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COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1569

1 AN ACT TO AMEND SECTION 83-48-5, MISSISSIPPI CODE OF 1972, TO
2 EXPAND THE MEDICAL MALPRACTICE INSURANCE AVAILABILITY PLAN THAT IS
3 ADMINISTERED BY THE MISSISSIPPI TORT CLAIMS BOARD TO MAKE
4 AVAILABLE PRIOR ACTS EXTENDED REPORTING PERIOD COVERAGE TO ALL
5 PARTICIPANTS OF THE PLAN AT ADDITIONAL PREMIUM ASSESSMENTS FOR
6 SUCH COVERAGE AND TO PAY ALL MEDICAL MALPRACTICE INSURANCE
7 PREMIUMS FOR CERTAIN RETIRED PHYSICIANS WHO PROVIDE VOLUNTEER
8 UNPAID HEALTH CARE SERVICES; TO AMEND SECTION 11-46-1, MISSISSIPPI
9 CODE OF 1972, TO REVISE THE DEFINITION OF "EMPLOYEE" FOR PURPOSES
10 OF LIMITED LIABILITY UNDER THE TORT CLAIMS BOARD TO INCLUDE THOSE
11 PHYSICIANS WHO PROVIDE HEALTH CARE SERVICES TO MEDICAID
12 RECIPIENTS, STATE AND SCHOOL EMPLOYEES HEALTH INSURANCE PLAN
13 PARTICIPANTS AND CHILDREN'S HEALTH INSURANCE PROGRAM PARTICIPANTS
14 IF AT LEAST THIRTY-FIVE PERCENT OF THE PHYSICIAN'S PATIENTS ARE
15 MEDICAID RECIPIENTS, OR NOT TO EXCEED ONE HUNDRED TWENTY-FIVE
16 PHYSICIANS; TO INCLUDE CERTAIN RETIRED PHYSICIANS WHO PROVIDE
17 VOLUNTEER UNPAID HEALTH CARE SERVICES TO ANY PUBLIC ENTITY OR
18 PRIVATE ENTITY; TO CREATE IN THE STATE TREASURY A SPECIAL FUND TO
19 THE CREDIT OF THE MISSISSIPPI TORT CLAIMS BOARD WHICH SHALL BE
20 COMPRISED OF ANY FUNDS MADE AVAILABLE FOR THE FUND BY THE
21 LEGISLATURE; TO PROVIDE THAT MONIES IN THE SPECIAL FUND SHALL BE
22 EXPENDED BY THE MISSISSIPPI TORT CLAIMS BOARD TO PROVIDE
23 ADDITIONAL FUNDS FOR PRIOR ACT COVERAGE FOR PLAN PARTICIPANTS AND
24 TO PAY THE MEDICAL MALPRACTICE PREMIUMS FOR THOSE RETIRED
25 PHYSICIANS DESCRIBED HEREIN; TO CREATE AN ADVISORY COUNCIL TO
26 ASSIST THE MISSISSIPPI TORT CLAIMS BOARD IN DETERMINING WHETHER A
27 PHYSICIAN MEETS THE PERCENTAGE REQUIREMENT NECESSARY TO QUALIFY AS
28 AN EMPLOYEE FOR LIMITED LIABILITY PURPOSES; TO PROVIDE RATES FOR
29 COPIES OF MEDICAL RECORDS THAT MAY BE CHARGED BY MEDICAL PROVIDERS
30 AND FACILITIES; AND FOR RELATED PURPOSES.

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

32 **SECTION 1.** The Legislature recognizes the importance of
33 assuring adequate health care services for all Mississippians, and
34 it acknowledges that physicians are a vital component of providing
35 such services. The Legislature finds that because of the makeup
36 of the citizenry of the state and the percentage of citizens who
37 are (a) Medicaid recipients, (b) State and School Employees Health
38 Insurance Plan participants and (c) Children's Health Insurance
39 Program participants, physicians who provide health care services
40 to such individuals are providing an essential public service and

41 that it is in the public interest to provide funding to further
42 address medical malpractice insurance needs of these physicians.

43 **SECTION 2.** Section 83-48-5, Mississippi Code of 1972, is
44 amended as follows:

45 83-48-5. (1) There is created the Medical Malpractice
46 Insurance Availability Plan that shall be funded by the
47 participants in the plan. The plan shall be administered by the
48 Tort Claims Board created under Section 11-46-18.

49 (2) (a) The plan shall provide coverage for medical
50 malpractice to hospitals, institutions for the aged or infirm, or
51 other health care facilities licensed by the State of Mississippi,
52 physicians, nurses or other personnel who are duly licensed to
53 practice in a hospital or other health care facility licensed by
54 the State of Mississippi. Participation in the plan shall be
55 voluntary for any hospital, institution for the aged or infirm, or
56 other health care facilities licensed by the State of Mississippi,
57 physicians, nurses and any other personnel who are duly licensed
58 to practice in a hospital or other health care facility licensed
59 by the State of Mississippi. However, no state entity may
60 participate in the plan. The term "state" as used in this
61 subsection has the meaning ascribed to that term under Section
62 11-46-1. The plan shall make available tail (extended reporting
63 period) coverage for participants of the plan at an additional
64 premium assessment for such coverage. The plan shall make
65 available prior acts extended reporting period coverage
66 (retroactive to the inception date of the physician's last medical
67 malpractice policy) for participants of the plan at an additional
68 premium assessment for such coverage. The board shall encourage
69 participation in the insurance industry market. Any duly licensed
70 qualified Mississippi agent who writes a policy under the plan may
71 receive a commission not to exceed five percent (5%) of the
72 premium assessment as full compensation.

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

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

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

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

88 (iv) For prior acts extended reporting period
89 coverage, the plan shall provide the same limits of coverage as
90 designated in subparagraphs (i) and (ii) of this paragraph (b).
91 For the purpose of providing funds, in addition to assessments,
92 for prior acts extending reporting period coverage, the
93 Mississippi Tort Claims Board shall use monies in the special fund
94 created under Section 4 of House Bill No. 1569, 2004 Regular
95 Session.

96 (3) Policies may be underwritten based on participant
97 history. All rates applicable to the coverage provided herein
98 shall be on an actuarially sound basis and calculated to be
99 self-supporting. Policies for prior acts extended reporting
100 period coverage shall be underwritten at the lowest premium rates
101 possible on an actuarially sound basis.

102 (4) Every participant in the plan shall:

103 (a) File with the board a written agreement, the form
104 and substance of which shall be determined by the board, signed by
105 a duly authorized representative of the participant, that the

106 participant will provide services to (i) Medicaid recipients, (ii)
107 State and School Employees Health Insurance Plan participants, and
108 (iii) Children's Health Insurance Program participants. The
109 agreement must provide, among other things, that the participant
110 will provide services to Medicaid recipients, State and School
111 Employees Health Insurance Plan participants, and Children's
112 Health Insurance Program participants in a manner that is
113 comparable to the services provided to all other patients and
114 shall be made without balance billing to the patient; and

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

117 (5) This chapter shall not preclude any hospital,
118 institution for the aged or infirm, or other health care
119 facilities licensed by the State of Mississippi, physician, nurse
120 or other personnel who are duly licensed to practice in a hospital
121 or other health care facility licensed by the State of Mississippi
122 from procuring medical malpractice insurance from any source other
123 than the plan.

124 (6) Notwithstanding any other provision of this section to
125 the contrary, the Mississippi Torts Claim Board shall use so much
126 of the monies in the special fund created in Section 4 of House
127 Bill No. 1569, 2004 Regular Session, as may be necessary to pay
128 all medical malpractice insurance premiums for not more than an
129 aggregate of twenty-five (25) physicians described in Section
130 11-46-1(f)(ii).

131 (7) The Tort Claims Board shall have the following powers
132 and duties:

133 (a) To expend money from a loan from the Tort Claims
134 Fund in an amount not to exceed Five Hundred Thousand Dollars
135 (\$500,000.00) for the start-up costs of administering the Medical
136 Malpractice Insurance Availability Plan;

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

138 (c) To charge and collect assessments and fees from
139 participants in the plan;

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

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

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

152 (g) To use monies in the special fund created under
153 Section 4 of House Bill No. 1569, 2004 Regular Session, for the
154 purposes provided in subsections (2)(b)(iv) and (6) of this
155 section.

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

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

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

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

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

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

171 (8) Nothing contained in this section shall be construed as
172 repealing, amending or superseding the provisions of any other law
173 and, if the provisions of this section conflict with any other
174 law, then the provisions of such other law shall govern and
175 control to the extent of the conflict.

176 **SECTION 3.** Section 11-46-1, Mississippi Code of 1972, is
177 amended as follows:

178 11-46-1. As used in this chapter the following terms shall
179 have the meanings herein ascribed unless the context otherwise
180 requires:

181 (a) "Claim" means any demand to recover damages from a
182 governmental entity as compensation for injuries.

183 (b) "Claimant" means any person seeking compensation
184 under the provisions of this chapter, whether by administrative
185 remedy or through the courts.

186 (c) "Board" means the Mississippi Tort Claims Board.

187 (d) "Department" means the Department of Finance and
188 Administration.

189 (e) "Director" means the executive director of the
190 department who is also the executive director of the board.

191 (f) "Employee" means:

192 (i) Any officer, employee or servant of the State
193 of Mississippi or a political subdivision of the state, including
194 elected or appointed officials and persons acting on behalf of the
195 state or a political subdivision in any official capacity,
196 temporarily or permanently, in the service of the state or a
197 political subdivision whether with or without compensation. The
198 term "employee" shall not mean a person or other legal entity
199 while acting in the capacity of an independent contractor under
200 contract to the state or a political subdivision; provided,
201 however, that for purposes of the limits of liability provided for
202 in Section 11-46-15, the term "employee" shall include physicians
203 under contract to provide health services with the State Board of

204 Health, the State Board of Mental Health or any county or
205 municipal jail facility while rendering services under such
206 contract. The term "employee" shall also include any physician,
207 dentist or other health care practitioner employed by the
208 University of Mississippi Medical Center (UMMC) and its
209 departmental practice plans who is a faculty member and provides
210 health care services only for patients at UMMC or its affiliated
211 practice sites. The term "employee" shall also include any
212 physician, dentist or other health care practitioner employed by
213 any university under the control of the Board of Trustees of State
214 Institutions of Higher Learning who practices only on the campus
215 of any university under the control of the Board of Trustees of
216 State Institutions of Higher Learning. The term "employee" shall
217 also include any physician, dentist or other health care
218 practitioner employed by the State Veterans Affairs Board and who
219 provides health care services for patients for the State Veterans
220 Affairs Board. The term "employee" shall also include Mississippi
221 Department of Human Services licensed foster parents for the
222 limited purposes of coverage under the Tort Claims Act as provided
223 in Section 11-46-8. For the purposes of the limits of liability
224 provided for in Section 11-46-15 and for no other purpose under
225 this chapter, the term "employee" also shall include any physician
226 who provides health care services to Medicaid recipients, State
227 and School Employees Health Insurance Plan participants and
228 Children's Health Insurance Program participants, provided that at
229 least thirty-five percent (35%) of the physician's patients, as
230 determined by the board, are Medicaid recipients, however, not to
231 exceed one hundred twenty-five (125) physicians; and
232 (ii) Any retired physician who provides volunteer
233 unpaid health care services to any public entity or private
234 entity. For the purposes of this subparagraph (ii), "public
235 entity" means any agency, department, institution, instrumentality
236 or political subdivision of the state, or any agency, department,

237 institution or instrumentality of any political subdivision of the
238 state; and "private entity" means any business, organization,
239 corporation, association or other legal entity which is not a
240 public entity.

241 (g) "Governmental entity" means and includes the state
242 and political subdivisions as herein defined.

243 (h) "Injury" means death, injury to a person, damage to
244 or loss of property or any other injury that a person may suffer
245 that is actionable at law or in equity.

246 (i) "Political subdivision" means any body politic or
247 body corporate other than the state responsible for governmental
248 activities only in geographic areas smaller than that of the
249 state, including, but not limited to, any county, municipality,
250 school district, community hospital as defined in Section
251 41-13-10, Mississippi Code of 1972, airport authority or other
252 instrumentality thereof, whether or not such body or
253 instrumentality thereof has the authority to levy taxes or to sue
254 or be sued in its own name.

255 (j) "State" means the State of Mississippi and any
256 office, department, agency, division, bureau, commission, board,
257 institution, hospital, college, university, airport authority or
258 other instrumentality thereof, whether or not such body or
259 instrumentality thereof has the authority to levy taxes or to sue
260 or be sued in its own name.

261 (k) "Law" means all species of law including, but not
262 limited to, any and all constitutions, statutes, case law, common
263 law, customary law, court order, court rule, court decision, court
264 opinion, court judgment or mandate, administrative rule or
265 regulation, executive order, or principle or rule of equity.

266 **SECTION 4.** There is created in the State Treasury a special
267 fund to the credit of the Mississippi Tort Claims Board, which
268 shall be comprised of any funds that may be made available for the
269 fund by the Legislature. Monies in the fund shall be expended by

270 the Mississippi Tort Claims Board, upon appropriation by the
271 Legislature, only for the purpose of providing additional funds
272 for prior acts extended reporting period coverage as provided in
273 Section 83-48-5 and for paying the medical malpractice premiums
274 for those physicians described in Section 11-46-1(f)(ii) as
275 provided for in Section 83-48-5. Unexpended amounts remaining in
276 the special fund at the end of a fiscal year shall not lapse into
277 the State General Fund, and any interest earned or investment
278 earnings on amounts in the special fund shall be deposited to the
279 credit of the special fund.

280 **SECTION 5.** The Tort Claims Board shall develop methods and
281 promulgate rules and regulations to verify whether a physician
282 meets the percentage requirement under Section 11-46-1(f) to
283 qualify as an employee. There is created an advisory council to
284 assist the Mississippi Tort Claims Board in determining whether a
285 physician meets the percentage requirement under Section
286 11-46-1(f) to qualify as an employee. The advisory council shall
287 be composed of the Executive Director of the Mississippi Medical
288 Association or his designee; the President of the Mississippi
289 Medical and Surgical Association or his designee; the
290 administrator of the Mississippi Tort Claims Board or his
291 designee; two (2) physicians appointed by the Lieutenant Governor;
292 two (2) physicians appointed by the Speaker of the House of
293 Representatives and three (3) nonphysician members, one (1) from
294 each Supreme Court district, appointed by the Governor.

295 **SECTION 6.** That any medical provider or hospital or nursing
296 home or other medical facility shall charge no more than the
297 following amounts to patients or their representatives for
298 photocopying any patient's records: Twenty Dollars (\$20.00) for
299 pages one (1) through twenty (20); One Dollar (\$1.00) per page for
300 the next eighty (80) pages; Fifty Cents (50¢) per page for all
301 pages thereafter. Ten percent (10%) of the total charge may be
302 added for postage and handling. Fifteen Dollars (\$15.00) may be

303 recovered by the medical provider or hospital or nursing home or
304 other medical facility for retrieving medical records in archives
305 at a location off the premises where the facility/office is
306 located.

307 **SECTION 7.** This act shall take effect and be in force from
308 and after July 1, 2004.