

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       (7) 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.