

By: Representative Warren

To: Sel Cmte on Access &  
Afford Med Mal Ins

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 369

1 AN ACT TO REENACT SECTIONS 83-48-1, 83-48-3, 83-48-5 AND  
2 83-48-7, MISSISSIPPI CODE OF 1972, WHICH CREATE THE MEDICAL  
3 MALPRACTICE INSURANCE AVAILABILITY ACT; TO AMEND REENACTED SECTION  
4 83-48-5, MISSISSIPPI CODE OF 1972, TO CORRECT SUBSECTION  
5 NUMBERING; TO REENACT SECTION 11-46-19, MISSISSIPPI CODE OF 1972,  
6 WHICH PROVIDES FOR THE ADMINISTRATION OF THE MEDICAL MALPRACTICE  
7 INSURANCE AVAILABILITY PLAN BY THE TORT CLAIMS BOARD; TO AMEND  
8 SECTION 6, CHAPTER 560, LAWS OF 2003, TO EXTEND THE REPEALER ON  
9 THE MEDICAL MALPRACTICE INSURANCE AVAILABILITY ACT; AND FOR  
10 RELATED PURPOSES.

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

12 **SECTION 1.** Section 83-48-1, Mississippi Code of 1972, is  
13 reenacted as follows:

14 83-48-1. This chapter may be cited as the "Medical  
15 Malpractice Insurance Availability Act."

16 **SECTION 2.** Section 83-48-3, Mississippi Code of 1972, is  
17 reenacted as follows:

18 83-48-3. The purpose of this chapter is to provide a  
19 temporary market of last resort to make necessary medical  
20 malpractice insurance available for hospitals, institutions for  
21 the aged or infirm, or other health care facilities licensed by  
22 the State of Mississippi, physicians, nurses and any other  
23 personnel who are duly licensed to practice in a hospital or other  
24 health care facility licensed by the State of Mississippi. It is  
25 not intended that the insurance plan authorized by this chapter  
26 shall become a permanent facility.

27 **SECTION 3.** Section 83-48-5, Mississippi Code of 1972, is  
28 reenacted and amended as follows:

29 83-48-5. (1) There is created the Medical Malpractice  
30 Insurance Availability Plan that shall be funded by the

31 participants in the plan. The plan shall be administered by the  
32 Tort Claims Board created under Section 11-46-18.

33 (2) (a) The plan shall provide coverage for medical  
34 malpractice to hospitals, institutions for the aged or infirm, or  
35 other health care facilities licensed by the State of Mississippi,  
36 physicians, nurses or other personnel who are duly licensed to  
37 practice in a hospital or other health care facility licensed by  
38 the State of Mississippi. Participation in the plan shall be  
39 voluntary for any hospital, institution for the aged or infirm, or  
40 other health care facilities licensed by the State of Mississippi,  
41 physicians, nurses and any other personnel who are duly licensed  
42 to practice in a hospital or other health care facility licensed  
43 by the State of Mississippi. However, no state entity may  
44 participate in the plan. The term "state" as used in this  
45 subsection has the meaning ascribed to that term under Section  
46 11-46-1. The plan shall make available tail (extended reporting  
47 period) coverage for participants of the plan at an additional  
48 premium assessment for such coverage. The board shall encourage  
49 participation in the insurance industry market. Any duly licensed  
50 qualified Mississippi agent who writes a policy under the plan may  
51 receive a commission not to exceed five percent (5%) of the  
52 premium assessment as full compensation.

53 (b) The limits of coverage under the plan shall be as  
54 follows:

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

61 (ii) For all other participants, a maximum of One  
62 Million Dollars (\$1,000,000.00), per single occurrence, and Three

63 Million Dollars (\$3,000,000.00), in the aggregate, per year, for  
64 all occurrences; and

65 (iii) For tail coverage, the plan shall provide  
66 some limits of coverage as designated in subparagraphs (i) and  
67 (ii) of this paragraph (b).

68 (3) Policies may be underwritten based on participant  
69 history. All rates applicable to the coverage provided herein  
70 shall be on an actuarially sound basis and calculated to be  
71 self-supporting.

72 (4) Every participant in the plan shall:

73 (a) File with the board a written agreement, the form  
74 and substance of which shall be determined by the board, signed by  
75 a duly authorized representative of the participant, that the  
76 participant will provide services to (i) Medicaid recipients, (ii)  
77 State and School Employees Health Insurance Plan participants, and  
78 (iii) Children's Health Insurance Program participants. The  
79 agreement must provide, among other things, that the participant  
80 will provide services to Medicaid recipients, State and School  
81 Employees Health Insurance Plan participants, and Children's  
82 Health Insurance Program participants in a manner that is  
83 comparable to the services provided to all other patients and  
84 shall be made without balance billing to the patient; and

85 (b) Pay all assessments and premiums established by the  
86 board.

87 (5) This chapter shall not preclude any hospital,  
88 institution for the aged or infirm, or other health care  
89 facilities licensed by the State of Mississippi, physician, nurse  
90 or other personnel who are duly licensed to practice in a hospital  
91 or other health care facility licensed by the State of Mississippi  
92 from procuring medical malpractice insurance from any source other  
93 than the plan.

94 (6) The Tort Claims Board shall have the following powers  
95 and duties:

- 96           (a) To expend money from a loan from the Tort Claims  
97 Fund in an amount not to exceed Five Hundred Thousand Dollars  
98 (\$500,000.00) for the start-up costs of administering the Medical  
99 Malpractice Insurance Availability Plan;
- 100           (b) To approve and pay claims of participants;
- 101           (c) To charge and collect assessments and fees from  
102 participants in the plan;
- 103           (d) To contract with accountants, attorneys, actuaries  
104 and any other experts deemed necessary to carry out the  
105 responsibilities under the plan. The outsourcing of any function  
106 of the board shall be provided by Mississippi residents or  
107 Mississippi domicile corporations, if available;
- 108           (e) To employ not more than five (5) persons in  
109 time-limited positions to assist the board in the administration  
110 of the plan;
- 111           (f) To contract for administration of the claims and  
112 service of the plan to a third party. The outsourcing of any  
113 function of the board shall be provided by Mississippi residents  
114 or Mississippi domicile corporations, if available;
- 115           (g) To adopt and promulgate rules and regulations to  
116 implement the provisions of the plan. The Tort Claims Board shall  
117 adopt such rules and regulations as may be necessary to ensure  
118 that the plan remains actuarially sound. The board shall retain  
119 the limited liability established by Section 11-46-15; and
- 120           (h) To submit an annual report on or before March 1  
121 each year to the House and Senate Insurance Committees. Such  
122 report shall contain:
- 123           (i) Certification by a qualified actuary that the  
124 plan is solvent;
- 125           (ii) The number of participants in the plan;
- 126           (iii) The number of claims filed and paid by the  
127 plan; and

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

130 (7) Nothing contained in this section shall be construed as  
131 repealing, amending or superseding the provisions of any other law  
132 and, if the provisions of this section conflict with any other  
133 law, then the provisions of such other law shall govern and  
134 control to the extent of the conflict.

135 **SECTION 4.** Section 83-48-7, Mississippi Code of 1972, is  
136 reenacted as follows:

137 83-48-7. There is created an advisory council to serve the  
138 Tort Claims Board in an advisory capacity for matters pertaining  
139 to the Medical Malpractice Coverage Availability Plan only. The  
140 advisory council shall be composed of one (1) member who shall  
141 have experience in the medical profession appointed by the  
142 Lieutenant Governor; one (1) member who shall have experience in  
143 the insurance industry appointed by the Lieutenant Governor; one  
144 (1) member who shall have experience in the medical profession  
145 appointed by the Speaker of the House of Representatives; one (1)  
146 member who shall have experience in the insurance industry  
147 appointed by the Speaker of the House of Representatives; and one  
148 (1) member who is a hospital administrator appointed by the  
149 Governor.

150 **SECTION 5.** Section 11-46-19, Mississippi Code of 1972, is  
151 reenacted as follows:

152 11-46-19. (1) The board shall have the following powers:

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

154 (b) To approve any award made from the Tort Claims  
155 Fund;

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

158 (d) To assign litigated claims against governmental  
159 entities other than political subdivisions to competent attorneys  
160 unless such governmental entity has a staff attorney who is

161 competent to represent the governmental entity and is approved by  
162 the board; the board shall give primary consideration to attorneys  
163 practicing in the jurisdiction where the claim arose in assigning  
164 cases; attorneys hired to represent a governmental entity other  
165 than a political subdivision shall be paid according to the  
166 department fee schedule;

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

169 (f) To employ on a full-time basis a staff attorney who  
170 shall possess the minimum qualifications required to be a member  
171 of The Mississippi Bar, and such other staff as it may deem  
172 necessary to carry out the purposes of this chapter; the employees  
173 in the positions approved by the board shall be hired by the  
174 director, shall be employees of the department, and shall be  
175 compensated from the Tort Claims Fund;

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

178 (h) To purchase any policies of liability insurance and  
179 to administer any plan of self-insurance or policies of liability  
180 insurance required for the protection of the state against claims  
181 and suits brought under this chapter;

182 (i) To expend money from the Tort Claims Fund for the  
183 purchase of any policies of liability insurance and the payment of  
184 any award or settlement of a claim against the state under the  
185 provisions of this chapter or of a claim against any school  
186 district, junior college or community college district, or state  
187 agency, arising from the operation of school buses or other  
188 vehicles, under the provisions of Section 37-41-42;

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

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

194           (1) To review and approve or reject any plan of  
195 liability insurance or self-insurance reserves proposed or  
196 provided by political subdivisions if such plan is intended to  
197 serve as security for risks of claims and suits against them for  
198 which immunity has been waived under this chapter;

199           (m) To administer disposition of claims against the  
200 Tort Claims Fund;

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

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

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

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

214           (r) To establish and assess premiums to be paid by  
215 governmental entities required to participate in the Tort Claims  
216 Fund;

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

219           (t) To annually submit its budget request to the  
220 Legislature as a state agency;

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

224           (v) To administer the Medical Malpractice Insurance  
225 Availability Plan under Section 83-48-5.

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

230 (3) The department shall have the following powers and  
231 duties:

232 (a) To annually report to the Legislature concerning  
233 each comprehensive plan of liability protection established  
234 pursuant to Section 11-46-17(2). Such report shall include a  
235 comprehensive analysis of the cost of the plan, a breakdown of the  
236 cost to participating state entities, and such other information  
237 as the department may deem necessary.

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

241 (c) To submit the board's budget request for the  
242 initial year of operation of the board in order to authorize  
243 expenditures for the 1993-1994 fiscal year and for the  
244 appropriation of such general funds as shall be required for the  
245 commencement of its activities.

246 **SECTION 6.** Section 6, Chapter 560, Laws of 2003, is amended  
247 as follows:

248 Section 6. This act shall take effect and be in force from  
249 and after its passage, and shall stand repealed from and after  
250 July 1, 2006.

251 **SECTION 7.** This act shall take effect and be in force from  
252 and after July 1, 2005.