

By: Representative Stevens

To: Insurance

HOUSE BILL NO. 1560

1 AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE JOINT
2 UNDERWRITING ASSOCIATION FOR MEDICAL MALPRACTICE INSURANCE; TO
3 PROVIDE DEFINITIONS; TO PROVIDE FOR A PLAN OF OPERATION; TO
4 REQUIRE CERTAIN INSURER ASSESSMENTS; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** The purpose of this act is to provide a temporary
7 market to make necessary medical malpractice insurance available
8 for physicians, registered nurses and all other personnel who are
9 duly licensed to practice in a hospital and hospitals. It is not
10 intended that the joint underwriting association authorized by
11 this act shall become a permanent facility.

12 **SECTION 2.** As used in this chapter, the following terms
13 shall have the meaning ascribed herein unless the context clearly
14 requires otherwise:

15 (a) "Association" means the joint underwriting
16 association established under Section 3 of this act.

17 (b) "Commissioner" means the Commissioner of Insurance.

18 (c) "Liability insurance" means and includes, but is
19 not limited to bodily injury liability, whether written in
20 connection with automobile liability insurance or otherwise, and
21 all types of liability insurance associated with the writing of
22 medical malpractice, fire, marine, employer's liability, steam
23 boiler, plate glass, fidelity, surety and burglary insurance.

24 (d) "Medical malpractice insurance" means insurance
25 coverage against the legal liability of the insured and against
26 loss, damage or expense incident to a claim arising out of the
27 death or injury of any person as the result of negligence or
28 malpractice in rendering professional service by any physician or



29 nurse who is fully licensed, whose license is current and who is
30 not under any restriction by his respective board of licensure.

31 (e) "Net direct premiums" means gross direct premiums
32 written on the lines of insurance set forth in this act, as
33 computed by the commissioner, less return premiums for the unused
34 or unabsorbed portions of premium deposits.

35 (f) "Physician" means a person who is fully licensed
36 under Section 73-25-1 et seq., whose license is current and who is
37 not under any restriction by the Board of Medical Licensure.

38 (g) "Other personnel" means persons, other than
39 physicians or nurses who are covered by professional medical or
40 hospital liability coverage, or both.

41 **SECTION 3.** (1) The commissioner shall establish a temporary
42 joint underwriting association that shall consist of all insurers
43 authorized to write, and engaged in writing, within this state on
44 any basis, liability insurance as reported in the companies'
45 annual statements.

46 (2) The purpose of the association is to provide a market
47 for medical malpractice insurance on a self-supporting basis
48 without subsidy from its members.

49 (3) The association shall not be established nor begin
50 underwriting operations until the commissioner, after due hearing
51 and investigation, has determined that medical malpractice
52 insurance is not readily available for hospitals or for
53 physicians, nurses and other personnel licensed to practice in a
54 hospital or other health care facility licensed by the State of
55 Mississippi. A determination that insurance is not readily
56 available for a particular group shall be necessary before the
57 association begins operations for that particular group. For the
58 purposes of this act, if premiums for medical malpractice
59 insurance for hospitals, physicians, nurses or other personnel who
60 are duly licensed to practice in a hospital or other health care
61 facility licensed by the State of Mississippi shall increase by



62 one hundred percent (100%) within a period of thirty-six (36)
63 months or less immediately preceding the hearing, the commissioner
64 shall determine that medical malpractice insurance is not readily
65 available in this state.

66 (4) Upon determination, the association shall be authorized
67 to issue policies of medical malpractice insurance to hospitals,
68 physicians, nurses or other personnel who are duly licensed to
69 practice in a hospital or other health care facility licensed by
70 the State of Mississippi.

71 (5) This act shall not preclude any physician, nurse or
72 other personnel who are duly licensed to practice in a hospital or
73 other health care facility licensed by the State of Mississippi or
74 hospital from procuring medical malpractice insurance from any
75 source other than the association.

76 (6) If the commissioner determines at any time that medical
77 malpractice insurance can be made readily available in the
78 voluntary market for either physicians, nurses, hospitals or other
79 personnel who are duly licensed to practice in a hospital or other
80 health care facility licensed by the State of Mississippi, the
81 association shall then cease its underwriting operations for
82 medical malpractice insurance that has been determined to be
83 available in the voluntary market. The commissioner may cease all
84 activities and close all accounts of the temporary joint
85 underwriting association, as provided in Section 15 of this act,
86 until the time that it is necessary to reinstate the plan under
87 like terms and conditions.

88 (7) All policies issued by the association shall provide for
89 a continuous period of coverage beginning on their respective
90 effective dates and terminating automatically three (3) years
91 after the effective date unless sooner terminated according to
92 terms of the policy or this act. Policies shall provide that
93 premiums shall be payable annually and may be adjusted during the
94 coverage period.



95 (8) The association, under this act and the plan of
96 operation with respect to medical malpractice insurance, shall
97 have the power on behalf of its members: (a) to issue or cause to
98 be issued policies of insurance to applicants, including
99 incidental coverages, subject to limits, deductibles and
100 coinsurance amounts specified in the plan of operation but not to
101 exceed Three Hundred Thousand Dollars (\$300,000.00) for each
102 claimant under one (1) policy and One Million Dollars
103 (\$1,000,000.00) for all claimants under one (1) policy in any one
104 (1) year; (b) to underwrite the insurance, and to adjust and pay
105 losses with respect thereto, or to appoint service companies to
106 perform those functions; (c) to assume reinsurance from its
107 members; and (d) to cede reinsurance.

108 (9) All policies of insurance under the provision of this
109 act shall be an occurrence policy and not a claims-made policy so
110 that the insured shall be protected if the claim arose during the
111 policy period even though asserted after the expiration for
112 termination date of the policy.

113 (10) Any policy under the provisions of this act shall
114 require the insurer to pay all sums the insured is obligated to
115 pay by law.

116 (11) Any policy issued under the provisions of this act
117 shall require the insurer to pay all reasonable and necessary
118 expenses of all claims asserted against an insurer which shall be
119 in addition to the limits of the policy.

120 (12) The commissioner shall have the power to adopt
121 reasonable rules and regulations according to law to implement
122 this act.

123 **SECTION 4.** The association shall be governed by a board of
124 nine (9) directors: five (5) directors from the companies which
125 are members of the association shall be elected at a meeting of
126 the member companies at a time and place designated by the
127 commissioner by voting by the member companies, whose votes shall



128 be weighted in accordance with each member's net direct liability
129 insurance premiums written during the preceding calendar year; two
130 (2) directors shall be appointed by the commissioner from the
131 medical profession, one (1) of whom shall have experience in the
132 field of hospital administration; one (1) director shall be
133 appointed by the commissioner and shall be a registered
134 professional nurse; and two (2) directors who are licensed local
135 insurance agents representing one (1) or more insurance companies
136 writing liability coverage shall be appointed by the commissioner.

137 **SECTION 5.** (1) Within forty-five (45) days following the
138 activation of the association, the directors of the association
139 shall submit to the commissioner for review a proposed plan of
140 operation consistent with the provisions of this act.

141 (2) The plan of operation shall provide for economic, fair
142 and nondiscriminatory administration and for the prompt and
143 efficient provision of medical malpractice insurance and shall
144 contain other provisions, including, but not limited to,
145 preliminary assessment of all members for initial expenses
146 necessary to begin operations, establishment of necessary
147 facilities, management of the association, assessment of members
148 to defray losses and expenses, arrangements by the commissioner,
149 reasonable and objective underwriting standards, acceptance and
150 cessation of reinsurance, appointment of servicing carriers or
151 other servicing arrangements and procedures for determining amount
152 of insurance to be provided by the association. Any such plan of
153 operation approved by the commissioner shall provide that the
154 policies shall be written and countersigned by a duly licensed
155 qualified Mississippi agent.

156 (3) The plan of operation shall be subject to approval by
157 the commissioner after consultation with the Mississippi State
158 Medical Association, Mississippi Nurses' Association and
159 Mississippi Hospital Association, representatives of the public
160 and other affected individuals and organizations. If the



161 commissioner disapproves all or any part of the proposed plan of
162 operation, the directors shall, within fifteen (15) days, submit
163 for review an appropriate revised plan of operation or part
164 thereof. If the directors fail to do so, the commissioner shall
165 promulgate a plan of operation or part thereof, as the case may
166 be. The plan of operation approved or promulgated by the
167 commission shall become effective upon order of the commissioner.

168 (4) Amendments to the plan of operation may be made by the
169 directors of the association, subject to the approval of the
170 commissioner, or shall be made at the direction of the
171 commissioner.

172 (5) There shall be a legislative committee for continuing
173 study, evaluation and review which shall be composed of three (3)
174 members of the Senate, one (1) of whom shall be the Chairman of
175 the Senate Committee on Insurance and two (2) of whom shall be
176 appointed by the Lieutenant Governor; and three (3) members of the
177 House of Representatives, one (1) of whom shall be the Chairman of
178 the House Committee on Insurance and two (2) of whom shall be
179 appointed by the Speaker of the House of Representatives. The
180 committee shall maintain a continuing evaluation and review of the
181 malpractice insurance program and needs and shall report to each
182 regular session of the Legislature on the total activities of the
183 association and malpractice insurance needs of the State of
184 Mississippi.

185 The members of the committee shall serve without salary or
186 per diem compensation, but each member of the committee shall be
187 reimbursed by the association for all actual, necessary expenses
188 incurred in the discharge of official duties upon presentation of
189 an expense voucher adopted and approved by a majority vote of a
190 quorum of the committee and signed by the chairman.

191 **SECTION 6.** (1) The rates, rating plans, rating rules,
192 rating classifications and territories applicable to the insurance
193 written by the association and statistics relating thereto shall



194 be subject to Chapter 3, Title 83, Mississippi Code of 1972,
195 giving due consideration to the past and prospective loss and
196 expense experience for medical malpractice insurance written and
197 to be written in this state, trends in the frequency and severity
198 of losses, the investment income of the association and such other
199 information as the commission may require, to be based on the
200 experience of loss within the State of Mississippi only. All
201 rates shall be on an actuarially sound basis, giving due
202 consideration to the group retrospective rating plan and the
203 stabilization reserve fund created in Section 7 of this act, and
204 shall be calculated to be self-supporting. The commissioner shall
205 make available to the association the loss and expense experience
206 of insurers previously writing medical malpractice insurance in
207 this state.

208 (2) All policies issued by the association shall be subject
209 to a nonprofit group retrospective rating plan to be approved by
210 the commissioner under which the final premium for all
211 policyholders of the association, as a group, will be equal to the
212 administrative expenses, loss and loss adjustment expenses, and
213 taxes, plus a reasonable allowance for contingencies and
214 servicing. Policyholders shall be given full credit for all
215 investment income, net of expenses and a reasonable management fee
216 on policyholder supplied funds. The standard premium, before
217 retrospective adjustment, for each policy issued by the
218 association shall be established for portions of the policy period
219 coinciding with the association's fiscal year on the basis of the
220 association's rates, rating plans, rating rules, rating
221 classifications and territories then in effect. The maximum final
222 premium for all policyholders of the association as a group shall
223 be limited as provided in subsection (5) of Section 7 of this act.
224 Since the business of the association is subject to the nonprofit
225 group retrospective rating plan required by this subsection, there



226 shall be a presumption that the rates filed and premiums for the
227 business of the association are not unreasonable or excessive.

228 (3) The commissioner shall cause the business of the
229 association to be examined as often as he deems appropriate to
230 assure that the group retrospective rating plan is being operated
231 in a manner consistent with this act. If he finds that the plan
232 is not being so operated, he shall issue an order to the
233 association, specifying in what respects the operation is
234 deficient and stating what corrective action shall be taken.

235 (4) The association shall certify to the commissioner the
236 estimated amount of any deficit remaining after the stabilization
237 reserve fund has been exhausted in payment of the maximum final
238 premium for all policyholders of the association. Within sixty
239 (60) days after such certification, the commissioner shall
240 authorize the members of the association to begin recoupment of
241 their respective shares of the deficit applying a surcharge to be
242 determined by the association at a rate not to exceed two percent
243 (2%) of the annual premiums on future policies affording those
244 kinds of insurance which form the basis for their participation in
245 the association under procedures established by the association.
246 The association shall amend the amount of its certification of
247 deficit to the commissioner as the values of its incurred losses
248 become finalized, and the members of the association shall amend
249 their recoupment procedure accordingly.

250 (5) In the event that sufficient funds are not available for
251 the sound financial operation of the association, pending
252 recoupment as provided in subsection (4) of this section, all
253 members shall, on a temporary basis, contribute to the financial
254 requirements of the association in the manner provided for in
255 Section 10 of this act. Any such contribution shall be reimbursed
256 to the members by recoupment as provided in subsection (4) of this
257 section.



258 **SECTION 7.** (1) There is created a stabilization reserve
259 fund which shall be administered by three (3) directors: one (1)
260 of whom shall be the Insurance Commissioner or his deputy; the
261 remaining two (2) directors shall be appointed by the
262 commissioner, one (1) of whom shall be a representative of the
263 association and the other a representative of its policyholders.

264 (2) The directors shall serve without salary, but each
265 director shall be reimbursed for actual and necessary expenses
266 incurred in the performance of duties as a director of the fund.

267 (3) Each policyholder shall pay to the association a
268 stabilization reserve fund charge equal to one-third (1/3) of each
269 premium payment due for insurance through the association. Such
270 charge shall be separately stated in the policy. The association
271 shall cancel the policy of any policyholder who fails to pay the
272 stabilization reserve fund charge.

273 (4) The association shall promptly pay to the trustee of the
274 fund all stabilization reserve fund charges which it collects from
275 its policyholders and any retrospective premium refunds payable
276 under the group retrospective rating plan authorized by this
277 chapter.

278 (5) All monies received by the fund shall be held in trust by
279 a trustee selected by the directors. The trustee may invest the
280 trust fund, subject to approval of the directors. All investment
281 income shall be credited to the fund. All expenses of
282 administration of the fund shall be charged against the fund.

283 The trust fund shall be used solely for the purpose of
284 discharging, when due, any retrospective premium charges payable
285 by policyholders of the association under the group retrospective
286 rating plan authorized by this act. Payment of retrospective
287 premium charges shall be made by the directors upon certification
288 to them by the association of the amount due. If the trust fund
289 is finally exhausted in payment of retrospective charges, all
290 liability and obligations of the association's policyholders, with



291 respect to the payment of retrospective premium charges, shall
292 thereupon terminate and shall be conclusively presumed to have
293 been discharged.

294 Any monies remaining in the fund after all such retrospective
295 premium charges have been paid shall be returned to policyholders
296 under procedures authorized by the directors.

297 **SECTION 8.** (1) Any hospital, licensed physician or other
298 personnel who are duly licensed to practice in a hospital shall,
299 on or after the effective date of the plan of operation, be
300 entitled to apply to the association for medical malpractice
301 insurance coverage. Such application shall be made on behalf of
302 an applicant by a duly licensed agent authorized by the applicant.

303 (2) If the association determines that the applicant meets
304 the underwriting standards of the association, as prescribed in
305 the plan of operation, and there is no unpaid, uncontested premium
306 due from the applicant for prior insurance, as shown by the
307 insured having failed to make written objection to premium charges
308 within thirty (30) days after billing, then the association, upon
309 receipt of the premium, or such portion thereof as is prescribed
310 in the plan of operation, shall cause to be issued a policy of
311 medical malpractice insurance.

312 **SECTION 9.** All insurers who are members of the association
313 shall participate in its writings, expenses, servicing allowance,
314 management fees and losses in the proportion that the net direct
315 premiums of each such member, excluding that portion of premiums
316 attributable to the operation of the association, written during
317 the preceding calendar year, bears to the aggregate net direct
318 premiums written in this state by all members of the association.
319 Each insurer's participation in the association shall be
320 determined annually on the basis of such net direct liability
321 insurance premiums written during the preceding calendar year, as
322 reported in the annual statements and other reports filed by the
323 insurer with the commissioner.



324 **SECTION 10.** (1) Any applicant to the association, any
325 person insured under this act or any affected insurer may appeal
326 to the commissioner within thirty (30) days after any ruling,
327 action or decision by or on behalf of the association, with
328 respect to those items the plan of operation defines as appealable
329 matters.

330 (2) All orders of the commissioner made under this act shall
331 be subject to judicial review in the Circuit Court of the First
332 Judicial District, Hinds County, Mississippi; however,
333 notwithstanding any other provision of law, such proceedings for
334 review shall act as a stay of the enforcement of any order or
335 decision of the commissioner disapproving or ordering the
336 withdrawal, adjustment or termination of the effectiveness of any
337 rate filing made by or on behalf of the association on the ground
338 that the rates or premiums for the business of the association are
339 unreasonable or excessive; and the association may continue to
340 charge rates pursuant to such filing pending final order of the
341 reviewing court.

342 **SECTION 11.** The association, for each year or portion
343 thereof that it is in operation, shall file in the office of the
344 commissioner, on or before January 1, a statement containing
345 information with respect to its transactions, condition,
346 operations and affairs during the preceding year. Such statement
347 shall contain such matters and information as are prescribed, and
348 shall be in such form as is approved by the commission. The
349 commissioner may, at any time, require the association to furnish
350 additional information with respect to its transactions, condition
351 or any matter connected therewith considered to be material and of
352 assistance in evaluating the scope, operation and experience of
353 the association.

354 **SECTION 12.** The commissioner shall make an examination into
355 the affairs of the association at least annually. The expense of
356 such examination shall be paid by the association.



357 **SECTION 13.** There shall be no liability on the part of, and
358 no cause of action of any nature shall arise against, the
359 association, the commissioner or his authorized representatives or
360 any other person or organization for any statements made in good
361 faith by them during any proceedings or concerning any matters
362 within the scope of this chapter.

363 **SECTION 14.** No member of the board of directors of the
364 stabilization reserve fund who is otherwise a public officer or
365 employee shall suffer a forfeiture of his office or employment or
366 any loss or diminution in the rights and privileges appertaining
367 thereto by reason of membership on the board of directors of the
368 stabilization reserve fund.

369 **SECTION 15.** (1) Upon thirty (30) days' notice to interested
370 parties, the commissioner may close any accounts established under
371 this act. Any funds in the accounts or any other funds collected
372 and received by the administrator or trustee of the temporary
373 joint underwriting association established under Section 3 of this
374 act shall be paid to the State Treasurer for deposit in the State
375 General Fund.

376 (2) Upon accounting to the commissioner and disbursement of
377 funds as provided in subsection (1) of this section, all past and
378 present directors of the association shall be relieved from any
379 liability concerning the funds and other provisions of this act.

380 **SECTION 16.** This act shall take effect and be in force from
381 and after July 1, 2002.

