

House Amendments to Senate Bill No. 2396

TO THE SECRETARY OF THE SENATE:

THIS IS TO INFORM YOU THAT THE HOUSE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

35 **SECTION 1.** The Legislature recognizes the importance of
36 assuring adequate health care services for all Mississippians, and
37 it acknowledges that physicians are a vital component of providing
38 such services. The Legislature finds that because of the makeup
39 of the citizenry of the state and the percentage of citizens who
40 are (a) Medicaid recipients, (b) State and School Employees Health
41 Insurance Plan participants and (c) Children's Health Insurance
42 Program participants, physicians who provide health care services
43 to such individuals are providing an essential public service and
44 that it is in the public interest to provide funding to further
45 address medical malpractice insurance needs of these physicians.

46 **SECTION 2.** Section 83-48-5, Mississippi Code of 1972, is
47 amended as follows:

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

52 (2) (a) The plan shall provide coverage for medical
53 malpractice to hospitals, institutions for the aged or infirm, or
54 other health care facilities licensed by the State of Mississippi,
55 physicians, nurses or other personnel who are duly licensed to
56 practice in a hospital or other health care facility licensed by
57 the State of Mississippi. Participation in the plan shall be
58 voluntary for any hospital, institution for the aged or infirm, or
59 other health care facilities licensed by the State of Mississippi,
60 physicians, nurses and any other personnel who are duly licensed

61 to practice in a hospital or other health care facility licensed
62 by the State of Mississippi. However, no state entity may
63 participate in the plan. The term "state" as used in this
64 subsection has the meaning ascribed to that term under Section
65 11-46-1. The plan shall make available tail (extended reporting
66 period) coverage for participants of the plan at an additional
67 premium assessment for such coverage. The plan shall make
68 available prior acts extended reporting period coverage
69 (retroactive to the inception date of the physician's last medical
70 malpractice policy) for participants of the plan at an additional
71 premium assessment for such coverage. The board shall encourage
72 participation in the insurance industry market. Any duly licensed
73 qualified Mississippi agent who writes a policy under the plan may
74 receive a commission not to exceed five percent (5%) of the
75 premium assessment as full compensation.

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

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

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

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

91 (iv) For prior acts extended reporting period
92 coverage, the plan shall provide the same limits of coverage as
93 designated in subparagraphs (i) and (ii) of this paragraph (b).
94 For the purpose of providing funds, in addition to assessments,
95 for prior acts extending reporting period coverage, the

96 Mississippi Tort Claims Board shall use monies in the special fund
97 created under Section 4 of House Bill No. 1569, 2004 Regular
98 Session.

99 (3) Policies may be underwritten based on participant
100 history. All rates applicable to the coverage provided herein
101 shall be on an actuarially sound basis and calculated to be
102 self-supporting. Policies for prior acts extended reporting
103 period coverage shall be underwritten at the lowest premium rates
104 possible on an actuarially sound basis.

105 (4) Every participant in the plan shall:

106 (a) File with the board a written agreement, the form
107 and substance of which shall be determined by the board, signed by
108 a duly authorized representative of the participant, that the
109 participant will provide services to (i) Medicaid recipients, (ii)
110 State and School Employees Health Insurance Plan participants, and
111 (iii) Children's Health Insurance Program participants. The
112 agreement must provide, among other things, that the participant
113 will provide services to Medicaid recipients, State and School
114 Employees Health Insurance Plan participants, and Children's
115 Health Insurance Program participants in a manner that is
116 comparable to the services provided to all other patients and
117 shall be made without balance billing to the patient; and

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

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

127 (6) Notwithstanding any other provision of this section to
128 the contrary, the Mississippi Torts Claim Board shall use so much
129 of the monies in the special fund created in Section 4 of Senate
130 Bill No. 2396, 2004 Regular Session, as may be necessary to pay

131 all medical malpractice insurance premiums for not more than an
132 aggregate of twenty-five (25) physicians described in Section
133 11-46-1(f)(ii).

134 (7) The Tort Claims Board shall have the following powers
135 and duties:

136 (a) To expend money from a loan from the Tort Claims
137 Fund in an amount not to exceed Five Hundred Thousand Dollars
138 (\$500,000.00) for the start-up costs of administering the Medical
139 Malpractice Insurance Availability Plan and to expend an
140 additional sum of money from a loan from the Tort Claims Fund in
141 an amount not to exceed Five Hundred Thousand Dollars
142 (\$500,000.00) to purchase reinsurance for the participants in the
143 plan, said loan to be repaid not later than July 1, 2006;

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

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

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

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

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

159 (g) To use monies in the special fund created under
160 Section 4 of Senate Bill No. 2396, 2004 Regular Session, for the
161 purposes provided in subsections (2)(b)(iv) and (6) of this
162 section.

163 (h) To adopt and promulgate rules and regulations to
164 implement the provisions of the plan. The Tort Claims Board shall
165 adopt such rules and regulations as may be necessary to ensure

166 that the plan remains actuarially sound. The board shall retain
167 the limited liability established by Section 11-46-15; and

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

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

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

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

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

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

183 **SECTION 3.** Section 11-46-1, Mississippi Code of 1972, is
184 amended as follows:

185 11-46-1. As used in this chapter the following terms shall
186 have the meanings herein ascribed unless the context otherwise
187 requires:

188 (a) "Claim" means any demand to recover damages from a
189 governmental entity as compensation for injuries.

190 (b) "Claimant" means any person seeking compensation
191 under the provisions of this chapter, whether by administrative
192 remedy or through the courts.

193 (c) "Board" means the Mississippi Tort Claims Board.

194 (d) "Department" means the Department of Finance and
195 Administration.

196 (e) "Director" means the executive director of the
197 department who is also the executive director of the board.

198 (f) "Employee" means:

199 (i) Any officer, employee or servant of the State
200 of Mississippi or a political subdivision of the state, including

201 elected or appointed officials and persons acting on behalf of the
202 state or a political subdivision in any official capacity,
203 temporarily or permanently, in the service of the state or a
204 political subdivision whether with or without compensation. The
205 term "employee" shall not mean a person or other legal entity
206 while acting in the capacity of an independent contractor under
207 contract to the state or a political subdivision; provided,
208 however, that for purposes of the limits of liability provided for
209 in Section 11-46-15, the term "employee" shall include physicians
210 under contract to provide health services with the State Board of
211 Health, the State Board of Mental Health or any county or
212 municipal jail facility while rendering services under such
213 contract. The term "employee" shall also include any physician,
214 dentist or other health care practitioner employed by the
215 University of Mississippi Medical Center (UMMC) and its
216 departmental practice plans who is a faculty member and provides
217 health care services only for patients at UMMC or its affiliated
218 practice sites. The term "employee" shall also include any
219 physician, dentist or other health care practitioner employed by
220 any university under the control of the Board of Trustees of State
221 Institutions of Higher Learning who practices only on the campus
222 of any university under the control of the Board of Trustees of
223 State Institutions of Higher Learning. The term "employee" shall
224 also include any physician, dentist or other health care
225 practitioner employed by the State Veterans Affairs Board and who
226 provides health care services for patients for the State Veterans
227 Affairs Board. The term "employee" shall also include Mississippi
228 Department of Human Services licensed foster parents for the
229 limited purposes of coverage under the Tort Claims Act as provided
230 in Section 11-46-8. For the purposes of the limits of liability
231 provided for in Section 11-46-15 and for no other purpose under
232 this chapter, the term "employee" also shall include any physician
233 who provides health care services to Medicaid recipients, State
234 and School Employees Health Insurance Plan participants and
235 Children's Health Insurance Program participants, provided that at

236 least thirty-five percent (35%) of the physician's patients, as
237 determined by the board, are Medicaid recipients, however, not to
238 exceed one hundred twenty-five (125) physicians; and

239 (ii) Any retired physician who provides volunteer
240 unpaid health care services to any public entity or private
241 entity. For the purposes of this subparagraph (ii), "public
242 entity" means any agency, department, institution, instrumentality
243 or political subdivision of the state, or any agency, department,
244 institution or instrumentality of any political subdivision of the
245 state; and "private entity" means any business, organization,
246 corporation, association or other legal entity which is not a
247 public entity.

248 (g) "Governmental entity" means and includes the state
249 and political subdivisions as herein defined.

250 (h) "Injury" means death, injury to a person, damage to
251 or loss of property or any other injury that a person may suffer
252 that is actionable at law or in equity.

253 (i) "Political subdivision" means any body politic or
254 body corporate other than the state responsible for governmental
255 activities only in geographic areas smaller than that of the
256 state, including, but not limited to, any county, municipality,
257 school district, community hospital as defined in Section
258 41-13-10, Mississippi Code of 1972, airport authority or other
259 instrumentality thereof, whether or not such body or
260 instrumentality thereof has the authority to levy taxes or to sue
261 or be sued in its own name.

262 (j) "State" means the State of Mississippi and any
263 office, department, agency, division, bureau, commission, board,
264 institution, hospital, college, university, airport authority or
265 other instrumentality thereof, whether or not such body or
266 instrumentality thereof has the authority to levy taxes or to sue
267 or be sued in its own name.

268 (k) "Law" means all species of law including, but not
269 limited to, any and all constitutions, statutes, case law, common
270 law, customary law, court order, court rule, court decision, court

271 opinion, court judgment or mandate, administrative rule or
272 regulation, executive order, or principle or rule of equity.

273 **SECTION 4.** There is created in the State Treasury a special
274 fund to the credit of the Mississippi Tort Claims Board, which
275 shall be comprised of any funds that may be made available for the
276 fund by the Legislature. Monies in the fund shall be expended by
277 the Mississippi Tort Claims Board, upon appropriation by the
278 Legislature, only for the purpose of providing additional funds
279 for prior acts extended reporting period coverage as provided in
280 Section 83-48-5 and for paying the medical malpractice premiums
281 for those physicians described in Section 11-46-1(f)(ii) as
282 provided for in Section 83-48-5. Unexpended amounts remaining in
283 the special fund at the end of a fiscal year shall not lapse into
284 the State General Fund, and any interest earned or investment
285 earnings on amounts in the special fund shall be deposited to the
286 credit of the special fund.

287 **SECTION 5.** The Tort Claims Board shall develop methods and
288 promulgate rules and regulations to verify whether a physician
289 meets the percentage requirement under Section 11-46-1(f) to
290 qualify as an employee. There is created an advisory council to
291 assist the Mississippi Tort Claims Board in determining whether a
292 physician meets the percentage requirement under Section
293 11-46-1(f) to qualify as an employee. The advisory council shall
294 be composed of the Executive Director of the Mississippi Medical
295 Association or his designee; the President of the Mississippi
296 Medical and Surgical Association or his designee; the
297 administrator of the Mississippi Tort Claims Board or his
298 designee; two (2) physicians appointed by the Lieutenant Governor;
299 two (2) physicians appointed by the Speaker of the House of
300 Representatives and three (3) nonphysician members, one (1) from
301 each Supreme Court district, appointed by the Governor.

302 **SECTION 6.** That any medical provider or hospital or nursing
303 home or other medical facility shall charge no more than the
304 following amounts to patients or their representatives for
305 photocopying any patient's records: Twenty Dollars (\$20.00) for

306 pages one (1) through twenty (20); One Dollar (\$1.00) per page for
307 the next eighty (80) pages; Fifty Cents (50¢) per page for all
308 pages thereafter. Ten percent (10%) of the total charge may be
309 added for postage and handling. Fifteen Dollars (\$15.00) may be
310 recovered by the medical provider or hospital or nursing home or
311 other medical facility for retrieving medical records in archives
312 at a location off the premises where the facility/office is
313 located.

314 **SECTION 7.** This act shall take effect and be in force from
315 and after July 1, 2004.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 83-48-5, MISSISSIPPI CODE OF 1972, TO
2 EXPAND THE MEDICAL MALPRACTICE INSURANCE AVAILABILITY PLAN THAT IS
3 ADMINISTERED BY THE MISSISSIPPI TORT CLAIMS BOARD TO MAKE
4 AVAILABLE PRIOR ACTS EXTENDED REPORTING PERIOD COVERAGE TO ALL
5 PARTICIPANTS OF THE PLAN AT ADDITIONAL PREMIUM ASSESSMENTS FOR
6 SUCH COVERAGE AND TO PAY ALL MEDICAL MALPRACTICE INSURANCE
7 PREMIUMS FOR CERTAIN RETIRED PHYSICIANS WHO PROVIDE VOLUNTEER
8 UNPAID HEALTH CARE SERVICES; TO AUTHORIZE THE MISSISSIPPI TORT
9 CLAIMS BOARD TO EXPEND AN ADDITIONAL SUM OF MONEY FROM A LOAN FROM
10 THE TORT CLAIMS FUND IN AN AMOUNT NOT TO EXCEED \$500,000.00 TO
11 PURCHASE REINSURANCE FOR THE PARTICIPANTS IN THE PLAN; TO AMEND
12 SECTION 11-46-1, MISSISSIPPI CODE OF 1972, TO REVISE THE
13 DEFINITION OF "EMPLOYEE" FOR PURPOSES OF LIMITED LIABILITY UNDER
14 THE TORT CLAIMS BOARD TO INCLUDE THOSE PHYSICIANS WHO PROVIDE
15 HEALTH CARE SERVICES TO MEDICAID RECIPIENTS, STATE AND SCHOOL
16 EMPLOYEES HEALTH INSURANCE PLAN PARTICIPANTS AND CHILDREN'S HEALTH
17 INSURANCE PROGRAM PARTICIPANTS IF AT LEAST THIRTY-FIVE PERCENT OF
18 THE PHYSICIAN'S PATIENTS ARE MEDICAID RECIPIENTS, OR NOT TO EXCEED
19 ONE HUNDRED TWENTY-FIVE PHYSICIANS; TO INCLUDE CERTAIN RETIRED
20 PHYSICIANS WHO PROVIDE VOLUNTEER UNPAID HEALTH CARE SERVICES TO
21 ANY PUBLIC ENTITY OR PRIVATE ENTITY; TO CREATE IN THE STATE
22 TREASURY A SPECIAL FUND TO THE CREDIT OF THE MISSISSIPPI TORT
23 CLAIMS BOARD WHICH SHALL BE COMPRISED OF ANY FUNDS MADE AVAILABLE
24 FOR THE FUND BY THE LEGISLATURE; TO PROVIDE THAT MONIES IN THE
25 SPECIAL FUND SHALL BE EXPENDED BY THE MISSISSIPPI TORT CLAIMS
26 BOARD TO PROVIDE ADDITIONAL FUNDS FOR PRIOR ACT COVERAGE FOR PLAN
27 PARTICIPANTS AND TO PAY THE MEDICAL MALPRACTICE PREMIUMS FOR THOSE
28 RETIRED PHYSICIANS DESCRIBED HEREIN; TO CREATE AN ADVISORY COUNCIL
29 TO ASSIST THE MISSISSIPPI TORT CLAIMS BOARD IN DETERMINING WHETHER
30 A PHYSICIAN MEETS THE PERCENTAGE REQUIREMENT NECESSARY TO QUALIFY
31 AS AN EMPLOYEE FOR LIMITED LIABILITY PURPOSES; TO PROVIDE RATES
32 FOR COPIES OF MEDICAL RECORDS THAT MAY BE CHARGED BY MEDICAL
33 PROVIDERS AND FACILITIES; AND FOR RELATED PURPOSES.

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Don Richardson
Clerk of the House of Representatives