MISSISSIPPI LEGISLATURE

REGULAR SESSION 2003

By: Senator(s) Kirby, King, Mettetal, Dawkins, Lee, Harvey, Horhn, Browning, Hewes, Thames, Johnson (19th), White, Dearing, Stogner, Cuevas, Canon, Carmichael, Nunnelee, Smith, Furniss, Jordan, Harden, Gordon, Robertson, Dickerson, Williamson, Johnson (38th), Chamberlin, Burton, Walls, Jackson, Frazier, Tollison, Chaney, Little

SENATE BILL NO. 2628
(As Sent to Governor)

AN ACT TO CREATE THE "MEDICAL MALPRACTICE INSURANCE AVAILABILITY ACT"; TO PROVIDE FOR THE ESTABLISHMENT OF THE MEDICAL MALPRACTICE INSURANCE AVAILABILITY PLAN TO BE FUNDED BY THE PARTICIPANTS IN THE PLAN; TO PROVIDE THAT THE PLAN SHALL BE ADMINISTERED BY THE TORT CLAIMS BOARD; TO PROVIDE REQUIREMENTS FOR PLAN PARTICIPANTS; TO CREATE AN ADVISORY COUNCIL TO ADVISE THE TORT CLAIMS BOARD ON MATTERS PERTAINING TO THE MEDICAL MALPRACTICE INSURANCE AVAILABILITY PLAN; TO AMEND SECTION 11-46-19, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

SECTION 1. This act may be cited as the "Medical Malpractice Insurance Availability Act."

SECTION 2. The purpose of this act is to provide a temporary market of last resort to make necessary medical malpractice insurance available for hospitals, institutions for the aged or infirm, or other health care facilities licensed by the State of Mississippi, physicians, nurses and any other personnel who are duly licensed to practice in a hospital or other health care facility licensed by the State of Mississippi. It is not intended that the insurance plan authorized by this act shall become a permanent facility.

SECTION 3. (1) There is created the Medical Malpractice Insurance Availability Plan that shall be funded by the participants in the plan. The plan shall be administered by the Tort Claims Board created under Section 11-46-18.

(2) (a) The plan shall provide coverage for medical malpractice to hospitals, institutions for the aged or infirm, or other health care facilities licensed by the State of Mississippi, 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. Participation in the plan shall be voluntary for any hospital, institution for the aged or infirm, or other health care facilities licensed by the State of Mississippi, physicians, nurses and any other personnel who are duly licensed to practice in a hospital or other health care facility licensed by the State of Mississippi. However, no state entity may participate in the plan. The term "state" as used in this subsection has the meaning ascribed to that term under Section 11-46-1. The plan shall make available tail (extended reporting period) coverage for participants of the plan at an additional premium assessment for such coverage. The board shall encourage participation in the insurance industry market. Any duly licensed qualified Mississippi agent who writes a policy under the plan may receive a commission not to exceed five percent (5%) of the premium assessment as full compensation.

(b) The limits of coverage under the plan shall be as follows:

   (i) For participants who are "political subdivisions" and participants who are "employees" of political subdivisions, as such terms are defined under Section 11-46-1, a maximum of Five Hundred Thousand Dollars ($500,000.00), per single occurrence, and Two Million Dollars ($2,000,000.00), in the aggregate, per year, for all occurrences;

   (ii) For all other participants, a maximum of One Million Dollars ($1,000,000.00), per single occurrence, and Three Million Dollars ($3,000,000.00), in the aggregate, per year, for all occurrences; and

   (iii) For tail coverage, the plan shall provide some limits of coverage as designated in subparagraphs (i) and (ii) of this paragraph (b).

(5) Policies may be underwritten based on participant history. All rates applicable to the coverage provided herein
shall be on an actuarially sound basis and calculated to be self-supporting.

(6) Every participant in the plan shall:

(a) File with the board a written agreement, the form and substance of which shall be determined by the board, signed by a duly authorized representative of the participant, that the participant will provide services to (i) Medicaid recipients, (ii) State and School Employees Health Insurance Plan participants, and (iii) Children's Health Insurance Program participants. The agreement must provide, among other things, that the participant will provide services to Medicaid recipients, State and School Employees Health Insurance Plan participants, and Children's Health Insurance Program participants in a manner that is comparable to the services provided to all other patients and shall be made without balance billing to the patient; and

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

(7) This act shall not preclude any hospital, institution for the aged or infirm, or other health care facilities licensed by the State of Mississippi, 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 from procuring medical malpractice insurance from any source other than the plan.

(8) The Tort Claims Board shall have the following powers and duties:

(a) To expend money from a loan from the Tort Claims Fund in an amount not to exceed Five Hundred Thousand Dollars ($500,000.00) for the start-up costs of administering the Medical Malpractice Insurance Availability Plan;

(b) To approve and pay claims of participants;

(c) To charge and collect assessments and fees from participants in the plan;
(d) To contract with accountants, attorneys, actuaries and any other experts deemed necessary to carry out the responsibilities under the plan. The outsourcing of any function of the board shall be provided by Mississippi residents or Mississippi domicile corporations, if available;

(e) To employ not more than five (5) persons in time-limited positions to assist the board in the administration of the plan;

(f) To contract for administration of the claims and service of the plan to a third party. The outsourcing of any function of the board shall be provided by Mississippi residents or Mississippi domicile corporations, if available;

(g) To adopt and promulgate rules and regulations to implement the provisions of the plan. The Tort Claims Board shall adopt such rules and regulations as may be necessary to ensure that the plan remains actuarially sound. The board shall retain the limited liability established by Section 11-46-15; and

(h) To submit an annual report on or before March 1 each year to the House and Senate Insurance Committees. Such report shall contain:

(i) Certification by a qualified actuary that the plan is solvent;

(ii) The number of participants in the plan;

(iii) The number of claims filed and paid by the plan; and

(iv) The amount of all assessments and fees collected from the participants in the plan.

(9) Nothing contained in this section shall be construed as repealing, amending or superseding the provisions of any other law and, if the provisions of this section conflict with any other law, then the provisions of such other law shall govern and control to the extent of the conflict.
SECTION 4. There is created an advisory council to serve the Tort Claims Board in an advisory capacity for matters pertaining to the Medical Malpractice Coverage Availability Plan only. The advisory council shall be composed of one (1) member who shall have experience in the medical profession appointed by the Lieutenant Governor; one (1) member who shall have experience in the insurance industry appointed by the Lieutenant Governor; one (1) member who shall have experience in the medical profession appointed by the Speaker of the House of Representatives; one (1) member who shall have experience in the insurance industry appointed by the Speaker of the House of Representatives; and one (1) member who is a hospital administrator appointed by the Governor.

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

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

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

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

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

(d) To assign litigated claims against governmental entities other than political subdivisions to competent attorneys unless such governmental entity has a staff attorney who is competent to represent the governmental entity and is approved by the board; the board shall give primary consideration to attorneys practicing in the jurisdiction where the claim arose in assigning cases; attorneys hired to represent a governmental entity other than a political subdivision shall be paid according to the department fee schedule;

(e) To approve all claimants' attorney fees in claims against the state;
(f) To employ on a full-time basis a staff attorney who shall possess the minimum qualifications required to be a member of The Mississippi Bar, and such other staff as it may deem necessary to carry out the purposes of this chapter; the employees in the positions approved by the board shall be hired by the director, shall be employees of the department, and shall be compensated from the Tort Claims Fund;

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

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

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

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

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

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

(m) To administer disposition of claims against the Tort Claims Fund;
(n) To withhold issuance of any warrants payable from funds of a participating state entity should such entity fail to make required contributions to the Tort Claims Fund in the time and manner prescribed by the board;

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

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

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

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

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

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

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

(v) To administer the Medical Malpractice Insurance Availability Plan under Section 3 of Senate Bill No. 2628, 2003 Regular Session.

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

(3) The department shall have the following powers and duties:
(a) To annually report to the Legislature concerning each comprehensive plan of liability protection established pursuant to Section 11-46-17(2). Such report shall include a comprehensive analysis of the cost of the plan, a breakdown of the cost to participating state entities, and such other information as the department may deem necessary.

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

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

SECTION 6. This act shall take effect and be in force from and after its passage, and shall stand repealed from and after July 1, 2005.