

**MISSISSIPPI CODE OF 1972**  
**As Amended**

SEC. 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.

SOURCES: Laws, 1984, ch. 495, Sec. 1; reenacted without change, Laws 1985, ch. 474, Sec. 1; 1988, ch. 479, Sec. 2; 1993, ch. 476, Sec. 1, eff from and after passage (approved April 1, 1993). Amended by Laws 1999, Ch. 518, Sec. 1, HB1147; Laws, 2002, 3rd Ex. Sess., ch. 2, § 2, HB 2, eff from and after Jan. 1, 2003.

PREVIOUS VERSIONS: Pre-2002.

### **SEC. 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.

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

**SEC. 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.

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

**SEC. 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.

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

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

(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 USC 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; or

(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.

(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.

**SOURCES:** Laws, 1984, ch. 495, Sec. 6; reenacted without change, 1985, ch. 474, Sec. 5; 1987, ch. 483, Sec. 5; 1993, ch. 476, Sec. 4; 1994, ch. 334, Sec. 1; 1995, ch. 483, Sec. 1; 1996, ch. 538, Sec. 1, eff from and after passage (approved April 12, 1996)

**1997 Amendment:**

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

11-46-9. (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 USC 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; or

(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.

(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.

**SOURCE:** 1997 Laws, Chapter 512, Sec. 2, HB313, Effective July 1, 1997.

**SEC. 11-46-11. Statute of limitations; notice of claim requirements; savings clause in favor of infants and those of unsound mind.**

(1) After all procedures within a governmental entity have been exhausted, any person having a claim for injury arising under the provisions of this chapter against a governmental entity or its employee shall proceed as he might in any action at law or in equity; provided, however, that ninety (90) days prior to maintaining an action thereon, such person shall file a notice of claim with the chief executive officer of the governmental entity. Service of notice of claim may also be had in the following manner: If the governmental entity is a county, then upon the chancery clerk of the county sued; if the governmental entity is a municipality, then upon the city clerk. If the governmental entity to be sued is a state entity as defined in Section [11-46-1\(j\)](#), service of notice of claim shall be had only upon that entity's chief executive officer. If the governmental entity is participating in a plan administered by the board pursuant to Section [11-46-7\(3\)](#), such chief executive officer shall notify the board of any claims filed within five (5) days after the receipt thereof.

(2) Every notice of claim required by subsection (1) of this section shall be in writing, and shall be delivered in person or by registered or certified United States mail. Every notice of claim shall contain a short and plain statement of the facts upon which the claim is based, including the circumstances which brought about the injury, the extent of the injury, the time and place the injury occurred, the names of all persons known to be involved, the amount of money damages sought and the residence of the person making the claim at the time of the injury and at the time of filing the notice.

(3) All actions brought under the provisions of this chapter shall be commenced within one (1) year next after the date of the tortious, wrongful or otherwise actionable conduct on which the liability phase of the action is based, and not after; provided, however, that the filing of a notice of claim as required by subsection (1) of this section shall serve to toll the statute of limitations for a period of ninety-five (95) days from the date the chief executive officer of the state agency receives the notice of claim, or for one hundred twenty (120) days from the date the chief executive officer or other statutorily designated official of a municipality, county or other political subdivision receives the notice of claim, during which time no action may be maintained by the claimant unless the claimant has received a notice of denial of claim. After the tolling period has expired, the claimant shall then have an additional ninety (90) days to file any action against the governmental entity served with proper claim notice. However, should the governmental entity deny any such claim, then the additional ninety (90) days during which the claimant may file an action shall begin to run upon the claimant's receipt of notice of denial of claim from the governmental entity. All notices of denial of claim shall be served by governmental entities upon claimants by certified mail, return receipt requested, only. For purposes of determining the running of limitations periods under this chapter, service of any notice of claim or notice of denial of claim shall be effective upon delivery by the methods statutorily designated in this chapter. The limitations period provided herein shall control and shall be exclusive in all actions subject to and brought under the provisions of this chapter, notwithstanding the nature of the claim, the label or other characterization the claimant may use to describe it, or the provisions of any other statute of limitations which would otherwise govern the type of claim or legal theory if it were not subject to or brought under the provisions of this chapter.

(4) From and after April 1, 1993, if any person entitled to bring any action under this chapter shall, at the time at which the cause of action accrued, be under the disability of infancy or unsoundness of mind, he may bring the action within the time allowed in this section after his disability shall be removed as provided by law. The savings in favor of persons under disability of unsoundness of mind shall never extend longer than twenty-one (21) years.

**SOURCES:** Laws, 1984, ch. 495, Sec. 7; reenacted without change, Laws 1985, ch. 474, Sec. 6; 1987, ch. 483, Sec. 6; 1988, ch. 479, Sec. 3; 1993, ch. 476, Sec. 5, eff from and after passage (approved April 1, 1993). Amended by Laws 1999, Ch. 469, Sec. 1, HB 778, eff. from and after passage (approved March 25, 1999). Laws 2000, Ch. 315, Sec. 1, SB2974; Laws, 2002, ch. 380, § 1, SB3052, eff from and after passage (approved Mar. 18, 2002.).

**PREVIOUS VERSIONS:** [Pre-2002](#)

### **SEC. 11-46-13. Jurisdiction; appeals; venue.**

(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 act, omission or event on which the liability phase of the action is based, occurred or took place. The venue for all other suits filed under the provisions of this chapter shall be in the county or judicial district thereof in which the principal offices of the governing body of the political subdivision are located. The venue specified in this subsection shall control in all actions filed against governmental entities, notwithstanding that other defendants which are not governmental entities may be joined in the suit, and notwithstanding the provisions of any other venue statute that otherwise would apply.

**SOURCES:** Laws, 1984, ch. 495, Sec. 8; reenacted without change, Laws 1985, ch. 474, Sec. 7; 1987, ch. 483, Sec. 7; 1992, ch. 491 Sec. 1; 1993, ch. 476, Sec. 10, eff from and after passage (approved April 1, 1993).

**SEC. 11-46-15. Limitation of liability; exemplary or punitive damages; interest; attorney's fees; reduction of award.**

(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, 2002, 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, 2002, 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.

**SOURCES:** Laws, 1984, ch. 495, Sec. 9; reenacted without change, Laws, 1985, ch. 474, Sec.8; Laws, 1987, ch. 483, Sec. 8; Laws, 1988, ch. 442, Sec. 5; Laws, 1989, ch. 537, Sec. 5; Laws, 1990, ch. 518, Sec. 5; Laws, 1991, ch. 618, Sec. 5; Laws, 1992, ch. 491 Sec. 2, SB 2546, eff from and after passage (approved May 12, 1992).

**PREVIOUS VERSION:** [Pre-2001](#).

**SEC. 11-46-16. Authority to purchase liability insurance; waiver of immunity to extent of insurance coverage.**

(1) Any governmental entity, in the discretion of its governing authorities, may purchase and maintain liability insurance to cover wrongful or tortious acts or omissions of such governmental entity or its employees. The authority granted under this subsection (1) shall not affect any similar authority of any governmental entity that is specifically granted by another statute, but any governmental entity having such authority pursuant to another statute shall be governed by that statute and shall be subject to all conditions, restrictions, limitations and provisions of the statute that applies specifically to that governmental entity.

(2) 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 insurance carried; however, except as otherwise provided in subsection (3) of this section, immunity from suit is only waived to the extent of such liability insurance carried and a judgment creditor shall have recourse only to the proceeds or right to proceeds of such liability insurance. No attempt shall be made in the trial of any case to suggest the existence of any insurance which covers in whole or in part any judgment or award rendered in favor of a claimant, but if the verdict rendered by the jury exceeds the limit of applicable insurance, the court, on motion, shall reduce the amount of the judgment as against the governmental entity only and not as to joint tort-feasors, if any, to a sum equal to the applicable limit stated in the insurance policy.

(3) Except as otherwise provided in Section 19-7-8, Mississippi Code of 1972, a governmental entity which has in effect liability insurance to cover wrongful or tortious acts or omissions of such governmental entity or its employees may, in its discretion, pay any amount of a claim that is within the deductible amount, if any, contained in such liability insurance policy. The determination of whether funds are available to pay any claim that is within the deductible amount and whether to pay a claim in any event shall be within the sole and exclusive discretion of the governmental entity. The authority granted to governmental entities under this subsection does not create a right in any claimant to demand or receive compensation for a claim; and nothing in this subsection shall be considered as a waiver of the immunity granted under Section [11-46-3](#). The provisions of this subsection only extend to governmental entities the discretionary authority to pay claims that otherwise would not be authorized without an act of the Legislature.

(4) The provisions of this section shall be of no force or effect from and after July 1, 1993, as to the state and, from and after October 1, 1993, shall be of no force or effect as to political subdivisions.

**SOURCES:** Laws, 1990, ch. 518, Sec. 6; 1992, ch. 491 Sec. 7; 1992 Special Session, ch. 3, Sec. 3, eff from and after passage (approved September 16, 1992).

**SEC. 11-46-17. Creation of Tort Claims Fund; liability insurance.**

(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 Department of Finance and Administration 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 chapter 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 chapter. All interest earned from the investment of monies in the fund shall be credited to the fund. Monies remaining in such fund at the end of a fiscal year shall not lapse into the State General Fund.

(2) From and after July 1, 1993, each governmental entity other than political subdivisions shall participate in a comprehensive plan of self-insurance and/or one or more policies of liability insurance administered by the Department of Finance and Administration. Such plan shall 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 chapter, including claims or suits for injuries from the use or operation of motor vehicles; provided, however, that the board may allow such plan to contain any reasonable limitations or exclusions not contrary to Mississippi state statutes or case law as are normally included in commercial liability insurance policies generally available to governmental entities. In addition to the coverage authorized in the preceding sentence, the plan may provide coverage for liabilities outside the provisions of this chapter, including but not limited to liabilities arising from Sections 1983 through 1987 of Title 42 of the United States Code and liabilities from actions brought in foreign jurisdictions, and the board shall establish limits of coverage for such liabilities. Each governmental entity participating in the plan shall make payments to the board in such amounts, times and manner 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 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 adequately insured.

Prior to July 1, 1993, the Board of Trustees of State Institutions of Higher Learning may provide such liability coverage for each university, department, trustee, employee, volunteer, facility and activity as the board of trustees, in its discretion, shall determine advisable. If liability coverage, either through insurance policies or self-insurance retention is in effect, immunity from suit shall be waived only to the limit of liability established by such insurance or self-insurance program.

From and after July 1, 1993, such liability coverage established by the board of trustees must conform to the provisions of this section and must receive approval from the board. Should the board reject such plan, the board of trustees shall participate in the liability program for state agencies established by the board.

(3) All political subdivisions shall, from and after October 1, 1993, obtain such policy or policies of insurance, establish such self-insurance reserves, or provide a combination of such insurance and reserves as necessary to cover all risks of claims and suits for which political subdivisions may be liable under this chapter; provided, however, that such policy or policies of insurance or such self-insurance may contain any reasonable limitations or exclusions not contrary to Mississippi state

statutes or case law as are normally included in commercial liability insurance policies generally available to political subdivisions. All such plans of insurance and/or reserves shall be submitted for approval to the board. The board shall issue a certificate of coverage to each political subdivision whose plan of insurance and/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 and/or reserves, the political subdivision shall act in accordance with the rules and regulations of the board and obtain a satisfactory plan of insurance and/or reserves to be approved by the board.

(4) Any governmental entity of the state may purchase liability insurance to cover claims in excess of the amounts provided for in Section [11-46-15](#) and may be sued by anyone in excess of the amounts provided for in Section [11-46-15](#) to the extent of such excess insurance carried; provided, however, that the immunity from suit above the amounts provided for in Section [11-46-15](#) shall be waived only to the extent of such excess liability insurance carried.

(5) Any two (2) or more political subdivisions are hereby authorized to enter into agreement and to contract between and among themselves for the purpose of pooling their liabilities as a group under this chapter. Such pooling agreements and contracts may provide for the purchase of one or more policies of liability insurance and/or the establishment of self-insurance reserves and shall be subject to approval by the board in the manner provided in subsections (2) and (3) of this section.

(6) The board shall have subrogation rights against a third party for amounts paid out of any plan of self-insurance administered by such board pursuant to this section in behalf of a governmental entity as a result of damages caused under circumstances creating a cause of action in favor of such governmental entity against a third party. The board shall deposit in the Tort Claims Fund all monies received in connection with the settlement or payment of any claim, including proceeds from the sale of salvage.

**SOURCES:** Laws, 1984, ch. 495; reenacted and amended, Laws, 1985, ch. 474, Sec. 9; reenacted and amended, Laws, 1986, ch. 438, Sec. 4; 1987, ch. 483, Sec. 9; 1988, ch. 442, Sec. 6; 1988, ch. 479, Sec. 4; 1989, ch. 537, Sec. 6; 1990, ch. 518, Sec. 7; 1991, ch. 618, Sec. 7; 1992, ch. 491 Sec. 8; 1993, ch. 476, Sec. 6; 1995, ch. 568, Sec. 1; 1996, ch. 377, Sec. 1, eff from and after passage (approved March 18, 1996)

#### **SEC. 11-46-19. Powers and duties of board.**

**[Until July 1, 2005, this section shall read as follows:]**

- (1) The board shall have the following powers:
  - (a) To provide oversight over the Tort Claims Fund;
  - (b) To approve any award made from the Tort Claims Fund;

(c) To pay all necessary expenses attributable to the operation of the Tort Claims Fund from such fund;

(d) To assign litigated claims against governmental entities other than political subdivisions to competent attorneys unless such governmental entity has a staff attorney who is competent to represent the governmental entity and is approved by the board; the board shall give primary consideration to attorneys practicing in the jurisdiction where the claim arose in assigning cases; attorneys hired to represent a governmental entity other than a political subdivision shall be paid according to the department fee schedule;

(e) To approve all claimants' attorney fees in claims against the state;

(f) To employ on a full-time basis a staff attorney who shall possess the minimum qualifications required to be a member of The Mississippi Bar, and such other staff as it may deem necessary to carry out the purposes of this chapter; the employees in the positions approved by the board shall be hired by the director, shall be employees of the department, and shall be compensated from the Tort Claims Fund;

(g) To contract with one or more reputable insurance consulting firms as may be necessary;

(h) To purchase any policies of liability insurance and to administer any plan of self-insurance or policies of liability insurance required for the protection of the state against claims and suits brought under this chapter;

(i) To expend money from the Tort Claims Fund for the purchase of any policies of liability insurance and the payment of any award or settlement of a claim against the state under the provisions of this chapter or of a claim against any school district, junior college or community college district, or state agency, arising from the operation of school buses or other vehicles, under the provisions of Section 37-41-42;

(j) To cancel, modify or replace any policy or policies of liability insurance procured by the board;

(k) To issue certificates of coverage to governmental entities, including any political subdivision participating in any plan of liability protection approved by the board;

(l) To review and approve or reject any plan of liability insurance or self-insurance reserves proposed or provided by political subdivisions if such plan is intended to serve as security for risks of claims and suits against them for which immunity has been waived under this chapter;

(m) To administer disposition of claims against the Tort Claims Fund;

(n) To withhold issuance of any warrants payable from funds of a participating state entity should such entity fail to make required contributions to the Tort Claims Fund in the time and manner prescribed by the board;

(o) To develop a comprehensive statewide list of attorneys who are qualified to represent the state and any employee thereof named as a defendant in a claim brought under this chapter against the state or such employee;

(p) To develop a schedule of fees for paying attorneys defending claims against the state or an employee thereof;

(q) To adopt and promulgate such reasonable rules and regulations and to do and perform all such acts as are necessary to carry out its powers and duties under this chapter;

(r) To establish and assess premiums to be paid by governmental entities required to participate in the Tort Claims Fund;

(s) To contract with a third-party administrator to process claims against the state under this chapter;

(t) To annually submit its budget request to the Legislature as a state agency;

(u) To dispose of salvage obtained in settlement or payment of any claim at fair market value by such means and upon such terms as the board may think best; and

(v) To administer the Medical Malpractice Insurance Availability Plan under Section 83-48-5.

(2) Policies of liability insurance purchased for the protection of governmental entities against claims and suits brought under this chapter shall be purchased pursuant to the competitive bidding procedures set forth in Section 31-7-13.

(3) The department shall have the following powers and duties:

(a) To annually report to the Legislature concerning each comprehensive plan of liability protection established pursuant to Section 11-46-17(2). Such report shall include a comprehensive analysis of the cost of the plan, a breakdown of the cost to participating state entities, and such other information as the department may deem necessary.

(b) To provide the board with any staff and meeting facilities as may be necessary to carry out the duties of the board as provided in this chapter.

(c) To submit the board's budget request for the initial year of operation of the board in order to authorize expenditures for the 1993-1994 fiscal year and for the appropriation of such general funds as shall be required for the commencement of its activities.

**[From and after July 1, 2005, this section shall read as follows:]**

(1) The board shall have the following powers:

(a) To provide oversight over the Tort Claims Fund;

(b) To approve any award made from the Tort Claims Fund;

(c) To pay all necessary expenses attributable to the operation of the Tort Claims Fund from such fund;

(d) To assign litigated claims against governmental entities other than political subdivisions to competent attorneys unless such governmental entity has a staff attorney who is competent to represent the governmental entity and is approved by the board; the board shall give primary consideration to attorneys practicing in the jurisdiction where the claim arose in assigning cases; attorneys hired to represent a governmental entity other than a political subdivision shall be paid according to the department fee schedule;

(e) To approve all claimants' attorney fees in claims against the state;

(f) To employ on a full-time basis a staff attorney who shall possess the minimum qualifications required to be a member of the Mississippi Bar, and such other staff as it may deem necessary to carry out the purposes of this chapter; the employees in the positions approved by the board shall be hired by the director, shall be employees of the department, and shall be compensated from the Tort Claims Fund;

(g) To contract with one or more reputable insurance consulting firms as may be necessary;

(h) To purchase any policies of liability insurance and to administer any plan of self-insurance or policies of liability insurance required for the protection of the state against claims and suits brought under this chapter;

(i) To expend money from the Tort Claims Fund for the purchase of any policies of liability insurance and the payment of any award or settlement of a claim against the state under the provisions of this chapter or of a claim against any school district, junior college or community college district, or state agency, arising from the operation of school buses or other vehicles, under the provisions of Section 37-41-42;

(j) To cancel, modify or replace any policy or policies of liability insurance procured by the board;

(k) To issue certificates of coverage to governmental entities, including any political subdivision participating in any plan of liability protection approved by the board;

(l) To review and approve or reject any plan of liability insurance or self-insurance reserves proposed or provided by political subdivisions if such plan is intended to serve as security for risks of claims and suits against them for which immunity has been waived under this chapter;

(m) To administer disposition of claims against the Tort Claims Fund;

(n) To withhold issuance of any warrants payable from funds of a participating state entity should such entity fail to make required contributions to the Tort Claims Fund in the time and manner prescribed by the board;

(o) To develop a comprehensive statewide list of attorneys who are qualified to represent the state and any employee thereof named as a defendant in a claim brought under this chapter against the state or such employee;

(p) To develop a schedule of fees for paying attorneys defending claims against the state or an employee thereof;

(q) To adopt and promulgate such reasonable rules and regulations and to do and perform all such acts as are necessary to carry out its powers and duties under this chapter;

(r) To establish and assess premiums to be paid by governmental entities required to participate in the Tort Claims Fund;

(s) To contract with a third-party administrator to process claims against the state under this chapter;

(t) To annually submit its budget request to the Legislature as a state agency; and

(u) To dispose of salvage obtained in settlement or payment of any claim at fair market value by such means and upon such terms as the board may think best.

(2) Policies of liability insurance purchased for the protection of governmental entities against claims and suits brought under this chapter shall be purchased pursuant to the competitive bidding procedures set forth in Section 31-7-13.

(3) The department shall have the following powers and duties:

(a) To annually report to the Legislature concerning each comprehensive plan of liability protection established pursuant to Section 11-46-17(2). Such report shall include a comprehensive analysis of the cost of the plan, a breakdown of the cost to participating state entities, and such other information as the department may deem necessary.

(b) To provide the board with any staff and meeting facilities as may be necessary to carry out the duties of the board as provided in this chapter.

(c) To submit the board's budget request for the initial year of operation of the board in order to authorize expenditures for the 1993-1994 fiscal year and for the appropriation of such general funds as shall be required for the commencement of its activities.

**SOURCES:** Laws, 1984, ch. 495, § 11; reenacted and amended, Laws, 1985, ch. 474, § 10; Laws, 1987, ch. 483, § 10; Laws, 1988, ch. 442, § 7; Laws, 1988, ch. 479, § 5; Laws, 1993, ch. 476, § 8; Laws, 1995, ch. 568, § 2; Laws, 1996, ch. 428, § 2; Laws, 2003, ch. 560, § 5, SB 2628, eff from and after passage (approved Apr. 24, 2003) and shall stand repealed from and after July 1, 2005

**SEC. 11-46-20. Tort Claims Board; regulation of liability coverage of governmental entities; annual review of insurance plans; other powers; fees.**

(1) The Tort Claims Board shall be charged with the responsibility to regulate all liability coverage of governmental entities required to have certificates of coverage under this chapter which elect to provide the same through a public entity group or individual self-insurance program. This regulation shall be accomplished through an initial approval as provided in Section [11-46-17](#) and by ongoing or annual review. Each self-insurance program shall annually submit to the Tort Claims Board the following items within ninety (90) days from the end of the group year:

- (a) An audited financial statement;
- (b) An actuarial valuation;
- (c) Contracts with third-party administrators (if any);
- (d) Excess insurance policies;
- (e) A list of members and premiums due from and collected from each member; and
- (f) Other data as may be required by the Tort Claims Board.

(2) Areas of regulation under this section shall include, but not be limited to, the following:

- (a) Financial solvency;
- (b) Rating plans, rates and rating basis;
- (c) Assessment plans of public entity groups;
- (d) Coverages offered and excluded;
- (e) Deductibles and deductible credits;
- (f) Proper purchase of excess insurance or reinsurance; and

(g) Review of losses, reserves and expenses annually.

(3) Individual self-insurers and group public entity self-insurers must provide the data requested for the purposes of this section in order to receive continuing approval of the Tort Claims Board and issuance of annual certificates of coverage to the governmental entities involved.

(4) The Tort Claims Board is authorized to assess and charge appropriate fees for the costs of regulation, as determined by the board, to the individual self-insurers and group public entity self-insurers being regulated.

(5) The Tort Claims Board is empowered to:

(a) Issue cease and desist orders;

(b) Require rate increases or decreases;

(c) Require assessments of members of group public entity self-insurers in such amounts as are authorized and required by the board;

(d) Require changes in excess insurance or reinsurance; or

(e) Take such other actions as deemed necessary by the board to carry out the provisions of this chapter.

**SOURCES:** Laws, 1994, ch. 568, § 1, eff from and after passage (approved April 7, 1994).

**SEC. 11-46-23. Provisions of chapter independent and severable.**

If any provision or clause of Chapter 46, Title 11, Mississippi Code of 1972, or application thereof is held invalid or unenforceable for any reason, such holding shall have no effect on any other provisions or applications of Chapter 46, Title 11, Mississippi Code of 1972, and to this end the provisions of Chapter 46, Title 11, Mississippi Code of 1972, are declared to be severable.

**SOURCES:** Laws, 1993, ch. 476, § 11, eff from and after passage (approved April 1, 1993).