HOUSE BILL NO. 661

AN ACT TO PROHIBIT UNFAIR TRADE PRACTICES IN THE BUSINESS OF INSURANCE; TO DEFINE CERTAIN TERMS USED IN THIS ACT; TO DEFINE CERTAIN PRACTICES AS UNFAIR TRADE PRACTICES; TO PROHIBIT FAVORED AGENTS OR INSURERS AND THE COERCION OF DEBTORS; TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO ISSUE CEASE AND DESIST ORDERS AND MONETARY PENALTY ORDERS UPON INSURERS FOUND TO HAVE ENGAGED IN UNFAIR TRADE PRACTICES; TO PROVIDE FOR JUDICIAL REVIEW OF ORDERS; TO AUTHORIZE A MONETARY PENALTY FOR VIOLATING THE CEASE AND DESIST ORDERS; TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO PROMULGATE REASONABLE RULES, REGULATIONS AND ORDERS AS ARE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS ACT; TO REPEAL SECTIONS 83-5-29 THROUGH 83-5-51, MISSISSIPPI CODE OF 1972, WHICH REGULATE TRADE PRACTICES IN THE BUSINESS OF INSURANCE; AND FOR RELATED PURPOSES.

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

SECTION 1. Purpose. The purpose of this act is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress) and the Gramm-Leach-Bliley Act (Public Law 106-102, 106th Congress), by defining, or providing for the determination of, all such practices in this state that constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined. Nothing herein shall be construed to create or imply a private cause of action for a violation of this act.

SECTION 2. Definitions. When used in this act:

(a) "Affiliate" means any company that controls, is controlled by, or is under common control with another company.

(b) "Commissioner" means the Commissioner of Insurance of this state.

(c) "Customer" means a person who obtains, applies for, or is solicited to obtain insurance.
(d) "Depository institution" means a bank or savings association.

(e) "Insurance information" means information concerning the premiums, terms and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of a depository institution or an affiliate of a depository institution.

(f) "Insured" means the party named on a policy or certificate as the individual with legal rights to the benefits provided by such policy.

(g) "Insurer" means any person, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, producers, brokers, adjusters and third-party administrators. Insurer shall also mean medical service plans, hospital service plans, health maintenance organizations, prepaid limited health care service plans, dental, optometric and other similar health service plans. For purposes of this act, these foregoing entities shall be deemed to be engaged in the business of insurance.

(h) "Person" means a natural or artificial entity, including, but not limited to, individuals, partnerships, associations, trusts or corporations.

(i) "Policy" or "certificate" means a contract of insurance, indemnity, medical, health or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any insurer.

(j) "Producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate, insurance.

SECTION 3. Unfair trade practices prohibited. It is an unfair trade practice for any insurer to commit any practice defined in Section 4 of this act if:
(a) It is committed flagrantly and in conscious disregard of this act or of any rules promulgated hereunder; or

(b) It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

SECTION 4. Unfair trade practices defined. Any of the following practices, if committed in violation of Section 3 of this act, are hereby defined as unfair trade practices in the business of insurance:

(a) **Misrepresentations and false advertising of insurance policies.** Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement, sales presentation, omission or comparison that:

   (i) Misrepresents the benefits, advantages, conditions or terms of any policy; or

   (ii) Misrepresents the dividends or share of the surplus to be received on any policy; or

   (iii) Makes a false or misleading statement as to the dividends or share of surplus previously paid on any policy; or

   (iv) Is misleading or is a misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates; or

   (v) Uses any name or title of any policy or class of policies misrepresenting the true nature thereof; or

   (vi) Is a misrepresentation, including any intentional misquote of premium rate, for the purpose of inducing or tending to induce the purchase, lapse, forfeiture, exchange, conversion or surrender of any policy; or

   (vii) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any policy; or
(viii) Misrepresents any policy as being shares of stock.

(b) **False information and advertising generally.**

Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any insurer in the conduct of its insurance business, which is untrue, deceptive or misleading.

(c) **Defamation.** Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any insurer, and which is calculated to injure such insurer.

(d) **Boycott, coercion and intimidation.** Entering into any agreement to commit, or by any concerted action committing any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

(e) **False statements and entries.**

(i) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of an insurer.
(ii) Knowingly making any false entry of a material fact in any book, report or statement of any insurer or knowingly omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer, or knowingly making any false material statement to any insurance department official.

(f) **Stock operations and advisory board contracts.**

Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to purchase insurance.

(g) **Unfair discrimination.**

(i) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any life insurance policy or annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such policy.

(ii) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any accident or health insurance policy or in the benefits payable thereunder, or in any of the terms or conditions of such policy, or in any other manner.

(iii) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of the risk, unless such action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience.
(iv) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on the residential property risk, or the personal property contained therein, solely because of the age of the residential property.

(v) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex, marital status, race, religion or national origin of the individual; however, nothing in this subsection shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits. Nothing in this section shall prohibit or limit the operation of fraternal benefit societies.

(vi) To terminate, or to modify coverage or to refuse to issue or refuse to renew any property or casualty policy solely because the applicant or insured or any employee of either is mentally or physically impaired; provided that this subsection shall not apply to accident and health insurance sold by a casualty insurer and, provided further, that this subsection shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance or renewal of any insurance policy or contract.

(vii) Refusing to insure solely because another insurer has refused to write a policy, or has cancelled or has refused to renew an existing policy in which that person was the named insured. Nothing herein contained shall prevent the termination of an excess insurance policy on account of the failure of the insured to maintain any required underlying insurance.

(h) Rebates.

(i) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any life
insurance policy or annuity, or accident and health insurance or
other insurance, or agreement as to such contract other than as
plainly expressed in the policy issued thereon, or paying or
allowing, or giving or offering to pay, allow, or give, directly
or indirectly, as inducement to such policy, any rebate of
premiums payable on the policy, or any special favor or advantage
in the dividends or other benefits thereon, or any valuable
consideration or inducement whatever not specified in the policy;
or giving, or selling, or purchasing or offering to give, sell, or
purchase as inducement to such policy or annuity or in connection
therewith, any stocks, bonds or other securities of any insurance
company or other corporation, association or partnership, or any
dividends or profits accrued thereon, or anything of value
whatsoever not specified in the policy.

(ii) Nothing in paragraph (g), or subparagraph (i)
of paragraph (h), shall be construed as including within the
definition of discrimination or rebates any of the following
practices:

1. In the case of life insurance policies or
annuities, paying bonuses to policyholders or otherwise abating
their premiums in whole or in part out of surplus accumulated from
nonparticipating insurance, provided that any such bonuses or
abatement of premiums shall be fair and equitable to policyholders
and for the best interests of the company and its policyholders;

2. In the case of life insurance policies
issued on the industrial debit plan, making allowance to
policyholders who have continuously for a specified period made
premium payments directly to an office of the insurer in an amount
that fairly represents the saving in collection expenses;

3. Readjusting the rate of premium for a
group insurance policy based on the loss or expense thereunder, at
the end of the first or any subsequent policy year of insurance
thereunder, which may be made retroactive only for such policy
year.

   (i) **Prohibited group enrollments.** No insurer shall

offer more than one (1) group policy of insurance through any
person unless such person is licensed, at a minimum, as a limited
insurance representative. However, this prohibition shall not
apply to employer/employee relationships, nor to any such
enrollments.

   (j) **Failure to maintain marketing and performance**

records. Failure of an insurer to maintain its books, records,
documents and other business records in such an order that data
regarding complaints, claims, rating, underwriting and marketing
are accessible and retrievable for examination by the Insurance
Commissioner. Data for at least the current calendar year and the
two (2) preceding years shall be maintained.

   (k) **Failure to maintain complaint handling procedures.**

Failure of any insurer to maintain a complete record of all the
complaints it received since the date of its last examination
under Section 83-5-205. This record shall indicate the total
number of complaints, their classification by line of insurance,
the nature of each complaint, the disposition of each complaint,
and the time it took to process each complaint. For purposes of
this subsection, "complaint" shall mean any written communication
primarily expressing a grievance.

   (l) **Misrepresentation in insurance applications.**

Making false or fraudulent statements or representations on or
relative to an application for a policy, for the purpose of
obtaining a fee, commission, money or other benefit from any
provider or individual person.

   (m) **Unfair financial planning practices.** An insurance
producer:

   (i) Holding himself or herself out, directly or
indirectly, to the public as a "financial planner," "investment
adviser," "consultant," "financial counselor" or any other
specialist engaged in the business of giving financial planning or
decision relating to investments, insurance, real estate, tax
matters or trust and estate matters when such person is in fact
engaged only in the sale of policies.

(ii) 1. Engaging in the business of financial
planning without disclosing to the client prior to the execution
of the agreement provided for in subparagraph (iii), or
solicitation of the sale of a product or service that
a. He or she is also an insurance
salesperson; and
b. That a commission for the sale of an
insurance product will be received in addition to a fee for
financial planning, if such is the case.

2. The disclosure requirement under this
subsection may be met by including it in any disclosure required
by federal or state securities law.

(iii) 1. Charging fees other than commissions for
financial planning by an insurance producer, unless such fees are
based upon a written agreement, signed by the party to be charged
in advance of the performance of the services under the agreement.
A copy of the agreement must be provided to the party to be
charged at the time the agreement is signed by the party.

a. The services for which the fee is to
be charged must be specifically stated in the agreement.

b. The amount of the fee to be charged
or how it will be determined or calculated must be specifically
stated in the agreement.

c. The agreement must state that the
client is under no obligation to purchase any insurance product
through the insurance agent, broker or consultant.

2. The insurance producer shall retain a copy
of the agreement for not less than three (3) years after

H. B. No. 661
01/HR07/R787
PAGE 9 (MS\HS)
completion of services, and a copy shall be available to the commissioner upon request.

(n) **Failure to file or to certify information regarding the endorsement or sale of long-term care insurance.** Failure of any insurer to:

(i) File with the insurance department the following material:

1. The policy and certificate;
2. A corresponding outline of coverage; and
3. All advertisements requested by the insurance department; or

(ii) Certify annually that the association has complied with the responsibilities for disclosure, advertising, compensation arrangements, or other information required by the commissioner, as set forth by regulation.

(o) **Failure to provide claims history.**

(i) **Loss information - property and casualty.** Failure of a company issuing property and casualty insurance to provide the following loss information for the three (3) previous policy years to the first named insured within thirty (30) days of receipt of the first named insured’s written request:

1. On all claims, date and description of occurrence, and total amount of payments; and
2. For any occurrence not included in item 1 of this subparagraph (i), the date and description of occurrence.

(ii) **Should the first named insured be requested by a prospective insurer to provide detailed loss information in addition to that required under subparagraph (i), the first named insured may mail or deliver a written request to the insurer for the additional information. No prospective insurer shall request more detailed loss information than reasonably required to underwrite the same line or class of insurance. The insurer shall provide information under this subparagraph to the first named insured.**
insured as soon as possible, but in no event later than twenty
(20) days of receipt of the written request. Notwithstanding any
other provision of this section, no insurer shall be required to
provide loss reserve information, and no prospective insurer may
refuse to insure an applicant solely because the prospective
insurer is unable to obtain loss reserve information.

(iii) The commissioner may promulgate regulations
to exclude the providing of the loss information as outlined in
subparagraph (i) for any line or class of insurance where it can
be shown that the information is not needed for that line or class
of insurance, or where the provision of loss information otherwise
is required by law.

(iv) Information provided under subparagraph (ii)
shall not be subject to discovery by any party other than the
insured, the insurer, and the prospective insurer.

(p) Violating any section of Title 83 and any
applicable regulations.

SECTION 5. Favored agent or insurer; coercion of debtors.

(a) No person or depository institution, or affiliate
of a depository institution may require as a condition precedent
to the lending of money or extension of credit, or any renewal
thereof, that the person to whom such money or credit is extended
or whose obligation a creditor is to acquire or finance, negotiate
any policy or renewal thereof through a particular insurer or
group of insurers or agent or broker or group of agents or
brokers. Further, no person or depository institution, or
affiliate of a depository institution, may reject an insurance
policy solely because the policy has been issued or underwritten
by a person who is not associated with the depository institution
or affiliate when insurance is required in connection with a loan
or extension of credit.
(b) No person or depository institution, or affiliate of a depository institution, who lends money or extends credit may:

(i) Solicit insurance for the protection of real property, after a person indicates interest in securing a first mortgage credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension. However, this provision does not prohibit a person or depository institution from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, or that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from the person or depository institution, or affiliate of a depository institution;

(ii) Unreasonably reject a policy furnished by the customer or borrower for the protection of the property securing the credit or lien. A rejection shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of a policy because it contains coverage in addition to that required in the credit transaction;

(iii) Require that any customer, borrower, mortgagor, purchaser, insurer, broker or agent pay a separate charge, in connection with the handling of any policy required as security for a loan on real estate, or pay a separate charge to substitute the policy of one (1) insurer for that of another. This paragraph does not include the interest that may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document. Further, this subparagraph (iii) does not apply to charges that would be required when the
person or depository institution or affiliate of a depository

institution is the licensed producer providing the insurance;

(iv) Use or disclose, without the express consent
of the customer, borrower, mortgagor or purchaser taken at a time
other than the making of the loan or extension of credit insurance
information relative to a policy which is required by the credit
transaction, for the purpose of soliciting, selling or replacing
such insurance. This provision does not apply in case of a
transfer of insurance information to an unaffiliated insurer in
connection with transferring insurance in force on an existing
insured of the depository institution, or an affiliate thereof, or
in connection with a merger with or acquisition of an unaffiliated
insurer, or the release of information as otherwise authorized by
state or federal law;

(v) Require any procedures or conditions of duly
licensed producers or insurers not customarily required of those
agents, brokers or insurers affiliated or in any way connected
with the person who lends money or extends credit;

(vi) Use an advertisement that would cause a
reasonable person to mistakenly believe that the federal
government or the state is responsible for the sales activity of,
or stands behind the credit of, the person, depository institution
or its affiliate;

(vii) Use an advertisement that would cause a
reasonable person to mistakenly believe that the federal
government or the state guarantees any returns on insurance
products or is a source of payment on any insurance obligation of
or sold by the person, depository institution or its affiliate.

(viii) Act as a producer unless properly licensed;

(ix) Pay or receive any commission, brokerage fee
or other compensation as a producer, unless the person holds a
valid producer’s license for the applicable class of insurance.

However, an unlicensed person employed by a depository
institution, or its affiliate, may refer a customer or potential customer to a licensed producer provided that the person does not discuss specific insurance policy terms and conditions. The unlicensed person may be compensated for the referral only if the compensation is a one-time nominal fixed dollar amount for each referral that does not depend on whether the customer purchases the insurance product from the licensed producer;

(x) Use, disclose or release health information obtained from the insurance records of a customer for any purpose other than for its activities as a licensed producer, without the express consent of the customer;

(xi) Solicit or sell insurance, other than credit insurance or flood insurance, unless the solicitation or sale is completed through documents separate from any credit transactions;

(xii) Include the expense of insurance premiums, other than credit insurance premiums or flood insurance premiums, in the primary credit transaction without the express written consent of the customer;

(xiii) Solicit or sell insurance unless its insurance sales activities are, to the extent practicable, physically separated from areas where retail deposits are routinely accepted; or

(xiv) Solicit or sell insurance unless it maintains separate and distinct books and records relating to the insurance transactions, including all files relating to and reflecting consumer complaints.

(c) Every person or depository institution, or affiliate of a depository institution who lends money or extends credit and who solicits insurance on real and personal property subject to subsection (b) of this section shall disclose to the customer in writing that the insurance related to the credit extension may be purchased from an insurer or producer of the customer’s choice, subject only to the lender’s right to reject a
given insurer or agent as provided in subsection (b)(ii).

Further, the disclosure shall inform the customer that the customer’s choice of insurer or producer will not affect the credit decision or credit terms in any way, except that the depository institution may impose reasonable requirements concerning the creditworthiness of the insurer and the scope of coverage chosen as provided in subsection (b)(ii).

(d) Every person or depository institution, or affiliate of a depository institution who lends money or extends credit and who solicits insurance on real and personal property shall disclose to the customer in writing and in a clear and conspicuous manner, prior to the sale, that the insurance related to such credit extension:

(i) Is not a deposit;

(ii) Is not insured by the Federal Deposit Insurance Corporation;

(iii) Is not guaranteed by the depository institution, its affiliate or any person soliciting or selling insurance on its premises; and

(iv) Where appropriate, involves investment risk, including the potential loss of principal.

The person, depository institution, or affiliate of the depository institution shall obtain written acknowledgement of the disclosure from the customer at the time the customer receives the disclosure or at the time of the initial purchase of the insurance policy.

(e) The commissioner shall have the power to examine and investigate those insurance related activities of any person, depository institution, affiliate of a depository institution or insurer that the commissioner believes may be in violation of this section. The person, depository institution, affiliate of a depository institution or insurer shall make its insurance books and records available to the commissioner and the commissioner’s
staff for inspection upon reasonable notice. Any affected person
may submit to the commissioner a complaint or material pertinent
to the enforcement of this section.

(f) Nothing herein shall prevent a person or depository
institutions, or affiliate of a depository institution who lends
money or extends credit from placing insurance on real or personal
property in the event the mortgagor, borrower or purchaser has
failed to provide required insurance in accordance with the terms
of the loan or credit document.

(g) Nothing contained in this section shall apply to
credit life or credit accident and health insurance.

SECTION 6. Power of commissioner. The commissioner shall
have power to examine and investigate the affairs of every insurer
in this state in order to determine whether such insurer has been
or is engaged in any unfair trade practice prohibited by this act.
Further, the commissioner shall have the power to examine and
investigate the affairs of every person, depository institution,
or affiliate of a depository institution related to the insurance
sales activities of the person, depository institution, or
affiliate of a depository institution in this state in order to
determine whether such person, depository institution, or
affiliate of a depository institution has been or is engaged in
any unfair trade practice prohibited by this act.

SECTION 7. Hearings, witnesses, appearances, production of
books, and service of process.

(1) Whenever the commissioner shall have reason to believe
that any insurer, person, depository institution or affiliate of a
depository institution has been engaged or is engaging in this
state in any unfair trade practice whether or not defined in this
act, and that a proceeding by the commissioner in respect thereto
would be in the interest of the public, the commissioner shall
issue and serve upon such insurer a statement of the charges in
that respect and a notice of a hearing thereon to be held at a

H. B. No. 661
01/HR07/R787
PAGE 16 (MS\HS)
time and place fixed in the notice, which shall not be less than

(2) At the time and place fixed for the hearing, the insurer
shall have an opportunity to be heard and to show cause why an
order should not be made by the commissioner requiring the insurer
to cease and desist from the acts, methods or practices so
complained of. Upon good cause shown, the commissioner shall
permit any person to intervene, appear and be heard at the hearing
by counsel or in person.

(3) Nothing contained in this act shall require the
observation at the hearing of formal rules of pleading or evidence.

(4) The commissioner, at the hearing, may administer oaths,
examine and cross examine witnesses, receive oral and documentary
evidence, and shall have the power to subpoena witnesses, compel
their attendance, and require the production of books, papers,
records, correspondence or other documents the commissioner deems
relevant to the inquiry. The commissioner may, and upon the
request of any party shall, cause to be made a stenographic record
of all the evidence and all the proceedings at the hearing. If no
stenographic record is made and if a judicial review is sought,
the commissioner shall prepare a statement of the evidence and
proceeding for use on review. In case of a refusal of any person
to comply with any subpoena or to testify with respect to any
matter concerning which he may be lawfully interrogated, the
Circuit Court of Hinds County, on application of the commissioner,
may issue an order requiring such person to comply with the
subpoena and to testify; and any failure to obey any order of the
court may be punished by the court as contempt.

(5) Statements of charges, notices, orders and other
processes of the commissioner under this act may be served by
anyone duly authorized by the commissioner, either in the manner
provided by law for service of process in civil actions, or by
registering and mailing a copy thereof to the person affected by
the statement, notice, order or other process at the person’s residence or principal office or place of business. The verified return by the person so serving the statement, notice, order, or other process, setting forth the manner of service, shall be proof of the same, and the return postcard receipt for the statement, notice, order or other process, registered and mailed as specified, shall be proof of the service of the same.

SECTION 8. Cease and desist and penalty orders. If, after hearing, the commissioner finds that an insurer, person, depository institution or affiliate of a depository institution has engaged in an unfair trade practice, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the insurer charged with the violation, a copy of the findings in an order requiring the insurer to cease and desist from engaging in the act or practice and the commissioner may, at the commissioner’s discretion order:

(a) Payment of a monetary penalty of not more than One Thousand Dollars ($1,000.00) for each violation, but not to exceed an aggregate penalty of One Hundred Thousand Dollars ($100,000.00) unless the violation was committed flagrantly in a conscious disregard of this act, in which case the penalty shall not be more than Twenty-five Thousand Dollars ($25,000.00) for each violation not to exceed an aggregate penalty of Two Hundred Fifty Thousand Dollars ($250,000.00); and/or

(b) Suspension or revocation of the insurer’s license if the insurer knew or reasonably should have known that it was in violation of this act.


(1) Any insurer, person, depository institution or affiliate of a depository institution subject to an order of the commissioner under Section 8 or Section 11 of this act may obtain a review of such order by filing in the Circuit Court of Hinds County, within thirty (30) days from the date of the service of
such order, a written petition praying that the order of the commissioner be set aside. A copy of such petition shall be forthwith served upon the commissioner, and thereupon the commissioner forthwith shall certify and file in such court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the commissioner. Upon filing of the petition and transcript, the court shall have jurisdiction of the proceeding and of the question determined therein, shall determine whether the filing of such petition shall operate as a stay of the order of the commissioner, and shall have power to make and enter upon the pleadings, evidence and proceedings set forth in the transcript a decree modifying, affirming or reversing the order of the commissioner, in whole or in part. The findings of the commissioner as to the facts, if supported by substantial evidence, shall be conclusive.

(2) To the extent that the order of the commissioner is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the commissioner. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner, the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The commissioner may modify the findings of fact, or make new findings by reason of the additional evidence so taken, and shall file such modified or new findings that are supported by substantial evidence with a recommendation if any, for the modification or setting aside of the original order, with the return of such additional evidence.

(3) An order issued by the commissioner under Section 8 of this act shall become final:
(a) Upon the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time; except that the commissioner may thereafter modify or set aside the order to the extent provided in Section 8 of this act; or

(b) Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.

(4) No order of the commissioner under this act or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.

**SECTION 10. Judicial review by intervenor.** If after any hearing under Section 7 or Section 11 of this act, the report of the commissioner does not charge a violation of this act, then any intervenor in the proceedings may within ten (10) days after the service of the report, cause a notice of appeal to be filed in the Circuit Court of Hinds County for a review of such report. Upon review, the court shall have authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act or practice which it finds, notwithstanding the report of the commissioner, constitutes a violation of this act, and containing penalties pursuant to Section 8 of this act.

**SECTION 11. Penalty for violation of cease and desist orders.** Any insurer, person, depository institution or affiliate of a depository institution that violates a cease and desist order of the commissioner and while such order is in effect, may after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to:

(a) A monetary penalty of not more than Twenty-five Thousand Dollars ($25,000.00) for each and every act or violation
not to exceed an aggregate of Two Hundred Fifty Thousand Dollars ($250,000.00) pursuant to any such hearing; and/or
(b) Suspension or revocation of the insurer’s license.

SECTION 12. Regulations. The commissioner may, after notice and hearing, promulgate reasonable rules, regulations and orders as are necessary or proper to carry out and effectuate the provisions of this act. Such regulations shall be subject to review in accordance with Section 25-43-1 et seq.

SECTION 13. Provisions of act additional to existing law. The powers vested in the commissioner by this act shall be additional to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive.

SECTION 14. Immunity from prosecution. If any person shall ask to be excused from attending and testifying or from producing any books, papers, records, correspondence or other documents at any hearing on the ground that the testimony or evidence required may tend to incriminate or subject the person to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, the person shall nonetheless comply with such direction, but shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person may testify or produce evidence thereto, and no testimony so given or evidence produced shall be received against the person upon any criminal action, investigation or proceeding; provided, however, that no such person so testifying shall be exempt from prosecution or punishment for any perjury committed while so testifying and the testimony or evidence so given or produced shall be admissible against the person upon any criminal action, investigation or proceeding concerning such perjury, nor shall the person be exempt from the refusal, revocation or suspension of any license, permission or authority conferred, or to be conferred, pursuant to...
the insurance law of this state. Any such person may execute,
acknowledge and file in the office of the commissioner a statement
expressly waiving such immunity or privilege in respect to any
transaction, matter or thing specified in such statement and
thereupon the testimony of such person or such evidence in
relation to such transaction, matter or thing may be received or
produced before any judge or justice, court, tribunal, grand jury
or otherwise, and if so received or produced such person shall not
be entitled to any immunity or privilege on account of any
testimony the person may so give or evidence so produced.

SECTION 15. Separability provision. If any provision of
this act, or the application of such provision to any person or
circumstances, shall be held invalid, the remainder of the act,
and the application of such provision to person or circumstances
other than those as to which it is held invalid, shall not be
affected thereby.

SECTION 16. Sections 83-5-29, 83-5-30, 83-5-31, 83-5-33,
83-5-49 and 83-5-51, Mississippi Code of 1972, which regulate
trade practices in the business of insurance, are hereby repealed.

SECTION 17. This act shall take effect and be in force from
and after July 1, 2001.