

By: Representative Guice

To: Public Health and Welfare; Judiciary B

HOUSE BILL NO. 669

1 AN ACT TO AMEND SECTION 43-1-5, MISSISSIPPI CODE OF 1972, TO  
 2 DIRECT THE STATE DEPARTMENT OF HUMAN SERVICES TO DEVELOP FORMULAS  
 3 BY WHICH ALL FUNDS RECEIVED FOR PROGRAMS ADMINISTERED BY THE  
 4 DEPARTMENT WILL BE APPORTIONED AMONG THE COUNTY DEPARTMENTS OF  
 5 HUMAN SERVICES ON AN EQUITABLE BASIS, AND EMPLOYEES OF THE  
 6 DEPARTMENT WHO DIRECTLY PROVIDE CLIENT SERVICES WILL BE  
 7 APPORTIONED AMONG THE COUNTY DEPARTMENTS ON AN EQUITABLE BASIS; TO  
 8 AMEND SECTION 11-46-9, MISSISSIPPI CODE OF 1972, TO PROVIDE  
 9 IMMUNITY TO EMPLOYEES OF THE DEPARTMENT OF HUMAN SERVICES FOR ANY  
 10 CLAIM ARISING OUT OF ANY ACT OR OMISSION OF THE EMPLOYEE IN THE  
 11 COURSE OF PROVIDING SERVICES UNDER PROGRAMS ADMINISTERED BY THE  
 12 DEPARTMENT, EXCEPT IN CERTAIN CASES; TO AMEND SECTION 97-3-7,  
 13 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PERSON WHO IS  
 14 CONVICTED OF ASSAULT AGAINST AN EMPLOYEE OF THE DEPARTMENT OF  
 15 HUMAN SERVICES WHO WAS PROVIDING SERVICES OF THE DEPARTMENT TO THE  
 16 PERSON SHALL BE PUNISHED BY IMPRISONMENT FOR NOT LESS THAN TWO  
 17 YEARS, WHICH MINIMUM PERIOD OF IMPRISONMENT SHALL NOT BE SUSPENDED  
 18 OR REDUCED BY THE COURT; AND FOR RELATED PURPOSES.

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

20 **SECTION 1.** Section 43-1-5, Mississippi Code of 1972, is  
 21 amended as follows:

22 43-1-5. It shall be the duty of the Department of Human  
 23 Services to:

24 (a) Establish and maintain programs not inconsistent  
 25 with the terms of this chapter and the rules, regulations and  
 26 policies of the State Department of Human Services, and publish  
 27 the rules and regulations of the department pertaining to those  
 28 programs.

29 (b) Make such reports in such form and containing such  
 30 information as the federal government may, from time to time,  
 31 require, and comply with such provisions as the federal government  
 32 may, from time to time, find necessary to assure the correctness  
 33 and verification of those reports.

34 (c) Within ninety (90) days after the end of each  
 35 fiscal year, and at each regular session of the Legislature, make



36 and publish one (1) report to the Governor and to the Legislature,  
37 showing for the period of time covered, in each county and for the  
38 state as a whole:

39 (i) The total number of recipients;

40 (ii) The total amount paid to them in cash;

41 (iii) The maximum and the minimum amount paid to  
42 any recipients in any one (1) month;

43 (iv) The total number of applications;

44 (v) The number granted;

45 (vi) The number denied;

46 (vii) The number cancelled;

47 (viii) The amount expended for administration of  
48 the provisions of this chapter;

49 (ix) The amount of money received from the federal  
50 government, if any;

51 (x) The amount of money received from recipients  
52 of assistance and from their estates and the disposition of same;

53 (xi) Such other information and recommendations as  
54 the Governor may require or the department deems advisable;

55 (xii) The number of state-owned automobiles  
56 purchased and operated during the year by the department, the  
57 number purchased and operated out of funds appropriated by the  
58 Legislature, the number purchased and operated out of any other  
59 public funds, the miles traveled per automobile, the total miles  
60 traveled, the average cost per mile and depreciation estimate on  
61 each automobile;

62 (xiii) The cost per mile and total number of miles  
63 traveled by department employees in privately owned automobiles,  
64 for which reimbursement is made out of state funds;

65 (xiv) Each association, convention or meeting  
66 attended by any department employees, the purposes thereof, the  
67 names of the employees attending and the total cost to the state  
68 of the convention, association or meeting;



69                   (xv) How the money appropriated to the  
70 institutions under the jurisdiction of the department has been  
71 expended during the preceding year, beginning and ending with the  
72 fiscal year of each institution, exhibiting the salaries paid to  
73 officers and employees of the institutions, and each and every  
74 item of receipt and expenditure;

75                   (xvi) The activities of each division within the  
76 Department of Human Services and recommendations for improvement  
77 of the services to be performed by each division;

78                   (xvii) In order of authority, the twenty (20)  
79 highest paid employees in the department receiving an annual  
80 salary in excess of Forty Thousand Dollars (\$40,000.00), by PIN  
81 number, job title, job description and annual salary.

82           Each report shall be balanced and shall begin with the  
83 balance at the end of the preceding fiscal year, and if any  
84 property belonging to the state or the institution is used for  
85 profit, the report shall show the expenses incurred in managing  
86 the property and the amount received from the same. The reports  
87 shall also show a summary of the gross receipts and gross  
88 disbursements for each fiscal year and shall show the money on  
89 hand at the beginning of the fiscal period of each division and  
90 institution of the department.

91                   (d) Develop formulas to be used by the department by  
92 which (i) all state and federal funds received for programs  
93 administered by the department will be apportioned among the  
94 county departments of human services on an equitable basis, and  
95 (ii) employees of the department who directly provide client  
96 services will be apportioned among the county departments of human  
97 services on an equitable basis. The formulas shall be based on  
98 the population and demographics of each county, the number of  
99 recipients of services provided by each county department of human  
100 services, and the particular needs of each individual county for  
101 services provided by the department.



102 This section shall stand repealed on July 1, 2004.

103 **SECTION 2.** Section 11-46-9, Mississippi Code of 1972, is  
104 amended as follows:

105 11-46-9. (1) A governmental entity and its employees acting  
106 within the course and scope of their employment or duties shall  
107 not be liable for any claim:

108 (a) Arising out of a legislative or judicial action or  
109 inaction, or administrative action or inaction of a legislative or  
110 judicial nature;

111 (b) Arising out of any act or omission of an employee  
112 of a governmental entity exercising ordinary care in reliance  
113 upon, or in the execution or performance of, or in the failure to  
114 execute or perform, a statute, ordinance or regulation, whether or  
115 not the statute, ordinance or regulation be valid;

116 (c) Arising out of any act or omission of an employee  
117 of a governmental entity engaged in the performance or execution  
118 of duties or activities relating to police or fire protection  
119 unless the employee acted in reckless disregard of the safety and  
120 well-being of any person not engaged in criminal activity at the  
121 time of injury;

122 (d) Based upon the exercise or performance or the  
123 failure to exercise or perform a discretionary function or duty on  
124 the part of a governmental entity or employee thereof, whether or  
125 not the discretion be abused;

126 (e) Arising out of an injury caused by adopting or  
127 failing to adopt a statute, ordinance or regulation;

128 (f) Which is limited or barred by the provisions of any  
129 other law;

130 (g) Arising out of the exercise of discretion in  
131 determining whether or not to seek or provide the resources  
132 necessary for the purchase of equipment, the construction or  
133 maintenance of facilities, the hiring of personnel and, in  
134 general, the provision of adequate governmental services;



135           (h) Arising out of the issuance, denial, suspension or  
136 revocation of, or the failure or refusal to issue, deny, suspend  
137 or revoke any privilege, ticket, pass, permit, license,  
138 certificate, approval, order or similar authorization where the  
139 governmental entity or its employee is authorized by law to  
140 determine whether or not that authorization should be issued,  
141 denied, suspended or revoked, unless the issuance, denial,  
142 suspension or revocation, or failure or refusal thereof, is of a  
143 malicious or arbitrary and capricious nature;

144           (i) Arising out of the assessment or collection of any  
145 tax or fee;

146           (j) Arising out of the detention of any goods or  
147 merchandise by any law enforcement officer, unless the detention  
148 is of a malicious or arbitrary and capricious nature;

149           (k) Arising out of the imposition or establishment of a  
150 quarantine, whether the quarantine relates to persons or property;

151           (l) Of any claimant who is an employee of a  
152 governmental entity and whose injury is covered by the Workers'  
153 Compensation Law of this state by benefits furnished by the  
154 governmental entity by which he is employed;

155           (m) Of any claimant who at the time the claim arises is  
156 an inmate of any detention center, jail, workhouse, penal farm,  
157 penitentiary or other such institution, regardless of whether the  
158 claimant is or is not an inmate of any detention center, jail,  
159 workhouse, penal farm, penitentiary or other such institution when  
160 the claim is filed;

161           (n) Arising out of any work performed by a person  
162 convicted of a crime when the work is performed pursuant to any  
163 sentence or order of any court or pursuant to laws of the State of  
164 Mississippi authorizing or requiring that work;

165           (o) Under circumstances where liability has been or is  
166 hereafter assumed by the United States, to the extent of that  
167 assumption of liability, including, but not limited to, any claim



168 based on activities of the Mississippi National Guard when the  
169 claim is cognizable under the National Guard Tort Claims Act of  
170 the United States, 32 USC 715 (32 USCS 715), or when the claim  
171 accrues as a result of active federal service or state service at  
172 the call of the Governor for quelling riots and civil  
173 disturbances;

174 (p) Arising out of a plan or design for construction or  
175 improvements to public property, including, but not limited to,  
176 public buildings, highways, roads, streets, bridges, levees,  
177 dikes, dams, impoundments, drainage channels, diversion channels,  
178 harbors, ports, wharfs or docks, where the plan or design has been  
179 approved in advance of the construction or improvement by the  
180 legislative body or governing authority of a governmental entity  
181 or by some other body or administrative agency, exercising  
182 discretion by authority to give that approval, and where the plan  
183 or design is in conformity with engineering or design standards in  
184 effect at the time of preparation of the plan or design;

185 (q) Arising out of an injury caused solely by the  
186 effect of weather conditions on the use of streets and highways;

187 (r) Arising out of the lack of adequate personnel or  
188 facilities at a state hospital or state corrections facility if  
189 reasonable use of available appropriations has been made to  
190 provide the personnel or facilities;

191 (s) Arising out of loss, damage or destruction of  
192 property of a patient or inmate of a state institution;

193 (t) Arising out of any loss of benefits or compensation  
194 due under a program of public assistance or public welfare;

195 (u) Arising out of or resulting from riots, unlawful  
196 assemblies, unlawful public demonstrations, mob violence or civil  
197 disturbances;

198 (v) Arising out of an injury caused by a dangerous  
199 condition on property of the governmental entity that was not  
200 caused by the negligent or other wrongful conduct of an employee



201 of the governmental entity or of which the governmental entity did  
202 not have notice, either actual or constructive, and adequate  
203 opportunity to protect or warn against; \* \* \* however, \* \* \* a  
204 governmental entity shall not be liable for the failure to warn of  
205 a dangerous condition that is obvious to one exercising due care;

206 (w) Arising out of the absence, condition, malfunction  
207 or removal by third parties of any sign, signal, warning device,  
208 illumination device, guardrail or median barrier, unless the  
209 absence, condition, malfunction or removal is not corrected by the  
210 governmental entity responsible for its maintenance within a  
211 reasonable time after actual or constructive notice; or

212 (x) Arising out of the administration of corporal  
213 punishment or the taking of any action to maintain control and  
214 discipline of students, as defined in Section 37-11-57, by a  
215 teacher, assistant teacher, principal or assistant principal of a  
216 public school district in the state unless the teacher, assistant  
217 teacher, principal or assistant principal acted in bad faith or  
218 with malicious purpose or in a manner exhibiting a wanton and  
219 willful disregard of human rights or safety.

220 (y) Arising out of any act or omission of an employee  
221 of the Department of Human Services in the course of providing  
222 services under programs administered by the department, except in  
223 cases of willful misconduct, gross negligence or the reckless  
224 disregard of the safety and well-being of any person.

225 (2) A governmental entity shall also not be liable for any  
226 claim where the governmental entity:

- 227 (a) Is inactive and dormant;
- 228 (b) Receives no revenue;
- 229 (c) Has no employees; and
- 230 (d) Owns no property.

231 (3) If a governmental entity exempt from liability by  
232 subsection (2) becomes active, receives income, hires employees or  
233 acquires any property, such governmental entity shall no longer be



234 exempt from liability as provided in subsection (2) and shall be  
235 subject to the provisions of this chapter.

236 **SECTION 3.** Section 97-3-7, Mississippi Code of 1972, is  
237 amended as follows:

238 97-3-7. (1) A person is guilty of simple assault if he (a)  
239 attempts to cause or purposely, knowingly or recklessly causes  
240 bodily injury to another; or (b) negligently causes bodily injury  
241 to another with a deadly weapon or other means likely to produce  
242 death or serious bodily harm; or (c) attempts by physical menace  
243 to put another in fear of imminent serious bodily harm; and, upon  
244 conviction, he shall be punished by a fine of not more than Five  
245 Hundred Dollars (\$500.00) or by imprisonment in the county jail  
246 for not more than six (6) months, or both. \* \* \* However, a  
247 person convicted of simple assault (a) upon a statewide elected  
248 official, law enforcement officer, fireman, emergency medical  
249 personnel, public health personnel, social worker employed by the  
250 Department of Human Services or another agency, superintendent,  
251 principal, teacher or other instructional personnel, school  
252 attendance officer, school bus driver, or a judge of a circuit,  
253 chancery, county, justice or youth court or a judge of the Court  
254 of Appeals or a justice of the Supreme Court, district attorney,  
255 legal assistant to a district attorney, county prosecutor,  
256 municipal prosecutor, court reporter employed by a court, court  
257 administrator, clerk or deputy clerk of the court, or public  
258 defender, while such statewide elected official, judge or justice,  
259 law enforcement officer, fireman, emergency medical personnel,  
260 public health personnel, social worker, superintendent, principal,  
261 teacher or other instructional personnel, school attendance  
262 officer, school bus driver, district attorney, legal assistant to  
263 a district attorney, county prosecutor, municipal prosecutor,  
264 court reporter employed by a court, court administrator, clerk or  
265 deputy clerk of the court, or public defender is acting within the  
266 scope of his duty, office or employment, or (b) upon a legislator





267 while the Legislature is in regular or extraordinary session or  
268 while otherwise acting within the scope of his duty, office or  
269 employment, shall be punished by a fine of not more than One  
270 Thousand Dollars (\$1,000.00) or by imprisonment for not more than  
271 five (5) years, or both. In addition, a person who is convicted  
272 of simple assault against an employee of the Department of Human  
273 Services who was providing services of the department to the  
274 person shall be punished by imprisonment of not less than two (2)  
275 years nor more than five (5) years, and the minimum period of  
276 imprisonment shall not be suspended or reduced by the court.

277 (2) A person is guilty of aggravated assault if he (a)  
278 attempts to cause serious bodily injury to another, or causes such  
279 injury purposely, knowingly or recklessly under circumstances  
280 manifesting extreme indifference to the value of human life; or  
281 (b) attempts to cause or purposely or knowingly causes bodily  
282 injury to another with a deadly weapon or other means likely to  
283 produce death or serious bodily harm; and, upon conviction, he  
284 shall be punished by imprisonment in the county jail for not more  
285 than one (1) year or in the Penitentiary for not more than twenty  
286 (20) years. \* \* \* However, a person convicted of aggravated  
287 assault (a) upon a statewide elected official, law enforcement  
288 officer, fireman, emergency medical personnel, public health  
289 personnel, social worker employed by the Department of Human  
290 Services or another agency, superintendent, principal, teacher or  
291 other instructional personnel, school attendance officer, school  
292 bus driver, or a judge of a circuit, chancery, county, justice or  
293 youth court or a judge of the Court of Appeals or a justice of the  
294 Supreme Court, district attorney, legal assistant to a district  
295 attorney, county prosecutor, municipal prosecutor, court reporter  
296 employed by a court, court administrator, clerk or deputy clerk of  
297 the court, or public defender, while such statewide elected  
298 official, judge or justice, law enforcement officer, fireman,  
299 emergency medical personnel, public health personnel, social



300 worker, superintendent, principal, teacher or other instructional  
301 personnel, school attendance officer, school bus driver, district  
302 attorney, legal assistant to a district attorney, county  
303 prosecutor, municipal prosecutor, court reporter employed by a  
304 court, court administrator, clerk or deputy clerk of the court, or  
305 public defender is acting within the scope of his duty, office or  
306 employment, or (b) upon a legislator while the Legislature is in  
307 regular or extraordinary session or while otherwise acting within  
308 the scope of his duty, office or employment, shall be punished by  
309 a fine of not more than Five Thousand Dollars (\$5,000.00) or by  
310 imprisonment for not more than thirty (30) years, or both. In  
311 addition, a person who is convicted of aggravated assault against  
312 an employee of the Department of Human Services who was providing  
313 services of the department to the person shall be punished by  
314 imprisonment of not less than two (2) years nor more than thirty  
315 (30) years, and the minimum period of imprisonment shall not be  
316 suspended or reduced by the court.

317 (3) A person is guilty of simple domestic violence who  
318 commits simple assault as described in subsection (1) of this  
319 section against a family or household member who resides with the  
320 defendant or who formerly resided with the defendant, a current or  
321 former spouse, a person who has a current dating relationship with  
322 the defendant, or a person with whom the defendant has had a  
323 biological or legally adopted child and upon conviction, the  
324 defendant shall be punished as provided under subsection (1) of  
325 this section; provided, that upon a third or subsequent conviction  
326 of simple domestic violence, whether against the same or another  
327 victim and within five (5) years, the defendant shall be guilty of  
328 a felony and sentenced to a term of imprisonment not less than  
329 five (5) nor more than ten (10) years. In sentencing, the court  
330 shall consider as an aggravating factor whether the crime was  
331 committed in the physical presence or hearing of a child under  
332 sixteen (16) years of age who was, at the time of the offense,



333 living within either the residence of the victim, the residence of  
334 the perpetrator, or the residence where the offense occurred.

335 (4) A person is guilty of aggravated domestic violence who  
336 commits aggravated assault as described in subsection (2) of this  
337 section against a family or household member who resides with the  
338 defendant or who formerly resided with the defendant, or a current  
339 or former spouse, a person who has a current dating relationship  
340 with the defendant, or a person with whom the defendant has had a  
341 biological or legally adopted child and upon conviction, the  
342 defendant shall be punished as provided under subsection (2) of  
343 this section; provided, that upon a third or subsequent offense of  
344 aggravated domestic violence, whether against the same or another  
345 victim and within five (5) years, the defendant shall be guilty of  
346 a felony and sentenced to a term of imprisonment of not less than  
347 five (5) nor more than twenty (20) years. In sentencing, the  
348 court shall consider as an aggravating factor whether the crime  
349 was committed in the physical presence or hearing of a child under  
350 sixteen (16) years of age who was, at the time of the offense,  
351 living within either the residence of the victim, the residence of  
352 the perpetrator, or the residence where the offense occurred.  
353 Reasonable discipline of a child, such as spanking, is not an  
354 offense under this subsection (4).

355 (5) "Dating relationship" means a social relationship of a  
356 romantic or intimate nature.

357 (6) Every conviction of domestic violence may require as a  
358 condition of any suspended sentence that the defendant participate  
359 in counseling or treatment to bring about the cessation of  
360 domestic abuse. The defendant may be required to pay all or part  
361 of the cost of the counseling or treatment, in the discretion of  
362 the court.

363 (7) In any conviction of assault as described in any  
364 subsection of this section which arises from an incident of



365 domestic violence, the sentencing order shall include the  
366 designation "domestic violence."

367         **SECTION 4.** This act shall take effect and be in force from  
368 and after July 1, 2003.

