

By: Senator(s) Johnson (38th)

To: Public Health and  
Welfare; Appropriations

SENATE BILL NO. 2291

1 AN ACT TO AUTHORIZE THE MISSISSIPPI COMMISSIONER OF INSURANCE  
2 TO CONTRACT WITH AN INSURANCE COMPANY TO PROVIDE MEDICAL  
3 MALPRACTICE INSURANCE BENEFITS FOR PHYSICIANS WHO PROVIDE SERVICES  
4 TO MEDICAID AND/OR MEDICARE BENEFICIARIES; TO PROVIDE THAT THE  
5 COST OF SUCH COVERAGE SHALL BE PAID FROM THE HEALTH CARE  
6 EXPENDABLE FUND; TO PROVIDE FOR THE OPERATION OF THE MEDICAL  
7 MALPRACTICE INSURANCE PLAN FOR SUCH PHYSICIANS, TO AUTHORIZE THE  
8 COMMISSIONER OF INSURANCE TO APPROVE RATES AND PREMIUMS FOR THE  
9 PLAN AND EXAMINE THE AFFAIRS OF THE INSURER; TO CREATE A MEDICAL  
10 MALPRACTICE FUND TO RECEIVE FUNDS APPROPRIATED BY THE LEGISLATURE  
11 FOR THE PAYMENT OF SUCH INSURANCE PREMIUMS; TO AMEND SECTIONS  
12 43-13-407 AND 43-13-405, MISSISSIPPI CODE OF 1972, TO DIRECT THE  
13 STATE TREASURER TO TRANSFER \$10 MILLION OF THE 2003 TOBACCO  
14 SETTLEMENT INSTALLMENT PAYMENT AND ANNUALLY THEREAFTER INTO THE  
15 HEALTH CARE EXPENDABLE FUND TO BE APPROPRIATED FOR THE MEDICAID  
16 PHYSICIAN MEDICAL MALPRACTICE INSURANCE BENEFIT PROGRAM CREATED  
17 UNDER THIS ACT; AND FOR RELATED PURPOSES.

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

19 **SECTION 1.** (1) The purpose of this section is to make  
20 necessary medical malpractice insurance available for duly  
21 licensed physicians who provide patient services to Medicaid,  
22 Medicare and dually eligible recipients who are residents of the  
23 State of Mississippi.

24 (2) As used in this section:

25 (a) "Commissioner" shall mean the Mississippi  
26 Commissioner of Insurance.

27 (b) "Medical malpractice insurance" shall mean  
28 insurance coverage against the legal liability of the insured and  
29 against loss, damage or expense incident to a claim arising out of  
30 the death or injury of any person as the result of negligence or  
31 malpractice in rendering professional service by any physician who  
32 provides patient services for Medicaid, Medicare or dually  
33 eligible beneficiaries.



34           (c) "Net direct premiums" shall mean gross direct  
35 premiums written on the lines of insurance set forth in this act,  
36 as computed by the commissioner, less return premiums for the  
37 unused or unabsorbed portions of premium deposits.

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

41           (3) The commissioner is authorized to enter into a contract  
42 with an insurer authorized to write, and engaged in writing,  
43 within this state on any basis, medical malpractice insurance as  
44 reported in the company's annual statement. The purpose of the  
45 contract shall be to provide a market for medical malpractice  
46 insurance for physicians who provide patient services to Medicaid,  
47 Medicare or dually eligible beneficiaries with the premium to be  
48 subsidized by the state from tobacco litigation payments from the  
49 Health Care Expendable Fund established under Section 43-13-407,  
50 Mississippi Code of 1972, subject to specific appropriation by the  
51 Legislature. The contract shall not be entered into until the  
52 commissioner, after due hearing and investigation, has determined  
53 that medical malpractice insurance is not readily available for  
54 hospitals or for physicians licensed to practice in a hospital or  
55 other health care facility licensed by the State of Mississippi in  
56 which Medicaid, Medicare or duly eligible beneficiaries receive  
57 care. A determination that insurance is not readily available for  
58 physicians shall be necessary before the contract is entered into  
59 by the commissioner. For the purposes of this section, if  
60 premiums for medical malpractice insurance for physicians or  
61 hospitals or other licensed facilities in which physicians  
62 practice shall increase by one hundred percent (100%) within a  
63 period of thirty-six (36) months or less immediately preceding the  
64 hearing, the commissioner shall determine that medical malpractice  
65 insurance is not readily available in this state.



66 (4) Upon determination, the commissioner shall be authorized  
67 to enter into a contract with an insurer to issue policies of  
68 medical malpractice insurance to physicians who provide patient  
69 services to Medicaid, Medicare or dually eligible beneficiaries.  
70 The premium cost for this coverage shall be subsidized by the  
71 state in direct proportion to the number of patient days  
72 reimbursed to such physician by the Medicaid program and/or the  
73 Medicare program, as compared to the number of patient days  
74 reimbursed to such physician by private insurance companies or  
75 from other private payment sources. The amount of subsidy shall  
76 be calculated over a six-month period or other monthly basis  
77 selected by agreement between the commissioner and the insurer.  
78 In the event a physician provides more than fifty percent (50%) of  
79 his patient day services to Medicaid, Medicare or dually eligible  
80 beneficiaries over a six-month period, or other period selected by  
81 agreement between the commissioner and the insurer, the state  
82 shall subsidize one hundred percent (100%) of the cost of the  
83 premium for such physician.

84 (5) This section shall not preclude any physician from  
85 procuring medical malpractice insurance from any source other than  
86 that contracted by the commissioner under this section.

87 (6) The contract with the insurer shall provide that if the  
88 commissioner determines at any time that medical malpractice  
89 insurance can be made readily available in the voluntary market  
90 for physicians, the commissioner may cease all activities and  
91 close all accounts with the insurer as agreed upon, until the time  
92 that it is necessary to reinstate the plan under like terms and  
93 conditions.

94 (7) All policies issued by the insurer shall provide for a  
95 continuous period of coverage beginning on their respective  
96 effective dates and terminating automatically three (3) years  
97 after the effective date unless sooner terminated according to  
98 terms of the policy or the contract with the insurer. Policies



99 shall provide that premiums shall be payable annually and may be  
100 adjusted during the coverage period.

101 (8) The plan shall include policies of insurance to  
102 applicants, including incidental coverage, subject to limits,  
103 deductibles and coinsurance amounts specified in the plan of  
104 operation but not to exceed One Million Dollars (\$1,000,000.00)  
105 for each claimant under one (1) policy and Twenty Million Dollars  
106 (\$20,000,000.00) for all claimants under one (1) policy in any one  
107 (1) year; and shall include the authority to underwrite the  
108 insurance, and to adjust and pay losses with respect thereto, or  
109 to appoint service companies to perform those functions; and shall  
110 include the authority to provide for reinsurance.

111 (9) The contract shall be subject to approval by the  
112 commissioner after consultation with the Mississippi State Medical  
113 Association, representatives of the public and other affected  
114 individuals and organizations. The contract shall become  
115 effective upon order of the commissioner as agreed to by the  
116 insurer. Amendments to the contract may be made by the  
117 commissioner as agreed to by the insurer.

118 (10) The rates, rating plans, rating rules, rating  
119 classifications and territories applicable to the insurance  
120 written under the contract shall be on an actuarially sound basis,  
121 giving due consideration to the past and prospective loss and  
122 expense experience for medical malpractice insurance written and  
123 to be written in this state, trends in the frequency and severity  
124 of losses, the investment income of the insurer and such other  
125 information as the commissioner may require, to be based on the  
126 experience of loss within the State of Mississippi only.

127 (11) In the event that sufficient funds are not available  
128 for the sound financial operation of the plan, the commissioner  
129 shall, on a temporary basis, contribute to the financial  
130 requirements of the insurer from funds made available from the  
131 Medical Malpractice Insurance Fund created hereunder, and any such



132 contribution shall be reimbursed to the fund if recouped by the  
133 insurer.

134 (12) There is hereby created a Medical Malpractice Insurance  
135 Fund which shall be administered by the commissioner, which shall  
136 be used for the purpose of discharging, when due, premium charges  
137 payable by policyholders of the medical malpractice insurance  
138 contracted with the insurer under this section. All monies  
139 received by the fund shall be subject to appropriation by the  
140 Legislature from the Health Care Expendable Fund or from any other  
141 source, and shall be held in trust by the commissioner or a  
142 trustee selected by the commissioner. The trustee may invest the  
143 trust fund, subject to the approval of the commissioner, and all  
144 investment income shall be credited to the fund, and all expenses  
145 of administration of the fund shall be charged against the fund.

146 (13) Any licensed physician qualified under the provisions  
147 of this section shall, on or after the effective date of the plan  
148 of operation, be entitled to apply to the insurer for medical  
149 malpractice insurance coverage. Such application shall be made on  
150 behalf of an applicant by a duly licensed agent authorized by the  
151 applicant. The Division of Medicaid shall provide necessary  
152 information to the commissioner in order to determine the  
153 eligibility of the physician to participate in the plan, and the  
154 portion of the premium cost to be subsidized by the state.

155 (14) The insurer, for each year or portion thereof that is  
156 in operation, shall file in the office of the commissioner, on or  
157 before January 1, a statement containing information with respect  
158 to its transactions, condition, operations and affairs during the  
159 preceding year. Such statement shall contain such matters and  
160 information as are prescribed, and shall be in such form as is  
161 approved by the commissioner. The commissioner may, at any time,  
162 require the insurer to furnish additional information with respect  
163 to its transactions, condition, or any matter connected therewith



164 considered to be material and of assistance in evaluating the  
165 operation of the plan.

166 (15) There shall be no liability on the part of, and no  
167 cause of action of any nature shall arise against, the  
168 commissioner or his authorized representatives for any statements  
169 made in good faith by them during any proceedings or concerning  
170 any matters within the scope of this section.

171 **SECTION 2.** Section 43-13-405, Mississippi Code of 1972, is  
172 amended as follows:

173 43-13-405. (1) In accordance with the purposes of this  
174 article, there is established in the State Treasury the Health  
175 Care Trust Fund, into which shall be deposited Two Hundred Eighty  
176 Million Dollars (\$280,000,000.00) of the funds received by the  
177 State of Mississippi as a result of the tobacco settlement as of  
178 the end of fiscal year 1999, and all tobacco settlement  
179 installment payments made in subsequent years for which the use or  
180 purpose for expenditure is not restricted by the terms of the  
181 settlement, except as otherwise provided in Section 43-13-407(2),  
182 (3) and (4). All income from the investment of the funds in the  
183 Health Care Trust Fund shall be credited to the account of the  
184 Health Care Trust Fund. The funds in the Health Care Trust Fund  
185 at the end of a fiscal year shall not lapse into the State General  
186 Fund.

187 (2) The Health Care Trust Fund shall remain inviolate and  
188 shall never be expended, except as provided in this article. The  
189 Legislature shall appropriate from the Health Care Trust Fund such  
190 sums as are necessary to recoup any funds lost as a result of any  
191 of the following actions:

192 (a) The federal Centers for Medicare and Medicaid  
193 Services, or other agency of the federal government, is successful  
194 in recouping tobacco settlement funds from the State of  
195 Mississippi;



196 (b) The federal share of funds for the support of the  
197 Mississippi Medicaid Program is reduced directly or indirectly as  
198 a result of the tobacco settlement;

199 (c) Federal funding for any other program is reduced as  
200 a result of the tobacco settlement; or

201 (d) Tobacco cessation programs are mandated by the  
202 federal government or court order.

203 (3) This section shall stand repealed on July 1, 2004.

204 **SECTION 3.** Section 43-13-407, Mississippi Code of 1972, is  
205 amended as follows:

206 43-13-407. (1) In accordance with the purposes of this  
207 article, there is established in the State Treasury the Health  
208 Care Expendable Fund, into which shall be transferred from the  
209 Health Care Trust Fund the following sums:

210 (a) In fiscal year 2000, Fifty Million Dollars  
211 (\$50,000,000.00);

212 (b) In fiscal year 2001, Fifty-five Million Dollars  
213 (\$55,000,000.00);

214 (c) In fiscal year 2002, Sixty Million Five Hundred  
215 Thousand Dollars (\$60,500,000.00);

216 (d) In fiscal year 2003, Sixty-six Million Five Hundred  
217 Fifty Thousand Dollars (\$66,550,000.00);

218 (e) In fiscal year 2004 and each subsequent fiscal  
219 year, a sum equal to the average annual amount of the income from  
220 the investment of the funds in the Health Care Trust Fund since  
221 July 1, 1999.

222 (2) In any fiscal year in which interest and dividends from  
223 the investment of the funds in the Health Care Trust Fund are not  
224 sufficient to fund the full amount of the annual transfer into the  
225 Health Care Expendable Fund as required in subsection (1) of this  
226 section, the State Treasurer shall transfer from tobacco  
227 settlement installment payments an amount that is sufficient to  
228 fully fund the amount of the annual transfer.



229           (3) (a) On March 6, 2002, the State Treasurer shall  
230 transfer the sum of Eighty-seven Million Dollars (\$87,000,000.00)  
231 from the Health Care Trust Fund into the Health Care Expendable  
232 Fund. In addition, at the time the State of Mississippi receives  
233 the 2002 calendar year tobacco settlement installment payment, the  
234 State Treasurer shall deposit the full amount of that installment  
235 payment into the Health Care Expendable Fund.

236           (b) If during any fiscal year after March 6, 2002, the  
237 general fund revenues received by the state exceed the general  
238 fund revenues received during the previous fiscal year by more  
239 than five percent (5%), the Legislature shall repay to the Health  
240 Care Trust Fund one-third (1/3) of the amount of the general fund  
241 revenues that exceed the five percent (5%) growth in general fund  
242 revenues. The repayment required by this paragraph shall continue  
243 in each fiscal year in which there is more than five percent (5%)  
244 growth in general fund revenues, until the full amount of the  
245 funds that were transferred and deposited into the Health Care  
246 Expendable Fund under the provisions of paragraph (a) of this  
247 subsection have been repaid to the Health Care Trust Fund.

248           (4) The State Treasurer shall transfer Ten Million Dollars  
249 (\$10,000,000.00) of the 2003 tobacco settlement installment  
250 payment, and annually thereafter, into the Health Care Expendable  
251 Fund, and said monies shall be appropriated by the Legislature  
252 into the Medical Malpractice Insurance Fund to fund the state's  
253 portion of the medical malpractice insurance plan for physicians  
254 who provide patient services to Medicaid, Medicare and dually  
255 eligible beneficiaries, as authorized in Section 1 of this act.

256           (5) All income from the investment of the funds in the  
257 Health Care Expendable Fund shall be credited to the account of  
258 the Health Care Expendable Fund. Any funds in the Health Care  
259 Expendable Fund at the end of a fiscal year shall not lapse into  
260 the State General Fund.



261       (6) The funds in the Health Care Expendable Fund shall be  
262 available for expenditure under specific appropriation by the  
263 Legislature beginning in fiscal year 2000, and shall be expended  
264 exclusively for health care purposes.

265       (7) Subsections (1), (2), (5) and (6) of this section shall  
266 stand repealed on July 1, 2004.

267       **SECTION 4.** This act shall take effect and be in force from  
268 and after July 1, 2003.

