

REPORT OF CONFERENCE COMMITTEE

MADAM PRESIDENT AND MR. SPEAKER:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

S. B. No. 2628: Mississippi Medical Malpractice Insurance Availability Act; create.

We, therefore, respectfully submit the following report and recommendation:

1. That the House recede from its Amendment No. 1.
2. That the Senate and House adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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
125 law; and, if the provisions of this section conflict with any
126 other 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 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.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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.

CONFEREES FOR THE SENATE

X

Dean Kirby

X

Nolan Mettetal

X

Alan Nunnelee

CONFEREES FOR THE HOUSE

X

Mary Ann Stevens

X

Keith Montgomery

X

Walter L. Robinson, Jr.