



**Liability Risks for After-Hours Use of Public School Property to Reduce Obesity:
MISSISSIPPI**

This memorandum summarizes Mississippi law governing liability for after-hours recreational use of school facilities. It should be read with this project's overview memorandum, which can be found at www.changelabsolutions.org/publications/liability-schools-50-states. It does not provide the kind of detailed analysis necessary to support the defense of a liability action, nor is it a substitute for consultation with a lawyer. If there are important cases, statutes, or analyses that we have overlooked, please inform us by sending an email to info@changelabsolutions.org.

Note that in 2012, Mississippi passed a law that authorized local school boards to adopt policies allowing public recreational use of school property outside of school hours.¹ We address the implication of this legislation below and in a separate publication, entitled "[Mississippi's Shared Use Law](#)."

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Introduction

For a negligence action in the state of Mississippi, a plaintiff must prove four elements: (1) the defendant owed the plaintiff a legal duty, (2) the defendant breached that duty, (3) the breach by the defendant caused an injury to the plaintiff, and (4) reasonably foreseeable damages resulted.² For purposes of evaluating the legal rules that affect the liability risk involved in opening up schools to after-hours use, the crucial issues involve the duty of the school system, in particular the potential application of governmental immunity.

Part A of this memorandum addresses the duty of the school system and ways that Mississippi law might limit or lessen the legal duty of care owed to after-school users of school district facilities. Part B addresses issues relating to limits on damages. Part C addresses two risk management issues that involve legal questions that are susceptible to a generalized legal analysis: (1) whether a school district could avoid liability arising out of recreational programs by requiring the participants, or their parents or legal guardians, to sign liability waivers; and (2) whether a third party providing the recreational programming on school facilities would have the same duty of care as a school district.

A. Public Schools, the Duty Element, and After-Hours Use

Generally, school districts and other providers of recreational facilities have the legal duty to take *reasonable* precautions to prevent injury. What is reasonable is very context specific and depends on many things: most important, the nature of the harm, the difficulty of preventing it, and generally accepted standards in the management of recreational facilities.

As any lawyer who has tried to explain the concept of negligence to a layperson knows, the standard of reasonable care can seem frustratingly vague and imprecise. Yet it is the standard that generally governs liability risk for

organizations and individuals in the United States. On the whole, it is a flexible standard that does a good job of balancing the competing interests of the providers and users of many kinds of services.

This section of the memorandum explores the ways that Mississippi law might limit or lessen the legal duty of care owed to after-school users of school district facilities. In subsection 1, we discuss governmental immunity and how it may insulate a school district from liability. Mississippi's shared use law grants school districts and their personnel immunity under certain circumstances. In addition, governmental immunity may apply in limited circumstances under specific categories of immunity granted in the Mississippi Tort Claims Act.

Subsection 2 discusses Mississippi's recreational user statute. In some states, recreational user statutes offer liability protection to school districts. Mississippi's recreational user statute may provide some protection to school districts, but it does not do so explicitly. Rather, counsel would have to argue that the statute applies to both public and private entities and that it applies to activities typical of an after-hours recreational program.

Subsection 3 discusses the impact on school liability of Mississippi court decisions to retain the traditional distinctions among different categories of entrants on land. We conclude that it likely offers little protections to school districts.

Subsection 4 discusses the liability and indemnification of school employees, a topic closely related to school districts' overall liability risk.

Subsection 5 concludes this part of the memorandum by comparing the legal duties that a school already faces for activity during the school day with the legal duties that the school would face if it permitted after-hours use of its facilities.

1. Limited Duty Due to Governmental Immunity

(a) After-School Recreation Immunity

In 2012, the Mississippi Legislature amended Title 37 by adding a new chapter to encourage local school boards to adopt policies allowing public recreational use of school property and facilities outside of school hours.³ The intent of the law is "to make school property available to community members during nonschool hours for recreational activities in order to support active living, reduce obesity, reduce health care costs associated with obesity, increase community safety, maximize community resources, and promote community support for schools."⁴ The law encourages local school districts to adopt policies to allow the use of indoor or outdoor school property and facilities for public recreation and sport during nonschool hours.⁵

To encourage school districts to open their property and facilities for community recreational use after school hours, the shared use law provides school districts and their employees with some immunity from liability. The law provides, subject to two exceptions, that, "[s]chool districts and school district employees may not be held liable for any claim resulting from a loss or injury arising from the use of indoor or outdoor school property or facilities made available for public recreation or sport."⁶ There are two exceptions to this grant of immunity to school districts.

First, there is no immunity for “[d]eliberate, willful or malicious injury to persons or property by a school district employee.”⁷

Second, the law states that there is no immunity from “[i]njury resulting from a lack of proper maintenance or upkeep of a piece of equipment or facilities, unless the school district or school district employee had attempted to restrict access to a piece of equipment or facilities area in need of repair which would endanger a student during normal school hours.”⁸ This common sense provision imposes a duty on school districts to properly maintain their equipment or make a reasonable effort to block access to equipment or facilities that they know are in need of repair. As a practical matter, this exception is likely to have little impact on schools, because, as addressed below, Mississippi schools already to have a duty during the school day to maintain their equipment and facilities safely or block access to unsafe equipment and facilities so that students are not harmed.⁹

Before the enactment of this shared use law, there was no explicit grant of immunity for schools that opened their facilities to community recreational use, although, as discussed below, a court might have found some protection from liability under other laws. Because the shared use law was drafted as a separate law and not incorporated into Mississippi’s Tort Claims Act (Act), it is not certain how the new law fits with other parts of the Act that offer protections from liability to school districts. The statute expressly states that it “may not be deemed to create or increase the liability of any person.”¹⁰ Although no court has interpreted this provision, this language likely ensures that the shared use law cannot act to take away other protections that school employees and, perhaps, school districts may have under the Act.¹¹

(b) Mississippi Tort Claims Act

While the shared use law provides some immunity to school districts and their personnel for after-school recreation activities, other possible claims of immunity exist under Mississippi law. In 1993, the Mississippi Legislature enacted the Act, which partially repealed the sovereign and governmental immunity that state and local governments had enjoyed before the Act.¹² The Act waives immunity; that is, it allows a governmental entity to be liable for claims arising out of the torts of governmental entities and governmental employees acting within the scope and course of their employment.¹³ The Act applies to political subdivisions, including school districts.¹⁴ The Act’s general waiver of governmental immunity is limited by 25 “exemptions,” which, if applicable, give a governmental entity absolute immunity from liability.¹⁵ Applicability of one exemption does not defeat all the claims: “succinctly put, immunity as to one claim does not necessarily, as a matter of law, equate to immunity as to all claims.”¹⁶ A plaintiff is not allowed to abuse this rule, however, by splitting a single claim into separate claims when they are clearly exempted under the statute. Generally, the courts have interpreted the Act’s exemptions in favor of limiting governmental liability.¹⁷

Two of the Act’s exemptions may apply to school districts that open their grounds after school hours.

Immunity for Discretionary Acts

The first exemption gives governmental entities immunity for discretionary acts, “whether or not the discretion [is]

abused.”¹⁸ Courts have provided some guidance regarding the application of the exemption. First, an act is discretionary when “an official is required to use his own judgment or discretion” in performing it.¹⁹ By contrast, an act is ministerial “if the duty is one which has been positively imposed by law and its performance required at a time and in a manner or upon conditions which are specifically designated, the duty to perform under the conditions specified not being dependent upon the officer’s judgment or discretion.”²⁰ The discretionary act exemption applies when “(a) an employee exercise[s] discretion [or judgment] where that judgment was not foreclosed by legal mandate and was thus not ministerial, and (b) the act also involved potential considerations of social, economic or political policy alternatives.”²¹ Therefore, the first prong of the test requires a court to determine whether an ordinance or regulation mandates whether and how an act is to be performed. If so, then the act is ministerial and not entitled to protection. If, however, the act is not so regulated and is accordingly found to be discretionary, the court then must determine whether the decision was based on social, economic, or political considerations.

By way of example, the Mississippi Supreme Court found that a van driver’s decision to allow a passenger to exit the van required use of independent judgment, but did not implicate any policy concerns. Therefore, the court held that the city was not entitled to immunity under the exemption.²² In contrast, the Supreme Court found that a coach’s decision to require a student to continue practicing, which resulted in the student’s suffering heatstroke, was discretionary. Thus, the court held that the school district was entitled to immunity.²³ The Supreme Court emphasized that to find otherwise would impair both a coach’s ability to discipline students and the school’s ability to offer extracurricular activities and provide well-balanced education.²⁴ Coaching, as well as other supervisory duties, often requires independent judgments rendering those decisions discretionary.

The shared law encourages but does not require a school district to open school grounds to the public. As a result, a district’s decision to open school grounds for after-school recreational activities, to whom, and for what activities is likely a discretionary act that requires policy considerations. Accordingly, a strong argument may be made that a district’s actions fall within the exception. It’s not clear, however, that immunity would apply to all activities resulting from opening the facilities to the public. Subsequent decisions, such as the type of maintenance that the facilities require, could be considered ministerial acts, depending on whether the acts require independent judgment or require consideration of policies. Thus, whether a court finds immunity under the Act would likely depend on the particular facts relating to the harm.

Immunity for Dangerous Conditions

The “dangerous condition” exemption could be available to a school district that opens its facilities for after-hours recreational activities.²⁵ This exemption provides immunity to a governmental entity for injuries caused by a dangerous condition on the governmental property “that was not caused by the entity’s negligent or wrongful conduct, or of which it had no notice, either actual or constructive, and no adequate opportunity to protect or warn against the condition, provided that the entity had no duty to warn of any condition open and obvious to anyone exercising due care.”²⁶ The “dangerous condition” must be a physical defect²⁷ and not a man-made condition.²⁸ To overcome the immunity, a plaintiff must prove that an act or omission by a governmental employee directly caused

the dangerous condition and that the entity knew of the condition and could have protected or warned the public. Lastly, the plaintiff must prove that the condition was not open and obvious to any person using due care.²⁹ While the “dangerous condition” exemption could be available to a school, as a practical matter, it may be difficult for a district to invoke. Mississippi schools have a duty to protect students from a dangerous condition of property during the school day (see discussion below). Because of this duty, it is less likely that a school would have no notice of a dangerous condition on its property.

Under the Act, liability for school districts is the rule, not the exception. This broad statutory waiver of immunity is mitigated by 25 enumerated exceptions under which a school could be granted immunity. Of particular import for school districts are the exemptions for discretionary acts and dangerous conditions, which may offer some protection from liability. Accordingly, under the Act, a school district could be protected from liability in limited circumstances.

2. Limited Duty under Recreational User Statute

A school district could also be eligible for immunity under Mississippi’s recreational user statute. In 1978, the Mississippi legislature enacted a recreational user statute to encourage landowners to open their lands to the public for recreational purposes.³⁰ The statute provides that the landowner, by opening access to the public, shall not:

- (a) be presumed to extend any assurance that such land or water area is safe for any purpose,
- (b) incur any duty of care toward a person who goes on the land or water area, or
- (c) become liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the land or water area.³¹

A landowner may receive protection under the statute only if he or she opens the land to the public free of charge, meaning that “[no] fee is charged for entering or using any part of such land” and “[no] concession is operated on said area offering to sell or selling any item or product to persons entering thereon for recreational purposes.”³² A landowner must give public notice of the availability of the land for such public use “. . . once annually in a newspaper of general circulation in the county where such lands are situated.”³³

A landowner who allows the public access to land for recreational purposes is protected from liability, unless the landowner acts in a “deliberate, willful or malicious” manner which results in an injury to persons or property.³⁴

The first question is whether the statute applies to public landowners. While the statute does not expressly state whether it applies to public landowners, courts have found that it does. A federal district court held that the United States enjoyed protection from liability under Mississippi’s statute in its capacity as a landowner.³⁵ In another case, the district court, while denying protection to a Mississippi county based upon the facts at hand, offered no suggestion that the statute did not apply to public landowners.³⁶ Finally, the purpose of the statute is “to encourage persons to make available to the public land and water areas for outdoor recreational purposes.”³⁷ Offering recreational use immunity to public lands furthers the legislature’s intent. Accordingly, it is likely that the statute applies to school district property.

The second question is whether the types of recreational activities that occur on school grounds fall within the statute's protection. The statute defines "outdoor recreational purposes" to include an extensive list of activities, including fishing, hunting, picnicking, and nature study, and expressly provides that the list is not exhaustive.³⁸ We found no case law interpreting the meaning of "outdoor recreational purposes" under the statute. Since the statute explicitly states that the list of enumerated recreational activities is not exhaustive, a district could argue that the intent of the statute is to make land available for general outside recreational activities, and therefore recreation on school sites should fall within the definition. Opponents, however, could argue that although the list is not exhaustive, it suggests activities that require more open land such as camping and trapping. Consequently, a court could find that regular playground activity is too dissimilar from the enumerated activities to enjoy protection under the recreational user statute.

3. Limited Duty Due to Historical Distinctions among Entrants on Land

We next consider whether Mississippi law retaining the traditional tripartite trespasser/licensee/invitee classifications of entrants on land offer protections to school districts that open their facilities for recreational use. We conclude that these distinctions are unlikely to provide significant protection to school districts.³⁹

The key inquiry under this analysis is whether members of the public who use public school facilities for after-hours recreation are licensees or invitees. (Because entrants using school grounds or facilities as part of a program to combat obesity would have the school's permission to be there, they would not be trespassers.) In Mississippi, a licensee is one who enters "upon the property of another for his own convenience, pleasure or benefit pursuant to the license or implied permission of the owner."⁴⁰ The duty owed to a licensee is the same as to a trespasser in that the licensee takes the premises as she finds it. The landowner has a duty to not intentionally or willfully injure a licensee and, if the landowner is aware of a danger, to use ordinary care with respect to the licensee.⁴¹

An invitee is a person who enters the land because of an expressed or implied invitation by the owner.⁴² Invitees are then subcategorized under Mississippi law as either business or public invitees. A business invitee is a person "invited to enter or remain on the land for a purpose directly or indirectly connected with business dealings with the possessor of the land."⁴³ A public invitee is a person who "is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public."⁴⁴ For our purposes, then, we are concerned with whether after-hours recreational users would be considered public invitees, as there is no relevant business purpose implicated unless the school charges an entrance fee. A landowner owes a duty to use ordinary care in preparing for a visit and while a public invitee is on the premises.⁴⁵

Whether recreational users of school facilities are considered public invitees or licensees is legally significant, because a landowner has a higher duty of care to public invitees than licensees. The definitions of licensee and public invitee are similar and offer minimal guidance regarding classification. During the regular school day, students and parents would likely be considered invitees. The Mississippi Supreme Court has held that schools must exercise ordinary care in performing their duties toward students.⁴⁶ Several Mississippi decisions have emphasized the compulsory nature of education under state law as well as the fact that the school is paid to teach the students.⁴⁷

The Court has also found that schools owe a duty of care to attendees of school-sponsored after-school activities, such as basketball games.⁴⁸

It's unclear how a court would classify after-school users of school recreational facilities for non-school sponsored activities as there is no case considering the issue. Children participating in a free after-school recreational program could be considered licensees for two main reasons. First, the children would be entering school grounds for their own pleasure and convenience, without providing any benefit to the school. Such an argument was successfully made in *Skelton v. Twin County Rural Electric Association* in which a boy injured himself on an electrical pipe while playing in his neighbor's yard.⁴⁹ In analyzing liability, the court determined that the child was a licensee rather than an invitee; even though he was invited onto the premises, he entered the property mainly for his own pleasure, to play.⁵⁰ Second, some Mississippi courts have looked to the Restatement (Second) of Torts § 332, which states that an invitation differs from mere permission, which is sufficient to distinguish an invitee from a licensee.⁵¹ A school could argue, then, that in opening up its grounds and facilities after hours, it is only *permitting* children, not *inviting* them, to use the premises. This argument would be best supported in cases in which the school did not offer specific programming but merely opened its grounds for informal, unstructured activities of the users' own choosing.

Under other circumstances a court might consider children to be invitees. If, for example, the school offered specific programming, a court could consider that the school was conferring an invitation. Similarly, if a school charged an entrance fee that benefitted the school, visitors could be considered invitees. The language in the shared use law could support this interpretation as well. Due to the lack of guidance from the statute and case law and the differing fact scenarios, however, it's difficult to predict how a court might rule.

4. Duties and Indemnification of Public School Employees

In Mississippi, a governmental employee may be joined in a tort suit only as a representative of government. Employees cannot be held personally liable for "acts or omissions occurring within the course and scope of the employee's duties."⁵² Governmental entities must defend an employee and may not seek contribution or indemnification from the employee unless the employee's actions are outside the scope and course of employment.⁵³ Government employees are not immune from liability for malicious or criminal offenses, libel, slander and defamation, fraud, or other actions found to be outside the course and scope of employment that negate the immunity defense.⁵⁴

5. Duty during the School Day and After: A Comparison

When deciding whether to open up school facilities for recreational use, it is useful to evaluate how the legal risk arising out of opening the school grounds for recreational use compares with the legal risk arising out of the use of school grounds for programs that the school already runs.

In Mississippi, schools owe a duty of care to students. The Mississippi Supreme Court has held that "public schools have the responsibility to use ordinary care and take reasonable steps to minimize risks to students thereby providing a safe school environment."⁵⁵ The court, in concluding that public schools have a statutory duty to students, wrote:

“[s]uperintendents, principals and teachers shall hold the pupils to strict account for disorderly conduct at school, on the way to and from school, on the playgrounds, and during recess.”⁵⁶ The court also looked to Mississippi Code Annotated § 37-9-69, which imposes a statutory duty for schools to maintain “appropriate control and discipline of students while they are in the care of the school.”⁵⁷ This duty arises in part because school attendance is compulsory under Mississippi law.⁵⁸ The Court has also found that schools owe a duty of care during school-sponsored after-school activities, such as basketball games.⁵⁹ Thus, during the school day and at other school-sponsored events, a school district owes a duty of care to students.

Under the shared use law, as discussed earlier, a school district that opens its facilities to the public for recreational use is generally immune from liability, absent two exceptions. Under the law, then, a district owes a lower standard of care to after-school users of its facilities than it does to students during the day. As a result, the liability risk to a district for an injury that occurs after school appears to be lower than the risk of liability for an injury that occurs during the school day.

B. Limits on Damages

1. Damages Limits under State Tort Claims Act

The Act limits an award for compensatory damages, punitive damages, interest, and attorneys’ fees against a governmental entity.⁶⁰ The maximum liability for all claims arising from a single occurrence is limited according to when the injury occurred. All claims between 1993 and 1997 are limited to \$50,000, whereas all claims between 1997 and 2001 are limited to \$250,000, and all claims after 2001 are limited to \$500,000.⁶¹ The Act bars any award for punitive damages or for prejudgment interest.⁶² Recovery of attorneys’ fees is also barred unless otherwise authorized by law.⁶³

2. General Damages Limits for Tort Claims

Because all claims against a governmental entity must be brought under the Act, the Act’s limitation on damages would govern a claim against a school district. Mississippi has also limited damages for other types of tort actions under the Tort Reform Act of 2004. Section two of the act caps noneconomic damages for all civil actions other than medical malpractice at \$1 million.⁶⁴ Section four caps punitive damages awards based on the defendant’s net worth and can be awarded only if malice, gross negligence, or reckless disregard for the safety of others is proved by clear and convincing evidence.⁶⁵ Section six, in addressing the allocation of fault, eliminates joint liability and prohibits the reallocation of fault initially assigned to an immune tortfeasor or one whose liability is limited by law.⁶⁶

C. Selected Risk Management Issues

In this section we consider two risk management issues involving legal questions that are susceptible to a generalized legal analysis: (1) whether a school district could avoid liability arising out of recreational programs by requiring the participants, or their parents or legal guardians, to sign liability waivers; and (2) whether a third party providing the recreational programming on school grounds would have the same duty of care as a school district. In

brief, we conclude that Mississippi courts disfavor liability releases and as such would be unlikely to enforce them, and that school district liability may be reduced if the school district contracts with a third party to provide recreational programming.

1. Liability Waivers

Mississippi courts do not favor exculpatory clauses in contracts and apply high standards when reviewing liability waivers.⁶⁷ In order for a release from liability to be upheld: (1) any waiver must “clearly and precisely” describe the extent of the waiver; (2) the waiver must be fairly and honestly negotiated; and (3) both parties must have understood that they were absolving the other party from liability.⁶⁸ The court considers the “intentions of the parties in light of the circumstances as they existed when the agreement was entered into.”⁶⁹ The Supreme Court of Mississippi has stated that “although waivers are commonly used and necessary for some activities . . . those who wish to relieve themselves from responsibilities associated with a lack of due care or negligence should do so in specific and unmistakable terms.”⁷⁰ Given that Mississippi courts disfavor releases from liability, competent drafting of waivers is essential. Often, assumption of risk questions are for the jury to decide and, as such, are a last line of defense for schools that open their facilities for after-hours recreational use.

2. Providing Access through Third Parties

A school district that contracts with a third party to provide recreational programming on its premises may benefit from reduced exposure to liability for injuries proximately caused by negligence of persons charged with supervising recreational activities.

If an independent contractor is supervising after-school recreational activities and a participant is injured due to negligent supervision, the school district would likely have a reduced exposure to liability.⁷¹ The key question is whether the relationship between the school district and the third party is that of master and servant or agent, or that of principal and independent contractor.⁷² In determining which relationship exists, courts may look at the contract between the parties as well as the conduct of the parties.⁷³ In general, a master-servant/agent relationship exists where “a servant is employed to perform certain acts in a way that is or may be specified, and he may not use his discretion as to the means to accomplish the end for which he is employed.”⁷⁴ In other words, master-servant/agent relationships resemble that of employer-employee relationships, where the “master” controls the “price in payment for the work,” “furnishes the means and appliances for the work,” and has the right to “direct the details of the manner in which the work is to be done.”⁷⁵

On the other hand, a principal-independent contractor relationship exists where “it appears that a person employed to do work is not, in the execution and performance of such work, subject to the control of the employer, but is free to execute the work without being subject to the orders of the employer with respect to the details thereof.”⁷⁶ It appears that no Mississippi court has confronted the question of whether a third party providing recreational programming on school grounds was an agent of the school district or an independent contractor. Courts have held in the past,

however, that umpires' associations⁷⁷ and security companies operating on school grounds⁷⁸ are independent contractors. Independent contractors operating on school grounds are not covered by the governmental immunity in the Act⁷⁹ and instead owe a duty of care to those under their supervision. Thus, it is unlikely that a school district will be held liable for injuries occurring during recreational activities under the auspices of a third party operating on school grounds if the third party is deemed an independent contractor and not a servant/agent.

The National Policy & Legal Analysis Network to Prevent Childhood Obesity (NPLAN) is a project of ChangeLab Solutions. ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

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¹ 2012 Miss. Laws WL No. 84 (H.B. 540).

² *Rolison v. City of Meridian*, 691 So. 2d 440, 444 (Miss. 1997). Regarding damages, “[f]ailure to anticipate remote possibilities does not constitute negligence.” *Id.*

³ 2012 Miss. Laws WL No. 84 (H.B. 540).

⁴ Miss. Code Ann. § 37-171-1(2). Unless otherwise specified, all further statutory references are to the Mississippi Code Annotated.

⁵ § 37-171-5(1).

⁶ § 37-171-5(2).

⁷ § 37-171-5(2)(a).

⁸ § 37-171-5(2)(b).

⁹ *Lang v. Bay St. Louis/Waveland School Dist.*, 764 So.2d 1234, 1241-42 (Miss. 1999).

¹⁰ § 37-171-5(2)(b).

¹¹ The statute does not define the term “person,” so it is unclear whether this protection extends only to employees or officials (as individuals) or whether it also protects a school district.

¹² MISS. CODE ANN. § 11-46-5(1) (2012); Jim Fraiser, *Recent Developments in Mississippi Tort Claims Act Law Pertaining to Notice of Claim and Exemptions to Immunity Issues: Substantial/Strict Compliance, Discretionary Acts, Police Protection and Dangerous Conditions*, 76 MISS. L.J. 973, 974 (2007).

¹³ MISS. CODE ANN. § 11-46-5(1).

¹⁴ *Id.* § 11-46-1(g), (i).

¹⁵ *Id.* § 11-46-9(1)(a)-(y); Robert F. Walker, Comment, *Mississippi Tort Claims Act: Is Discretionary Immunity Useless?*, 71 MISS. L.J. 695 (2002).

¹⁶ Fraiser, *supra* note 3, at 984.

¹⁷ Several Mississippi Supreme Court rulings suggest a liberal construction of the statute’s exemptions, favoring governmental protection. The court has ruled favorably regarding strict notice provisions and the police protection exemption. Jim Fraiser, *A Review of the Substantive Provisions of the Mississippi Governmental Immunity Act: Employees’ Individual Liability, Exemptions to Waiver of Immunity, Non-jury Trial, and Limitation of Liability*, 68 MISS. L.J. 703, 739 (1999).

¹⁸ MISS. CODE ANN. § 11-46-9(1)(d) (2012).

¹⁹ *Harris ex rel. Harris v. McCray*, 867 So. 2d 188, 191 (Miss. 2003).

²⁰ *L. W. v. McComb Separate Mun. Sch. Dist.*, 754 So. 2d 1136, 1141 (Miss. 1999) (citing *T. M. v. Noblitt*, 650 So. 2d 1340, 1344 (Miss. 1995)).

²¹ Fraiser, *supra* note 3, at 987 (discussing MISS. CODE ANN. § 11-46-9(d)).

²² *Stewart v. City of Jackson*, 804 So. 2d 1041, 1048 (Miss. 2002).

²³ *Harris v. McCray*, *supra*, 867 So. 2d at 192.

²⁴ *Id.* at 193.

²⁵ See MISS. CODE ANN. § 11-46-9(1)(v) (2012).

²⁶ Fraiser, *supra* note 3, at 998.

²⁷ *Johnson v. Alcorn State Univ.*, 929 So. 2d 398 (Miss. Ct. App. 2006).

²⁸ *Id.* at 407.

²⁹ *Bryant v. Board of Supervisors of Rankin County*, 10 So.3d 919, 921 (2008).

³⁰ *Id.* § 89-2-1.

³¹ *Id.*

³² *Id.* § 89-2-7.

³³ *Id.*

³⁴ *Id.* § 89-2-5.

³⁵ See *Dorman v. United States*, 812 F. Supp. 685 (S.D. Miss. 1993).

³⁶ See *Dumas v. Pike County, Miss.*, 642 F. Supp. 131 (S.D. Miss. 1986).

³⁷ MISS. CODE ANN. § 89-2-1 (2012).

³⁸ *Id.* § 89-2-3 (“The term ‘outdoor recreational purposes’ as used in this chapter shall include, but not necessarily be limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing and visiting historical, archaeological, scenic or scientific sites”).

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- ³⁹ *Anderson v. Claiborne County Recreational Club, Inc.*, 812 So. 2d 965 (Miss. 2002); *Skelton v. Twin County Rural Elec. Ass'n*, 611 So. 2d 931 (Miss. 1992).
- ⁴⁰ *Little v. Bell*, 719 So. 2d 757, 760 (Miss. 1998); *Skelton*, 611 So. 2d at 936.
- ⁴¹ *Little*, 719 So. 2d at 760; *Skelton*, 611 So. 2d at 936–37.
- ⁴² *Skelton*, 611 So. 2d at 936.
- ⁴³ *Clark v. Moore Mem'l United Methodist Church*, 538 So. 2d 760, 763 (Miss. 1989).
- ⁴⁴ *Id.*
- ⁴⁵ *Skelton*, 611 So. 2d at 936.
- ⁴⁶ See, e.g. *Lang v. Bay St. Louis/Waveland School Dist.*, 764 So.2d 1234, 1240 (1999).
- ⁴⁷ See *infra* notes 45–46.
- ⁴⁸ *Pearl Public School Dist. v. Groner*, 784 So.2d 911, 915–916 (2001).
- ⁴⁹ 611 So. 2d 931 (Miss. 1992).
- ⁵⁰ *Id.* at 936.
- ⁵¹ *Clark v. Moore Mem'l United Methodist Church*, 538 So. 2d 760, 764 (Miss. 1989) (citing the comment to § 332, “although invitation does not in itself establish the status of invitee, it is essential to it. An invitation differs from mere permission in this: an invitation is conduct which justifies others in believing that the possessor desires them to enter the land; permission is conduct justifying others in believing that the possessor is willing that they shall enter, if they desire to do so. . . .”); *Daulton v. Miller*, 815 So. 2d 1237, 1239–40 (Miss. Ct. App. 2002); *Martin v. B. P. Exploration & Oil, Inc.*, 769 So. 2d 261 (Miss. Ct. App. 2000).
- ⁵² MISS. CODE ANN. § 11-46-7(2).
- ⁵³ *Id.* § 11-46-7(5).
- ⁵⁴ *Id.*
- ⁵⁵ *L. W. v. McComb Separate Mun. Sch. Dist.*, 754 So. 2d 1136, 1141 (Miss. 1999), *overruled on other grounds by Mississippi Transp. Com'n v. Montgomery*, 80 So.3d 789, 797 (Miss. 2012).
- ⁵⁶ *Id.* at 1141
- ⁵⁷ *Id.*
- ⁵⁸ MISS. CODE ANN. § 37-13-91 (2012).
- ⁵⁹ *Pearl Public School Dist. v. Groner*, *supra* 48, at 915–916 (2001).
- ⁶⁰ MISS. CODE ANN. § 11-46-15 (2012).
- ⁶¹ *Id.* § 11-46-15(1)(a)-(b).
- ⁶² *Id.* § 11-46-15(2).
- ⁶³ *Id.*
- ⁶⁴ *Id.* § 11-1-60 (2)(b).
- ⁶⁵ *Id.* § 11-1-65.
- ⁶⁶ *Id.* § 85-5-7.
- ⁶⁷ *Turnbough v. Ladner*, 754 So. 2d 467 (Miss. 1999).
- ⁶⁸ *Id.*
- ⁶⁹ *Id.*
- ⁷⁰ *Id.*
- ⁷¹ See *Rolison v. City of Meridian*, 691 So. 2d 440, 444–45 (Miss. 1997) (City not liable for injuries to baseball player when game was supervised by independent contract umpires association).
- ⁷² *Id.*
- ⁷³ *Id.* at 445.
- ⁷⁴ *Richardson v. APAC-Miss., Inc.*, 631 So. 2d 143, 147 (Miss. 1994).
- ⁷⁵ *Id.* at 148.
- ⁷⁶ *Id.* at 147.
- ⁷⁷ *Rolison*, 691 So. 2d at 445.
- ⁷⁸ See *Knight v. Terrell*, 961 So. 2d 30, 32 (Miss. 2007).
- ⁷⁹ *Id.*