

By: Senator(s) Kirby

To: Insurance

SENATE BILL NO. 2056
(As Sent to Governor)

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, however,
133 such transfer shall be conditional upon the following:

134 (i) The reimbursement to the State of Mississippi
135 of its investments in the plan;

136 (ii) The continuation of making medical
137 malpractice insurance available for health care providers in the
138 state; and

139 (iii) The agreement that the acquirer will renew
140 the participants enrolled in the plan on the date of transfer for
141 a period of three (3) years from the date of transfer, and will
142 not increase the premiums, assessments and fees collected from
143 such participants during such period of time.

144 Funds received by the State of Mississippi for the transfer
145 of assets and liabilities of the plan shall be used to reimburse
146 any amount owed to the Tort Claims Fund for the costs of
147 administering the plan, and any funds in excess of that amount
148 shall be deposited into the Mississippi Trauma Care Systems Fund
149 created in Section 41-59-75.

150 (7) Nothing contained in this section shall be construed as
151 repealing, amending or superseding the provisions of any other law
152 and, if the provisions of this section conflict with any other
153 law, then the provisions of such other law shall govern and
154 control to the extent of the conflict.

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

157 83-48-7. There is created an advisory council to serve the
158 Tort Claims Board in an advisory capacity for matters pertaining
159 to the Medical Malpractice Coverage Availability Plan only. The
160 advisory council shall be composed of one (1) member who shall

161 have experience in the medical profession appointed by the
162 Lieutenant Governor; one (1) member who shall have experience in
163 the insurance industry appointed by the Lieutenant Governor; one
164 (1) member who shall have experience in the medical profession
165 appointed by the Speaker of the House of Representatives; one (1)
166 member who shall have experience in the insurance industry
167 appointed by the Speaker of the House of Representatives; and one
168 (1) member who is a hospital administrator appointed by the
169 Governor.

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

172 83-48-9. Sections 83-48-1, 83-48-3, 83-48-5 and 83-48-7,
173 Mississippi Code of 1972, shall stand repealed from and after the
174 transfer of the plan's assets and liabilities as provided in
175 Section 83-48-6(i).

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

178 11-46-19. (1) The board shall have the following powers:

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

180 (b) To approve any award made from the Tort Claims
181 Fund;

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

184 (d) To assign litigated claims against governmental
185 entities other than political subdivisions to competent attorneys
186 unless such governmental entity has a staff attorney who is
187 competent to represent the governmental entity and is approved by
188 the board; the board shall give primary consideration to attorneys
189 practicing in the jurisdiction where the claim arose in assigning
190 cases; attorneys hired to represent a governmental entity other
191 than a political subdivision shall be paid according to the
192 department fee schedule;

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

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

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

204 (h) To purchase any policies of liability insurance and
205 to administer any plan of self-insurance or policies of liability
206 insurance required for the protection of the state against claims
207 and suits brought under this chapter;

208 (i) To expend money from the Tort Claims Fund for the
209 purchase of any policies of liability insurance and the payment of
210 any award or settlement of a claim against the state under the
211 provisions of this chapter or of a claim against any school
212 district, junior college or community college district, or state
213 agency, arising from the operation of school buses or other
214 vehicles, under the provisions of Section 37-41-42;

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

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

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

225 (m) To administer disposition of claims against the
226 Tort Claims Fund;

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

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

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

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

240 (r) To establish and assess premiums to be paid by
241 governmental entities required to participate in the Tort Claims
242 Fund;

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

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

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

250 (v) To administer the Medical Malpractice Insurance
251 Availability Plan under Section 83-48-5. The provisions of this
252 paragraph (v) shall stand repealed from and after the transfer of
253 the plan's assets and liabilities as provided in Section
254 83-48-6(i).

255 (2) Policies of liability insurance purchased for the
256 protection of governmental entities against claims and suits

257 brought under this chapter shall be purchased pursuant to the
258 competitive bidding procedures set forth in Section 31-7-13.

259 (3) The department shall have the following powers and
260 duties:

261 (a) To annually report to the Legislature concerning
262 each comprehensive plan of liability protection established
263 pursuant to Section 11-46-17(2). Such report shall include a
264 comprehensive analysis of the cost of the plan, a breakdown of the
265 cost to participating state entities, and such other information
266 as the department may deem necessary.

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

270 (c) To submit the board's budget request for the
271 initial year of operation of the board in order to authorize
272 expenditures for the 1993-1994 fiscal year and for the
273 appropriation of such general funds as shall be required for the
274 commencement of its activities.

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