

\*\*\* Current through the 2016 Regular and 1st and 2nd Extraordinary Sessions of the Legislature \*\*\*

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

Miss. Code Ann. § 11-46-1 (2016)

§ 11-46-1. Definitions

As used in this chapter, the following terms shall have the meanings 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, including firefighters who are members of a volunteer fire department that is a political subdivision. 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; and

(i) For purposes of the limits of liability provided for in Section 11-46-15, the term "employee" shall include:

1. 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 the contract;

2. 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;

3. 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;

4. 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;

(ii) 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; and

(iii) The term "employee" also shall include any employee or member of the governing board of a charter school but shall not include any person or entity acting in the capacity of an independent contractor to provide goods or services under a contract with a charter school.

(g) "Governmental entity" means the state and political subdivisions.

(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, charter school, volunteer fire department that is a chartered nonprofit corporation providing emergency services under contract with a county or municipality, community hospital as defined in Section 41-13-10, airport authority, or other instrumentality of the state, whether or not the body or instrumentality 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 the body or instrumentality 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; Laws, 2013, ch. 385, § 1; Laws, 2013, ch. 497, § 32; brought forward without change, Laws, 2016, ch. 367, § 2, eff from and after July 1, 2016.

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Miss. Code Ann. § 11-46-3 (2016)

§ 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, Laws, 1985, ch. 474, § 2; reenacted and amended, Laws, 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).

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Miss. Code Ann. § 11-46-5 (2016)

§ 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).

*Miss. Code Ann. § 11-46-6*

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Miss. Code Ann. § 11-46-6 (2016)

§ 11-46-6. Repealed

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

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

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Miss. Code Ann. § 11-46-7 (2016)

§ 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).

*Miss. Code Ann. § 11-46-8*

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Miss. Code Ann. § 11-46-8 (2016)

§ 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 (2016)

§ 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 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 65-43-1 or 65-43-3, 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; brought forward without change, Laws, 2016, ch. 367, § 3, eff from and after July 1, 2016.

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Miss. Code Ann. § 11-46-11 (2016)

§ 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 under this chapter shall proceed as he might in any action at law or in equity, except that at least ninety (90) days before instituting suit, the person must file a notice of claim with the chief executive officer of the governmental entity.

(2) (a) Service of notice of claim shall be made as follows:

(i) For local governments:

1. If the governmental entity is a county, then upon the chancery clerk of the county sued;

2. If the governmental entity is a municipality, then upon the city clerk.

(ii) If the governmental entity to be sued is a state entity as defined in Section 11-46-1(j), or is a political subdivision other than a county or municipality, service of notice of claim shall be had only upon that entity's or political subdivision's chief executive officer. The chief executive officer of a governmental entity participating in a plan administered by the board pursuant to Section 11-46-7(3) shall notify the board of any claims filed within five (5) days after receipt thereof.

(b) Every notice of claim shall:

(i) Be in writing;

(ii) Be delivered in person or by registered or certified United States mail; and

(iii) 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) (a) All actions brought under 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, except that filing a notice of claim within the required one-year period will toll the statute of limitations for ninety-five (95) days from the date the chief executive officer of the state entity or the chief executive officer or other statutorily designated official of a political subdivision receives the notice of claim.

(b) No action whatsoever may be maintained by the claimant until the claimant receives a

notice of denial of claim or the tolling period expires, whichever comes first, after which the claimant has an additional ninety (90) days to file suit; failure to file within the time allowed is an absolute bar to any further proceedings under this chapter.

(c) All notices of denial of claim shall be served by governmental entities upon claimants by certified mail, return receipt requested, only.

(d) (i) To determine the running of limitations periods under this chapter, service of any notice of claim or notice of denial of claim is effective upon delivery by the methods statutorily designated in this chapter.

(ii) The limitations period provided in this section controls 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 that 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.

**HISTORY:** SOURCES: Laws, 1984, ch. 495, § 7; reenacted without change, Laws, 1985, ch. 474, § 6; Laws, 1987, ch. 483, § 6; Laws, 1988, ch. 479, § 3; Laws, 1993, ch. 476, § 5; Laws, 1999, ch. 469, § 1; Laws, 2000, ch. 315, § 1; Laws, 2002, ch. 380, § 1; Laws, 2012, ch. 513, § 1, eff from and after July 1, 2012.

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Miss. Code Ann. § 11-46-13 (2016)

§ 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.

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

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Miss. Code Ann. § 11-46-15 (2016)

§ 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, 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.

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

*Miss. Code Ann. § 11-46-16*

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Miss. Code Ann. § 11-46-16 (2016)

§ 11-46-16. Expired.

Expired by operation of law, eff from and after July 1, 1993 as to the state, and from and  
after October 1, 1995 as to political subdivisions.

[Laws, 1990, ch. 518, § 6; Laws, 1992, ch. 491 § 7; Laws, 1992 Special Session, ch. 3, §  
3, eff from and after passage (approved September 16, 1992).]



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Miss. Code Ann. § 11-46-17 (2016)

§ 11-46-17. Creation of Tort Claims Fund; liability insurance; funding of agency expenses; deposit of monies into State General Fund

(1) There is hereby created in the State Treasury a special fund to be known as the "Tort Claims Fund."

All monies that the Department of Finance and Administration receives and collects under the provisions of subsection (2) of this section and all funds that the Legislature appropriates for use by the board in administering the provisions of this chapter shall be deposited in the 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 the 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 or one or more policies of liability insurance or combination of the two, all to be administered by the Department of Finance and Administration. The 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; the board may allow the 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. The plan may also 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 the costs 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.

Before July 1, 1993, the Board of Trustees of State Institutions of Higher Learning may provide 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 the insurance or self-insurance program. From and after July 1, 1993, 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 a 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 a policy or policies of insurance, establish self-insurance reserves, or provide a combination of insurance and reserves as necessary to cover all risks of claims and suits for which political subdivisions may be liable under this chapter; a political subdivision shall not be required to obtain pollution liability insurance. However, this shall not limit any cause of action against a political subdivision relative to limits of liability under the Tort Claims Act. The policy or policies of insurance or 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 the plans of insurance or reserves or combination of insurance and reserves shall be submitted for approval to the board. The board shall issue a certificate of coverage to each political subdivision whose plan 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 its plan, the political subdivision shall act in accordance with the rules and regulations of the board and obtain a satisfactory plan of insurance or reserves or combination of insurance and reserves to be approved by the board.

(4) Any governmental entity 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 the excess insurance carried; however, the immunity from suit above the amounts provided for in Section 11-46-15 shall be waived only to the extent of excess liability insurance carried.

(5) Any two (2) or more political subdivisions may contract to pool their liabilities as a group under this chapter. The pooling agreements and contracts may provide for the purchase of one or more policies of liability insurance or the establishment of self-insurance reserves or a combination of insurance and 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 the board pursuant to this section on behalf of a governmental entity that is not a political subdivision 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.

(7) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(8) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY:** SOURCES: Laws, 1984, ch. 495; reenacted and amended, Laws, 1985, ch. 474, § 9; reenacted and amended, Laws, 1986, ch. 438, § 4; Laws, 1987, ch. 483, § 9; Laws, 1988, ch. 442, § 6; Laws, 1988, ch. 479, § 4; Laws, 1989, ch. 537, § 6; Laws, 1990, ch. 518, § 7; Laws, 1991, ch. 618, § 7; Laws, 1992, ch. 491 § 8; Laws, 1993, ch. 476, § 6; Laws, 1995, ch. 568, § 1; Laws, 1996, ch. 377, § 1; Laws, 1998, ch. 496, § 1; Laws, 2013, ch. 385, § 2; Laws, 2016, ch. 459, § 66, eff from and after July 1, 2016.

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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

Miss. Code Ann. § 11-46-18 (2016)

§ 11-46-18. Mississippi Tort Claims Board; membership; payment of expenses; officers; meetings

(1) There is created a board which shall be known as the Mississippi Tort Claims Board. The board shall consist of seven (7) members as follows:

(a) The Governor, subject to the advice and consent of the Senate, shall appoint one (1) member who shall serve at the will and pleasure of the Governor and who shall serve as chairman of the board.

(b) The Director of the Department of Environmental Quality shall be a member of the board.

(c) The Commissioner of Insurance shall be a member of the board.

(d) The Director of the Department of Finance and Administration shall be a member of the board, shall serve as the executive director to the board, and shall be authorized to conduct the administrative affairs of the board.

(e) The Attorney General shall be a member of the board.

(f) The Commissioner of Public Safety shall be a member of the board.

(g) The State Treasurer shall be a member of the board.

(2) The member of the board appointed by the Governor shall receive per diem as provided by Section 25-3-69 and reimbursement of travel expenses as provided in Section 25-3-41 for expenses incurred in carrying out his duties as a member of the Mississippi Tort Claims Board.

(3) The board, by majority vote, shall determine the place and time of its meetings and shall spread the same on its minutes. A majority of the members shall constitute a quorum, and final action of the board shall require the affirmative vote of a majority of those present and voting. The board shall elect a vice chairman who shall preside in the absence or incapacity of the chairman and such other officers as it deems necessary and as established by its rules of order. Extraordinary meetings may be held upon call of the chairman or upon petition of any four (4) members of the board should the chairman refuse to call a meeting. The initial meeting of the board shall convene upon call of the chairman.

(4) The Lieutenant Governor may designate one (1) Senator and the Speaker of the House of Representatives may designate one (1) Representative to attend any meeting of the Tort Claims Board. The appointing authorities may designate alternate members from their respective houses to serve when the regular designees are unable to attend such meetings of the board. Such legislative designees shall have no jurisdiction or vote on any matter within the jurisdiction of the board. For attending meetings of the board, such legislators

shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the board will be paid while the Legislature is in session. No per diem and expenses will be paid, except for attending meetings of the board, without prior approval of the proper committee in their respective houses.

**HISTORY:** SOURCES: Laws, 1993, ch. 476, § 7; Laws, 1994, ch. 568, § 2, eff from and after passage (approved April 7, 1994).

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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

Miss. Code Ann. § 11-46-19 (2016)

§ 11-46-19. Powers and duties of board

(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) [Repealed]

(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.

**HISTORY:** 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; reenacted and amended, Laws, 2005, ch. 539, § 5; Laws, 2006, ch. 567, § 6, eff from and after passage (approved Apr. 24, 2006.)

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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

Miss. Code Ann. § 11-46-20 (2016)

§ 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.

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



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TITLE 29. PUBLIC LANDS, BUILDINGS AND PROPERTY  
CHAPTER 13. FLOOD INSURANCE FOR STATE-OWNED BUILDINGS

Miss. Code Ann. § 29-13-1 (2016)

§ 29-13-1. Purchase of business property insurance and business personal property insurance on all state-owned buildings and contents thereof; participation in National Flood Insurance Program

(1) The Department of Finance and Administration ("department") shall purchase and maintain business property insurance and business personal property insurance on all state-owned buildings and/or contents as required by federal law and regulations of the Federal Emergency Management Agency (FEMA) as is necessary for receiving public assistance or reimbursement for repair, reconstruction, replacement or other damage to those buildings and/or contents caused by the Hurricane Katrina Disaster of 2005 or subsequent disasters. The department is authorized to expend funds from any available source for the purpose of obtaining and maintaining that property insurance. The department is authorized to enter into agreements with other state agencies, local school districts, community/junior college districts, state institutions of higher learning and community hospitals to pool their liabilities to participate in a group business property and/or business personal property insurance program, subject to uniform rules and regulations as may be adopted by the Department of Finance and Administration.

(2) The Department of Finance and Administration is required to purchase and maintain flood insurance under the National Flood Insurance Program (42 USCS, Section 4001 et seq.) as required by federal law on state-owned buildings and/or contents. To meet the requirements of participation in such program, the department is further required to adopt floodplain management criteria and procedures in accordance with the rules and regulations of 24 CFR, Chapter X, Subchapter B (National Flood Insurance Program), established by the United States Department of Housing and Urban Development pursuant to the National Flood Insurance Act of 1968 (Public Law 90-448) as amended and by the Flood Disaster Protection Act of 1973 (Public Law 93-234) as amended, and any supplemental changes to such rules and regulations. The department shall adopt the floodplain management criteria set forth in 24 CFR, Chapter X, Section 1910.3, on an emergency basis immediately upon passage of this chapter and until such time as final regulations and criteria are developed by the department. Final regulations, criteria and procedures shall be implemented by the department within ninety (90) days after passage of this chapter. Such criteria and procedures shall apply to any new construction or substantial improvement of state-owned buildings and other state-owned development located in floodplain areas as identified in conjunction with the National Flood Insurance Program. The department shall enforce the floodplain management criteria and procedures adopted by the department pursuant to this section.

(3) No state agency shall be authorized to expend any state, federal or special funds for the construction, renovation, repair or placement of any structure in a designated floodplain, floodway or coastal high hazard area, or to allow for the construction, renovation, repair or placement of any privately owned structure onto state-owned land in a designated floodplain, floodway or coastal high hazard area unless such agency has previously obtained the necessary permits required by the Department of Finance and Administration to comply with the regulations of the Federal Emergency Management Agency (FEMA), National Flood Insurance Program and the state's floodplain management regulations.

**HISTORY:** SOURCES: Laws, 1979, 1st Ex Sess. ch. 5, § 1; Laws, 1984, ch. 488, § 191; Laws, 1994, ch. 449, § 1; Laws, 2005, 5th Ex Sess, ch. 24, § 1, eff from and after passage (approved Oct. 24, 2005.)

*Miss. Code Ann. § 29-13-3*

MISSISSIPPI CODE of 1972

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TITLE 29. PUBLIC LANDS, BUILDINGS AND PROPERTY  
CHAPTER 13. FLOOD INSURANCE FOR STATE-OWNED BUILDINGS

Miss. Code Ann. § 29-13-3 (2016)

§ 29-13-3. Filing claims; expenditures

The Department of Finance and Administration shall file any claims for damages covered under the Hurricane Katrina Disaster of 2005 or subsequent flood insurance policies purchased pursuant to Section 29-13-1. The proceeds of any such claim for damage to a state-owned building shall be paid to the Department of Finance and Administration and the State of Mississippi, which is authorized to expend such proceeds to repair or replace such damaged building.

**HISTORY:** SOURCES: Laws, 1979, 1st Ex Sess. ch. 5, § 2; Laws, 1984, ch. 488, § 192; Laws, 1992, ch. 396, § 1; Laws, 2005, 5th Ex Sess, ch. 24, § 2, eff from and after passage (approved Oct. 24, 2005.)

*Miss. Code Ann. § 29-13-5*

MISSISSIPPI CODE of 1972

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TITLE 29. PUBLIC LANDS, BUILDINGS AND PROPERTY  
CHAPTER 13. FLOOD INSURANCE FOR STATE-OWNED BUILDINGS

Miss. Code Ann. § 29-13-5 (2016)

§ 29-13-5. Inventory of state-owned buildings in flood plain areas

The Department of Finance and Administration shall compile an inventory of all state-owned buildings in any area of the state affected by the Hurricane Katrina Disaster of 2005 or any floodplain areas and any necessary data concerning such buildings. Each agency, board, commission, department and institution of the state shall cooperate in the preparation of the inventory and shall submit any information required by the department in a timely manner which will allow the inventory to be finalized and presented to the appropriate federal and state agencies. Such information shall include the specific location and, where available, the elevation of all state-owned buildings under the jurisdiction of the agency, board, commission, department or institution in any hurricane hazard or floodplain areas.

**HISTORY:** SOURCES: Laws, 1979, 1st Ex Sess. ch. 5, § 3; Laws, 2005, 5th Ex Sess, ch. 24, § 3, eff from and after passage (approved Oct. 24, 2005.)