HOUSE BILL NO. 1560

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

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

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

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

(a) "Association" means the joint underwriting association established under Section 3 of this act.
(b) "Commissioner" means the Commissioner of Insurance.
(c) "Liability insurance" means and includes, but is not limited to bodily injury liability, whether written in connection with automobile liability insurance or otherwise, and all types of liability insurance associated with the writing of medical malpractice, fire, marine, employer's liability, steam boiler, plate glass, fidelity, surety and burglary insurance.
(d) "Medical malpractice insurance" means insurance coverage against the legal liability of the insured and against loss, damage or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional service by any physician or
nurse who is fully licensed, whose license is current and who is not under any restriction by his respective board of licensure.

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

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

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

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

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

(3) The association shall not be established nor begin underwriting operations until the commissioner, after due hearing and investigation, has determined that medical malpractice insurance is not readily available for hospitals or for physicians, nurses and other personnel licensed to practice in a hospital or other health care facility licensed by the State of Mississippi. A determination that insurance is not readily available for a particular group shall be necessary before the association begins operations for that particular group. For the purposes of this act, if premiums for medical malpractice insurance for hospitals, physicians, nurses or other personnel who are duly licensed to practice in a hospital or other health care facility licensed by the State of Mississippi shall increase by
one hundred percent (100%) within a period of thirty-six (36)
months or less immediately preceding the hearing, the commissioner
shall determine that medical malpractice insurance is not readily
available in this state.

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

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

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

(7) All policies issued by the association shall provide for
a continuous period of coverage beginning on their respective
effective dates and terminating automatically three (3) years
after the effective date unless sooner terminated according to
terms of the policy or this act. Policies shall provide that
premiums shall be payable annually and may be adjusted during the
coverage period.
The association, under this act and the plan of operation with respect to medical malpractice insurance, shall have the power on behalf of its members: (a) to issue or cause to be issued policies of insurance to applicants, including incidental coverages, subject to limits, deductibles and coinsurance amounts specified in the plan of operation but not to exceed Three Hundred Thousand Dollars ($300,000.00) for each claimant under one (1) policy and One Million Dollars ($1,000,000.00) for all claimants under one (1) policy in any one (1) year; (b) to underwrite the insurance, and to adjust and pay losses with respect thereto, or to appoint service companies to perform those functions; (c) to assume reinsurance from its members; and (d) to cede reinsurance.

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

Any policy under the provisions of this act shall require the insurer to pay all sums the insured is obligated to pay by law.

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

The commissioner shall have the power to adopt reasonable rules and regulations according to law to implement this act.

SECTION 4. The association shall be governed by a board of nine (9) directors: five (5) directors from the companies which are members of the association shall be elected at a meeting of the member companies at a time and place designated by the commissioner by voting by the member companies, whose votes shall
be weighted in accordance with each member's net direct liability insurance premiums written during the preceding calendar year; two
(2) directors shall be appointed by the commissioner from the medical profession, one (1) of whom shall have experience in the field of hospital administration; one (1) director shall be appointed by the commissioner and shall be a registered professional nurse; and two (2) directors who are licensed local insurance agents representing one (1) or more insurance companies writing liability coverage shall be appointed by the commissioner.

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

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

(3) The plan of operation shall be subject to approval by the commissioner after consultation with the Mississippi State Medical Association, Mississippi Nurses' Association and Mississippi Hospital Association, representatives of the public and other affected individuals and organizations. If the
commissioner disapproves all or any part of the proposed plan of
operation, the directors shall, within fifteen (15) days, submit
for review an appropriate revised plan of operation or part
thereof. If the directors fail to do so, the commissioner shall
promulgate a plan of operation or part thereof, as the case may
be. The plan of operation approved or promulgated by the
commission shall become effective upon order of the commissioner.

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

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

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

SECTION 6. (1) The rates, rating plans, rating rules,
rate classifications and territories applicable to the insurance
written by the association and statistics relating thereto shall
be subject to Chapter 3, Title 83, Mississippi Code of 1972, giving due consideration to the past and prospective loss and expense experience for medical malpractice insurance written and to be written in this state, trends in the frequency and severity of losses, the investment income of the association and such other information as the commission may require, to be based on the experience of loss within the State of Mississippi only. All rates shall be on an actuarially sound basis, giving due consideration to the group retrospective rating plan and the stabilization reserve fund created in Section 7 of this act, and shall be calculated to be self-supporting. The commissioner shall make available to the association the loss and expense experience of insurers previously writing medical malpractice insurance in this state.

(2) All policies issued by the association shall be subject to a nonprofit group retrospective rating plan to be approved by the commissioner under which the final premium for all policyholders of the association, as a group, will be equal to the administrative expenses, loss and loss adjustment expenses, and taxes, plus a reasonable allowance for contingencies and servicing. Policyholders shall be given full credit for all investment income, net of expenses and a reasonable management fee on policyholder supplied funds. The standard premium, before retrospective adjustment, for each policy issued by the association shall be established for portions of the policy period coinciding with the association's fiscal year on the basis of the association's rates, rating plans, rating rules, rating classifications and territories then in effect. The maximum final premium for all policyholders of the association as a group shall be limited as provided in subsection (5) of Section 7 of this act. Since the business of the association is subject to the nonprofit group retrospective rating plan required by this subsection, there
shall be a presumption that the rates filed and premiums for the
business of the association are not unreasonable or excessive.

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

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

(5) In the event that sufficient funds are not available for
the sound financial operation of the association, pending
recoupment as provided in subsection (4) of this section, all
members shall, on a temporary basis, contribute to the financial
requirements of the association in the manner provided for in
Section 10 of this act. Any such contribution shall be reimbursed
to the members by recoupment as provided in subsection (4) of this
section.
SECTION 7. (1) There is created a stabilization reserve fund which shall be administered by three (3) directors: one (1) of whom shall be the Insurance Commissioner or his deputy; the remaining two (2) directors shall be appointed by the commissioner, one (1) of whom shall be a representative of the association and the other a representative of its policyholders.

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

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

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

(5) All monies received by the fund shall be held in trust by a trustee selected by the directors. The trustee may invest the trust fund, subject to approval of the directors. All investment income shall be credited to the fund. All expenses of administration of the fund shall be charged against the fund. The trust fund shall be used solely for the purpose of discharging, when due, any retrospective premium charges payable by policyholders of the association under the group retrospective rating plan authorized by this act. Payment of retrospective premium charges shall be made by the directors upon certification to them by the association of the amount due. If the trust fund is finally exhausted in payment of retrospective charges, all liability and obligations of the association's policyholders, with
respect to the payment of retrospective premium charges, shall thereupon terminate and shall be conclusively presumed to have been discharged.

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

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

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

SECTION 9. All insurers who are members of the association shall participate in its writings, expenses, servicing allowance, management fees and losses in the proportion that the net direct premiums of each such member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year, bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's participation in the association shall be determined annually on the basis of such net direct liability insurance premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the insurer with the commissioner.
SECTION 10. (1) Any applicant to the association, any person insured under this act or any affected insurer may appeal to the commissioner within thirty (30) days after any ruling, action or decision by or on behalf of the association, with respect to those items the plan of operation defines as appealable matters.

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

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

SECTION 12. The commissioner shall make an examination into the affairs of the association at least annually. The expense of such examination shall be paid by the association.
SECTION 13. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the association, the commissioner or his authorized representatives or any other person or organization for any statements made in good faith by them during any proceedings or concerning any matters within the scope of this chapter.

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

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

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

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