

By: Senator(s) Kirby

To: Insurance

SENATE BILL NO. 2359

1 AN ACT TO PROVIDE PROCEDURES FOR THE LICENSING OF INSURANCE  
 2 PRODUCERS; TO PROVIDE DEFINITIONS; TO PROVIDE FOR WRITTEN  
 3 EXAMINATIONS AND FEES FOR LICENSURE OF INSURANCE PRODUCERS; TO  
 4 PROVIDE CERTAIN EXEMPTIONS FROM THE WRITTEN EXAMINATION; TO  
 5 PROVIDE FOR TEMPORARY LICENSURE; TO PROVIDE FOR A HEARING BEFORE  
 6 THE INSURANCE COMMISSIONER FOR NONRENEWAL OR DENIAL OF LICENSE; TO  
 7 REQUIRE LICENSURE BEFORE A PERSON MAY ACCEPT A COMMISSION FOR  
 8 SELLING, SOLICITING OR NEGOTIATING INSURANCE IN THIS STATE; TO  
 9 PROVIDE CERTAIN IMMUNITIES; TO PROVIDE CERTAIN PENALTIES; TO  
 10 AUTHORIZE THE COMMISSIONER OF INSURANCE TO PROMULGATE REGULATIONS  
 11 TO CARRY OUT THE PURPOSES OF THIS ACT; TO AMEND SECTION 83-17-205,  
 12 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT AN APPLICANT FOR A  
 13 LICENSE AS AN INSURANCE AGENT MUST BE AT LEAST 18 YEARS OF AGE  
 14 RATHER THAN 21 YEARS OF AGE; TO AMEND SECTIONS 83-17-1, 83-17-101  
 15 AND 83-17-203, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;  
 16 AND FOR RELATED PURPOSES.

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

18 SECTION 1. The purpose of this act is to provide the  
 19 qualifications and procedures required for the licensing of  
 20 insurance producers. This act does not apply to excess and  
 21 surplus lines agents and brokers licensed under Sections 83-21-17  
 22 through 83-21-31 except as provided in Section 8 and Section 14(3)  
 23 of this act.

24 SECTION 2. The following words and phrases shall have the  
 25 meanings ascribed herein unless the context clearly indicates  
 26 otherwise:

27 (a) "Business entity" means a corporation, association,  
 28 partnership, limited liability company, limited liability  
 29 partnership or other legal entity.

30 (b) "Commissioner" means the Commissioner of Insurance.

31 (c) "Home state" means the District of Columbia and any  
 32 state or territory of the United States in which an insurance

33 producer maintains his or her principal place of residence or  
34 principal place of business and is licensed to act as an insurance  
35 producer.

36 (d) "Insurance" means any of the lines of authority in  
37 Section 83-19-1.

38 (e) "Insurance producer" means a person required to be  
39 licensed under the laws of this state to sell, solicit or  
40 negotiate insurance.

41 (f) "Insurer" means that as defined in Section 83-6-1.

42 (g) "License" means a document issued by the  
43 commissioner authorizing a person to act as an insurance producer  
44 for the lines of authority specified in the document. The license  
45 itself does not create any authority, actual, apparent or  
46 inherent, in the holder to represent or commit an insurance  
47 carrier.

48 (h) "Limited line credit insurance" includes credit  
49 life, credit disability, credit property, credit unemployment,  
50 involuntary unemployment, mortgage life, mortgage guaranty,  
51 mortgage disability, guaranteed automobile protection (gap)  
52 insurance and any other form of insurance offered in connection  
53 with an extension of credit that is limited to partially or wholly  
54 extinguishing that credit obligation that the commissioner  
55 determines should be designated a form of limited line credit  
56 insurance.

57 (i) "Limited line credit insurance producer" means a  
58 person who sells, solicits or negotiates one or more forms of  
59 limited line credit insurance coverage to individuals through a  
60 master, corporate, group or individual policy.

61 (j) "Limited lines insurance" means those lines of  
62 insurance defined in Section 83-19-1, Class 1(b), (p) and (q) and  
63 Section 83-19-1, Class 2(d) or any other line of insurance that  
64 the commissioner deems necessary to recognize for the purposes of  
65 complying with Section 8(5) of this act.

66           (k) "Limited lines producer" means a person authorized  
67 by the commissioner to sell, solicit or negotiate limited lines  
68 insurance.

69           (l) "Negotiate" means the act of conferring directly  
70 with or offering advice directly to a purchaser or prospective  
71 purchaser of a particular contract of insurance concerning any of  
72 the substantive benefits, terms or conditions of the contract, if  
73 the person engaged in that act either sells insurance or obtains  
74 insurance from insurers for purchasers.

75           (m) "Person" means an individual or a business entity.

76           (n) "Sell" means to exchange a contract of insurance by  
77 any means, for money or its equivalent, on behalf of an insurance  
78 company.

79           (o) "Solicit" means attempting to sell insurance or  
80 asking or urging a person to apply for a particular kind of  
81 insurance from a particular company.

82           (p) "Terminate" means the cancellation of the  
83 relationship between an insurance producer and the insurer or the  
84 termination of a producer's authority to transact insurance.

85           (q) "Uniform business entity application" means the  
86 current version of the NAIC uniform business entity application  
87 for resident and nonresident business entities.

88           (r) "Uniform application" means the current version of  
89 the NAIC uniform application for resident and nonresident producer  
90 licensing.

91       SECTION 3. A person shall not sell, solicit or negotiate  
92 insurance in this state for any class or classes of insurance  
93 unless the person is licensed for that line of authority in  
94 accordance with this act.

95       SECTION 4. (1) Nothing in this act shall be construed to  
96 require an insurer to obtain an insurance producer license. In  
97 this section, the term "insurer" does not include an insurer's  
98 officers, directors, employees, subsidiaries or affiliates.

99           (2) A license as an insurance producer shall not be required  
100 of the following:

101           (a) An officer, director or employee of an insurer or  
102 of an insurance producer, if the officer, director or employee  
103 does not receive any commission on policies written or sold to  
104 insure risks residing, located or to be performed in this state  
105 and:

106                   (i) The officer, director or employee's activities  
107 are executive, administrative, managerial, clerical or a  
108 combination of these and are only indirectly related to the sale,  
109 solicitation or negotiation of insurance; or

110                   (ii) The officer, director or employee's function  
111 relates to underwriting, loss control or inspection of insurance;  
112 or

113                   (iii) The officer, director or employee is acting  
114 in the capacity of a special agent or agency supervisor assisting  
115 insurance producers where the person's activities are limited to  
116 providing technical advice and assistance to licensed insurance  
117 producers and do not include the sale, solicitation or negotiation  
118 of insurance;

119           (b) A person who secures and furnishes information for  
120 the purpose of group life insurance, group property and casualty  
121 insurance, group annuities, group or blanket accident and health  
122 insurance or for the purpose of enrolling individuals under plans  
123 or issuing certificates under plans or otherwise assisting in  
124 administering plans; or who performs administrative services  
125 related to mass marketed property and casualty insurance where no  
126 commission is paid to the person for the service;

127           (c) An employer or association or its officer,  
128 directors, employees, or the trustees of an employee trust plan,  
129 to the extent that the employers, officers, employees, director or  
130 trustees are engaged in the administration or operation of a  
131 program of employee benefits for the employer's or association's

132 own employees or the employees of its subsidiaries or affiliates,  
133 which program involves the use of insurance issued by an insurer,  
134 as long as the employers, associations, officers, directors,  
135 employees or trustees are not in any manner compensated, directly  
136 or indirectly, by the company issuing the contracts;

137 (d) Employees of insurers or organizations employed by  
138 insurers who are engaging in the inspection, rating or  
139 classification of risk or in the supervision of the training of  
140 insurance producers and who are not individually engaged in the  
141 sale, solicitation or negotiation of insurance;

142 (e) A person whose activities in this state are limited  
143 to advertising without the intent to solicit insurance in this  
144 state through communications in printed publications or other  
145 forms of electronic mass media whose distribution is not limited  
146 to residents of the state, if the person does not sell, solicit or  
147 negotiate insurance that would insure risks residing, located or  
148 to be performed in this state;

149 (f) A person who is not a resident of this state who  
150 sells, solicits or negotiates a contract of insurance for  
151 commercial property and casualty risks to an insured with risks  
152 located in more than one (1) state insured under that contract, if  
153 that person is otherwise licensed as an insurance producer to  
154 sell, solicit or negotiate that insurance in the state where the  
155 insured maintains its principal place of business and the contract  
156 of insurance insures risks located in that state; or

157 (g) A salaried full-time employee who counsels or  
158 advises his or her employer relative to the insurance interests of  
159 the employer or of the subsidiaries or business affiliates of the  
160 employer if the employee does not sell or solicit insurance or  
161 receive a commission.

162 SECTION 5. (1) A resident individual applying for an  
163 insurance producer license shall pass a written examination unless  
164 exempt under Section 9 of this act. The examination shall test

165 the knowledge of the individual concerning the lines of authority  
166 for which application is made, the duties and responsibilities of  
167 an insurance producer and the insurance laws and regulations of  
168 this state. Examinations required by this section shall be  
169 developed and conducted under rules and regulations prescribed by  
170 the commissioner.

171 (2) The commissioner may make arrangements, including  
172 contracting with an outside testing service, for administering  
173 examinations and collecting the nonrefundable fee set forth in  
174 Sections 83-17-107 and 83-17-209.

175 (3) Each individual applying for an examination shall remit  
176 a nonrefundable fee as prescribed by the commissioner as set forth  
177 in Sections 83-17-107 and 83-17-209.

178 (4) An individual who fails to appear for the examination as  
179 scheduled or fails to pass the examination shall reapply for an  
180 examination and remit all required fees and forms before being  
181 rescheduled for another examination.

182 SECTION 6. (1) A person applying for a resident insurance  
183 producer license shall make application to the commissioner on the  
184 uniform application and declare under penalty of refusal,  
185 suspension or revocation of the license that the statements made  
186 in the application are true, correct and complete to the best of  
187 the individual's knowledge and belief. Before approving the  
188 application, the commissioner shall find that the individual:

189 (a) Is at least eighteen (18) years of age;

190 (b) Has not committed any act that is a ground for  
191 denial, suspension or revocation set forth in Section 11 of this  
192 act;

193 (c) Where required by the commissioner, has completed a  
194 prelicensing course of study for the lines of authority for which  
195 the person has applied;

196 (d) Has paid the fees set forth in Sections 27-15-87  
197 and 27-15-93; and

198 (e) Has successfully passed the examinations for the  
199 liens of authority for which the person has applied.

200 (2) A business entity acting as an insurance producer is  
201 required to obtain an insurance producer license. Application  
202 shall be made using the uniform business entity application.  
203 Before approving the application, the commissioner shall find  
204 that:

205 (a) The business entity has paid the fees set forth in  
206 Sections 27-15-85 and 27-15-93; and

207 (b) The business entity has designated a licensed  
208 producer responsible for the business entity's compliance with the  
209 insurance laws, rules and regulations of this state.

210 (3) The commissioner may require any documents reasonably  
211 necessary to verify the information contained in an application.

212 (4) Each insurer that sells, solicits or negotiates any form  
213 of limited line credit insurance shall provide to each individual  
214 whose duties include selling, soliciting or negotiating limited  
215 line credit insurance a program of instruction that may be  
216 approved by the commissioner.

217 SECTION 7. (1) Unless denied licensure under Section 11 of  
218 this act, persons who have met the requirements of Sections 5 and  
219 6 of this act, shall be issued an insurance producer license. An  
220 insurance producer may receive qualification for a license in one  
221 or more of the following lines of authority:

222 (a) Life: insurance coverage on human lives including  
223 benefits of endowment and annuities and may include benefits in  
224 the event of death or dismemberment by accident and benefits for  
225 disability income.

226 (b) Accident and health or sickness: insurance  
227 coverage for sickness, bodily injury or accidental death and may  
228 include benefits for disability income.

229 (c) Property: insurance coverage for the direct or  
230 consequential loss or damage to property of every kind.

231 (d) Casualty: insurance coverage against legal  
232 liability, including that for death, injury or disability or  
233 damage to real or personal property.

234 (e) Variable life and variable annuity products:  
235 insurance coverage provided under variable life insurance  
236 contracts and variable annuities.

237 (f) Personal lines: property and casualty insurance  
238 coverage sold to individuals and families for primarily  
239 noncommercial purposes.

240 (g) Credit: limited line credit insurance.

241 (h) Any other line of insurance permitted under state  
242 laws or regulations.

243 (2) An insurance producer license shall remain in effect  
244 unless revoked or suspended as long as the fee set forth in  
245 Sections 27-15-87 and 27-15-93 is paid and education requirements  
246 for resident individual producers are met by the due date.

247 (3) An individual insurance producer who allows his or her  
248 license to lapse may, within twelve (12) months from the due date  
249 of the renewal fee, reinstate the same license without the  
250 necessity of passing a written examination. However, a penalty in  
251 the amount of double the unpaid renewal fee shall be required for  
252 any renewal fee received after the due date.

253 (4) A licensed insurance producer who is unable to comply  
254 with license renewal procedures due to military service or some  
255 other extenuating circumstances, including, but not limited to, a  
256 long-term medical disability may request a waiver of those  
257 procedures. The producer may also request a waiver of any  
258 examination requirement or any other fine or sanction imposed for  
259 failure to comply with renewal procedures.

260 (5) The license shall contain the licensee's name, address,  
261 personal identification number and the date of issuance, the lines  
262 of authority, the expiration date and any other information the  
263 commissioner deems necessary.



264 (6) Licensees shall inform the commissioner by any means  
265 acceptable to the commissioner of a change of address within  
266 thirty (30) days of the change. Failure to timely inform the  
267 commissioner of a change in legal name or address shall result in  
268 a penalty under Sections 83-17-123 and 83-17-221.

269 (7) In order to assist in the performance of the  
270 commissioner's duties, the commissioner may contract with  
271 nongovernmental entities, including the National Association of  
272 Insurance Commissioner (NAIC) or any affiliates or subsidiaries  
273 that the NAIC oversees, to perform any ministerial functions,  
274 including the collection of fees, related to producer licensing  
275 that the commissioner and the nongovernmental entity may deem  
276 appropriate.

277 SECTION 8. (1) Unless denied licensure pursuant to Section  
278 11 of this act, a nonresident person shall receive a nonresident  
279 producer license if:

280 (a) The person is currently licensed as a resident and  
281 is in good standing in his or her home state;

282 (b) The person has submitted the proper request for  
283 licensure and has paid the fees required by Sections 27-15-87 and  
284 27-15-93;

285 (c) The person has submitted or transmitted to the  
286 commissioner the application for licensure that the person  
287 submitted to his or her home state, or a completed uniform  
288 application; and

289 (d) The person's home state awards nonresident producer  
290 licenses to residents of this state on the same basis.

291 (2) The commissioner may verify the producer's licensing  
292 status through the producer database maintained by the National  
293 Association of Insurance Commissioners, its affiliates or  
294 subsidiaries.

295 (3) A nonresident producer who moves from one state to  
296 another state or a resident producer who moves from this state to

297 another state shall file a change of address and provide  
298 certification from the new resident state within thirty (30) days  
299 of the change of legal residence. No fee or license application  
300 is required.

301 (4) Notwithstanding any other provision of this act, a  
302 person licensed as a surplus lines producer in his or her home  
303 state shall receive a nonresident surplus lines producer license  
304 in accordance with subsection (1) of this section. Except as to  
305 subsection (1) of this section, nothing in this section otherwise  
306 amends or supercedes any provision of Sections 83-21-17 through  
307 83-21-31.

308 (5) Notwithstanding any other provision of this act, a  
309 person licensed as a limited line credit insurance or other type  
310 of limited lines producer in his or her home state shall receive a  
311 nonresident limited lines producer license in accordance with  
312 subsection (1) of this section, granting the same scope of  
313 authority as granted under the license issued by the producer's  
314 home state. For the purposes of this subsection, limited line  
315 insurance is any authority granted by the home state which  
316 restricts the authority of the license to less than the total  
317 authority prescribed in the associated major lines under Section  
318 7(1)(a) through (f) of this act.

319 SECTION 9. (1) An individual who applies for an insurance  
320 producer license in this state who was previously licensed for the  
321 same lines of authority in another state shall not be required to  
322 complete any prelicensing education or examination. This  
323 exemption is only available if the person is currently licensed in  
324 that state or if the application is received within ninety (90)  
325 days of the cancellation of the applicant's previous license and  
326 if the prior state issues a certification that, at the time of  
327 cancellation, the applicant was in good standing in that state or  
328 the state's producer database records, maintained by the National  
329 Association of Insurance Commissioners, its affiliates or

330 subsidiaries, indicate that the producer is or was licensed in  
331 good standing for the line of authority requested.

332 (2) A person licensed as an insurance producer in another  
333 state who moves to this state shall make application within ninety  
334 (90) days of establishing legal residence to become a resident  
335 licensee in accordance with Section 6 of this act. No  
336 prelicensing education or examination shall be required of that  
337 person to obtain any line of authority previously held in the  
338 prior state except where the commissioner determines otherwise by  
339 regulation.

340 SECTION 10. (1) The commissioner may issue a temporary  
341 insurance producer license for a period not to exceed one hundred  
342 eighty (180) days without requiring an examination if the  
343 commissioner deems that the temporary license is necessary for the  
344 servicing of an insurance business in the following cases:

345 (a) To the surviving spouse or court-appointed personal  
346 representative of a licensed insurance producer who dies or  
347 becomes mentally or physically disabled to allow adequate time for  
348 the sale of the insurance business owned by the producer or for  
349 the recovery or return of the producer to the business or to  
350 provide for the training and licensing of new personnel to operate  
351 the producer's business.

352 (b) To a member or employee of a business entity  
353 licensed as an insurance producer, upon the death or disability of  
354 an individual designated in the business entity application or the  
355 license;

356 (c) To the designee of a licensed insurance producer  
357 entering active service in the armed forces of the United States  
358 of America; or

359 (d) In any other circumstance where the commissioner  
360 deems that the public interest will best be served by the issuance  
361 of this license.

362           (2) The commissioner may by order limit the authority of any  
363 temporary licensee in any way deemed necessary to protect insureds  
364 and the public. The commissioner may require the temporary  
365 licensee to have a suitable sponsor who is a licensed producer or  
366 insurer and who assumes responsibility for all acts of the  
367 temporary licensee and may impose other similar requirements  
368 designed to protect insureds and the public. The commissioner may  
369 by order revoke a temporary license if the interest of insureds or  
370 the public are endangered. A temporary license may not continue  
371 after the owner or the personal representative disposes of the  
372 business.

373           SECTION 11. (1) The commissioner may place on probation,  
374 suspend, revoke or refuse to issue or renew an insurance  
375 producer's license or may levy a civil penalty in accordance with  
376 Sections 83-17-123 and 83-17-221 or any combination of actions for  
377 any one or more of the following causes:

378                   (a) Providing incorrect, misleading, incomplete or  
379 materially untrue information in the license application;

380                   (b) Violating any insurance laws, or violating any  
381 regulation, subpoena or order of the commissioner or of another  
382 state's commissioner;

383                   (c) Obtaining or attempting to obtain a license through  
384 misrepresentation or fraud;

385                   (d) Improperly withholding, misappropriating or  
386 converting any monies or properties received in the course of  
387 doing insurance business;

388                   (e) Intentionally misrepresenting the terms of an  
389 actual or proposed insurance contract or application for  
390 insurance;

391                   (f) Having been convicted of a felony;

392                   (g) Having admitted or been found to have committed any  
393 insurance unfair trade practice or fraud;

394           (h) Using fraudulent, coercive or dishonest practices  
395 or demonstrating incompetence, untrustworthiness or financial  
396 irresponsibility in the conduct of business in this state or  
397 elsewhere;

398           (i) Having an insurance producer license, or its  
399 equivalent, denied, suspended or revoked in any other state,  
400 province, district or territory;

401           (j) Forging another's name to an application for  
402 insurance or to any document related to an insurance transaction;

403           (k) Improperly using notes or any other reference  
404 material to complete an examination for an insurance license;

405           (l) Knowingly accepting insurance business from an  
406 individual who is not licensed;

407           (m) Failing to comply with an administrative or court  
408 order imposing a child support obligation; or

409           (n) Failing to pay state income tax or comply with any  
410 administrative or court order directing payment of state income  
411 tax.

412           (2) If the action by the commissioner is to nonrenew or to  
413 deny an application for a license, the commissioner shall notify  
414 the applicant or licensee and advise, in writing, the applicant or  
415 licensee of the reason for the denial or nonrenewal of the  
416 applicant's or licensee's license. The applicant or licensee may  
417 make written demand upon the commissioner within ten (10) days for  
418 a hearing before the commissioner to determine the reasonableness  
419 of the commissioner's action. The hearing shall be held within  
420 thirty (30) days and shall be held in accordance with Sections  
421 83-17-123 and 83-17-221.

422           (3) The license of a business entity may be suspended,  
423 revoked or refused if the commissioner finds, after hearing, that  
424 an individual licensee's violation was known or should have been  
425 known by one or more of the partners, officers or managers acting

426 on behalf of the partnership or corporation and the violation was  
427 neither reported to the commissioner nor corrective action taken.

428 (4) In addition to or in lieu of any applicable denial,  
429 suspension or revocation of a license, a person may, after  
430 hearing, be subject to a civil fine according to Sections  
431 83-17-123, 83-17-221 and any other applicable statutes.

432 (5) The commissioner shall retain the authority to enforce  
433 the provisions of and impose any penalty or remedy authorized by  
434 this act and Title 83, Mississippi Code of 1972, against any  
435 person who is under investigation for or charged with a violation  
436 of this act or Title 83, Mississippi Code of 1972, even if the  
437 person's license or registration has been surrendered or has  
438 lapsed by operation of law.

439 SECTION 12. (1) An insurance company or insurance producer  
440 shall not pay a commission, service fee, brokerage or other  
441 valuable consideration to a person for selling, soliciting or  
442 negotiating insurance in this state if that person is required to  
443 be licensed under this act and is not so licensed.

444 (2) A person shall not accept a commission, service fee,  
445 brokerage or other valuable consideration for selling, soliciting  
446 or negotiating insurance in this state if that person is required  
447 to be licensed under this act and is not so licensed.

448 (3) Renewal or other deferred commissions may be paid to a  
449 person for selling, soliciting or negotiating insurance in this  
450 state if the person was required to be licensed under this act at  
451 the time of the sale, solicitation or negotiation and was so  
452 licensed at that time.

453 (4) An insurer or insurance producer may pay or assign  
454 commissions, service fees, brokerages or other valuable  
455 consideration to an insurance agency or to persons who do not  
456 sell, solicit or negotiate insurance in this state, unless the  
457 payment would violate Section 83-17-7 or any other applicable  
458 provision of Title 83, Mississippi Code of 1972.

459           SECTION 13. (1) An insurance producer shall not act as an  
460 agent of an insurer unless the insurance producer becomes an  
461 appointed agent of that insurer. An insurance producer who is not  
462 acting as an agent of a noninsurer is not required to become  
463 appointed.

464           (2) To appoint a producer as its agent, the appointing  
465 insurer shall file, in a format approved by the commissioner, a  
466 notice of appointment within fifteen (15) days from the date the  
467 agency contract is executed or the first insurance application is  
468 submitted. An insurer may also elect to appoint a producer to all  
469 or some insurers within the insurer's holding company system or  
470 group by the filing of a single appointment request.

471           (3) Upon receipt of the notice of appointment, the  
472 commissioner shall verify within a reasonable time not to exceed  
473 thirty (30) days that the insurance producer is eligible for  
474 appointment. If the insurance producer is determined to be  
475 ineligible for appointment, the commissioner shall notify the  
476 insurer within five (5) days of its determination.

477           (4) An insurer shall pay an appointment fee, in the amount  
478 and method of payment set forth in Section 83-17-5 for each  
479 insurance producer appointed by the insurer.

480           (5) An insurer shall remit, in a manner prescribed by the  
481 commissioner, a renewal appointment fee in the amount set forth in  
482 Section 83-17-5.

483           SECTION 14. (1) An insurer or authorized representative of  
484 the insurer that terminates the appointment, employment, contract  
485 or other insurance business relationship with a producer shall  
486 notify the commissioner within thirty (30) days following the  
487 effective date of the termination, using a format prescribed by  
488 the commissioner, if the reason for termination is one of the  
489 reasons set forth in Section 11 of this act or the insurer has  
490 knowledge the producer was found by a court, government body or  
491 self-regulatory organization authorized by law to have engaged in

492 any of the activities in Section 11 of this act. Upon the written  
493 request of the commissioner, the insurer shall provide additional  
494 information, documents, records or other data pertaining to the  
495 termination or activity of the producer.

496 (2) An insurer or authorized representative of the insurer  
497 that terminates the appointment, employment or contract with a  
498 producer for any reason not set forth in Section 11 of this act  
499 shall notify the commissioner within thirty (30) days following  
500 the effective date of the termination using a format prescribed by  
501 the commissioner. Upon written request of the commissioner, the  
502 insurer shall provide additional information, documents, records  
503 or other data pertaining to the termination.

504 (3) The insurer or the authorized representative of the  
505 insurer shall promptly notify the commissioner in a format  
506 acceptable to the commissioner if, upon further review or  
507 investigation, the insurer discovers additional information that  
508 would have been reportable to the commissioner in accordance with  
509 subsection (1) of this section had the insurer then known of its  
510 existence.

511 (4) (a) Within fifteen (15) days after making the  
512 notification required by subsections (1), (2) and (3) of this  
513 section, the insurer shall mail a copy of the notification to the  
514 producer at his or her last known address. If the producer is  
515 terminated for cause for any of the reasons listed in Section 11  
516 of this section, the insurer shall provide a copy of the  
517 notification to the producer at his or her last known address by  
518 certified mail, return receipt requested, postage prepaid or by  
519 overnight delivery using a nationally recognized carrier.

520 (b) Within thirty (30) days after the producer has  
521 received the original or additional notification, the producer may  
522 file written comments concerning the substance of the notification  
523 with the commissioner. The producer shall, by the same means,  
524 simultaneously send a copy of the comments to the reporting



525 insurer, and the comments shall become a part of the  
526 commissioner's file and accompany every copy of a report  
527 distributed or disclosed for any reason about the producer as  
528 permitted under subsection (6) of this section.

529       (5) (a) In the absence of actual malice, an insurer, the  
530 authorized representative of the insurer, a producer, the  
531 commissioner or an organization of which the commissioner is a  
532 member and that compiles the information and makes it available to  
533 other commissioners or regulatory or law enforcement agencies  
534 shall not be subject to civil liability, and a civil cause of  
535 action of any nature shall not arise against these entities or  
536 their respective agents or employees, as a result of any statement  
537 or information required by or provided under this section or any  
538 information relating to any statement that may be requested in  
539 writing by the commissioner from an insurer or producer or a  
540 statement by a terminating insurer or producer to an insurer or  
541 producer limited solely and exclusively to whether a termination  
542 for cause under subsection (1) of this section was reported to the  
543 commissioner if the propriety of any termination for cause under  
544 subsection (1) of this section is certified in writing by an  
545 officer or authorized representative of the insurer or producer  
546 terminating the relationship.

547       (b) In any action brought against a person that may  
548 have immunity under paragraph (a) of this subsection for making  
549 any statement required by this section or providing any  
550 information relating to any statement that may be requested by the  
551 commissioner, the party bringing the action shall plead  
552 specifically in any allegation that paragraph (a) of this  
553 subsection does not apply because the person making the statement  
554 or providing the information did so with actual malice.

555       (c) Paragraph (a) or (b) of this subsection shall not  
556 abrogate or modify any existing statutory or common law privileges  
557 or immunities.

558           (6) (a) Any documents, materials or other information in  
559 the control or possession of the department of insurance that is  
560 furnished by an insurer, producer or an employee or agent thereof  
561 acting on behalf of the insurer or producer or obtained by the  
562 commissioner in an investigation under this section shall be  
563 confidential by law and privileged, shall not be subject to the  
564 Public Records Act, shall not be subject to subpoena and shall not  
565 be subject to discovery or admissible in evidence in any private  
566 civil action. However, the commissioner is authorized to use the  
567 documents, materials or other information in the furtherance of  
568 any regulatory or legal action brought as a part of the  
569 commissioner's duties.

570           (b) Neither the commissioner nor any person who  
571 received documents, materials or other information while acting  
572 under the authority of the commissioner shall be permitted or  
573 required to testify in any private civil action concerning any  
574 confidential documents, materials or information subject to  
575 paragraph (a) of this subsection.

576           (c) In order to assist in the performance of the  
577 commissioner's duties under this act, the commissioner:

578           (i) May share documents, materials or other  
579 information, including the confidential and privileged documents,  
580 materials or information subject to paragraph (a) of this  
581 subsection, with other state, federal and international regulatory  
582 agencies, with the National Association of Insurance  
583 Commissioners, its affiliates or subsidiaries and with state,  
584 federal and international law enforcement authorities, if the  
585 recipient agrees to maintain the confidentiality and privileged  
586 status of the document, material or other information;

587           (ii) May receive documents, materials or  
588 information, including otherwise confidential and privileged  
589 documents, materials or information, from the National Association  
590 of Insurance Commissioners, its affiliates or subsidiaries and

591 from regulatory and law enforcement officials of other foreign or  
592 domestic jurisdictions and shall maintain as confidential or  
593 privileged any document, material or information received with  
594 notice or the understanding that it is confidential or privileged  
595 under the laws of the jurisdiction that is the source of the  
596 document, material or information; and

597 (iii) May enter into agreements governing sharing  
598 and use of information consistent with this subsection.

599 (d) No waiver of any applicable privilege or claim of  
600 confidentiality in the documents, materials or information shall  
601 occur as a result of disclosure to the commissioner under this  
602 section or as a result of sharing as authorized in paragraph (c)  
603 of this subsection.

604 (e) Nothing in this act shall prohibit the commissioner  
605 from releasing final, adjudicated actions including for cause  
606 terminations that are open to public inspection pursuant to the  
607 Public Records Act to a database or other clearinghouse service  
608 maintained by the National Association of Insurance Commissioners,  
609 its affiliates or subsidiaries of the National Association of  
610 Insurance Commissioners.

611 (7) An insurer, the authorized representative of the insurer  
612 or producer that fails to report as required under the provisions  
613 of this section or that is found to have reported with actual  
614 malice by a court of competent jurisdiction may, after notice and  
615 hearing, have its license or certificate of authority suspended or  
616 revoked and may be fined in accordance with all applicable  
617 statutes.

618 SECTION 15. (1) The commissioner shall waive any  
619 requirements for a nonresident license applicant with a valid  
620 license from his or her home state, except the requirements  
621 imposed by Section 8 of this act, if the applicant's home state  
622 awards nonresident licenses to residents of this state on the same  
623 basis.

624 (2) A nonresident producer's satisfaction of his or her home  
625 state's continuing education requirements for licensed insurance  
626 producers shall constitute satisfaction of this state's continuing  
627 education requirements if the nonresident producer's home state  
628 recognizes the satisfaction of its continuing education  
629 requirements imposed upon producers from this state on the same  
630 basis.

631 SECTION 16. (1) A producer shall report to the commissioner  
632 any administrative action taken against the producer in another  
633 jurisdiction or by another governmental agency in this state  
634 within thirty (30) days of the final disposition of the matter.  
635 This report shall include a copy of the order, consent to order or  
636 other relevant legal documents.

637 (2) Within thirty (30) days of the initial pretrial hearing  
638 date, a producer shall report to the commissioner any criminal  
639 prosecution of the producer taken in any jurisdiction. The report  
640 shall include a copy of the initial complaint filed, the order  
641 resulting from the hearing and any other relevant legal documents.

642 SECTION 17. The commissioner may, in accordance with Section  
643 25-43-1 et seq., promulgate reasonable regulations as are  
644 necessary or proper to carry out the purposes of this act.

645 SECTION 18. If any provisions of this act, or the  
646 application of a provision to any person or circumstances, shall  
647 be held invalid, the remainder of the act, and the application of  
648 the provision to persons or circumstances other than those to  
649 which it is held invalid, shall not be affected.

650 SECTION 19. Section 83-17-1, Mississippi Code of 1972, is  
651 amended as follows:

652 83-17-1. Every person, including those required to be  
653 licensed as a producer, who solicits insurance on behalf of any  
654 insurance company, or who takes or transmits, other than for  
655 himself, an application for insurance or a policy of insurance, or  
656 who advertises or otherwise gives notice that he will receive or

657 transmit the same, or who shall receive or deliver a policy of  
658 insurance of any such company, or who shall examine or inspect any  
659 risk, or receive, collect, or transmit any premium of insurance,  
660 or make or forward a diagram of any building, or do or perform any  
661 other act or thing in the making or consummation of any contract  
662 of insurance for or with any such insurance company, other than  
663 for himself, or who shall examine into or adjust or aid in  
664 adjusting any loss for or on behalf of any such insurance company,  
665 whether any of such acts shall be done at the instance or request  
666 or by the employment of the insurance company, or of or by any  
667 broker or other person, shall be held to be the agent of the  
668 company for which the act is done or the risk is taken as to all  
669 the duties and liabilities imposed by law, whatever conditions or  
670 stipulations may be contained in the policy or contract. The term  
671 "agent" shall also include all creditors whose officers, employees  
672 or legal representatives are authorized to act in any manner,  
673 directly or indirectly, in the solicitation of, negotiation for,  
674 or procurement or making of a contract of property insurance,  
675 under a small loan property insurance license, where such  
676 insurance coverage is written on collateral in which the creditor  
677 has an insurable interest. As used herein, the term "credit  
678 property insurance" means insurance on personal property or  
679 household goods pursuant to or in connection with a specific loan  
680 or other credit transactions, including lease payments and  
681 residual, which protects the lender or the borrower from damage or  
682 destruction to such personal property or household goods pledged  
683 as collateral for the loan. Such person knowingly procuring, by  
684 fraudulent representations, payment or the obligation for the  
685 payment of a premium of insurance shall be punished by a fine of  
686 not less than One Hundred Dollars (\$100.00) nor more than Five  
687 Hundred Dollars (\$500.00), or be imprisoned for not more than one  
688 (1) year.

689 SECTION 20. Section 83-17-101, Mississippi Code of 1972, is  
690 amended as follows:

691 83-17-101. Whenever used in this article, certain terms  
692 shall be defined as follows:

693 (a) The term "agent" shall include all individuals,  
694 partnerships, \* \* \* corporations, and all those required to be  
695 licensed as producers who act in any manner, directly or  
696 indirectly, as such in the solicitation of, negotiation for, or  
697 procurement or making of a contract of life, health or accident  
698 insurance, or making of an annuity contract, and includes hospital  
699 service association agents; except that the term "agent" shall not  
700 include any regular salaried officer or employee of a licensed  
701 insurer or of a licensed insurance agent who does not solicit or  
702 accept from the public applications for any such contract. A  
703 regular salaried officer or employee of an insurer authorized to  
704 do business in this state shall not be deemed to be an "agent" by  
705 reason of rendering assistance to or on behalf of a licensed  
706 insurance agent, provided that such salaried officer or employee  
707 devotes substantially all of his time to activities other than the  
708 solicitation of applications for life, health or accident  
709 insurance or annuity contracts and receives no commission or other  
710 compensation directly dependent upon the amount of business  
711 obtained. The possessor of an insurable interest in any risk or  
712 subject of insurance shall not be deemed an agent by reason of  
713 procuring or maintaining, or agreeing to procure or maintain,  
714 insurance extending to such interests, together with the interest  
715 or interests of others in such risk or subject of insurance,  
716 however the cost may be borne.

717 (b) The term "inactive agent" shall mean an individual  
718 who is retired, disabled or has not obtained from the Commissioner  
719 of Insurance a current continuous certificate. An inactive agent  
720 shall not solicit new business or service existing business, but  
721 may receive renewal commissions.

722           (c) The term "supervising general agent" as used in  
723 this article refers to and includes any person, partnership,  
724 association or corporation, having authority to serve as trustees,  
725 managers or administrators, except attorneys at law, for such  
726 licensed insurance companies or their insureds in the handling of  
727 insurance programs underwritten by such licensed insurance  
728 companies, or in which they may be participating.

729           (d) The term "insurance contract" shall mean any  
730 contract or policy affecting life, health or accident insurance or  
731 any annuity contract on behalf of any company or insurer engaged  
732 in the business of writing life, health or accident insurance or  
733 annuity contracts.

734           (e) The term "excess risk" shall mean all or any  
735 portion of a life, health or accident insurance risk or contract  
736 of annuity for which application is made to an agent and which  
737 exceeds the amount of insurance or annuity which will be provided  
738 by the insurer for which such agent is licensed.

739           (f) The term "rejected risk" shall mean a life, health  
740 or accident insurance risk or annuity contract for which  
741 application has been made to an agent and which insurance or  
742 annuity contract is declined by the insurer for which such agent  
743 is licensed.

744           (g) The term "commissioner" shall mean the Commissioner  
745 of Insurance of the State of Mississippi.

746           (h) The terms "company" and "insurer" shall mean a  
747 corporation, association, hospital and/or medical service  
748 association, exchange, order or society writing life, health and  
749 accident and/or hospital insurance or annuity contracts, but shall  
750 not include fraternal societies as defined in Section 83-29-1.

751           (i) The term "person" shall mean any individual,  
752 partnership or corporation incorporated pursuant to Sections  
753 79-10-1 through 79-10-117, being the Mississippi Professional  
754 Corporation Act, and Sections 79-29-901 through 79-29-933, being

755 the Mississippi Limited Liability Company Act, except as otherwise  
756 limited by Section 83-17-105.

757 SECTION 21. Section 83-17-203, Mississippi Code of 1972, is  
758 amended as follows:

759 83-17-203. The terms "agent" and "solicitor" as used in this  
760 article refer to and include all persons, residents of this state,  
761 and all those required to be licensed as producers engaged in any  
762 of the activities enumerated in Section 83-17-201, but do not  
763 include (1) persons employed by insurance agents or agencies or  
764 companies solely for the performance of clerical, stenographic,  
765 and similar office duties; or (2) the supervising general, state,  
766 special agents or others similarly employed by a supervising  
767 general agent or insurance company or carrier, neither of whom  
768 shall be eligible to apply for or secure a certificate of  
769 authority or license as a resident countersigning agent as defined  
770 herein or in other provisions of the insurance laws of this state;  
771 and said "supervising general, state, special agents" as used in  
772 this article refer to and include all persons, firms,  
773 partnerships, and corporations having authority to appoint or  
774 supervise resident local agents in this state on behalf of  
775 insurance companies; but nothing contained in this subsection (2)  
776 shall prohibit the licensing as an agent of a person appointed to  
777 act as agent for a company operating through agents who represent  
778 only one (1) company or group of companies under the same control  
779 or management; or (3) the attorney-in-fact or the traveling  
780 salaried representative of a reciprocal insurance exchange; the  
781 term "attorney-in-fact" or the "traveling salaried representative"  
782 as used in this article refers to and includes all persons, not  
783 otherwise licensed under the provisions of this article, who  
784 represent or are employed by any underwriter, association, or  
785 reciprocal insurance exchange writing policies in Mississippi  
786 other than through resident agents, who in any manner solicit  
787 business on behalf of such underwriters, associations, or



788 reciprocal insurance exchanges. It is expressly provided,  
789 however, that this section shall not prevent the licensing of any  
790 person now licensed as an agent who would, but for the provisions  
791 of subsection (2) hereof be eligible for such license; provided  
792 further, a local agent operating as a general agent may be  
793 licensed in such dual capacity so long as the general agency is  
794 operated in connection with a local agency, or where the owners or  
795 majority of the stockholders have a substantial interest in such  
796 local and general agency.

797 The term "inactive agent" shall mean an individual who is  
798 retired, disabled or has not obtained from the Commissioner of  
799 Insurance a current continuous certificate. An inactive agent  
800 shall not solicit new business or service existing business, but  
801 may receive renewal commissions.

802 The term "insurance solicitor" as used in this article refers  
803 to and includes any person, a resident of this state, directly  
804 connected with and principally employed by and authorized by an  
805 insurance agent to solicit and negotiate or assist in any manner  
806 in the sale and issuance of policies or contracts of insurance  
807 solely on behalf of such agents; and no license shall be renewed  
808 for any solicitor unless it is conclusively shown that more than  
809 fifty percent (50%) of his total annual employment income for the  
810 preceding year is derived from commissions on insurance; and for  
811 the purposes of this article, life, accident and health insurance  
812 commissions shall be included in calculating said fifty percent  
813 (50%). The agent appointing such solicitor shall be responsible  
814 for the acts of the solicitor. Any violation of the insurance  
815 laws by the solicitor may be grounds for revocation of license of  
816 both the agent and the solicitor after proper hearing. The  
817 commission of any unlawful act by the solicitor shall be prima  
818 facie evidence that the agent had knowledge of such act.

819 The term "insurance agent" as used in this article refers to  
820 and includes all insurance agents not thus employed as "insurance

821 solicitors." No license or renewal license as a resident local  
822 agent shall be granted to any person to act as said agent who is  
823 not actively engaged therein by soliciting and servicing the  
824 insurance-buying public as an agent individually, or as a bona  
825 fide employee of an agent or agency; and no renewal license shall  
826 be issued to any agent until it is conclusively shown by filing an  
827 affidavit with the Commissioner of Insurance or otherwise that not  
828 more than thirty-five per cent (35%) of the aggregate amount of  
829 commissions of the said agent was derived from "controlled  
830 business" as referred to and defined hereinafter.

831 The terms "insurance company" and "insurance carrier" as used  
832 in this article refer to and include all stock, mutual,  
833 reciprocal, and other types of insurance companies, carriers,  
834 associations, or exchanges writing the type or types of insurance  
835 to which this article applies.

836 SECTION 22. Section 83-17-205, Mississippi Code of 1972, is  
837 amended as follows:

838 83-17-205. (1) Before the issuance of a license or  
839 certificate of authority under the provisions of this article, the  
840 applicant, who shall be a natural person, resident of this state,  
841 at least eighteen (18) years of age, and the company or companies  
842 which the applicant proposes to represent shall file with the  
843 commissioner evidence in such form as the commissioner shall have  
844 prescribed, showing that the applicant is qualified, fit and  
845 trustworthy to act as an agent and to solicit the kind or kinds of  
846 insurance for which a license is requested; and the applicant  
847 shall submit evidence in such form as may be required by the  
848 commissioner of his intent to act in good faith as an agent and  
849 that he is not seeking a license for the purpose of acquiring or  
850 saving commissions, premiums or other valuable considerations on  
851 policies of insurance to be issued to himself or to his relatives,  
852 business associates, employers or employees, or in which they or  
853 either of them have an interest. In the event the applicant has

854 not been previously licensed within the last two (2) years as an  
855 agent for the kind or kinds of insurance for which a license is  
856 requested, the commissioner shall, as a test of the applicant's  
857 knowledge and other qualifications provided for herein, require  
858 that the applicant submit to a written examination approved by the  
859 commissioner which shall cover the type of license desired,  
860 whether the same be a general license to apply to all lines or a  
861 limited license applicable to grouping by type, types or kinds as  
862 set out hereinafter. Any license issued under this article shall  
863 state the kind or kinds of insurance which the agent is authorized  
864 to write.

865 (2) In addition to requirements set out in subsection (1) of  
866 this section, the commissioner shall require such company  
867 requesting appointment of the applicant as agent for the first  
868 time to furnish a certificate to the commissioner, verified by an  
869 executive officer or managing general or special agent of such  
870 company, that the company has duly investigated the character and  
871 record of such person and has satisfied itself that such person is  
872 of good moral character and is qualified, fit and trustworthy to  
873 act as its agent. The Commissioner of Insurance may at any time  
874 require any company to obtain a credit report on an agent if the  
875 commissioner deems such request advisable.

876 Should such credit report reflect information regarding an  
877 offense or violation in relation to which the Department of  
878 Insurance has taken action, such information shall not render  
879 applicant ineligible for license if applicant has complied with  
880 the order of the commissioner regarding such offense.

881 (3) No license shall be issued to any applicant nor shall  
882 the Commissioner of Insurance issue a renewal of any license as  
883 agent or solicitor until the new or renewal applicant shall file  
884 an affidavit with the Commissioner of Insurance that the applicant  
885 shall in good faith engage in the insurance business as agent or  
886 solicitor, and that he is not seeking a license for the purpose of

887 acquiring or saving commissions, premiums or other valuable  
888 considerations on "controlled business"; that is, on policies of  
889 insurance to be issued to himself or to his relatives, business  
890 associates, employers or employees, or in which they or either of  
891 them have an interest. The title retained in connection with  
892 conditional sales or title retention contracts shall not be  
893 construed to constitute "an interest" in the seller within the  
894 meaning of this article. A violation of this provision of this  
895 section shall be deemed to be probable if the commissioner finds  
896 that during any twelve-month period aggregate commissions or other  
897 compensations accruing in favor of the applicant based upon the  
898 insurance procured or to be procured by or through the applicant  
899 with respect to his own interests or those of his family,  
900 relatives, employers, employees or business associates, as  
901 provided herein, have exceeded or will exceed thirty-five percent  
902 (35%) of the aggregate amount of commissions or compensations  
903 accruing to him as agent or his agency during such period of time.

904       Nothing herein contained shall prohibit the licensing under a  
905 limited license as to motor vehicle physical damage insurance, any  
906 person employed by or associated with a motor vehicle sales agency  
907 with respect to insurance on a motor vehicle sold, serviced or  
908 financed by it. Whenever employment is terminated of any such  
909 person employed by or associated with any such agency, the  
910 Commissioner of Insurance shall be notified, and the license shall  
911 be cancelled immediately.

912       It is further provided that the provisions of this section  
913 likewise shall not apply with respect to the interest of a real  
914 estate mortgagee in or as to insurance covering such interest or  
915 in the real estate subject to such mortgage.

916       (4) Each application or filing made under this section shall  
917 include the social security number(s) of the applicant in  
918 accordance with Section 93-11-64, Mississippi Code of 1972.

919 SECTION 23. This act shall take effect and be in force from  
920 and after January 1, 2002.