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To: Insurance;  
Appropriations

SENATE BILL NO. 2628  
(As Sent to Governor)

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

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

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

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

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

27 (2) (a) The plan shall provide coverage for medical  
28 malpractice to hospitals, institutions for the aged or infirm, or  
29 other health care facilities licensed by the State of Mississippi,  
30 physicians, nurses or other personnel who are duly licensed to  
31 practice in a hospital or other health care facility licensed by



32 the State of Mississippi. Participation in the plan shall be  
33 voluntary for any hospital, institution for the aged or infirm, or  
34 other health care facilities licensed by the State of Mississippi,  
35 physicians, nurses and any other personnel who are duly licensed  
36 to practice in a hospital or other health care facility licensed  
37 by the State of Mississippi. However, no state entity may  
38 participate in the plan. The term "state" as used in this  
39 subsection has the meaning ascribed to that term under Section  
40 11-46-1. The plan shall make available tail (extended reporting  
41 period) coverage for participants of the plan at an additional  
42 premium assessment for such coverage. The board shall encourage  
43 participation in the insurance industry market. Any duly licensed  
44 qualified Mississippi agent who writes a policy under the plan may  
45 receive a commission not to exceed five percent (5%) of the  
46 premium assessment as full compensation.

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

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

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

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

62 (5) Policies may be underwritten based on participant  
63 history. All rates applicable to the coverage provided herein



64 shall be on an actuarially sound basis and calculated to be  
65 self-supporting.

66 (6) Every participant in the plan shall:

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

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

81 (7) This act shall not preclude any hospital, institution  
82 for the aged or infirm, or other health care facilities licensed  
83 by the State of Mississippi, physician, nurse or other personnel  
84 who are duly licensed to practice in a hospital or other health  
85 care facility licensed by the State of Mississippi from procuring  
86 medical malpractice insurance from any source other than the plan.

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

89 (a) To expend money from a loan from the Tort Claims  
90 Fund in an amount not to exceed Five Hundred Thousand Dollars  
91 (\$500,000.00) for the start-up costs of administering the Medical  
92 Malpractice Insurance Availability Plan;

93 (b) To approve and pay claims of participants;

94 (c) To charge and collect assessments and fees from  
95 participants in the plan;



96           (d) To contract with accountants, attorneys, actuaries  
97 and any other experts deemed necessary to carry out the  
98 responsibilities under the plan. The outsourcing of any function  
99 of the board shall be provided by Mississippi residents or  
100 Mississippi domicile corporations, if available;

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

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

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

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

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

118                   (ii) The number of participants in the plan;

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

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

123           (9) Nothing contained in this section shall be construed as  
124 repealing, amending or superseding the provisions of any other law  
125 and, if the provisions of this section conflict with any other  
126 law, then the provisions of such other law shall govern and  
127 control to the extent of the conflict.



128           **SECTION 4.** There is created an advisory council to serve the  
129 Tort Claims Board in an advisory capacity for matters pertaining  
130 to the Medical Malpractice Coverage Availability Plan only. The  
131 advisory council shall be composed of one (1) member who shall  
132 have experience in the medical profession appointed by the  
133 Lieutenant Governor; one (1) member who shall have experience in  
134 the insurance industry appointed by the Lieutenant Governor; one  
135 (1) member who shall have experience in the medical profession  
136 appointed by the Speaker of the House of Representatives; one (1)  
137 member who shall have experience in the insurance industry  
138 appointed by the Speaker of the House of Representatives; and one  
139 (1) member who is a hospital administrator appointed by the  
140 Governor.

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

143           11-46-19. (1) The board shall have the following powers:

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

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

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

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

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



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

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

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

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

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

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

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

190           (m) To administer disposition of claims against the  
191 Tort Claims Fund;



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

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

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

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

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

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

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

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

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

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

222           (3) The department shall have the following powers and  
223 duties:



224           (a) To annually report to the Legislature concerning  
225 each comprehensive plan of liability protection established  
226 pursuant to Section 11-46-17(2). Such report shall include a  
227 comprehensive analysis of the cost of the plan, a breakdown of the  
228 cost to participating state entities, and such other information  
229 as the department may deem necessary.

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

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

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

