By: Senator(s) Kirby

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2396

1 AN ACT TO AMEND SECTION 83-48-5, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE THE TORT CLAIMS BOARD TO EXPEND AN ADDITIONAL SUM OF
3 MONEY FROM A LOAN FROM THE TORT CLAIMS FUND FOR THE PURCHASE OF
4 REINSURANCE FOR THE PARTICIPANTS IN THE MEDICAL MALPRACTICE
5 INSURANCE AVAILABILITY PLAN; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 83-48-5, Mississippi Code of 1972, is
8 amended as follows:

9 83-48-5. (1) There is created the Medical Malpractice
10 Insurance Availability Plan that shall be funded by the
11 participants in the plan. The plan shall be administered by the
12 Tort Claims Board created under Section 11-46-18.

13 (2) (a) The plan shall provide coverage for medical
14 malpractice to hospitals, institutions for the aged or infirm, or
15 other health care facilities licensed by the State of Mississippi,
16 physicians, nurses or other personnel who are duly licensed to
17 practice in a hospital or other health care facility licensed by
18 the State of Mississippi. Participation in the plan shall be
19 voluntary for any hospital, institution for the aged or infirm, or
20 other health care facilities licensed by the State of Mississippi,
21 physicians, nurses and any other personnel who are duly licensed
22 to practice in a hospital or other health care facility licensed
23 by the State of Mississippi. However, no state entity may
24 participate in the plan. The term "state" as used in this
25 subsection has the meaning ascribed to that term under Section
26 11-46-1. The plan shall make available tail (extended reporting
27 period) coverage for participants of the plan at an additional
28 premium assessment for such coverage. The board shall encourage

29 participation in the insurance industry market. Any duly licensed
30 qualified Mississippi agent who writes a policy under the plan may
31 receive a commission not to exceed five percent (5%) of the
32 premium assessment as full compensation.
33 (b) The limits of coverage under the plan shall be as
34 follows:
35 (i) For participants who are "political
36 subdivisions" and participants who are "employees" of political
37 subdivisions, as such terms are defined under Section 11-46-1, a
38 maximum of Five Hundred Thousand Dollars ($500,000.00), per single
39 occurrence, and Two Million Dollars ($2,000,000.00), in the
40 aggregate, per year, for all occurrences;
41 (ii) For all other participants, a maximum of One
42 Million Dollars ($1,000,000.00), per single occurrence, and Three
43 Million Dollars ($3,000,000.00), in the aggregate, per year, for
44 all occurrences; and
45 (iii) For tail coverage, the plan shall provide
46 some limits of coverage as designated in subparagraphs (i) and
47 (ii) of this paragraph (b).
48 (3) Policies may be underwritten based on participant
49 history. All rates applicable to the coverage provided herein
50 shall be on an actuarially sound basis and calculated to be
51 self-supporting.
52 (4) Every participant in the plan shall:
53 (a) File with the board a written agreement, the form
54 and substance of which shall be determined by the board, signed by
55 a duly authorized representative of the participant, that the
56 participant will provide services to (i) Medicaid recipients, (ii)
57 State and School Employees Health Insurance Plan participants, and
58 (iii) Children's Health Insurance Program participants. The
59 agreement must provide, among other things, that the participant
60 will provide services to Medicaid recipients, State and School
61 Employees Health Insurance Plan participants, and Children's

62 Health Insurance Program participants in a manner that is
63 comparable to the services provided to all other patients and
64 shall be made without balance billing to the patient; and
65 (b) Pay all assessments and premiums established by the
66 board.
67 (5) This chapter shall not preclude any hospital,
68 institution for the aged or infirm, or other health care
69 facilities licensed by the State of Mississippi, physician, nurse
70 or other personnel who are duly licensed to practice in a hospital
71 or other health care facility licensed by the State of Mississippi
72 from procuring medical malpractice insurance from any source other
73 than the plan.
74 (6) The Tort Claims Board shall have the following powers
75 and duties:
76 (a) To expend money from a loan from the Tort Claims
77 Fund in an amount not to exceed Five Hundred Thousand Dollars
78 ($500,000.00) for the start-up costs of administering the Medical
79 Malpractice Insurance Availability Plan and to expend an
80 additional sum of money from a loan from the Tort Claims Fund in
81 an amount not to exceed Five Hundred Thousand Dollars
82 ($500,000.00) to purchase reinsurance for the participants in the
83 plan, said loan to be repaid not later than July 1, 2006;
84 (b) To approve and pay claims of participants;
85 (c) To charge and collect assessments and fees from
86 participants in the plan;
87 (d) To contract with accountants, attorneys, actuaries
88 and any other experts deemed necessary to carry out the
89 responsibilities under the plan. The outsourcing of any function
90 of the board shall be provided by Mississippi residents or
91 Mississippi domicile corporations, if available;
92 (e) To employ not more than five (5) persons in
93 time-limited positions to assist the board in the administration
94 of the plan;

95 (f) To contract for administration of the claims and
96 service of the plan to a third party. The outsourcing of any
97 function of the board shall be provided by Mississippi residents
98 or Mississippi domicile corporations, if available;
99 (g) To adopt and promulgate rules and regulations to
100 implement the provisions of the plan. The Tort Claims Board shall
101 adopt such rules and regulations as may be necessary to ensure
102 that the plan remains actuarially sound. The board shall retain
103 the limited liability established by Section 11-46-15; and
104 (h) To submit an annual report on or before March 1
105 each year to the House and Senate Insurance Committees. Such
106 report shall contain:
107 (i) Certification by a qualified actuary that the
108 plan is solvent;
109 (ii) The number of participants in the plan;
110 (iii) The number of claims filed and paid by the
111 plan; and
112 (iv) The amount of all assessments and fees
113 collected from the participants in the plan.
114 <u>(7)</u> Nothing contained in this section shall be construed as
115 repealing, amending or superseding the provisions of any other law
116 and, if the provisions of this section conflict with any other
117 law, then the provisions of such other law shall govern and
118 control to the extent of the conflict.
119 **SECTION 2.** This act shall take effect and be in force from
120 and after July 1, 2004.

ST: Medical Malpractice Insurance Availability Plan; authorize Tort Claims Board to borrow money to purchase reinsurance.