

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

To: Insurance;
Appropriations

SENATE BILL NO. 2628

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

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

126 (2) The plan of operation shall provide for economic, fair
127 and nondiscriminatory administration and for the prompt and



128 efficient provision of medical malpractice insurance and shall
129 contain other provisions, including, but not limited to,
130 preliminary assessment of all members for initial expenses
131 necessary to begin operations, establishment of necessary
132 facilities, management of the association, assessment of members
133 to defray losses and expenses, arrangements by the commissioner,
134 reasonable and objective underwriting standards, acceptance and
135 cessation of reinsurance, appointment of servicing carriers or
136 other servicing arrangements and procedures for determining amount
137 of insurance to be provided by the association. Any such plan of
138 operation approved by the commissioner shall provide that the
139 policies shall be written and countersigned by a duly licensed
140 qualified Mississippi agent.

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

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

157 (5) There shall be a legislative committee for continuing
158 study, evaluation and review which shall be composed of three (3)
159 members of the Senate, one (1) of whom shall be the Chairman of
160 the Senate Committee on Insurance and two (2) of whom shall be



161 appointed by the Lieutenant Governor; and three (3) members of the
162 House of Representatives, one (1) of whom shall be the Chairman of
163 the House Committee on Insurance and two (2) of whom shall be
164 appointed by the Speaker of the House of Representatives. The
165 committee shall maintain a continuing evaluation and review of the
166 malpractice insurance program and needs and shall report to each
167 regular session of the Legislature on the total activities of the
168 association and malpractice insurance needs of the State of
169 Mississippi.

170 No committee member may receive per diem, travel or other
171 expenses unless authorized by the Management Committees of the
172 Senate and the House of Representatives. Members of the committee
173 shall be paid from the contingent expense funds of the Senate and
174 the House of Representatives in the same amounts as provided for
175 committee meetings when the Legislature is not in session;
176 however, no per diem or expense for attending meetings of the
177 committee will be paid while the Legislature is in session.

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



193 of insurers previously writing medical malpractice insurance in
194 this state.

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

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

222 (4) The association shall certify to the commissioner the
223 estimated amount of any deficit remaining after the stabilization
224 reserve fund has been exhausted in payment of the maximum final
225 premium for all policyholders of the association. Within sixty



226 (60) days after such certification, the commissioner shall
227 authorize the members of the association to begin recoupment of
228 their respective shares of the deficit applying a surcharge to be
229 determined by the association at a rate not to exceed two percent
230 (2%) of the annual premiums on future policies affording those
231 kinds of insurance which form the basis for their participation in
232 the association under procedures established by the association.
233 The association shall amend the amount of its certification of
234 deficit to the commissioner as the values of its incurred losses
235 become finalized, and the members of the association shall amend
236 their recoupment procedure accordingly.

237 (5) In the event that sufficient funds are not available for
238 the sound financial operation of the association, pending
239 recoupment as provided in subsection (4) of this section, all
240 members shall, on a temporary basis, contribute to the financial
241 requirements of the association in the manner provided for in
242 Section 10 of this act. Any such contribution shall be reimbursed
243 to the members by recoupment as provided in subsection (4) of this
244 section.

245 **SECTION 7.** (1) There is created a stabilization reserve
246 fund which shall be administered by three (3) directors: one (1)
247 of whom shall be the Insurance Commissioner or his deputy; the
248 remaining two (2) directors shall be appointed by the
249 commissioner, one (1) of whom shall be a representative of the
250 association and the other a representative of its policyholders.

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

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



258 shall cancel the policy of any policyholder who fails to pay the
259 stabilization reserve fund charge.

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

264 (5) All monies received by the fund shall be held in trust by
265 a trustee selected by the directors. The trustee may invest the
266 trust fund, subject to approval of the directors. All investment
267 income shall be credited to the fund. All expenses of
268 administration of the fund shall be charged against the fund.

269 The trust fund shall be used solely for the purpose of
270 discharging, when due, any retrospective premium charges payable
271 by policyholders of the association under the group retrospective
272 rating plan authorized by this act. Payment of retrospective
273 premium charges shall be made by the directors upon certification
274 to them by the association of the amount due. If the trust fund
275 is finally exhausted in payment of retrospective charges, all
276 liability and obligations of the association's policyholders, with
277 respect to the payment of retrospective premium charges, shall
278 thereupon terminate and shall be conclusively presumed to have
279 been discharged.

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

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

289 (2) If the association determines that the applicant meets
290 the underwriting standards of the association, as prescribed in



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

298 **SECTION 9.** All insurers who are members of the association
299 shall participate in its writings, expenses, servicing allowance,
300 management fees and losses in the proportion that the net direct
301 premiums of each such member, excluding that portion of premiums
302 attributable to the operation of the association, written during
303 the preceding calendar year, bears to the aggregate net direct
304 premiums written in this state by all members of the association.
305 Each insurer's participation in the association shall be
306 determined annually on the basis of such net direct liability
307 insurance premiums written during the preceding calendar year, as
308 reported in the annual statements and other reports filed by the
309 insurer with the commissioner.

310 **SECTION 10.** (1) Any applicant to the association, any
311 person insured under this act or any affected insurer may appeal
312 to the commissioner within thirty (30) days after any ruling,
313 action or decision by or on behalf of the association, with
314 respect to those items the plan of operation defines as appealable
315 matters.

316 (2) All orders of the commissioner made under this act shall
317 be subject to judicial review in the Circuit Court of the First
318 Judicial District, Hinds County, Mississippi; however,
319 notwithstanding any other provision of law, such proceedings for
320 review shall act as a stay of the enforcement of any order or
321 decision of the commissioner disapproving or ordering the
322 withdrawal, adjustment or termination of the effectiveness of any
323 rate filing made by or on behalf of the association on the ground



324 that the rates or premiums for the business of the association are
325 unreasonable or excessive; and the association may continue to
326 charge rates pursuant to such filing pending final order of the
327 reviewing court.

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

340 **SECTION 12.** The commissioner shall make an examination into
341 the affairs of the association at least annually. The expense of
342 such examination shall be paid by the association.

343 **SECTION 13.** There shall be no liability on the part of, and
344 no cause of action of any nature shall arise against, the
345 association, the commissioner or his authorized representatives or
346 any other person or organization for any statements made in good
347 faith by them during any proceedings or concerning any matters
348 within the scope of this act.

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

355 **SECTION 15.** (1) Upon thirty (30) days' notice to interested
356 parties, the commissioner may close any accounts established under



357 this act. Any funds in the accounts or any other funds collected
358 and received by the administrator or trustee of the temporary
359 joint underwriting association established under Section 3 of this
360 act shall be paid to the State Treasurer for deposit in the State
361 General Fund.

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

366 **SECTION 16.** This act shall take effect and be in force from
367 and after July 1, 2003.

