

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.