

By: Senator(s) Kirby

To: Insurance; Finance

SENATE BILL NO. 2115

1 AN ACT TO AMEND SECTION 83-1-21, MISSISSIPPI CODE OF 1972,
2 TO EXEMPT CERTAIN INFORMATION RECEIVED BY THE COMMISSIONER OF
3 INSURANCE FROM THE MISSISSIPPI PUBLIC RECORDS ACT; TO AMEND
4 SECTION 83-19-31, MISSISSIPPI CODE OF 1972, TO DELETE THE
5 PROHIBITION OF LOANING ANY CAPITAL OR SURPLUS OF A DOMESTIC
6 INSURANCE COMPANY TO ANY STOCKHOLDER, OFFICER OR DIRECTOR OF THE
7 COMPANY; TO AMEND SECTION 83-19-51, MISSISSIPPI CODE OF 1972, TO
8 PROHIBIT ANY AMOUNT OF CAPITAL OR SURPLUS OF A DOMESTIC INSURANCE
9 COMPANY FROM BEING LOANED TO ANY STOCKHOLDER, OFFICER OR DIRECTOR
10 OF THE COMPANY; TO AMEND SECTION 83-19-67, MISSISSIPPI CODE OF
11 1972, TO PROVIDE THAT MANAGEMENT CONTRACTS SHALL BE FILED WITH,
12 AND SUBJECT TO REVIEW AND FINAL APPROVAL OF, THE DEPARTMENT OF
13 INSURANCE; TO AMEND SECTION 83-39-17, MISSISSIPPI CODE OF 1972, TO
14 REVISE THE NOTICE REQUIREMENTS FOR REVOCATION HEARINGS OF BAIL
15 AGENT PRIVILEGE LICENSES; TO AMEND SECTION 83-57-13, MISSISSIPPI
16 CODE OF 1972, TO REVISE THE METHOD OF COMPUTING THE NET ASSET
17 REQUIREMENT OF HOME WARRANTY ASSOCIATIONS; TO AMEND SECTION
18 83-57-31, MISSISSIPPI CODE OF 1972, TO CORRECT AN INCORRECT CODE
19 SECTION REFERENCE; TO CREATE A NEW CODE SECTION TO BE CODIFIED
20 WITHIN CHAPTER 5 OF TITLE 83, MISSISSIPPI CODE OF 1972, TO REQUIRE
21 INSURERS TO NOTIFY THE COMMISSIONER OF INSURANCE AND FILE A
22 BIOGRAPHICAL AFFIDAVIT WHEN CHANGING OFFICERS AND DIRECTORS; TO
23 REPEAL SECTION 83-19-25, MISSISSIPPI CODE OF 1972, WHICH PROHIBITS
24 DOMESTIC INSURANCE COMPANIES FROM PAYING SALARIES IN EXCESS OF
25 \$5,000.00 TO NON-RESIDENT OFFICERS AND EMPLOYEES; AND FOR RELATED
26 PURPOSES.

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

28 SECTION 1. Section 83-1-21, Mississippi Code of 1972, is
29 amended as follows:

30 83-1-21. The commissioner shall keep in his office for
31 public inspection all reports received by him, a record of all his
32 proceedings, including a concise statement of the result of
33 official examinations, an exhibit of the financial condition and
34 methods of all insurers under his supervision, as disclosed by
35 their statements or by official examination, and such other
36 information with regard to them as he may deem it proper to
37 preserve. However, all complaints, or information related
38 thereto, filed with the Commissioner of Insurance or his staff

39 shall be exempt from the Mississippi Public Records Act. If
40 requested by a third party, the commissioner shall produce under
41 subpoena the information with the personal information pertaining
42 to the complaining party deleted. The requesting party shall be
43 responsible for the cost of reproducing these materials.

44 Such reports or records which are no longer useful or
45 necessary may be disposed of in accordance with approved records
46 control schedules. No records, however, may be destroyed without
47 the approval of the Director of the Department of Archives and
48 History.

49 SECTION 2. Section 83-19-31, Mississippi Code of 1972, is
50 amended as follows:

51 83-19-31. (1) No corporation so formed shall transact any
52 other business than that specified in its charter and articles of
53 association. Companies so formed must meet the following capital
54 and surplus requirements:

55 (a) Single-line companies so formed to write a
56 classification listed in paragraphs (a) through (n) in Section
57 27-15-83, the minimum capital requirement shall be Four Hundred
58 Thousand Dollars (\$400,000.00) and the surplus shall be a minimum
59 of Six Hundred Thousand Dollars (\$600,000.00).

60 (b) Multi-line companies so formed to write a
61 combination of the classifications listed in paragraphs (a)
62 through (n) in Section 27-15-83, the minimum capital requirement
63 shall be Six Hundred Thousand Dollars (\$600,000.00) and the
64 surplus shall be a minimum of Nine Hundred Thousand Dollars
65 (\$900,000.00).

66 (c) Companies so formed for the purpose of transacting
67 the business of life insurance on the industrial plan may organize
68 with a minimum capital of One Hundred Thousand Dollars
69 (\$100,000.00) and a minimum surplus of Fifty Thousand Dollars
70 (\$50,000.00).

71 An industrial life insurer shall be limited to the following:

72 1. A life insurance policy, in the aggregate value
73 of Five Thousand Dollars (\$5,000.00) in death benefits, exclusive
74 of multiple indemnity benefits.

75 2. A disability policy in the aggregate benefits

76 of Sixty Dollars (\$60.00) per week.

77 3. A policy providing benefits for dismembered and
78 broken limbs and/or loss of eyesight in the aggregate of Five
79 Thousand Dollars (\$5,000.00) per policy year.

80 4. A policy which provides benefits for the
81 payment for or furnishing of hospitalization, drugs, attending
82 physicians and surgical costs in the aggregate of Three Thousand
83 Five Hundred Dollars (\$3,500.00) per policy year.

84 (d) All mutual and reciprocal companies shall possess
85 at the time of initial license and maintain thereafter a surplus,
86 after deductions for services, in an amount equal to the capital
87 and surplus requirements of a stock company writing similar lines
88 of insurance.

89 (e) If at any time the surplus of such domestic company
90 or association shall be less than the minimum surplus noted above,
91 such company or association shall be considered impaired; and it
92 shall be the duty of the officers of such company or association
93 to report any such impairment of surplus to the State Commissioner
94 of Insurance in writing within ten (10) days after such impairment
95 occurs. When any such impairment is reported, or if the
96 Commissioner of Insurance should determine that the company is
97 operating in an impaired condition, the commissioner may suspend
98 the certificate of authority and license of such domestic
99 insurance company or association to do business in this state
100 until such company shall raise or increase its surplus to the
101 minimum amount required herein.

102 (2) Any domestic company qualifying under the foregoing
103 sections shall deposit with the State Treasurer fifty percent
104 (50%) of its capital stock, either in cash or in such bonds or
105 securities in which such company is authorized by law to invest
106 its funds. Upon such deposit and evidence, by affidavit or
107 otherwise, satisfactory to the Insurance Commissioner that the
108 capital and surplus is all paid in and that the company is the

109 actual and unqualified owner of the securities representing the
110 paid-up capital and surplus, he shall issue to such company his
111 certificate authorizing it to transact business in this
112 state * * *.

113 The provisions of this section as to the minimum requirements
114 as to paid-up capital stock and cash surplus shall not become
115 effective until January 1, 1988, concerning any domestic company
116 which was authorized to do business and was writing business in
117 this state on July 1, 1985.

118 (3) No insurance company, including any mutual insurance
119 company, organized under the laws of this state and transacting
120 business in this state shall expose itself to loss on any one (1)
121 risk or hazard to an amount exceeding ten percent (10%) of its
122 paid-up capital and surplus unless the excess is reinsured in some
123 other company duly authorized to transact similar business in this
124 state or as otherwise provided in the insurance code. For
125 purposes of this subsection, the terms "risk" and "hazard" apply
126 to the subject matter of any one (1) insurance policy and not to
127 any one (1) peril.

128 (4) The Commissioner of Insurance may require additional
129 capital and surplus based on the type, nature or volume of
130 business transacted.

131 SECTION 3. Section 83-19-51, Mississippi Code of 1972, is
132 amended as follows:

133 83-19-51. (1) A domestic insurance company may invest its
134 capital, surplus, and other funds, or certain parts thereof, in
135 the following:

136 (a) Bonds or other evidence of indebtedness of the
137 United States, of any state of the United States, of the Dominion
138 of Canada, or of any province thereof.

139 (b) Bonds or other evidence of indebtedness of any
140 county, city, town, village, school district, municipal district,
141 or other civil district within the United States or the Dominion

142 of Canada.

143 (c) Bonds or notes secured by mortgages or deeds of
144 trust upon unencumbered real estate in the United States or
145 Dominion of Canada worth at least thirty-three and one-third
146 percent (33-1/3%) more than the amount loaned thereon, and may
147 also loan upon the security of improved unencumbered real property
148 in any state, provided the security be eligible for insurance and
149 be insured under provisions of the National Housing Act and any
150 amendments thereto. Where improvements on the land constitute a
151 part of the value on which the loan is made, the improvements
152 shall be insured against fire and tornado for the benefit of the
153 mortgagee, in an amount not less than the difference between
154 seventy-five percent (75%) of the value of the land and the amount
155 of the loan. For the purposes of this subsection (c), real estate
156 shall not be deemed to be encumbered within the meaning of this
157 section by reason of the existence of taxes or assessments that
158 are not delinquent, instruments creating or reserving mineral,
159 oil, or timber rights, rights-of-way, joint driveways, sewer
160 rights, rights in walls, or other comparable or similar
161 instruments, rights, restrictions, and covenants, nor by reason of
162 building restrictions or restrictive covenants, nor when such real
163 estate is subject to lease in whole or in part whereby rents or
164 profits are reserved to the owner, provided such lease and the
165 notes for rent given thereunder be assigned by the lessor to the
166 company.

167 (d) Bonds, notes, or other evidences of indebtedness
168 which are secured by mortgages, security deeds, vendor's liens, or
169 deeds of trust upon leasehold estates having an unexpired term of
170 twenty-five (25) years or longer in improved unencumbered real
171 estate in the United States worth at least thirty-three and
172 one-third percent (33-1/3%) more than the amount loaned thereon.
173 For the purposes of this subsection (d), the real estate on which
174 such leasehold estate exists shall not be deemed to be encumbered

175 within the meaning of this section by reason of the existence of
176 taxes or assessments that are not delinquent, instruments creating
177 or reserving mineral, oil, or timber rights, rights-of-way, joint
178 driveways, sewer rights, rights in walls, or other comparable or
179 similar instruments, rights, restrictions, and covenants, nor by
180 reason of building restrictions or restrictive covenants.

181 (e) In bankers' acceptances and bills of exchange of
182 the kinds and maturities made eligible by law for rediscount with
183 Federal Reserve banks, provided that the same are accepted by a
184 bank or trust company incorporated under the laws of the United
185 States, of this commonwealth, or by any other bank or trust
186 company which is a member of the Federal Reserve system. However,
187 not more than ten percent (10%) of the admitted assets shall be so
188 invested.

189 (f) Stock in Federal Home Loan Bank, or bonds,
190 debentures, notes, or other evidences of indebtedness, or the
191 preferred or guaranteed stock or shares of any solvent institution
192 created or existing under the laws of the United States, of any
193 state thereof, of the Dominion of Canada, or of any province
194 thereof, if such institution, or in the case of guaranteed bonds,
195 debentures, notes, or other evidences of indebtedness, or
196 guaranteed stocks or shares, the guaranteeing institution, during
197 each of any three (3) years, including the last two (2) years, of
198 the five (5) years next preceding such investment, shall have
199 earned a sum applicable to dividends equal, at least, to four
200 percent (4%) upon the par value (or, in the case of stock or
201 shares having no par value, then upon the value upon which such
202 stock was issued) of all its capital stock or shares outstanding
203 in each of such three (3) years. No life insurance company shall
204 invest in its own stock and may not invest more than ten percent
205 (10%) of its total assets in the preferred or guaranteed stock or
206 bonds of any one (1) corporation, as above described.

207 (g) Loans upon the pledge of any of the securities

208 herein authorized.

209 (h) In adequately secured equipment trust certificates
210 or other adequately secured instruments evidencing an interest in
211 equipment wholly or partly within the United States, and a right
212 to receive determined portions or rental, purchase or other fixed
213 obligatory payments for the use or purchase of such equipment,
214 provided that not more than five percent (5%) of its total assets
215 be so invested.

216 (i) The common capital stock of any bank or trust
217 company which is a member of the Federal Deposit Insurance
218 Corporation and has earned no less than five percent (5%) on its
219 total capital accounts for each of the preceding three (3) years,
220 not to exceed, however, ten percent (10%) of the actually issued
221 and outstanding common capital stock of any one (1) such bank or
222 trust company; or a building and loan association which is a
223 member of the Federal Savings and Loan Insurance Association and
224 has earned no less than five percent (5%) on its total capital
225 accounts for each of the preceding three (3) years, not to exceed,
226 however, ten percent (10%) of the actually issued and outstanding
227 common capital stock of any one (1) such building and loan
228 association; provided that not more than five percent (5%) of the
229 assets of such domestic company shall be so invested at any time
230 in common stock of either banks or trust companies, or building
231 and loan associations, or in an aggregate of the two (2).

232 Provided, however, no domestic insurance company may acquire
233 common stock in any bank or building and loan association in this
234 state when such acquisition will cause the aggregate of such stock
235 held by any domestic insurance company or companies to exceed
236 fifteen percent (15%) of the common stock of such bank or building
237 and loan association.

238 (j) A life insurance company may also purchase for its
239 own benefit any policy of life insurance or other obligation of
240 the company and claims of the holders thereof, and may lend to the

241 holders of its life insurance policies sums not exceeding in any
242 case the reserve value of the policy at the time the loan is made
243 and, for the payment of any such loan, the policy and all profits
244 thereon shall be pledged.

245 (k) A company doing business in a foreign country may
246 invest the funds required to meet its obligations in such country
247 and, in conformity to the laws thereof, in the same kinds of
248 securities in such foreign country that such company is allowed by
249 law to invest in the United States.

250 (l) Bonds or other evidences of indebtedness of the
251 Inter-American Development Bank.

252 (m) Cash or deposits in checking or savings accounts,
253 under certificates of deposit or in any other form, or other
254 certificates or evidence of indebtedness from solvent banks and
255 trust companies and in savings accounts, certificates of deposit
256 or similar certificates or evidences of deposits in solvent
257 savings and loan associations and building and loan associations.

258 (n) Construction loans, repurchase agreement
259 transactions, standby mortgage loan commitments, electronic,
260 computer or data processing equipment investments, financial risk
261 limiting and balancing transactions, including put and call
262 options purchased solely for legitimate financial futures hedging,
263 nonspeculative purposes if these transactions are traded upon a
264 contract market designated and regulated by a federal agency.

265 (o) Bonds or other evidences of indebtedness of the
266 African Development Bank.

267 (p) Any other investment expressly authorized by law.

268 (2) Any domestic company may invest an amount not to exceed
269 in the aggregate ten percent (10%) of its admitted assets and to
270 further increase such authority by an additional four percent (4%)
271 provided such four percent (4%) investments are made in the State
272 of Mississippi without regard to the restrictions in, and
273 notwithstanding the provisions of, any other subsection of this

274 section or of any other act or acts regulating or governing the
275 investments of domestic companies.

276 (3) Any domestic company may invest an amount not to exceed
277 ten percent (10%) of its admitted assets in common shares of
278 solvent corporations incorporated under the laws of any of the
279 states among the United States of America without regard to the
280 restrictions in, and notwithstanding the provisions of, any other
281 subsection of this section or of any other act or acts regulating
282 or governing the investments of domestic companies; provided,
283 however, that the solvent corporation, during each of any three
284 (3) years, including the last two (2) years, of the five (5) years
285 next preceding such investment, shall have earned a sum applicable
286 to dividends equal, at least, to four percent (4%) upon the par
287 value (or, in the case of stock or shares having no par value,
288 then upon the value upon which such stock was issued) of all of
289 its capital stock or shares outstanding in each of such three (3)
290 years. No life insurance company shall invest more than five
291 percent (5%) of its admitted assets in common shares of any one
292 (1) corporation as hereinbefore provided.

293 Conflict of interest. Provided, however, no domestic
294 insurance company shall under this section acquire common stock in
295 any company where the officers or directors of the insurance
296 company, individually or collectively, hold an interest in excess
297 of ten percent (10%) of the company in which the common stock is
298 acquired. For the purpose of this limitation, interest is defined
299 as actual ownership, ownership in the name of a trustee, ownership
300 in the name of a relative within the third degree, ownership in
301 the name of an owned or controlled corporation or business, or
302 ownership in the form of an option.

303 Provided, further, no officer or director of the insurance
304 company shall either directly or indirectly derive any profit or
305 revenue from stock purchases under the above subsection, either in
306 the form of commissions, brokerage, or the outright sale of shares

307 of stock to the insurance company.

308 (4) No amount of capital or surplus of any domestic
309 insurance company shall be loaned to any stockholder, officer or
310 director of the company.

311 (5) Notwithstanding the provisions of this section, the
312 commissioner may, after notice and hearing, order a company to
313 limit or withdraw from certain investments, or discontinue certain
314 investment practices, to the extent that the commissioner finds
315 that such investments or investment practices endanger the
316 solvency of the company.

317 (6) No loan or investment, except loans on the security of
318 life insurance policies, shall be made by any such company unless
319 the same shall have been authorized by the board of directors or
320 by a committee thereof charged with the duty of supervising loans
321 or investments, and no company shall enter into any agreement to
322 withhold from sale any of its securities or property; but the
323 disposition of its assets shall at all times be within the control
324 of the company.

325 Nothing in this law shall prohibit a company from accepting
326 in good faith, to protect its interest, securities or property
327 other than herein referred to, in payment of or to secure debts
328 due or to become due the company.

329 (7) Nothing in this section shall be construed as affecting
330 any investment existing on April 27, 1966; and this section shall
331 not repeal Sections 43-33-301 through 43-33-307 of the Mississippi
332 Code of 1972.

333 SECTION 4. Section 83-19-67, Mississippi Code of 1972, is
334 amended as follows:

335 83-19-67. * * * Any management contract between a domestic
336 insurance company and a person, as defined in Section 83-6-1(f),
337 shall be filed with, and subject to review and approval of, the
338 Department of Insurance.

339 SECTION 5. Section 83-39-17, Mississippi Code of 1972, is

340 amended as follows:

341 83-39-17. Before any license shall be refused or suspended
342 or revoked, or the renewal thereof refused hereunder, the
343 commissioner shall give notice of his intention to do so, by
344 certified mail, to the applicant or licensee and to the insurer or
345 professional bail agent appointing or employing the applicant or
346 licensee, as the case may be, and shall set a date, not less than
347 ten (10) days from the date of mailing the notice, when the
348 applicant or licensee and a duly authorized representative of the
349 insurer or professional bail agent may appear to be heard and
350 produce evidence. This notice shall constitute automatic
351 suspension of license. In the conduct of the hearing, the
352 commissioner or any regular salaried employee specially designated
353 by him for this purpose shall have power to administer oaths, to
354 require the appearance of and examine any person under oath, and
355 to require the production of books, records, or papers relevant to
356 the inquiry upon his own initiative or upon the request of the
357 applicant or licensee. Upon the termination of the hearing,
358 findings shall be reduced to writing and, upon approval by the
359 commissioner, shall be filed in his office and notice of the
360 findings sent by certified mail to the applicant or licensee and
361 the insurer or professional bail agent concerned.

362 SECTION 6. Section 83-57-13, Mississippi Code of 1972, is
363 amended as follows:

364 83-57-13. (1) An association licensed under this chapter
365 shall maintain a funded, unearned premium reserve account,
366 consisting of unencumbered assets, equal to a minimum of
367 twenty-five percent (25%) of the gross written premiums received
368 by it from all warranty contracts in force. Such assets shall be
369 held in the form of cash or invested in approved securities for
370 investments.

371 (2) An association shall maintain, at a minimum, net assets
372 equal to one-sixth (1/6) of the written premiums it receives for

373 the issuance and delivery of any binder or warranty in force. Net
374 assets may be less than one-sixth (1/6) of the premiums written
375 provided the association has net assets of not less than Five
376 Hundred Thousand Dollars (\$500,000.00) and maintains a funded,
377 unearned premium reserve account consisting of unencumbered assets
378 equal to a minimum of forty percent (40%) of the gross written
379 premiums received by it from all warranty contracts in force which
380 shall be held in the form of cash or invested in securities for
381 investments.

382 (3) In computing the net asset requirement, goodwill,
383 franchises, customer lists, patents or trademarks, receivables
384 from or advances to officers, directors, employees, salesmen or
385 affiliated companies, * * * assets deposited outside the United
386 States, and any other assets that are non-admitted in accordance
387 with the National Association of Insurance Commissioners
388 Accounting Practices and Procedures Manual shall be deducted from
389 the net assets of the association.

390 (4) An association shall not be required to set up an
391 unearned premium reserve if it has purchased contractual liability
392 insurance which demonstrates to the satisfaction of the department
393 that one hundred percent (100%) of its claim exposure is covered
394 by such insurance. Such contractual liability insurance shall be
395 obtained from an insurer that holds a certificate of authority to
396 do business within the state or from an insurer approved by the
397 department as financially capable of meeting the obligations
398 incurred pursuant to the policy. For purposes of this subsection,
399 the contractual liability policy shall contain the following
400 provisions:

401 (a) If the home warranty association is unable to
402 fulfill its obligation under its contracts issued in this state
403 for any reason, including insolvency, bankruptcy, or dissolution,
404 the contractual liability insurer will pay losses and unearned
405 premiums under such plans directly to persons making claims under

406 such contracts.

407 (b) The insurer issuing the policy shall assume full
408 responsibility for the administration of claims in the event of
409 the inability of the association to do so.

410 (c) The policy may not be cancelled or not renewed by
411 either the insurer or the association unless sixty (60) days'
412 written notice thereof has been given to the department by the
413 insurer before the date of such cancellation or nonrenewal.

414 (5) An association that purchases contractual liability
415 insurance on the warranties that it issues shall provide the
416 department with claim statistics required to be filed by
417 associations not purchasing such insurance.

418 SECTION 7. Section 83-57-31, Mississippi Code of 1972, is
419 amended as follows:

420 83-57-31. Home warranty associations licensed under this
421 chapter shall be subject to periodic examinations by the
422 department, in the same manner and subject to the same terms and
423 conditions as apply to insurers under Sections 83-5-201 and
424 83-6-27, Mississippi Code of 1972.

425 SECTION 8. All domestic insurers shall notify the
426 Commissioner of Insurance in writing within thirty (30) days after
427 any change of officers or directors of the insurers. The notice
428 shall include a biographical affidavit on the new officer or
429 director in a format as developed by the commissioner.

430 SECTION 9. Section 83-19-25, Mississippi Code of 1972, which
431 prohibits domestic insurance companies from paying salaries in
432 excess of Five Thousand Dollars (\$5,000.00) to non-resident
433 officers and employees, is hereby repealed.

434 SECTION 10. Section 8 of this act shall be codified within
435 Chapter 5 of Title 83, Mississippi Code of 1972.

436 SECTION 11. This act shall take effect and be in force from
437 and after July 1, 1999.