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To: Insurance; Appropriations

SENATE BILL NO. 2628
(As Passed the Senate)

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 AMEND SECTION 11-46-17,
11 MISSISSIPPI CODE OF 1972, TO REQUIRE HOSPITALS OWNED AND OPERATED
12 BY POLITICAL SUBDIVISIONS TO PARTICIPATE UNDER THE TORT CLAIMS
13 ACT; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

31 (c) "Medical malpractice insurance" means insurance
32 coverage against the legal liability of the insured and against



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

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

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

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

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

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

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

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

64 (6) The plan shall issue, or cause to be issued, policies of
65 insurance to applicants, including incidental coverages, subject



66 to terms and conditions as determined by the board. All rates
67 applicable to the insurance provided herein shall be established
68 by the board's actuaries and shall be calculated to be
69 self-supporting.

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

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

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

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

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

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

91 11-46-19. (1) The board shall have the following powers:

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

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

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

97 (d) To assign litigated claims against governmental
98 entities other than political subdivisions to competent attorneys



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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



163 (v) To administer the Medical Malpractice Insurance
164 Availability Plan created in Section 4 of Senate Bill No. 2628,
165 2003 Regular Session, to assess the participants of the plan, to
166 adopt such rules and regulations, to accept, place and expend
167 funds received from participants of the plan, and to retain
168 accountants, attorneys, actuaries and any other experts deemed
169 necessary to carry out the responsibilities under Sections 1
170 through 4 of Senate Bill No. 2628, 2003 Regular Session; and

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

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

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

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

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

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



195 **SECTION 6.** Section 11-46-17, Mississippi Code of 1972, is
196 amended as follows:

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

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

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



228 States Code and liabilities from actions brought in foreign
229 jurisdictions, and the board shall establish limits of coverage
230 for such liabilities. Each governmental entity participating in
231 the plan shall make payments to the board in such amounts, times
232 and manner determined by the board as the board deems necessary to
233 provide sufficient funds to be available for payment by the board
234 of such costs as it incurs in providing coverage for the
235 governmental entity. Each governmental entity of the state other
236 than the political subdivisions thereof participating in the plan
237 procured by the board shall be issued by the board a certificate
238 of coverage whose form and content shall be determined by the
239 board but which shall have the effect of certifying that in the
240 opinion of the board each of such governmental entities is
241 adequately insured.

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

255 (3) All political subdivisions shall, from and after October
256 1, 1993, obtain such policy or policies of insurance, establish
257 such self-insurance reserves, or provide a combination of such
258 insurance and reserves as necessary to cover all risks of claims
259 and suits for which political subdivisions may be liable under
260 this chapter; except any political subdivision shall not be



261 required to obtain pollution liability insurance. However, this
262 shall not limit any cause of action against such political
263 subdivision relative to limits of liability under the Tort Claims
264 Act. Such policy or policies of insurance or such self-insurance
265 may contain any reasonable limitations or exclusions not contrary
266 to Mississippi state statutes or case law as are normally included
267 in commercial liability insurance policies generally available to
268 political subdivisions. All such plans of insurance and/or
269 reserves shall be submitted for approval to the board. The board
270 shall issue a certificate of coverage to each political
271 subdivision whose plan of insurance and/or reserves it approves in
272 the same manner as provided in subsection (2) of this section.
273 Whenever any political subdivision fails to obtain the board's
274 approval of any plan of insurance and/or reserves, the political
275 subdivision shall act in accordance with the rules and regulations
276 of the board and obtain a satisfactory plan of insurance and/or
277 reserves to be approved by the board. Notwithstanding any
278 provision to the contrary, any hospital owned and operated by a
279 political subdivision shall participate in a comprehensive plan of
280 self-insurance and/or one or more policies of liability insurance
281 under the Tort Claims Act and administered by the board.

282 (4) Any governmental entity of the state may purchase
283 liability insurance to cover claims in excess of the amounts
284 provided for in Section 11-46-15 and may be sued by anyone in
285 excess of the amounts provided for in Section 11-46-15 to the
286 extent of such excess insurance carried; provided, however, that
287 the immunity from suit above the amounts provided for in Section
288 11-46-15 shall be waived only to the extent of such excess
289 liability insurance carried.

290 (5) Any two (2) or more political subdivisions are hereby
291 authorized to enter into agreement and to contract between and
292 among themselves for the purpose of pooling their liabilities as a
293 group under this chapter. Such pooling agreements and contracts



294 may provide for the purchase of one or more policies of liability
295 insurance and/or the establishment of self-insurance reserves and
296 shall be subject to approval by the board in the manner provided
297 in subsections (2) and (3) of this section.

298 (6) The board shall have subrogation rights against a third
299 party for amounts paid out of any plan of self-insurance
300 administered by such board pursuant to this section in behalf of a
301 governmental entity as a result of damages caused under
302 circumstances creating a cause of action in favor of such
303 governmental entity against a third party. The board shall
304 deposit in the Tort Claims Fund all monies received in connection
305 with the settlement or payment of any claim, including proceeds
306 from the sale of salvage.

307 **SECTION 7.** This act shall take effect and be in force from
308 and after its passage, and shall stand repealed from and after
309 July 1, 2005.

