

By: Senator(s) Kirby, King, Mettetal,
Dawkins

To: Insurance;
Appropriations

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2628

1 AN ACT TO CREATE THE "MISSISSIPPI MEDICAL MALPRACTICE
2 INSURANCE AVAILABILITY ACT"; TO DEFINE CERTAIN TERMS; TO PROVIDE
3 FOR THE ESTABLISHMENT OF THE MEDICAL MALPRACTICE INSURANCE
4 AVAILABILITY PLAN TO BE FUNDED BY THE PARTICIPANTS IN THE PLAN; TO
5 PROVIDE THAT THE TORT CLAIMS BOARD SHALL PROMULGATE RULES AND
6 REGULATIONS TO ADMINISTER THE PLAN; TO PROVIDE QUALIFICATIONS IN
7 ORDER TO PARTICIPATE IN THE PLAN; TO AUTHORIZE THE TORT CLAIMS
8 BOARD TO CONTRACT THE ADMINISTRATION OF CLAIMS AND SERVICE OF THE
9 PLAN TO A THIRD PARTY; TO AMEND SECTION 11-46-19, MISSISSIPPI CODE
10 OF 1972, TO CONFORM THERETO; TO BRING FORWARD SECTION 11-46-17,
11 MISSISSIPPI CODE OF 1972, FOR PURPOSES OF AMENDMENT; AND FOR
12 RELATED PURPOSES.

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

14 **SECTION 1.** Sections 1 through 4 of this act may be cited as
15 the "Mississippi Medical Malpractice Insurance Availability Act."

16 **SECTION 2.** The purpose of Sections 1 through 4 of this act
17 is to provide necessary medical malpractice insurance available
18 for hospitals, institutions for the aged or infirm, physicians,
19 nurses or other personnel who are duly licensed to practice in a
20 hospital or other health care facility licensed by the State of
21 Mississippi.

22 **SECTION 3.** As used in Sections 1 through 4 of this act, the
23 following terms shall have the meaning ascribed herein unless the
24 context clearly requires otherwise:

25 (a) "Plan" means the Medical Malpractice Insurance
26 Availability Plan established under Sections 1 through 4 of this
27 act.

28 (b) "Board" means the Mississippi Tort Claims Board
29 created in Section 11-46-18.

30 (c) "Medical malpractice insurance" means insurance
31 coverage against the legal liability of the insured and against
32 loss, damage or expense incident to a claim arising out of the



33 death or injury of any person as the result of negligence or
34 malpractice in rendering professional service by any physician,
35 nurse or health care facility who is fully licensed, whose license
36 is current and who is not under any restriction by the respective
37 board of licensure.

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 Board of Medical Licensure.

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

44 **SECTION 4.** (1) The board shall establish the Medical
45 Malpractice Insurance Availability Plan that shall be funded by
46 the participants in the plan.

47 (2) The purpose of the plan is to provide availability of
48 medical malpractice insurance to the participants on a
49 self-supporting basis.

50 (3) The board shall promulgate rules and regulations to
51 ensure that the plan remains actuarially sound.

52 (4) The plan may issue, or cause to be issued, policies of
53 medical malpractice insurance to hospitals, institutions for the
54 aged or infirm, physicians, nurses or other personnel who are duly
55 licensed to practice in a hospital or other health care facility
56 licensed by the State of Mississippi.

57 (5) Sections 1 through 4 of this act shall not preclude any
58 hospital, institution for the aged or infirm, physician, nurse or
59 other personnel who are duly licensed to practice in a hospital or
60 other health care facility licensed by the State of Mississippi
61 from procuring medical malpractice insurance from sources other
62 than the plan.

63 (6) The plan shall issue, or cause to be issued, policies of
64 insurance to applicants, including incidental coverages, subject
65 to terms and conditions as determined by the board. All rates



66 applicable to the insurance provided herein shall be established
67 by the board's actuaries and shall be calculated to be
68 self-supporting.

69 (7) In order to participate in the plan, a health care
70 provider must:

71 (a) Cause to be filed with the board a written
72 agreement, the form and substance of which shall be determined by
73 the board, signed by a duly authorized representative, that the
74 health care provider will provide services to (i) Medicaid
75 recipients, and (ii) State and School Employees Health Insurance
76 Plan participants. Such written agreement shall provide, among
77 other things, that the health care provider will provide services
78 to Medicaid recipients, and State and School Employees' Health
79 Insurance Plan participants in a manner that is comparable to the
80 services provided to all other patients and shall be made without
81 balance billing to the patient.

82 (b) Pay all assessments and premiums established by the
83 board.

84 (8) The board shall be responsible for the day-to-day
85 management and administration of the insurance plan.

86 (9) The board may contract the administration of claims and
87 service of the self-insured plan to a third party.

88 **SECTION 5.** Section 11-46-19, Mississippi Code of 1972, is
89 amended as follows:

90 11-46-19. (1) The board shall have the following powers:

91 (a) To provide oversight over the Tort Claims Fund;

92 (b) To approve any award made from the Tort Claims
93 Fund;

94 (c) To pay all necessary expenses attributable to the
95 operation of the Tort Claims Fund from such fund;

96 (d) To assign litigated claims against governmental
97 entities other than political subdivisions to competent attorneys
98 unless such governmental entity has a staff attorney who is



99 competent to represent the governmental entity and is approved by
100 the board; the board shall give primary consideration to attorneys
101 practicing in the jurisdiction where the claim arose in assigning
102 cases; attorneys hired to represent a governmental entity other
103 than a political subdivision shall be paid according to the
104 department fee schedule;

105 (e) To approve all claimants' attorney fees in claims
106 against the state;

107 (f) To employ on a full-time basis a staff attorney who
108 shall possess the minimum qualifications required to be a member
109 of The Mississippi Bar, and such other staff as it may deem
110 necessary to carry out the purposes of this chapter; the employees
111 in the positions approved by the board shall be hired by the
112 director, shall be employees of the department, and shall be
113 compensated from the Tort Claims Fund;

114 (g) To contract with one or more reputable insurance
115 consulting firms as may be necessary;

116 (h) To purchase any policies of liability insurance and
117 to administer any plan of self-insurance or policies of liability
118 insurance required for the protection of the state against claims
119 and suits brought under this chapter;

120 (i) To expend money from the Tort Claims Fund for the
121 purchase of any policies of liability insurance and the payment of
122 any award or settlement of a claim against the state under the
123 provisions of this chapter or of a claim against any school
124 district, junior college or community college district, or state
125 agency, arising from the operation of school buses or other
126 vehicles, under the provisions of Section 37-41-42;

127 (j) To cancel, modify or replace any policy or policies
128 of liability insurance procured by the board;

129 (k) To issue certificates of coverage to governmental
130 entities, including any political subdivision participating in any
131 plan of liability protection approved by the board;



132 (1) To review and approve or reject any plan of
133 liability insurance or self-insurance reserves proposed or
134 provided by political subdivisions if such plan is intended to
135 serve as security for risks of claims and suits against them for
136 which immunity has been waived under this chapter;

137 (m) To administer disposition of claims against the
138 Tort Claims Fund;

139 (n) To withhold issuance of any warrants payable from
140 funds of a participating state entity should such entity fail to
141 make required contributions to the Tort Claims Fund in the time
142 and manner prescribed by the board;

143 (o) To develop a comprehensive statewide list of
144 attorneys who are qualified to represent the state and any
145 employee thereof named as a defendant in a claim brought under
146 this chapter against the state or such employee;

147 (p) To develop a schedule of fees for paying attorneys
148 defending claims against the state or an employee thereof;

149 (q) To adopt and promulgate such reasonable rules and
150 regulations and to do and perform all such acts as are necessary
151 to carry out its powers and duties under this chapter;

152 (r) To establish and assess premiums to be paid by
153 governmental entities required to participate in the Tort Claims
154 Fund;

155 (s) To contract with a third-party administrator to
156 process claims against the state under this chapter;

157 (t) To annually submit its budget request to the
158 Legislature as a state agency; * * *

159 (u) To dispose of salvage obtained in settlement or
160 payment of any claim at fair market value by such means and upon
161 such terms as the board may think best;

162 (v) To administer the Medical Malpractice Insurance
163 Availability Plan created in Section 4 of Senate Bill No. 2628,
164 2003 Regular Session, to assess the participants of the plan, to



165 adopt such rules and regulations, to accept, place and expend
166 funds received from participants of the plan, and to retain
167 accountants, attorneys, actuaries and any other experts deemed
168 necessary to carry out the responsibilities under Sections 1
169 through 4 of Senate Bill No. 2628, 2003 Regular Session; and

170 (w) To expend money from the Tort Claims Fund in an
171 amount not to exceed Five Hundred Thousand Dollars (\$500,000.00)
172 for the start-up costs of administering the Medical Malpractice
173 Insurance Availability Plan.

174 (2) Policies of liability insurance purchased for the
175 protection of governmental entities against claims and suits
176 brought under this chapter shall be purchased pursuant to the
177 competitive bidding procedures set forth in Section 31-7-13.

178 (3) The department shall have the following powers and
179 duties:

180 (a) To annually report to the Legislature concerning
181 each comprehensive plan of liability protection established
182 pursuant to Section 11-46-17(2). Such report shall include a
183 comprehensive analysis of the cost of the plan, a breakdown of the
184 cost to participating state entities, and such other information
185 as the department may deem necessary.

186 (b) To provide the board with any staff and meeting
187 facilities as may be necessary to carry out the duties of the
188 board as provided in this chapter.

189 (c) To submit the board's budget request for the
190 initial year of operation of the board in order to authorize
191 expenditures for the 1993-1994 fiscal year and for the
192 appropriation of such general funds as shall be required for the
193 commencement of its activities.

194 **SECTION 6.** Section 11-46-17, Mississippi Code of 1972, is
195 brought forward as follows:

196 11-46-17. (1) There is hereby created in the State Treasury
197 a special fund to be known as the "Tort Claims Fund."



198 All such monies as the Department of Finance and
199 Administration shall receive and collect under the provisions of
200 subsection (2) of this section and all such funds as the
201 Legislature may appropriate for use by the board in administering
202 the provisions of this chapter shall be deposited in such fund.
203 All monies in the fund may be expended by the board for any and
204 all purposes for which the board is authorized to expend funds
205 under the provisions of this chapter. All interest earned from
206 the investment of monies in the fund shall be credited to the
207 fund. Monies remaining in such fund at the end of a fiscal year
208 shall not lapse into the State General Fund.

209 (2) From and after July 1, 1993, each governmental entity
210 other than political subdivisions shall participate in a
211 comprehensive plan of self-insurance and/or one or more policies
212 of liability insurance administered by the Department of Finance
213 and Administration. Such plan shall provide coverage to each of
214 such governmental entities for every risk for which the board
215 determines the respective governmental entities to be liable in
216 the event of a claim or suit for injuries under the provisions of
217 this chapter, including claims or suits for injuries from the use
218 or operation of motor vehicles; provided, however, that the board
219 may allow such plan to contain any reasonable limitations or
220 exclusions not contrary to Mississippi state statutes or case law
221 as are normally included in commercial liability insurance
222 policies generally available to governmental entities. In
223 addition to the coverage authorized in the preceding sentence, the
224 plan may provide coverage for liabilities outside the provisions
225 of this chapter, including, but not limited to, liabilities
226 arising from Sections 1983 through 1987 of Title 42 of the United
227 States Code and liabilities from actions brought in foreign
228 jurisdictions, and the board shall establish limits of coverage
229 for such liabilities. Each governmental entity participating in
230 the plan shall make payments to the board in such amounts, times



231 and manner determined by the board as the board deems necessary to
232 provide sufficient funds to be available for payment by the board
233 of such costs as it incurs in providing coverage for the
234 governmental entity. Each governmental entity of the state other
235 than the political subdivisions thereof participating in the plan
236 procured by the board shall be issued by the board a certificate
237 of coverage whose form and content shall be determined by the
238 board but which shall have the effect of certifying that in the
239 opinion of the board each of such governmental entities is
240 adequately insured.

241 Prior to July 1, 1993, the Board of Trustees of State
242 Institutions of Higher Learning may provide such liability
243 coverage for each university, department, trustee, employee,
244 volunteer, facility and activity as the board of trustees, in its
245 discretion, shall determine advisable. If liability coverage,
246 either through insurance policies or self-insurance retention is
247 in effect, immunity from suit shall be waived only to the limit of
248 liability established by such insurance or self-insurance program.
249 From and after July 1, 1993, such liability coverage established
250 by the board of trustees must conform to the provisions of this
251 section and must receive approval from the board. Should the
252 board reject such plan, the board of trustees shall participate in
253 the liability program for state agencies established by the board.

254 (3) All political subdivisions shall, from and after October
255 1, 1993, obtain such policy or policies of insurance, establish
256 such self-insurance reserves, or provide a combination of such
257 insurance and reserves as necessary to cover all risks of claims
258 and suits for which political subdivisions may be liable under
259 this chapter; except any political subdivision shall not be
260 required to obtain pollution liability insurance. However, this
261 shall not limit any cause of action against such political
262 subdivision relative to limits of liability under the Tort Claims
263 Act. Such policy or policies of insurance or such self-insurance



264 may contain any reasonable limitations or exclusions not contrary
265 to Mississippi state statutes or case law as are normally included
266 in commercial liability insurance policies generally available to
267 political subdivisions. All such plans of insurance and/or
268 reserves shall be submitted for approval to the board. The board
269 shall issue a certificate of coverage to each political
270 subdivision whose plan of insurance and/or reserves it approves in
271 the same manner as provided in subsection (2) of this section.
272 Whenever any political subdivision fails to obtain the board's
273 approval of any plan of insurance and/or reserves, the political
274 subdivision shall act in accordance with the rules and regulations
275 of the board and obtain a satisfactory plan of insurance and/or
276 reserves to be approved by the board.

277 (4) Any governmental entity of the state may purchase
278 liability insurance to cover claims in excess of the amounts
279 provided for in Section 11-46-15 and may be sued by anyone in
280 excess of the amounts provided for in Section 11-46-15 to the
281 extent of such excess insurance carried; provided, however, that
282 the immunity from suit above the amounts provided for in Section
283 11-46-15 shall be waived only to the extent of such excess
284 liability insurance carried.

285 (5) Any two (2) or more political subdivisions are hereby
286 authorized to enter into agreement and to contract between and
287 among themselves for the purpose of pooling their liabilities as a
288 group under this chapter. Such pooling agreements and contracts
289 may provide for the purchase of one or more policies of liability
290 insurance and/or the establishment of self-insurance reserves and
291 shall be subject to approval by the board in the manner provided
292 in subsections (2) and (3) of this section.

293 (6) The board shall have subrogation rights against a third
294 party for amounts paid out of any plan of self-insurance
295 administered by such board pursuant to this section in behalf of a
296 governmental entity as a result of damages caused under



297 circumstances creating a cause of action in favor of such
298 governmental entity against a third party. The board shall
299 deposit in the Tort Claims Fund all monies received in connection
300 with the settlement or payment of any claim, including proceeds
301 from the sale of salvage.

302 **SECTION 7.** This act shall take effect and be in force from
303 and after its passage, and shall stand repealed from and after
304 July 1, 2005.

