MISSISSIPPI LEGISLATURE REGULAR SESSION 2004

By: Representative Stevens

To: Insurance

HOUSE BILL NO. 608

AN ACT TO AMEND SECTION 83-48-5, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE TORT CLAIMS BOARD TO EXPEND AN ADDITIONAL SUM OF MONEY FROM A LOAN FROM THE TORT CLAIMS FUND FOR THE PURCHASE OF REINSURANCE FOR THE PARTICIPANTS IN THE MEDICAL MALPRACTICE INSURANCE AVAILABILITY PLAN; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 83-48-5, Mississippi Code of 1972, is amended as follows:

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

(2) (a) The plan shall provide coverage for medical malpractice to hospitals, institutions for the aged or infirm, or other health care facilities licensed by the State of Mississippi, physicians, nurses or other personnel who are duly licensed to practice in a hospital or other health care facility licensed by the State of Mississippi. Participation in the plan shall be voluntary for any hospital, institution for the aged or infirm, or other health care facilities licensed by the State of Mississippi, physicians, nurses and any other personnel who are duly licensed to practice in a hospital or other health care facility licensed by the State of Mississippi. However, no state entity may participate in the plan. The term "state" as used in this subsection has the meaning ascribed to that term under Section 11-46-1. The plan shall make available tail (extended reporting period) coverage for participants of the plan at an additional premium assessment for such coverage. The board shall encourage

participation in the insurance industry market. Any duly licensed qualified Mississippi agent who writes a policy under the plan may receive a commission not to exceed five percent (5%) of the premium assessment as full compensation.

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

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

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

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

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

(6) Every participant in the plan shall:

(a) File with the board a written agreement, the form and substance of which shall be determined by the board, signed by a duly authorized representative of the participant, that the participant will provide services to (i) Medicaid recipients, (ii) State and School Employees Health Insurance Plan participants, and (iii) Children's Health Insurance Program participants. The agreement must provide, among other things, that the participant will provide services to Medicaid recipients, State and School Employees Health Insurance Plan participants, and Children's

Health Insurance Program participants in a manner that is comparable to the services provided to all other patients and shall be made without balance billing to the patient; and

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

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

(8) The Tort Claims Board shall have the following powers and duties:

(a) To expend money from a loan from the Tort Claims Fund in an amount not to exceed Five Hundred Thousand Dollars ($500,000.00) for the start-up costs of administering the Medical Malpractice Insurance Availability Plan and to expend an additional sum of money from a loan from the Tort Claims Fund in an amount not to exceed Five Hundred Thousand Dollars ($500,000.00) to purchase reinsurance for the participants in the plan;

(b) To approve and pay claims of participants;

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

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

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

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

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

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

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

(ii) The number of participants in the plan;

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

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

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

SECTION 2. This act shall take effect and be in force from and after July 1, 2004.