

By: Representative Warren

To: Sel Cmte on Access &  
Afford Med Mal Ins

HOUSE BILL NO. 369  
(As Sent to Governor)

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 AMEND REENACTED SECTION 11-46-19, MISSISSIPPI CODE  
6 OF 1972, TO CODIFY THE REPEALER ON THE PARAGRAPH WHICH PROVIDES  
7 FOR THE ADMINISTRATION OF THE MEDICAL MALPRACTICE INSURANCE  
8 AVAILABILITY PLAN BY THE TORT CLAIMS BOARD; TO AMEND SECTION 6,  
9 CHAPTER 560, LAWS OF 2003, TO DELETE THE REPEALER ON THE MEDICAL  
10 MALPRACTICE INSURANCE AVAILABILITY ACT; TO CREATE A NEW SECTION  
11 83-48-9, MISSISSIPPI CODE OF 1972, TO CODIFY THE REPEALER ON THE  
12 MEDICAL MALPRACTICE INSURANCE AVAILABILITY ACT; AND FOR RELATED  
13 PURPOSES.

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

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

17 83-48-1. This chapter may be cited as the "Medical  
18 Malpractice Insurance Availability Act."

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

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

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

32           83-48-5. (1) There is created the Medical Malpractice  
33 Insurance Availability Plan that shall be funded by the  
34 participants in the plan. The plan shall be administered by the  
35 Tort Claims Board created under Section 11-46-18.

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

56           (b) The limits of coverage under the plan shall be as  
57 follows:

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

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

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

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

75        (4) Every participant in the plan shall:

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

88           (b) Pay all assessments and premiums established by the  
89 board.

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

97           (6) The Tort Claims Board shall have the following powers  
98 and duties:

99           (a) To expend money from a loan from the Tort Claims  
100 Fund in an amount not to exceed Five Hundred Thousand Dollars  
101 (\$500,000.00) for the start-up costs of administering the Medical  
102 Malpractice Insurance Availability Plan;

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

104           (c) To charge and collect assessments and fees from  
105 participants in the plan;

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

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

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

118           (g) To adopt and promulgate rules and regulations to  
119 implement the provisions of the plan. The Tort Claims Board shall  
120 adopt such rules and regulations as may be necessary to ensure  
121 that the plan remains actuarially sound. The board shall retain  
122 the limited liability established by Section 11-46-15; and

123           (h) To submit an annual report on or before March 1  
124 each year to the House and Senate Insurance Committees. Such  
125 report shall contain:

126           (i) Certification by a qualified actuary that the  
127 plan is solvent;

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

129 (iii) The number of claims filed and paid by the  
130 plan; and

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

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

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

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

153 **SECTION 5.** Section 11-46-19, Mississippi Code of 1972, is  
154 reenacted and amended as follows:

155 11-46-19. (1) The board shall have the following powers:

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

157 (b) To approve any award made from the Tort Claims  
158 Fund;

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

161           (d) To assign litigated claims against governmental  
162 entities other than political subdivisions to competent attorneys  
163 unless such governmental entity has a staff attorney who is  
164 competent to represent the governmental entity and is approved by  
165 the board; the board shall give primary consideration to attorneys  
166 practicing in the jurisdiction where the claim arose in assigning  
167 cases; attorneys hired to represent a governmental entity other  
168 than a political subdivision shall be paid according to the  
169 department fee schedule;

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

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

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

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

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

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

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

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

202           (m) To administer disposition of claims against the  
203 Tort Claims Fund;

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

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

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

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

217           (r) To establish and assess premiums to be paid by  
218 governmental entities required to participate in the Tort Claims  
219 Fund;

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

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

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

227 (v) To administer the Medical Malpractice Insurance  
228 Availability Plan under Section 83-48-5. The provisions of this  
229 paragraph (v) shall stand repealed from and after July 1, 2007.

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

234 (3) The department shall have the following powers and  
235 duties:

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

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

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

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

252 Section 6. This act shall take effect and be in force from  
253 and after its passage \* \* \*.

254 **SECTION 7.** The following provision shall be codified as  
255 Section 83-48-9, Mississippi Code of 1972:

256 83-48-9. Sections 83-48-1, 83-48-3, 83-48-5 and 83-48-7,  
257 Mississippi Code of 1972, shall stand repealed from and after July  
258 1, 2007.

259           **SECTION 8.** This act shall take effect and be in force from  
260 and after July 1, 2005.