

By: Senator(s) Kirby

To: Insurance

SENATE BILL NO. 2568

1 AN ACT TO REENACT SECTIONS 83-48-1 THROUGH 83-48-9 AND
2 SECTION 11-46-19, MISSISSIPPI CODE OF 1972, WHICH CREATE THE
3 MEDICAL MALPRACTICE INSURANCE AVAILABILITY ACT; TO AMEND REENACTED
4 SECTIONS 11-46-19 AND 83-48-9, MISSISSIPPI CODE OF 1972, TO CHANGE
5 TO A DATE CERTAIN THE REPEALER ON THE ACT AND ON THE AUTHORITY OF
6 THE TORT CLAIMS BOARD TO ADMINISTER THE PLAN; AND FOR RELATED
7 PURPOSES.

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

9 **SECTION 1.** Section 11-46-19, Mississippi Code of 1972, is
10 reenacted and amended as follows:

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

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

13 (b) To approve any award made from the Tort Claims
14 Fund;

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

17 (d) To assign litigated claims against governmental
18 entities other than political subdivisions to competent attorneys
19 unless such governmental entity has a staff attorney who is
20 competent to represent the governmental entity and is approved by
21 the board; the board shall give primary consideration to attorneys
22 practicing in the jurisdiction where the claim arose in assigning
23 cases; attorneys hired to represent a governmental entity other
24 than a political subdivision shall be paid according to the
25 department fee schedule;

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

28 (f) To employ on a full-time basis a staff attorney who
29 shall possess the minimum qualifications required to be a member

30 of The Mississippi Bar, and such other staff as it may deem
31 necessary to carry out the purposes of this chapter; the employees
32 in the positions approved by the board shall be hired by the
33 director, shall be employees of the department, and shall be
34 compensated from the Tort Claims Fund;

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

37 (h) To purchase any policies of liability insurance and
38 to administer any plan of self-insurance or policies of liability
39 insurance required for the protection of the state against claims
40 and suits brought under this chapter;

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

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

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

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

58 (m) To administer disposition of claims against the
59 Tort Claims Fund;

60 (n) To withhold issuance of any warrants payable from
61 funds of a participating state entity should such entity fail to

62 make required contributions to the Tort Claims Fund in the time
63 and manner prescribed by the board;

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

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

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

73 (r) To establish and assess premiums to be paid by
74 governmental entities required to participate in the Tort Claims
75 Fund;

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

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

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

83 (v) To administer the Medical Malpractice Insurance
84 Availability Plan under Section 83-48-5. The provisions of this
85 paragraph (v) shall stand repealed from and after July 1, 2008.

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

90 (3) The department shall have the following powers and
91 duties:

92 (a) To annually report to the Legislature concerning
93 each comprehensive plan of liability protection established
94 pursuant to Section 11-46-17(2). Such report shall include a

95 comprehensive analysis of the cost of the plan, a breakdown of the
96 cost to participating state entities, and such other information
97 as the department may deem necessary.

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

101 (c) To submit the board's budget request for the
102 initial year of operation of the board in order to authorize
103 expenditures for the 1993-1994 fiscal year and for the
104 appropriation of such general funds as shall be required for the
105 commencement of its activities.

106 **SECTION 2.** Section 83-48-1, Mississippi Code of 1972, is
107 reenacted as follows:

108 83-48-1. This chapter may be cited as the "Medical
109 Malpractice Insurance Availability Act."

110 **SECTION 3.** Section 83-48-3, Mississippi Code of 1972, is
111 reenacted as follows:

112 83-48-3. The purpose of this chapter is to provide a
113 temporary market of last resort to make necessary medical
114 malpractice insurance available for hospitals, institutions for
115 the aged or infirm, or other health care facilities licensed by
116 the State of Mississippi, physicians, nurses and any other
117 personnel who are duly licensed to practice in a hospital or other
118 health care facility licensed by the State of Mississippi. It is
119 not intended that the insurance plan authorized by this chapter
120 shall become a permanent facility.

121 **SECTION 4.** Section 83-48-5, Mississippi Code of 1972, is
122 reenacted as follows:

123 83-48-5. (1) There is created the Medical Malpractice
124 Insurance Availability Plan that shall be funded by the
125 participants in the plan. The plan shall be administered by the
126 Tort Claims Board created under Section 11-46-18.

127 (2) (a) The plan shall provide coverage for medical
128 malpractice to hospitals, institutions for the aged or infirm, or
129 other health care facilities licensed by the State of Mississippi,
130 physicians, nurses or other personnel who are duly licensed to
131 practice in a hospital or other health care facility licensed by
132 the State of Mississippi. Participation in the plan shall be
133 voluntary for any hospital, institution for the aged or infirm, or
134 other health care facilities licensed by the State of Mississippi,
135 physicians, nurses and any other personnel who are duly licensed
136 to practice in a hospital or other health care facility licensed
137 by the State of Mississippi. However, no state entity may
138 participate in the plan. The term "state" as used in this
139 subsection has the meaning ascribed to that term under Section
140 11-46-1. The plan shall make available tail (extended reporting
141 period) coverage for participants of the plan at an additional
142 premium assessment for such coverage. The board shall encourage
143 participation in the insurance industry market. Any duly licensed
144 qualified Mississippi agent who writes a policy under the plan may
145 receive a commission not to exceed five percent (5%) of the
146 premium assessment as full compensation.

147 (b) The limits of coverage under the plan shall be as
148 follows:

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

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

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

162 (3) Policies may be underwritten based on participant
163 history. All rates applicable to the coverage provided herein
164 shall be on an actuarially sound basis and calculated to be
165 self-supporting.

166 (4) Every participant in the plan shall:

167 (a) File with the board a written agreement, the form
168 and substance of which shall be determined by the board, signed by
169 a duly authorized representative of the participant, that the
170 participant will provide services to (i) Medicaid recipients, (ii)
171 State and School Employees Health Insurance Plan participants, and
172 (iii) Children's Health Insurance Program participants. The
173 agreement must provide, among other things, that the participant
174 will provide services to Medicaid recipients, State and School
175 Employees Health Insurance Plan participants, and Children's
176 Health Insurance Program participants in a manner that is
177 comparable to the services provided to all other patients and
178 shall be made without balance billing to the patient; and

179 (b) Pay all assessments and premiums established by the
180 board.

181 (5) This chapter shall not preclude any hospital,
182 institution for the aged or infirm, or other health care
183 facilities licensed by the State of Mississippi, physician, nurse
184 or other personnel who are duly licensed to practice in a hospital
185 or other health care facility licensed by the State of Mississippi
186 from procuring medical malpractice insurance from any source other
187 than the plan.

188 (6) The Tort Claims Board shall have the following powers
189 and duties:

190 (a) To expend money from a loan from the Tort Claims
191 Fund in an amount not to exceed Five Hundred Thousand Dollars

192 (\$500,000.00) for the start-up costs of administering the Medical
193 Malpractice Insurance Availability Plan;

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

195 (c) To charge and collect assessments and fees from
196 participants in the plan;

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

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

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

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

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

217 (i) Certification by a qualified actuary that the
218 plan is solvent;

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

220 (iii) The number of claims filed and paid by the
221 plan; and

222 (iv) The amount of all assessments and fees
223 collected from the participants in the plan; and

224 (i) To transfer the assets and liabilities of the plan,
225 upon approval by the Department of Finance and Administration, for
226 the terms and consideration as determined by the board, however,
227 such transfer shall be conditional upon the following:

228 (i) The reimbursement to the State of Mississippi
229 of its investments in the plan;

230 (ii) The continuation of making medical
231 malpractice insurance available for health care providers in the
232 state; and

233 (iii) The agreement that the acquirer will renew
234 the participants enrolled in the plan on the date of transfer for
235 a period of three (3) years from the date of transfer, and will
236 not increase the premiums, assessments and fees collected from
237 such participants during such period of time.

238 Funds received by the State of Mississippi for the transfer
239 of assets and liabilities of the plan shall be used to reimburse
240 any amount owed to the Tort Claims Fund for the costs of
241 administering the plan, and any funds in excess of that amount
242 shall be deposited into the Mississippi Trauma Care Systems Fund
243 created in Section 41-59-75.

244 (7) Nothing contained in this section shall be construed as
245 repealing, amending or superseding the provisions of any other law
246 and, if the provisions of this section conflict with any other
247 law, then the provisions of such other law shall govern and
248 control to the extent of the conflict.

249 **SECTION 5.** Section 83-48-7, Mississippi Code of 1972, is
250 reenacted as follows:

251 83-48-7. There is created an advisory council to serve the
252 Tort Claims Board in an advisory capacity for matters pertaining
253 to the Medical Malpractice Coverage Availability Plan only. The
254 advisory council shall be composed of one (1) member who shall
255 have experience in the medical profession appointed by the
256 Lieutenant Governor; one (1) member who shall have experience in

257 the insurance industry appointed by the Lieutenant Governor; one
258 (1) member who shall have experience in the medical profession
259 appointed by the Speaker of the House of Representatives; one (1)
260 member who shall have experience in the insurance industry
261 appointed by the Speaker of the House of Representatives; and one
262 (1) member who is a hospital administrator appointed by the
263 Governor.

264 **SECTION 6.** Section 83-48-9, Mississippi Code of 1972, is
265 reenacted and amended as follows:

266 83-48-9. Sections 83-48-1, 83-48-3, 83-48-5 and 83-48-7,
267 Mississippi Code of 1972, shall stand repealed from and after July
268 1, 2008.

269 **SECTION 7.** This act shall take effect and be in force from
270 and after July 1, 2007.