To: Insurance

By: Senator(s) Kirby

Senate Bill No. 2160

AN ACT TO AMEND SECTION 75-49-13, MISSISSIPPI CODE OF 1972, TO REVISE THE APPEAL PROCEDURES FOR PERSONS AGGRAVIATED BY ANY DECISION OF THE COMMISSIONER OF INSURANCE REGARDING MANUFACTURED HOUSING LICENSES; TO AMEND SECTION 75-57-9, MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN STANDARDS CONCERNING THE REGULATION OF THE LIQUEFIED PETROLEUM AND COMPRESSED GAS INDUSTRY; TO AMEND SECTION 83-5-11, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE COMMISSIONER OF INSURANCE SHALL SERVE AS ATTORNEY FOR ALL INSURANCE COMPANIES FOR PURPOSES OF LEGAL PROCESS; TO AMEND SECTION 83-5-55, MISSISSIPPI CODE OF 1972, TO DELETE THE PROVISION REQUIRING LIFE INSURANCE COMPANIES TO FILE WITH THE COMMISSIONER OF INSURANCE A REPORT SHOWING THE AMOUNT OF MISSISSIPPI RESERVES; TO AMEND SECTION 83-6-25, MISSISSIPPI CODE OF 1972, TO REQUIRE INSURANCE COMPANIES TO RECEIVE WRITTEN APPROVAL FROM THE INSURANCE COMMISSIONER BEFORE DISTRIBUTING EXTRAORDINARY DIVIDENDS; TO ELIMINATE THE THIRTY-DAY WAITING PERIOD FOR THE COMMISSIONER'S RESPONSE BEFORE DISTRIBUTION; TO AMEND SECTIONS 83-6-27, 83-19-75 AND 83-19-77, MISSISSIPPI CODE OF 1972, TO ELIMINATE REFERENCES TO REPEALED STATUTES IN CERTAIN INSURANCE REGULATIONS; TO AMEND SECTION 83-15-5, MISSISSIPPI CODE OF 1972, TO REQUIRE TITLE INSURANCE COMPANIES TO DEPOSIT WITH THE STATE TREASURER A CERTAIN PERCENTAGE OF THEIR CAPITAL STOCK; TO AMEND SECTION 83-17-7, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF THE REPEALER ON THE PROVISION OF LAW WHICH PROHIBITS COMMISSIONS TO UNAUTHORIZED AGENTS AND AUTHORIZES REFERRAL FEES TO CERTAIN UNLICENSED EMPLOYEES OF THE AGENT, AGENCY OR AFFILIATE; TO AMEND SECTION 83-17-13, MISSISSIPPI CODE OF 1972, TO REMOVE THE REQUIREMENT THAT AN INSURANCE POLICY MUST BE SIGNED BY A RESIDENT AGENT; TO PROHIBIT LICENSED AGENTS FROM SIGNING ANY BLANK POLICY OF INSURANCE; TO AMEND SECTION 83-21-15, MISSISSIPPI CODE OF 1972, TO REMOVE THE PROHIBITION AGAINST NONRESIDENT INSURANCE AGENTS OWNING AN INTEREST IN A MISSISSIPPI AGENCY; TO AMEND SECTION 83-29-31, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT LEGAL PROCESSES SERVED UPON THE COMMISSIONER OF INSURANCE AS ATTORNEY FOR FRATERNAL SOCIETIES SHALL BE FORWARDED TO FRATERNAL SOCIETIES BY CERTIFIED MAIL INSTEAD OF REGISTERED MAIL; TO AMEND SECTION 83-37-31, MISSISSIPPI CODE OF 1972, TO ALLOW THE COMMISSIONER OF INSURANCE TO PLACE A BURIAL ASSOCIATION IN RECEIVERSHIP IF THE ASSOCIATION FAILS TO COMPLY WITH CERTAIN LICENSING PROVISIONS; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State of Mississippi:

SECTION 1. Section 75-49-13, Mississippi Code of 1972, is amended as follows:

75-49-13. (1) The commissioner shall not:

(a) Deny an application for a license without first giving the applicant a hearing, or an opportunity to be heard, on
the question of whether he is qualified under the provisions of this chapter to receive the license applied for.

(b) Revoke or suspend a license without first giving the licensee a hearing, or an opportunity to be heard, on the question of whether there are sufficient grounds under the provisions of this chapter upon which to base such revocation or suspension.

(2) Any interested party shall have the right to have the commissioner call a hearing for the purpose of taking action in respect to any matter within the commissioner's jurisdiction by filing with the commissioner a verified complaint setting forth the grounds upon which the complaint is based.

(3) The commissioner may on his own motion call a hearing for the purpose of taking action in respect to any matter within his jurisdiction.

(4) When a hearing is to be held before the commissioner, the commissioner shall give written notice thereof to all parties whose rights may be affected thereby. The notice shall set forth the reason for the hearing and the questions or issues to be decided by the commissioner at such hearing and the time when and the place where the hearing will be held. All such notices shall be mailed to all parties, whose rights may be affected by such hearing by registered or certified mail, and addressed to their last known address.

(5) All parties whose rights may be affected at any hearing before the commissioner shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against them, and to produce evidence and witnesses in their own behalf. The commissioner shall make and keep a record of each such hearing and shall provide a transcript thereof to any interested party upon his request and at his expense. Testimony taken at all such hearings shall be taken either stenographically or by machine.
(6) If any party who is notified of a hearing in accordance with the requirements of this chapter fails to appear at such hearing, either in person or by counsel, then and in that event the commissioner may make any decision and take any action he may deem necessary or appropriate with respect to any issue or question scheduled for hearing and decision by him at such hearing which affects or may affect the rights of such defaulting party, and such defaulting party shall have no right of appeal under the provisions of this chapter.

(7) All decisions of the commissioner with respect to the hearings provided for in this section shall be incorporated into orders of the commissioner. All such orders shall be made available during normal office hours for inspection by interested persons.

(8) It shall be the duty of the sheriffs and constables of the counties of this state and of any employee of the commissioner, when so directed by the commissioner, to execute any summons, citation or subpoena which the commissioner may cause to be issued and to make his return thereof to the commissioner. The sheriffs and constables so serving and returning same shall be paid for so doing fees provided for such services in the circuit court. Any person who appears before the commissioner or a duly designated employee of his department in response to a summons, citation or subpoena shall be paid the same witness fee and mileage allowance as witnesses in the circuit court. In case of failure or refusal on the part of any person to comply with any summons, citation or subpoena issued and served as above authorized or in the case of the refusal of any person to testify or answer to any matter regarding which he may be lawfully interrogated or the refusal of any person to produce his record books and accounts relating to any matter regarding which he may be lawfully interrogated, the chancery court of any county of the State of Mississippi, or any chancellor of any such court in
vacation, may, on application of the commissioner, issue an
attachment for such person and compel him to comply with such
summons, citation or subpoena and to attend before the
commissioner or his designated employee and to produce the
documents specified in any subpoena duces tecum and give his
testimony upon such matters as he may be lawfully required. Any
such chancery court, or any chancellor of any such court in
vacation, shall have the power to punish for contempt as in case
of disobedience of like process issued from or by any such
chancery court, or by refusal to testify therein in response to
such process, and such person shall be taxed with the costs of
such proceedings.

(9) The following procedure shall govern in taking and
perfecting appeals:

(a) Any person who is a party to any hearing before the
commissioner and who is aggrieved by any decision of the
commissioner with respect to any hearing before him, unless
prevented by the provisions of subsection (6) of this section,
shall have the right of appeal * * * to the chancery court of the
First Judicial District of Hinds County, Mississippi. All such
appeals shall be taken and perfected within sixty (60) days from
the date of the decision of the commissioner which is the subject
of the appeal, and the chancery court to which such appeal is
taken may affirm such decision or reverse and remand the same to
the commissioner for further proceedings as justice may require or
dismiss such decision. All such appeals shall be taken and
perfected, heard and determined, either in termtime or in
vacation, on the record, including a transcript of pleadings and
evidence, both oral and documentary, heard and filed before the
commissioner. In perfecting any appeal provided by this chapter,
the provisions of law respecting notice to the reporter and
allowance of bills of exceptions, now or hereafter in force,
respecting appeals from the chancery court to the Supreme Court
shall be applicable, provided, however, that the reporter shall transcribe his notes, taken stenographically or by machine, and file the record with the commissioner within thirty (30) days after approval of the appeal bond, unless, on application of the reporter, or of the appellant, an additional fifteen (15) days shall have been allowed by the commissioner to the reporter within which to transcribe his notes and file the transcript of the record with the commission.

(b) Upon the filing with the commissioner of a petition of appeal to the proper chancery court, it shall be the duty of the commissioner, as promptly as possible, and in any event within sixty (60) days after approval of the appeal bond, to file with the clerk of the chancery court to which the appeal is taken, a copy of the petition for appeal and of the decision appealed from, and the original and one (1) copy of the transcript of the record of the proceedings and evidence before the commission. After the filing of the petition, the appeal shall be perfected by the filing of a bond in the penal sum of Five Hundred Dollars ($500.00) with two (2) sureties or with a surety company qualified to do business in Mississippi as surety, conditioned to pay the costs of such appeal, the bond to be approved by the commissioner or by the clerk of the chancery court to which such appeal is taken.

(10) No decision of the commissioner made as a result of a hearing under the provisions of this section shall become final with respect to any party affected and aggrieved by such decision until such party shall have exhausted or shall have had an opportunity to exhaust all of his remedies provided for by this section; provided, however, any such decision may be made final if the commissioner finds that failure to do so would be detrimental to the public interest or public welfare, but the finality of any such decision shall not prevent any party or parties affected and
aggrieved thereby to appeal the same in accordance with the appellate procedure set forth in this section.

(11) The commissioner shall prescribe his rules of order or procedure in hearings or other proceedings before it under this chapter; provided, however, that such rules of order or procedure shall not be in conflict or contrary to the provisions of this section.

SECTION 2. Section 75-57-9, Mississippi Code of 1972, is amended as follows:

75-57-9. The codes of the American Society of Mechanical Engineers - Boiler and Pressure Vessel Code - Section II Material Specifications; Section VIII Pressure Vessels; and Section IX Welding and Brazing Qualifications; American Petroleum Institute Standard 620 (American Petroleum Institute Recommended Rules for the Design and Construction of Large Welded Low-pressure Storage Tanks); Standards of the National Fuel Gas Code as published by the National Fire Protection Association, NFPA-54; the Standards for the Storage and Handling of Liquefied Petroleum Gas as published by the National Fire Protection Association, NFPA-58; and other National Fire Protection Association standards applicable to liquefied petroleum gas and compressed gas; and the safety requirements for the storage and handling of anhydrous ammonia as published by the American National Standards Institute, Inc.; as the codes and standards referred to herein as revised, and standards referred to above are hereby adopted by reference as specifications for the purpose of material standards, construction, handling, transportation and installation of all liquefied compressed gas systems and inspection and operation of pressure vessels. Copies of all codes and standards referred to in the foregoing are available for public use and inspection at the office of the Commissioner of Insurance. The State Liquefied Compressed Gas Board is fully authorized and empowered in the exercise of its authority granted under this section to change,
delete from or amend from time to time the national code and
standards adopted by reference in this section. Any changes,
deletions or amendments made to the national codes and codes
adopted by reference in this section shall be made in strict
compliance with the Mississippi Administrative Procedures Law,
Chapter 43, Title 25, Mississippi Code of 1972, and with the
approval of the Commissioner of Insurance. The State Liquefied
Compressed Gas Board is fully authorized and empowered in the
exercise of the authority granted under this section to exempt or
grant deviations from the national code and standards adopted by
reference in this section with respect to reconditioned or
remanufactured railroad tank car pressure vessels designed for and
used as stationary storage tanks for agricultural fertilizers.

SECTION 3. Section 83-5-11, Mississippi Code of 1972, is
amended as follows:

83-5-11. When legal process is served upon the commissioner
as attorney for an insurance company, he shall forthwith notify
the company of such service by letter prepaid and directed to its
secretary or, in the case of a foreign country, to its resident
manager, if any, in the United States, and shall, within two (2)
days after such service, forward in the same manner a copy of the
process served on him to the secretary or manager or to such
person as may have been previously designated by the company by
written notice filed in the office of the commissioner. The
failure of the commissioner to notify the company shall not affect
the validity of such service but shall subject him to liability on
his bond for such damages as the company shall suffer thereby. As
a condition of a valid and effectual service and of the duty of
the commissioner in the premises, the plaintiff in such process
shall pay to the commissioner at the time of service thereof the
sum of Twenty-five Dollars ($25.00), which the plaintiff shall
recover as taxable costs if he prevails in his suit. The
commissioner shall keep a record of all such proceedings, that shall show the day and hour of service.

SECTION 4. Section 83-5-55, Mississippi Code of 1972, is amended as follows:

83-5-55. Every insurance company shall file in the office of the Commissioner of Insurance, on or before the first day of March of each year, a statement showing the business standing and financial condition of the company and sworn to by the president or vice president and secretary or treasurer or chief managing agent or officer of such company. The statement to be filed shall be on and in accordance with the NAIC Annual Statement Blank and Instructions thereto and the NAIC Accounting Practices and Procedures Manual. * * *

SECTION 5. Section 83-6-25, Mississippi Code of 1972, is amended as follows:

83-6-25. (1) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distributions to its shareholders without first making a written request and receiving written approval for such payment from the commissioner.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the lesser of: (a) ten percent (10%) of such insurer's surplus as regards policyholders as of the thirty-first day of December next preceding; or (b) the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the thirty-first day of December next preceding, but shall not include pro rata distributions of any class of the insurer's
own securities. In determining whether a dividend or distribution is extraordinary, an insurer may carry forward net gain from operations, if such insurer is a life insurer, or net income, if such insurer is not a life insurer, from the previous two (2) calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net gain from operations or the net income, as the case may be, from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until the commissioner has approved the payment of such a dividend or distribution.

SECTION 6. Section 83-6-27, Mississippi Code of 1972, is amended as follows:

83-6-27. (1) The commissioner is authorized to order any insurer registered under Sections 83-6-3 through 83-6-19 of this act to produce such records, books, or other information papers in the possession of the insurer or its affiliates which are necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner is authorized to examine such affiliates to obtain such information.

(2) The commissioner shall exercise his authority under subsection (1) of this section only if the interests of the policyholders of such insurer may be adversely affected.

(3) The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff which are reasonably necessary to assist in the conduct of the examination.
under subsection (1) of this section. Any persons so retained are
under the direction and control of the commissioner and shall act
in a purely advisory capacity.

(4) Each registered insurer producing for examination
records, books and papers pursuant to subsection (1) of this
section is liable for the expense of such examination ***.

SECTION 7. Section 83-19-75, Mississippi Code of 1972, is
amended as follows:

83-19-75. If the surplus of any domestic insurance company
or association shall be impaired, as provided in Sections 83-19-75
and 83-19-77, and such impairment shall not be reported to the
Commissioner of Insurance of this state within ten (10) days after
such impairment occurs or results, the executive officers,
secretary, treasurer, and directors of such company shall each be
guilty of a misdemeanor and, upon conviction thereof, shall be
punished by a fine of not more than Five Hundred Dollars ($500.00)
or by imprisonment in the county jail for not more than six (6)
months, or by both such fine and imprisonment, in the discretion
of the court.

SECTION 8. Section 83-19-77, Mississippi Code of 1972, is
amended as follows:

83-19-77. Sections 83-19-75 and 83-19-77 shall not be
construed as applicable to fraternal, benevolent, or burial
associations, or any other organization not specifically named in
the foregoing schedule.

SECTION 9. Section 83-15-5, Mississippi Code of 1972, is
amended as follows:

83-15-5. (1) A corporation created as herein provided shall
not issue any title insurance policy until it has capital of not
less than One Hundred Fifty Thousand Dollars ($150,000.00) and
surplus of not less than Seventy-five Thousand Dollars
($75,000.00). The total amount of any policy issued by such
corporation without reinsurance shall not exceed fifty percent
(50%) of the capital and surplus of the company, as reflected by its latest statement to the commissioner. In transactions where a primary risk is carried by another title insurance company, a domestic title insurance company may issue its reinsurance or coinsurance for an amount not exceeding its capital and surplus.

(2) A corporation created as herein provided shall deposit with the State Treasurer fifty percent (50%) of its capital stock, either in cash or in such bonds or securities in which the company is authorized by law to invest its funds. Upon such deposit and evidence, by affidavit or otherwise, satisfactory to the Insurance Commissioner that the capital and surplus is all paid in and that the company is the actual and unqualified owner of the securities representing the paid-up capital and surplus, he shall issue to the company his certificate authorizing it to transact business in this state.

SECTION 10. Section 83-17-7, Mississippi Code of 1972, is amended as follows:

83-17-7. It shall be unlawful for any insurance company or any insurance agent to pay, directly or indirectly, any commission, brokerage or other valuable consideration on account of any policy or policies written on risks in this state to any person, agent, firm or corporation not duly licensed as an insurance agent in this state, except that property and other risks of nonresident persons, and of foreign corporations not qualified in this state, may be insured by brokers or other agents duly licensed in other states.

It shall be lawful, however, for an insurance company or any insurance agent to pay, directly or indirectly, to the surviving spouse or heirs of a deceased licensed insurance agent in this state any commissions or other valuable consideration to which the deceased agent would be entitled, whether such surviving spouse or heir is or is not a licensed agent.
It shall be lawful for an insurance agent, agency or affiliate to pay a referral fee to any unlicensed employee of the agent, agency or affiliate when the employee refers a prospective insured to the licensed agent or agency. The referral fee shall be a one-time nominal fee of a fixed dollar amount for each referral customer. The payment of any referral fee shall not depend on whether the referral results in a sale of any insurance products. Furthermore, the referral fee shall not be based on a percentage of any premiums or commissions collected by the licensed agent. The referral fee shall not be paid, either directly or indirectly, to the prospective insured.

The Commissioner of Insurance may promulgate rules and regulations necessary to carry out the provisions of this section.

The provisions of this section shall stand repealed from and after July 1, 2006.

SECTION 11. Section 83-17-13, Mississippi Code of 1972, is amended as follows:

83-17-13. It shall be unlawful for any licensed agent, as required under Section 83-17-21, to sign any blank policy of insurance. Upon satisfactory proof that any agent has violated the provisions of this section, the commissioner shall revoke such agent's license for all companies for not less than three (3) nor more than six (6) months for the first offense, and for one (1) year for the second offense.

SECTION 12. Section 83-21-15, Mississippi Code of 1972, is amended as follows:

83-21-15. (1) Whenever the existing or future laws of any other state of the United States, the District of Columbia or any province of the Dominion of Canada shall require the licensing of a resident of this state as a nonresident agent or broker, then in every such case where the resident agents of such state, District of Columbia or any province of the Dominion of Canada desire to broker business to resident agents of this state, they shall be
required to pay the same license fee and otherwise qualify under
the conditions imposed by the law of such state upon residents of
this state.

(2) This section shall be enforced by the Commissioner of
Insurance of the State of Mississippi, who shall collect and pay
into the Treasury of the state all license fees, fines or
penalties required by this statute as other funds and taxes
collected by him.

(3) The Commissioner of Insurance may, upon written
application in such form as the commissioner may prescribe, duly
sworn to, and on the payment of the proper license fee as required
in subsection (1) of this section, issue a nonresident agent's
license to an individual who meets all other qualifications of
Mississippi insurance laws, but who is not a resident of this
state, if, by the laws of the state of his residence, residents of
this state may be licensed in such manner as nonresident agents of
his state.

(4) No such license shall be issued to any individual
who does not hold an agent's license issued by the state or
province of his residence.

(5) Before the issuance of any such nonresident agent's
license, the applicant therefor shall appoint the Commissioner of
Insurance as his attorney to receive service of legal process
which may be issued against the nonresident agent in this state,
on causes of action arising within this state out of
transactions under his license. All such nonresident agents
shall, in the discretion of the Commissioner of Insurance, be
subject to the insurance laws and regulations of the State of
Mississippi applying to licensed agents of this state engaged in
the transaction of the same kind or class of insurance.

(6) The license shall expire on June 1 following the date of
issue. However, the commissioner may at any time after the
granting of the license, for cause shown and after a hearing,
determine that the holder of such license has not complied with the requirements of this section or with the insurance laws of this state, or that the holder of the license is not a suitable person to act as a nonresident agent, and shall thereupon revoke the license of such nonresident agent.

(7) A resident agent of this state may divide commissions with a duly licensed nonresident agent in accordance with the laws, rules and regulations of Mississippi relating to brokerage business.

(8) Nothing contained herein shall be construed to permit an applicant licensed solely as a broker in the state of his residence to be granted a nonresident agent's license; and nothing contained herein shall be construed to permit the holder of a nonresident agent's license to act as an agent under the provisions of Sections 83-21-17 through 83-21-31, to perform any of the acts permitted thereunder.

(9) This section is hereby declared to be cumulative and supplemental to all other valid statutes relating to insurance.

SECTION 13. Section 83-29-31, Mississippi Code of 1972, is amended as follows:

83-29-31. Every society, whether domestic or foreign, now transacting business in this state and every such society hereafter applying for admission shall, before being licensed, appoint in writing the Commissioner of Insurance and his successors in office to be its true and lawful attorney on whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state.

Copies of such appointment, certified by the Commissioner of Insurance, shall be deemed sufficient evidence thereof and shall
be admitted in evidence with the same force and effect as the
original thereof might be admitted. Service shall only be made
upon such attorney, shall be made in duplicate upon the
Commissioner of Insurance or, in his absence, upon the person in
charge of his office, and shall be deemed sufficient service upon
such society. No such service shall be valid or binding against
any such society when it is required thereunder to file its
answer, pleading, or defense in less than thirty (30) days from
the date of mailing the copy of the service to the society. When
legal process against any such society is served upon the
Commissioner of Insurance, he shall forthwith forward by certified
mail one of the duplicate copies prepaid and directed to the
secretary or corresponding officer. Legal process shall not be
served upon any such society except in the manner provided herein.

SECTION 14. Section 83-37-31, Mississippi Code of 1972, is
amended as follows:

83-37-31. Should the Insurance Commissioner find that any
person, firm, association, or corporation engaged in the business
herein described has refused to pay any just claim or demand based
on the contracts, or that he or they be unable to pay same after
the claim or demand has been legally determined to be just and
outstanding, or fail to comply with any of the licensing
provisions of this chapter, the commissioner shall notify the
Attorney General. The Attorney General shall apply to the
chancery court for a receivership to wind up the business of such
person, firm, association, or corporation, shall represent the
interest of all claimants under such contracts, and shall have a
right of action for the use and benefit of the claimants against
the bond or security herein required for the full amount of all
such claims, together with all necessary costs of such
receivership.

SECTION 15. This act shall take effect and be in force from
and after July 1, 2001.