

By: Senator(s) Kirby

To: Insurance

SENATE BILL NO. 2334

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 DELETE THE REPEALER ON
 9 THE MEDICAL MALPRACTICE INSURANCE AVAILABILITY ACT; TO CREATE A
 10 NEW SECTION 83-48-9, MISSISSIPPI CODE OF 1972, TO CODIFY THE
 11 REPEALER ON THE MEDICAL MALPRACTICE INSURANCE AVAILABILITY ACT;
 12 AND FOR RELATED PURPOSES.

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

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

16 83-48-1. This chapter may be cited as the "Medical
 17 Malpractice Insurance Availability Act."

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

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

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

31 83-48-5. (1) There is created the Medical Malpractice
 32 Insurance Availability Plan that shall be funded by the

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

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

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

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

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

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

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

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

74 (4) Every participant in the plan shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

154 11-46-19. (1) The board shall have the following powers:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

232 (3) The department shall have the following powers and
233 duties:

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

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

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

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

250 Section 6. This act shall take effect and be in force from
251 and after its passage * * *.

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

254 83-48-9. Sections 83-48-1, 83-48-3, 83-48-5 and 83-48-7,
255 Mississippi Code of 1972, shall stand repealed from and after July
256 1, 2007.

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