

**IN THE SUPREME COURT OF MISSISSIPPI  
NO. 2007-CA-02095**

**ARTHUR and ANGELA PARSONS, JR.,  
husband and wife**

**PLAINTIFFS-APPELLANTS**

**VERSUS**

**MISSISSIPPI STATE PORT AUTHORITY  
and MISSISSIPPI DEVELOPMENT  
AUTHORITY**

**DEFENDANTS-APPELLEES**

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**APPEAL FROM THE CIRCUIT COURT OF  
HARRISON COUNTY, FIRST JUDICIAL  
DISTRICT, MISSISSIPPI**

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**RESPONSE BRIEF OF THE DEFENDANTS-APPELLEES**

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**ORAL ARGUMENT NOT REQUESTED**

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Balch & Bingham LLP, attorneys for Mississippi State Port Authority at Gulfport and Mississippi Development Authority, Defendants-Appellees
2. Board of Mississippi State Port Authority at Gulfport
3. Board of Mississippi Development Authority
4. Wynn E. Clark, attorney at law, and Law Offices of Danny E. Cupit, P.C., attorneys for Arthur and Angela Parsons, Jr., Plaintiffs-Appellants
5. Arthur and Angela Parsons, Jr.
6. Wells, Marble & Hurst, PLLC, attorneys of record for KLLM Transport Services, Inc., Defendant
7. KLLM Transport Services, Inc.
8. Samson & Powers, PLLC and Wagner & Bagot, LLP, attorneys for Chiquita Fresh North America, L.L.C., Defendant
9. Chiquita Fresh North America, L.L.C.

A handwritten signature in cursive script, appearing to read "Mr. H. Stone", is positioned above a horizontal line.

Counsel of Record for Defendants-Appellees,  
Mississippi State Port Authority at Gulfport  
and Mississippi Development Authority

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### **STATEMENT IN OPPOSITION OF ORAL ARGUMENT**

The Defendants-Appellees do not request oral argument in this appeal due to the statutory provisions and legislative intent at issue being clear and unambiguous. Oral argument, if granted, will likely result in a mere recitation of the statutory and general laws cited herein.

## STATEMENT OF THE CASE

### **A. Course of Proceedings and Disposition in the Trial Court**

On February 12, 2007, Arthur and Angela Parsons, the Appellants-Plaintiffs (“Plaintiffs”), filed a Complaint in the Circuit Court of Harrison County, First Judicial District, Mississippi, the Honorable Stephen B. Simpson presiding (“Trial Court”), against the Mississippi State Port Authority at Gulfport (“Port Authority”) and the Mississippi Development Authority (“MDA”). (R. at 11-23.) Plaintiffs’ Complaint alleges that the Port Authority and the MDA were negligent in the preparation for, the mitigation of, the response to, and the recovery from Hurricane Katrina, and that the Port Authority’s and the MDA’s negligence caused debris from the Port of Gulfport to trespass onto Plaintiffs’ property and cause damage thereto. (R. at 14-20.)

On March 19, 2007, the Port Authority and the MDA filed a Motion to Dismiss and Memorandum in Support thereof (“Motion to Dismiss”) pursuant to Rule 12(b)(6) of the Mississippi Rules of Civil Procedure requesting the Trial Court to dismiss Plaintiffs’ claims against them. (R. at 24-91.) The Motion to Dismiss was based, *inter alia*, on the immunity granted to state agencies pursuant to the Mississippi Emergency Management Law, §§ 33-15-1, *et seq.*, of the Mississippi Code Annotated (“MEML”) (a copy of which is attached hereto as Appendix “A”), particularly § 33-15-21 of the Mississippi Code Annotated (also referenced herein as the “MEML Immunity”). (R. at 31-34.)

On April 2, 2007, Plaintiffs filed a Response to the Port Authority’s and the MDA’s Motion to Dismiss. (R. at 92-94.) As stated in their Response, Plaintiffs’ position is that the Mississippi Tort Claims Act, §§ 11-46-1, *et seq.*, of the Mississippi Code Annotated (“MTCA”) (copies of relevant portions are attached hereto as Appendix “B”), controls the liability of the Port Authority and the MDA and only provides for limited immunity. (R. at 92-93.)

On July 30, 2007, a hearing on the Motion to Dismiss was held before the Trial Court. (R. at 108; Mot. to Dismiss Hr'g Tr. at 1-25.) On September 14, 2007, the Trial Court entered an Order granting the Motion to Dismiss pursuant to the statutory immunity provided in § 33-15-21. (R. at 129-30.) The Trial Court found that the MEML is "Mississippi's comprehensive disaster response statute and outlines the state's disaster management program," and that the Port Authority and the MDA are immune from claims involving "all aspects of pre-emergency preparedness and post emergency response, recovery and mitigation." (R. at 130, citing Miss. Code Ann. § 33-15-5(c)(v).)

On November 2, 2007, per the Plaintiffs' request, the Trial Court amended its Order of September 14, 2007 into a Final Judgment pursuant to Rule 54(b) of the Mississippi Rules of Civil Procedure. (R. at 134.) The Trial Court's Final Judgment is consistent with over 45 other Hurricane Katrina-related rulings in federal and state courts dismissing the Port Authority and/or the MDA pursuant to the MEML in cases substantially similar to the present one. (R. at 28.)

#### **B. Statement of Facts**

Both the Port Authority and the MDA are agencies of the State of Mississippi. (R. 11-12 and 24.) Several years prior to Hurricane Katrina, the Port Authority adopted certain Hurricane Procedures that were filed with the Secretary of State and constitute rules and regulations promulgated pursuant to the MEML. (R. at 14-15, ¶ 11; R. at 33 n.13); *see* Code Miss. R. 06.000.002.

On August 25, 2005, Governor Haley Barbour executed a state of emergency declaration in preparation for the possibility of Hurricane Katrina affecting the Mississippi Gulf Coast. (*See* R. at 15, ¶ 12.) "On August 26, 2005, the Port Authority sent notice of the impending hurricane to its Port tenants and began to implement its hurricane preparedness plan." (R. at 15, ¶ 13.)

On August 29, 2005, Hurricane Katrina made landfall on the Mississippi Gulf Coast. (R. at 15, ¶ 17.) Hurricane Katrina was one of the greatest natural disasters the United States, and particularly Mississippi, has ever experienced. Plaintiffs allege that the wind and water of Hurricane Katrina transported numerous objects and debris from the Port of Gulfport onto their property and that the objects and debris caused damage to their property. (R. at 15-16, ¶¶ 17-18.) Based on these alleged circumstances, Plaintiffs allege that the Port Authority and the MDA were negligent in their preparation for Hurricane Katrina and that their negligence caused the damage to, and trespasses upon, Plaintiffs' property. (R. at 16-20.)

## SUMMARY OF THE ARGUMENT

The immunity provided to the Port Authority and the MDA as state agencies pursuant to the MEML, particularly § 33-15-21(a), is neither superseded by nor in conflict with the MTCA.

The Mississippi Legislature (“Legislature”) amended the MEML subsequent to the effective date of the MTCA by stating that all of the provisions of the MEML, including § 33-15-21, serve the important interests of promoting the state's emergency preparedness, response, recovery and mitigation capabilities. *See* Miss. Code Ann. § 33-15-2(2) and (3). Moreover, the Legislature affirmed after the effective date of the MTCA that: “All existing laws, ordinances, rules and regulations inconsistent with the provisions of [the MEML], or of any order, rule, or regulation issued under the authority of [the MEML], shall be suspended during the period of time and to the extent that such conflict, disaster or emergency exists.” Miss. Code Ann. § 33-15-31(b). Accordingly, the immunity provided to the Port Authority and the MDA pursuant to § 33-15-21 is not superseded by the MTCA.

Further, the MTCA provides that its waiver of sovereign immunity in certain instances was not intended to supersede any state law immunity or bar to civil suit in existence prior to the MTCA. Miss. Code Ann. § 11-46-7(8). The MTCA also provides an exemption from liability that is directly applicable to this case: “A governmental entity . . . shall not be liable for any claim: . . . [w]hich is limited or barred by the provisions of any other law . . . .” Miss. Code Ann. § 11-46-9(1)(f). The express language of the MTCA indicates that there is no conflict between its provisions and those of the MEML. Plaintiffs’ argument fails to address the substance and/or timing of any of these provisions.

Based on the foregoing, the Plaintiffs’ appeal is without merit and the Final Judgment of the Trial Court should be affirmed. The Trial Court properly held pursuant to § 33-15-21(a), and consistent with over 45 other federal and/or state court dismissals, that the Port Authority and the

MDA are immune from liability for Plaintiffs' claims arising out of the Port Authority's and the MDA's preparations for Hurricane Katrina, the worst natural disaster in United States history by any of several measures.

## ARGUMENT

### **I. THE IMMUNITY GRANTED TO THE PORT AUTHORITY AND THE MDA DURING TIMES OF EMERGENCY PURSUANT TO THE MEML IS NEITHER SUPERSEDED BY NOR IN CONFLICT WITH THE MTCA.**

#### ***A. The MEML Immunity is Not Superseded by the MTCA.***

Plaintiffs' position is that the Trial Court improperly dismissed the Port Authority and the MDA pursuant to § 33-15-21(a) of the Mississippi Code Annotated because the MTCA "effectively supersedes the absolute immunity provided in Miss. Code Ann. § 33-15-21 and channels that immunity through the limited provisions of the Tort Claims Act." (Appellants' Br. at 10.) Plaintiffs base their position on the fact that § 33-15-21, standing alone, was enacted by the Legislature in 1980 and that the subsequently enacted MTCA, particularly § 11-46-5(1) of the Mississippi Code Annotated, implicitly repeals § 33-15-21. (Appellants' Br. at 10-11.) The fallacy in Plaintiffs' argument is that it focuses too narrowly on the legislative intent behind § 33-15-21 in 1980 only and simply misses the forest of subsequent years for a tree of a single year.

As stated by Plaintiffs, Section 11-46-5 became effective in 1992 and states in pertinent part:

(1) Notwithstanding the immunity granted in Section 11-46-3, or the provisions of any other law to the contrary, the immunity of the state and its political subdivisions from claims for money damages arising out of the torts of such governmental entities and the torts of their employees while acting within the course and scope of their employment is hereby waived from and after July 1, 1993, as to the state, and from and after October 1, 1993, as to political subdivisions; provided, however, immunity of a governmental entity in any such case shall be waived only to the extent of the maximum amount of liability provided for in Section 11-46-15.<sup>1</sup>

---

<sup>1</sup> Despite Plaintiffs' contention that this statutory provision abolished sovereign immunity (Appellants' Br. at 12), it is clear that the MTCA was intended to only waive sovereign immunity in certain circumstances. See Miss. Code Ann. §§ 11-46-3 through 11-46-9.

To date, § 11-46-5 has remained unchanged by the Legislature since 1992. *See* Miss. Code Ann. § 11-46-5(1); Act of May 12, 1992, ch. 491, § 4, 1992 Miss. Laws 648, 648-49 (a copy of which is attached as Appendix "D"). The Legislature, however, has re-evaluated, amended and added new provisions to the MEML on numerous occasions following the effective date of the MTCA and § 11-46-5 in particular.

Specifically, the Legislature added a statement of its legislative intent regarding the MEML in 1995 which has been codified as § 33-15-2 of the Mississippi Code Annotated. *See* Act of July 1, 1995, ch. 333, § 1, 1995 Miss. Laws 68, 68-69 (a copy of which is attached as Appendix "E"). Section 33-15-2 states in pertinent part as follows:

(2) It is the intent of the Legislature to reduce the vulnerability of the people and property of this state; to prepare for efficient evacuation and shelter of threatened or affected persons; to provide for the rapid and orderly provision of relief to persons and for the coordination of activities relating to emergency preparedness, response, recovery and mitigation among and between agencies and officials of this state, with similar agencies and officials of other states, with local and federal governments, with interstate organizations and with the private sector.

(3) It is further the intent of the Legislature to promote the state's emergency preparedness, response, recovery and mitigation capabilities through enhanced coordination, long-term planning and adequate funding. State policy for responding to disasters is to support local emergency response efforts. In the case of a major or catastrophic disaster, however, the needs of residents and communities will likely be greater than local resources. In these situations, the state must be capable of providing effective, coordinated and timely support to communities and the public. Therefore, the Legislature determines and declares that the provisions of this article fulfill an important state interest.

Miss. Code Ann. § 33-15-2(2) and (3) (emphasis added). The Legislature clearly affirmed its legislative intent and its belief in the appropriateness of § 33-15-21 by stating over three (3) years after the effective date of the MTCA that all the provisions contained in the MEML fulfill an important state interest.

Additionally, the Legislature re-evaluated and amended § 33-15-31 of the Mississippi Code Annotated in 1995. *See* Act of July 1, 1995, ch. 333, § 13, 1995 Miss. Laws 68, 82 (a copy of which is attached as Appendix “E”). Section 33-15-31 states in pertinent part:

(b) All orders, rules, and regulations promulgated by the Governor, the Mississippi Emergency Management Agency or by any political subdivision or other agency authorized by this article to make orders, rules and regulations, shall have the full force and effect of law, when, in the event of issuance by the Governor, or any state agency, a copy thereof is filed in the office of the Secretary of State, or, if promulgated by a political subdivision of the state or agency thereof, when filed in the office of the clerk of the political subdivision or agency promulgating the same. All existing laws, ordinances, rules and regulations inconsistent with the provisions of this article, or of any order, rule, or regulation issued under the authority of this article, shall be suspended during the period of time and to the extent that such conflict, disaster or emergency exists.

Miss. Code Ann. § 33-15-31(b) (emphasis added). Again, the Legislature clearly affirmed after the effective date of the MTCA that the provisions of the MEML, including § 33-15-21, control in the event of a conflict with any other law when the provisions of the MEML are applicable. As stated by Plaintiffs, the last expression of the Legislature must prevail over the former. (Appellants’ Br. at 11, citing *Coker v. Wilkinson*, 106 So. 886, 887 (Miss. 1926).)

Even if the Legislature had not added to, amended and reaffirmed the provisions of the MEML in their entirety following the effective date of the MTCA, the MTCA expressly stated at the time of its initial enactment and effective dates, and continues to state today, that it is not intended to repeal any immunity or bar to a civil suit under Mississippi or federal law that existed prior to the MTCA.

***B. The MEML Immunity is Not in Conflict with the MTCA.***

The MTCA, specifically § 11-46-7 of the Mississippi Code Annotated, states in pertinent part:

(1) The remedy provided by this chapter against a governmental entity or its employee is exclusive of any other civil action or civil proceeding by reason of the same subject matter against the governmental entity or its employee or the

estate of the employee for the act or omission which gave rise to the claim or suit; and any claim made or suit filed against a governmental entity or its employee to recover damages for any injury for which immunity has been waived under this chapter shall be brought only under the provisions of this chapter, notwithstanding the provisions of any other law to the contrary. . . .

(8) Nothing in this chapter shall enlarge or otherwise adversely affect the personal liability of an employee of a governmental entity. **Any immunity or other bar to a civil suit under Mississippi or federal law shall remain in effect.** The fact that a governmental entity may relieve an employee from all necessary legal fees and expenses and any judgment arising from the civil lawsuit shall not under any circumstances be communicated to the trier of fact in the civil lawsuit.

Miss. Code Ann. § 11-46-7(1) and (8) (emphasis added). The MTCA has read this way since its initial enactment in 1984 and the date it became initially effective in 1992. *See* Act of May 15, 1984, ch. 495, § 5, 1984 Miss. Laws 640, 642 (a copy of which is attached as Appendix “C”); Act of May 12, 1992, ch. 491, § 6, 1992 Miss. Laws 648, 649-50 (a copy of which is attached as Appendix “D”). The plain language of the MTCA establishes that the intent of the Legislature was for the immunity provided in § 33-15-21(a) to remain in full force and effect.

Additionally, a particular exemption from liability that has always been contained in the MTCA further evinces a lack of any conflict between the MTCA and the MEML Immunity. Section 11-46-9(1)(f) states:

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

(f) Which is limited or barred by the provisions of any other law . . . .

Miss. Code Ann. § 11-46-9(1)(f) (emphasis added); *see* Act of May 15, 1984, ch. 495, § 6, 1984 Miss. Laws 640, 642 (a copy of which is attached as Appendix “C”). Similar to § 11-46-7(8), the clear intent expressed in the § 11-46-9(1)(f) exemption is for state agencies like the Port Authority and the MDA to remain immune from liability when a claim is “limited or barred by the provisions” of § 33-15-21(a).

Plaintiffs' position is that the remedy provided by the MTCA is the exclusive remedy for any tort recovery against a governmental entity. (Appellants' Br. at 10.) Section 11-46-7(1) basically states as much. The word "remedy," however, is not synonymous with "immunity," and the MTCA has never pretended to expressly list all immunities available to governmental entities by way of the MTCA. The MEML Immunity fits perfectly within the plain language of §§ 11-46-7(8) and 11-46-9(1)(f).

The "hopeless conflict" between the MTCA and the MEML Immunity alleged by the Plaintiffs is simply not the case (*see* Appellants' Br. at 7 and 11), and there is no need for this Honorable Court to resort to the rules of statutory construction as suggested by Plaintiffs since determining the intent of the Legislature starts with looking at the words of the statutes themselves (Appellants' Br. at 11, citing *Miss. Gaming Comm'n v. Imperial Palace of Miss., Inc.*, 751 So. 2d 1025, 1028 (Miss. 1999).) Accordingly, the Port Authority and the MDA respectfully request this Honorable Court to affirm the Final Judgment entered by the Trial Court and uphold the express intent of the Legislature.

## **II. THE TRIAL COURT PROPERLY DISMISSED PLAINTIFFS' CLAIMS PURSUANT TO THE MEML IMMUNITY.**

As summarized by the Trial Court,

[T]he complaint clearly seeks to recover damages from the Port Authority and the MDA for the adequacy and implementation of their hurricane procedures, the inadequacy of their preventative measures during Hurricane Katrina's approach and their corrective measures afterwards.

(R. at 130; *see* R. at 11-23.) Section 33-15-21 provides in pertinent part:

(a) Neither the state nor any political subdivision thereof, nor other agencies, nor, except in cases of willful misconduct, the agents, employees, or representatives of any of them engaged in any emergency management activities, while complying with or attempting to comply with this article or any rule or regulation promulgated pursuant to the provisions of this article, shall be liable for the death of or any injury to persons, or damage to property, as a result of such activity.

Plaintiffs do not question the status of either the Port Authority or the MDA as agencies of the State of Mississippi. (R. at 11-12, ¶¶ 2A. and B.) Plaintiffs have not disputed that their Complaint clearly alleges liability against the Port Authority and the MDA for their “emergency management” activities in preparation for or recovery from Hurricane Katrina. *See* Miss. Code Ann. § 33-15-5(c), (defining “emergency management” to include “the preparation for, the mitigation of, the response to, and the recovery from emergencies and disasters”). The preparation for and recovery from Hurricane Katrina by the Port Authority and the MDA, coupled with the Governor’s execution of an emergency declaration for Hurricane Katrina, clearly placed these state agencies within the meaning and protection of the MEML. *See* Miss. Code Ann. § 33-15-5(h), (j) and (m). In fact, Plaintiffs do not contest that the provisions of § 33-15-21(a) standing alone provide the Port Authority and the MDA with absolute immunity in this case. (Mot. to Dismiss Hr’g Tr. at 14, lines 18-21; Appellants’ Br. at 1 and 10.)

Since the MEML is neither superseded by, nor conflicts with, the MTCA, there is no question that the Trial Court properly held that “[t]he actions and inactions which Plaintiff alleges give rise to liability are precisely the emergency management the legislature insulated these defendants from through Miss. Code Ann. § 33-15-21[a].” Based on the foregoing, there is no possibility of state law imposing liability against the Port Authority and the MDA based on Plaintiffs’ claims, and the Port Authority and the MDA respectfully request this Honorable Court to affirm the Final Judgment of the Trial Court. (*See* R. at 129-30 and 134.)

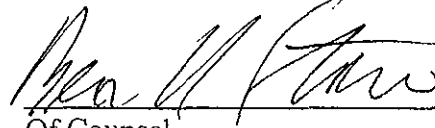
CONCLUSION

For the reasons given, the Trial Court's grant of the State Defendants' Motion to Dismiss should be affirmed.

Respectfully submitted,

MISSISSIPPI STATE PORT AUTHORITY AT  
GULFPORT and MISSISSIPPI DEVELOPMENT  
AUTHORITY, DEFENDANTS-APPELLEES

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APPELLEES

**CERTIFICATE OF SERVICE**

I, Ben H. Stone, Esq., attorney for Defendants-Appellees, Mississippi State Port Authority at Gulfport and the Mississippi Development Authority, certify that I have this day filed an original and three (3) copies of this Response Brief of the Defendants-Appellees with the Mississippi Supreme Court Clerk and have served a copy of same by United States mail, with postage prepaid, on the following persons at the following:

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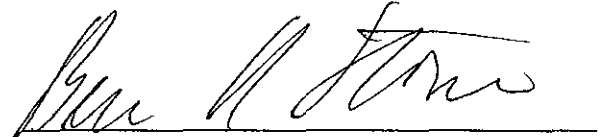
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This the 3<sup>rd</sup> day of June, 2008.

  
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Of Counsel

# APPENDIX “A”

1 of 29 DOCUMENTS

MISSISSIPPI CODE of 1972 ANNOTATED  
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\*\*\* CURRENT THROUGH THE 2007 1st EXTRAORDINARY SESSION \*\*\*  
\*\*\* STATE COURT ANNOTATIONS CURRENT THROUGH January 10, 2008 \*\*\*

TITLE 33. MILITARY AFFAIRS  
CHAPTER 15. EMERGENCY MANAGEMENT AND CIVIL DEFENSE  
ARTICLE 1. EMERGENCY MANAGEMENT LAW

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

*Miss. Code Ann. § 33-15-1 (2008)*

§ 33-15-1. Short title

This article may be cited as the "Mississippi Emergency Management Law."

**HISTORY:** SOURCES: Codes, 1942, § 8610-01; Laws, 1942, ch. 206; Laws, 1952, ch. 312, § 1; Laws, 1980, ch. 491, § 1, eff from and after passage (approved May 9, 1980).

**NOTES:**

CROSS REFERENCES. --Civil emergencies, see §§ 45-17-1 et seq.

Provision restricting the prices which may be charged for goods during a state of emergency, see § 75-24-25.

JUDICIAL DECISIONS

1. IN GENERAL.

This chapter is not to be read in pari materia with § 31-7-13(k); during an emergency, the Emergency Management Law controls. *Bolivar County v. Wal-Mart Stores*, 797 So. 2d 790 (Miss. 1999).

ATTORNEY GENERAL OPINIONS

Based on Section 47-1-9, as a general rule, county inmates may not be worked on private property, even if such work benefits the public. However, the Mississippi Emergency Management Law, codified at 33-15-1, et. seq., is an exception to the general rule if the governing authorities determine that an emergency exists and there is a need to use the services of prisoners to protect life or property. Price, December 13, 1996, A.G. Op. #96-0793.

If a board of supervisors finds and determines, consistent with fact, that a local emergency, as defined by Section 33-15-5(g) exists, then the board has the authority to declare a state of emergency and invoke the provisions of Section 33-15-1, et. seq. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

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MISSISSIPPI CODE of 1972 ANNOTATED  
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\*\*\* CURRENT THROUGH THE 2007 1st EXTRAORDINARY SESSION \*\*\*  
\*\*\* STATE COURT ANNOTATIONS CURRENT THROUGH January 10, 2008 \*\*\*

TITLE 33. MILITARY AFFAIRS  
CHAPTER 15. EMERGENCY MANAGEMENT AND CIVIL DEFENSE  
ARTICLE 1. EMERGENCY MANAGEMENT LAW

**GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY**

*Miss. Code Ann. § 33-15-2 (2008)*

**§ 33-15-2. Legislative findings and declaration of intent**

(1) The Legislature finds and declares that the state is vulnerable to a wide range of emergencies, including natural, technological and man-made disasters, all of which threaten the life, health and safety of its people; damage and destroy property; disrupt services and everyday business and recreational activities; and impede economic growth and development. The Legislature further finds that this vulnerability is exacerbated by the growth in the state's number of persons with special needs. This growth has greatly complicated the state's ability to coordinate its emergency management resources and activities.

(2) It is the intent of the Legislature to reduce the vulnerability of the people and property of this state; to prepare for efficient evacuation and shelter of threatened or affected persons; to provide for the rapid and orderly provision of relief to persons and for the coordination of activities relating to emergency preparedness, response, recovery and mitigation among and between agencies and officials of this state, with similar agencies and officials of other states, with local and federal governments, with interstate organizations and with the private sector.

(3) It is further the intent of the Legislature to promote the state's emergency preparedness, response, recovery and mitigation capabilities through enhanced coordination, long-term planning and adequate funding. State policy for responding to disasters is to support local emergency response efforts. In the case of a major or catastrophic disaster, however, the needs of residents and communities will likely be greater than local resources. In these situations, the state must be capable of providing effective, coordinated and timely support to communities and the public. Therefore, the Legislature determines and declares that the provisions of this article fulfill an important state interest.

**HISTORY:** SOURCES: Laws, 1995, ch. 333, § 1, eff from and after July 1, 1995.

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MISSISSIPPI CODE of 1972 ANNOTATED  
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\*\*\* CURRENT THROUGH THE 2007 1st EXTRAORDINARY SESSION \*\*\*  
\*\*\* STATE COURT ANNOTATIONS CURRENT THROUGH January 10, 2008 \*\*\*

TITLE 33. MILITARY AFFAIRS  
CHAPTER 15. EMERGENCY MANAGEMENT AND CIVIL DEFENSE  
ARTICLE 1. EMERGENCY MANAGEMENT LAW

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

*Miss. Code Ann. § 33-15-3 (2008)*

§ 33-15-3. Policy and purpose

(a) Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage or other hostile action, and from natural, man-made or technological disasters, and in order to insure that preparations of this state will be adequate to deal with, reduce vulnerability to, and recover from such disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health and safety, and to preserve the lives and property of the people of this state, it is hereby found and declared necessary: (1) To create a state emergency management agency, and to authorize the creation of local organizations for emergency management in the municipalities and counties of the state, and to authorize cooperation with the federal government and the governments of other states; (2) to confer upon the Governor, the agency and upon the executive heads or governing bodies of the municipalities and counties of the state the emergency powers provided herein; and (3) to provide for the rendering of mutual aid among the municipalities and counties of the state, and with other states, and with the federal government with respect to the carrying out of emergency management functions and responsibilities; (4) to authorize the establishment of such organizations and the development and employment of such measures as are necessary and appropriate to carry out the provisions of this article; and (5) to provide the means to assist in the prevention or mitigation of emergencies which may be caused or aggravated by inadequate planning for, and regulation of, public and private facilities and land use.

(b) It is further declared to be the purpose of this article and the policy of the state that all emergency management functions of this state be coordinated, to the maximum extent, with the comparable functions of the federal government, including its various departments and agencies, of other states and localities, and of private agencies of every type, to the end that the most effective preparation and use may be made of the nation's manpower, resources, and facilities for dealing with any disaster or emergency, or both, that may occur as enumerated in this section.

**HISTORY:** SOURCES: Codes, 1942, § 8610-02; Laws, 1952, ch. 312, § 2; Laws, 1962, ch. 482, § 1; Laws, 1980, ch. 491, § 2; Laws, 1995, ch. 333, § 2, eff from and after July 1, 1995.

**NOTES:**

**CROSS REFERENCES.** --Civil emergencies, see §§ 45-17-1 et seq.

Provision restricting the prices which may be charged for goods during a state of emergency, see § 75-24-25.

ATTORNEY GENERAL OPINIONS

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It would be inconsistent and counterproductive with policy of emergency management law for local agencies to develop plans for emergencies without approval of state emergency management agency; such "independent" plans could easily be inefficient and even antagonistic without some review process. McFatter, May 10, 1990, A.G. Op. #90-0300.

AM JUR. 54A Am. Jur. 2d, Military, and Civil Defense §§ 447, 448.

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*Miss. Code Ann. § 33-15-5 (2008)*

§ 33-15-5. Definitions

The following words, whenever used in this article shall, unless a different meaning clearly appears from the context, have the following meanings:

- (a) "Agency" means the Mississippi Emergency Management Agency, created by Section 33-15-7.
- (b) "Director" means the Director of Emergency Management, appointed pursuant to Section 33-15-7.
- (c) "Emergency management" means the preparation for, the mitigation of, the response to, and the recovery from emergencies and disasters. Specific emergency management responsibilities include, but are not limited to:
  - (i) Reduction of vulnerability of people and communities of this state to damage, injury and loss of life and property resulting from natural, technological or man-made emergencies or hostile military paramilitary action.
  - (ii) Preparation for prompt and efficient response and recovery to protect lives and property affected by emergencies.
  - (iii) Response to emergencies using all systems, plans and resources necessary to preserve adequately the health, safety and welfare of persons or property affected by the emergency.
  - (iv) Recovery from emergencies by providing for the rapid and orderly start of restoration and rehabilitation of persons and property affected by emergencies.
  - (v) Provision of an emergency management system embodying all aspects of preemergency preparedness and postemergency response, recovery and mitigation.
  - (vi) Assistance in anticipation, recognition, appraisal, prevention and mitigation of emergencies which may be caused or aggravated by inadequate planning for, and regulation of public and private facilities and land use.
- (d) "Civil defense," whenever it appears in the laws of the State of Mississippi, shall mean "emergency management" unless the context clearly indicates otherwise.

(e) "State of war emergency" means the condition which exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States or upon receipt by the state of a warning from the federal government indicating that such an attack is probable or imminent.

(f) "State of emergency" means the duly proclaimed existence of conditions of disaster or extreme peril to the safety of persons or property within the state caused by air or water pollution, fire, flood, storm, epidemic, earthquake, hurricane, resource shortages, or other natural or man-made conditions other than conditions causing a "state of war emergency," which conditions by reasons of their magnitude are or are likely to be beyond the control of the services, personnel, equipment and facilities of any single county and/or municipality and requires combined forces of the state to combat.

(g) "Local emergency" means the duly proclaimed existence of conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a county and/or municipality caused by such conditions as air or water pollution, fire, flood, storm, epidemic, earthquake, hurricane, resource shortages or other natural or man-made conditions, which conditions are or are likely to be beyond the control of the services, personnel, equipment and facilities of the political subdivision and require the combined forces of other subdivisions or of the state to combat.

(h) "Emergency" means any occurrence, or threat thereof, whether natural, technological, or man-made, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

(i) "Man-made emergency" means an emergency caused by an action against persons or society, including, but not limited to, emergency attack, sabotage, terrorism, civil unrest or other action impairing the orderly administration of government.

(j) "Natural emergency" means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought or an earthquake.

(k) "Technological emergency" means an emergency caused by a technological failure or accident, including, but not limited to, an explosion, transportation accident, radiological accident, or chemical or other hazardous material incident.

(l) "Local emergency management agency" means an organization created to discharge the emergency management responsibilities and functions of a political subdivision.

(m) "Disaster" means any natural, technological or civil emergency as defined in this section that causes damage of sufficient severity and magnitude to result in a declaration of an emergency by a county or municipality, the Governor or the President of the United States. Disasters shall be identified by the severity of resulting damage, as follows:

(i) "Catastrophic disaster" means a disaster that will require massive state and federal assistance, including immediate military involvement.

(ii) "Major disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance.

(iii) "Minor disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance.

(n) "Disaster Reservist" means any person hired on a temporary basis pursuant to State Personnel Board policies and procedures regulating personal service contracts, that is hired to perform specific tasks related to a Governor's State of Emergency, or by an emergency or disaster declaration of the President of the United States, by the agency, and is

assigned to perform such duties as may be required under the direction of the appropriate agency supervisor.

(o) "Emergency impact area" means the area of the state in which market conditions exist due to a state of emergency creating a likelihood that prices ordinarily charged for goods and services could be raised unfairly due to the underlying emergency.

**HISTORY:** SOURCES: Codes, 1942, §§ 8610-03, 8610-04; Laws, 1942, ch. 206; Laws, 1952, ch. 312, §§ 3, 4; Laws, 1980, ch. 491, § 3; Laws, 1983, ch. 420, § 1; Laws, 1995, ch. 333, § 3; Laws, 1998, ch. 338, § 1; Laws, 2000, ch. 413, § 1; Laws, 2006, ch. 433, § 2, eff from and after passage (approved Mar. 20, 2006.)

**NOTES:**

**AMENDMENT NOTES.** --The 2006 amendment inserted "hurricane" following "earthquake" in (f) and (g); and added (o).

**CROSS REFERENCES.** --Authority of governor to proclaim state of emergency upon finding that conditions described in § 33-15-5(g) exist, see § 33-15-11.

Authority of governing body of municipality or county to declare local emergency, see § 33-15-17.

Civil emergencies, see §§ 45-17-1 et seq.

Provision restricting the prices that may be charged for goods during a state of emergency, see § 75-24-25.

**ATTORNEY GENERAL OPINIONS**

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Service charge imposed to fund E-911 system is intended for any legitimate expenditure to set up and operate E-911 system; monies derived from telephone fees charged to fund E-911 system may not be used to buy communications equipment for emergency management (civilian defense). Johnson, Sept. 6, 1990, A.G. Op. #90-0675.

If a board of supervisors finds and determines, consistent with fact, that a local emergency, as defined by Section 33-15-5(g) exists, then the board has the authority to declare a state of emergency and invoke the provisions of Section 33-15-1, et. seq. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

Upon activation by the Governor the Mississippi Emergency Management Agency (MEMA) may contract with medical personnel to provide emergency surgical services and provide the contract personnel with the full immunity provided for employees of the state. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

AM JUR. 54A Am. Jur. 2d, Military, and Civil Defense § 447 et seq.

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*Miss. Code Ann. § 33-15-7 (2008)*

§ 33-15-7. Mississippi Emergency Management Agency established; director and other personnel

(a) There is hereby created within the executive branch of the state government a department called the Mississippi Emergency Management Agency with a director of emergency management who shall be appointed by the Governor; he shall hold office during the pleasure of the Governor and shall be compensated as determined by any appropriation that may be made by the Legislature for such purposes.

(b) The director, with the approval of the Governor, may employ such technical, clerical, stenographic and other personnel, to be compensated as provided in any appropriation that may be made for such purpose, and may make such expenditures within the appropriation therefor, or from other funds made available to him for purposes of emergency management, as may be necessary to carry out the purposes of this article.

(c) The director and other personnel of the emergency management agency shall be provided with appropriate office space, furniture, equipment, supplies, stationery and printing in the same manner as provided for other state agencies.

(d) The director, subject to the direction and control of the Governor, shall be the executive head of the emergency management agency and shall be responsible to the Governor for carrying out the program for emergency management of this state. He shall coordinate the activities of all organizations for emergency management within the state, and shall maintain liaison with and cooperate with emergency management agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by this article as may be prescribed by the Governor.

**HISTORY:** SOURCES: Codes, 1942, § 8610-04; Laws, 1942, ch. 206; Laws, 1952, ch. 312, § 4; Laws, 1980, ch. 491, § 4; Laws, 1995, ch. 333, § 4, eff from and after July 1, 1995.

**NOTES:**

**CROSS REFERENCES.** --Director's membership on the surplus property procurement commission, see § 31-9-1.

Powers and duties of the emergency management agency concerning the transportation of radioactive waste, see §§ 45-14-51 et seq.

Civil emergencies, see §§ 45-17-1 et seq.

Notice of emergency, see § 49-17-27.

Membership of director on nuclear waste technical review committee, see § 57-49-11.

Application of guidelines of emergency management agency to disposal or storage of nuclear waste, see § 57-49-35.

#### ATTORNEY GENERAL OPINIONS

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Upon activation by the Governor the Mississippi Emergency Management Agency (MEMA) may contract with medical personnel to provide emergency surgical services and provide the contract personnel with the full immunity provided for employees of the state. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

AM JUR. 54A Am. Jur. 2d, Military, and Civil Defense § 452.

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*Miss. Code Ann. § 33-15-9 (2008)*

§ 33-15-9. Repealed

Repealed by Laws, 1995, ch. 333, § 15, eff from and after July 1, 1995.

[Codes, 1942, § 8610-05; Laws, 1942, ch. 206; 1952, ch. 312, § 5; 1980, ch. 491, § 5]

**NOTES:**

EDITOR'S NOTE. --Former § 33-15-9 provided for the Mississippi Emergency Management Council.

[Repealed]

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*Miss. Code Ann. § 33-15-11 (2008)*

§ 33-15-11. Emergency management powers of Governor

(a) The Governor shall have general direction and control of the activities of the Emergency Management Agency and Council and shall be responsible for the carrying out of the provisions of this article, and in the event of a man-made, technological or natural disaster or emergency beyond local control, may assume direct operational control over all or any part of the emergency management functions within this state.

(b) In performing his duties under this article, the Governor is further authorized and empowered:

(1) To make, amend and rescind the necessary orders, rules and regulations to carry out the provisions of this article with due consideration of the plans of the federal government, and to enter into disaster assistance grants and agreements with the federal government under the terms as may be required by federal law.

(2) To work with the Mississippi Emergency Management Agency in preparing a comprehensive plan and program for the emergency management of this state, such plan and program to be integrated into and coordinated with the emergency management plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparation of plans and programs for emergency management by the political subdivisions of this state, such local plans to be integrated into and coordinated with the emergency management plan and program of this state to the fullest possible extent.

(3) In accordance with such plan and program for emergency management of this state, to ascertain the requirements of the state or the political subdivisions thereof for food or clothing or other necessities of life in the event of attack or natural or man-made or technological disasters and to plan for and procure supplies, medicines, materials and equipment, and to use and employ from time to time any of the property, services and resources within the state, for the purposes set forth in this article; to make surveys of the industries, resources and facilities within the state as are necessary to carry out the purposes of this article; to institute training programs and public information programs, and to take all other preparatory steps, including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need.

(4) To cooperate with the President and the heads of the Armed Forces, and the Emergency Management Agency of the United States, and with the officers and agencies of other states in matters pertaining to the emergency

management of the state and nation and the incidents thereof; and in connection therewith, to take any measures which he may deem proper to carry into effect any request of the President and the appropriate federal officers and agencies, for any action looking to emergency management, including the direction or control of (a) blackouts and practice blackouts, air raid drills, mobilization of emergency management forces, and other tests and exercises, (b) warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith, (c) the effective screening or extinguishing of all lights and lighting devices and appliances, (d) shutting off water mains, gas mains, electric power connections and the suspension of all other utility services, (e) the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior and subsequent to drills or attack, (f) public meetings or gatherings under emergency conditions, and (g) the evacuation and reception of the civilian population.

(5) To take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this article and with the orders, rules and regulations made pursuant thereto.

(6) To employ such measures and give such directions to the state or local boards of health as may be reasonably necessary for the purpose of securing compliance with the provisions of this article or with the findings or recommendations of such boards of health by reason of conditions arising from enemy attack or the threat of enemy attack or natural, man-made or technological disaster.

(7) To utilize the services and facilities of existing officers and agencies of the state and of the political subdivisions thereof; and all such officers and agencies shall cooperate with and extend their services and facilities to the Governor as he may request.

(8) To establish agencies and offices and to appoint executive, technical, clerical and other personnel as may be necessary to carry out the provisions of this article including, with due consideration to the recommendation of the local authorities, part-time or full-time state and regional area directors.

(9) To delegate any authority vested in him under this article, and to provide for the subdelegation of any such authority.

(10) On behalf of this state to enter into reciprocal aid agreements or compacts with other states and the federal government, either on a statewide basis or local political subdivision basis or with a neighboring state or province of a foreign country. Such mutual aid arrangements shall be limited to the furnishings or exchange of food, clothing, medicine and other supplies; engineering services; emergency housing; police services; national or state guards while under the control of the state; health, medical and related services; fire fighting, rescue, transportation and construction services and equipment; personnel necessary to provide or conduct these services; and such other supplies, equipment, facilities, personnel and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel and similar items for mobile support units, fire fighting and police units and health units; and on such terms and conditions as are deemed necessary.

(11) To sponsor and develop mutual aid plans and agreements between the political subdivisions of the state, similar to the mutual aid arrangements with other states referred to above.

(12) To collect information and data for assessment of vulnerabilities and capabilities within the borders of Mississippi as it pertains to the nation and state's security and homeland defense. This information shall be exempt from the Mississippi Public Records Act, Section 25-61-1 et seq.

(13) Authorize any agency or arm of the state to create a special emergency management revolving fund, accept donations, contributions, fees, grants, including federal funds, as may be necessary for such agency or arm of the state to administer its functions of this article as set forth in the Executive Order of the Governor.

(14) To authorize the Commissioner of Public Safety to select, train, organize and equip a ready reserve of

auxiliary highway patrolmen.

(15) To suspend or limit the sale, dispensing or transportation of alcoholic beverages, firearms, explosives and combustibles.

(16) To control, restrict and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods or services.

(17) To proclaim a state of emergency in an area affected or likely to be affected thereby when he finds that the conditions described in Section 33-15-5(g) exist, or when he is requested to do so by the mayor of a municipality or by the president of the board of supervisors of a county, or when he finds that a local authority is unable to cope with the emergency. Such proclamation shall be in writing and shall take effect immediately upon its execution by the Governor. As soon thereafter as possible, such proclamation shall be filed with the Secretary of State and be given widespread notice and publicity. The Governor, upon advice of the director, shall review the need for continuing the state of emergency at least every thirty (30) days until the emergency is terminated and shall proclaim a reduction of area or the termination of the state of emergency at the earliest possible date that conditions warrant.

(18) To declare an emergency impact area when he finds that the conditions described in Section 33-15-5(o) exist. The proclamation shall be in writing and shall take effect immediately upon its execution by the Governor. As soon as possible, the proclamation shall be filed with the Secretary of State and be given widespread notice and publicity. The Governor shall review the need for continuing the declaration of emergency impact area at least every thirty (30) days until the emergency is terminated, and shall proclaim the reduction of the emergency impact area or termination of the declaration of emergency impact area at the earliest date or dates possible.

(c) In addition to the powers conferred upon the Governor in this section, the Legislature hereby expressly delegates to the Governor the following powers and duties in the event of an impending enemy attack, an enemy attack, or a man-made, technological or natural disaster where such disaster is beyond local control:

(1) To suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with a disaster or emergency.

(2) To transfer the direction, personnel or functions of state agencies, boards, commissions or units thereof for the purpose of performing or facilitating disaster or emergency services.

(3) To commandeer or utilize any private property if necessary to cope with a disaster or emergency, provided that such private property so commandeered or utilized shall be paid for under terms and conditions agreed upon by the participating parties. The owner of said property shall immediately be given a receipt for the said private property and said receipt shall serve as a valid claim against the Treasury of the State of Mississippi for the agreed upon market value of said property.

(4) To perform and exercise such other functions, powers and duties as may be necessary to promote and secure the safety and protection of the civilian population in coping with a disaster or emergency.

**HISTORY:** SOURCES: Codes, 1942, § 8610-06; Laws, 1952, ch. 312, § 6; Laws, 1962, ch. 482, § 2; Laws, 1980, ch. 491, § 6; Laws, 1983, ch. 420, § 2; Laws, 1995, ch. 333, § 5; Laws, 2000, ch. 413, § 2; Laws, 2003, ch. 473, § 1; Laws, 2006, ch. 433, § 3, eff from and after passage (approved Mar. 20, 2006.)

**NOTES:**

JOINT LEGISLATIVE COMMITTEE NOTE. --Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of (b)(16). The

word "advise" was changed to "advice." The Joint Committee ratified the correction at its June 3, 2003 meeting.

AMENDMENT NOTES. --The 2003 amendment inserted present (b)(12) and redesignated former (b)(12) as (b)(13) and redesignated the remaining subsections accordingly; substituted "execution by the Governor" for "issuance" in the second sentence of the present (b)(17); substituted "advice" for "advise" in the third sentence of the present (b)(17).

The 2006 amendment inserted "a reduction of area or" following "terminated and shall proclaim" in the last sentence of (b)(17); and added (b)(18).

CROSS REFERENCES. --Spending authority of commission of budget and accounting during state of emergency, see § 33-15-25.

Definition of "state of emergency", as declared by Governor in accordance with this section, as affecting Disaster Assistance Act of 1993, see § 33-15-305.

Use of Disaster Assistance Trust Fund monies for disaster relief when so tasked under provisions of this section, see § 33-15-307.

State agency, when requested by director in accordance with this section, must act according to its areas of responsibility to carry out purposes of Disaster Assistance Act, see § 33-15-309.

Requirement that fees collected from the issuance of a permit to transport radioactive waste be deposited in the emergency management revolving fund, see § 45-14-61.

Civil emergencies, see §§ 45-17-1 et seq.

Provision restricting the prices that may be charged for goods during a state of emergency, see § 75-24-25.

#### ATTORNEY GENERAL OPINIONS

##### ATTORNEY GENERAL OPINIONS

Upon activation by the Governor the Mississippi Emergency Management Agency (MEMA) may contract with medical personnel to provide emergency surgical services and provide the contract personnel with the full immunity provided for employees of the state. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

AM JUR. 54A Am. Jur. 2d, Military, and Civil Defense §§ 449, 450.

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*Miss. Code Ann. § 33-15-13 (2008)*

§ 33-15-13. Emergency powers of Governor

(a) In the event of actual or impending enemy attack, as determined by the President, against the United States and the State of Mississippi, the Governor may proclaim that a state of war emergency exists, and thereafter the Governor shall have and may exercise for such period as such state of war emergency exists or continues, the following additional emergency powers:

(1) To enforce all laws, rules and regulations relating to emergency management and to assume direct operational control of all emergency management forces and helpers in the state;

(2) To purchase supplies and services for emergency management purposes, including aiding the populace, without necessity for advertising therefor; to call upon all persons, firms and corporations to furnish such supplies, services and facilities as they may control which may be needed for the protection of the public, and to enter into all necessary contracts and agreements as may be necessary with relation thereto, all or any provisions of law with reference to advertisements in such matters being expressly waived for this purpose;

(3) To utilize or commandeer any private property for the protection of the public or at the request of the President, the Armed Forces or the Emergency Management Agency of the United States including:

(A) For use during emergency only, all means of transportation and communication, except newspapers, or publications, or wire facilities leased or owned by news services, newspapers and other news publications;

(B) Food, clothing, equipment, materials, medicines, any supplies and stocks of fuel of whatever nature;

(C) Facilities including buildings and plants, for use during emergency only; in the event it shall become necessary to utilize any such facilities, plants or services, the operation thereof, if possible, shall be left in the hands of the owner, subject to direction of the Governor, and only such portion as may be essential for the protection of life and property, or the national defense, shall be commandeered or utilized;

(4) To sell, lend, give or distribute all or any such personal property utilized among the inhabitants of the state and to account to the State Treasurer for any funds received for such property;

(5) To perform and exercise such other functions, powers and duties as may be deemed necessary to promote and

secure the safety and protection of the civilian population.

(b) Adequate compensation shall be paid for any property so utilized, taken or condemned. In case it shall become necessary to take or use any private property as provided above, the full faith and credit of the State of Mississippi shall be pledged to pay just compensation therefor. In case the Governor and the owner of any such property so utilized or taken shall not be able to agree on the compensation to be paid for use, damage or taking thereof, the amount of such compensation to be paid shall be determined in conformity with the statutes of this state relating to eminent domain procedures.

(c) All powers granted to the Governor by this section with respect to a state of war emergency shall terminate when the state of war emergency has been terminated by proclamation of the Governor or by concurrent resolution of the Legislature declaring it at an end.

**HISTORY:** SOURCES: Codes, 1942, § 8610-07; Laws, 1952, ch. 312, § 7; Laws, 1980, ch. 491, § 7; Laws, 1983, ch. 420, § 3; Laws, 1995, ch. 333, § 6, eff from and after July 1, 1995.

**NOTES:**

CROSS REFERENCES. --Spending authority of commission of budget and accounting during state of war emergency, see § 33-15-25.

Civil emergencies, see §§ 45-17-1 et seq.

Provision restricting the prices which may be charged for goods during a state of emergency, see § 75-24-25.

**RESEARCH REFERENCES**

AM JUR. 54A Am. Jur. 2d, Military, and Civil Defense § 447.

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*Miss. Code Ann. § 33-15-14 (2008)*

**§ 33-15-14. Preparation and maintenance of state comprehensive emergency management plan**

(1) The agency is responsible for maintaining a comprehensive statewide program of emergency management. The agency is responsible for coordination with efforts of the federal government with other departments and agencies of state government, with county and municipal governments and school boards and with private agencies that have a role in emergency management.

(2) In performing its duties under this article, the agency shall:

(a) Work with the Governor, or his representative, in preparing a State Comprehensive Emergency Management Plan of this state, which shall be integrated into and coordinated with the emergency management plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparation of plans and programs for emergency management by the political subdivisions of the state, such local plans to be integrated into and coordinated with the emergency plan and program of this state. The plan must contain provisions to ensure that the state is prepared for emergencies and minor, major and catastrophic disasters, and the agency shall work closely with local governments and agencies and organizations with emergency management responsibilities in preparing and maintaining the plan. The State Comprehensive Emergency Management Plan will be operations oriented and:

(i) Include an evacuation component that includes specific regional and interregional planning provisions and promotes intergovernmental coordination of evacuation activities. This component must, at a minimum: ensure coordination pertaining to evacuees crossing county lines; set forth procedures for directing people caught on evacuation routes to safe shelter; and establish policies and strategies for emergency medical evacuations.

(ii) Include a shelter component that includes specific regional and interregional planning provisions and promotes coordination of shelter activities between the public, private and nonprofit sectors. This component must, at a minimum: contain strategies to ensure the availability of adequate public shelter space in each region of the state; establish strategies for refuge-of-last-resort programs; provide strategies to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel; provide for a postdisaster communications system for public shelters; establish model shelter guidelines for operations, registration, inventory, power generation capability, information management and staffing; and set forth policy guidance for sheltering people with special needs.

(iii) Include a postdisaster response and recovery component that includes specific regional and interregional planning provisions and promotes intergovernmental coordination of postdisaster response and recovery activities. This component must provide for postdisaster response and recovery strategies according to whether a disaster is minor, major or catastrophic. The postdisaster response and recovery component must, at a minimum: establish the structure of the state's postdisaster response and recovery organization; establish procedures for activating the state's plan; set forth policies used to guide postdisaster response and recovery activities; describe the chain of command during the postdisaster response and recovery period; describe initial and continuous postdisaster response and recovery actions; identify the roles and responsibilities of each involved agency and organization; provide for a comprehensive communications plan; establish procedures for monitoring mutual aid agreements; provide for rapid impact assessment teams; ensure the availability of an effective statewide urban search and rescue program coordinated with the fire services; ensure the existence of a comprehensive statewide medical care and relief plan administered by the State Department of Health; and establish systems for coordinating volunteers and accepting and distributing donated funds and goods.

(iv) Include additional provisions addressing aspects of preparedness, response and recovery, as determined necessary by the agency.

(v) Address the need for coordinated and expeditious deployment of state resources, including the Mississippi National Guard. In the case of an imminent major disaster, procedures should address predeployment of the Mississippi National Guard, and, in the case of an imminent catastrophic disaster, procedures should address predeployment of the Mississippi National Guard and the United States Armed Forces. This subparagraph (v) does not authorize the agency to call out and deploy the Mississippi National Guard, which authority and determination rests solely with the Governor.

(vi) Establish a system of communications and warning to ensure that the state's population and emergency management agencies are warned of developing emergency situations and can communicate emergency response decisions.

(vii) Establish guidelines and schedules for annual exercises that evaluate the ability of the state and its political subdivisions to respond to minor, major and catastrophic disasters and support local emergency management agencies. Such exercises shall be coordinated with local governments and, to the extent possible, the federal government.

(viii) 1. Assign lead and support responsibilities to state agencies and personnel for emergency support functions and other support activities.

2. The agency shall prepare an interim postdisaster response and recovery component that substantially complies with the provisions of this paragraph (a). Each state agency assigned lead responsibility for an emergency support function by the State Comprehensive Emergency Management Plan shall also prepare a detailed operational plan needed to implement its responsibilities. The complete State Comprehensive Emergency Management Plan shall be submitted to the Governor no later than January 1, 1996, and on January 1 of every even-numbered year thereafter.

(b) Adopt standards and requirements for county emergency management plans. The standards and requirements must ensure that county plans are coordinated and consistent with the State Comprehensive Emergency Management Plan. If a municipality elects to establish an emergency management program, it must adopt a city emergency management plan that complies with all standards and requirements applicable to county emergency management plans.

(c) Assist political subdivisions in preparing and maintaining emergency management plans.

(d) Review periodically political subdivision emergency management plans for consistency with the State Comprehensive Emergency Management Plan and standards and requirements adopted under this section.

(e) Make recommendations to the Legislature, building code organizations and political subdivisions for zoning, building and other land use controls, safety measures for securing mobile homes or other nonpermanent or

semipermanent structures; and other preparedness, prevention and mitigation measures designed to eliminate emergencies or reduce their impact.

(f) In accordance with the State Comprehensive Emergency Management Plan and program for emergency management, ascertain the requirements of the state and its political subdivisions for equipment and supplies of all kinds in the event of an emergency; plan for and either procure supplies, medicines, materials and equipment or enter into memoranda of agreement or open purchase orders that will ensure their availability; and use and employ from time to time any of the property, services and resources within the state in accordance with this article.

(g) Anticipate trends and promote innovations that will enhance the emergency management system.

(h) Prepare and distribute to appropriate state and local officials catalogs of federal, state and private assistance programs.

(i) Implement training programs to improve the ability of state and local emergency management personnel to prepare and implement emergency management plans and programs, and require all local civil defense directors or emergency management directors to complete such training as a condition to their authority to continue service in their emergency management positions.

(j) Review periodically emergency operating procedures of state agencies and recommend revisions as needed to ensure consistency with the State Comprehensive Emergency Management Plan and program.

(k) Prepare, in advance whenever possible, such executive orders, proclamations and rules for issuance by the Governor as are necessary or appropriate for coping with emergencies and disasters.

(l) Cooperate with the federal government and any public or private agency or entity in achieving any purpose of this article.

(m) Assist political subdivisions with the creation and training of urban search and rescue teams and promote the development and maintenance of a state urban search and rescue program.

(n) Delegate, as necessary and appropriate, authority vested in it under this article and provide for the subdelegation of such authority.

(o) Require each county or municipality to designate an agent for working with the agency in the event of a natural disaster. The county or municipality may designate any person as agent who has completed training programs required of emergency management directors.

(p) Report biennially to the Governor and the President of the Senate, and the Speaker of the House of Representatives, no later than January 1 of every odd-numbered year, the status of the emergency management capabilities of the state and its political subdivisions.

(q) In accordance with Section 25-43-1 et seq., create, implement, administer, promulgate, amend and rescind rules, programs and plans needed to carry out the provisions of this article with due consideration for, and in cooperating with, the plans and programs of the federal government.

(r) Have the sole power and discretion to enter into, sign, execute and deliver long-term or multi-year leases of real and personal property with other state and federal agencies.

(s) Do other things necessary, incidental or appropriate for the implementation of this article.

(t) In accordance with Section 33-15-15, create, implement, administer, promulgate, amend and rescind rules regarding the development of the Mississippi Disaster Reservist Program.

**HISTORY:** SOURCES: Laws, 1995, ch. 333, § 7; Laws, 2000, ch. 413, § 3; Laws, 2002, ch. 475, § 1; Laws, 2004, ch. 302, § 1, eff from and after passage (approved Feb. 20, 2004.)

**NOTES:**

**JOINT LEGISLATIVE COMMITTEE NOTE.** --Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a enacting error in the paragraph (a) of subsection (2). The word "the" was inserted preceding "Governor" in the first sentence. The Joint Committee ratified the correction at its July 8, 2004 meeting.

**AMENDMENT NOTES.** --The 2004 amendment inserted present (2)(r) and redesignated former (2)(r) and (2)(s) as (2)(s) and (2)(t).

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**GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY**

*Miss. Code Ann. § 33-15-15 (2008)*

**§ 33-15-15. Mobile support units**

(a) The agency is authorized to provide, within or without the state, such support from available personnel, equipment and other resources of state agencies and the political subdivisions of the state as may be necessary to reinforce emergency management agencies in areas stricken by emergency. Such support shall be rendered with due consideration of the plans of the federal government, this state, the other states and of the criticalness of the existing situation. Emergency management support forces shall be called to duty upon orders of the agency and shall perform their functions in any part of the state, or, upon the conditions specified in this section, in other states.

(b) Personnel of emergency management support forces while on duty, whether within or without the state, shall:

(1) If they are employees of the state, have the powers, duties, rights, privileges and immunities and receive the compensation incidental to their employment;

(2) If they are employees of a political subdivision of the state, and whether serving within or without such political subdivision, have the powers, duties, rights, privileges and immunities and receive the compensation incidental to their employment; and

(3) If they are not employees of the state or a political subdivision thereof, be entitled to compensation by the state at a rate commensurate with their duties and responsibilities and to the same rights and immunities as are provided by law for the employees of this state.

All personnel of emergency management support forces shall, while on duty, be subject to the operational control of the authority in charge of emergency management activities in the area in which they are serving, and shall be reimbursed for all actual and necessary travel and subsistence expenses, and for death, disability or injury to such personnel while on such emergency duty as a member of an emergency management support force, the state shall pay compensation to the heirs in event of death or the individual in event of injury or disability in accordance with payment schedules contained in the Mississippi Workers' Compensation Law.

(c) The state shall reimburse a political subdivision for the actual and necessary travel, subsistence and maintenance expenses of employees of such political subdivision while serving as members of an emergency management support force, and for all payments for death, disability or injury of such employees incurred in the course of such duty, and for

all losses of or damage to supplies and equipment of such political subdivision resulting from the operation of such emergency management support force. The state may also reimburse a political subdivision for employees' overtime while deployed as members of an emergency management support force and backfill of deployed forces when determined by the director to be necessary to avoid serious financial consequences for the political subdivision providing support and when requested by the chief elected official of the political subdivision stating the circumstances for the request.

(d) Whenever an emergency management support force of another state shall render aid in this state pursuant to the orders of the governor of its home state and upon the request of the Governor of this state, the personnel thereof shall have the powers, duties, rights, privileges and immunities of emergency management personnel serving in similar capacities in this state, except compensation, and this state shall reimburse such other state for the compensation paid and actual and necessary travel, subsistence and maintenance expenses of the personnel of such emergency management support force while rendering such aid, and for all payments for death, disability or injury of such personnel incurred in the course of rendering such aid, and for all losses of or damage to supplies and equipment of such other state or a political subdivision thereof resulting from the rendering of such aid; provided, that the laws of such other state contain provisions substantially similar to this section.

(e) No personnel of emergency management support forces of this state shall be ordered by the Governor to operate in any other state unless the laws of such other state contain provisions substantially similar to this section.

**HISTORY:** SOURCES: Codes, 1942, § 8610-08; Laws, 1952, ch. 312, § 8; Laws, 1980, ch. 491, § 8; Laws, 1995, ch. 333, § 8; Laws, 2006, ch. 374, § 1, eff from and after passage (approved Mar. 13, 2006.)

**NOTES:**

AMENDMENT NOTES. --The 2006 amendment added the last sentence in (c).

CROSS REFERENCES. --Civil emergencies, see §§ 45-17-1 et seq.

**ATTORNEY GENERAL OPINIONS**

**ATTORNEY GENERAL OPINIONS**

Upon activation by the Governor the Mississippi Emergency Management Agency (MEMA) may contract with medical personnel to provide emergency surgical services and provide the contract personnel with the full immunity provided for employees of the state. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

AM JUR. 54A Am. Jur. 2d, Military, and Civil Defense § 453.

CJS. 99 C.J.S., Workmen's Compensation § 117.

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*Miss. Code Ann. § 33-15-17 (2008)*

§ 33-15-17. Local organization of emergency management

(a) Each county and municipality, or counties and the municipalities therein acting jointly, or two (2) or more counties acting jointly, of this state are hereby authorized and directed to establish a local organization for emergency management in accordance with the state emergency management plan and program, if required and authorized so to do by such state emergency management plan. Each local organization for emergency management shall have a director who shall be appointed by the governing body of the political subdivision, or political subdivisions acting jointly, and who shall have direct responsibility for the organization, administration and operation of such local organization for emergency management, subject to the direction and control of such governing body. Each local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of the state emergency management plan. Each county shall develop an emergency management plan and program that is coordinated and consistent with the State Comprehensive Emergency Management Plan and program. Counties that are part of an interjurisdictional emergency management agreement entered into pursuant to this section shall cooperatively develop an emergency management plan and program that is coordinated and consistent with the state emergency management plan and program.

(b) In carrying out the provisions of this article each county and municipality, or the two (2) acting jointly, or two (2) or more counties acting jointly, where there is joint organization, in which any disaster as described in Section 33-15-5 occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each county and municipality is authorized to exercise the powers vested under this section in the light of the exigencies of the extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes and the appropriation and expenditure of public funds.

(c) Each county and each municipality, or two (2) or more counties acting jointly, shall have the power and authority:

(1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency

assistance to the victims of any enemy attack or man-made, technological or natural disasters; and to direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies;

(2) To appoint, employ, remove, or provide, with or without compensation, air raid wardens, rescue teams, auxiliary fire and police personnel, and other emergency management workers;

(3) To establish, as necessary, a primary and one or more secondary emergency operating centers to provide continuity of government, and direction and control of emergency operation during an emergency;

(4) To donate public funds, supplies, labor and equipment to assist any governmental entity in a county or municipality in which a disaster as described in Section 33-15-5 occurs;

(5) Subject to the order of the Governor, or the chief executive of the political subdivision, to assign and make available for duty, the employees, property or equipment of the subdivision relating to fire fighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for emergency management purposes either within or outside of the limits of the subdivision;

(6) Subject to the order of the chief executive of the county or municipality or the Governor to order the evacuation of any area subject to an impending or existing enemy attack or man-made, technological or natural disaster;

(7) Subject to the order of the chief executive of the county or municipality or the Governor, to control or restrict egress, ingress and movement within the disaster area to the degree necessary to facilitate the protection of life and property. thirty (30) days until such local emergency is terminated, and shall proclaim the termination of such local emergency at the earliest possible date that conditions warrant. During a local emergency, the governing body of a political subdivision may promulgate orders and regulations necessary to provide for the protection of life and property, including orders or regulations imposing a curfew within designated boundaries where necessary to preserve the public order and safety. Such orders and regulations and amendments and rescissions thereof shall be in writing and shall be given widespread notice and publicity. The authorization granted by this section to impose a curfew shall not be construed as restricting in any manner the existing authority to impose a curfew pursuant to police power for any other lawful purpose.

(d) A local emergency as defined in Section 33-15-5 may be proclaimed by the governing body of a municipality or county. The governing body shall review the need for continuing the local emergency at least every thirty (30) days until such local emergency is terminated, and shall proclaim the termination of such local emergency at the earliest possible date that conditions warrant. During a local emergency, the governing body of a political subdivision may promulgate orders and regulations necessary to provide for the protection of life and property, including orders or regulations imposing a curfew within designated boundaries where necessary to preserve the public order and safety. Such orders and regulations and amendments and rescissions thereof shall be in writing and shall be given widespread notice and publicity. The authorization granted by this section to impose a curfew shall not be construed as restricting in any manner the existing authority to impose a curfew pursuant to police power for any other lawful purpose.

**HISTORY:** SOURCES: Codes, 1942, § 8610-09; Laws, 1942, ch. 206; Laws, 1952, ch. 312, § 9; Laws, 1980, ch. 491, § 9; Laws, 1983, ch. 420, § 4; Laws, 1995, ch. 333, § 9; Laws, 2005, 5th Ex Sess, ch. 20, § 1, eff from and after passage (approved Oct. 24, 2005.)

**NOTES:**

**AMENDMENT NOTES.** --The 2005 amendment, 5th Ex Sess, ch. 20, substituted "33-15-5" for "33-15-3" in (b); added (c)(4) and redesignated former (c)(4) through (c)(6) as present (c)(5) through (c)(7); and substituted "thirty (30)" for "seven (7)" preceding "days until such local emergency" in (d).

CROSS REFERENCES. --Definition of "local emergency", as proclaimed in accordance with this section, as affecting Disaster Assistance Act of 1993, see § 33-15-305.

Civil emergencies, see §§ 45-17-1 et seq.

#### ATTORNEY GENERAL OPINIONS

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*Miss. Code Section 33-15-17* makes it clear that Civil Defense Director exercises power under control and direction of governing authority that hired Director; also that, in absence of stated term in contract, person appointed as Civil Defense Director serves until removed by appointing authority. Jones, Apr. 7, 1993, A.G. Op. #93-0173.

The statute authorizes the Harrison County Board of Supervisors, under its emergency powers, acting through its local organization for emergency management, to order the evacuation of boats from marinas along the coast line of Harrison County in the event of an emergency, such as a hurricane. Meadows, September 4, 1998, A.G. Op. #98-0560.

An emergency management agency may purchase with funds appropriated to it by the county and distribute to the general public within its jurisdiction such written or printed information regarding emergency actions and emergency assistance as it finds, consistent with fact, and encompasses such findings of fact in an order finding the necessity for such purpose, are necessary and proper for emergency management purposes and are neither inconsistent nor in conflict with the policies and plans set by the federal and state emergency management agencies. Souderes, May 21, 1999, A.G. Op. #99-0251.

Pursuant to Section 33-15-17(c)(4), the county has the authority to contract directly with medical personnel and, in so doing, provide that personnel with the full immunity afforded a county employee pursuant to Section 33-15-21. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

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*Miss. Code Ann. § 33-15-19 (2008)*

**§ 33-15-19. Mutual aid arrangements**

(a) The governing body of a municipality or county of the state is authorized to participate in the Statewide Mutual Aid Compact (SMAC) established by the agency as a mechanism to standardize mutual aid arrangements between jurisdictions within the state. SMAC provides guidelines for requesting and receiving mutual aid, liability protection and reimbursement procedures for providing such aid. The governing body of each political subdivision of the state is strongly encouraged to sign and ratify the SMAC for mutual aid between their jurisdiction and other cities or counties within the state. A copy of this agreement must be signed by the senior elected official of the jurisdiction and the director and will be maintained on file by the agency.

(b) Political subdivisions of the state are also authorized to develop and enter into mutual aid agreements with other jurisdictions outside the state for reciprocal emergency aid and assistance in case of emergencies too extensive to be dealt with unassisted. Copies of the agreements shall be sent to the agency and shall be consistent with the state comprehensive emergency management plan and program, and in time of emergency it shall be the duty of each local emergency management organization to render assistance in accordance with the provisions of such mutual aid agreements.

(c) The Governor may enter into compacts with any state or group of states if he finds that joint action with that state or group of states is desirable in meeting common intergovernmental problems of emergency management planning or emergency prevention, mitigation, response and recovery.

**HISTORY:** SOURCES: Codes, 1942, § 8610-10; Laws, 1952, ch. 312, § 10; Laws, 1980, ch. 491, § 10; Laws, 1995, ch. 333, § 10; Laws, 2006, ch. 374, § 2, eff from and after passage (approved Mar. 13, 2006.)

**NOTES:**

**AMENDMENT NOTES.** --The 2006 amendment rewrote (a); added present (b); and redesignated former (b) as present (c).

**CROSS REFERENCES.** --Civil emergencies, see §§ 45-17-1 et seq.

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*Miss. Code Ann. § 33-15-21 (2008)*

§ 33-15-21. Immunity

(a) Neither the state nor any political subdivision thereof, nor other agencies, nor, except in cases of willful misconduct, the agents, employees, or representatives of any of them engaged in any emergency management activities, while complying with or attempting to comply with this article or any rule or regulation promulgated pursuant to the provisions of this article, shall be liable for the death of or any injury to persons, or damage to property, as a result of such activity. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this article, or under the workmen's compensation law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of congress.

(b) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons or providing assistance to persons during or in recovery from an actual, impending, mock or practice attack or any man-made, technological or natural disaster, together with his successors in interest, if any, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises by virtue of its use for emergency management purposes, or loss of, or damage to, the property of such person.

**HISTORY:** SOURCES: Codes, 1942, § 8610-11; Laws, 1952, ch. 312, § 11; Laws, 1980, ch. 491, § 11, eff from and after passage (approved May 9, 1980).

**NOTES:**

EDITOR'S NOTE. --Chapter 408 of Laws, 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission".

CROSS REFERENCES. --Civil emergencies, see §§ 45-17-1 et seq.

ATTORNEY GENERAL OPINIONS

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Pursuant to Section 33-15-17(c)(4), the county has the authority to contract directly with medical personnel and, in so doing, provide that personnel with the full immunity afforded a county employee pursuant to Section 33-15-21. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

Upon activation by the Governor the Mississippi Emergency Management Agency (MEMA) may contract with medical personnel to provide emergency surgical services and provide the contract personnel with the full immunity provided for employees of the state. Meadows, Jan. 30, 2003, A.G. Op. #03-0054.

ALR. Official immunity of state national guard members. 52 A.L.R.4th 1095.

AM JUR. 54A Am. Jur. 2d, Military, and Civil Defense § 451.

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*Miss. Code Ann. § 33-15-23 (2008)*

§ 33-15-23. Funds

For the purpose of paying any expenses of its local emergency management organization, or for paying any expenses of the emergency management program, any board of supervisors of a county or any governing body of a municipality is authorized to expend any available funds from the general fund of such county or municipality.

**HISTORY:** SOURCES: Codes, 1942, § 8610-12; Laws, 1952, ch. 312, § 12; Laws, 1980, ch. 491, § 12, eff from and after passage (approved May 9, 1980).

**NOTES:**

CROSS REFERENCES. --Civil emergencies, see §§ 45-17-1 et seq.

ATTORNEY GENERAL OPINIONS

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If city participated in creation of civil defense agency, or has by interlocal agreement assumed some of burden of agency, then city may expend funds to defray expenses of agency; agency could make plans for evacuation in event of accident at nuclear plant and once approved by proper authorities plans could be reasonably advertised in order to make public aware of what to do in event of accident. McFatter, May 10, 1990, A.G. Op. #90-0300.

If a county board of supervisors finds, as a matter of fact, that travel expenses incurred by non-county personnel for specific training that will benefit the county are necessary and reasonable in relation to the benefit gained by the county, and not for individual benefit, the expenses may be paid out of the county general fund. Scott, Jan. 29, 1992, A.G. Op. #91-0976.

Payment of any certification fee charged by a certifying body is a prohibited use of the county general fund, as the resultant certificate would be in the name of an individual and not the county. Scott, Jan. 29, 1992, A.G. Op. #91-0976.

This section permits a board of supervisors, should such board of supervisors find as a matter of fact and spread such finding upon its minutes, that the payment of travel expenses of members of a local emergency management organization are necessary and reasonable in relation to the benefit gained by the county, said board of supervisors may pay travel expenses of the members of said organization to come to and from the headquarters of the organization. Shaw, Nov. 14, 1997, A.G. Op. #97-0735.

An emergency management agency may purchase with funds appropriated to it by the county and distribute to the

general public within its jurisdiction such written or printed information regarding emergency actions and emergency assistance as it finds, consistent with fact, and encompasses such findings of fact in an order finding the necessity for such purpose, are necessary and proper for emergency management purposes and are neither inconsistent nor in conflict with the policies and plans set by the federal and state emergency management agencies. Souderes, May 21, 1999, A.G. Op. #99-0251.

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*Miss. Code Ann. § 33-15-25 (2008)*

§ 33-15-25. Matching funds

(a) The Governor of the State of Mississippi is authorized to enter into agreements with the federal government for the purpose of matching any federal funds that may be made available for emergency management purposes, which shall include purchasing emergency management equipment and supplies, to the state on a matching basis. Provided, that no agreement shall obligate the state for an amount greater than the appropriation available for such purpose. The state's portion of the purchase price of any emergency management equipment may be made available from any appropriation made for such purposes.

(b) Any county board of supervisors or municipal governing body may enter into agreement with the federal government with approval of the State Director of Emergency Management for matching funds which may be made available for emergency management purposes, which shall include purchasing emergency management equipment and supplies, by such county or municipality in conjunction with any federal matching program and funds may be expended from the general fund of such county or municipality or from such other funds as may be available to such county or municipality for emergency management purposes in order to provide the county or municipal portion of funds necessary to carry out such matching agreement.

(c) The agency may withhold from any county board of supervisors, municipality or not-for-profit entity a portion or all of a subgrant whenever the agency determines that the county, municipality or not-for-profit entity owes a refund on any past subgrant project that was not completed as required.

**HISTORY:** SOURCES: Codes, 1942, § 8610-13; Laws, 1952, ch. 312, § 13; Laws, 1980, ch. 491, § 13; Laws, 1983, ch. 420, § 5; Laws, 1984, ch. 488, § 197; Laws, 1995, ch. 333, § 11; Laws, 2002, ch. 475, § 2, eff from and after July 1, 2002.

**NOTES:**

EDITOR'S NOTE. --Laws, 1984, ch. 488, § 341 provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

RESEARCH REFERENCES

AM JUR. 54A Am. Jur. 2d, Military, and Civil Defense § 447.

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ARTICLE 1. EMERGENCY MANAGEMENT LAW

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

*Miss. Code Ann. § 33-15-27 (2008)*

§ 33-15-27. Authority to accept services, gifts, grants and loans

(a) Whenever the federal government or any agency or officer thereof shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant or loan, for purposes of emergency management, the state, acting through the governor, or such political subdivision, acting with the consent of the governor and through its governing body, may accept such offer and upon such acceptance the governor of the state or governing body of such political subdivision, may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(b) Whenever any person, firm or corporation shall offer to the state or to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant or loan, for purposes of emergency management, the state, acting through the governor, or such political subdivision, acting through its governing body may accept such offer and upon such acceptance the governor of the state or governing body of such political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer.

**HISTORY:** SOURCES: Codes, 1942, § 8610-14; Laws, 1952, ch. 312, § 14; Laws, 1980, ch. 491, § 14, eff from and after passage (approved May 9, 1980).

**NOTES:**

CROSS REFERENCES. --Civil emergencies, see §§ 45-17-1 et seq.

ATTORNEY GENERAL OPINIONS

ATTORNEY GENERAL OPINIONS

County may, with consent of governor, pay landowner for removal of structure necessary to comply with flood damage prevention ordinance so as to allow county to participate in National Flood Insurance Program. Barry, Dec. 16, 1992, A.G. Op. #92-0892.

AM JUR. 54A Am. Jur. 2d, Military, and Civil Defense § 447.

Miss. Code Ann. § 33-15-27

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*Miss. Code Ann. § 33-15-29 (2008)*

§ 33-15-29. Utilization of existing services and facilities

(a) In carrying out the provisions of this article, the Governor and the executive officers or governing bodies of the political subdivisions of the state are directed to utilize the services, equipment, supplies and facilities of existing departments, offices, and agencies of the state and of the political subdivisions thereof to the maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and facilities to the Governor and to the emergency management organizations of the state or such subdivisions upon request.

(b) State agencies in carrying out their assigned disaster or emergency assignments shall be reimbursed their expenses for emergency or disaster-related duties which may include the payment of overtime and the employment of temporary personnel by such agencies in the same manner as authorized in Sections 33-15-301 et seq., 43-41-17 [repealed] and 43-41-319 [repealed], and as provided by Section 43-41-701 [repealed].

**HISTORY:** SOURCES: Codes, 1942, § 8610-15; Laws, 1942, ch. 206; Laws, 1952, ch. 312, § 15; Laws, 1980, ch. 491, § 15; Laws, 1983, ch. 420, § 6; Laws, 1995, ch. 333, § 12, eff from and after July 1, 1995.

**NOTES:**

EDITOR'S NOTE. --Section 43-41-17, referred to in subsection (b), was repealed by Laws, 1984, ch. 488, § 335, eff from and after July 1, 1984, Section 43-41-319, also referred to in subsection (b), was repealed by Laws, 2004, ch. 405, eff from and after July 1, 2004, and Section 43-41-701, also referred to in subsection (b), was repealed by Laws, 1984, ch. 488, § 337, eff from and after July 1, 1984.

CROSS REFERENCES. --Civil emergencies, see §§ 45-17-1 et seq.

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*Miss. Code Ann. § 33-15-31 (2008)*

§ 33-15-31. Orders, rules and regulations

(a) The governing bodies of the political subdivisions of the state and other agencies designated or appointed by the Governor are authorized and empowered to make, amend, and rescind such orders, rules, and regulations as may be necessary for emergency management purposes and to supplement the carrying out of the provisions of this article, but not inconsistent with any orders, rules and regulations promulgated by the Governor or by any state agency exercising a power delegated to it by him.

(b) All orders, rules, and regulations promulgated by the Governor, the Mississippi Emergency Management Agency or by any political subdivision or other agency authorized by this article to make orders, rules and regulations, shall have the full force and effect of law, when, in the event of issuance by the Governor, or any state agency, a copy thereof is filed in the office of the Secretary of State, or, if promulgated by a political subdivision of the state or agency thereof, when filed in the office of the clerk of the political subdivision or agency promulgating the same. All existing laws, ordinances, rules and regulations inconsistent with the provisions of this article, or of any order, rule, or regulation issued under the authority of this article, shall be suspended during the period of time and to the extent that such conflict, disaster or emergency exists.

(c) In order to attain uniformity so far as practicable throughout the country in measures taken to aid emergency management, all action taken under this article and all orders, rules and regulations made pursuant thereto, shall be taken or made with due consideration to the orders, rules, regulations, actions, recommendations, and requests of federal authorities relevant thereto and, to the extent permitted by law, shall be consistent with such orders, rules, regulations, actions, recommendations and requests.

**HISTORY:** SOURCES: Codes, 1942, § 8610-16; Laws, 1952, ch. 312, § 16; Laws, 1980, ch. 491, § 16; Laws, 1995, ch. 333, § 13, eff from and after July 1, 1995.

**NOTES:**

**CROSS REFERENCES.** --Civil emergencies, see §§ 45-17-1 et seq.

Provision restricting the prices which may be charged for goods during a state of emergency, see § 75-24-25.

**RESEARCH REFERENCES**

AM JUR. 54A Am. Jur. 2d, Military, and Civil Defense § 447.

Miss. Code Ann. § 33-15-31

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*Miss. Code Ann. § 33-15-33 (2008)*

§ 33-15-33. Political activity prohibited

No individual employed by or for an organization for emergency management established under the authority of this article shall, while acting under authority of his position or representing himself in his official capacity, participate in any form of political activity, and no such organization shall be employed directly or indirectly for political purposes.

**HISTORY:** SOURCES: Codes, 1942, § 8610-17; Laws, 1952, ch. 312, § 17; Laws, 1980, ch. 491, § 17, eff from and after passage (approved May 9, 1980).

ATTORNEY GENERAL OPINIONS

ATTORNEY GENERAL OPINIONS

No statute or rule requires employee of county civil defense to resign in order to be candidate for county school board of education, provided that employee carries out duties of his or her job and does not engage in any political activities during working hours; however county civil should avoid campaigning in any official capacity relating to job with civil defense. Shepard Aug. 26, 1993, A.G. Op. #93-0422.

Since office of school board member and civil defense employee are both in executive branch of government, there is no separation of powers violation in one person serving in both positions. Shepard Aug. 26, 1993, A.G. Op. #93-0422.

AM JUR. 54A Am. Jur. 2d, Military, and Civil Defense § 447.

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*Miss. Code Ann. § 33-15-35 (2008)*

§ 33-15-35. Repealed

Repealed by Laws, 1980, ch. 491, § 37, eff from and after May 9, 1980.

[Codes, 1942, § 8610-18; Laws, 1952, ch. 312, § 18; 1962, ch. 482, § 3]

**NOTES:**

EDITOR'S NOTE. --Former § 33-15-33 required loyalty oaths by persons employed or associated with civil defense.

[Repealed]

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*Miss. Code Ann. § 33-15-37 (2008)*

§ 33-15-37. Enforcement

It shall be the duty of every organization for emergency management established pursuant to this article and of the officers thereof to execute and enforce such orders, rules and regulations as may be made by the governor under authority of this article. Each such organization shall have available for inspection at its office all orders, rules and regulations made by the governor, or under his authority.

**HISTORY:** SOURCES: Codes, 1942, § 8610-19; Laws, 1952, ch. 312, § 19; Laws, 1980, ch. 491, § 18, eff from and after passage (approved May 9, 1980).

**NOTES:**

**CROSS REFERENCES.** --Civil emergencies, see §§ 45-17-1 et seq.

Provision restricting the prices which may be charged for goods during a state of emergency, see § 75-24-25.

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*Miss. Code Ann. § 33-15-39 (2008)*

§ 33-15-39. Peace officers

Any county or municipality, through its governing board, and with the approval of the sheriff in a county, or the chief of police in a municipality, may confer upon members of emergency management auxiliary police units, the powers of peace officers, subject to such restrictions as shall be imposed.

**HISTORY:** SOURCES: Codes, 1942, § 8610-20; Laws, 1952, ch. 312, § 20; Laws, 1980, ch. 491, § 19, eff from and after passage (approved May 9, 1980).

**NOTES:**

**CROSS REFERENCES.** --Civil emergencies, see §§ 45-17-1 et seq.

Provision restricting the prices which may be charged for goods during a state of emergency, see § 75-24-25.

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*Miss. Code Ann. § 33-15-41 (2008)*

**§ 33-15-41. Arrests**

Any emergency management auxiliary policeman who has had conferred upon him the power of a peace officer, as provided in Section 33-15-39 and when in full and distinctive uniform or displaying a badge or other insignia of authority, may arrest without a warrant any person violating or attempting to violate in such officer's presence any order, rule, or regulation made pursuant to this article. This authority shall be limited to those rules and regulations which affect the public generally.

**HISTORY:** SOURCES: Codes, 1942, § 8610-21; Laws, 1952, ch. 312, § 21; Laws, 1980, ch. 491, § 20, eff from and after passage (approved May 9, 1980).

**NOTES:**

CROSS REFERENCES. --Civil emergencies, see §§ 45-17-1 et seq.

Provision restricting the prices which may be charged for goods during a state of emergency, see § 75-24-25.

Procedure for making arrests, see §§ 99-3-1 et seq.

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*Miss. Code Ann. § 33-15-43 (2008)*

**§ 33-15-43. Penalties**

Any person violating any provision of this article or any rule, order, or regulation made pursuant to this article shall, upon conviction thereof, be punishable by a fine not exceeding five hundred dollars or imprisonment for not exceeding six months or both.

**HISTORY:** SOURCES: Codes, 1942, § 8610-22; Laws, 1952, ch. 312, § 22, eff from and after passage (approved April 16, 1952).

**NOTES:**

**CROSS REFERENCES.** --Provision restricting the prices which may be charged for goods during a state of emergency, see § 75-24-25.

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*Miss. Code Ann. § 33-15-45 (2008)*

§ 33-15-45. Local emergency management councils continued

All local emergency management councils heretofore created under the provisions of former Sections 8610-8620, Mississippi Code of 1942, are hereby continued, subject to the provisions of this article.

**HISTORY:** SOURCES: Codes, 1942, § 8610-23; Laws, 1952, ch. 312, § 23; Laws, 1980, ch. 491, § 21, eff from and after passage (approved May 9, 1980).

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*Miss. Code Ann. § 33-15-47 (2008)*

§ 33-15-47. Liberality of construction

This article shall be construed liberally in order to effectuate its purposes.

**HISTORY:** SOURCES: Codes, 1942, § 8610-25; Laws, 1952, ch. 312, § 25, eff from and after passage (approved April 16, 1952).

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*Miss. Code Ann. § 33-15-49 (2008)*

§ 33-15-49. Emergency use of state or local personnel and equipment authorized; limitation of liability

In the event an impending enemy attack, an enemy attack, or a man-made, technological or natural disaster occurs within the state or within any portion of it and a proclamation is issued by the governing authorities of the county, the governing authorities of the municipality, the office of the Governor of the state or the President of the United States declaring such affected areas to be disaster areas, the governing authorities of any county or municipality adversely affected by such disaster may:

(a) Use county or municipally owned equipment and such public employees as necessary to venture onto private property to aid in removing debris and to prevent further damage to such property at the request of the property owners;

(b) Use county or municipally owned equipment and such public employees as necessary to venture onto private property to remove debris and to perform any other necessary and needed services to prevent the spread of disease or any other health hazard to the community at large.

If the governing authorities of such adversely affected counties or municipalities are unable to perform such necessary and needed functions with their own equipment and personnel, they may request aid from other counties and municipalities not adversely affected by such impending enemy attack, enemy attack, or man-made, technological or natural disaster, and capable and willing to furnish needed services.

Provided, however, if the Governor determines that the governing authorities of such adversely affected counties or municipalities still lack sufficient equipment and personnel under such circumstances to perform such functions, any state agency or instrumentality, when directed by the Governor, is authorized to enter upon publicly or privately owned land or water and to use state-owned equipment and state employees as necessary to clear or remove debris and wreckage. Whenever the governor provides for clearance of debris or wreckage pursuant hereto, employees of the designated state agencies or instrumentalities are authorized to enter upon private or public land or water and perform any tasks necessary to the removal or clearance operation. Except in cases of willful misconduct, gross negligence or bad faith, any state employee or agent complying with and performing duties pursuant hereto shall not be liable for death or injury to persons or damage to property.

**HISTORY:** SOURCES: Laws, 1980, ch. 491, § 22; Laws, 1998, ch. 338, § 2, eff from and after July 1, 1998.

ATTORNEY GENERAL OPINIONS

ATTORNEY GENERAL OPINIONS

Prisoners may not generally be worked on private property, except a municipality may provide prisoners for public service work for nonprofit charitable organizations to provide food to charities, and prisoners may be worked on private property during emergency situations pursuant to the Mississippi Emergency Management Law. Pickens, July 3, 1997, A.G. Op. #97-0365.

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*Miss. Code Ann. § 33-15-51 (2008)*

**§ 33-15-51. Grand Gulf Disaster Assistance Trust Fund**

The Grand Gulf Disaster Assistance Trust Fund is hereby created as a special fund in the State Treasury to be administered by the Mississippi Emergency Management Agency. Monies paid into the fund shall be derived from Sections 27-35-309(3)(b)(i) and (ii) and 27-35-309(3)(d). All monies deposited therein shall be available for expenditure, transfer and allocation by the Mississippi Emergency Management Agency for state and local preparedness activities directly related to the Grand Gulf Nuclear Generating Plant, with at least fifty percent (50%) of the monies in the fund earmarked for use in conducting such activities in the geographic area falling within a thirty-mile radius of the plant.

**HISTORY:** SOURCES: Laws, 1990, ch. 524, § 3; Laws, 1990, 1st Ex Sess, ch. 12, § 2; Laws, 1993, ch 486, § 1, eff from and after July 1, 1993.

**NOTES:**

CROSS REFERENCES. --Taxation of nuclear generating plants and distribution of revenues, see § 27-35-309.

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*Miss. Code Ann. § 33-15-53 (2008)*

**§ 33-15-53. State emergency coordination officers**

The head of each state department, agency or commission shall select from within such agency a person to be designated as the emergency coordination officer for the agency and an alternate. The emergency coordination officer is responsible for coordinating with the Mississippi Emergency Management Agency on emergency preparedness issues, preparing and maintaining emergency preparedness and postdisaster response and recovery plans for such agency, maintaining rosters of personnel to assist in disaster operations and coordinating appropriate training for agency personnel. These individuals shall be responsible for ensuring that each state facility, such as a prison, office building or university, has a disaster preparedness plan that is approved by the applicable local emergency management agency or the division. The head of each agency shall notify the Governor and the Mississippi Emergency Management Agency in writing of the person initially designated as the emergency coordination officer for such agency and his alternate and of any changes in persons so designated thereafter.

**HISTORY:** SOURCES: Laws, 1995, ch. 333, § 14, eff from and after July 1, 1995.

# APPENDIX “B”

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CHAPTER 46. IMMUNITY OF STATE AND POLITICAL SUBDIVISIONS FROM LIABILITY AND SUIT FOR  
TORTS AND TORTS OF EMPLOYEES

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

*Miss. Code Ann. § 11-46-1 (2008)*

§ 11-46-1. Definitions

As used in this chapter the following terms shall have the meanings herein ascribed unless the context otherwise requires:

- (a) "Claim" means any demand to recover damages from a governmental entity as compensation for injuries.
- (b) "Claimant" means any person seeking compensation under the provisions of this chapter, whether by administrative remedy or through the courts.
- (c) "Board" means the Mississippi Tort Claims Board.
- (d) "Department" means the Department of Finance and Administration.
- (e) "Director" means the executive director of the department who is also the executive director of the board.
- (f) "Employee" means any officer, employee or servant of the State of Mississippi or a political subdivision of the state, including elected or appointed officials and persons acting on behalf of the state or a political subdivision in any official capacity, temporarily or permanently, in the service of the state or a political subdivision whether with or without compensation. The term "employee" shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the state or a political subdivision; provided, however, that for purposes of the limits of liability provided for in Section 11-46-15, the term "employee" shall include physicians under contract to provide health services with the State Board of Health, the State Board of Mental Health or any county or municipal jail facility while rendering services under such contract. The term "employee" shall also include any physician, dentist or other health care practitioner employed by the University of Mississippi Medical Center (UMMC) and its departmental practice plans who is a faculty member and provides health care services only for patients at UMMC or its affiliated practice sites. The term "employee" shall also include any physician, dentist or other health care practitioner employed by any university under the control of the Board of Trustees of State Institutions of Higher Learning who practices only on the campus of any university under the control of the Board of Trustees of State Institutions of Higher Learning. The term "employee" shall also include any physician, dentist or other health care practitioner employed by the State Veterans Affairs Board and who provides health care services for patients for the State Veterans Affairs Board. The term "employee" shall also include Mississippi Department of Human Services licensed foster parents for the limited

purposes of coverage under the Tort Claims Act as provided in Section 11-46-8.

(g) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(h) "Injury" means death, injury to a person, damage to or loss of property or any other injury that a person may suffer that is actionable at law or in equity.

(i) "Political subdivision" means any body politic or body corporate other than the state responsible for governmental activities only in geographic areas smaller than that of the state, including but not limited to, any county, municipality, school district, community hospital as defined in *Section 41-13-10, Mississippi Code of 1972*, airport authority or other instrumentality thereof, whether or not such body or instrumentality thereof has the authority to levy taxes or to sue or be sued in its own name.

(j) "State" means the State of Mississippi and any office, department, agency, division, bureau, commission, board, institution, hospital, college, university, airport authority or other instrumentality thereof, whether or not such body or instrumentality thereof has the authority to levy taxes or to sue or be sued in its own name.

(k) "Law" means all species of law including, but not limited to any and all constitutions, statutes, case law, common law, customary law, court order, court rule, court decision, court opinion, court judgment or mandate, administrative rule or regulation, executive order, or principle or rule of equity.

**HISTORY: SOURCES:** Laws, 1984, ch. 495, § 1; reenacted without change, Laws, 1985, ch. 474, § 1; Laws, 1988, ch. 479, § 2; Laws, 1993, ch. 476, § 1; Laws, 1999, ch. 518, § 1; Laws, 2002, 3rd Ex. Sess., ch. 2, § 2, eff from and after Jan. 1, 2003.

**NOTES:**

**EDITOR'S NOTE.** --Laws, 1987, ch. 483, § 50, provides as follows:

"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

**AMENDMENT NOTES.** --The 2002 amendment, 3rd Ex. Sess., rewrote (f).

**CROSS REFERENCES.** --Immunity from suit of political subdivisions as they are defined in this section, see § 11-46-3.

Applicability of sections 11-46-1 et seq. to community hospitals, their owners, and their boards of trustees, see § 41-13-11.

Applicability of §§ 11-46-1 et seq. to causes of action arising out of any wrongful act or omission in connection with an activity or operation of a hospital, nursing home or other community hospital facility or community health program, see § 41-13-11.

Application of this chapter to actions by and against electric utilities arising out of injuries resulting from contact with high voltage overhead lines, see § 45-15-13.

"State" or a "political subdivision", as defined in this section, as being an employer subject to the Workers' Compensation Law, see § 71-3-5.

**JUDICIAL DECISIONS**

1. In general

1.5. Applicability.

## Applicability

2. Constitutionality
3. Employee
4. Political subdivision
5. Dismissal of claim
6. Miscellaneous.
7. Standard of care.
6. Expert testimony.

## 1. IN GENERAL.

In an action brought under the Mississippi Tort Claims Act, plaintiff failed to prove that an ambulance driver was negligent as a matter of law in operating an ambulance during an emergency when she ran over plaintiff's foot and caused him to suffer damages. *Albright v. Delta Reg'l Med. Ctr.* 899 So. 2d 897 (Miss. Ct. App. 2004), cert. denied, 898 So. 2d 679 (Miss. 2005).

In the context of actions pursuant to the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 to 11-46-23, the common thread running through cases where an officer acts with reckless disregard in operating a motor vehicle is an appreciation of the unreasonable risk of the danger involved coupled with a conscious indifference to the consequences that are certain to follow. *Davis v. Latch*, 873 So. 2d 1059 (Miss. Ct. App. 2004).

Trial court properly granted summary judgment for defendants in a medical malpractice case where, since the hospital was protected by the Mississippi Tort Claims Act (MTCA), the husband had to meet the requirements of Miss. Code Ann. § 11-46-11; he did not substantially comply with the MTCA requirements; plaintiff filed his complaint after the one-year statute of limitations had expired. *Davis v. Hoss*, 869 So. 2d 397 (Miss. 2004).

Chancery court lacked subject matter jurisdiction to consider the individuals' claims brought pursuant to the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq. against the Mississippi Municipality Liability Plan, for injuries suffered as the result of a motor vehicle accident with a city police officer, as Miss. Const. art. 6, §§ 159 & 161 did not include actions under the MTCA; rather, the circuit court had jurisdiction over the matter pursuant to Miss. Const. art. 6, § 156. *Miss. Mun. Liab. Plan v. Jordan*, 863 So. 2d 934 (Miss. 2003).

Where a widow filed an action against a city, its police chief, and two police officers, arising from the shooting death of her husband in his home, the trial court erred in dismissing her amended complaint as to her claim under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq. because she had specified and separated the negligence-and tort-based state law claims from the constitutional tort claims brought pursuant to 42 U.S.C.S. § 1983 in her amended complaint; the MTCA operated as the exclusive remedy for the state law civil claims against the city, the chief, and the officers; and Miss. R. Civ. P. 8(a) only required that notice of a claim be given. *Elkins v. McKenzie*, 865 So. 2d 1065 (Miss. 2003).

Because the only claim for equitable relief in a negligence action brought under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 through 11-46-23, was a request for an accounting, the proper jurisdiction was in a circuit court, and not in chancery court. *City of Ridgeland v. Fowler*, 846 So. 2d 210 (Miss. 2003).

The clear intent of the legislature in enacting this chapter was to immunize the state and its political subdivisions from any tortious conduct, including tortious breach of implied term or condition of any warranty or contract; however, the provisions of this chapter have no application to a pure breach of contract action. *City of Grenada v. Whitten Aviation, Inc.* 755 So. 2d 1208 (Miss. Ct. App. 1999).

This chapter does not proscribe actions against the state for the return of private property allegedly wrongfully acquired by the state or its agencies or institutions. *Greyhound Welfare Found. v. Mississippi State Univ.* 736 So. 2d 1048 (Miss. 1999).

Negligence cause of action against municipality, arising after Pruett decision abolishing judicially-created sovereign immunity but before Presley decision prospectively holding unconstitutional the tort claims act provision stating sovereign immunity provisions were not yet effective, was governed by pre-Pruett common law. (Per Mills, J., with three justices concurring and three justices concurring in the result). *Hord v. City of Yazoo City*, 702 So. 2d 121 (Miss. 1997).

Physicians and other medical personnel at state prison, against whom action was brought following death of prisoner, were not the "state" or its "political subdivisions", and thus did not come within scope of statute under which state and its political subdivisions are not, have never been, and shall not be liable and are entitled to immunity. *Sparks v. Kim*, 701 So. 2d 1113 (Miss. 1997).

Codification of principles of sovereign immunity did not violate Mississippi constitutional provision that courts shall be open and remedy shall be available for every injury; remedy clause is not absolute guarantee of trial and it is legislature's decision whether or not to address restrictions upon actions against government entities. *Mohundro v. Alcorn County*, 675 So. 2d 848 (Miss. 1996).

Codification of principles of sovereign immunity did not violate due process clause of Fourteenth Amendment; there was no right to sue state or its political subdivisions at common law and, through codification, legislature continued to withhold such right, and thus there was no property right to sue state. *Mohundro v. Alcorn County*, 675 So. 2d 848 (Miss. 1996).

The decision of *Presley v. Mississippi State Highway Commission* (Miss. 1992) 608 So. 2d 1288, which declared the codified principle of sovereign immunity (§§ 11-46-1 et seq.) unconstitutional, has no retroactive application. *Robinson v. Stewart*, 655 So. 2d 866 (Miss. 1995), rehearing denied.

There is no "property right" to sue the State, since the Mississippi Legislature has withheld that right through its statutes, and therefore the principle of sovereign immunity, as enacted by the legislature in §§ 11-46-1 et seq., does not violate the due process clause of the Mississippi Constitution or the 14th Amendment to the United States Constitution. *Robinson v. Stewart*, 655 So. 2d 866 (Miss. 1995), rehearing denied.

The Mississippi Legislature's post-Pruett legislative enactments on sovereign immunity (§§ 11-46-1 et seq.) do not violate the remedy clause of the Mississippi Constitution. *Robinson v. Stewart*, 655 So. 2d 866 (Miss. 1995), rehearing denied.

The governmental immunity and tort claims act should not be construed to immunize governmental authorities and agencies from suits other than for money damages. *Fordice v. Thomas*, 649 So. 2d 835 (Miss. 1995), but see *USPCI of Miss., Inc. v. State ex rel. McGowan*, 688 So. 2d 783 (Miss. 1997).

The decision of the Supreme Court declaring unconstitutional the portion of the Sovereign Immunity Act (§§ 11-46-1 et seq.) mandating that all claims against the State be governed by case law governing sovereign immunity as it existed on November 10, 1982, applies prospectively only, and is "purely prospective" so that it applies only to claims arising after the mandate issues. *Presley v. Mississippi State Hwy. Comm'n*, 608 So. 2d 1288 (Miss. 1992).

To the extent that § 11-46-6 [Repealed] purports to freeze the doctrine of sovereign immunity to the state of development of the common law prior to *Pruett v. City of Rosedale* (Miss. 1982) 421 So. 2d 1046, it is void; the State is immunized from claims arising thereafter to the extent that the Supreme Court would do so applying the evolving standards of common law, including any extensions or contractions of the doctrine deemed appropriate, on a case by case basis and to the extent that those benefitting by the immunity did not prepare themselves by acquiring insurance policies covering the liability in question in the event that immunity did not obtain. *Presley v. Mississippi State Hwy. Comm'n*, 608 So. 2d 1288 (Miss. 1992).

The portion of the Sovereign Immunity Act (§§ 11-46-1 et seq.) requiring that all claims against the State be governed by case law governing sovereign immunity as it existed immediately prior to the decision in *Pruett v. City of Rosedale* (Miss. 1982) 421 So. 2d 1046 is unconstitutional as it violates the doctrine of separation of powers and the prohibition against reviving or amending a law by reference to its title only. *Presley v. Mississippi State Hwy. Comm'n*, 608 So. 2d 1288 (Miss. 1992).

State Highway Commission is alter ego of state and shares in state's Eleventh Amendment immunity from suit in federal court. *Brady v. Michelin Reifenwerke*, 613 F. Supp. 1076 (S.D. Miss. 1985).

#### 1.5. APPLICABILITY.

Finding against the student in her action against a state university and a professor after she suffered a third-degree burn at an iron pour demonstration was improper because the state university, falling within the coverage of *Miss. Code Ann. § 11-46-1(j)*, was not protected by discretionary function immunity and was liable for the professor's negligence pursuant to the waiver of sovereign immunity; it was difficult to fathom how the professor's failure to put down dry sand before the pour involved a policy judgment of a social, political, or economic nature. *Pritchard v. Von Houten*, 960 So. 2d 568 (Miss. Ct. App. 2007).

Finding in favor of the husband and wife in their action against the city for personal injuries and loss of consortium under the Mississippi Tort Claims Act, *Miss. Code Ann. § 11-46-1* et seq., was proper pursuant to Miss. R. Evid. 401 and Miss. R. Evid. 402 because an expert's testimony tended to make the fact that the city negligently repaired and maintained the grate and sidewalk more probable than that without his proffered evidence. *City of Natchez v. Jackson*, 941 So. 2d 865 (Miss. Ct. App. 2006).

Finding in favor of the hospital in the patient's action under the Mississippi Tort Claims Act was proper because the patient failed to prove that the treatment he received was the proximate cause of his alleged injuries. *Lander v. Singing River Hosp. Sys.* 933 So. 2d 1043 (Miss. Ct. App. 2006).

Dismissal of the decedent's mother's and a student's action against a state university resulting from a shooting on campus was appropriate under *Miss. Code Ann. § 11-46-1* et seq. because the shooting of the victims was not the harm that would have otherwise resulted from failing to log the gunman in on campus; additionally, there was no authority that the university, through an employee, had a duty to warn the victims of the dangerous condition of the gunman's character. *Johnson v. Alcorn State Univ.* 929 So. 2d 398 (Miss. Ct. App. 2006).

Police did not have immunity from suit where a police officer acted recklessly in initiating a police chase of a suspect where the chase was not because a serious crime had just been committed; the vehicles exceeded the speed limit in a residential neighborhood, in the dark, with a low probability of apprehending the suspect, as he was known as someone who would flee and had successfully fled in the past. *City of Ellisville v. Richardson*, 913 So. 2d 973 (Miss. 2005).

*Miss. Code Ann. § 11-46-3* granted immunity to the state and its political subdivisions for breach of implied term or condition of any warranty or contract. Thus, although the decedent was indeed a third-party beneficiary of the written contract between the city and the development district, her estate was not permitted to pursue claims of breach of implied terms of that contract against the city or its political subdivisions. *City of Jackson v. Estate of Stewart*, 908 So. 2d 703 (Miss. 2005).

Mississippi Tort Claims Act, *Miss. Code Ann. §§ 11-46-1* to *11-46-23*, did not provide immunity for a city that neglected to inspect or maintain a city ditch; business was entitled to damages when, during a heavy rain, the ditch flooded, causing property damage. *City of Jackson v. Internal Engine Parts Group, Inc.* 903 So. 2d 60 (Miss. 2005).

Denial of the general hospital's and physicians' motion to transfer venue in a medical malpractice action was improper under the Mississippi Tort Claims Act (MTCA), *Miss. Code Ann. § 11-46-1* et seq., where the general hospital was entitled to a venue in the county in which the principal offices were located, *Miss. Code Ann. § 11-11-3(1)*, because the decedent's heirs failed to assert a reasonable claim of liability against the medical center and treating physicians. *Wayne Gen. Hosp. v. Hayes*, 868 So. 2d 997 (Miss. 2004).

Personal injury plaintiffs' motion for a remand of the matter to state court was granted because it could not be stated that the Mississippi Department of Transportation (MDOT) was fraudulently joined as a defendant in the action simply to defeat diversity jurisdiction, particularly when the MDOT could be held potentially liable to plaintiffs under the Mississippi Tort Claims Act, *Miss. Code Ann. § 11-46-1* et seq. *Johnson v. James Constr. Group, LLC*, 306 F. Supp. 2d 654 (S.D. Miss. 2004).

Department of Public Safety was not immune from liability in a suit by a driver. A state trooper, who was speeding excessively, acted in reckless disregard of the driver's safety. *Miss. Dep't of Pub. Safety v. Durn*, 861 So. 2d 990 (Miss. 2003).

Under the Mississippi Tort Claims Act, *Miss. Code Ann. § 11-46-1* et seq., whether governmental conduct was discretionary required a two-prong analysis: (1) whether the activity involved an element of choice or judgment; and if so, (2) whether the choice or judgment involved social, economic or political policy alternatives, and, conversely, governmental conduct was ministerial if imposed by law, and its performance was not dependent on the employee's judgment. *Doe v. State ex rel. Miss. Dep't of Corr.* 859 So. 2d 350 (Miss. 2003).

While parole supervision procedures appeared to be ministerial in nature, a field officer's responsibilities to monitor

and supervise a parolee were immune from suit in cases where the State had no indication of a specific threat on a parolee's part to harm an individual. *Doe v. State ex rel. Miss. Dep't of Corr.* 859 So. 2d 350 (Miss. 2003).

The University of Mississippi Medical Center and the University Anesthesia Services Practice Group (UAS) established in connection with the Medical Center are instrumentalities of the State of Mississippi within the meaning of the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 through 11-46-23 and, as such, waived their immunity against a claim for medical malpractice liability only to the extent that UAS had purchased liability insurance; further, a staff anesthesiologist who participated in an operation in which a child suffered brain damage while sedated was an employee of the Center entitled to immunity despite also being a member of UAS and despite the fact that the doctor had personal liability insurance. *Mozingo v. Scharf*, 828 So. 2d 1246 (Miss. 2002).

#### APPLICABILITY.

Sections 11-46-1 et seq., applied to a case where the event giving rise to the action occurred on June 1, 1994, clearly after the Act went into effect. *Henderson v. Un-Named Emergency Room*, 758 So. 2d 422 (Miss. 2000).

#### 2. CONSTITUTIONALITY.

The fact that the parties disagreed as to whether an individual was an employee within the meaning of the statute did not mean the statute's definition was constitutionally vague. *Smith v. Braden*, 765 So. 2d 546 (Miss. 2000).

The Tort Claims Act does not violate the right to due process by depriving persons of their day in court as there is no property right to sue the state. *Smith v. Braden*, 765 So. 2d 546 (Miss. 2000).

The Tort Claims Act does not violate the right to equal protection by protecting a physician employed by the state, while not protecting other physicians practicing medicine in Mississippi. The relevant question is whether the plaintiff, rather than the defendant, is treated differently from others that are similarly situated. *Smith v. Braden*, 765 So. 2d 546 (Miss. 2000).

Sections 11-46-1 to 11-46-23 do not violate the constitutional requirements that courts be open and that a remedy be available for every injury since the remedy clause is not an absolute guarantee of trial and it is the legislature's decision whether to address restrictions upon actions against government entities. *Quinn v. Mississippi State Univ.* 720 So. 2d 843 (Miss. 1998).

The court rejected the contention that the Sovereign Immunity Act is unconstitutional as it pertains to claims arising between April 1, 1993, and October 1, 1993. *Chamberlin v. City of Hernando*, 716 So. 2d 596 (Miss. 1998).

#### 3. EMPLOYEE.

Plaintiff VA patient conceded that a vascular surgeon was a state employee, and despite the patient's arguments to the contrary, the court found that there was no genuine issue of material fact that at the pertinent time, the surgeon was acting within the course and scope of his duties as a state employee, under Miss. Code Ann. §§ 11-46-5(3), 11-46-7(7), and, thus, immune under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. §§ 11-46-1 et seq. His involvement with the patient was solely by virtue of his being on-call pursuant to his employment with the university and its relationship to the VA facility. *Creel v. United States*, 512 F. Supp. 2d 574 (S.D. Miss. 2007).

Pursuant to Miss. Code Ann. § 11-46-1(f) and Miller factors, the doctor was an employee of the state hospital and the state for purposes of liability under the Mississippi Tort Claims Act; therefore, summary judgment was properly granted in favor of the doctor on the husband's wrongful death and medical malpractice claims. *Barksdale v. Carroll*, 944 So. 2d 107 (Miss. Ct. App. 2006).

Doctor acted as an employee of the state of Mississippi when he treated the patient; therefore, the doctor was entitled to immunity as provided in the Mississippi Tort Claims Act and the trial court erred when it denied the doctor's motion for summary judgment. *Meeks v. Miller*, 956 So. 2d 942 (Miss. Ct. App. 2006).

According to the plain language of Miss. Code Ann. § 11-46-1(f), the State intends to protect part-time workers, full-time workers, salaried employees, and uncompensated employees. The purpose of the Mississippi Torts Claim Act (MTCA) is to provide immunity to the physicians who are acting on behalf of the State or a political subdivision in any official capacity, temporarily or permanently, in the service of the State or a political subdivision, whether with or without compensation; the 2002 amendment to Miss. Code Ann. § 11-46-1 was not intended as an additional restriction to exclude certain physicians, but, rather, the addition was meant to assure that the physicians who were members of the

departmental practice plans were fully protected under the MTCA. Thus, the appellate court was unable to conclude that the doctor (who was being sued by decedent's husband) was not an employee, merely because he did not belong to the departmental practice plan; an uncompensated, part-time physician at University of Mississippi Medical Center does not have to be a member of the employee practice plans to be considered an employee under *Miss. Code Ann. § 11-46-1(f)* of the MTCA. *Barksdale v. Carroll*, -- So. 2d -- (Miss. Ct. App. Mar. 14, 2006).

In a car accident case, where decedent's husband was suing a doctor who was an employee of the University of Mississippi Medical Center (UMMC), and the State, for purposes of liability under *Miss. Code Ann. § 11-46-1(f)* of the Mississippi Tort Claims Act (MTCA), the doctor was immune from liability because (1) he was acting as a supervisor with regard to the decedent; (2) he did not choose his patients or the residents that he supervised; (3) he was acting as a faculty physician and was following the direction of the UMMC; (4) over the phone, he acted in a supervisory capacity to a surgical resident, which involved little judgment or discretion; and (5) he was acting as an uncompensated faculty member for the UMMC, not as an independent contractor. Therefore, the doctor's motion for summary judgment on the husband's second amended complaint alleging causes of action for malpractice, negligence and medical negligence, *res ipsa loquitur*, and failure to obtain informed consent, was properly granted. *Barksdale v. Carroll*, -- So. 2d -- (Miss. Ct. App. Mar. 14, 2006).

Doctor was not immune under the Mississippi Tort Claims Act, *Miss. Code Ann. § 11-46-7(2)*, from a patient's malpractice suit because the doctor was an independent contractor, rather than an employee of a county hospital, within the meaning of "employee" in *Miss. Code Ann. § 11-46-1(f)*, where the doctor's contract was with a private corporation that assigned her to work at the hospital and issued her paycheck. *Carpenter v. Reinhard*, -- F. Supp. 2d -- (N.D. Miss. July 15, 2005).

Grant of summary judgment against the patient in her medical malpractice action against the physician was proper where the physician was an employee of the state university medical center and therefore an employee of the state of Mississippi. Thus, he was immune from liability under *Miss. Code Ann. § 11-46-7(2)* of the Mississippi Tort Claims Act, *Miss. Code Ann. § 11-46-1 et seq.* *Owens v. Thomae*, 904 So. 2d 207 (Miss. Ct. App. 2005).

In a medical malpractice action, a doctor was not entitled to summary judgment on the issue of immunity under the Mississippi Tort Claims Act because there were disputed issues of fact regarding the doctor's true employment status, including the nature of the doctor's contractual and business relationships with a county hospital and a private corporation. *Carpenter v. Reinhard*, 345 F. Supp. 2d 629 (N.D. Miss. Nov. 22, 2004).

Although a man, who fell under the definition of "employee" for purposes of *Miss. Code Ann. § 11-46-1(f)* of the Mississippi Tort Claims Act (MTCA), *Miss. Code Ann. §§ 11-46-1 to 11-46-23*, caused an accident that injured an individual and then failed to disclose to the individual that the man was a county employee, the individual failed to establish that the county withheld information regarding the employee's work status, nor did the individual show that the county provided the individual with misleading or inaccurate information, and the individual did not exercise due diligence in determining the true parties of the lawsuit or in determining the man's work status; thus, the court affirmed the trial court's grant of summary judgment under Miss. R. Civ. P. 56(c) in favor of the county and the man on the grounds that the individual failed to substantially comply with the notice requirements of the MTCA, and, therefore, the statute of limitations had expired. *Ray v. Keith*, 859 So. 2d 995 (Miss. 2003).

For purposes of *Miss. Code Ann. § 11-46-1(f)* of the the Mississippi Tort Claims Act (MTCA), *Miss. Code Ann. §§ 11-46-1 through 11-46-23*, receiving income for a University of Mississippi Medical Center medical practice plan does not make a physician an independent contractor. *Watts v. Tsang*, 828 So. 2d 785 (Miss. 2002).

For purposes of *Miss. Code Ann. § 11-46-1(f)* of the the Mississippi Tort Claims Act (MTCA), *Miss. Code Ann. §§ 11-46-1 through 11-46-23*, the doctor who supervised a procedure that left the patient a paraplegic was a state employee and immune from liability because (1) the doctor was employed by the University of Mississippi Medical Center (UMMC) and acting according to the terms and conditions of the doctor's contract; (2) the doctor was a full-time faculty member at UMMC and had never engaged in the practice of medicine outside the course and scope of the doctor's employment; and (3) the doctor was a supervising teacher and trainer of residents (interns and fellows as well) and did not receive compensation from any person or entity other than a State entity. *Watts v. Tsang*, 828 So. 2d 785 (Miss. 2002).

Summary judgment for the defendant physician was not appropriate in a medical malpractice action where the plaintiffs did not dispute that the physician was an employee of a state university in his role as an assistant professor,

but there was a material issue of fact as to whether he was an employee of the state university in connection with his private practice. *Smith v. Braden*, 765 So. 2d 546 (Miss. 2000).

The defendant physician was not entitled to summary judgment in a medical malpractice action on the basis of the one year statute of limitations contained in the Tort Claims Act. There was a triable issue of fact regarding whether he was a state employee within the meaning of the statute while engaged in clinical outpatient practice under the general auspices of the state university which employed him. *Miller v. Meeks*, 762 So. 2d 302 (Miss. 2000).

The evidence showed that a doctor was not a staff physician, but rather a post-graduate house staff officer, and thus she was an employee of the state, who was provided with no additional compensation for her services; thus, the Tort Claims Act applied to her, and the lower court was correct in dismissing a medical malpractice action against her; however, the evidence with regard to two other doctors was not clear, and the cases against them were remanded for additional discovery. *Pickens v. Donaldson*, 748 So. 2d 684 (Miss. 1999).

#### 4. POLITICAL SUBDIVISION.

While plaintiffs erred under *Miss. Code Ann. § 11-46-1(i)* in naming a sheriff's department as a defendant in a personal injury suit, the trial court erred in denying plaintiffs' motion for leave to amend the complaint pursuant to Miss. R. Civ. P. 15(c) to add a county as a defendant where plaintiffs' notice of claim letter put the proper county official on notice that, except for the mistake of naming the wrong party, the action would have been brought against the county. *Mieger v. Pearl River County*, -- So. 2d -- (Miss. Ct. App. Jan. 8, 2008).

Where plaintiff parent sued defendant school district in state court alleging her child was sexually assaulted at school and obtained a judgment under the Mississippi Tort Claims Act, her later claims in federal court were properly held as barred due to res judicata; while school districts' sources of funding under *Miss. Code Ann. § 37-45-21*, *37-47-1* et seq., *Miss. Code Ann. § 37-57-1*, *Miss. Code Ann. § 37-59-3*, and *Miss. Code Ann. § 37-151-7* were equally divided between local school districts and the state under *Miss. Code Ann. § 11-46-7*, *Miss. Code Ann. § 11-46-16(2)*, and *Miss. Code Ann. § 11-46-17(2)*, any judgment against the school district would be paid through the Tort Claims Fund and excess liability insurance, and thus, the school district was not considered an arm of the state entitled to Eleventh Amendment immunity. *Black v. N. Panola Sch. Dist.* 461 F.3d 584 (5th Cir. 2006).

State legislature did not intend for the Mississippi Tort Claims Act (MTCA) to extend to a private entity such as defendant, a transit company that executed an agreement with a city to operate and maintain a public transportation system; defendant was not created for the sole purpose of fulfilling a state mandated government service (rather, defendant was presumably created to be a profitable business for the benefit of its shareholders). *Thompson v. McDonald Transit Assocs.* 440 F. Supp. 2d 530 (S.D. Miss. 2006).

Although *Miss. Code Ann. § 19-25-19* states that all sheriffs shall be liable for the acts of their deputies, this does not provide sufficient weight to tip the argument in favor of finding that a sheriff's department is a separate political subdivision or governmental entity for purposes of the Mississippi Tort Claims Act (MTCA). *Brown v. Thompson*, 927 So. 2d 733 (Miss. 2006).

In a case of first impression, the Supreme Court of Mississippi held that a county sheriff's department was not a political subdivision as defined in *Miss. Code Ann. § 11-46-1(i)*, of the Mississippi Tort Claims Act (MTCA), and thus an individual's suit naming the sheriff's department was not properly filed; the county should have been named as the governmental defendant. A review of the structural relationship between counties and sheriff's departments in *Miss. Code Ann. § 19-25-13* and *Miss. Code Ann. § 19-25-19* supported that holding. *Brown v. Thompson*, 927 So. 2d 733 (Miss. 2006).

Suspect in murder gave a videotaped statement indicating that the couple were present during the victim's murder, robbery having been the motive, and based on that information, the sheriff obtained an arrest warrant for the couple. When the aforementioned suspect recanted his allegation, and sheriff realized there was no longer probable cause to hold the couple, sovereign immunity applied in the couple's suit against the sheriff and the county for false arrest and malicious prosecution, under the exception of *Miss. Code Ann. § 11-46-9(1)(c)*. *Keen v. Simpson County*, 904 So. 2d 1157 (Miss. Ct. App. 2004).

Trial court abused its discretion in denying a motion by a hospital and three physicians to transfer venue in a medical malpractice action because a decedent's heirs had failed to assert a reasonable claim of liability against certain defendants that had been dismissed from the action and because the hospital was a community hospital under the

Mississippi Tort Claims Act and was entitled to venue in the county in which its governing body's principal offices were located. *Wayne Gen. Hosp. v. Hayes*, -- So. 2d -- (Miss. Nov. 6, 2003).

Working in conjunction with *Miss. Code Ann. § 11-46-3(1)*, § 11-46-1(i) defines "political subdivisions" to specifically include school districts. *Harris v. McCray*, 867 So. 2d 188 (Miss. 2003).

Airport authority that argued it was a "joint airport board" was nevertheless a governmental entity that exercised powers that were declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity, and thus was a political subdivision under subsection (i); the airport authority could not escape liability by merely asserting that it was really an airport board because airport boards, although not specifically listed, were by definition subject to the statute. *Spencer v. Greenwood Airport Auth.* 834 So. 2d 707 (Miss. 2003).

For purposes of *Miss. Code Ann. § 11-46-1(i)*, (j) of the the Mississippi Tort Claims Act (MTCA), *Miss. Code Ann. §§ 11-46-1 through 11-46-23*, the University Anesthesia Services is an instrumentality of the State, even though it is a private, for-profit corporation that pays state taxes like other private corporations. *Watts v. Tsang*, 828 So. 2d 785 (Miss. 2002).

For purposes of *Miss. Code Ann. § 11-46-1(i)*, (j) of the the Mississippi Tort Claims Act (MTCA), *Miss. Code Ann. §§ 11-46-1 through 11-46-23*, where a medical practice group was created by the University of Mississippi Medical Center (UMMC), and is overseen by UMMC, and the purpose is to supplement the income of its faculty; when the day-to-day oversight is left to the department chair, subject to limited oversight by the vice chancellor, and its membership is composed solely of full-time UMMC-faculty physicians; where the faculty physicians can only practice at UMMC-approved sites, and the money is distributed on a point system based on factors other than mere patient service, the medical practice group is a State entity. *Watts v. Tsang*, 828 So. 2d 785 (Miss. 2002).

School district was entitled to sovereign immunity from wrongful death action arising out of death of eight-year-old special education student who ran away from school. *Brown v. Houston Sch. Dist.* 704 So. 2d 1325 (Miss. 1997).

##### 5. DISMISSAL OF CLAIM.

Grant of summary judgment in favor of the city and police officer in the jogger's action under the Mississippi Tort Claims Act, *Miss. Code Ann. §§ 11-46-1 to 11-46-23*, after he was struck by the police officer while jogging was appropriate because the jogger failed to prove that the officer acted with reckless disregard of the safety and well-being of others, *Miss. Code Ann. § 11-46-9(1)(c)*. *Morton v. City of Shelby*, -- So. 2d -- (Miss. Ct. App. Nov. 20, 2007).

Dismissal of the employee's action after he was terminated was proper because although he filed his suit against the sheriff's department and the sheriff within the statutorily prescribed period in *Miss. Code Ann. § 11-46-11(3)*, he still failed to comply with the Mississippi Tort Claims Act since he filed his complaint 37 days before he filed his notice of claim with the sheriff's department. *Clanton v. Desoto County Sheriff's Dep't*, 963 So. 2d 560 (Miss. Ct. App. 2007).

In an action pursuant to the Mississippi Tort Claims Act, *Miss. Code Ann. § 11-46-1 et seq.*, where a slow-moving county motor grader executed a turn on the highway, even though the operator did not give a hand signal, the grader operator was not negligent in failing to do same or for failing to keep a proper lookout, but the injured driver was negligent in passing the grader within 100 feet of an intersection and failing to keep a proper lookout. *Barnett v. Lauderdale County Bd. of Supervisors*, 880 So. 2d 1085 (Miss. Ct. App. 2004).

Evidence showed the officer was traveling approximately 37 miles per hour with lights and sirens activated, there was nothing obstructing the view of either the person later injured or the officer, and the greater weight of evidence also proved that the person's left turn signal was not activated. In addition, the officer had consciously stopped at the previous two intersections because the officer considered both of those to be blind intersections, and therefore, the officer's behavior supported the finding that the officer appreciated the risk involved in approaching the intersection and did not act with reckless disregard. *Davis v. Latch*, 873 So. 2d 1059 (Miss. Ct. App. 2004).

Grant of summary judgment in favor of the employee's employer was proper where the employee failed to substantially comply with the notice provisions of the Mississippi Tort Claim Act's, *Miss. Code Ann. § 11-46-1 et seq.*, *Miss. Code Ann. § 11-46-11*. *Harris v. Miss. Valley State Univ.* 873 So. 2d 970 (Miss. 2004).

When a victim was raped by a parolee accepted from another state for supervision, summary judgment was correctly granted to the State in the victim's action against it for negligently accepting supervision of the parolee and negligently supervising him because acceptance of the parolee's supervision was mandatory under the Uniform Act for Out-of-State Parolee Supervision, *Miss. Code Ann. § 47-7-71*, as he had family and a job in Mississippi, and decisions made by the

parolee's supervising parole officer in the course of the parolee's supervision were discretionary, so the State could not be held liable under the Mississippi Tort Claims Act, *Miss. Code Ann. § 11-46-1 et seq. Doe v. State ex rel. Miss. Dep't of Corr.* 859 So. 2d 350 (Miss. 2003).

Former university professor's tortious interference with contract claim against the university that formerly employed her and its officials was covered by the Mississippi Tort Claims Act, *Miss. Code Ann. § 11-46-1 et seq.*; accordingly, the professor had to comply with the Act's requirements as it was the exclusive remedy for the professor under *Miss. Code Ann. § 11-46-7(1)*; furthermore, the professor's claim was time-barred under *Miss. Code Ann. § 11-46-11(3)* as it was not timely filed. *Black v. Ansah*, -- So. 2d -- (Miss. Ct. App. June 3, 2003).

In an arrestee's suit alleging that a deputy sheriff used excessive force, the arrestee's state-law tort claims were dismissed because the arrestee failed, under the substantial compliance standard, to comply with the notice provisions of the *Mississippi Tort Claims Act. Whiting v. Tunica County*, 222 F. Supp. 2d 809 (N.D. Miss. 2002).

#### 6. MISCELLANEOUS.

After dismissing, upon summary judgment, a former student's 42 U.S.C.S. § 1983 claims against a university and its officials, a court declined, pursuant to 28 U.S.C.S. § 1367(c)(3), to exercise supplemental jurisdiction over the student's Mississippi Tort Claims Act, *Miss. Code Ann. §§ 11-46-1 et seq.*, and state law breach of contract claims. *Senu-Oke v. Jackson State Univ.* 521 F. Supp. 2d 551 (S.D. Miss. 2007).

#### 7. STANDARD OF CARE.

Where alleged negligent actions are caused by an employee who is not a doctor or a nurse in a medical malpractice case, the conduct must be evaluated using traditional negligence/reasonable care standards; therefore, in a case filed under the Mississippi Tort Claims Act, *Miss. Code Ann. §§ 11-46-1 et seq.*, the reasonable care standard was properly applied where an employee's action caused water to be aspirated by a post-surgical patient, which allegedly resulted in pneumonia. This action contradicted the medical records, which stated that the patient was to receive nothing by mouth. *Univ. of Miss. Med. Ctr. v. Pounders*, 970 So. 2d 141 (Miss. 2007).

#### 6. EXPERT TESTIMONY.

In a case filed under the Mississippi Tort Claims Act, *Miss. Code Ann. §§ 11-46-1 et seq.*, a trial court did not err by allowing expert testimony under Miss. R. Evid. 702 because a witness did not have to be a pulmonologist in order to opine on matters concerning aspiration pneumonia; the witness had received specialized training and knowledge in medical school and by treating other patients. *Univ. of Miss. Med. Ctr. v. Pounders*, 970 So. 2d 141 (Miss. 2007).

#### ATTORNEY GENERAL OPINIONS

Drainage district is political subdivisions of state, as well as private enterprise, and should have liability insurance coverage. Bradley Sept. 8, 1993, A.G. Op. #93-0632.

Office of district attorney is not exempt from supporting Tort Claims System through requirements to have liability insurance by virtue of general immunity. Mellen, Jan. 12, 1994, A.G. Op. #93-0705.

Although counties and cities are without authority to provide specific types of insurance set forth in Section 25-15-101 to volunteer firefighters, tort risk coverage may be provided under Section 11-46-1. Ranck, Feb. 16, 1994, A.G. Op. #94-0080.

Sections 11-46-1 et seq. include actions brought against state agency employees and political subdivision employees in federal law actions for acts or omissions occurring within the course and scope of their duties. Hardy, March 2, 1995, A.G. Op. #95-0084.

The Mississippi Business Finance Corporation (MBFC), as a state agency, has sovereign immunity. MBFC does not have the authority to execute an agreement which would, in effect, waive the immunity by agreeing to indemnify a third party for claims. Pittman, March 29, 1995, A.G. Op. #95-0107.

The Workers' Compensation Commission peer reviewers fall within the definition of Section 11-46-1(f) and as such would be entitled to a defense subject to all provisions of the Act. Additionally, if Section 11-46-9(1)(d) applies, the Commission's peer reviewers would be exempt from liability and therefore immune from suit. Porter, August 23, 1995, A.G. Op. #95-0343.

The definition, in Section 11-46-1(f), does exclude from the protection of the Act those persons "acting on behalf of the state" who are "independent contractors." Howell, March 8, 1996, A.G. Op. #96-0137.

The Tort Claims Act is not a "law with respect to the acquisition, operation or disposition of property," and therefore a housing authority is not excluded from the requirements of the Tort Claims Act. See Sections 11-46-1(i), 43-33-5 and 43-33-11. Hardy, March 29, 1996, A.G. Op. #96-0157.

There appears to be no statutory prohibition to using wanted posters in an effort to find individuals with outstanding contempt of court warrants. However, the Mississippi Tort Claims Act as set forth in Section 11-46-1 et. seq., does not protect state agencies or political subdivisions from defamation. Moran, July 8, 1996, A.G. Op. #96-0431.

If the county does not choose to provide a bond for the medical examiner, and the medical examiner is sued in her official capacity, the county would be obligated to provide legal counsel. See Sections 25-1-47 and 11-46-1, et seq. Brooks, December 20, 1996, A.G. Op. #96-0835.

Staff physicians under contract with the University of Mississippi Medical Center are employees of a governmental entity of the State of Mississippi, and the Medical Center is responsible for affording them a defense and paying any judgment against them or settlement for any claim arising out of an act or omission within the course and scope of their employment, and within the limits of the Mississippi Tort Claims Act. Conerly, September 4, 1998, A.G. Op. #98-0500.

A county supervisor falls within the definition of "employee" under the Mississippi Tort Claims Act. Ross, Jr., Jan. 22, 2002, A.G. Op. #01-0754.

An unpaid volunteer acting on behalf of a state university hospital is afforded coverage under the Tort Claims Act. Conerly, Mar. 29, 2002, A.G. Op. #02-0144.

Full-time staff doctors employed by and paid by a public hospital owned by a county are considered employees for purposes of the Tort Claims Act, and as such, are not personally liable for acts or omissions occurring within the course and scope of their employment. Brown, Apr. 26, 2002, A.G. Op. #02-0211.

The Bolivar Medical Center Foundation is a public corporation and the respective trustees and employees are covered by the Tort Claims Act. Griffith, Oct. 18, 2002, A.G. Op. #02-0590.

Employees of the Pat Harrison Waterway District acting within the scope and course of their employment are covered by the Tort Claims Act. Matthews, Dec. 6, 2002, A.G. Op. #02-0686.

Doctors, nurses and pharmacists employed by the State Department of Health and acting within the scope and course of their employment are covered by the Tort Claims Act. Amy, Jan. 17, 2003, A.G. Op. #02-0746.

A legal defense is provided to doctors, nurses and pharmacists employed by the State Department of Health even though the conduct is alleged to be outside the course and scope of their employment. Amy, Jan. 17, 2003, A.G. Op. #02-0746.

There is no reason for a practitioner to obtain additional liability coverage as long as the acts are within the course and scope of his employment with the State Health Department. Amy, Jan. 17, 2003, A.G. Op. #02-0746.

ALR. Liability of county for torts in connection with activities which pertain, or are claimed to pertain, to private or proprietary function. 16 A.L.R.2d 1079.

Persons upon whom notice of injury or claim against municipal corporation may or must be served. 23 A.L.R.2d 969.

Immunity from liability for damages in tort of state or governmental unit or agency in operating hospital. 25 A.L.R.2d 203.

Tort liability of governmental unit for injury or damage resulting from insecticide and vermin eradication operations. 25 A.L.R.2d 1057.

Operation of garage for maintenance and repair of municipal vehicles as governmental function. 26 A.L.R.2d 944.

Installation or operation of parking meters as within governmental immunity from tort liability. 33 A.L.R.2d 761.

Infancy or incapacity as affecting notice required as condition of holding municipality or other political subdivision liable for personal injury. 34 A.L.R.2d 725.

Tort liability of municipality or other governmental unit in connection with destruction of weeds and the like. 34 A.L.R.2d 1210.

Maintenance of auditorium, community recreational center, building, or the like, by municipal corporation as governmental or proprietary function for purposes of tort liability. 47 A.L.R.2d 544.

Municipal operation of bathing beach or swimming pool as governmental or proprietary function, for purposes of tort liability. 55 A.L.R.2d 1434.

Rule of municipal immunity from liability for acts in performance of governmental functions as applicable to personal injury or death as result of a nuisance. 56 A.L.R.2d 1415.

Municipal operation of sewage disposal plant as governmental or proprietary function, for purposes of tort liability. 57 A.L.R.2d 1336.

Municipal immunity from liability for torts. 60 A.L.R.2d 1198.

Waiver of, or estoppel to assert, failure to give required notice of claim of injury to municipality, county, or other governmental agency or body. 65 A.L.R.2d 1278.

Liability or indemnity insurance carried by governmental unit as affecting immunity from tort liability. 68 A.L.R.2d 1437.

What is "motor vehicle" or the like within statute waiving governmental immunity as to operation of such vehicles. 77 A.L.R.2d 945.

Liability for performing an autopsy. 83 A.L.R.2d 955.

Snow removal operations as within doctrine of governmental immunity from tort liability. 92 A.L.R.2d 796.

Right of contractor with federal, state, or local public body to latter's immunity from tort liability. 9 A.L.R.3d 382.

Modern status of the rules as to immunity of foreign sovereign from suit in federal or state courts. 25 A.L.R.3d 322.

Modern status of doctrine of sovereign immunity as applied to public schools and institutions of higher learning. 33 A.L.R.3d 703.

Liability of highway authorities arising out of motor vehicle accident allegedly caused by failure to erect or properly maintain traffic control device at intersection. 34 A.L.R.3d 1008.

Tort liability of public schools and institutions of higher learning for injuries caused by acts of fellow students. 36 A.L.R.3d 330.

Tort liability of public schools and institutions of higher learning for accidents occurring during use of premises and equipment for other than school purposes. 37 A.L.R.3d 712.

Tort liability of public schools and institutions of higher learning for injuries due to condition of grounds, walks, and playgrounds. 37 A.L.R.3d 738.

Tort liability of public schools and institutions of higher learning for injuries resulting from lack or insufficiency of supervision. 38 A.L.R.3d 830.

Liability of municipal corporation for negligent performance of building inspector's duties. 41 A.L.R.3d 567.

Liability of governmental entity or public officer for personal injury or damages arising out of vehicular accident due to negligent or defective design of highway. 45 A.L.R.3d 875.

Attorney's mistake or neglect as excuse for failing to file timely notice of tort claim against state or local governmental unit. 55 A.L.R.3d 930.

Modern status of the law as to validity of statutes or ordinances requiring notice of tort claim against local governmental entity. 59 A.L.R.3d 93.

Liability of governmental entity for issuance of permit for construction which caused or accelerated flooding. 62 A.L.R.3d 514.

Validity and construction of statute authorizing or requiring governmental unit to procure liability insurance covering public officers or employees for liability arising out of performance of public duties. 71 A.L.R.3d 6.

Validity and construction of statute authorizing or requiring governmental unit to indemnify public officer or employee for liability arising out of performance of public duties. 71 A.L.R.3d 90.

Maintenance of class action against governmental entity as affected by requirement of notice of claim. 76 A.L.R.3d 1244.

Sovereign immunity doctrine as precluding suit against sister state for tort committed within forum state. 81 A.L.R.3d 1239.

Governmental tort liability for social service agency's negligence in placement, or supervision after placement, of children. 90 A.L.R.3d 1214.

Governmental liability from operation of zoo. 92 A.L.R.3d 832.

Liability of governmental unit or private owner or occupant of land abutting highway for injuries or damage sustained

when motorist strikes tree or stump on abutting land. 100 A.L.R.3d 510.

Liability of university, college, or other school for failure to protect student from crime. 1 A.L.R.4th 1099.

Tort liability of public schools and institutions of higher learning for educational malpractice. 1 A.L.R.4th 1139.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from design, construction, or failure to warn of narrow bridge. 2 A.L.R.4th 635.

Actual notice or knowledge by governmental body or officer of injury or incident resulting in injury as constituting required claim or notice of claim for injury -- modern status. 7 A.L.R.4th 1063.

Liability of urban redevelopment authority or other state or municipal agency or entity for injuries occurring in vacant or abandoned property owned by governmental entity. 7 A.L.R.4th 1129.

Construction and application, under state law, of doctrine of "executive privilege". 10 A.L.R.4th 355.

Liability of state, in issuing automobile certificate of title, for failure to discover title defect. 28 A.L.R.4th 184.

Governmental tort liability as to highway median barriers. 58 A.L.R.4th 559.

Governmental tort liability for injury to roller skater allegedly caused by sidewalk or street defects. 58 A.L.R.4th 1197.

Governmental liability for failure to post highway deer crossing warning signs. 59 A.L.R.4th 1217.

State's liability for personal injuries from criminal attack in state park. 59 A.L.R.4th 1236.

Tort liability of public authority for failure to remove parentally abused or neglected children from parents' custody. 60 A.L.R.4th 942.

Liability of municipal corporation or other governmental entity for injury or death caused by action or inaction of off-duty police officer. 36 A.L.R.5th 1.

Excessiveness or adequacy of damages awarded for injuries to trunk or torso, or internal injuries. 48 A.L.R.5th 129.

Tort liability of public schools and institutions of higher learning for accident involving motor vehicle operated by student. 85 A.L.R.5th 301.

Liability of municipality or other governmental unit for failure to provide police protection from crime. 90 A.L.R.5th 273.

Federal Tort Claims Act: When is government officer or employee "acting within the scope of his office or employment" for purpose of determining government liability under 28 *USCS sec. 1346(b)*. 6 A.L.R. Fed. 373.

Effect of Foreign Sovereign Immunities Act (28 *USCS secs. 1330, 1441(d), 1602 et seq.*) on right to jury trial in action against foreign state. 56 A.L.R. Fed. 679.

AM JUR. 41 Am. Jur. Trials 1, Social Worker Malpractice for Failure to Protect Foster Children.

LAW REVIEWS. The History and Future of Sovereign Immunity for Mississippi School Districts. 58 *Miss. L. J.* 275, Fall 1988.

1984 Mississippi Supreme Court Review: Civil Procedure. 55 *Miss L. J.* 49, March, 1985.

Fraiser, A Review of the Substantive Provisions of the Mississippi Governmental Immunity Act: Employees Individual Liability, Exemptions to the Waiver of Immunity, Non-Jury Trial, and Limitation of Liability, 68 *Miss L.J.* 703, Spring, 1999.

Litigation in Mississippi Today: A Symposium: Comment: Mississippi Tort Claims Act: Is Discretionary Immunity Useless?, 71 *Miss. L.J.* 695, Winter, 2002.

Tort Reform and the Medical Liability Insurance Crisis in Mississippi: Diagnosing the Disease and Prescribing a Remedy, 22 *Miss. C. L. Rev.* 9, Fall, 2002.

Checking Up On the Medical Malpractice Liability Insurance Crisis in Mississippi: Are Additional Tort Reforms the Cure?, 73 *Miss. L.J.* 1001 (2004).

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MISSISSIPPI CODE of 1972 ANNOTATED  
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\*\*\* CURRENT THROUGH THE 2007 1st EXTRAORDINARY SESSION \*\*\*  
\*\*\* STATE COURT ANNOTATIONS CURRENT THROUGH January 10, 2008 \*\*\*

TITLE 11. CIVIL PRACTICE AND PROCEDURE  
CHAPTER 46. IMMUNITY OF STATE AND POLITICAL SUBDIVISIONS FROM LIABILITY AND SUIT FOR  
TORTS AND TORTS OF EMPLOYEES

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

*Miss. Code Ann. § 11-46-3 (2008)*

§ 11-46-3. Declaration of legislative intent

(1) The Legislature of the State of Mississippi finds and determines as a matter of public policy and does hereby declare, provide, enact and reenact that the "state" and its "political subdivisions," as such terms are defined in Section 11-46-1, are not now, have never been and shall not be liable, and are, always have been and shall continue to be immune from suit at law or in equity on account of any wrongful or tortious act or omission or breach of implied term or condition of any warranty or contract, including but not limited to libel, slander or defamation, by the state or its political subdivisions, or any such act, omission or breach by any employee of the state or its political subdivisions, notwithstanding that any such act, omission or breach constitutes or may be considered as the exercise or failure to exercise any duty, obligation or function of a governmental, proprietary, discretionary or ministerial nature and notwithstanding that such act, omission or breach may or may not arise out of any activity, transaction or service for which any fee, charge, cost or other consideration was received or expected to be received in exchange therefor.

(2) The immunity of the state and its political subdivisions recognized and reenacted herein is and always has been the law in this state, before and after November 10, 1982, and before and after July 1, 1984, and is and has been in full force and effect in this state except only in the case of rights which, prior to the date of final passage hereof, have become vested by final judgment of a court of competent jurisdiction or by the express terms of any written contract or other instrument in writing.

**HISTORY: SOURCES:** Laws, 1984, ch. 495, § 2; reenacted and amended, 1985, ch. 474, § 2; reenacted and amended, 1986, ch. 438, § 1; Laws, 1987, ch. 483, § 1; Laws, 1988, ch. 442, § 1; Laws, 1989, ch. 537, § 1; Laws, 1990, ch. 518, § 1; Laws, 1991, ch. 618, § 1; Laws, 1992, ch. 491 § 3; Laws, 1992 Special Session, ch. 3, § 1; Laws, 1993, ch. 476, § 2, eff from and after passage (approved April 1, 1993).

**NOTES:**

**EDITOR'S NOTE.** --Laws, 1987, ch. 483, § 50, provides as follows:

"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

CROSS REFERENCES. --Waiver of immunity granted in this section, see § 11-46-5.

#### JUDICIAL DECISIONS

1. In general
2. Retroactivity
3. Illustrative cases

##### 1. IN GENERAL.

A thorough review of *Miss. Code Ann. § 1-3-33* and the Mississippi Tort Claims Act (MTCA), *Miss. Code Ann. § 11-46-1* et seq., revealed that there was no contrary intent manifested by the Legislature that meant that the MTCA should be interpreted only in the singular manner; *Miss. Code Ann. § 11-46-15(1)* was interpreted by using singular or plural language. The Legislature did not manifestly express a contrary intention not to include plural language in its Declaration of Legislative Intent set forth in *Miss. Code Ann. § 11-46-3*. *Miss. DOT v. Allred*, 928 So. 2d 152 (Miss. 2006).

Resident's argument that the Mississippi Tort Claims Act, *Miss. Code Ann. § 11-46-3*, should not apply to investment property was untenable as *Miss. Code Ann. § 11-46-3 (1)* explicitly mentioned immunity pertaining to proprietary functions; furthermore, under a political subdivision's broad power to purchase and hold real estate, the lesser power to lease was necessarily implied. *Davis v. Forrest Royale Apts.* 938 So. 2d 293 (Miss. Ct. App. 2006).

In conjunction with *Miss. Code Ann. § 11-46-3(1)*, § 11-46-1(i) defines "political subdivisions" to specifically include school districts. *Harris v. McCray*, 867 So. 2d 188 (Miss. 2003).

The statute does not violate the separation of powers doctrine. *Fortune v. Lee County Bd. of Supvrs.* 725 So. 2d 747 (Miss. 1998).

Under subsection (2), only acts of an incorporated municipality which are proprietary in nature are excepted from sovereign immunity. *Mosby v. Moore*, 716 So. 2d 551 (Miss. 1998).

Department of Transportation had sovereign immunity from liability to motorist who was injured at intersection where department was conducting road construction when oncoming ambulance struck her car at intersection, allegedly after department's flagman flagged motorist to proceed with left turn; department's purchase of liability insurance for employees operating motor vehicles in performance of official duties did not waive immunity, as flagman was not operating motor vehicle. *Mississippi Transp. Comm'n v. Jenkins*, 699 So. 2d 597 (Miss. 1997).

Department of Transportation had sovereign immunity on claim for indemnification by ambulance service that was sued for injuries sustained by motorist when oncoming ambulance struck her car at intersection, allegedly after department's flagman flagged her to proceed with left turn. *Mississippi Transp. Comm'n v. Jenkins*, 699 So. 2d 597 (Miss. 1997).

Sovereign immunity applies to actions where state is possible joint tort-feasor. *Mississippi Transp. Comm'n v. Jenkins*, 699 So. 2d 597 (Miss. 1997).

School district was "political subdivision" of state and thus was protected by sovereign immunity from negligence suit arising from incident on August 26, 1993, after effective date of statute restoring sovereign immunity for state and its political subdivisions, but before effective date of statute largely waiving such immunity for political subdivisions. *Gressett ex rel. Gressett v. Newton Separate Mun. Sch. Dist.* 697 So. 2d 444 (Miss. 1997).

Codification of principles of sovereign immunity did not violate Mississippi constitutional provision that courts shall be open and remedy shall be available for every injury; remedy clause is not absolute guarantee of trial and it is legislature's decision whether or not to address restrictions upon actions against government entities. *Mohundro v. Alcorn County*, 675 So. 2d 848 (Miss. 1996).

Codification of principles of sovereign immunity did not violate due process clause of Fourteenth Amendment; there was no right to sue state or its political subdivisions at common law and, through codification, legislature continued to withhold such right, and thus there was no property right to sue state. *Mohundro v. Alcorn County*, 675 So. 2d 848 (Miss. 1996).

Sovereign immunity cloaks all "governmental functions" a city performs. *Westbrook v. City of Jackson*, 665 So. 2d 833 (Miss. 1995), rehearing denied.

"Governmental functions," which are cloaked with sovereign immunity, are those functions which a city is required to undertake. *Westbrook v. City of Jackson*, 665 So. 2d 833 (Miss. 1995), rehearing denied.

Operation of fire department, including the supply of water to combat fires, is a governmental function, cloaked by sovereign immunity, even if the same supply provides drinking water, which is proprietary activity. *Westbrook v. City of Jackson*, 665 So. 2d 833 (Miss. 1995), rehearing denied.

City could not lose sovereign immunity for fire protection service in annexed area through negligence per se, where annexation ordinance did not require specific placement of water lines or mains in a certain point. *Westbrook v. City of Jackson*, 665 So. 2d 833 (Miss. 1995), rehearing denied.

Governmental officers are immune from personal liability for fire protection decisions if the decision to provide water lines, or certain aspects of fire protection to property, is a discretionary matter involving public policy decisions. *Westbrook v. City of Jackson*, 665 So. 2d 833 (Miss. 1995), rehearing denied.

Provision of water lines, under annexation ordinance providing for installment of water lines "when necessary and economically feasible," was discretionary decision, for which city officials were entitled to qualified immunity. *Westbrook v. City of Jackson*, 665 So. 2d 833 (Miss. 1995), rehearing denied.

The decision of *Presley v. Mississippi State Highway Commission* (Miss. 1992) 608 So. 2d 1288, which declared the codified principle of sovereign immunity (§§ 11-46-1 et seq.) unconstitutional, has no retroactive application. *Robinson v. Stewart*, 655 So. 2d 866 (Miss. 1995), rehearing denied.

There is no "property right" to sue the State, since the Mississippi Legislature has withheld that right through its statutes, and therefore the principle of sovereign immunity, as enacted by the legislature in §§ 11-46-1 et seq., does not violate the due process clause of the Mississippi Constitution or the 14th Amendment to the United States Constitution. *Robinson v. Stewart*, 655 So. 2d 866 (Miss. 1995), rehearing denied.

The Mississippi Legislature's post-Pruett legislative enactments on sovereign immunity (§§ 11-46-1 et seq.) do not violate the remedy clause of the Mississippi Constitution. *Robinson v. Stewart*, 655 So. 2d 866 (Miss. 1995), rehearing denied.

A city's operation of a service garage and towing service for its vehicles was a proprietary function, and therefore the defense of sovereign immunity was not available in a wrongful death action against the city arising from a collision between the deceased's car and a city tow truck. *Thomas v. Hilburn*, 654 So. 2d 898 (Miss. 1995).

For purposes of governmental immunity, the statutory framework for reporting cases of suspected child abuse includes elements of both ministerial and discretionary conduct; § 43-21-353 first requires a person to make a determination of whether "reasonable cause" exists as a foundation for an incident report, which involves a duty to investigate a ministerial duty and a decision as to whether reasonable cause exists a decision involving the exercise of personal judgment and discretion; if a determination is made that there is reasonable cause to report the incident, the statute then mandates that an immediate oral report be issued to the Department of Human Services an action involving no discretion. *T.M. v. Noblitt*, 650 So. 2d 1340 (Miss. 1995).

The governor was not protected by § 11-46-3 in a declaratory action alleging that he engaged in rulemaking under state law and violated the plaintiff's right to take part in the rulemaking process under the state's Administrative Procedures Law because he failed to give notice of his plans to adopt a Capacity Assurance Plan before its submission to the United States Environmental Protection Agency, since the statute is part of the governmental immunity and tort claims act and the plaintiff's claim was not based on tort damages under § 11-46-3(1). *Fordice v. Thomas*, 649 So. 2d 835 (Miss. 1995), but see *USPCI of Miss., Inc. v. State ex rel. McGowan*, 688 So. 2d 783 (Miss. 1997).

The governmental immunity and tort claims act should not be construed to immunize governmental authorities and agencies from suits other than for money damages. *Fordice v. Thomas*, 649 So. 2d 835 (Miss. 1995), but see *USPCI of Miss., Inc. v. State ex rel. McGowan*, 688 So. 2d 783 (Miss. 1997).

A county was protected by sovereign immunity in a wrongful death action arising from an automobile collision which occurred on a county road bridge on September 20, 1985, following the enactment of §§ 11-46-1 et seq. *Coplin v. Francis*, 631 So. 2d 752 (Miss. 1994).

The decision of the Supreme Court declaring unconstitutional the portion of the Sovereign Immunity Act (§§ 11-41-6 et seq.) mandating that all claims against the State be governed by case law governing sovereign immunity as it existed

on November 10, 1982, applies prospectively only, and is "purely prospective" so that it applies only to claims arising after the mandate issues. *Presley v. Mississippi State Hwy. Comm'n*, 608 So. 2d 1288 (Miss. 1992).

To the extent that § 11-46-6 purports to freeze the doctrine of sovereign immunity to the state of development of the common law prior to *Pruett v. City of Rosedale* (Miss. 1982) 421 So. 2d 1046, it is void; the State is immunized from claims arising thereafter to the extent that the Supreme Court would do so applying the evolving standards of common law, including any extensions or contractions of the doctrine deemed appropriate, on a case by case basis and to the extent that those benefitting by the immunity did not prepare themselves by acquiring insurance policies covering the liability in question in the event that immunity did not obtain. *Presley v. Mississippi State Hwy. Comm'n*, 608 So. 2d 1288 (Miss. 1992).

The portion of the Sovereign Immunity Act (§§ 11-46-1 et seq.) requiring that all claims against the State be governed by case law governing sovereign immunity as it existed immediately prior to the decision in *Pruett v. City of Rosedale* (Miss. 1982) 421 So. 2d 1046 is unconstitutional as it violates the doctrine of separation of powers and the prohibition against reviving or amending a law by reference to its title only. *Presley v. Mississippi State Hwy. Comm'n*, 608 So. 2d 1288 (Miss. 1992).

In a personal injury action against a city and city officials, the 6-year statute of limitations set forth in § 15-1-49, rather than the 2-year statute of limitations set forth in § 11-46-11(3) of the Tort Claims Act, applied since the Tort Claims Act had not yet taken effect. *Starnes v. City of Vardaman*, 580 So. 2d 733 (Miss. 1991).

The continuance of electrical power is a property interest worthy of due process protections. Thus, the defense of sovereign immunity was not available to a county where a homeowner alleged that he had been damaged when the county and an electrical utility discontinued his electrical power, since sovereign immunity is no defense where a violation of constitutional rights is concerned. *Tucker v. Hinds County*, 558 So. 2d 869 (Miss. 1990).

## 2. RETROACTIVITY.

Where the plaintiff was not prejudiced by application of the retroactive provisions of this section, she had no standing to assert that the retroactive provisions of this section rendered this section constitutionally defective as a whole. *Lincoln County Sch. Dist. v. Doe*, 749 So. 2d 943 (Miss. 1999).

## 3. ILLUSTRATIVE CASES.

Miss. Code Ann. § 11-46-3 granted immunity to the state and its political subdivisions for breach of implied term or condition of any warranty or contract. Thus, although the decedent was indeed a third-party beneficiary of the written contract between the city and the development district, her estate was not permitted to pursue claims of breach of implied terms of that contract against the city or its political subdivisions. *City of Jackson v. Estate of Stewart*, 908 So. 2d 703 (Miss. 2005).

In a driver's suit against a county for failing to install warning signs near a curve, the evidence was sufficient to support a verdict for the county; compliance with the Manual on Uniform Traffic Control Devices was not conclusive as to the standard of care. *Donaldson v. Covington County*, 846 So. 2d 219 (Miss. 2003).

Although the "interim" version of Miss. Code Ann. § 11-46-3 (Supp. 1993) was in effect at the time of the police officer's automobile accident with plaintiff, the immunity exception provided in subsection (3) of that section was inapplicable because the operation and maintenance of a police department was not a function of proprietary nature; thus, the city was entitled to summary judgment on the issue of sovereign immunity. *Gale v. Thomas*, 759 So. 2d 1150 (Miss. 1999).

## ATTORNEY GENERAL OPINIONS

Municipality does not have authority to waive immunity set forth in Section 11-46-1, et seq., by agreeing to indemnify railroad for claims; municipality does not have authority to agree to indemnify railroad for losses relating to use of license or arising from same location; city has authority to maintain shrubbery and vegetation on municipal property, but does not have authority to maintain shrubbery and vegetation on private property, such as railroad right-of-way. Scott Nov. 3, 1993, A.G. Op. #93-0727.

A nonprofit corporation established by a regional housing authority pursuant to § 43-33-11(i) is excluded from the provisions of the Mississippi Tort Claims Act. McArty, April 9, 1999, A.G. Op. #99-0150.

A for-profit corporation established by a nonprofit corporation which has been established by a regional housing authority pursuant to § 43-33-11(i) is excluded from the provisions of the Mississippi Tort Claims Act. *McArty*, April 9, 1999, A.G. Op. #99-0150.

ALR. Governmental liability for failure to post highway deer crossing warning signs. 59 A.L.R.4th 1217.

State's liability for personal injuries from criminal attack in state park. 59 A.L.R.4th 1236.

Tort liability of public authority for failure to remove parentally abused or neglected children from parents' custody. 60 A.L.R.4th 942.

When is federal agency employee independent contractor, creating exception to United States waiver of immunity under Federal Tort Claims Act (28 U.S.C.A. §2671). 166 A.L.R. Fed. 187.

AM JUR. 51 *Am. Jur. 2d (Rev), Limitation of Actions*, §§ 359, 85.

57 *Am. Jur. 2d, Municipal, School, and State Tort Liability*, §§ 53 et seq.

64 *Am. Jur. 2d, Public Works and Contracts*, §§ 132 et seq.

65 *Am. Jur. 2d, Public Officers and Employees*, §§ 261 et seq.

72 *Am. Jur. 2d, States, Territories, and Dependencies*, §§ 87-89.

19 *Am. Jur. POF2d* p 583, Governmental Entity's Liability for Injuries caused by Negligently Released Individual.

CJS. 81 C.J.S., States §§ 274 et seq.

LAW REVIEWS. The History and Future of Sovereign Immunity for Mississippi School Districts. 58 *Miss. L. J.* 275, Fall 1988.

Caught in the Crossfire: Employers' Liability for Workplace Violence, 70 *Miss. L.J.* 505 (2000).

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\*\*\* CURRENT THROUGH THE 2007 1st EXTRAORDINARY SESSION \*\*\*  
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TITLE 11. CIVIL PRACTICE AND PROCEDURE  
CHAPTER 46. IMMUNITY OF STATE AND POLITICAL SUBDIVISIONS FROM LIABILITY AND SUIT FOR  
TORTS AND TORTS OF EMPLOYEES

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*Miss. Code Ann. § 11-46-5 (2008)*

§ 11-46-5. Waiver of immunity; course and scope of employment; presumptions

(1) Notwithstanding the immunity granted in Section 11-46-3, or the provisions of any other law to the contrary, the immunity of the state and its political subdivisions from claims for money damages arising out of the torts of such governmental entities and the torts of their employees while acting within the course and scope of their employment is hereby waived from and after July 1, 1993, as to the state, and from and after October 1, 1993, as to political subdivisions; provided, however, immunity of a governmental entity in any such case shall be waived only to the extent of the maximum amount of liability provided for in Section 11-46-15.

(2) For the purposes of this chapter an employee shall not be considered as acting within the course and scope of his employment and a governmental entity shall not be liable or be considered to have waived immunity for any conduct of its employee if the employee's conduct constituted fraud, malice, libel, slander, defamation or any criminal offense other than traffic violations.

(3) For the purposes of this chapter and not otherwise, it shall be a rebuttable presumption that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment.

(4) Nothing contained in this chapter shall be construed to waive the immunity of the state from suit in federal courts guaranteed by the *Eleventh Amendment to the Constitution of the United States*.

**HISTORY: SOURCES:** Laws, 1984, ch. 495, § 3; reenacted and amended, Laws, 1985, ch. 474, § 3; reenacted and amended, Laws, 1986, ch. 438, § 2; Laws, 1987, ch. 483, § 2; Laws, 1988, ch. 442, § 2; Laws, 1989, ch. 537, § 2; Laws, 1990, ch. 518, § 2; Laws, 1991, ch. 618, § 2; Laws, 1992, ch. 491 § 4, eff from and after passage (approved May 12, 1992).

**NOTES:**

**EDITOR'S NOTE.** --Laws, 1987, ch. 483, § 50, provides as follows:

"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

CROSS REFERENCES. --Immunity of vocational rehabilitation agency for the blind from suit for damages arising out of the operation of the agency's motor vehicles, see § 37-33-55.

Repeal of provisions requiring motor vehicle liability insurance on department of human service's vehicles on date sovereign immunity of state is waived as provided in this section, see § 37-33-55.

FEDERAL ASPECTS. --*Eleventh Amendment to the Constitution of the United States*, see *USCS, Constitution, Amendment 11*.

#### JUDICIAL DECISIONS

1. In general
2. Course and scope of employment.
3. Evidence sufficient to prove liability
4. Evidence insufficient to prove liability.

##### 1. IN GENERAL.

Where plaintiff parent sued defendant school district in state court alleging her child was sexually assaulted at school and obtained a judgment under the Mississippi Tort Claims Act, her later claims in federal court were properly held as barred due to res judicata; while school districts' sources of funding under *Miss. Code Ann. § 37-45-21, 37-47-1 et seq., Miss. Code Ann. § 37-57-1, Miss. Code Ann. § 37-59-3, and Miss. Code Ann. § 37-151-7* were equally divided between local school districts and the state under *Miss. Code Ann. § 11-46-7, Miss. Code Ann. § 11-46-16(2), and Miss. Code Ann. § 11-46-17(2)*, any judgment against the school district would be paid through the Tort Claims Fund and excess liability insurance, and thus, the school district was not considered an arm of the state entitled to Eleventh Amendment immunity as *Miss. Code Ann. § 11-46-5(1)* permitted school districts to be sued. *Black v. N. Panola Sch. Dist.* 461 F.3d 584 (5th Cir. 2006).

Finding that a city was not liable for a citizen's injuries under *Miss. Code Ann. § 11-46-5(2)* was reversed because the police acted with malice when they responded to a domestic disturbance call; a citizen was arrested for resisting arrest and disorderly conduct, was handcuffed and in submission, and one officer ground the citizen's face into the concrete garage floor, causing his teeth to break. The court held that the circuit court properly found that the immunity provisions of *Miss. Code Ann. §§ 93-21-27 and 93-21-28* pertaining to domestic abuse incidents did not apply. *City of Jackson v. Calcote*, 910 So. 2d 1103 (Miss. Ct. App. 2005).

In a wrongful death suit, as *Miss. Code Ann. § 11-46-9(1)(m)* applied to any non-intentional/non-criminal acts alleged to have been committed upon a deceased inmate by a sheriff and/or his deputies in the course and scope of their employment, the trial court correctly dismissed claims alleging negligent acts by defendants and properly left an assault claim viable; however, it erred by dismissing other counts that alleged intentional criminal acts, as pursuant to *Miss. Code Ann. §§ 11-46-5(2), 11-46-7(2)*, these claims remained viable under the wrongful death statute, *Miss. Code Ann. § 11-7-13*. *Lee v. Thompson*, 859 So. 2d 981 (Miss. 2003).

Dismissal of a minor student's suit against a school district and others over an alleged sexual assault by male students was affirmed, where the trial court's finding of no causation in fact, as the student failed to show she had been sexually assaulted, and that the district met its duty to use ordinary care to protect students from harm, were supported by the record. *T. K. v. Simpson County Sch. Dist.* 846 So. 2d 312 (Miss. Ct. App. 2003).

Because the parents failed to support their contention that *Miss. Code Ann. § 11-46-5* superseded the specific types of immunity set forth in *Miss. Code Ann. § 11-46-9*, failure to cite legal authority in support of an issue was a procedural bar on appeal. *Webb v. DeSoto County*, 843 So. 2d 682 (Miss. 2003).

School district was "political subdivision" of state and thus was protected by sovereign immunity from negligence suit arising from incident on August 26, 1993, after effective date of statute restoring sovereign immunity for state and its political subdivisions, but before effective date of statute largely waiving such immunity for political subdivisions. *Gressett ex rel. Gressett v. Newton Separate Mun. Sch. Dist.* 697 So. 2d 444 (Miss. 1997).

While decision to replace bridge with culvert on county road was discretionary one to which qualified immunity attached, fact issue existed as to whether county supervisor who determined that replacement was necessary, determined size of culvert needed, and supervised installation of culvert substantially exceeded his authority or was so grossly negligent that his action could be described as constructively intentional such that he was deprived of immunity, precluding summary judgment for supervisor on motorist's personal injury claim. *Mohundro v. Alcorn County*, 675 So. 2d 848 (Miss. 1996).

## 2. COURSE AND SCOPE OF EMPLOYMENT.

Plaintiff VA patient conceded that a vascular surgeon was a state employee, and despite the patient's arguments to the contrary, the court found that there was no genuine issue of material fact that at the pertinent time, the surgeon was acting within the course and scope of his duties as a state employee, under Miss. Code Ann. §§ 11-46-5(3), 11-46-7(7), and, thus, immune under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq. His involvement with the patient was solely by virtue of his being on-call pursuant to his employment with the university and its relationship to the VA facility. *Creel v. United States*, 512 F. Supp. 2d 574 (S.D. Miss. 2007).

Summary judgment in favor of the driver was affirmed because there was no issue of material fact that the driver, by running a stop sign, was not acting outside the course and scope of her employment with the governmental entity, and it was undisputed that the claimants did not comply with the one year statute of limitations that accompanied actions under the Mississippi Tort Claims Act. *Jackson v. Hodge*, 911 So. 2d 625 (Miss. Ct. App. 2005).

Although a trial court had not erred when it held that a city was not liable for the acts of two police officers during and after an arrest of an African-American male because the officers had acted beyond the scope of their employment, the court erred when it found the city liable because it had negligently supervised the officers. There was not a scintilla of evidence presented to indicate that the city had any policy which encouraged the type of activity that the officers engaged in and there was no factual support for the factual holding that the city was deliberately indifferent to the rights of African-Americans. *City of Jackson v. Powell*, 917 So. 2d 59 (Miss. 2005).

In the patient's suit against the doctor and the state hospital for the death of the patient's unborn child, the Miller factors were more than sufficient to determine the status of physicians working for state hospitals, and the state hospital's disclaimer of liability for the doctor's acts did not change the legal status of the doctor, especially when the state hospital had admitted that the doctor was its employee. Thus, the trial court properly determined that the doctor was shielded from liability under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1-23. *Wright v. Quesnel*, 876 So. 2d 362 (Miss. 2004).

Where a deputy assaulted an individual in attempting to force the individual to sit for a casino security photograph, the deputy was acting for the casino, and not in his official capacity for the county, and the deputy was not entitled to immunity. *Kirk v. Crump*, 886 So. 2d 741 (Miss. Ct. App. 2004), cert. denied, 887 So. 2d 183 (Miss. 2004).

Dismissal of an inmate's claim against the employees of the Missouri Department of Corrections was proper where the employees were acting within the course and scope of their employment; the inmate's negligence action was barred by the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 et seq., 11-46-5. *Whitt v. Gordon*, 872 So. 2d 71 (Miss. Ct. App. 2004).

Because a public school coach's actions at a fund-raiser where a plaintiff was injured were performed not for his own benefit but for the school's, the trial court properly held that he had acted in the scope of his employment and was thus immune from suit under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 et seq. *Singley v. Smith*, 844 So. 2d 448 (Miss. 2003).

Proof by a preponderance of the evidence is necessary to overcome the presumption created by 46-5 Miss. Code Ann. § 11-46-5 that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment. *Singley v. Smith*, 844 So. 2d 448 (Miss. 2003).

An employee can be found to be acting outside the course and scope of employment if acting with malice. *Bridges v. Pearl River Valley Water Supply Dist.* 793 So. 2d 584 (Miss. 2001).

A county sheriff was acting in his official capacity when he responded to an emergency call at a residence and eventually shot a suspect; the plaintiff failed to offer any evidence to suggest that the sheriff was not acting as an employee of the county; and there was a wealth of evidence to show that the sheriff acted in his official capacity. *Holmes v. Defer*, 722 So. 2d 624 (Miss. 1998). But see *Carr v. Town of Shubuta*, 733 So. 2d 261 (Miss. 1999).

Where the plaintiff sued the defendant city for false arrest, subsection (2) did not bar the city's liability. *Foster v. Noel*, 715 So. 2d 174 (Miss. 1998).

### 3. EVIDENCE SUFFICIENT TO PROVE LIABILITY.

In a child's suit against the Mississippi Department of Human Services (DHS), failure to investigate a child's allegations of sexual abuse by an employee of a youth care facility was a ministerial act for which DHS could be held liable. *Miss. Dep't of Human Servs. v. S. W.* -- So. 2d -- (Miss. Ct. App. Aug. 7, 2007).

### 4. EVIDENCE INSUFFICIENT TO PROVE LIABILITY.

Finding against the student in her action against a state university and a professor after she suffered a third-degree burn at an iron pour demonstration was improper under *Miss. Code Ann. § 11-46-9(1)(d)* because the university was not protected by discretionary function immunity and was liable for the professor's negligence pursuant to the waiver of sovereign immunity codified at *Miss. Code Ann. § 11-46-5*; it was difficult to fathom how the professor's failure to put down dry sand before the pour involved a policy judgment of a social, political, or economic nature. *Pritchard v. Von Houten*, 960 So. 2d 568 (Miss. Ct. App. 2007).

When a teacher's aide was escorting an autistic child to his classroom, the child became agitated while the aide continued to move him through the hallway. The child suffered bruises as a result of the teacher's aide's fully sensible attempts to restrain him, and no treatment or medication was warranted or prescribed for the bruises; the aide's restraint of the child constituted control and discipline under *Miss. Code Ann. § 37-11-57*, and the circuit court properly applied *Miss. Code Ann. § 11-46-9(1)(x)* in finding that said actions did not constitute wanton and willful conduct to allow the parents to recover damages. *Pigford v. Jackson Pub. Sch. Dist.* 910 So. 2d 575 (Miss. Ct. App. 2005), cert. denied, 920 So. 2d 1008 (Miss. 2005).

Officer didn't show malice in an arrest in which the arrestee allegedly suffered a sprained wrist, and was immune from liability. The district, as well, was immune from from liability. *Pearl River Valley Water Supply Dist. v. Bridges*, 878 So. 2d 1013 (Miss. Ct. App. 2004).

Primary issue was whether the physicians were acting as employees of the University of Mississippi Medical Center (UMMC), or whether they were independent contractors for purposes of immunity or liability, and although the physicians did wear two hats, because they were entitled to engage, to an extent, in separate private practice, the appellate court, applying the standard of *Miller v. Meeks*, held that the State exercised reasonable control over the physicians, including the power to terminate the physicians' contract, the uncontroverted evidence was that the physicians were acting as employees of UMMC at the time of the subject surgery on the complaining patient, and pursuant to Mississippi's former sovereign immunity law, *Miss. Code Ann. § 11-46-7(2)*, the physicians were immune from liability. *Brown v. Warren*, 858 So. 2d 168 (Miss. Ct. App. 2003).

Where an individual worked for the Mississippi Bureau of Narcotics making drug buys, and was caught in the crossfire between a dealer and a Bureau officer, all the individual was able to show with regard to his negligence claim, was that the Bureau and its agents made a series of challengeable choices, from the level of training before sending an officer on a drug buy, to the directions given that officer; bad judgment; however, was insufficient for liability where the individual offered no evidence to meet the evidentiary burden of the reckless disregard standard. *Lippincott v. Miss. Bureau of Narcotics*, 856 So. 2d 465 (Miss. Ct. App. 2003).

### ATTORNEY GENERAL OPINIONS

Municipality does not have authority to waive immunity set forth in Section 11-46-1, et seq., by agreeing to indemnify railroad for claims; municipality does not have authority to agree to indemnify railroad for losses relating to use of license or arising from same location; city has authority to maintain shrubbery and vegetation on municipal property, but does not have authority to maintain shrubbery and vegetation on private property, such as railroad right-of-way. Scott Nov. 3, 1993, A.G. Op. #93-0727.

Members of Foster Care Review Board enjoy public official immunity for any of their acts arising out of and within course and scope of their duties on Board pursuant to Section 11-46-9 provided that conduct does not constitute fraud, malice, libel, slander, defamation or criminal offense. Tardy, Jan. 5, 1994, A.G. Op. #93-0972.

ALR. Waiver of, or estoppel to assert, failure to give required notice of claim of injury to municipality, county, or other governmental agency or body. 65 A.L.R.2d 1278.

Immunity of police or other law enforcement officer from liability in defamation action. 100 A.L.R.5th 341.

Liability of municipal corporation or other governmental entity for injury or death caused by action or inaction of off-duty police officer. 36 A.L.R.5th 1.

Tort liability of public schools and institutions of higher learning for accident involving motor vehicle operated by student. 85 A.L.R.5th 301.

When is federal agency employee independent contractor, creating exception to United States waiver of immunity under Federal Tort Claims Act (28 U.S.C.A. §2671). 166 A.L.R. Fed. 187.

AM JUR. 18 Am. Jur. Pl & Pr Forms (Rev), Municipal, School, and State Tort Liability, Forms 1 et seq.

LAW REVIEWS. The History and Future of Sovereign Immunity for Mississippi School Districts. 58 *Miss. L. J.* 275, Fall 1988.

1984 Mississippi Supreme Court Review: Civil Procedure. 55 *Miss L. J.* 49, March, 1985.

Caught in the Crossfire: Employers' Liability for Workplace Violence, 70 *Miss. L.J.* 505 (2000).

Constitutional Law -- Fourth Amendment -- The Warrantless Use of Thermal Imaging Technologies Is Unconstitutional, 71 *Miss. L.J.* 325, Fall, 2001.

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TITLE 11. CIVIL PRACTICE AND PROCEDURE  
CHAPTER 46. IMMUNITY OF STATE AND POLITICAL SUBDIVISIONS FROM LIABILITY AND SUIT FOR  
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*Miss. Code Ann. § 11-46-6 (2008)*

§ 11-46-6. Repealed

Repealed by Laws, 1992 Special Session, ch. 3, § 2, eff from and after passage (approved September 16, 1992).

[Laws, 1987, ch. 483, § 3; 1988, ch. 442, § 3; 1989, ch. 537, § 3; 1990, ch. 518, § 3; 1991, ch. 618, § 3; 1992, ch. 491, § 5]

NOTES:

EDITOR'S NOTE. --Former § 11-46-6 prescribed the claims and causes of action to which Chapter 46, Title 11, Miss. Code of 1972 applied.

[Repealed]

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*Miss. Code Ann. § 11-46-7 (2008)*

§ 11-46-7. Exclusiveness of remedy; joinder of government employee; immunity for acts or omissions occurring within course and scope of employee's duties; provision of defense for and payment of judgments or settlements of claims against employees; contribution or indemnification by employee

(1) The remedy provided by this chapter against a governmental entity or its employee is exclusive of any other civil action or civil proceeding by reason of the same subject matter against the governmental entity or its employee or the estate of the employee for the act or omission which gave rise to the claim or suit; and any claim made or suit filed against a governmental entity or its employee to recover damages for any injury for which immunity has been waived under this chapter shall be brought only under the provisions of this chapter, notwithstanding the provisions of any other law to the contrary.

(2) An employee may be joined in an action against a governmental entity in a representative capacity if the act or omission complained of is one for which the governmental entity may be liable, but no employee shall be held personally liable for acts or omissions occurring within the course and scope of the employee's duties. For the purposes of this chapter an employee shall not be considered as acting within the course and scope of his employment and a governmental entity shall not be liable or be considered to have waived immunity for any conduct of its employee if the employee's conduct constituted fraud, malice, libel, slander, defamation or any criminal offense.

(3) From and after July 1, 1993, as to the state, from and after October 1, 1993, as to political subdivisions, and subject to the provisions of this chapter, every governmental entity shall be responsible for providing a defense to its employees and for the payment of any judgment in any civil action or the settlement of any claim against an employee for money damages arising out of any act or omission within the course and scope of his employment; provided, however, that to the extent that a governmental entity has in effect a valid and current certificate of coverage issued by the board as provided in Section 11-46-17, or in the case of a political subdivision, such political subdivision has a plan or policy of insurance and/or reserves which the board has approved as providing satisfactory security for the defense and protection of the political subdivision against all claims and suits for injury for which immunity has been waived under this chapter, the governmental entity's duty to indemnify and/or defend such claim on behalf of its employee shall be secondary to the obligation of any such insurer or indemnitor, whose obligation shall be primary. The provisions of this subsection shall not be construed to alter or relieve any such indemnitor or insurer of any legal obligation to such employee or to any governmental entity vicariously liable on account of or legally responsible for damages due to the allegedly wrongful error, omissions, conduct, act or deed of such employee.

(4) The responsibility of a governmental entity to provide a defense for its employee shall apply whether the claim is brought in a court of this or any other state or in a court of the United States.

(5) A governmental entity shall not be entitled to contribution or indemnification, or reimbursement for legal fees and expenses from its employee unless a court shall find that the act or omission of the employee was outside the course and scope of his employment. Any action by a governmental entity against its employee and any action by an employee against the governmental entity for contribution, indemnification, or necessary legal fees and expenses shall be tried to the court in the same suit brought on the claim against the governmental entity or its employee.

(6) The duty to defend and to pay any judgment as provided in subsection (3) of this section shall continue after employment with the governmental entity has been terminated, if the occurrence for which liability is alleged happened within the course and scope of duty while the employee was in the employ of the governmental entity.

(7) For the purposes of this chapter and not otherwise, it shall be a rebuttable presumption that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment.

(8) Nothing in this chapter shall enlarge or otherwise adversely affect the personal liability of an employee of a governmental entity. Any immunity or other bar to a civil suit under Mississippi or federal law shall remain in effect. The fact that a governmental entity may relieve an employee from all necessary legal fees and expenses and any judgment arising from the civil lawsuit shall not under any circumstances be communicated to the trier of fact in the civil lawsuit.

**HISTORY: SOURCES:** Laws, 1984, ch. 495, § 5; reenacted and amended, Laws, 1985, ch. 474, § 4; reenacted and amended, Laws, 1986, ch. 438, § 3; Laws, 1987, ch. 483, § 4; Laws, 1988, ch. 442, § 4; Laws, 1989, ch. 537, § 4; Laws, 1990, ch. 518, § 4; Laws, 1991, ch. 618, § 4; Laws, 1992, ch. 491 § 6; Laws, 1993, ch. 476, § 3, eff from and after passage (approved April 1, 1993).

#### NOTES:

**EDITOR'S NOTE.** --Laws, 1987, ch. 483, § 50, provides as follows:

"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

**CROSS REFERENCES.** --Statute of limitations and notice requirements, see § 11-46-11.

#### JUDICIAL DECISIONS

##### 1. In general

##### 1.5. Constitutionality

##### 2. Course and scope of duties

##### 3. Applicability

#### 1. IN GENERAL.

Five-part test articulated by the Mississippi Supreme Court to analyze a doctor's employment status for purposes of Mississippi Tort Claims Act, *Miss. Code Ann. § 11-46-7(2)*, in a case involving a doctor who served as both a contract employee for a state hospital and also as a solo practitioner, is not applicable in cases where a doctor has no direct contractual relationship with a state hospital. *Carpenter v. Reinhard*, -- F. Supp. 2d -- (N.D. Miss. July 15, 2005).

Trial court did not err in dismissing the decedent's estate's negligence action against the circuit court clerks for failing

to enroll a foreign judgment, which allegedly prevented the estate from being able execute the judgment, because according to *Miss. Code Ann. § 11-46-7(1)* of the Mississippi Tort Claims Act (MTCA), when bringing suit against a governmental official for actions taken in his or her official capacity, a plaintiff must comply with the provisions of the MTCA. Among the provisions of the MTCA with which the estate failed to comply was the one-year statute of limitations and the notice of claim requirements of *Miss. Code Ann. § 11-46-11*. *Estate of Spiegel v. Western Sur. Co.* 908 So. 2d 859 (Miss. Ct. App. 2005).

Absent evidence showing otherwise, state environmental agencies and their employee were immune to landowners' claims of tortious interference with contract and business relations concerning the development of protected wetlands that belonged to the landowners. *Dunston v. Miss. Dep't of Marine Res.* 892 So. 2d 837 (Miss. Ct. App. 2005).

Deputy responding to a call from a fellow officer was not speeding and did not sound a siren because the deputy did not want there to be any accidents resulting from motorists coming to an abrupt stop, and while the deputy failed to anticipate that another vehicle might be pulling out from the blind spot in front of the truck in front of the deputy, the deputy's decision to steer around that turning truck did not exhibit a wilful or wanton disregard for the safety of others or a willingness that harm should follow; thus, summary judgment for the county was proper. *Kelley v. Grenada County*, 859 So. 2d 1049 (Miss. Ct. App. 2003).

Trial court abused its discretion in denying a motion by a hospital and three physicians to transfer venue in a medical malpractice action because a decedent's heirs had failed to assert a reasonable claim of liability against certain defendants that had been dismissed from the action and because the hospital was a community hospital under the Mississippi Tort Claims Act and was entitled to venue in the county in which its governing body's principal offices were located. *Wayne Gen. Hosp. v. Hayes*, -- So. 2d -- (Miss. Nov. 6, 2003).

Mississippi Torts Claims Act provides the exclusive civil remedy for claims of negligence against a school district. *Harris v. McCray*, 867 So. 2d 188 (Miss. 2003).

Where a widow filed an action against a city, its police chief, and two police officers arising from the shooting death of her husband in his home, the trial court erred in dismissing her amended complaint as to her claim under the Mississippi Tort Claims Act (MTCA), *Miss. Code Ann. § 11-46-1* et seq., because she had specified and separated the negligence-and tort-based state law claims from the constitutional tort claims brought pursuant to 42 U.S.C.S. § 1983 in her amended complaint; under *Miss. Code Ann. § 11-46-7(1)* the MTCA operated as the exclusive remedy for the state law civil claims against the city, the chief, and the officers; and Miss. R. Civ. P. 8(a) only required that notice of a claim be given. *Elkins v. McKenzie*, 865 So. 2d 1065 (Miss. 2003).

Former university professor's tortious interference with contract claim against the university that formerly employed her and its officials was covered by the Mississippi Tort Claims Act, *Miss. Code Ann. § 11-46-1* et seq.; accordingly, the professor had to comply with the Act's requirements as it was the exclusive remedy for the professor under *Miss. Code Ann. § 11-46-7(1)*; furthermore, the professor's claim was time-barred under *Miss. Code Ann. § 11-46-11(3)* as it was not timely filed. *Black v. Ansah*, -- So. 2d -- (Miss. Ct. App. June 3, 2003).

City was liable for the wrongful death of a driver under the Mississippi Tort Claims Act, *Miss. Code Ann. §§ 11-46-1* et seq., because several officers acted in reckless disregard of the safety of the driver when they initiated a police chase in violation of department policy. *City of Jackson v. Brister*, 838 So. 2d 274 (Miss. 2003).

Court affirmed the trial court's dismissal of a physician, a faculty neurosurgeon at a state medical center, from a patient's medical malpractice action on the grounds of immunity under the Mississippi Tort Claims Act, *Miss. Code Ann. § 11-46-7(2)*; there was nothing to support the patient's claim that the physician was an independent contractor because the physician performed the patient's operation in front of a surgical resident in furtherance of the resident's education, given that the state exercised sufficient control over the physician, and the fact that the physician exercised independent judgment in performing the operation did not make the physician an independent contractor. *Clayton v. Harkey*, 826 So. 2d 1283 (Miss. 2002).

In a case where a mother filed a lawsuit for damages after her son died in police custody, the trial court correctly granted summary judgment to a sheriff and a sheriff's deputy because the mother failed to also sue the county. *Conrod v. Holder*, 825 So. 2d 16 (Miss. 2002).

Trial court erred in granting summary judgment on the ground of governmental immunity to two psychiatrists who worked for a medical center at a state school, where a conservator claimed that his father had suffered side effects from prescription drugs the psychiatrists prescribed, as genuine issues of material fact existed as to whether the psychiatrists

were protected by immunity for their actions. *Bennett v. Madakasira*, 821 So. 2d 794 (Miss. 2002).

Where doctor was hired as an employee of a community hospital, which was afforded immunity protection under Miss. Code Ann. § 41-13-11(5), and the doctor was found to be an employee of the hospital rather than an independent contractor, the patient was not able to proceed with a medical malpractice action against the doctor because the doctor was entitled to sovereign immunity protection. *Gilchrist v. Veatch*, 807 So. 2d 485 (Miss. Ct. App. 2002).

Under the plain language of the Mississippi Tort Claims Act even though a government employee may not be personally liable for acts and omissions occurring within the course and scope of the employee's duties, the employee's still may be joined in the action against the employer, if the acts or omissions are ones for which the governmental entity may be liable. *Stewart v. City of Jackson*, 804 So. 2d 1041 (Miss. 2002).

Statute provided the exclusive civil remedy against a governmental entity and its employees for acts or omissions that give rise to a suit; any claim filed against a governmental entity and its employees had to be brought under the statutory scheme. *City of Jackson v. Sutton*, 797 So. 2d 977 (Miss. 2001).

Where a school district was dismissed from a motor vehicle personal injury action because it was never served with process and the plaintiffs did not appeal that dismissal, the school district employee vehicle operator was not individually liable, due to immunity granted to an employee acting within the course and scope of her employment. *Cotton v. Paschall*, 782 So. 2d 1215 (Miss. 2001).

No claim upon which relief could be granted was stated in an action alleging that a student was physically injured when a teacher administered excessive corporal punishment to him where it was alleged that the teacher was acting within the course and scope of her employment. *Duncan v. Chamblee*, 757 So. 2d 946 (Miss. 1999).

Nurses employed by a community hospital owned by a county were immune under subsection (2) of this section for alleged negligence which occurred within the course and scope of their duties. *Jones v. Baptist Mem. Hospital-Golden Triangle*, 735 So. 2d 993 (Miss. 1999).

#### 1.5. CONSTITUTIONALITY.

Statute was not in conflict with Mississippi Constitution because it did not violate due process; there was no property right to sue the State and without such a property interest there could be no due process violation. *City of Jackson v. Sutton*, 797 So. 2d 977 (Miss. 2001).

#### 2. COURSE AND SCOPE OF DUTIES.

Plaintiff VA patient conceded that a vascular surgeon was a state employee, and despite the patient's arguments to the contrary, the court found that there was no genuine issue of material fact that at the pertinent time, the surgeon was acting within the course and scope of his duties as a state employee, under Miss. Code Ann. §§ 11-46-5(3), 11-46-7(7), and, thus, immune under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq. His involvement with the patient was solely by virtue of his being on-call pursuant to his employment with the university and its relationship to the VA facility. *Creel v. United States*, 512 F. Supp. 2d 574 (S.D. Miss. 2007).

There was substantial credible evidence to conclude that the instructor was acting within the course and scope of his employment at the time of the student's injuries; there was nothing on the tape to indicate that the instructor was doing anything other than what he was told. *Hayes v. Univ. of Southern Miss.* 952 So. 2d 261 (Miss. Ct. App. 2006).

Summary judgment in favor of the driver was affirmed because there was no issue of material fact that the driver, by running a stop sign, was not acting outside the course and scope of her employment with the governmental entity, and it was undisputed that the claimants did not comply with the one year statute of limitations that accompanied actions under the Mississippi Tort Claims Act. *Jackson v. Hodge*, 911 So. 2d 625 (Miss. Ct. App. 2005).

Although a trial court had not erred when it held that a city was not liable for the acts of two police officers during and after an arrest of an African-American male because the officers had acted beyond the scope of their employment, the court erred when it found the city liable because it had negligently supervised the officers. There was not a scintilla of evidence presented to indicate that the city had any policy which encouraged the type of activity that the officers engaged in and there was no factual support for the factual holding that the city was deliberately indifferent to the rights of African-Americans. *City of Jackson v. Powell*, 917 So. 2d 59 (Miss. 2005).

In plaintiff's personal injury action against a police officer, court did not err in finding that the officer was not individually liable under Miss. Code Ann. § 11-46-7(2) because the officer was acting within the course and scope of his

employment at the time when he stopped plaintiff's vehicle and drew his gun. Officer had received a call that two vehicles were speeding and that shots had been fired. *Smith v. Brookhaven*, 914 So. 2d 180 (Miss. Ct. App. 2005).

Officer didn't show malice in arrest in which the arrestee allegedly suffered a sprained wrist, and was immune from liability. The district, as well, was immune from liability. *Pearl River Valley Water Supply Dist. v. Bridges*, 878 So. 2d 1013 (Miss. Ct. App. 2004).

As a security officer who hugged and kissed appellant after arresting her for driving under the influence had not been acting within the scope of the officer's employment with a water district, appellant's claims against the district were properly dismissed on summary judgment. *Cockrell v. Pearl River Valley Water Supply Dist.* 865 So. 2d 357 (Miss. 2004).

Where the driver of a car was stopped during a police chase and then the driver gunned the engine and hit defendant police officer as the car again sped away, and the officer shot at the car, hitting plaintiff, a passenger in the car, the passenger's state law claims of assault, battery, aggravated assault, false arrest, false imprisonment, and intentional infliction of emotional distress failed, as none of the state law claims alleged misconduct occurring outside the scope of employment under Miss. Code Ann. § 11-46-7(2); rather, the officer's actions were within the course and scope of employment. *Herman v. City of Shannon*, 296 F. Supp. 2d 709 (N.D. Miss. 2003).

Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-7(2) barred plaintiff's state law claims against the police chief and the officer because the wrongful arrest of plaintiff occurred in the scope and course of their employment, but did not bar the state law claims against the city under Miss. Code Ann. § 11-46-9(1)(c) because the officer was acting within the scope of his employment when he acted with reckless disregard in the arrest of the mother. *Craddock v. Hicks*, 314 F. Supp. 2d 648 (N.D. Miss. 2003).

State officials were immune from liability following the death of a 15-year-old who was incarcerated at the Oakley Training School, as a nurse's misdiagnosis of meningitis as a cold virus or flu did not establish "deliberate indifference" or give rise to cause of action; under the Mississippi Tort Claims Act officials and employees had immunity, under Miss. Code Ann. §§ 11-46-7(2) and 11-46-9-(1)(m). *Mallery v. Taylor*, 805 So. 2d 613 (Miss. Ct. App. 2002).

An employee can be found to be acting outside the course and scope of employment if acting with malice. *Bridges v. Pearl River Valley Water Supply Dist.* 793 So. 2d 584 (Miss. 2001).

Physicians employed by the University of Mississippi Medical Center were entitled to immunity in a medical malpractice action arising from their conduct during a 10 day period in January 1993 where (1) there was no dispute that the physicians were employees of the medical center acting within the course and scope of their employment, (2) the patient was a Medicaid patient who did not choose any particular doctor, and (3) the physicians were assigned to the patient in accordance with their duties at the medical center as a public hospital and an educational institution. *Sullivan v. Washington*, 768 So. 2d 881 (Miss. 2000).

Plaintiff's assertion that the police officer was acting within the course of his employment at the time of the accident was fatal to her attempt to hold the officer personally liable because subsection (2) precludes liability for acts of an officer that occur within the course and scope of his duties. *Gale v. Thomas*, 759 So. 2d 1150 (Miss. 1999).

Statute under which governmental entity and its employees are immune from any claim asserted by prison inmate could not be applied retroactively to bar action brought against prison physicians and other medical personnel following death of prison inmate, which occurred prior to effective date of statute, as state prison physicians and other prison personnel were not protected by sovereign immunity as it existed prior to enactment of statute. *Sparks v. Kim*, 701 So. 2d 1113 (Miss. 1997).

### 3. APPLICABILITY.

Because defendants, two county attorneys, a sheriff, and the sheriff's deputy, were acting in their official roles in enforcing a facially valid Virginia custody order granting custody of children to the children's mother, immunity under Miss. Code Ann. § 11-46-7(2) applied to the claims of plaintiffs, a father and his adult son who had been granted custody of the children by a Mississippi court. *Blake v. Wilson*, 962 So. 2d 705 (Miss. Ct. App. 2007).

Dismissal of the decedent's mother's and a student's action against a state university resulting from a shooting on campus was appropriate where Miss. Code Ann. § 11-46-7(1) provided the exclusive civil remedy against state and governmental entities and the underlying act of the claims was the fact that the gunman shot the victims; there was no authority suggesting that the university, through an employee, had a duty to warn the victims of the dangerous

conditions of the gunman's character. *Johnson v. Alcorn State Univ.* 929 So. 2d 398 (Miss. Ct. App. 2006).

Where plaintiff parent sued defendant school district in state court alleging her child was sexually assaulted at school and obtained a judgment under the Mississippi Tort Claims Act, her later claims in federal court were properly held as barred due to res judicata; while school districts' sources of funding under Miss. Code Ann. § 37-45-21, 37-47-1 et seq., Miss. Code Ann. § 37-57-1, Miss. Code Ann. § 37-59-3, and Miss. Code Ann. § 37-151-7 were equally divided between local school districts and the state under Miss. Code Ann. § 11-46-7, Miss. Code Ann. § 11-46-16(2), and Miss. Code Ann. § 11-46-17(2), any judgment against the school district would be paid through the Tort Claims Fund and excess liability insurance, and thus, the school district was not considered an arm of the state entitled to Eleventh Amendment immunity. *Black v. N. Panola Sch. Dist.* 461 F.3d 584 (5th Cir. 2006).

From the time of the resident's injury on May 7, 2001, she was under a duty to exercise due diligence in ascertaining the proper defendant; the warranty deed, which listed Forrest County as the owner of the property, was available to the resident during the entire period, had she chosen to exercise due diligence by examining it; her own failure to exercise due diligence did not excuse her duty to comply with the procedural requirements of the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq. *Davis v. Forrest Royale Apts.* 938 So. 2d 293 (Miss. Ct. App. 2006).

Doctor was not immune under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-7(2), from a patient's malpractice suit because the doctor was an independent contractor, rather than an employee of a county hospital, where the doctor's contract was with a private corporation that assigned her to work at the hospital and issued her paycheck. *Carpenter v. Reinhard*, -- F. Supp. 2d -- (N.D. Miss. July 15, 2005).

Grant of summary judgment against the patient in her medical malpractice action against the physician was proper where the physician was an employee of the state university medical center and therefore an employee of the state of Mississippi. Thus, he was immune from liability under Miss. Code Ann. § 11-46-7(2) of the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq. *Owens v. Thomae*, 904 So. 2d 207 (Miss. Ct. App. 2005).

District court should have granted the motion for judgment notwithstanding the verdict of defendants, a state university and professors, regarding the applicability of the Mississippi Tort Claims Act in a doctoral student's action alleging that defendants' conduct prevented her from receiving her doctoral degree because although the student claimed that the action was in contract, clearly tort claims were before the jury, and the Act's statute of limitations had run. *Univ. of S. Miss. v. Williams*, 891 So. 2d 160 (Miss. 2004).

#### ATTORNEY GENERAL OPINIONS

Members of Foster Care Review Board enjoy public official immunity for any of their acts arising out of and within course and scope of their duties on the Board pursuant to Section 11-46-9 provided that conduct does not constitute fraud, malice, libel, slander, defamation or criminal offense. Tardy, Jan. 5, 1994, A.G. Op. #93-0972.

Under Section 11-46-7(3), a School District may not require that school district personnel who use their personal vehicles for travel in the course of their employment provide proof of liability insurance coverage on such vehicles. Sadler, February 9, 1995, A.G. Op. #95-0006.

Since Section 11-46-7 creates an exclusive remedy against the state for an employee's negligence, and clearly states that no employee shall be held personally liable for any judgments obtained in any action brought under the Mississippi Tort Claims Act, within the course and scope of his employment, then no state employee's insurer should ever be liable to a plaintiff for injuries sustained as a result of the employee's negligence, thereby obviating the need for the insurer to defend or pay any judgment or settlement. Hardy, February 16, 1996, A.G. Op. #96-0053.

Staff physicians under contract with the University of Mississippi Medical Center are employees of a governmental entity of the State of Mississippi, and the Medical Center is responsible for affording them a defense and paying any judgment against them or settlement for any claim arising out of an act or omission within the course and scope of their employment, and within the limits of the Mississippi Tort Claims Act. Conerly, September 4, 1998, A.G. Op. #98-0500.

Doctors, nurses and pharmacists employed by the State Department of Health and acting within the scope and course of their employment are covered by the Tort Claims Act. Amy, Jan. 17, 2003, A.G. Op. #02-0746.

A legal defense is provided to doctors, nurses and pharmacists employed by the State Department of Health even though the conduct is alleged to be outside the course and scope of their employment. Amy, Jan. 17, 2003, A.G. Op. #02-0746.

There is no reason for a practitioner to obtain additional liability coverage as long as the acts are within the course and scope of his employment with the State Health Department. Amy, Jan. 17, 2003, A.G. Op. #02-0746.

ALR. Causes of action governed by limitations period in *UCC* § 2-725. 49 A.L.R.5th 1.

AM JUR. 5 Am. Jur. Proof of Facts 3d, Defamation by Employer, §§ 1 et seq.

LAW REVIEWS. The History and Future of Sovereign Immunity for Mississippi School Districts. 58 *Miss. L. J.* 275, Fall 1988.

Caught in the Crossfire: Employers' Liability for Workplace Violence, 70 *Miss. L.J.* 505 (2000).

Checking Up On the Medical Malpractice Liability Insurance Crisis in Mississippi: Are Additional Tort Reforms the Cure?, 73 *Miss. L.J.* 1001 (2004).

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\*\*\* CURRENT THROUGH THE 2007 1st EXTRAORDINARY SESSION \*\*\*  
\*\*\* STATE COURT ANNOTATIONS CURRENT THROUGH January 10, 2008 \*\*\*

TITLE 11. CIVIL PRACTICE AND PROCEDURE  
CHAPTER 46. IMMUNITY OF STATE AND POLITICAL SUBDIVISIONS FROM LIABILITY AND SUIT FOR  
TORTS AND TORTS OF EMPLOYEES

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

*Miss. Code Ann. § 11-46-8 (2008)*

§ 11-46-8. Foster parents covered under this chapter

Mississippi Department of Human Services licensed foster parents shall be covered under this chapter for claims made by parties other than the foster child which are based on inadequate supervision or inadequate care of the foster child on the part of the foster parent.

**HISTORY: SOURCES:** Laws, 1999, ch. 518, § 2, eff from and after July 1, 1999.

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*Miss. Code Ann. § 11-46-9 (2008)*

§ 11-46-9. Exemption of governmental entity from liability on claims based on specified circumstances

*[Effective until the date Laws of 2007, ch. 582, § 21, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, this section will read as follows:]*

(1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:

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

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

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

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

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

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

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

(h) Arising out of the issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke any privilege, ticket, pass, permit, license, certificate, approval, order or similar authorization where the governmental entity or its employee is authorized by law to determine whether or not such authorization should be

issued, denied, suspended or revoked unless such issuance, denial, suspension or revocation, or failure or refusal thereof, is of a malicious or arbitrary and capricious nature;

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

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

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

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

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

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

(o) Under circumstances where liability has been or is hereafter assumed by the United States, to the extent of such assumption of liability, including, but not limited to, any claim based on activities of the Mississippi National Guard when such claim is cognizable under the National Guard Tort Claims Act of the United States, 32 *USCS* 715 (32 *USCS* 715), or when such claim accrues as a result of active federal service or state service at the call of the Governor for quelling riots and civil disturbances;

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

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

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

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

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

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

(v) Arising out of an injury caused by a dangerous condition on property of the governmental entity that was not caused by the negligent or other wrongful conduct of an employee of the governmental entity or of which the governmental entity did not have notice, either actual or constructive, and adequate opportunity to protect or warn against; provided, however, that a governmental entity shall not be liable for the failure to warn of a dangerous condition which is obvious to one exercising due care;

(w) Arising out of the absence, condition, malfunction or removal by third parties of any sign, signal, warning

device, illumination device, guardrail or median barrier, unless the absence, condition, malfunction or removal is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice;

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

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

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

(3) If a governmental entity exempt from liability by subsection (2) becomes active, receives income, hires employees or acquires any property, such governmental entity shall no longer be exempt from liability as provided in subsection (2) and shall be subject to the provisions of this chapter.

*[Effective from and after the date Laws of 2007, ch. 582, § 21, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, this section will read as follows:]*

(1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:

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

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

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

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

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

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

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

(h) Arising out of the issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke any privilege, ticket, pass, permit, license, certificate, approval, order or similar authorization where

the governmental entity or its employee is authorized by law to determine whether or not such authorization should be issued, denied, suspended or revoked unless such issuance, denial, suspension or revocation, or failure or refusal thereof, is of a malicious or arbitrary and capricious nature;

- (i) Arising out of the assessment or collection of any tax or fee;
- (j) Arising out of the detention of any goods or merchandise by any law enforcement officer, unless such detention is of a malicious or arbitrary and capricious nature;
- (k) Arising out of the imposition or establishment of a quarantine, whether such quarantine relates to persons or property;
- (l) Of any claimant who is an employee of a governmental entity and whose injury is covered by the Workers' Compensation Law of this state by benefits furnished by the governmental entity by which he is employed;
- (m) Of any claimant who at the time the claim arises is an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution, regardless of whether such claimant is or is not an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution when the claim is filed;
- (n) Arising out of any work performed by a person convicted of a crime when the work is performed pursuant to any sentence or order of any court or pursuant to laws of the State of Mississippi authorizing or requiring such work;
- (o) Under circumstances where liability has been or is hereafter assumed by the United States, to the extent of such assumption of liability, including, but not limited to, any claim based on activities of the Mississippi National Guard when such claim is cognizable under the National Guard Tort Claims Act of the United States, 32 *USCS* 715 (32 *USCS* 715), or when such claim accrues as a result of active federal service or state service at the call of the Governor for quelling riots and civil disturbances;
- (p) Arising out of a plan or design for construction or improvements to public property, including, but not limited to, public buildings, highways, roads, streets, bridges, levees, dikes, dams, impoundments, drainage channels, diversion channels, harbors, ports, wharfs or docks, where such plan or design has been approved in advance of the construction or improvement by the legislative body or governing authority of a governmental entity or by some other body or administrative agency, exercising discretion by authority to give such approval, and where such plan or design is in conformity with engineering or design standards in effect at the time of preparation of the plan or design;
- (q) Arising out of an injury caused solely by the effect of weather conditions on the use of streets and highways;
- (r) Arising out of the lack of adequate personnel or facilities at a state hospital or state corrections facility if reasonable use of available appropriations has been made to provide such personnel or facilities;
- (s) Arising out of loss, damage or destruction of property of a patient or inmate of a state institution;
- (t) Arising out of any loss of benefits or compensation due under a program of public assistance or public welfare;
- (u) Arising out of or resulting from riots, unlawful assemblies, unlawful public demonstrations, mob violence or civil disturbances;
- (v) Arising out of an injury caused by a dangerous condition on property of the governmental entity that was not caused by the negligent or other wrongful conduct of an employee of the governmental entity or of which the governmental entity did not have notice, either actual or constructive, and adequate opportunity to protect or warn against; provided, however, that a governmental entity shall not be liable for the failure to warn of a dangerous condition which is obvious to one exercising due care;

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

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

(y) Arising out of the construction, maintenance or operation of any highway, bridge or roadway project entered into by the Mississippi Transportation Commission or other governmental entity and a company under the provisions of Section 1 or 2 of Senate Bill No. 2375, 2007 Regular Session, where the act or omission occurs during the term of any such contract.

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

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

(3) If a governmental entity exempt from liability by subsection (2) becomes active, receives income, hires employees or acquires any property, such governmental entity shall no longer be exempt from liability as provided in subsection (2) and shall be subject to the provisions of this chapter.

**HISTORY: SOURCES:** Laws, 1984, ch. 495, § 6; reenacted without change, 1985, ch. 474, § 5; Laws, 1987, ch. 483, § 5; Laws, 1993, ch. 476, § 4; Laws, 1994, ch. 334, § 1; Laws, 1995, ch. 483, § 1; Laws, 1996, ch. 538, § 1; Laws, 1997, ch. 512, § 2; Laws, 2007, ch. 582, § 21, eff. (the later of July 1, 2007, or the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

#### NOTES:

**EDITOR'S NOTE.** --Laws, 1987, ch. 483, § 50, provides as follows:

"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

Laws of 2007, ch. 582, §§ 26 and 27 provide:

"SECTION 26. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended."

"SECTION 27. This act shall take effect and be in force from and after July 1, 2007, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, after July 1, 2007, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

**AMENDMENT NOTES.** --The 2007 amendment, in the version effective from and after the date it is effectuated under

Section 5 of the Voting Rights Act of 1965, added (1)(y); and made minor stylistic changes.

FEDERAL ASPECTS. --Provisions of the National Guard Tort Claims Act, see 32 USCS § 715.

#### JUDICIAL DECISIONS

1. In general
- 1.5. Construction with other laws
2. Constitutionality
3. Absence, condition, malfunction, or removal by third parties of sign, signal, warning device, etc
4. Adequate governmental services
5. Discretionary functions
6. Police or fire protection
7. Illustrative cases

#### 1. IN GENERAL.

In granting immunity from claims brought by an inmate, *Miss. Code Ann. § 11-46-9(1)(m)* does not distinguish between those lawfully and those unlawfully within the custody of the state. *Brooks v. Pennington*, -- So. 2d -- (Miss. Ct. App. May 29, 2007).

Construction project was executed by the independent contractor's employees, and appellants presented no evidence that the Mississippi Department of Transportation's (MDOT) employees committed any act or omission that led to the accident; the supreme court could not look to apply the immunity provisions of the Mississippi Tort Claims Act (MTCA) unless some wrong by the government was first established, and the requisite negligence could not be established. *Chisolm v. Miss. DOT*, 942 So. 2d 136 (Miss. 2006).

Legal principle referred to as "Frasier's octopus" applies to an individual claim, but may or may not apply to all claims; therefore, summary judgment was improperly granted to a department of transportation on claims of negligent construction, negligent maintenance, negligent improvement, and failure to warn based on a finding of immunity under *Miss. Code Ann. § 11-46-9(1)(p)* on a defective design claim. *MacDonald v. Miss. DOT*, 955 So. 2d 355 (Miss. Ct. App. 2006).

County and deputy sheriff were immune from that arose out of a traffic collision when the deputy was on his way to have spare keys made for the county's gas pumps, which was deemed to be performance of governmental duties, and the deputy did not act with reckless disregard of a risk. At worst, the deputy's action in pulling into an intersection was negligent. *Reynolds v. County of Wilkinson*, 936 So. 2d 395 (Miss. Ct. App. 2006).

In a case where a mental health patient suffered injuries due to a fall during an attempted escape, *Miss. Code Ann. § 11-46-9(1)(m)* did not shield a state department of mental health from liability because it only pertained to penal institutions. *Miss. Dep't of Mental Health v. Hall*, 936 So. 2d 917 (Miss. 2006).

In a case where a patient in a mental health facility was injured during an attempted escape, liability was not precluded under *Miss. Code Ann. § 97-9-25* and *Miss. Code Ann. § 11-46-9(1)(f)* because an attempted escape by a mental patient was not a criminal act. *Miss. Dep't of Mental Health v. Hall*, 936 So. 2d 917 (Miss. 2006).

*Miss. Code Ann. § 11-46-9(1)* provided that any governmental entity and its employees who were acting within the scope of their employment were not liable for any claim unless the employee acted in reckless disregard of the safety and well-being of any person; therefore, because the driver had to show more than mere negligence to establish reckless disregard and there was no indication that the deputy acted with deliberate disregard for the safety of others when he hit her vehicle, the trial court properly granted the sheriff summary judgment in her lawsuit seeking to collect for injuries

that she sustained in an accident with a sheriff's department vehicle. *Jackson v. Payne*, 922 So. 2d 48 (Miss. Ct. App. 2006).

County was not immune from its duty to properly maintain and repair the bridge and its duty to warn of a dangerous condition where the county had been on notice for five years that the bridge needed repair and was in danger of imminent collapse; the county had more than enough money to fix the bridge, without jeopardizing funds for other road and bridge projects. *Ladner v. Stone County*, 938 So. 2d 270 (Miss. Ct. App. 2006), cert. denied, 937 So. 2d 450 (Miss. 2006).

Driver could not maintain a dangerous condition cause of action against the State Aid defendants because there was no dispute that the bridge was a county road, not a state highway. *Ladner v. Stone County*, 938 So. 2d 270 (Miss. Ct. App. 2006), cert. denied, 937 So. 2d 450 (Miss. 2006).

Inmate's state claims were barred pursuant to Miss. Code Ann. § 11-46-9(m) because the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 to -23, specifically excluded claims arising under state law while a person was lawfully incarcerated in a penal facility. *Harvison v. Greene County Sheriff Dep't*, 899 So. 2d 922 (Miss. Ct. App. 2005).

Miss. Code Ann. § 11-46-9 did not provide immunity for a city that neglected to inspect or maintain a city ditch; a business was entitled to recover damages when, during a heavy rain, the ditch flooded, causing property damage. *City of Jackson v. Internal Engine Parts Group, Inc.* 903 So. 2d 60 (Miss. 2005).

Officer didn't show malice in an arrest in which the arrestee allegedly suffered a sprained wrist, and was immune from liability. The district, as well, was immune from liability. *Pearl River Valley Water Supply Dist. v. Bridges*, 878 So. 2d 1013 (Miss. Ct. App. 2004).

Inmate was an inmate of the county jail at the time of the incident in question and appellees were exempt from liability under Miss. Code Ann. § 11-46-9(1)(m); because a governmental entity was immune from all claims arising from claimants who were inmates at the time the claim arose, Miss. Code Ann. § 11-46-9(1)(m) of the Mississippi Torts Claims Act, Miss. Code Ann. § 11-46-1 et seq., did not apply to sheriff's department employees. *Love v. Sunflower County Sheriff's Dep't*, 860 So. 2d 797 (Miss. 2003).

Miss. Code Ann. § 11-46-9(1)(m) clearly barred the parents' wrongful death suit against the county and individuals after the death of their son while he was incarcerated in the county detention center; since § 11-46-9(1)(m) provided the decedent with no remedy, it also prevented a suit by the heirs, and the parents were unable to bring a wrongful death suit on behalf of a prisoner who died while incarcerated. *Webb v. DeSoto County*, 843 So. 2d 682 (Miss. 2003).

Legislature expressly stated the governmental entity would be immune from all liability from any claim of any claimant who was an inmate at the time the claim arose; an inmate remained an inmate while being transported, while participating in public service work programs or while on leave if a pass was granted. *Wallace v. Town of Raleigh*, 815 So. 2d 1203 (Miss. 2002).

After witnessing the deceased's commission of several criminal offenses, which were more than misdemeanors, the officers were empowered to stop and arrest him as there was a causal nexus between the deceased's criminal activity and the actions of the officers. *Tory v. City of Edwards*, 829 So. 2d 1246 (Miss. Ct. App. 2002).

Miss. Code Ann. § 11-46-9(1)(m) preserves the government's sovereign immunity with regard to the claims of jail inmates. *Liggins v. Coahoma County Sheriff's Dep't*, 823 So. 2d 1152 (Miss. 2002).

Tort Claims Act was the exclusive route for filing suit against a governmental entity and its employees; governmental entity and its employees acting within the course and scope of their employment were free of liability for a claim based upon any of the acts or omissions enumerated therein. *City of Jackson v. Sutton*, 797 So. 2d 977 (Miss. 2001).

Governor was not protected by sovereign immunity from resident's action to compel public hearing pursuant to Administrative Procedures Law (APL) before submitting Capacity Assurance Plan (CAP) to federal Environmental Protection Agency (EPA). *USPCI of Miss., Inc. v. State ex rel. McGowan*, 688 So. 2d 783 (Miss. 1997).

Under § 83-11-101(1), uninsured motorist (UM) carrier was entitled to assert city's defense of sovereign immunity (§ 11-46-9) in connection with collision between fire truck and insured; insured's statutory right to UM benefits is limited to instances in which insured would be entitled, at time of injury, to recover through legal action. *Coleman v. American Mfrs. Mut. Ins. Co.* 930 F. Supp. 255 (N.D. Miss. 1996).

Decision to replace bridge with culvert on county road was discretionary function to which qualified immunity attached in personal injury action brought by motorist. *Mohundro v. Alcorn County*, 675 So. 2d 848 (Miss. 1996).

Evidence did not establish breach of ministerial duty on part of county supervisors in their individual capacities in

connection with replacement of bridge with culvert on county road; while statute required culverts to be not less than full width of crown of roadway and to have guide or warning posts on either side, there was no evidence that such minimum standards were not met. *Mohundro v. Alcorn County*, 675 So. 2d 848 (Miss. 1996).

While decision to replace bridge with culvert on county road was discretionary one to which qualified immunity attached, fact issue existed as to whether county supervisor who determined that replacement was necessary, determined size of culvert needed, and supervised installation of culvert substantially exceeded his authority or was so grossly negligent that his action could be described as constructively intentional such that he was deprived of immunity, precluding summary judgment for supervisor on motorist's personal injury claim. *Mohundro v. Alcorn County*, 675 So. 2d 848 (Miss. 1996).

Sovereign immunity cloaks all "governmental functions" a city performs. *Westbrook v. City of Jackson*, 665 So. 2d 833 (Miss. 1995), rehearing denied.

"Governmental functions," which are cloaked with sovereign immunity, are those functions which a city is required to undertake. *Westbrook v. City of Jackson*, 665 So. 2d 833 (Miss. 1995), rehearing denied.

Operation of fire department, including the supply of water to combat fires, is a governmental function, cloaked by sovereign immunity, even if the same supply provides drinking water, which is proprietary activity. *Westbrook v. City of Jackson*, 665 So. 2d 833 (Miss. 1995), rehearing denied.

City could not lose sovereign immunity for fire protection service in annexed area through negligence per se, where annexation ordinance did not require specific placement of water lines or mains in a certain point. *Westbrook v. City of Jackson*, 665 So. 2d 833 (Miss. 1995), rehearing denied.

Governmental officers are immune from personal liability for fire protection decisions if the decision to provide water lines, or certain aspects of fire protection to property, is a discretionary matter involving public policy decisions. *Westbrook v. City of Jackson*, 665 So. 2d 833 (Miss. 1995), rehearing denied.

Provision of water lines, under annexation ordinance providing for installment of water lines "when necessary and economically feasible," was discretionary decision, for which city officials were entitled to qualified immunity. *Westbrook v. City of Jackson*, 665 So. 2d 833 (Miss. 1995), rehearing denied.

A city's operation of a service garage and towing service for its vehicles was a proprietary function, and therefore the defense of sovereign immunity was not available in a wrongful death action against the city arising from a collision between the deceased's car and a city tow truck. *Thomas v. Hilburn*, 654 So. 2d 898 (Miss. 1995).

For purposes of governmental immunity, the statutory framework for reporting cases of suspected child abuse includes elements of both ministerial and discretionary conduct; § 43-21-353 first requires a person to make a determination of whether "reasonable cause" exists as a foundation for an incident report, which involves a duty to investigate a ministerial duty and a decision as to whether reasonable cause exists a decision involving the exercise of personal judgment and discretion; if a determination is made that there is reasonable cause to report the incident, the statute then mandates that an immediate oral report be issued to the Department of Human Services an action involving no discretion. *T.M. v. Noblitt*, 650 So. 2d 1340 (Miss. 1995).

When the State is sued to determine whether a state statute or action is unconstitutional, the State cannot be held liable for damages if the conduct falls within one of the exceptions found in § 11-46-9. *State v. Hinds County Bd. of Supvrs.* 635 So. 2d 839 (Miss. 1994).

A county's action seeking a determination of whether § 47-5-112 [Repealed] violated any constitutional rights enjoyed by the county was not barred, since there is no sovereign immunity when the relief sought is a declaration that a particular statute or action of the State is unconstitutional. *State v. Hinds County Bd. of Supvrs.* 635 So. 2d 839 (Miss. 1994).

Sheriff's deputies who obtained a search warrant were shielded from liability by qualified immunity since the action of obtaining the search warrant was discretionary rather than ministerial. *Barrett v. Miller*, 599 So. 2d 559 (Miss. 1992).

Sheriff deputies were not exercising discretionary authority in searching a home where the deputies were acting under a search warrant which gave them the authority to search and set out the parameters in which the search should be carried out; the execution of the search warrant was a ministerial act and required no discretionary decision making, aside from the places in the house to be searched, on the part of the deputies executing the warrant, and therefore the deputies who executed it were not shielded from liability by qualified immunity. *Barrett v. Miller*, 599 So. 2d 559 (Miss. 1992).

A sheriff's duties with respect to operating a jail and keeping prisoners confined were discretionary in nature and, therefore, the sheriff was entitled to the protection of qualified immunity in a suit to recover for the wrongful death of a victim who was murdered by escaped inmates. *McQueen v. Williams*, 587 So. 2d 918 (Miss. 1991).

Any liability on the part of the Mississippi State Highway Commission for a breach of its implied warranty that plans and specifications to a contractor for resurfacing would provide a reasonably safe highway, was premised upon a tort liability arising from negligently defective plans and specifications, rather than any contractual obligation, and therefore the Commission was immune from suit. *Employers Ins. v. Mississippi State Hwy. Comm'n*, 575 So. 2d 999 (Miss. 1990), cert. denied, 502 U.S. 817, 112 S. Ct. 72, 116 L. Ed. 2d 46 (1991).

The governor's duties under § 47-5-93 and § 7-1-5(c) and (d) are discretionary and, as such, the governor enjoys a qualified immunity to a civil suit for damages based on the governor's alleged failure to perform his duties under those statutes. *McFadden v. State*, 542 So. 2d 871 (Miss. 1989).

Although ordinarily private individual may not maintain suit against school district to enforce zoning ordinance or to enjoin what is in essence public nuisance created by construction of school building, where construction of school building in violation of municipal offstreet parking ordinance would obstruct abutting landowner's right of ingress and egress, landowner may obtain injunction against construction of building unless and until school district complies with parking ordinance. *Robinson v. Indianola Mun. Separate Sch. Dist.* 467 So. 2d 911 (Miss. 1985).

### 1.5. CONSTRUCTION WITH OTHER LAWS.

While Miss. Code Ann. § 11-7-13 allows wrongful death beneficiaries to maintain an action to recover damages as would the decedent if death had not ensued, the action is derivative and the beneficiaries stand in the position of their decedent; thus, where the decedent was a prison inmate who could not have filed an action against the Mississippi Department of Corrections or a prison superintendent because of the immunity granted in Miss. Code Ann. § 11-46-9(1)(m), his wrongful death beneficiaries could not maintain a wrongful death action against those defendants. *Carter v. Miss. Dep't of Corr.* 860 So. 2d 1187 (Miss. 2003), cert. denied, 541 U.S. 959, 124 S. Ct. 1714, 158 L. Ed. 2d 399 (2004).

The purchase of liability insurance by a governmental entity under § 11-46-17(4) does not limit the exclusions or exemptions enumerated in this section. *Leslie v. City of Biloxi*, 758 So. 2d 430 (Miss. 2000).

### 2. CONSTITUTIONALITY.

Subsection (1)(d) of this section does not violate either the *fourteenth amendment of the U.S. Constitution* or the Remedy Clause of the Mississippi Constitution, Article 3, Section 24, which guarantees that individuals shall have access to courts to redress their injuries. *Jones v. Mississippi DOT*, 744 So. 2d 256 (Miss. 1999).

The Remedy Clause, Miss. Const. art. 3, § 24, does not conflict with sovereign immunity, does not require exceptions to sovereign immunity, and does not grant an absolute guarantee of a trial; thus, no violation of the Remedy Clause occurred when plaintiff's action against the Mississippi Department of Corrections and a prison official for the wrongful death of an inmate was dismissed based on the immunity granted in Miss. Code Ann. § 11-46-9(1)(m). *Carter v. Miss. Dep't of Corr.* 860 So. 2d 1187 (Miss. 2003), cert. denied, 541 U.S. 959, 124 S. Ct. 1714, 158 L. Ed. 2d 399 (2004).

Sovereign immunity does not violate due process; such a violation requires the infringement of a liberty or property right and as the right to sue the State has been withheld by the Mississippi Legislature, the denial of the right to sue the State or other governmental entities or employees under Miss. Code Ann. § 11-46-9(1)(m) does not infringe upon any property right and does not violate due process. *Carter v. Miss. Dep't of Corr.* 860 So. 2d 1187 (Miss. 2003), cert. denied, 541 U.S. 959, 124 S. Ct. 1714, 158 L. Ed. 2d 399 (2004).

Miss. Code Ann. § 11-46-9(1)(m), which denies inmates the right to bring claims against the State or other governmental entities, does not violate the Equal Protection clause of the Fourteenth Amendment because there is a legitimate purpose in protecting governmental entities from claims brought by inmates. *Carter v. Miss. Dep't of Corr.* 860 So. 2d 1187 (Miss. 2003), cert. denied, 541 U.S. 959, 124 S. Ct. 1714, 158 L. Ed. 2d 399 (2004).

### 3. ABSENCE, CONDITION, MALFUNCTION, OR REMOVAL BY THIRD PARTIES OF SIGN, SIGNAL, WARNING DEVICE, ETC.

Placement of a warning sign at a culvert is considered a ministerial function, as set forth in Miss. Code Ann. § 65-21-1

*Barr v. Hancock County*, 950 So. 2d 254 (Miss. Ct. App. 2007).

Miss. Code Ann. § 11-46-9 and the corresponding case law make it clear that a governmental entity is immune from claims arising from a non-obvious dangerous condition on government property, or failure to warn of the dangerous condition, absent actual or constructive notice of the dangerous condition. *Jones v. Miss. Transp. Comm'n*, 920 So. 2d 516 (Miss. Ct. App. 2006).

Summary judgment was properly awarded to a county in a wrongful death action filed by a driver's beneficiaries under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-9(1)(v), because the beneficiaries failed to present any evidence that the accumulation of excess gravel on roads constituted a dangerous condition. *Lowery v. Harrison County Bd. of Supervisors*, 891 So. 2d 264 (Miss. Ct. App. 2004).

Miss. Code Ann. § 11-46-9(1)(w) does not require a governmental entity to actively patrol areas containing warning signs to see if a third party has removed the signs. The statute exempts the governmental entity from liability for the removal of warning signs unless the absence, condition, malfunction or removal is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice. *Mitchell v. City of Greenville*, 846 So. 2d 1028 (Miss. 2003).

Where precautions were taken to warn motorists of the dangerous road condition, the city was not required to actively patrol areas containing warning signs to see if a third party removed the signs, and no evidence was presented to indicate that the city knew or should have known that the sign was blown or tipped over; therefore, the city was entitled to immunity from suit and entitled to summary judgment. *Mitchell v. City of Greenville*, 846 So. 2d 1028 (Miss. 2003).

In a citizen's negligence suit against the city for injuries she sustained when she fell at a construction site that had no warning devices, the city was not immune under Miss. Code Ann. § 11-46-9(v), (w) because the condition was not obvious and readily apparent. *City of Newton v. Lofton*, 840 So. 2d 833 (Miss. Ct. App. 2003).

Subsection (1)(a) did not require the grant of summary judgment to the defendant county in an action arising from a single vehicle accident where the plaintiffs alleged that the county was negligent in its failure to warn of the danger at the curve because there were no advisory speed limits, warning signs or other devices at the curve where the accident occurred; the plaintiffs did not assert claims relating to legislative, judicial or administrative action or inaction and, instead, complained about an alleged dangerous condition about which there was a failure to warn and questioned whether the county had exercised ordinary care. *Leflore County v. Givens*, 754 So. 2d 1223 (Miss. 2000).

In light of the plain language of subsection (1)(b), which makes qualified sovereign immunity contingent on the exercise of ordinary care, a county was not entitled to summary judgment in an action arising from a single vehicle accident where the plaintiffs alleged that the county was negligent in its failure to warn of a dangerous curve. *Leflore County v. Givens*, 754 So. 2d 1223 (Miss. 2000).

Subsection (1)(p) did not require the grant of summary judgment to the defendant county in an action arising from a single vehicle accident where the plaintiffs did not assert claims relating to the design, plan or construction of the road at issue and, instead, complained about an alleged dangerous condition about which there was a failure to warn and questioned whether the county had exercised ordinary care. *Leflore County v. Givens*, 754 So. 2d 1223 (Miss. 2000).

Subsection (1)(e) did not require the grant of summary judgment to the defendant county in an action arising from a single vehicle accident where the plaintiffs did not assert claims relating to the adoption, or failure to adopt, a statute, ordinance or regulation and, instead, complained about an alleged dangerous condition about which there was a failure to warn and questioned whether the county had exercised ordinary care. *Leflore County v. Givens*, 754 So. 2d 1223 (Miss. 2000).

Subsection (1)(w) of this section is an extension of an exemption subsumed in subsection (1)(d) of this section, as opposed to the establishment of a new exemption. *Jones v. Mississippi DOT*, 744 So. 2d 256 (Miss. 1999).

#### 4. ADEQUATE GOVERNMENTAL SERVICES.

City was immune to a homeowner's claim of negligence in which he claimed that the city's negligent maintenance of his dirt road had caused damage to his wife physically and to his vehicles because: (1) the claim arose from an injury which resulted solely from the effect rain had on the road, and (2) even if one concluded that the city had a duty to purchase its own grading equipment, that was a discretionary decision for which the city had immunity under the act. *Schepens v. City of Long Beach*, 924 So. 2d 620 (Miss. Ct. App. 2006).

While subsection (1)(g) of this section provides that a school district is immune for certain policy decisions, such as

how much money to allocate, it does not immunize a school district for failure to fulfill its statutory obligations; a school board is required by § 37-7-301(d) to erect, repair, and equip school facilities as well as maintain, control, and care for the same, and subsection (1)(g) of this section provides a school district and its employees with protection from liability while performing or failing to perform such statutory duties so long as ordinary care is exercised. *Lang v. Bay St. Louis/Waveland Sch. Dist.* 764 So. 2d 1234 (Miss. 1999).

##### 5. DISCRETIONARY FUNCTIONS.

In action brought by a husband and wife against defendants, a city, its mayor, the chief of police, and police officers, pursuant to 42 U.S.C.S. § 1983 and state law, the court denied defendants' motion to dismiss because the police protection and discretionary function exemptions to waiver of immunity under Miss. Code Ann. § 11-46-9(1)(c), (d) did not apply; the husband was not engaged in criminal activity at the time of his arrest, so the issue regarding the applicability of § 11-46-9(1)(c) was whether the officers acted in reckless disregard of the husband's safety or well being, and it could not be said that the officers' actions, as identified in plaintiffs' allegations of excessive force and wrongful arrest, fell within the exemption, and if, as the husband alleged, the officers had no arguable basis for concluding they had probable cause to arrest the husband, it would seem that they had no discretion to arrest him, and in no event did the officers have discretion to use excessive force against him. *McGregory v. City of Jackson*, 504 F. Supp. 2d 143 (S.D. Miss. 2007).

In an action brought by plaintiff against defendants, a city, its mayor, the chief of police, and a police officer, pursuant to 42 U.S.C.S. § 1983 and state law, asserting claims of excessive force, false arrest and false imprisonment, and various other state tort claims, the court granted defendants' motion to dismiss for immunity pursuant to Fed. R. Civ. P. 12(b)(6) because Miss. Code Ann. § 11-46-9(1)(c), (d) did not provide exceptions to the Mississippi Tort Claims Act (MTCA) waiver of immunity for plaintiff's claims, as the court was unable to conclude on the basis of the facts alleged by plaintiff that defendants were immune under the MTCA. *Spencer v. City of Jackson*, 511 F. Supp. 2d 671 (S.D. Miss. 2007).

After learning of the former professor's affair with a student at a university where he previously taught, the decision of the former president of the university and the former vice-president of academic affairs to recommend the professor for only a one-year position necessarily involved an act of choice or judgment, as by nature the president's and vice-president's administrative positions at the university required them to make those types of choices and judgments regarding the faculty, and Miss. Code Ann. § 37-101-15(f) provided that the executive head of the university nominate for election all subordinate employees of the university; nothing in the statute limited the discretion of the president and thus the action by the president and vice-president recommending the professor for one year's employment instead of tenure-track, after learning of the affair with the student, was a discretionary act immune from suit under Miss. Code Ann. § 11-46-9(1)(d). *Suddith v. Univ. of S. Miss.* -- So. 2d -- (Miss. Ct. App. July 31, 2007).

Because defendants, two county attorneys, a sheriff, and the sheriff's deputy, were enforcing a facially valid Virginia custody order granting custody of children to the children's mother, it arose out of a judicial action; thus, immunity under Miss. Code Ann. § 11-46-9(1)(a) applied to the claims of plaintiffs, a father and his adult son who had been granted custody of the children by a Mississippi court. *Blake v. Wilson*, 962 So. 2d 705 (Miss. Ct. App. 2007).

Because defendants, two county attorneys, a sheriff, and the sheriff's deputy, were enforcing a facially valid Virginia custody order granting custody of children to the children's mother, they acted with discretion and were forced to make choices that involved social, economical, or political policy alternatives; thus, immunity under Miss. Code Ann. § 11-46-9(1)(d) applied to the claims of plaintiffs, a father and his adult son who had been granted custody of the children by a Mississippi court. *Blake v. Wilson*, 962 So. 2d 705 (Miss. Ct. App. 2007).

Miss. Code Ann. § 65-21-1 plainly states that certain construction requirements must be met once a governmental entity determines that a culvert is needed; it only sets forth the minimum requirements to be met with regard to the construction of culverts, and any decisions made outside of those minimum requirements are discretionary functions of government. *Barr v. Hancock County*, 950 So. 2d 254 (Miss. Ct. App. 2007).

Finding against the student in her action against a state university and a professor after she suffered a third-degree burn at an iron pour demonstration was improper under Miss. Code Ann. § 11-46-9(1)(d) because the university was not protected by discretionary function immunity and was liable for the professor's negligence pursuant to the waiver of sovereign immunity codified at Miss. Code Ann. § 11-46-5; it was difficult to fathom how the professor's failure to put

down dry sand before the pour involved a policy judgment of a social, political, or economic nature. *Pritchard v. Von Houten*, 960 So. 2d 568 (Miss. Ct. App. 2007).

Summary judgment was properly awarded to the Mississippi Transportation Commission (MTC) in appellants' action for injuries and death resulting from a two-vehicle collision because the MTC's duty to place warning signs was discretionary under Miss. Code Ann. § 63-3-303; hence, the MTC's failure to place warning signs was shielded from liability according to Miss. Code Ann. § 11-46-9(1)(d). *Willingham v. Miss. Transp. Comm'n*, 944 So. 2d 949 (Miss. Ct. App. 2006).

State hospital was entitled to immunity from tort liability pursuant to Miss. Code Ann. § 41-4-7(g) because the hospital was acting in a discretionary manner when it made placement decisions for the patient and allowed the patient to participate in a day program where the patient suffered an injury; the decisions were a matter of social policy and the hospital and its employees were thus immune from tort liability in a lawsuit filed by the patient. *Dancy v. East Miss. State Hosp.* 944 So. 2d 10 (Miss. 2006).

When the Mississippi Department of Mental Health enacted policies and procedures pursuant to Miss. Code Ann. § 41-4-7(g), it was enacting in a discretionary fashion and was thus immune from tort liability when a patient was injured allegedly because of a placement decision that was made for him while he was committed to a state hospital. *Dancy v. East Miss. State Hosp.* 944 So. 2d 10 (Miss. 2006).

Officer's actions with regard to the icy condition on the highway involved an element of choice or judgment, and therefore his decision to promptly notify the Mississippi Department of Transportation of the condition rather than remaining at the scene after the first accident was discretionary and not ministerial, and there was no statute, regulation, or police department policy that outlined how the officer should have addressed the condition; accordingly, the precise time, manner, and conditions by which the officer's duties were to be observed were not prescribed, and therefore were left to the judgment of the officer. *Willing v. Benz*, -- So. 2d -- (Miss. Ct. App. Nov. 21, 2006).

Regional housing authority's officers were immune from tort liability based on their actions in the wake of a flood that damaged a developer's apartment complex because their issuance of housing choice vouchers to the developer's tenants during a declared state of emergency, although based upon their questionable reliance on erroneous statements, qualified as discretionary acts under Miss. Code Ann. 11-46-9(d). *Urban Developers LLC v. City of Jackson*, 468 F.3d 281 (5th Cir. 2006).

Waterway district was immune from liability under Miss. Code Ann. § 11-46-9 in a wrongful death case because its discretionary decisions regarding the operation of a swimming facility were grounded in public policy, there was inadequate proof regarding knowledge of a missing buoy and signs, and there could have been other causes of a drowning. *Dotts v. Pat Harrison Waterway Dist.* 933 So. 2d 322 (Miss. Ct. App. 2006).

While Miss. Code Ann. § 63-3-305 contains the term "shall", it also contains the phrase, "as they may deem necessary", which, as state legal precedent suggests, means that a local authority's placement of traffic control devices is a discretionary duty. Because the placement of traffic control devices, including road construction signs, is a discretionary duty, Miss. Code Ann. § 11-46-9(1)(d) applies, and a county cannot be liable with regard to the placement of such signs, regardless of whether or not it abused its discretion in doing so. *Dozier v. Hinds County*, 379 F. Supp. 2d 834 (S.D. Miss. 2005).

Trial court did not err in granting summary judgment to Mississippi Department of Transportation (DOT) in a wrongful death because the DOT was immune under Miss. Code Ann. § 11-46-9(1)(d), failing to warn of a dangerous condition, because the placement of warning signs was a discretionary function not within the context of ordinary care. *Barrentine v. Miss. DOT*, 913 So. 2d 391 (Miss. Ct. App. 2005).

Claimants in a wrongful death action were not entitled to a remand because a non-diverse county defendant had been fraudulently joined in the cause, making removal under 28 U.S.C.S. § 1441 appropriate. The county was not responsible for the placement of stop signs at the intersection where the accident occurred, and its placement of road construction signs near the intersection was a discretionary governmental function, for which the county had immunity and no duty of ordinary care under Miss. Code Ann. § 11-46-9(1)(d); thus, the county had no basis for liability. *Dozier v. Hinds County*, 354 F. Supp. 2d 707 (S.D. Miss. 2005).

Where the victim was shot by her estranged husband the county was not liable for the failure of the justice court clerk or justice court judge to transmit the signed arrest warrant to the county sheriff's department. The alleged conduct of both the justice court clerk and judge fell squarely within Miss. Code Ann. § 11-46-9(1)(a) and the trial court properly

found that sovereign immunity prevented prosecution of the injured person's negligence based claims; moreover, the actions of said officials were discretionary and the ordinary care standard was not applicable to *Miss. Code Ann. § 11-46-9(1)(d)*. *Collins v. Tallahatchie County*, 876 So. 2d 284 (Miss. 2004).

Although a student suffered damages as a result of heatstroke during a high school football practice, the school district and the football coach were immune from liability under the Mississippi Tort Claims Act; acts or omissions of the coach were discretionary in nature. *Harris v. McCray*, 867 So. 2d 188 (Miss. 2003).

Statute did not provide immunity to the city and the driver as the discretionary act of deciding to help an invalid exit a van did not implicate any social, economic or political policy. *Stewart v. City of Jackson*, 804 So. 2d 1041 (Miss. 2002).

The addition of the abuse of discretion phrase into subsection (1)(d) of this section is not in derogation of the common law right and, therefore, the subsection need not be construed against any such limitation under the rules of statutory construction. *L.W. v. McComb Separate Mun. Sch. Dist.*, 1999 Miss. LEXIS 128 (Miss. Mar. 31, 1999), subst. op., 754 So. 2d 1136 (Miss. 1999).

The discretionary function exemption contained in subsection (1)(d) of this section did not bar an action in which a 14 year old student who was assaulted by a fellow student alleged that the school was negligent in failing to (1) maintain a safe environment, (2) properly monitor its grounds, (3) properly supervise its students, and (4) have a route of safe departure for detention students. *L.W. v. McComb Separate Mun. Sch. Dist.* 754 So. 2d 1136 (Miss. 1999).

#### 6. POLICE OR FIRE PROTECTION.

Grant of summary judgment in favor of the city and police officer in the jogger's action under the Mississippi Tort Claims Act, *Miss. Code Ann. §§ 11-46-1 to 11-46-23*, after he was struck by the police officer while jogging was appropriate because the jogger failed to prove that the officer acted with reckless disregard of the safety and well-being of others, *Miss. Code Ann. § 11-46-9(1)(c)*. *Morton v. City of Shelby*, -- So. 2d -- (Miss. Ct. App. Nov. 20, 2007).

While *Miss. Code Ann. § 37-7-321* and *Miss. Code Ann. § 37-7-323* allowed schools to retain independent contractors to work as peace officers on school grounds, the legislature however did not provide an express grant of immunity to those independent contractors under *Miss. Code Ann. § 19-19-5* or the Mississippi Tort Claims Act (MTCA), *Miss. Code Ann. § 11-46-9*; accordingly, the trial court erred in finding that the security contractor was immune to suit by virtue of the MTCA. *Knight v. Terrell*, 961 So. 2d 30 (Miss. 2007).

Because defendants, two county attorneys, a sheriff, and the sheriff's deputy, were acting in their official roles in enforcing a facially valid Virginia custody order granting custody of children to the children's mother, immunity under *Miss. Code Ann. § 11-46-7(2)* applied to the claims of plaintiffs, a father and his adult son who had been granted custody of the children by a Mississippi court. *Blake v. Wilson*, 962 So. 2d 705 (Miss. Ct. App. 2007).

City was immune from liability under *Miss. Code Ann. § 11-46-9(1)(c)* for the decedent's death, and therefore it was properly granted summary judgment because the officer's conduct did not amount to reckless disregard for the safety of the traveling public; the officer notified his dispatcher of the condition of the highway and the dispatcher promptly notified the Mississippi Department of Transportation so that sand or salt could be applied to the ice patch. *Willing v. Estate of Benz*, 958 So. 2d 1240 (Miss. Ct. App. 2007).

City was immune from liability under *Miss. Code Ann. § 11-46-9(1)(q)* for the decedent's death, and therefore it was properly granted summary judgment because the ice was caused solely by the effect of weather, and the family did not point to any evidence that the city or the officer contributed to or were responsible for the formation of the ice patch. *Willing v. Estate of Benz*, 958 So. 2d 1240 (Miss. Ct. App. 2007).

Judgment was properly entered for a city in a personal injury case based on sovereign immunity under *Miss. Code Ann. § 11-46-9(1)(c)* because an officer did not act with reckless disregard when she pursued a suspect with outstanding warrants since she saw an open container in his car and suspected he was driving under the influence. *Broome v. City of Columbia*, 952 So. 2d 1050 (Miss. Ct. App. 2007).

City was entitled to immunity under the police protection exemption under *Miss. Code Ann. § 11-46-9(1)(c)*, and therefore the city's motion for summary judgment was properly granted in the party guest's personal injury action, because the officer's failure to remove the keys from and/or lock the doors of his patrol car did not show a reckless disregard for the safety of others, given that the party guest testified that there was a crowd of 15 or more angry teenagers who were wielding knives and throwing sticks, bricks, and other objects and who the party guest was convinced were intent on killing or seriously injuring him. *Chapman v. City of Quitman*, 954 So. 2d 468 (Miss. Ct. App.

2007).

Summary judgment was properly granted to a city in a negligence case because it was immune under *Miss. Code Ann. § 11-46-9(1)(c)* since an officer was not acting with reckless disregard when she pursued a suspect while trying to serve outstanding domestic warrants; the officer suspected he was driving under the influence and saw an open container. *Broome v. City of Columbia*, — So. 2d — (Miss. Ct. App. Oct. 17, 2006).

Record showed that the police officers did not exercise reckless disregard when they chose to charge the victim's murderer with simple assault where the police officer was apparently unaware that an aggressor may be charged with domestic violence if that person commits an assault upon one with whom they formerly resided; the administratrix also failed to present any evidence to show how the town acted in a willful, wanton, or wrongful manner in failing to relay a detailed account of the assault to the murderer's parole officer or by not informing the municipal judge of the murderer's prior aggravated assault conviction. *Fair v. Town of Friars Point*, 930 So. 2d 467 (Miss. Ct. App. 2006).

Defendants were properly granted judgment on plaintiffs' personal injury claims because defendant police officer's conduct during a vehicle pursuit did not rise to the level of reckless disregard, which was required by *Miss. Code Ann. § 11-46-9(1)(c)* for a finding of liability; the officer took specific steps in an attempt to safeguard other vehicles that may have entered the intersection where the accident occurred, including, inter alia, sounding his air horn and reducing his speed. *Cole v. Miss. Dep't of Pub. Safety*, 930 So. 2d 472 (Miss. Ct. App. 2006).

University police corps provided local law enforcement with college-educated, specialized, quasi-military trained police officers to assist in protecting against violent crime; therefore, it was related to police protection and satisfied the government/proprietary distinction, as police training was a governmental function. *Hayes v. Univ. of Southern Miss.* 952 So. 2d 261 (Miss. Ct. App. 2006).

Directed verdict in favor of the sheriff and county in the family's action alleging reckless disregard by an auxiliary deputy sheriff concerning an accident involving the deputy and their son was appropriate under *Miss. Code Ann. § 11-46-9(1)(c)* because the deputy's actions, at the most, amounted to negligence; the deputy was traveling no more than five miles over the speed limit and *Miss. Code Ann. § 63-3-517* permitted him to do so because he was responding to an accident. *Peebles v. Winston County*, 929 So. 2d 385 (Miss. Ct. App. 2006).

Record revealed immense suffering by the resident and his wife and children due to the resident's arrest for a crime which he unquestionably did not commit, and the cellular phone company paid for transposing numbers that led to the resident's arrest; the city police officers were at the most, negligent, they did not act in reckless disregard of the safety and well-being of the resident or any other citizen, and pursuant to *Miss. Code Ann. § 11-46-9(1)(c)*, the city was exempt from liability. *City of Greenville v. Jones*, 925 So. 2d 106 (Miss. 2006).

In plaintiff's personal injury action against a police officer, court did not err in finding that the officer was immune from liability under the Mississippi Tort Claims Act, *Miss. Code Ann. § 11-46-9(1)(c)*, because the officer was justified in drawing his gun upon stopping plaintiff's car; officer had received call that two cars were speeding and that shots had been fired. *Smith v. Brookhaven*, 914 So. 2d 180 (Miss. Ct. App. 2005).

Suspect in murder gave a videotaped statement indicating that the couple were present during the victim's murder, robbery having been the motive, and based on that information, the sheriff obtained an arrest warrant for the couple. When the aforementioned suspect recanted his allegation, and sheriff realized there was no longer probable cause to hold the couple, sovereign immunity applied in the couple's suit against the sheriff and the county for false arrest and malicious prosecution, under the exception of *Miss. Code Ann. § 11-46-9(1)(c)*. *Keen v. Simpson County*, 904 So. 2d 1157 (Miss. Ct. App. 2004).

In a mother's suit against a police officer and the department of public safety when her son was killed in a car accident while riding with his father soon after the officer had given the father a speeding ticket, judgment in the officer's favor was proper as his failure to check the father's sobriety did not rise to the level of reckless disregard required for the mother to recover against the State. *Thomas ex rel. Thomas v. Miss. Dep't of Pub. Safety*, 882 So. 2d 789 (Miss. Ct. App. 2004).

Evidence showed the officer was traveling approximately 37 miles per hour with lights and sirens activated, there was nothing obstructing the view of either the person later injured or the officer, and the greater weight of evidence also proved that the person's left turn signal was not activated. In addition, the officer had consciously stopped at the previous two intersections because the officer considered both of those to be blind intersections, and therefore, the officer's behavior supported the finding that the officer appreciated the risk involved in approaching the intersection and

did not act with reckless disregard *Davis v. Latch*, 873 So. 2d 1059 (Miss. Ct. App. 2004).

In the context of actions pursuant to the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 to 11-46-23, the common thread running through cases where an officer acts with reckless disregard in operating a motor vehicle is an appreciation of the unreasonable risk of danger involved coupled with a conscious indifference to the consequences that are certain to follow. *Davis v. Latch*, 873 So. 2d 1059 (Miss. Ct. App. 2004).

Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-7(2) barred plaintiff's state law claims against the police chief and the officer because the wrongful arrest of plaintiff occurred in the scope and course of their employment, but did not bar the state law claims against the city under Miss. Code Ann. § 11-46-9(1)(c) because the officer was acting within the scope of his employment when he acted with reckless disregard in the arrest of the mother. *Craddock v. Hicks*, 314 F. Supp. 2d 648 (N.D. Miss. 2003).

Department of Public Safety was not immune from liability in a suit by a driver. A state trooper, who was speeding excessively and acted in reckless disregard of the driver's safety; the fact that the driver made a left turn did not matter, as this was not criminal activity. *Miss. Dep't of Pub. Safety v. Durn*, 861 So. 2d 990 (Miss. 2003).

As a decedent was engaged in criminal activity (drunk driving) and there was a causal nexus between that activity and his death in a collision with a fire truck, the city was immune from a wrongful death suit under Miss. Code Ann. § 11-46-9(1)(c). *Estate of Williams v. City of Jackson*, 844 So. 2d 1161 (Miss. 2003).

Operating a vehicle involves both the moving and the stopping of a vehicle, and when these are done under the influence of alcohol, it is considered criminal activity which operates to limit the duty owed by police and fire personnel under Miss. Code Ann. § 11-46-9(1)(c); however, in order for recovery from a governmental entity to be barred, the criminal activity has to have some causal nexus to the wrongdoing of the tortfeasor. *Estate of Williams v. City of Jackson*, 844 So. 2d 1161 (Miss. 2003).

Dismissal of the driver and passengers' action against the city and police officer after they were struck by the officer's vehicle was proper where the officer's action evinced no recklessness, Miss. Code Ann. § 11-46-9(1)(c); he was remiss in paying attention to traffic directly in his lane, but he was guilty of simple negligence and nothing more. *Joseph v. City of Moss Point*, 856 So. 2d 548 (Miss. Ct. App. 2003), cert. denied, 860 So. 2d 315 (Miss. 2003).

Where conflicting evidence was presented as to whether the police officer, who was engaged in a high speed chase when the officer struck the decedent, had the officer's blue lights flashing, summary judgment pursuant to Miss. R. Civ. P. 56 was improperly granted in favor of the city in the wrongful death action; the conflicting testimony raised an issue of material fact as to whether the officer's behavior constituted reckless disregard under Miss. Code Ann. § 11-46-9(1)(c). *Johnson v. City of Cleveland*, 846 So. 2d 1031 (Miss. 2003).

In a wrongful death suit against a town, the town was correctly granted summary judgment since there were no facts of record to support the allegation that the town acted with reckless disregard for the decedent's safety; only 13 minutes elapsed between the decedent's report to the police that he had been shot at and his fatal shooting, and the police acted responsibly and within their discretion. *Titus v. Williams*, 844 So. 2d 459 (Miss. 2003).

The "reckless disregard" exception to the Mississippi Tort Claims Act in Miss. Code Ann. § 11-46-9(1)(c) was not applicable to the homeowners' suit against county for delay in 911 response by police, which did not involve personal injury, but only loss of property. *Lee County v. Davis*, 838 So. 2d 243 (Miss. 2003).

Government and its employees acting within the course and scope of their employment are not liable for any claims arising out of an act or omission of the employee engaged in the performance of execution of duties or activities relating to police or fire protection, unless it is proven by a preponderance of the evidence that the employee was acting in a reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of the injury; therefore, a trial court correctly determined that a city and its police officer waived immunity under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 et seq., because an injured party established that the officer acted in reckless disregard of his safety when he answered a burglary call without activating his lights or siren. *City of Jackson v. Lipsey*, 834 So. 2d 687 (Miss. 2003).

Maintenance and inspection of police vehicles are activities related to police protection, so that a city and an officer were immune from liability arising out of negligence in the performance of either act under the police protection exemption of Miss. Code Ann. § 11-46-9(1)(c) when the brakes in a police car failed and the police car collided with another car. *McGrath v. City of Gautier*, 794 So. 2d 983 (Miss. 2001).

In an action in which the plaintiff alleged that he was injured by a security officer for a water supply district, the water

supply district was not entitled to summary judgment as the record did not contain any evidence that the district engaged in a policy-oriented decision-making process concerning the supervision of its employees. *Bridges v. Pearl River Valley Water Supply Dist.* 793 So. 2d 584 (Miss. 2001).

The criminal activity supporting the exemption for police or fire protection unless the government employee acted in reckless disregard of the safety of a person "not engaged in criminal activity at the time of injury" must be more than fortuitous, but need not rise to the level of a felony. *Bridges v. Pearl River Valley Water Supply Dist.* 793 So. 2d 584 (Miss. 2001).

A governmental agency and its employees, acting within the course and scope of their official duties, and engaged in the performance or execution of duties relating to police or fire protection, will not be liable for any claim arising out of the performance or execution of those duties, unless it is proven, by a preponderance of the evidence, that the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of injury. *Simpson v. City of Pickens*, 761 So. 2d 855 (Miss. 2000).

A police officer and the city that employed him were not entitled to immunity with regard to a motor vehicle accident involving the officer since the evidence showed reckless disregard by the officer of the safety and well-being of others where (1) the officer testified to seeing the plaintiff's vehicle stopped at the a townhome complex, (2) the plaintiff attempted a left turn from the complex, (3) the officer was driving at a minimum of 57 miles per hour in a posted 35 miles per hour zone and struck the plaintiff's vehicle in the driver's door knocking the vehicle 75 feet, and (4) the officer was in a non-emergency situation using neither sirens nor flashing lights and was going to meet fellow officers for dinner. *City of Jackson v. Perry*, 764 So. 2d 373 (Miss. 2000).

The fact that the plaintiff was driving without a license at the time that his vehicle was struck by a police officer's vehicle being driven in a reckless manner did not bar his recovery for injuries sustained in the accident as the officer's conduct did not have anything to do with the plaintiff's criminal activity. *City of Jackson v. Perry*, 764 So. 2d 373 (Miss. 2000).

A deputy sheriff acted with reckless disregard within the meaning of subsection (1)(c) of this section when he backed up the incline entrance to a parking lot knowing he could not be sure the area was clear. *Maye v. Pearl River County*, 758 So. 2d 391 (Miss. 1999).

In an action arising from a collision with a drunk driver in which the plaintiff alleged that, immediately prior to the accident, a city police officer had stopped the drunk driver for operating his vehicle in an erratic fashion and failing to have the vehicle's headlights on, but permitted the drunk driver to continue driving even though he knew the driver was intoxicated and incapable of driving in a safe and prudent manner, the trial court erred in holding that the complaint was insufficient because it did not allege that the officer intended to harm the plaintiff; the proper focus should have been whether the officer intended to do the act that caused harm to the plaintiff. *Turner v. City of Ruleville*, 735 So. 2d 226 (Miss. 1999).

Reckless disregard within the meaning of subsection (1)(c) of this section is synonymous with willfulness and wantonness. *Turner v. City of Ruleville*, 735 So. 2d 226 (Miss. 1999).

A police officer who detained the plaintiff when she went to the police station to inquire about an outstanding warrant for shoplifting did not act in reckless disregard for the plaintiff's safety and well-being since he was faced with an arrest warrant that was valid on its face and had a duty to execute the warrant. *Foster v. Noel*, 715 So. 2d 174 (Miss. 1998).

#### 7. ILLUSTRATIVE CASES.

Mississippi Department of Transportation (MDOT) was entitled to summary judgment in the injured driver's suit for damages arising out of a car accident that occurred while the highway was being refurbished. The injured driver did not put forward evidence that MDOT had notice of any defective condition; therefore, MDOT was immune from liability under Miss. Code Ann. § 11-46-9. *Frazier v. Miss. DOT*, 970 So. 2d 221 (Miss. Ct. App. 2007).

Inmate was incarcerated when the inmate filed a complaint against numerous governmental entities and employees; those governmental entities and employees were immune from the inmate's lawsuit and the chancellor properly dismissed the inmate's complaint. *Bessent v. Clark*, -- So. 2d -- (Miss. Ct. App. Sept. 25, 2007).

In a 42 U.S.C.S. § 1983 case against a city that also alleged state tort claims, since the facts as set forth in the complaint did not rise to level of reckless disregard, a city was not liable under the *Mississippi Tort Claims Act*. *Bynum v. City of Magee*, 507 F. Supp. 2d 627 (S.D. Miss. 2007).

In a child's suit against the Mississippi Department of Human Services (DHS), failure to investigate a child's allegations of sexual abuse by an employee of a youth care facility was a ministerial act for which DHS could be held liable. *Miss. Dep't of Human Servs. v. S. W.* -- So. 2d -- (Miss. Ct. App. Aug. 7, 2007).

Trial court erred in granting a sheriff, county, and surety summary judgment on an individual's claims of false imprisonment and negligence where the individual raised issues of fact as to whether the sheriff or his deputies complied with their duties in accepting surrender from a bail bondsman, and whether they evinced a reckless disregard for the individual's safety and well-being in accepting his surrender. *Brooks v. Pennington*, -- So. 2d -- (Miss. Ct. App. May 29, 2007).

Trial court erred by holding that the city was immune from liability under *Miss. Code Ann. § 11-46-9(1)(d)*, and therefore it erred by granting the city summary judgment because the trial court failed to consider the second prong of the public policy test, which required that the choice involved social, economic, or political policy. *Willing v. Estate of Benz*, 958 So. 2d 1240 (Miss. Ct. App. 2007).

City was entitled to immunity under the mob exemption under *Miss. Code Ann. § 11-46-9(1)(u)*, and therefore the city's motion for summary judgment was properly granted in the party guest's personal injury action, because: (1) the actions of the angry crowd of teenagers constituted a riot, as the party guest testified that there were at least 15 people assembled on the night in question, all angry with the party guest and attempting to seriously injure or kill him by wielding knives and throwing sticks and bricks at him; and (2) the bystander who stole the officer patrol car and struck the party guest with it was part of the rioting mob, and therefore the party guest's claim arose out of and resulted from the riot. *Chapman v. City of Quitman*, 954 So. 2d 468 (Miss. Ct. App. 2007).

Trial court erred by granting the city summary judgment under the discretionary function exemption under *Miss. Code Ann. § 11-46-9(1)(d)* because the trial court applied only the first prong of the public policy function test rather than both prongs. *Chapman v. City of Quitman*, 954 So. 2d 468 (Miss. Ct. App. 2007).

Summary judgment was properly granted to a county based on sovereign immunity under *Miss. Code Ann. § 11-46-9(1)(d)* because the decision to backfill a road instead of paving it after the upgrade or installation of a culvert was a discretionary function; even though the failure to place a warning sign was a ministerial function, there was no liability for the county because the condition of the roadway, and not the failure to place the sign, was the cause of the accident. *Barr v. Hancock County*, 950 So. 2d 254 (Miss. Ct. App. 2007).

Trial court properly granted summary judgment to a county constable under Miss. R. Civ. P. 56 in a personal injury suit because the constable had immunity, under *Miss. Code Ann. § 11-46-9(1)(c)*, for injuries to a father, which occurred when the constable's car collided with his four-wheeler, because there was significant evidence that the father was engaged in criminal activity that had a causal nexus to the accident; the father was driving on a suspended license and pled guilty to reckless driving, however summary judgment against the father's sons was improper because genuine issues of fact existed as to whether the sons were engaged in criminal activity, whether any criminal activity on the part of the sons had a causal nexus to the accident, and whether the constable acted with reckless disregard in his pursuit of appellants. *Giles v. Brown*, 962 So. 2d 612 (Miss. Ct. App. 2006).

Summary judgment was properly granted to a city in a negligence case based on a fall from a raised sidewalk crack because the city had immunity under *Miss. Code Ann. § 11-46-9(1)(v)*; the city did not have a duty to maintain the sidewalks in a perfect condition, it did not have notice, and the open and obvious defense applied. *Howard v. City of Biloxi*, 943 So. 2d 751 (Miss. Ct. App. 2006).

City was immune from liability under *Miss. Code Ann. § 11-46-9(1)(q)*, and therefore it was properly granted summary judgment in the family's wrongful death action, because the ice was caused solely by the effect of weather, and the family did not point to any evidence that the city or the officer contributed to or were responsible for the formation of the ice patch on the highway. *Willing v. Benz*, -- So. 2d -- (Miss. Ct. App. Nov. 21, 2006).

City was immune from liability under *Miss. Code Ann. § 11-46-9(1)(c)*, and therefore it was properly granted summary judgment in the family's wrongful death action, because the officer's conduct did not amount to reckless disregard for the safety of the traveling public; the officer notified his dispatcher of the condition of the highway and the dispatcher promptly notified the Mississippi Department of Transportation so that sand or salt could be applied to the ice patch. *Willing v. Benz*, -- So. 2d -- (Miss. Ct. App. Nov. 21, 2006).

Trial court erred in sua sponte entering a default judgment against a city under Miss. R. Civ. P. 55 in a suit brought under the Mississippi Tort Claims Act, specifically *Miss. Code Ann. § 11-46-9(1)(c)*; although the city did not timely

answer plaintiffs amended complaint pursuant to Miss. R. Civ. P. 15(a), the parties continued to engage in discovery for over four years and plaintiff had no intention of seeking of a default judgment. *City of Jackson v. Presley*, 942 So. 2d 777 (Miss. 2006).

Trial court did not err in finding that the Mississippi Department of Transportation (MDOT) was immune from liability for a traffic accident pursuant to Miss. Code Ann. § 11-46-9(1) as credible evidence supported the court's finding that the parents of an infant who died from the injuries she received in the collision had failed to prove that the MDOT had had notice of a dangerous condition at the intersection, at least prior to the instant accident. *Reeves v. Miss. DOT*, 941 So. 2d 884 (Miss. Ct. App. 2006).

Finding in favor of the husband and wife in their action against the city for personal injuries and loss of consortium was appropriate pursuant to Miss. Code Ann. § 11-46-9(1)(v) because the coal grate at issue was a dangerous condition. *City of Natchez v. Jackson*, 941 So. 2d 865 (Miss. Ct. App. 2006).

Department of mental health was found liable for negligence because a psychiatric hospital owed a duty of care to, inter alia, monitor the patient, and an injury during an escape was foreseeable. Immunity under Miss. Code Ann. § 11-46-9(d) did not apply either because the duties owed were not discretionary based on Miss. Code Ann. § 41-21-102(6). *Miss. Dep't of Mental Health v. Hall*, 936 So. 2d 917 (Miss. 2006).

In a wrongful death action filed by the parents of two passengers who were killed during a police pursuit of the driver of a stolen vehicle, a city was properly granted summary judgment because the court could not find that the officer recklessly disregarded the passengers' safety when considering the totality of the circumstances; evidence showed, inter alia, that: (1) the driver's flight from the police lasted for a matter of minutes over five miles; (2) the flight did not occur on a residential street or within a residential neighborhood; (3) there was little or no testimony regarding the characteristics of the streets on which the flight took place; (4) traffic was light; (5) the weather was sunny and clear; and (6) the driver was operating a stolen vehicle with a suspended license and the officer noticed him because of his excessive speed and reckless driving. *McCoy v. City of Florence*, 949 So. 2d 69 (Miss. Ct. App. 2006).

In a wrongful death action filed by the parents of two passengers who were killed during a police pursuit of the driver of a stolen vehicle, a city was properly granted summary judgment because the passengers were engaged in criminal activity, as there was no dispute that they knew that the car was stolen and that they encouraged the driver to flee from the police, in violation of Miss. Code Ann. § 97-35-7(2). *McCoy v. City of Florence*, 949 So. 2d 69 (Miss. Ct. App. 2006).

In a wrongful death action filed by the parents of two passengers who were killed during a police pursuit of the driver of a stolen vehicle, a county and a city were properly granted summary judgment because neither were involved in the pursuit. *McCoy v. City of Florence*, 949 So. 2d 69 (Miss. Ct. App. 2006).

Dismissal of the decedent's mother's and a student's action against a state university resulting from a shooting on campus was appropriate under Miss. Code Ann. § 11-46-9(1)(v) where the underlying act of the claims was the fact that the gunman shot the victims; they cited no authority suggesting that the university, through an employee, had a duty to warn the victims of the dangerous conditions of the gunman's character. *Johnson v. Alcorn State Univ.* 929 So. 2d 398 (Miss. Ct. App. 2006).

Where plaintiff parent sued defendant school district in state court alleging her child was sexually assaulted at school and obtained a judgment under the Mississippi Tort Claims Act, her later claims in federal court were properly held as barred due to res judicata; while school districts' sources of funding under Miss. Code Ann. § 37-45-21, 37-47-1 et seq., Miss. Code Ann. § 37-57-1, Miss. Code Ann. § 37-59-3, and Miss. Code Ann. § 37-151-7 were equally divided between local school districts and the state under Miss. Code Ann. § 11-46-7, Miss. Code Ann. § 11-46-16(2), and Miss. Code Ann. § 11-46-17(2), any judgment against the school district would be paid through the Tort Claims Fund and excess liability insurance, and thus, the school district was not considered an arm of the state entitled to Eleventh Amendment immunity as Miss. Code Ann. § 11-46-5(1) permitted school districts to be sued. *Black v. N. Panola Sch. Dist.* 461 F.3d 584 (5th Cir. 2006).

Summary judgment was properly awarded to a county medical center in plaintiff's negligence action where the medical center was immune from liability under Miss. Code Ann. § 11-46-9(1)(v); there was no evidence that the medical center caused the dangerous condition of a chair-bed that collapsed when plaintiff sat on it. *Hodges v. Madison County Med. Ctr.* 929 So. 2d 381 (Miss. Ct. App. 2006).

Summary judgment was granted to a police officer and a city in a personal injury case arising from an arrest because

the evidence did not show that the officer acted with reckless disregard under *Miss. Code Ann. § 11-46-9(1)(c)*; an arrestee only complained once that handcuffs were too tight, and there was no evidence of medical bills or lost wages. *Bradley v. McAllister*, 929 So. 2d 377 (Miss. Ct. App. 2006).

Mississippi Department of Wildlife, Fisheries, and Parks should have been granted immunity under *Miss. Code Ann. § 11-46-9(1)(v)* because there was insufficient evidence to establish that there was a dangerous condition on the Department's property of which it had constructive notice and time to correct or warn against. There was no evidence that the Department had prior notice of the drop-off where the visitor fell, which the trial court found was covered by leaves and pine straw; there was no evidence that the Department failed to exercise reasonable care in its inspections of the roadways, as a risk management supervisor testified that he inspected the park about a month before the visitor's fall and found no drop-offs that needed to be corrected. *Miss. Dep't of Wildlife, Fisheries & Parks v. Brannon*, 943 So. 2d 53 (Miss. Ct. App. 2006).

Appellate court affirmed the grant of summary judgment in favor of a county in wrongful death action brought by the personal representative of the decedent who was an inmate when he was killed in an accident after having volunteered for garbage detail because *Miss. Code Ann. § 11-46-9(1)(m)* specifically precluded state tort claims by inmates. *Powell v. Clay County Bd. of Supervisors*, 924 So. 2d 523 (Miss. 2006).

Judgment was properly awarded to the Mississippi Transportation Commission (MTC) in plaintiff's negligence action under the Mississippi Tort Claims Act, *Miss. Code Ann. § 11-46-9*, where substantial evidence showed that the MTC had no notice of a defective shoulder, plaintiff produced no evidence showing that the defect was noticeable upon passing, and there was no evidence that any verbal or written complaints were filed prior to plaintiff's collision with another vehicle. *Jones v. Miss. Transp. Comm'n*, 920 So. 2d 516 (Miss. Ct. App. 2006).

Summary judgment was granted in favor of defendant city and police officers in a 42 U.S.C.S. § 1983 suit alleging false arrest and imprisonment, malicious prosecution, and intentional and/or negligent infliction of emotional distress filed by two citizens arrested for an arson/murder but later exonerated; although the officers could have done a more thorough investigation at the scene, they did not act recklessly under *Miss. Code Ann. § 11-46-9(1)(c)*. *Mitchell v. City of Jackson*, 481 F. Supp. 2d 586 (S.D. Miss. 2006).

Where an assistant district attorney was acting in the scope of her employment by providing police with identifying information regarding a person who had committed the crime of false pretenses, even though the information was incorrect, there was no liability under *Miss. Code Ann. § 11-46-9(1)(d)*. *Stewart v. DA*, 923 So. 2d 1017 (Miss. Ct. App. 2005), cert. denied, 927 So. 2d 750 (Miss. 2006).

Bridge contractor was hired by Mississippi Department of Transportation as an independent contractor, and under the language of the contract, said contractor bore responsibility for the signage at the construction site; however, under the Mississippi Torts Claim Act, *Miss. Code Ann. § 11-46-1 et seq.*, MDOT could have still been liable under the narrow exceptions of *Miss. Code Ann. § 11-46-9(1)(p)* and *(v)*, if MDOT had notice of the dangerous condition, and MDOT had adequate opportunity to protect or warn against the dangerous condition; in the latter respect, in the case at bar, MDOT's liability for the lack of warning signs and other measures at the bridge construction site was a question of fact, where it was clear that an MDOT representative made frequent visits to the construction site, and it was clear that at least on one occasion, MDOT requested that the contractor install additional warning devices. *Chisolm v. Miss. DOT*, 942 So. 2d 165 (Miss. Ct. App. 2005).

Under *Miss. Code Ann. § 11-46-9(1)(v)*, the Mississippi Department of Transportation (MDOT) and its employees could not be liable for any claim resulting from a dangerous condition on the State's property if: (1) that condition was not caused by the negligence or wrongful conduct of the employee, or (2) MDOT lacked notice and an adequate opportunity to warn of the dangerous condition. However, in the case at bar, based on testimony of MDOT employees, the appellate court found that there were clearly issues of fact for the jury as far as MDOT's notice of a dangerous condition at the bridge construction site, and MDOT's opportunity to have warned or protected against the condition; thus, in the suit by the heirs of the decedent who was killed at said construction site, summary judgment for the MDOT was improper. *Chisolm v. Miss. DOT*, 942 So. 2d 165 (Miss. Ct. App. 2005).

Mississippi county was fraudulently joined in a suit, arising out of a fatal car accident because: (1) the county did not have any legal responsibility with regard to the posting of a stop sign at the intersection where the accident occurred, (2) *Miss. Code Ann. § 63-3-305* granted discretionary authority to the county to place and maintain traffic control devices upon highways within the county, (3) under *Miss. Code Ann. § 11-46-9(1)(d)*, the county could not be held liable for its

exercise of discretionary power under *Miss. Code Ann. § 63-3-305*, even if an abuse of discretion was shown, and (4) although there was precedent under Mississippi law to hold municipalities liable, either under *Miss. Code Ann. § 11-46-9(1)(b)* or *(1)(w)*, for failing to warn about known dangerous conditions on roads, no reasonable factfinder would find that the motorist who caused the accident was not adequately warned about the approaching intersection. *Dozier v. Hinds County*, 379 F. Supp. 2d 834 (S.D. Miss. 2005).

Trial court had not committed reversible error by failing to find it immune from liability under *Miss. Code Ann. § 11-46-9(1)(c)* because the person who brought a suit against the city and police officers was contemporaneously engaged in criminal activity because the crimes for which he was charged and convicted ceased prior to the delivery of the offensive blows by the officers. His attempt to resist arrest ended, at the latest under the facts of the instant case, when he was handcuffed. *City of Jackson v. Powell*, 917 So. 2d 59 (Miss. 2005).

Although a trial court had not erred when it held that a city was not liable for the acts of two police officers during and after an arrest of an African-American male because the officers had acted beyond the scope of their employment, the court erred when it found the city liable because it had negligently supervised the officers. There was not a scintilla of evidence presented to indicate that the city had any policy which encouraged the type of activity that the officers engaged in and there was no factual support for the factual holding that the city was deliberately indifferent to the rights of African-Americans. *City of Jackson v. Powell*, 917 So. 2d 59 (Miss. 2005).

Appellate court affirmed grant of summary judgment in favor of the county because the testimony of the individual and a third party was sufficient to establish that dense fog was the sole proximate cause of the accident, and thus, the county was entitled to immunity under *Miss. Code Ann. § 11-46-9 (1)(q)*. *Hayes v. Greene County*, 932 So. 2d 831 (Miss. Ct. App. 2005).

Teacher's aide was walking side-by-side with the autistic child when the child had his anxiety attack, and during said anxiety attacks, it was common for the child to become violent with other children and to hit them. During the particular anxiety attack, the child was running into walls and tables, and for those reasons, the aide was required to act quickly in order to prevent the child from hurting himself or others; under those circumstances, the aide took reasonable steps to minimize the risk of harm to the child who suffered bruises during the incident and the child's parents were not entitled to damages on grounds of school district negligence. *Pigford v. Jackson Pub. Sch. Dist.* 910 So. 2d 575 (Miss. Ct. App. 2005), cert. denied, 920 So. 2d 1008 (Miss. 2005).

When a teacher's aide was escorting the autistic child to his classroom, the child became agitated while he aide continued to move him through the hallway. The child suffered bruises as a result of the teacher's aide's fully sensible attempts to restrain him, and no treatment or medication was warranted or prescribed for said bruises; the aide's restraint of the child constituted control and discipline under *Miss. Code Ann. § 37-11-57*, and the circuit court properly applied *Miss. Code Ann. § 11-46-9(1)(x)* in finding that said actions did not constitute wanton and willful conduct to allow the parents to recover damages. *Pigford v. Jackson Pub. Sch. Dist.* 910 So. 2d 575 (Miss. Ct. App. 2005), cert. denied, 920 So. 2d 1008 (Miss. 2005).

Paramedic testified that the "hallmark signs" of a placental abruption, excruciating pain and excessive bleeding, were not present, and both paramedics testified that they did not see blood. The pregnant employee testified that blood was not found because her co-workers had wiped the blood from the floor, but the trial court properly found that since neither paramedic testified that they saw blood, then it could only find such a decision to be discretionary; therefore, given that the employee's condition was abnormal, whether to have treated the situation as a "load and go" required the paramedics to use their own judgment, the trial court correctly deemed the paramedic's decision as discretionary, and it correctly granted the city's motion to dismiss the wrongful death action under *Miss. R. Civ. P. 41(b)*. *Sanders v. Riverboat Corp.* 913 So. 2d 351 (Miss. Ct. App. 2005).

Husband's claims against his employer's personnel officers were properly dismissed because officers, as employees of a state prison, were acting within the scope of their employment when they collected insurance premiums while wife's life insurance application, which was ultimately denied, was pending. *Smith v. Med. Life Ins. Co.* 910 So. 2d 48 (Miss. Ct. App. 2005).

Absent evidence showing otherwise, state environmental agencies and their employee were immune to landowners' claims of tortious interference with contract and business relations concerning the development of protected wetlands that belonged to the landowners. *Dunston v. Miss. Dep't of Marine Res.* 892 So. 2d 837 (Miss. Ct. App. 2005).

Teacher's aide was walking side-by-side with an autistic child when the child had an anxiety attack, and during said

anxiety attacks, it was common for the child to become violent with other children and to hit them. During the particular anxiety attack, the child was running into walls and tables, and for those reasons, the aide was required to act quickly in order to prevent the child from hurting himself or others; under those circumstances, the aide took reasonable steps to minimize the risk of harm to the child who suffered bruises during the incident and the child's parents were not entitled to damages on grounds of school district negligence. *Pigford v. Jackson Pub. Sch. Dist.* 910 So. 2d 575 (Miss. Ct. App. 2005), cert. denied, 920 So. 2d 1008 (Miss. 2005).

In a citizen's excessive force action, substantial evidence supported the circuit court's finding that the city was liable for the citizen's injuries pursuant to Miss. Code Ann. § 11-46-9(1)(c) because the police officers' actions were not reasonable or in good faith, and the citizen was not engaged in criminal conduct at the time of his injuries. The record showed that the citizen had been arrested for resisting arrest and disorderly conduct, was handcuffed and in submission, and that one officer ground the citizen's face into the concrete garage floor, causing his teeth to break. *City of Jackson v. Calcote*, 910 So. 2d 1103 (Miss. Ct. App. 2005).

When a teacher's aide was escorting an autistic child to his classroom, the child became agitated while the aide continued to move him through the hallway. The child suffered bruises as a result of the teacher's aide's fully sensible attempts to restrain him, and no treatment or medication was warranted or prescribed for said bruises; the aide's restraint of the child constituted control and discipline under Miss. Code Ann. § 37-11-57, and the circuit court properly applied Miss. Code Ann. § 11-46-9(1)(x) in finding that said actions did not constitute wanton and willful conduct to allow the parents to recover damages. *Pigford v. Jackson Pub. Sch. Dist.* 910 So. 2d 575 (Miss. Ct. App. 2005), cert. denied, 920 So. 2d 1008 (Miss. 2005).

In a family's suit following a car accident, summary judgment in favor of the department of transportation, the county, and the engineer was proper as the family failed to produce sufficient evidence to establish that the last inspection by the department was negligently performed, or that the county or the engineer negligently inspected and maintained the culvert. *Jenkins v. Miss. DOT*, 904 So. 2d 1207 (Miss. Ct. App. 2004).

Contractor had not presented any evidence that the Mississippi Department of Transportation (MDOT) was entitled to immunity from liability based upon the exemption set forth in Miss. Code Ann. § 11-46-9, and MDOT could not be deemed to have been fraudulently joined in the action based upon an alleged exemption under § 11-46-9. *Johnson v. James Constr. Group, LLC*, 306 F. Supp. 2d 654 (S.D. Miss. 2004).

Dismissal of an inmate's claim against the employees of the Missouri Department of Corrections was proper where the employees were acting within the course and scope of their employment; the inmate's negligence action was barred by the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 et seq., 11-46-9-(1)(m). *Whitt v. Gordon*, 872 So. 2d 71 (Miss. Ct. App. 2004).

Deputy responding to a call from a fellow officer was not speeding and did not sound a siren because the deputy did not want there to be any accidents resulting from motorists coming to an abrupt stop, and while the deputy failed to anticipate that another vehicle might be pulling out from the blind spot in front of the truck in front of the deputy, the deputy's decision to steer around that turning truck did not exhibit a wilful or wanton disregard for the safety of others or a willingness that harm should follow; thus, summary judgment for the county was proper. *Kelley v. Grenada County*, 859 So. 2d 1049 (Miss. Ct. App. 2003).

In a slip and fall case, the trial court erred in not granting the city immunity under Miss. Code Ann. § 11-46-9(1)(v) as the injured patient admitted that the steps and ramp outside the municipal building where he fell were covered with enough snow and ice for anyone to see and that he wasn't paying attention as he left the building holding his money and a receipt. *City of Clinton v. Smith*, 861 So. 2d 323 (Miss. 2003).

In a wrongful death suit, as Miss. Code Ann. § 11-46-9(1)(m) applied to any non-intentional/non-criminal acts alleged to have been committed upon a deceased inmate by a sheriff and/or his deputies while in the course and scope of their employment, the trial court correctly dismissed claims alleging negligent acts by defendants and properly left an assault claim viable; however, it erred by dismissing other counts that alleged intentional criminal acts, as pursuant to Miss. Code Ann. §§ 11-46-5(2), 11-46-7(2), these claims remained viable under the wrongful death statute, Miss. Code Ann. § 11-7-13 (Supp. 2003). *Lee v. Thompson*, 859 So. 2d 981 (Miss. 2003).

Before municipal officials could be found negligent, thereby entitling a plaintiff to recover, the plaintiff had to show the existence of a legal duty owed to him by the municipal officials; any assertion that the municipal officials breached a duty to the decedent because they failed to guarantee his safety and well-being was unrealistic and untenable, given

that the municipal officials were not present when the threat on the decedent's life was made, and the municipal officials, acting in their individual capacity, owed no duty to the decedent. *Dependants of Reid v. City of Canton*, 858 So. 2d 163 (Miss. Ct. App. 2003).

Trial court properly ruled that the Mississippi Department of Transportation (MDOT) was not immune from suit under Miss. Code Ann. § 11-46-9, as it found that, while MDOT's duty to inspect and maintain a highway where plaintiff's accident occurred was discretionary, it failed to exercise a minimum standard of ordinary care when it did not give notice of the dangerous condition of the highway. *Miss. DOT v. Cargile*, 847 So. 2d 258 (Miss. 2003).

Though the Mississippi Department of Transportation was not immune from suit, as the trial court properly found that a five to six inch drop-off on the shoulder of a road was a dangerous condition that was not obvious, which was created by the negligence of the Department and of which the Department knew but failed to warn against, the trial court erred by not assessing some degree of fault to plaintiff driver, who had been obliged to exercise vigilant caution when she learned the road was under construction. *Miss. DOT v. Trosclair*, 851 So. 2d 408 (Miss. Ct. App. 2003).

Where an individual worked for the Mississippi Bureau of Narcotics making drug buys, and was caught in the crossfire between a dealer and a Bureau officer, each factual allegation made by the individual to support the individual's claim of breach of contract amounted to mere negligence; the individual did not claim the Bureau acted with "dishonest purpose or moral obliquity," but claimed the Bureau made a series of bad choices, and that was insufficient on its face to constitute a breach of an implied covenant of good faith and fair dealing. *Lippincott v. Miss. Bureau of Narcotics*, 856 So. 2d 465 (Miss. Ct. App. 2003).

Where an individual worked for the Mississippi Bureau of Narcotics making drug buys, and was caught in the crossfire between a dealer and a Bureau officer, all the individual was able to show with regard to his negligence claim, was that the Bureau and its agents made a series of challengeable choices, from the level of training before sending an officer on a drug buy, to the directions given that officer; bad judgment, however, was insufficient for liability where the individual offered no evidence to meet the evidentiary burden of the reckless disregard standard. *Lippincott v. Miss. Bureau of Narcotics*, 856 So. 2d 465 (Miss. Ct. App. 2003).

Parolee fell under Miss. Code Ann. § 47-7-71(1) of the Uniform Act for Out-of-State Parolee Supervision because the parolee's parents lived in the state and the parolee indicated that parolee had a job in the state, and thus the State's acceptance of the parolee under the Act was proper and mandatory; because there was nothing in the Act or the state corrections department regulations that required a field officer to revoke one's parole, the officer's decision not to revoke the parole after the parolee failed to timely report was an exercise of discretion, and because (1) there was no evidence of a gross, reckless, or wanton failure in the State's supervision of the parolee, and (2) there was no sufficient causal connection or element of foreseeability between the alleged violated statutory duty and the injuries sustained by the victim when raped by a parolee, the State maintained the benefit of immunity under Miss. Code Ann. § 11-46-9(1) of the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 et seq., and the State was properly granted summary judgment in the victim's action for damages. *Connell v. State*, 841 So. 2d 1127 (Miss. 2003).

Victim's one-year window under Miss. Code Ann. § 11-46-11(3) of the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 to et seq., to file a notice of claim against the State for damages related to the victim's rape by a parolee did not begin to run until the day the victim was raped, and the victim's notice of claim and complaint were timely filed, although the court ultimately found the State immune from liability under Miss. Code Ann. § 11-46-9(1). *Connell v. State*, 841 So. 2d 1127 (Miss. 2003).

City was liable for the wrongful death of a driver under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 et seq., because several officers acted in reckless disregard of the safety of the driver when they initiated a police chase in violation of department policy. *City of Jackson v. Brister*, 838 So. 2d 274 (Miss. 2003).

Where driver merely alleged a police officer negligently collided with her vehicle, it was insufficient to defeat an immunity-based defense on summary judgment under Mississippi tort claims act because the driver failed to prove the act was willful or wanton or otherwise exhibited a reckless disregard for the safety and well being of others. *Bonner v. McCormick*, 827 So. 2d 39 (Miss. Ct. App. 2002).

In an action arising from an injury sustained by the plaintiff when a fight broke out at a high school basketball game, remand to the trial court was necessary because the trial court made no reference to ordinary care in its findings of fact and conclusions of law as to whether the defendant school district was immune from liability. *Pearl Pub. Sch. Dist. v. Groner*, 784 So. 2d 911 (Miss. 2001).

The defendant city and police officers were immune from liability for injuries sustained by the plaintiff when he lost control of his vehicle while being pursued by police officers for traffic violations since it did not appear that the officers intentionally chased after the plaintiff in such a way as to frighten him and cause him to wreck his vehicle and since the plaintiff was engaged in criminal activity at the time of his accident, based on his possible speeding, his failure to yield to the blue lights, and his driving with a suspended license. *Topps v. City of Hollandale*, -- F. Supp. 2d -- (N.D. Miss. June 30, 2000).

A county may be held liable under subsection (1)(h) for damages for issuing a permit to perform work when it knows that the applicant who proposes to do the work is not duly licensed to perform the work in question since such conduct is arbitrary and capricious conduct violative of a statutory mandate. *Lowe v. Lowndes County Bldg. Inspection Dep't*, 760 So. 2d 711 (Miss. 2000).

A police officer who was struck by an automobile while riding a motorcycle and leading a funeral procession was barred from bringing suit against the defendant city and the defendant automobile driver (who was another police officer) as he was employed by a governmental entity and received worker's compensation benefits provided by that entity. *Leslie v. City of Biloxi*, 758 So. 2d 430 (Miss. 2000).

Sovereign immunity was not an absolute bar to an action against a defendant school district for failing to act after a student told a teacher of a threat by another student; public schools have a ministerial responsibility to insure a safe school environment under § 37-9-69 and should take reasonable steps to minimize risks to students. *L.W. v. McComb Separate Mun. Sch. Dist.*, 1999 Miss. LEXIS 128 (Miss. Mar. 31, 1999), subst. op., 754 So. 2d 1136 (Miss. 1999).

The purchase of insurance by a school district under § 11-46-17(4) does not limit the exclusions or exemptions enumerated in this section. *L.W. v. McComb Separate Mun. Sch. Dist.* 754 So. 2d 1136 (Miss. 1999).

#### ATTORNEY GENERAL OPINIONS

Municipality does not have authority to waive immunity set forth in Section 11-46-1, et seq., by agreeing to indemnify railroad for claims; municipality does not have authority to agree to indemnify railroad for losses relating to use of license or arising from same location; city has authority to maintain shrubbery and vegetation on municipal property, but does not have authority to maintain shrubbery and vegetation on private property, such as railroad right-of-way. Scott Nov. 3, 1993, A.G. Op. #93-0727.

Members of Foster Care Review Board enjoy public official immunity for any of their acts arising out of and within course and scope of their duties on Board pursuant to Section 11-46-9 provided that conduct does not constitute fraud, malice, libel, slander, defamation or criminal offense. Tardy, Jan. 5, 1994, A.G. Op. #93-0972.

Section 11-46-9 would bar payment of damages to property seized unless the detention of the property was arbitrary or capricious. In addition, there is a one year statute of limitations under Section 11-46-11. Walters, March 29, 1996, A.G. Op. #96-0146.

Section 11-46-9(1) provides that a governmental entity and its employees shall not be liable for any claim "arising out of any work performed by a person convicted of a crime when the work is performed pursuant to any sentence or order of any court or pursuant to laws of the State of Mississippi authorizing or requiring such work." An adjudication of delinquency by the Youth Court might not rise to the level of a criminal conviction. Trapp, July 8, 1996, A.G. Op. #96-0398.

Municipalities may insure themselves only for claims for which they are liable; the police and fire protection exemption specifically bars claims against municipalities and the city of Jackson may not gratuitously provide coverage. Tedder, March 13, 1998, A.G. Op. #98-0133.

If the Mississippi Department of Transportation denies an access permit to a state highway under its police power and the denial effectively prohibits ingress and egress to the individual requesting the permit, an aggrieved individual may seek judicial review of the denial of the permit; however, absent malicious, arbitrary, or capricious conduct, the denial of a permit is a legitimate exercise of police power by the Mississippi Department of Transportation. Brown, Mar. 22, 2002, A.G. Op. #02-0121.

Damages will not ordinarily lie against the Mississippi Department of Transportation or their employees for the denial of a permit for ingress and egress in cases to a state highway where there is no pre-existing right. Brown, Mar. 22, 2002, A.G. Op. #02-0121.

Employees acting within the scope and course of their employment are covered by the Tort Claims Act for breaches

of fiduciary or administrative duties sounding in tort that are discretionary in nature; the same is not true regarding ministerial acts. *Matthews*, Dec. 6, 2002, A.G. Op. #02-0686.

ALR. Liability of municipal corporation or other governmental entity for injury or death caused by action or inaction of off-duty police officer. 36 A.L.R.5th 1.

Sufficiency of notice of claim against local governmental unit as regards identity, name, address, and residence of claimant. 53 A.L.R.5th 617.

Liability of municipality or other governmental unit for failure to provide police protection from crime. 90 A.L.R.5th 273.

Claims arising from governmental conduct causing damage to plaintiff's real property as within discretionary function exception of federal tort claims act (28 U.S.C.A. § 2680(a)). 167 A.L.R. Fed. 1.

Liability of United States for failure to warn of danger or hazard not directly created by act or omission of federal government and not in national parks as affected by "discretionary function or duty" exception to Federal Tort Claims Act. 169 A.L.R. Fed. 421.

Liability of United States for failure to warn of danger or hazard resulting from governmental act or omission as affected by "discretionary function or duty" exception to Federal Tort Claims Act (28 U.S.C.A. § 2680(a)). 170 A.L.R. Fed. 365.

Liability of United States for failure to warn local police or individuals of discharge, release, or escape of person who is deemed dangerous to public as affected by "discretionary act or duty" exception to Federal Tort Claims Act. 171 A.L.R. Fed. 655.

Claims arising from conduct of governmental employer in administering or failing to administer medical care as within discretionary function exception of Federal Tort Claims Act (28 U.S.C.A. § 2680(a)). 172 A.L.R. Fed. 407.

Liability of United States, under Federal Tort Claims Act (28 U.S.C.A. §/ 1346, 2680), for damages caused by ingestion or administration of government-approved drugs, vaccines, and medications. 173 A.L.R. Fed. 431.

Construction and application of Federal Tort Claims Act (FTCA) exception in 28 U.S.C.A. § 3680(c), concerning claims arising in respect of assessment or collection of any tax or customs duty, or detention of goods or merchandise by any officer of customs or excise or any other law-enforcement officer. 173 A.L.R. Fed. 465.

AM JUR. 2A Am. Jur. Pl & Pr Forms (Rev), Assault and Battery, Form 72.1 (Complaint, petition, or declaration-Assault and battery -- Plaintiff shot by police officer during arrest).

19A Am. Jur. Pl & Pr Forms (Rev), Penal and Correctional Institutions, Form 5.1 (Complaint, petition, or declaration -- Against municipal corporation -- Failure to prevent suicide of jail inmate -- Survival and wrongful death action).

41 Am. Jur. Trials 1, Social Worker Malpractice for Failure to Protect Foster Children.

LAW REVIEWS. 1985 Mississippi Supreme Court Review -- Administrative Law. 55 *Miss. L. J.* 735, December 1985.

The History and Future of Sovereign Immunity for Mississippi School Districts. 58 *Miss. L. J.* 275, Fall 1988.

1984 Mississippi Supreme Court Review: Civil Procedure. 55 *Miss. L. J.* 49, March, 1985.

Caught in the Crossfire: Employers' Liability for Workplace Violence, 70 *Miss. L.J.* 505 (2000).

Litigation in Mississippi Today: A Symposium: Comment: Mississippi Tort Claims Act: Is Discretionary Immunity Useless?, 71 *Miss. L.J.* 695, Winter, 2002.

# APPENDIX “C”

CHAPTER 495  
SENATE BILL NO. 2441

AN ACT TO PROVIDE THAT THE STATE AND ITS POLITICAL SUBDIVISIONS SHALL BE IMMUNE FROM LIABILITY AND SUIT FOR THEIR TORTS AND THE TORTS OF THEIR EMPLOYEES; TO PROVIDE THAT SUCH IMMUNITY SHALL BE WAIVED UNDER CERTAIN CIRCUMSTANCES; TO PROVIDE CERTAIN EXCLUSIONS FROM LIABILITY UNDER THIS ACT; TO PROVIDE THAT ANY PERSON HAVING A CLAIM FOR INJURY ARISING UNDER THE PROVISIONS OF THIS ACT SHALL PROCEED AS HE MIGHT IN ANY ACTION AT LAW OR IN EQUITY; TO PROVIDE A TWO-YEAR STATUTE OF LIMITATION FOR ANY ACTION COMMENCED UNDER THE PROVISIONS OF THIS ACT; TO PROVIDE FOR THE JURISDICTION AND VENUE IN SUITS UNDER THIS ACT; TO LIMIT THE AMOUNT OF DAMAGES WHICH MAY BE RECOVERED UNDER THIS ACT; TO CREATE A FUND IN THE STATE TREASURY FOR THE PURCHASE OF LIABILITY INSURANCE AND THE PAYMENT OF CLAIMS AGAINST GOVERNMENTAL ENTITIES; TO PROVIDE THAT THE STATE FISCAL MANAGEMENT BOARD SHALL PROCURE AND ADMINISTER A COMPREHENSIVE PLAN OF LIABILITY INSURANCE FOR THE STATE AND FOR POLITICAL SUBDIVISIONS WHICH WISH TO PARTICIPATE THEREIN; TO REQUIRE POLITICAL SUBDIVISIONS THAT DO NOT PARTICIPATE IN SUCH PLANS TO OBTAIN SUCH INSURANCE AND/OR ESTABLISH SUCH RESERVES AS MAY BE NECESSARY TO COVER ALL RISKS THAT SUCH SUBDIVISIONS MAY BE LIABLE FOR UNDER THE PROVISIONS OF THIS ACT; TO REQUIRE THE STATE FISCAL MANAGEMENT BOARD TO ISSUE CERTIFICATES OF COVERAGE TO POLITICAL ENTITIES THAT PARTICIPATE IN SUCH PLAN OR OBTAIN ADEQUATE COVERAGE; TO PRESCRIBE CERTAIN OTHER POWERS AND DUTIES OF THE STATE FISCAL MANAGEMENT BOARD UNDER THE PROVISIONS OF THIS ACT; TO REQUIRE THAT MONEY IN THE "ACCIDENT CONTINGENT FUND" OF THE STATE TREASURY BE TRANSFERRED TO THE "TORT CLAIMS FUND" CREATED UNDER THIS ACT; TO AMEND SECTIONS 19-5-99, 21-27-17, 21-37-37, 41-19-33, 41-29-108, 41-55-5, 41-61-7, 43-27-10, 47-5-75, 49-19-117, 55-9-89, 57-13-5, 57-32-5, 59-5-37, 59-17-31, 61-1-13, 61-3-15, 61-3-83, 61-13-13, 65-1-8, 65-1-91 AND 77-5-725, MISSISSIPPI CODE OF 1972, IN CONFORMITY WITH THE PROVISIONS OF THIS ACT; TO REPEAL SECTIONS 19-7-8, 37-7-304, 37-29-83, 41-13-11, 41-55-11 AND 51-15-120, MISSISSIPPI CODE OF 1972, WHICH AUTHORIZE CERTAIN POLITICAL SUBDIVISIONS TO PURCHASE AND OBTAIN LIABILITY INSURANCE FOR CLAIMS MADE OR SUITS FILED AGAINST SUCH GOVERNMENTAL ENTITIES OR ITS EMPLOYEES; TO REPEAL SECTIONS 37-41-37, 37-41-39 AND 37-41-41, MISSISSIPPI CODE OF 1972, WHICH AUTHORIZE SUITS FOR DAMAGES ARISING OUT OF THE OPERATION OF SCHOOL BUSES, PROVIDE FOR AN "ACCIDENT CONTINGENT FUND" AND PROVIDE FOR THE PAYMENT OF CLAIMS AND COMPENSATION IN SUCH ACTIONS; TO REPEAL SECTIONS 41-13-101, 41-13-103, 41-13-105 AND 41-13-107, MISSISSIPPI CODE OF 1972, WHICH AUTHORIZE THE ESTABLISHMENT OF TRUSTS FOR THE PAYMENT OF CLAIMS AGAINST CERTAIN HOSPITALS; TO REPEAL SECTION 45-1-19, MISSISSIPPI CODE OF 1972, WHICH ALLOWS CERTAIN STATE AGENCIES TO PURCHASE LIABILITY INSURANCE; TO AMEND SECTION 2, CHAPTER 528, LAWS OF 1983, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

*Be it enacted by the Legislature of the State of Mississippi:*

SECTION 1. As used in this act the following terms shall have the meanings herein ascribed unless the context otherwise requires:

- (a) "Claim" means any demand to recover damages from a governmental entity as compensation for injuries.
- (b) "Board" means the State Fiscal Management Board.
- (c) "Employee" means any officer, employee or servant of the State of Mississippi or a political subdivision of the state, including elected or appointed officials and persons acting on behalf of the state or a political subdivision in any official capacity, temporarily or permanently, in the service of the state or a political subdivision whether with or without compensation. The term "employee" shall not mean a

person or other legal entity while acting in the capacity of an independent contractor under contract to the state or a political subdivision.

(d) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(e) "Injury" means death, injury to a person, damage to or loss of property or any other injury that a person may suffer that is actionable at law or in equity.

(f) "Political subdivision" means any body politic or body corporate other than the state responsible for governmental activities only in geographic areas smaller than that of the state, including any county, municipality, school district, airport authority or other instrumentality thereof, whether or not such body or instrumentality thereof has the authority to levy taxes or to sue or be sued in its own name.

(g) "State" means the State of Mississippi and any office, department, agency, division, bureau, commission, board, institution, hospital, college, university, airport authority or other instrumentality thereof, whether or not such body or instrumentality thereof has the authority to levy taxes or to sue or be sued in its own name.

SECTION 2. The Legislature of the State of Mississippi finds and determines as a matter of public policy and does hereby declare that from and after July 1, 1985, the "state" and, from and after October 1, 1985, its "political subdivisions," as such terms are defined in Section 1 of this act, shall not be liable and shall be immune from suit at law or in equity on account of any wrongful or tortious act or omission, including libel, slander or defamation, by the state or its political subdivisions, or any such act or omission by any employee of the state or its political subdivisions, notwithstanding that any such act or omission constitutes or may be considered as the exercise or failure to exercise any duty, obligation or function of a governmental, proprietary, discretionary or ministerial nature and notwithstanding that such act or omission may or may not arise out of any activity, transaction or service for which any fee, charge, cost or other consideration was received or expected to be received in exchange therefor.

SECTION 3. (1) Notwithstanding the immunity granted in Section 2 of this act, or the provisions of any other law to the contrary, the immunity of the state and its political subdivisions from claims for money damages arising out of the torts of such governmental entities and the torts of their employees while acting within the course and scope of their employment is hereby waived from and after July 1, 1985, as to the state, and from and after October 1, 1985, as to political subdivisions; provided, however, immunity of a governmental entity in any such case shall be waived only to the extent of the maximum amount of liability provided for in Section 9 of this act.

(2) For the purposes of this act an employee shall not be considered as acting within the course and scope of his employment and a governmental entity shall not be liable or be considered to have waived immunity for any conduct of its employee if the employee's conduct constituted fraud, malice, libel, slander, defamation or any criminal offense other than traffic violations.

(3) For the purposes of this act and not otherwise, it shall be a rebuttable presumption that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment.

(4) Nothing contained in this act shall be construed to waive the immunity of the state from suit in federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States.

SECTION 4. This act shall apply only to claims that accrue on or after July 1, 1985, as to the state, and on or after October 1, 1985, as to political subdivisions. Claims that accrue prior to July 1, 1985, as to the state or, prior to October 1, 1985, as to political subdivisions, shall not be affected by this act but shall continue to be governed by the case law governing sovereign immunity as it existed immediately prior to the decision in the case of *Pruett v. City of Rosedale*, 421 So. 2d 1046, and by the statutory law governing sovereign immunity existing prior to July 1, 1985.

SECTION 5. (1) The remedy provided by this act against a governmental entity is, from and after July 1, 1985, as to the state, and, from and after October 1, 1985, as to political subdivisions, exclusive of any other civil action or civil proceeding by reason of the same subject matter against the governmental entity for the act or omission which gave rise to the claim or suit; and any claim made or suit filed against a governmental entity to recover damages for any injury for which immunity has been waived under this act shall be brought only under the provisions of this act, notwithstanding the provisions of any other law to the contrary.

(2) Nothing in this act shall enlarge, diminish or otherwise affect the personal liability of an employee of a governmental entity. Any immunity or other bar to a civil suit under Mississippi or federal law shall remain in effect.

SECTION 6. A governmental entity shall not be liable for any claim:

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

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

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

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

(e) Which is limited or barred by the provisions of any other law;

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

(g) Arising out of the issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order, or similar authorization where the governmental entity or its employee is authorized by law to determine whether or not such authorization should be issued, denied, suspended or revoked unless such issuance, denial, suspension or revocation, or failure or refusal thereof, is of a malicious or arbitrary and capricious nature;

(h) Arising out of the assessment or collection of any tax or fee;

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

(j) Arising out of the imposition or establishment of a quarantine, whether such quarantine relates to persons or property;

(k) Of any claimant who is an employee of a governmental entity and whose injury is covered by the Workmen's Compensation Law of this state by benefits furnished by the governmental entity by which he is employed;

(l) Under circumstances where liability has been or is hereafter assumed by the United States, to the extent of such assumption of liability, including but not limited to any claim based on activities of the Mississippi National Guard when such claim is cognizable under the National Guard Tort Claims Act of the United States, 32 USC 715, or when such claim accrues as a result of active federal service or state service at the call of the Governor for quelling riots and civil disturbances;

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

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

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

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

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

(r) Arising out of or resulting from riots, unlawful assemblies, unlawful public demonstrations, mob violence or civil disturbances; or

(s) Arising out of an injury caused by a dangerous condition on property of the governmental entity that was not caused by the negligent or other wrongful conduct of an employee of the governmental entity or of which the governmental entity did not have notice, either actual or constructive, and adequate opportunity to protect or warn against; provided, however, that a governmental entity shall not be liable for the failure to warn of a dangerous condition which is obvious to one exercising due care.

SECTION 7. (1) Any person having a claim for injury arising under the provisions of this act against a governmental entity shall proceed as he might in any action at law or in equity.

(2) All actions brought under the provisions of this act shall be commenced within two (2) years next after the cause of such action accrued, and not after.

SECTION 8. (1) Jurisdiction for any suit filed under the provisions of this act shall be in the court having original or concurrent jurisdiction over a cause of action upon which the claim is based. Appeals may be taken in the manner provided by law.

(2) The venue for any suit filed under the provisions of this act against the state shall be in the county in which the cause of action arose, or in Hinds County. The venue for all other suits filed under the provisions of this act shall be in the county in which the principal offices of the governing body of the political subdivision are located.

SECTION 9. (1) In any claim or suit for damages against a governmental entity brought under the provisions of this act, the liability shall not exceed the sum of Five Hundred Thousand Dollars (\$500,000.00) for all claims arising out of a single occurrence for all damages permitted under this act.

(2) No judgment against a governmental entity for any act or omission for which immunity is waived under this act shall include an award for exemplary or punitive damages or for interest prior to judgment, or an award of attorney's fees unless attorney's fees are specifically authorized by law.

(3) Except as otherwise provided in Section 10(4) of this act, in any suit brought under the provisions of this act, if the verdict which is returned, when added to costs and any attorney's fees authorized by law, would exceed the maximum dollar amount of liability provided in subsection (1) of this section, the court shall reduce the verdict accordingly and enter judgment in an amount not to exceed the maximum dollar amount of liability provided in subsection (1) of this section.

SECTION 10. (1) There is hereby created in the State Treasury a special fund to be known as the "Tort Claims Fund."

All such monies as the State Fiscal Management Board shall receive and collect under the provisions of subsection (2) of this section and all such funds as the Legislature may appropriate for use by the board in administering the provisions of this act shall be deposited in such fund. All monies in the fund may be expended by the board for any and all purposes for which the board is authorized to expend funds under the provisions of this act.

(2) From and after July 1, 1985, each governmental entity of the state other than the political subdivisions thereof, and each political subdivision of the state which shall desire to do so, shall participate in a comprehensive plan of one or more policies of liability insurance procured and administered by the State Fiscal Management Board, such plan to provide coverage to each of such governmental entities for every risk for which the board determines the respective governmental entities to be liable in the event of a claim or suit for injuries under the provisions of this act, including claims or suits for injuries from the use or operation of motor vehicles. Each governmental entity participating in the plan shall make payments to the board in such amounts, times and manner as shall be determined by the board as the board deems necessary to provide sufficient funds to be available for payment by the board of such costs as it incurs in providing coverage for the governmental entity. Each governmental entity of the state other than the political subdivisions thereof, and each political subdivision participating in the plan procured by the board shall be issued by the board a certificate of coverage whose form and content shall be determined by the board but which shall have the effect of certifying that in the opinion of the board each of such governmental entities is insured against all risks of claims and suits for which the governmental entity may be liable under this act.

(3) Any political subdivision which elects not to participate in the plan as provided in subsection (2) of this section shall, from and after October 1, 1985, obtain such insurance, establish such reserves or provide a combination of such insurance and reserves as necessary to cover all risks of claims and suits for which the political subdivisions may be liable under this act. All such plans or policies of insurance and/or reserves shall be submitted for approval to the State Fiscal Management Board. The board shall issue a certificate of coverage to each political subdivision whose plan of

insurance or reserves it approves in the same manner as provided in subsection (2) of this section. Whenever any political subdivision fails to obtain the board's approval of any plan of insurance or reserve, the political subdivision shall act in accordance with the rules and regulations of the board and either obtain a satisfactory plan of insurance or reserve to be approved by the board or become a participant in the plan provided by the board as provided by subsection (2) of this section.

(4) Any governmental entity of the state may purchase liability insurance to cover claims in excess of the amounts provided for in Section 9 of this act, and may be sued by anyone in excess of the amounts provided for in Section 9 of this act to the extent of such excess insurance carried; provided, however, that the immunity from suit above the amounts provided for in Section 9 of this act shall be waived only to the extent of such excess liability insurance carried.

SECTION 11. (1) In addition to such powers and duties as are otherwise provided by law, the State Fiscal Management Board shall have the following powers and duties:

(a) To contract, as may be necessary, with one or more reputable insurance consulting firms to develop and implement a comprehensive insurance plan to cover all risks against claims and suits which may be brought against a governmental entity under this act;

(b) To purchase and administer any plan or policies of liability insurance required for the protection of governmental entities against claims and suits brought under this act;

(c) To expend money from the Tort Claims Fund for the purchase of any plan or policy of liability insurance and the payment of any claim made pursuant to the provisions of this act;

(d) To cancel, modify or replace any plan or policy of liability insurance procured by the board;

(e) To issue certificates of coverage to governmental entities, including any political subdivision participating in any plan or policies of liability insurance procured or approved by the board;

(f) To review and approve or reject all plans of insurance and/or reserves proposed or provided by political subdivisions in lieu of their participation in any plan of insurance procured by the State Fiscal Management Board if such plans or reserves are intended to serve as security for all risks of claims and suits against them for which immunity has been waived under this act; and

(g) To adopt and promulgate such reasonable rules and regulations and to do and perform all such acts as are necessary to carry out their powers and duties under this act.

(2) The State Fiscal Management Board shall purchase such plans or policies of liability insurance that are required for the protection of governmental entities against claims and suits brought under this act, pursuant to the competitive bidding procedures set forth in Section 31-7-13.

(3) In order to aid in seeking the lowest possible cost to the governmental entities, the State Fiscal Management Board shall conduct a survey of political subdivisions to determine those that might be interested in participating in the comprehensive plan of one or more policies of liability insurance established pursuant to Section 10(2) of this act.

# APPENDIX “D”

suffered from or was treated for during the period of service from October 1, 1961, through August 15, 1962.

(3) Within forty-five (45) days of receipt of an application from any person under subsection (2) of this section, the Adjutant General shall complete a review of all medical records of such person on file with the Mississippi National Guard. If the Adjutant General, following such review, finds that the medical records of such person are not accurate or do not properly reflect that such person served during the period of October 1, 1961, through August 15, 1962, as evidenced by affidavits, statements and the person's application file in his office, he shall order that the medical records of such person be amended by the appropriate military record agency so as to properly reflect all illnesses and injuries that the person suffered and was treated for during the period of time he served on active duty with the 1065th Transportation Company of the Mississippi Army National Guard.

(4) Any person whose medical records are reconstructed or amended under subsection (3) of this section shall be entitled to require copies of such records to be provided to any federal or state agency for the purpose of determining if the person qualifies for veterans' benefits.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: May 11, 1992

#### CHAPTER NO. 491 SENATE BILL NUMBER 2009

AN ACT TO AMEND SECTION 11-46-13, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE JUDGE OF THE APPROPRIATE COURT SHALL HEAR AND DETERMINE, WITHOUT A JURY, SUITS BROUGHT AGAINST THE STATE OR ITS POLITICAL SUBDIVISIONS PURSUANT TO SECTIONS 11-46-1 THROUGH 11-46-21, MISSISSIPPI CODE OF 1972; TO AMEND SECTION 11-46-15, MISSISSIPPI CODE OF 1972, TO REVISE THE NUMBER OF YEARS DURING WHICH CERTAIN LIMITATIONS ON THE AMOUNT OF DAMAGES THAT MAY BE AWARDED IN SUITS AGAINST THE STATE OR ITS POLITICAL SUBDIVISION AFTER SOVEREIGN IMMUNITY IS WAIVED; TO AMEND SECTIONS 11-46-3, 11-46-5, 11-46-6, 11-46-7, 11-46-15, 11-46-17 AND 11-46-21, MISSISSIPPI CODE OF 1972, TO EXTEND UNTIL JULY 1, 1993, FOR THE STATE, AND UNTIL OCTOBER 1, 1993, FOR POLITICAL SUBDIVISIONS OF THE STATE, THE DATE UPON WHICH THE IMMUNITY OF SUCH GOVERNMENTAL ENTITIES SHALL BE WAIVED IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 46, TITLE 11, MISSISSIPPI CODE OF 1972; TO AMEND SECTION 11-46-16, MISSISSIPPI CODE OF 1972, TO EXTEND UNTIL JULY 1, 1993, AS TO THE STATE, AND UNTIL OCTOBER 1, 1993, AS TO POLITICAL SUBDIVISIONS, THE PROVISIONS WHICH PROVIDE THAT THE IMMUNITY OF ANY GOVERNMENTAL ENTITY SHALL BE WAIVED TO THE EXTENT OF LIABILITY INSURANCE IN EFFECT; TO AMEND SECTIONS 19-5-99, 19-7-8, 21-15-6, 21-27-17, 21-37-37, 37-7-304, 37-7-319, 37-29-83, 37-29-85, 37-41-37, 37-41-39, 37-41-41, 41-13-11, 41-19-33, 41-29-108, 41-55-5, 41-55-11, 41-59-5, 41-61-83, 43-27-10, 45-1-19, 47-5-75, 49-1-80, 49-4-33, 49-19-117, 51-15-120, 55-9-89, 57-32-5, 59-5-37, 59-17-31, 61-1-13, 61-3-15, 61-3-83, 61-5-47, 61-13-13, 65-1-8, 65-1-91, 71-3-5 AND 77-5-725, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

*Be it enacted by the Legislature of the State of Mississippi:*

SECTION 1. Section 11-46-13, Mississippi Code of 1972, is amended as follows:

11-46-13. (1) Jurisdiction for any suit filed under the provisions of this chapter shall be in the court having original or concurrent jurisdiction over a cause of action upon which the claim is based. The judge of the appropriate court shall hear and determine,

without a jury, any suit filed under the provisions of this chapter. Appeals may be taken in the manner provided by law.

(2) The venue for any suit filed under the provisions of this chapter against the state or its employees shall be in the county in which the cause of action arose, or in Hinds County. The venue for all other suits filed under the provisions of this chapter shall be in the county in which the principal offices of the governing body of the political subdivision are located.

SECTION 2. Section 11-46-15, Mississippi Code of 1972, is amended as follows:

11-46-15. (1) In any claim or suit for damages against a governmental entity or its employee brought under the provisions of this chapter, the liability shall not exceed the following for all claims arising out of a single occurrence for all damages permitted under this chapter:

(a) For claims or causes of action arising from acts or omissions occurring on or after July 1, 1993, but before July 1, 1997, the sum of Fifty Thousand Dollars (\$50,000.00);

(b) For claims or causes of action arising from acts or omissions occurring on or after July 1, 1997, but before July 1, 2001, the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00);

(c) For claims or causes of action arising from acts or omissions occurring on or after July 1, 2001, the sum of Five Hundred Thousand Dollars (\$500,000.00).

(2) No judgment against a governmental entity or its employee for any act or omission for which immunity is waived under this chapter shall include an award for exemplary or punitive damages or for interest prior to judgment, or an award of attorney's fees unless attorney's fees are specifically authorized by law.

(3) Except as otherwise provided in Section 11-46-17(4), in any suit brought under the provisions of this chapter, if the verdict which is returned, when added to costs and any attorney's fees authorized by law, would exceed the maximum dollar amount of liability provided in subsection (1) of this section, the court shall reduce the verdict accordingly and enter judgment in an amount not to exceed the maximum dollar amount of liability provided in subsection (1) of this section.

SECTION 3. Section 11-46-3, Mississippi Code of 1972, is amended as follows:

11-46-3. The Legislature of the State of Mississippi finds and determines as a matter of public policy and does hereby declare that from and after July 1, 1993, the "state" and, from and after October 1, 1993, its "political subdivisions," as such terms are defined in Section 11-46-1, shall not be liable and shall be immune from suit at law or in equity on account of any wrongful or tortious act or omission, including libel, slander or defamation, by the state or its political subdivisions, or any such act or omission by any employee of the state or its political subdivisions, notwithstanding that any such act or omission constitutes or may be considered as the exercise or failure to exercise any duty, obligation or function of a governmental, proprietary, discretionary or ministerial nature and notwithstanding that such act or omission may or may not arise out of any activity, transaction or service for which any fee, charge, cost or other consideration was received or expected to be received in exchange therefor.

SECTION 4. Section 11-46-5, Mississippi Code of 1972, is amended as follows:

11-46-5. (1) Notwithstanding the immunity granted in Section 11-46-3, or the provisions of any other law to the contrary, the immunity of the state and its political subdivisions from claims for money damages arising out of the torts of such governmental entities and the torts of their employees while acting within the course and scope of their employment is hereby waived from and after July 1, 1993, as to the state, and from and after October 1, 1993, as to political subdivisions; provided, however, immunity of a governmental entity in any such case shall be waived only to the extent of the maximum amount of liability provided for in Section 11-46-15.

(2) For the purposes of this chapter an employee shall not be considered as acting within the course and scope of his employment and a governmental entity shall not be liable or be considered to have waived immunity for any conduct of its employee if the employee's conduct constituted fraud, malice, libel, slander, defamation or any criminal offense other than traffic violations.

(3) For the purposes of this chapter and not otherwise, it shall be a rebuttable presumption that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment.

(4) Nothing contained in this chapter shall be construed to waive the immunity of the state from suit in federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States.

SECTION 5. Section 11-46-6, Mississippi Code of 1972, is amended as follows:

11-46-6. This chapter shall apply only to claims or causes of action arising from acts or omissions occurring on or after July 1, 1993, as to the state, and on or after October 1, 1993, as to political subdivisions. Claims or causes of action arising from acts or omissions occurring prior to July 1, 1993, as to the state, or prior to October 1, 1993, as to political subdivisions, shall not be affected by this chapter but shall continue to be governed by the case law governing sovereign immunity as it existed immediately prior to the decision in the case of *Pruett v. City of Rosedale*, 421 So.2d 1046, and by the statutory law governing sovereign immunity in effect from and after the passage of Chapter 474, Laws of 1985.

SECTION 6. Section 11-46-7, Mississippi Code of 1972, is amended as follows:

11-46-7. (1) The remedy provided by this chapter against a governmental entity or its employee is, from and after July 1, 1993, as to the state, and, from and after October 1, 1993, as to political subdivisions, exclusive of any other civil action or civil proceeding by reason of the same subject matter against the governmental entity or its employee or the estate of the employee for the act or omission which gave rise to the claim or suit; and any claim made or suit filed against a governmental entity or its employee to recover damages for any injury for which immunity has been waived under this chapter shall be brought only under the provisions of this chapter, notwithstanding the provisions of any other law to the contrary.

(2) From and after July 1, 1993, as to the state, and from and after October 1, 1993, as to political subdivisions, an employee may be joined in an action against a governmental entity in a representative capacity if the act or omission complained of is one for which the governmental entity may be liable, but no employee shall be held personally liable for acts or omissions occurring within the course and scope of the employee's duties. For the purposes of this chapter an employee shall not be considered as acting within the course and scope of his employment and a governmental entity shall not be liable or be considered to have waived immunity for any conduct of its employee if the

employee's conduct constituted fraud, malice, libel, slander, defamation or any criminal offense.

(3) From and after July 1, 1993, as to the state, from and after October 1, 1993, as to political subdivisions, and subject to the provisions of this chapter, every governmental entity shall be responsible for providing a defense to its employees and for the payment of any judgment in any civil action or the settlement of any claim against an employee for money damages arising out of any act or omission within the course and scope of his employment; provided, however, that to the extent that a governmental entity has in effect a valid and current certificate of coverage issued by the Department of Finance and Administration as provided in Section 11-46-17, or in the case of a political subdivision not participating in the plan provided by the board, such political subdivision has a plan or policy of insurance and/or reserves which the department has approved as providing satisfactory security for the defense and protection of the political subdivision against all claims and suits for injury for which immunity has been waived under this chapter, the governmental entity's duty to indemnify and/or defend such claim on behalf of its employee shall be secondary to the obligation of any such insurer or indemnitor, whose obligation shall be primary. The provisions of this subsection shall not be construed to alter or relieve any such indemnitor or insurer of any legal obligation to such employee or to any governmental entity vicariously liable on account of or legally responsible for damages due to the allegedly wrongful error, omissions, conduct, act or deed of such employee.

(4) The responsibility of a governmental entity to provide a defense for its employee shall apply whether the claim is brought in a court of this state under Mississippi law or is brought in a United States court under federal law.

(5) A governmental entity shall not be entitled to contribution or indemnification, or reimbursement for legal fees and expenses from its employee unless a court shall find that the act or omission of the employee was outside the course and scope of his employment. Any action by a governmental entity against its employee and any action by an employee against the governmental entity for contribution, indemnification, or necessary legal fees and expenses shall be tried to the court in the same suit brought on the claim against the governmental entity or its employee.

(6) The duty to defend and to pay any judgment as provided in subsection (3) of this section shall continue after employment with the governmental entity has been terminated, if the occurrence for which liability is alleged happened within the course and scope of duty while the employee was in the employ of the governmental entity.

(7) For the purposes of this chapter and not otherwise, it shall be a rebuttable presumption that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment.

(8) Nothing in this chapter shall enlarge or otherwise adversely affect the personal liability of an employee of a governmental entity. Any immunity or other bar to a civil suit under Mississippi or federal law shall remain in effect. The fact that a governmental entity may relieve an employee from all necessary legal fees and expenses and any judgment arising from the civil lawsuit shall not under any circumstances be communicated to the trier of fact in the civil lawsuit.

SECTION 7. Section 11-46-16, Mississippi Code of 1972, is amended as follows:

11-46-16. (1) If any governmental entity has in effect liability insurance to cover wrongful or tortious acts or omissions of such governmental entity or its employees, such governmental entity may be sued by anyone affected to the extent of such insur-

# APPENDIX “E”

nity under this section shall be extended only if the physician or certified nurse practitioner and patient execute a written waiver in advance of the rendering of such medical services specifying that such services are provided without the expectation of payment and that the licensed physician or certified nurse practitioner shall be immune as provided herein.

(2) Any physician who voluntarily renders any medical service under a special volunteer medical license authorized under Section 1 of this act without any payment or compensation or the expectation or promise of any payment or compensation shall be immune from liability for any civil action arising out of any act or omission resulting from the rendering of the medical service unless the act or omission was the result of the physician's gross negligence or wilful misconduct. In order for the immunity under this subsection to apply, there must be a written or oral agreement for the physician to provide a voluntary noncompensated medical service before the rendering of the service by the physician.

SECTION 5. This act shall take effect and be in force from and after July 1, 1995.

Approved: March 10, 1995

## CHAPTER NO. 333 HOUSE BILL NUMBER 1103

AN ACT TO CREATE NEW CODE SECTIONS TO BE CODIFIED AS SECTIONS 33-15-2, 33-15-14 AND 33-15-53, MISSISSIPPI CODE OF 1972, TO EXPRESS LEGISLATIVE INTENT WITH REGARD TO THE STATE'S EMERGENCY MANAGEMENT LAW; TO ESTABLISH THE RESPONSIBILITIES OF THE MISSISSIPPI EMERGENCY MANAGEMENT AGENCY; TO REQUIRE THAT EACH STATE DEPARTMENT, AGENCY OR COMMISSION DESIGNATE AN EMERGENCY COORDINATION OFFICER AND AN ALTERNATE EMERGENCY COORDINATION OFFICER FROM WITHIN SUCH DEPARTMENT, AGENCY OR COMMISSION; TO AMEND SECTION 33-15-5, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERMS "EMERGENCY MANAGEMENT," "EMERGENCY," "MAN-MADE EMERGENCY," "NATURAL EMERGENCY," "TECHNOLOGICAL EMERGENCY," "LOCAL EMERGENCY MANAGEMENT AGENCY" AND "DISASTER"; TO AMEND SECTIONS 33-15-3, 33-15-7, 33-15-11, 33-15-13, 33-15-15, 33-15-17, 33-15-19, 33-15-25, 33-15-29 AND 33-15-31, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; TO REPEAL SECTION 33-15-9, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE CREATION OF THE MISSISSIPPI EMERGENCY MANAGEMENT COUNCIL; TO REPEAL SECTION 33-15-101, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE AUTHORITY OF THE STATE TO ENTER INTO CIVIL DEFENSE AND DISASTER COMPACTS; AND FOR RELATED PURPOSES.

*Be it enacted by the Legislature of the State of Mississippi:*

SECTION 1. The following shall be codified as Section 33-15-2, Mississippi Code of 1972:

33-15-2. (1) The Legislature finds and declares that the state is vulnerable to a wide range of emergencies, including natural, technological and man-made disasters, all of which threaten the life, health and safety of its people; damage and destroy property; disrupt services and everyday business and recreational activities; and impede economic growth and development. The Legislature further finds that this vulnerability is exacerbated by the growth in the state's number of persons with special needs. This growth has greatly complicated the state's ability to coordinate its emergency management resources and activities.

(2) It is the intent of the Legislature to reduce the vulnerability of the people and property of this state; to prepare for efficient evacuation and shelter of threatened or affected persons; to provide for the rapid and orderly provision of relief to persons and for the coordination of activities relating to emergency preparedness, response, recovery and mitigation among and between agencies and officials of this state, with similar agencies and officials of other states, with local and federal governments, with interstate organizations and with the private sector.

(3) It is further the intent of the Legislature to promote the state's emergency preparedness, response, recovery and mitigation capabilities through enhanced coordination, long-term planning and adequate funding. State policy for responding to disasters is to support local emergency response efforts. In the case of a major or catastrophic disaster, however, the needs of residents and communities will likely be greater than local resources. In these situations, the state must be capable of providing effective, coordinated and timely support to communities and the public. Therefore, the Legislature determines and declares that the provisions of this article fulfill an important state interest.

SECTION 2. Section 33-15-3, Mississippi Code of 1972, is amended as follows:

33-15-3. (a) Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage or other hostile action, and from natural, man-made or technological disasters, and in order to insure that preparations of this state will be adequate to deal with, reduce vulnerability to, and recover from such disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health and safety, and to preserve the lives and property of the people of this state, it is hereby found and declared necessary: (1) To create a state emergency management agency, and to authorize the creation of local organizations for emergency management in the municipalities and counties of the state, and to authorize cooperation with the federal government and the governments of other states; (2) to confer upon the Governor, the agency and upon the executive heads or governing bodies of the municipalities and counties of the state the emergency powers provided herein; and (3) to provide for the rendering of mutual aid among the municipalities and counties of the state, and with other states, and with the federal government with respect to the carrying out of emergency management functions and responsibilities; (4) to authorize the establishment of such organizations and the development and employment of such measures as are necessary and appropriate to carry out the provisions of this article; and (5) to provide the means to assist in the prevention or mitigation of emergencies which may be caused or aggravated by inadequate planning for, and regulation of, public and private facilities and land use.

(b) It is further declared to be the purpose of this article and the policy of the state that all emergency management functions of this state be coordinated, to the maximum extent, with the comparable functions of the federal government, including its various departments and agencies, of other states and localities, and of private agencies of every type, to the end that the most effective preparation and use may be made of the nation's manpower, resources, and facilities for dealing with any disaster or emergency, or both, that may occur as enumerated in this section.

SECTION 3. Section 33-15-5, Mississippi Code of 1972, is amended as follows:

33-15-5. The following words, whenever used in this article shall, unless a different meaning clearly appears from the context, have the following meanings:

(a) "Agency," the Mississippi Emergency Management Agency, created by Section 33-15-7.

(b) "Director," the Director of Emergency Management, appointed pursuant to Section 33-15-7.

(c) "Emergency management," means the preparation for, the mitigation of, the response to, and the recovery from emergencies and disasters. Specific emergency management responsibilities include, but are not limited to:

(i) Reduction of vulnerability of people and communities of this state to damage, injury and loss of life and property resulting from natural, technological or man-made emergencies or hostile military paramilitary action.

(ii) Preparation for prompt and efficient response and recovery to protect lives and property affected by emergencies.

(iii) Response to emergencies using all systems, plans and resources necessary to preserve adequately the health, safety and welfare of persons or property affected by the emergency.

(iv) Recovery from emergencies by providing for the rapid and orderly start of restoration and rehabilitation of persons and property affected by emergencies.

(v) Provision of an emergency management system embodying all aspects of preemergency preparedness and postemergency response, recovery and mitigation.

(vi) Assistance in anticipation, recognition, appraisal, prevention and mitigation of emergencies which may be caused or aggravated by inadequate planning for, and regulation of public and private facilities and land use.

(d) "Civil defense," whenever it appears in the laws of the State of Mississippi, shall mean "emergency management" unless the context clearly indicates otherwise.

(e) "State of war emergency" means the condition which exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States or upon receipt by the state of a warning from the federal government indicating that such an attack is probable or imminent.

(f) "State of emergency" means the duly proclaimed existence of conditions of disaster or extreme peril to the safety of persons or property within the state caused by air or water pollution, fire, flood, storm, epidemic, earthquake, resource shortages, or other natural or man-made conditions other than conditions causing a "state of war emergency," which conditions by reasons of their magnitude are or are likely to be beyond the control of the services, personnel, equipment and facilities of any single county and/or municipality and requires combined forces of the state to combat.

(g) "Local emergency" means the duly proclaimed existence of conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a county and/or municipality caused by such conditions as air or water pollution, fire, flood, storm, epidemic, earthquake, resource shortages or other natural or man-made conditions, which conditions are or are likely to be beyond the control of the services, personnel, equipment and facilities of the political subdivision and require the combined forces of other subdivisions or of the state to combat.

(h) "Emergency" means any occurrence, or threat thereof, whether natural, technological, or man-made, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

(i) "Man-made emergency" means an emergency caused by an action against persons or society, including, but not limited to, emergency attack, sabotage, terrorism, civil unrest or other action impairing the orderly administration of government.

(j) "Natural emergency" means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought or an earthquake.

(k) "Technological emergency" means an emergency caused by a technological failure or accident, including, but not limited to, an explosion, transportation accident, radiological accident, or chemical or other hazardous material incident.

(l) "Local emergency management agency" means an organization created to discharge the emergency management responsibilities and functions of a political subdivision.

(m) "Disaster" means any natural, technological or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a county, the Governor or the President of the United States. Disasters shall be identified by the severity of resulting damage, as follows:

(i) "Catastrophic disaster" means a disaster that will require massive state and federal assistance, including immediate military involvement.

(ii) "Major disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance.

(iii) "Minor disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance.

SECTION 4. Section 33-15-7, Mississippi Code of 1972, is amended as follows:

33-15-7. (a) There is hereby created within the executive branch of the state government a department called the Mississippi Emergency Management Agency with a director of emergency management who shall be appointed by the Governor; he shall hold office during the pleasure of the Governor and shall be compensated as determined by any appropriation that may be made by the Legislature for such purposes.

(b) The director, with the approval of the Governor, may employ such technical, clerical, stenographic and other personnel, to be compensated as provided in any appropriation that may be made for such purpose, and may make such expenditures within the appropriation therefor, or from other funds made available to him for purposes of emergency management, as may be necessary to carry out the purposes of this article.

(c) The director and other personnel of the emergency management agency shall be provided with appropriate office space, furniture, equipment, supplies, stationery and printing in the same manner as provided for other state agencies.

(d) The director, subject to the direction and control of the Governor, shall be the executive head of the emergency management agency and shall be responsible to

the Governor for carrying out the program for emergency management of this state. He shall coordinate the activities of all organizations for emergency management within the state, and shall maintain liaison with and cooperate with emergency management agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by this article as may be prescribed by the Governor.

SECTION 5. Section 33-15-11, Mississippi Code of 1972, is amended as follows:

33-15-11. (a) The Governor shall have general direction and control of the activities of the Emergency Management Agency and Council and shall be responsible for the carrying out of the provisions of this article, and in the event of a man-made, technological or natural disaster or emergency beyond local control, may assume direct operational control over all or any part of the emergency management functions within this state.

(b) In performing his duties under this article, the Governor is further authorized and empowered:

(1) To make, amend, and rescind the necessary orders, rules and regulations to carry out the provisions of this article with due consideration of the plans of the federal government.

(2) To work with the Mississippi Emergency Management Agency in preparing a comprehensive plan and program for the emergency management of this state, such plan and program to be integrated into and coordinated with the emergency management plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparation of plans and programs for emergency management by the political subdivisions of this state, such local plans to be integrated into and coordinated with the emergency management plan and program of this state to the fullest possible extent.

(3) In accordance with such plan and program for emergency management of this state, to ascertain the requirements of the state or the political subdivisions thereof for food or clothing or other necessities of life in the event of attack or natural or man-made or technological disasters and to plan for and procure supplies, medicines, materials, and equipment, and to use and employ from time to time any of the property, services, and resources within the state, for the purposes set forth in this article; to make surveys of the industries, resources and facilities within the state as are necessary to carry out the purposes of this article; to institute training programs and public information programs, and to take all other preparatory steps, including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need.

(4) To cooperate with the President and the heads of the Armed Forces, and the Emergency Management Agency of the United States, and with the officers and agencies of other states in matters pertaining to the emergency management of the state and nation and the incidents thereof; and in connection therewith, to take any measures which he may deem proper to carry into effect any request of the President and the appropriate federal officers and agencies, for any action looking to emergency management, including the direction or control of (a) blackouts and practice blackouts, air raid drills, mobilization of emergency management forces, and other tests and exercises, (b) warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith, (c) the effective screening or extinguishing of all lights and lighting devices and appliances, (d) shutting off water mains, gas mains, electric

power connections and the suspension of all other utility services, (e) the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior, and subsequent to drills or attack, (f) public meetings or gatherings under emergency conditions, (g) the evacuation and reception of the civilian population, and (h) implementing the State Emergency Management Agency's crisis relocation plan when directed.

(5) To take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this article and with the orders, rules and regulations made pursuant thereto.

(6) To employ such measures and give such directions to the state or local boards of health as may be reasonably necessary for the purpose of securing compliance with the provisions of this article or with the findings or recommendations of such boards of health by reason of conditions arising from enemy attack or the threat of enemy attack or natural, man-made or technological disaster.

(7) To utilize the services and facilities of existing officers and agencies of the state and of the political subdivisions thereof; and all such officers and agencies shall cooperate with and extend their services and facilities to the Governor as he may request.

(8) To establish agencies and offices and to appoint executive, technical, clerical, and other personnel as may be necessary to carry out the provisions of this article including, with due consideration to the recommendation of the local authorities, part-time or full-time state and regional area directors.

(9) To delegate any authority vested in him under this article, and to provide for the subdelegation of any such authority.

(10) On behalf of this state to enter into reciprocal aid agreements or compacts with other states and the federal government, either on a statewide basis or local political subdivision basis or with a neighboring state or province of a foreign country. Such mutual aid arrangements shall be limited to the furnishings or exchange of food, clothing, medicine, and other supplies; engineering services; emergency housing; police services; national or state guards while under the control of the state; health, medical and related services; fire fighting, rescue, transportation, and construction services and equipment; personnel necessary to provide or conduct these services; and such other supplies, equipment, facilities, personnel, and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items for mobile support units, fire fighting, and police units and health units; and on such terms and conditions as are deemed necessary.

(11) To sponsor and develop mutual aid plans and agreements between the political subdivisions of the state, similar to the mutual aid arrangements with other states referred to above.

(12) Authorize any agency or arm of the state to create a special emergency management revolving fund, accept donations, contributions, fees, grants, including federal funds, as may be necessary for such agency or arm of the state to administer its functions of this article as set forth in the executive order of the Governor.

(13) To authorize the Commissioner of Public Safety to select, train, organize, and equip a ready reserve of auxiliary highway patrolmen.

(14) To suspend or limit the sale, dispensing or transportation of alcoholic beverages, firearms, explosives and combustibles.

(15) To control, restrict and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale or distribution of food, feed, fuel, clothing, and other commodities, materials, goods or services.

(16) To proclaim a state of emergency in an area affected or likely to be affected thereby when he finds that the conditions described in Section 33-15-5(g) exist, or when he is requested to do so by the mayor of a municipality or by the president of the board of supervisors of a county, or when he finds that a local authority is unable to cope with the emergency. Such proclamation shall be in writing and shall take effect immediately upon its issuance. As soon thereafter as possible, such proclamation shall be filed with the Secretary of State and be given widespread notice and publicity. The state of emergency shall be terminated at the earliest possible date that conditions warrant.

(c) In addition to the powers conferred upon the Governor in this section, the Legislature hereby expressly delegates to the Governor the following powers and duties in the event of an impending enemy attack, an enemy attack, or a man-made, technological or natural disaster where such disaster is beyond local control:

(1) To suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with a disaster or emergency.

(2) To transfer the direction, personnel or functions of state agencies, boards, commissions or units thereof for the purpose of performing or facilitating disaster or emergency services.

(3) To commandeer or utilize any private property if necessary to cope with a disaster or emergency, provided that such private property so commandeered or utilized shall be paid for under terms and conditions agreed upon by the participating parties. The owner of said property shall immediately be given a receipt for the said private property and said receipt shall serve as a valid claim against the Treasury of the State of Mississippi for the agreed upon market value of said property.

(4) To perform and exercise such other functions, powers and duties as may be necessary to promote and secure the safety and protection of the civilian population in coping with a disaster or emergency.

SECTION 6. Section 33-15-13, Mississippi Code of 1972, is amended as follows:

33-15-13. (a) In the event of actual or impending enemy attack, as determined by the President, against the United States and the State of Mississippi, the Governor may proclaim that a state of war emergency exists, and thereafter the Governor shall have and may exercise for such period as such state of war emergency exists or continues, the following additional emergency powers:

(1) To enforce all laws, rules and regulations relating to emergency management and to assume direct operational control of all emergency management forces and helpers in the state;

(2) To purchase supplies and services for emergency management purposes, including aiding the populace, without necessity for advertising therefor; to call upon all

persons, firms and corporations to furnish such supplies, services and facilities as they may control which may be needed for the protection of the public, and to enter into all necessary contracts and agreements as may be necessary with relation thereto, all or any provisions of law with reference to advertisements in such matters being expressly waived for this purpose;

(3) To utilize or commandeer any private property for the protection of the public or at the request of the President, the Armed Forces or the Emergency Management Agency of the United States including:

(A) For use during emergency only, all means of transportation and communication, except newspapers, or publications, or wire facilities leased or owned by news services, newspapers and other news publications;

(B) Food, clothing, equipment, materials, medicines, any supplies and stocks of fuel of whatever nature;

(C) Facilities including buildings and plants, for use during emergency only; in the event it shall become necessary to utilize any such facilities, plants or services, the operation thereof, if possible, shall be left in the hands of the owner, subject to direction of the Governor, and only such portion as may be essential for the protection of life and property, or the national defense, shall be commandeered or utilized;

(4) To sell, lend, give or distribute all or any such personal property utilized among the inhabitants of the state and to account to the State Treasurer for any funds received for such property;

(5) To perform and exercise such other functions, powers and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population.

(b) Adequate compensation shall be paid for any property so utilized, taken or condemned. In case it shall become necessary to take or use any private property as provided above, the full faith and credit of the State of Mississippi shall be pledged to pay just compensation therefor. In case the Governor and the owner of any such property so utilized or taken shall not be able to agree on the compensation to be paid for use, damage or taking thereof, the amount of such compensation to be paid shall be determined in conformity with the statutes of this state relating to eminent domain procedures.

(c) All powers granted to the Governor by this section with respect to a state of war emergency shall terminate when the state of war emergency has been terminated by proclamation of the Governor or by concurrent resolution of the Legislature declaring it at an end.

SECTION 7. The following shall be codified as Section 33-15-14, Mississippi code of 1972:

33-15-14. (1) The agency is responsible for maintaining a comprehensive statewide program of emergency management. The agency is responsible for coordination with efforts of the federal government with other departments and agencies of state government, with county and municipal governments and school boards and with private agencies that have a role in emergency management.

(2) In performing its duties under this article, the agency shall:

(a) Work with Governor, or his representative, in preparing a state comprehensive emergency management plan of this state, which shall be integrated into, and coordinated with the emergency management plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparation of plans and programs for emergency management by the political subdivisions of the state, such local plans to be integrated into and coordinated with the emergency plan and program of this state. The plan must contain provisions to ensure that the state is prepared for emergencies and minor, major and catastrophic disasters, and the agency shall work closely with local governments and agencies and organizations with emergency management responsibilities in preparing and maintaining the plan. The state comprehensive emergency management plan will be operations oriented and:

(i) Include an evacuation component that includes specific regional and interregional planning provisions and promotes intergovernmental coordination of evacuation activities. This component must, at a minimum: ensure coordination pertaining to evacuees crossing county lines; set forth procedures for directing people caught on evacuation routes to safe shelter; and establish policies and strategies for emergency medical evacuations.

(ii) Include a shelter component that includes specific regional and interregional planning provisions and promotes coordination of shelter activities between the public, private and nonprofit sectors. This component must, at a minimum: contain strategies to ensure the availability of adequate public shelter space in each region of the state; establish strategies for refuge-of-last-resort programs; provide strategies to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel; provide for a postdisaster communications system for public shelters; establish model shelter guidelines for operations, registration, inventory, power generation capability, information management and staffing; and set forth policy guidance for sheltering people with special needs.

(iii) Include a postdisaster response and recovery component that includes specific regional and interregional planning provisions and promotes intergovernmental coordination of postdisaster response and recovery activities. This component must provide for postdisaster response and recovery strategies according to whether a disaster is minor, major or catastrophic. The postdisaster response and recovery component must, at a minimum: establish the structure of the state's postdisaster response and recovery organization; establish procedures for activating the state's plan; set forth policies used to guide postdisaster response and recovery activities; describe the chain of command during the postdisaster response and recovery period; describe initial and continuous postdisaster response and recovery actions; identify the roles and responsibilities of each involved agency and organization; provide for a comprehensive communications plan; establish procedures for monitoring mutual aid agreements; provide for rapid impact assessment teams; ensure the availability of an effective statewide urban search and rescue program coordinated with the fire services; ensure the existence of a comprehensive statewide medical care and relief plan administered by the State Department of Health; and establish systems for coordinating volunteers and accepting and distributing donated funds and goods.

(iv) Include additional provisions addressing aspects of preparedness, response and recovery, as determined necessary by the agency.

(v) Address the need for coordinated and expeditious deployment of state resources, including the Mississippi National Guard. In the case of an imminent major disaster, procedures should address predeployment of the Mississippi National Guard, and, in the case of an imminent catastrophic disaster, procedures should address predeployment of the Mississippi National Guard and the United States Armed Forces. This

subparagraph (v) does not authorize the agency to call out and deploy the Mississippi National Guard, which authority and determination rests solely with the Governor.

(vi) Establish a system of communications and warning to ensure that the state's population and emergency management agencies are warned of developing emergency situations and can communicate emergency response decisions.

(vii) Establish guidelines and schedules for annual exercises that evaluate the ability of the state and its political subdivisions to respond to minor, major and catastrophic disasters and support local emergency management agencies. Such exercises shall be coordinated with local governments and, to the extent possible, the federal government.

(viii) 1. Assign lead and support responsibilities to state agencies and personnel for emergency support functions and other support activities.

2. The agency shall prepare an interim postdisaster response and recovery component that substantially complies with the provisions of this paragraph (a). Each state agency assigned lead responsibility for an emergency support function by the state comprehensive emergency management plan shall also prepare a detailed operational plan needed to implement its responsibilities. The complete state comprehensive emergency management plan shall be submitted to the Governor no later than January 1, 1996, and on January 1 of every even-numbered year thereafter.

(b) Adopt standards and requirements for county emergency management plans. The standards and requirements must ensure that county plans are coordinated and consistent with the state comprehensive emergency management plan. If a municipality elects to establish an emergency management program, it must adopt a city emergency management plan that complies with all standards and requirements applicable to county emergency management plans.

(c) Assist political subdivisions in preparing and maintaining emergency management plans.

(d) Review periodically political subdivision emergency management plans for consistency with the State Comprehensive Emergency Management Plan and standards and requirements adopted under this section.

(e) Make recommendations to the Legislature, building code organizations and political subdivisions for zoning, building and other land use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures; and other preparedness, prevention and mitigation measures designed to eliminate emergencies or reduce their impact.

(f) In accordance with the State Comprehensive Emergency Management Plan and program for emergency management, ascertain the requirements of the state and its political subdivisions for equipment and supplies of all kinds in the event of an emergency; plan for and either procure supplies, medicines, materials and equipment or enter into memoranda of agreement or open purchase orders that will ensure their availability; and use and employ from time to time any of the property, services and resources within the state in accordance with this article.

(g) Anticipate trends and promote innovations that will enhance the emergency management system.

(h) Prepare and distribute to appropriate state and local officials catalogs of federal, state and private assistance programs.

(i) Implement training programs to improve the ability of state and local emergency management personnel to prepare and implement emergency management plans and programs.

(j) Review periodically emergency operating procedures of state agencies and recommend revisions as needed to ensure consistency with the State Comprehensive Emergency Management Plan and program.

(k) Prepare, in advance whenever possible, such executive orders, proclamations and rules for issuance by the Governor as are necessary or appropriate for coping with emergencies and disasters.

(l) Cooperate with the federal government and any public or private agency or entity in achieving any purpose of this article.

(m) Assist political subdivisions with the creation and training of urban search and rescue teams and promote the development and maintenance of a state urban search and rescue program.

(n) Delegate, as necessary and appropriate, authority vested in it under this article and provide for the subdelegation of such authority.

(o) Report biennially to the Governor and the President of the Senate, and the Speaker of the House of Representatives, no later than January 1 of every odd-numbered year, the status of the emergency management capabilities of the state and its political subdivisions.

(p) In accordance with Section 25-43-1 et seq., create, implement, administer, promulgate, amend and rescind rules, programs and plans needed to carry out the provisions of this article with due consideration for, and in cooperating with, the plans and programs of the federal government.

(q) Do other things necessary, incidental or appropriate for the implementation of this article.

SECTION 8. Section 33-15-15, Mississippi Code of 1972, is amended as follows:

33-15-15. (a) The agency is authorized to provide, within or without the state, such support from available personnel, equipment and other resources of state agencies and the political subdivisions of the state as may be necessary to reinforce emergency management agencies in areas stricken by emergency. Such support shall be rendered with due consideration of the plans of the federal government, this state, the other states and of the criticalness of the existing situation. Emergency management support forces shall be called to duty upon orders of the agency and shall perform their functions in any part of the state, or, upon the conditions specified in this section, in other states.

(b) Personnel of emergency management support forces while on duty, whether within or without the state, shall:

(1) If they are employees of the state, have the powers, duties, rights, privileges and immunities and receive the compensation incidental to their employment;

(2) If they are employees of a political subdivision of the state, and whether serving within or without such political subdivision, have the powers, duties, rights, privileges and immunities and receive the compensation incidental to their employment; and

(3) If they are not employees of the state or a political subdivision thereof, be entitled to compensation by the state at a rate commensurate with their duties and responsibilities and to the same rights and immunities as are provided by law for the employees of this state.

All personnel of emergency management support forces shall, while on duty, be subject to the operational control of the authority in charge of emergency management activities in the area in which they are serving, and shall be reimbursed for all actual and necessary travel and subsistence expenses, and for death, disability or injury to such personnel while on such emergency duty as a member of an emergency management support force, the state shall pay compensation to the heirs in event of death or the individual in event of injury or disability in accordance with payment schedules contained in the Mississippi Workers' Compensation Law.

(c) The state shall reimburse a political subdivision for the actual and necessary travel, subsistence and maintenance expenses of employees of such political subdivision while serving as members of an emergency management support force, and for all payments for death, disability or injury of such employees incurred in the course of such duty, and for all losses of or damage to supplies and equipment of such political subdivision resulting from the operation of such emergency management support force.

(d) Whenever an emergency management support force of another state shall render aid in this state pursuant to the orders of the governor of its home state and upon the request of the Governor of this state, the personnel thereof shall have the powers, duties, rights, privileges and immunities of emergency management personnel serving in similar capacities in this state, except compensation, and this state shall reimburse such other state for the compensation paid and actual and necessary travel, subsistence and maintenance expenses of the personnel of such emergency management support force while rendering such aid, and for all payments for death, disability or injury of such personnel incurred in the course of rendering such aid, and for all losses of or damage to supplies and equipment of such other state or a political subdivision thereof resulting from the rendering of such aid; provided, that the laws of such other state contain provisions substantially similar to this section.

(e) No personnel of emergency management support forces of this state shall be ordered by the Governor to operate in any other state unless the laws of such other state contain provisions substantially similar to this section.

SECTION 9. Section 33-15-17, Mississippi Code of 1972, is amended as follows:

33-15-17. (a) Each county and municipality, or counties and the municipalities therein acting jointly, or two (2) or more counties acting jointly, of this state are hereby authorized and directed to establish a local organization for emergency management in accordance with the state emergency management plan and program, if required and authorized so to do by such state emergency management plan. Each local organization for emergency management shall have a director who shall be appointed by the governing body of the political subdivision, or political subdivisions acting jointly, and who shall have direct responsibility for the organization, administration and operation of such local organization for emergency management, subject to the direction and control of such governing body. Each local organization for emergency management shall perform emergency management functions within the territorial limits of the political sub-

division within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of the state emergency management plan. Each county shall develop an emergency management plan and program that is coordinated and consistent with the state comprehensive emergency management plan and program. Counties that are part of an interjurisdictional emergency management agreement entered into pursuant to this section shall cooperatively develop an emergency management plan and program that is coordinated and consistent with the state emergency management plan and program.

(b) In carrying out the provisions of this article each county and municipality, or the two (2) acting jointly, or two (2) or more counties acting jointly, where there is joint organization, in which any disaster as described in Section 33-15-3 occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each county and municipality is authorized to exercise the powers vested under this section in the light of the exigencies of the extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes and the appropriation and expenditure of public funds.

(c) Each county and each municipality, or two (2) or more counties acting jointly, shall have the power and authority:

(1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any enemy attack or man-made, technological or natural disasters; and to direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies;

(2) To appoint, employ, remove, or provide, with or without compensation, air raid wardens, rescue teams, auxiliary fire and police personnel, and other emergency management workers;

(3) To establish, as necessary, a primary and one or more secondary emergency operating centers to provide continuity of government, and direction and control of emergency operation during an emergency;

(4) Subject to the order of the Governor, or the chief executive of the political subdivision, to assign and make available for duty, the employees, property or equipment of the subdivision relating to fire fighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for emergency management purposes either within or outside of the limits of the subdivision;

(5) Subject to the order of the chief executive of the county or municipality or the Governor to order the evacuation of any area subject to an impending or existing enemy attack or man-made, technological or natural disaster;

(6) Subject to the order of the chief executive of the county or municipality or the Governor, to control or restrict egress, ingress and movement within the disaster area to the degree necessary to facilitate the protection of life and property.

(d) A local emergency as defined in Section 33-15-5 may be proclaimed by the governing body of a municipality or county. The governing body shall review the need for continuing the local emergency at least every seven (7) days until such local emergency is terminated, and shall proclaim the termination of such local emergency at the earliest possible date that conditions warrant. During a local emergency, the governing body of a political subdivision may promulgate orders and regulations necessary to provide for the protection of life and property, including orders or regulations imposing a curfew within designated boundaries where necessary to preserve the public order and safety. Such orders and regulations and amendments and rescissions thereof shall be in writing and shall be given widespread notice and publicity. The authorization granted by this section to impose a curfew shall not be construed as restricting in any manner the existing authority to impose a curfew pursuant to police power for any other lawful purpose.

SECTION 10. Section 33-15-19, Mississippi Code of 1972, is amended as follows:

33-15-19. (a) The governing body of a municipality or county of the state is authorized to develop and enter into mutual aid agreements within the state for reciprocal emergency management aid and assistance in case of disaster or emergency too extensive to be dealt with unassisted. Copies of the agreements shall be sent to the agency. Such arrangements shall be consistent with the state emergency management plan and program, and in time of emergency it shall be the duty of each local emergency management organization to render assistance in accordance with the provisions of such mutual aid arrangements.

(b) The Governor may enter into compacts with any state or group of states if he finds that joint action with that state or group of states is desirable in meeting common intergovernmental problems of emergency management planning or emergency prevention, mitigation, response and recovery.

SECTION 11. Section 33-15-25, Mississippi Code of 1972, is amended as follows:

33-15-25. (a) The Governor of the State of Mississippi is authorized to enter into agreements with the federal government for the purpose of matching any federal funds that may be made available for emergency management purposes, which shall include purchasing emergency management equipment and supplies, to the state on a matching basis. Provided, that no agreement shall obligate the state for an amount greater than the appropriation available for such purpose. The state's portion of the purchase price of any emergency management equipment may be made available from any appropriation made for such purposes.

(b) Any county board of supervisors or municipal governing body may enter into agreement with the federal government with approval of the State Director of Emergency Management for matching funds which may be made available for emergency management purposes, which shall include purchasing emergency management equipment and supplies, by such county or municipality in conjunction with any federal matching program and funds may be expended from the general fund of such county or municipality or from such other funds as may be available to such county or municipality for emergency management purposes in order to provide the county or municipal portion of funds necessary to carry out such matching agreement.

SECTION 12. Section 33-15-29, Mississippi Code of 1972, is amended as follows:

33-15-29. (a) In carrying out the provisions of this article, the Governor and the executive officers or governing bodies of the political subdivisions of the state are directed to utilize the services, equipment, supplies and facilities of existing departments, offices, and agencies of the state and of the political subdivisions thereof to the

maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and facilities to the Governor and to the emergency management organizations of the state or such subdivisions upon request.

(b) State agencies in carrying out their assigned disaster or emergency assignments shall be reimbursed their expenses for emergency or disaster-related duties which may include the payment of overtime and the employment of temporary personnel by such agencies in the same manner as authorized in Sections 33-15-301 et seq., 43-41-17 and 43-41-319, and as provided by Section 43-41-701.

SECTION 13. Section 33-15-31, Mississippi Code of 1972, is amended as follows:

33-15-31. (a) The governing bodies of the political subdivisions of the state and other agencies designated or appointed by the Governor are authorized and empowered to make, amend, and rescind such orders, rules, and regulations as may be necessary for emergency management purposes and to supplement the carrying out of the provisions of this article, but not inconsistent with any orders, rules and regulations promulgated by the Governor or by any state agency exercising a power delegated to it by him.

(b) All orders, rules, and regulations promulgated by the Governor, the Mississippi Emergency Management Agency or by any political subdivision or other agency authorized by this article to make orders, rules and regulations, shall have the full force and effect of law, when, in the event of issuance by the Governor, or any state agency, a copy thereof is filed in the office of the Secretary of State, or, if promulgated by a political subdivision of the state or agency thereof, when filed in the office of the clerk of the political subdivision or agency promulgating the same. All existing laws, ordinances, rules and regulations inconsistent with the provisions of this article, or of any order, rule, or regulation issued under the authority of this article, shall be suspended during the period of time and to the extent that such conflict, disaster or emergency exists.

(c) In order to attain uniformity so far as practicable throughout the country in measures taken to aid emergency management, all action taken under this article and all orders, rules and regulations made pursuant thereto, shall be taken or made with due consideration to the orders, rules, regulations, actions, recommendations, and requests of federal authorities relevant thereto and, to the extent permitted by law, shall be consistent with such orders, rules, regulations, actions, recommendations and requests.

SECTION 14. The following shall be codified as Section 33-15-53, Mississippi Code of 1972:

33-15-53. The head of each state department, agency or commission shall select from within such agency a person to be designated as the emergency coordination officer for the agency and an alternate. The emergency coordination officer is responsible for coordinating with the Mississippi Emergency Management Agency on emergency preparedness issues, preparing and maintaining emergency preparedness and postdisaster response and recovery plans for such agency, maintaining rosters of personnel to assist in disaster operations and coordinating appropriate training for agency personnel. These individuals shall be responsible for ensuring that each state facility, such as a prison, office building or university, has a disaster preparedness plan that is approved by the applicable local emergency management agency or the division. The head of each agency shall notify the Governor and the Mississippi Emergency Management Agency in writing of the person initially designated as the emergency coordination officer for such agency and his alternate and of any changes in persons so designated thereafter.