

By: Senator(s) Kirby

To: Insurance

SENATE BILL NO. 2056

1 AN ACT TO REENACT SECTIONS 83-48-1 THROUGH 83-48-9,  
 2 MISSISSIPPI CODE OF 1972, WHICH CREATE THE MEDICAL MALPRACTICE  
 3 INSURANCE AVAILABILITY ACT; TO AMEND REENACTED SECTION 83-48-5,  
 4 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE TORT CLAIMS BOARD, UPON  
 5 APPROVAL BY THE DEPARTMENT OF FINANCE AND ADMINISTRATION, TO  
 6 TRANSFER THE ASSETS AND LIABILITIES OF THE MEDICAL MALPRACTICE  
 7 INSURANCE AVAILABILITY PLAN; TO AMEND REENACTED SECTION 83-48-9,  
 8 MISSISSIPPI CODE OF 1972, TO REVISE THE DATE OF REPEAL; TO AMEND  
 9 SECTION 11-46-19, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;  
 10 AND FOR 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; \* \* \*

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; and

130 (i) To transfer the assets and liabilities of the plan,  
131 upon approval by the Department of Finance and Administration, for  
132 the terms and consideration as determined by the board. Such  
133 transfer shall be conditional upon the reimbursement to the State  
134 of Mississippi of its investments in the plan and the continuation  
135 of making medical malpractice insurance available for health care  
136 providers in the state.

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

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

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

157 **SECTION 5.** Section 83-48-9, Mississippi Code of 1972, is  
158 reenacted and amended as follows:

159 83-48-9. Sections 83-48-1, 83-48-3, 83-48-5 and 83-48-7,  
160 Mississippi Code of 1972, shall stand repealed from and after the

161 transfer of the plan's assets and liabilities as provided in  
162 Section 83-48-6(i).

163 **SECTION 6.** Section 11-46-19, Mississippi Code of 1972, is  
164 amended as follows:

165 11-46-19. (1) The board shall have the following powers:

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

167 (b) To approve any award made from the Tort Claims  
168 Fund;

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

171 (d) To assign litigated claims against governmental  
172 entities other than political subdivisions to competent attorneys  
173 unless such governmental entity has a staff attorney who is  
174 competent to represent the governmental entity and is approved by  
175 the board; the board shall give primary consideration to attorneys  
176 practicing in the jurisdiction where the claim arose in assigning  
177 cases; attorneys hired to represent a governmental entity other  
178 than a political subdivision shall be paid according to the  
179 department fee schedule;

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

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

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

191 (h) To purchase any policies of liability insurance and  
192 to administer any plan of self-insurance or policies of liability

193 insurance required for the protection of the state against claims  
194 and suits brought under this chapter;

195 (i) To expend money from the Tort Claims Fund for the  
196 purchase of any policies of liability insurance and the payment of  
197 any award or settlement of a claim against the state under the  
198 provisions of this chapter or of a claim against any school  
199 district, junior college or community college district, or state  
200 agency, arising from the operation of school buses or other  
201 vehicles, under the provisions of Section 37-41-42;

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

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

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

212 (m) To administer disposition of claims against the  
213 Tort Claims Fund;

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

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

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

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

227 (r) To establish and assess premiums to be paid by  
228 governmental entities required to participate in the Tort Claims  
229 Fund;

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

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

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

237 (v) To administer the Medical Malpractice Insurance  
238 Availability Plan under Section 83-48-5. The provisions of this  
239 paragraph (v) shall stand repealed from and after the transfer of  
240 the plan's assets and liabilities as provided in Section  
241 83-48-6(i).

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

246 (3) The department shall have the following powers and  
247 duties:

248 (a) To annually report to the Legislature concerning  
249 each comprehensive plan of liability protection established  
250 pursuant to Section 11-46-17(2). Such report shall include a  
251 comprehensive analysis of the cost of the plan, a breakdown of the  
252 cost to participating state entities, and such other information  
253 as the department may deem necessary.

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



257                   (c) To submit the board's budget request for the  
258 initial year of operation of the board in order to authorize  
259 expenditures for the 1993-1994 fiscal year and for the  
260 appropriation of such general funds as shall be required for the  
261 commencement of its activities.

262                   **SECTION 7.** This act shall take effect and be in force from  
263 and after its passage.