

*****Adopted*****

AMENDMENT No. 1 PROPOSED TO

Senate Bill NO. 2628

By Representative(s) Committee

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

12 SECTION 1. (1) This section shall be known and may be cited
13 as the "Medical Malpractice Coverage Availability Act."

14 (2) There is created the Medical Malpractice Coverage
15 Availability Plan that shall be funded by the participants in the
16 plan. The plan shall be administered by the Mississippi Tort
17 Claims Board created under Section 11-46-18.

18 (3) (a) The Tort Claims Board shall provide coverage for
19 medical malpractice to hospitals or other health care facilities
20 licensed by the State of Mississippi, physicians, nurses or other
21 personnel who are duly licensed to practice in a hospital or other
22 health care facility licensed by the State of Mississippi.
23 However, a state entity may not participate in the plan. The term
24 "state" as used in this subsection has the meaning ascribed to
25 that term under Section 11-46-1. Every community hospital, as
26 such term is defined in Section 41-13-10, shall participate in the
27 plan; however, the Tort Claims Board shall promulgate rules and
28 regulations to allow these community hospitals to opt out of the
29 plan. Participation in the plan shall be optional for any other
30 hospital or other health care facility, or any physician, nurse or
31 other health care provider who is duly licensed to practice in a

32 hospital or other health care facility licensed by the State of
33 Mississippi.

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

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

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

46 (4) Every participant in the plan shall:

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

60 (b) Pay all assessments and fees established by the
61 Tort Claims Board.

62 (5) The Tort Claims Board shall have the following powers
63 and duties:

64 (a) To expend money from a loan from the Tort Claims
65 Fund in an amount not to exceed Five Hundred Thousand Dollars
66 (\$500,000.00) for the start-up costs of administering the Medical

67 Malpractice Coverage Availability Plan;

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

69 (c) To charge and collect assessments and fees from
70 participants in the plan;

71 (d) To contract with accountants, attorneys, actuaries
72 and any other experts deemed necessary to carry out the
73 responsibilities under the plan;

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

77 (f) To contract for administration of the claims and
78 service of the plan to a third party; and

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

84 (6) Nothing contained in this section shall be construed as
85 repealing, amending or superseding the provisions of any other
86 law; and, if the provisions of this section conflict with any
87 other law, then the provisions of such other law shall govern and
88 control to the extent of the conflict.

89 **SECTION 2.** Section 11-46-17, Mississippi Code of 1972, is
90 amended as follows:

91 11-46-17. (1) There is hereby created in the State Treasury
92 a special fund to be known as the "Tort Claims Fund."

93 All such monies as the Department of Finance and
94 Administration shall receive and collect under the provisions of
95 subsection (2) of this section and all such funds as the
96 Legislature may appropriate for use by the board in administering
97 the provisions of this chapter shall be deposited in such fund.
98 All monies in the fund may be expended by the board for any and
99 all purposes for which the board is authorized to expend funds
100 under the provisions of this chapter. All interest earned from
101 the investment of monies in the fund shall be credited to the

102 fund. Monies remaining in such fund at the end of a fiscal year
103 shall not lapse into the State General Fund.

104 (2) From and after July 1, 1993, each governmental entity
105 other than political subdivisions shall participate in a
106 comprehensive plan of self-insurance and/or one or more policies
107 of liability insurance administered by the Department of Finance
108 and Administration. Such plan shall provide coverage to each of
109 such governmental entities for every risk for which the board
110 determines the respective governmental entities to be liable in
111 the event of a claim or suit for injuries under the provisions of
112 this chapter, including claims or suits for injuries from the use
113 or operation of motor vehicles; provided, however, that the board
114 may allow such plan to contain any reasonable limitations or
115 exclusions not contrary to Mississippi state statutes or case law
116 as are normally included in commercial liability insurance
117 policies generally available to governmental entities. In
118 addition to the coverage authorized in the preceding sentence, the
119 plan may provide coverage for liabilities outside the provisions
120 of this chapter, including, but not limited to, liabilities
121 arising from Sections 1983 through 1987 of Title 42 of the United
122 States Code and liabilities from actions brought in foreign
123 jurisdictions, and the board shall establish limits of coverage
124 for such liabilities. Each governmental entity participating in
125 the plan shall make payments to the board in such amounts, times
126 and manner determined by the board as the board deems necessary to
127 provide sufficient funds to be available for payment by the board
128 of such costs as it incurs in providing coverage for the
129 governmental entity. Each governmental entity of the state other
130 than the political subdivisions thereof participating in the plan
131 procured by the board shall be issued by the board a certificate
132 of coverage whose form and content shall be determined by the
133 board but which shall have the effect of certifying that in the
134 opinion of the board each of such governmental entities is
135 adequately insured.

136 Prior to July 1, 1993, the Board of Trustees of State

137 Institutions of Higher Learning may provide such liability
138 coverage for each university, department, trustee, employee,
139 volunteer, facility and activity as the board of trustees, in its
140 discretion, shall determine advisable. If liability coverage,
141 either through insurance policies or self-insurance retention is
142 in effect, immunity from suit shall be waived only to the limit of
143 liability established by such insurance or self-insurance program.

144 From and after July 1, 1993, such liability coverage established
145 by the board of trustees must conform to the provisions of this
146 section and must receive approval from the board. Should the
147 board reject such plan, the board of trustees shall participate in
148 the liability program for state agencies established by the board.

149 (3) All political subdivisions shall, from and after October
150 1, 1993, obtain such policy or policies of insurance, establish
151 such self-insurance reserves, or provide a combination of such
152 insurance and reserves as necessary to cover all risks of claims
153 and suits for which political subdivisions may be liable under
154 this chapter; except any political subdivision shall not be
155 required to obtain pollution liability insurance. However, this
156 shall not limit any cause of action against such political
157 subdivision relative to limits of liability under the Tort Claims
158 Act. Such policy or policies of insurance or such self-insurance
159 may contain any reasonable limitations or exclusions not contrary
160 to Mississippi state statutes or case law as are normally included
161 in commercial liability insurance policies generally available to
162 political subdivisions. All such plans of insurance and/or
163 reserves shall be submitted for approval to the board. The board
164 shall issue a certificate of coverage to each political
165 subdivision whose plan of insurance and/or reserves it approves in
166 the same manner as provided in subsection (2) of this section.
167 Whenever any political subdivision fails to obtain the board's
168 approval of any plan of insurance and/or reserves, the political
169 subdivision shall act in accordance with the rules and regulations
170 of the board and obtain a satisfactory plan of insurance and/or
171 reserves to be approved by the board. Except as otherwise

172 provided in Section 1(3)(a) of Senate Bill 2628, 2003 Regular
173 Session, notwithstanding any other provision to the contrary, all
174 community hospitals, as defined in Section 41-13-10, shall
175 participate in the Medical Malpractice Coverage Availability Plan
176 established under Section 1 of Senate Bill 2628, 2003 Regular
177 Session.

178 (4) Any governmental entity of the state may purchase
179 liability insurance to cover claims in excess of the amounts
180 provided for in Section 11-46-15 and may be sued by anyone in
181 excess of the amounts provided for in Section 11-46-15 to the
182 extent of such excess insurance carried; provided, however, that
183 the immunity from suit above the amounts provided for in Section
184 11-46-15 shall be waived only to the extent of such excess
185 liability insurance carried.

186 (5) Any two (2) or more political subdivisions are hereby
187 authorized to enter into agreement and to contract between and
188 among themselves for the purpose of pooling their liabilities as a
189 group under this chapter. Such pooling agreements and contracts
190 may provide for the purchase of one or more policies of liability
191 insurance and/or the establishment of self-insurance reserves and
192 shall be subject to approval by the board in the manner provided
193 in subsections (2) and (3) of this section.

194 (6) The board shall have subrogation rights against a third
195 party for amounts paid out of any plan of self-insurance
196 administered by such board pursuant to this section in behalf of a
197 governmental entity as a result of damages caused under
198 circumstances creating a cause of action in favor of such
199 governmental entity against a third party. The board shall
200 deposit in the Tort Claims Fund all monies received in connection
201 with the settlement or payment of any claim, including proceeds
202 from the sale of salvage.

203 **SECTION 3.** Section 11-46-19, Mississippi Code of 1972, is
204 amended as follows:

205 11-46-19. (1) The board shall have the following powers:

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

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

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

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

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

222 (f) To employ on a full-time basis a staff attorney who
223 shall possess the minimum qualifications required to be a member
224 of the Mississippi Bar, and such other staff as it may deem
225 necessary to carry out the purposes of this chapter; the employees
226 in the positions approved by the board shall be hired by the
227 director, shall be employees of the department, and shall be
228 compensated from the Tort Claims Fund;

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

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

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

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

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

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

252 (m) To administer disposition of claims against the
253 Tort Claims Fund;

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

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

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

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

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

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

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

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

277 (v) To administer the Medical Malpractice Coverage
278 Availability Plan under Section 1 of Senate Bill 2628, 2003
279 Regular Session.

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

284 (3) The department shall have the following powers and
285 duties:

286 (a) To annually report to the Legislature concerning
287 each comprehensive plan of liability protection established
288 pursuant to Section 11-46-17(2). Such report shall include a
289 comprehensive analysis of the cost of the plan, a breakdown of the
290 cost to participating state entities, and such other information
291 as the department may deem necessary.

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

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

300 **SECTION 4.** This act shall take effect and be in force from
301 and after its passage, and shall stand repealed from and after
302 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 COVERAGE
2 AVAILABILITY ACT"; TO PROVIDE FOR THE ESTABLISHMENT OF THE MEDICAL
3 MALPRACTICE COVERAGE AVAILABILITY PLAN; TO PROVIDE THAT THE PLAN
4 SHALL BE ADMINISTERED BY THE TORT CLAIMS BOARD; TO PRESCRIBE THE
5 POWERS AND DUTIES OF THE BOARD IN REGARD TO THE ADMINISTRATION OF
6 THE PLAN; TO PROVIDE REQUIREMENTS FOR PLAN PARTICIPANTS; TO
7 PRESCRIBE LIMITS OF COVERAGE FOR PARTICIPANTS IN THE PLAN; TO
8 AMEND SECTIONS 11-46-17 AND 11-46-19, MISSISSIPPI CODE OF 1972, IN
9 CONFORMITY WITH THE PROVISIONS OF THIS ACT; AND FOR RELATED
10 PURPOSES.