

By: Representative Simpson

To: Insurance

HOUSE BILL NO. 1212

1 AN ACT TO REENACT SECTIONS 83-35-1 THROUGH 83-35-31,
 2 MISSISSIPPI CODE OF 1972, WHICH SET FORTH THE POWERS AND DUTIES OF
 3 THE MISSISSIPPI INSURANCE UNDERWRITING ASSOCIATION AND WHICH WERE
 4 REPEALED IN 1988 BY OPERATION OF LAW, TO ASSURE AN ADEQUATE MARKET
 5 FOR FIRE AND EXTENDED COVERAGE INSURANCE IN THE COASTAL AREA OF
 6 MISSISSIPPI; TO REPEAL, ON JULY 1, 2004, SECTIONS 83-34-1 THROUGH
 7 83-34-29, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE
 8 MISSISSIPPI WINDSTORM UNDERWRITING ASSOCIATION; AND FOR RELATED
 9 PURPOSES.

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

11 **SECTION 1.** Section 83-35-1, Mississippi Code of 1972, is
 12 reenacted as follows:

13 83-35-1. It is hereby declared by the Legislature of the
 14 State of Mississippi that an adequate market for fire and extended
 15 coverage insurance is necessary to the economic welfare of the
 16 State of Mississippi and that without such insurance the orderly
 17 growth and development of the State of Mississippi would be
 18 severely impeded; that furthermore, adequate insurance upon
 19 property in the coastal area is necessary; and that while the need
 20 for such insurance is increasing, the market for such insurance is
 21 not adequate and is likely to become less adequate in the future.
 22 It is the purpose of this chapter to provide a mandatory program
 23 to assure an adequate market for fire and extended coverage
 24 insurance in the coastal area of Mississippi.

25 **SECTION 2.** Section 83-35-3, Mississippi Code of 1972, is
 26 reenacted as follows:

27 83-35-3. In this chapter, unless the context otherwise
 28 requires:

29 (a) "Essential property insurance" means insurance
 30 against direct loss to property as defined and limited in the



31 standard fire policy and extended coverage endorsement thereon, as
32 approved by the Mississippi Insurance Commissioner.

33 (b) "Association" means the Mississippi Insurance
34 Underwriting Association established pursuant to the provisions of
35 this chapter.

36 (c) "Plan of operation" means the plan of operation of
37 the association approved or promulgated by the Mississippi
38 Insurance Commissioner pursuant to the provisions of this chapter.

39 (d) "Insurance property" means builder's risk and real
40 property at fixed locations in coastal areas or the contents
41 located therein, but shall not include insurance on motor
42 vehicles, which property is determined by the association after
43 inspection and pursuant to the criteria specified in the plan of
44 operation, to be in an insurable condition; provided, however, any
45 one- and two-family dwellings built in substantial accordance with
46 the local building code, including the design-wind requirements,
47 which is not otherwise rendered uninsurable by reason of use,
48 occupancy or state of repair, shall be an insurable risk within
49 the meaning of this chapter, but neighborhood, area, location,
50 environmental hazards beyond the control of the applicant or owner
51 of the property shall not be considered in determining insurable
52 condition. Provided, further, that any structure commenced on or
53 after June 1, 1970, not built in substantial compliance with the
54 local residential building code or the local building code,
55 including the design-wind requirements therein, shall not be an
56 insurable risk under the terms of this chapter. The owner or
57 applicant shall furnish with the application proof in the form of
58 a certificate from a local building inspector, contractor,
59 engineer or architect that the structure is build in substantial
60 accordance with the local building code.

61 (e) "Commissioner" means the Mississippi Insurance
62 Commissioner.



63 (f) "Coastal area" means all of that area of the State
64 of Mississippi designated as "coastal area" in the "plan of
65 operation" and approved by the commissioner.

66 (g) "Net direct premiums" means gross direct premiums,
67 excluding reinsurance assumed and ceded, written on property in
68 this state for fire and extended coverage insurance, including the
69 fire and extended coverage components of comprehensive dwelling
70 policy and commercial multiple peril package policies, less return
71 premiums upon canceled contracts, dividends paid or credited to
72 policyholders or the unused or unabsorbed portion of premium
73 deposits, and further excluding premiums on farm property.

74 **SECTION 3.** Section 83-35-5, Mississippi Code of 1972, is
75 reenacted as follows:

76 83-35-5. There is hereby created the Mississippi Insurance
77 Underwriting Association, consisting of all insurers authorized to
78 write and engage in writing property insurance within this state
79 on a direct basis. Every such insurer shall be a member of the
80 association and shall remain a member of the association so long
81 as the association is in existence, as a condition of its
82 authority, to continue to transact the business of insurance in
83 this state.

84 **SECTION 4.** Section 83-35-7, Mississippi Code of 1972, is
85 reenacted as follows:

86 83-35-7. The association shall, pursuant to the provisions
87 of this chapter and the plan of operation, and with respect to
88 essential property insurance on insurable property, have the power
89 on behalf of its members:

90 (a) To cause to be issued policies of insurance to
91 applicants;

92 (b) To assume reinsurance from its members;

93 (c) To cede reinsurance to its members and to purchase
94 reinsurance in behalf of its members.



95 **SECTION 5.** Section 83-35-9, Mississippi Code of 1972, is
96 reenacted as follows:

97 83-35-9. The Insurance Commissioner shall appoint a
98 temporary board of directors of this association, which shall
99 consist of five (5) representatives of member of the association.
100 Such temporary board of directors shall prepare and submit a plan
101 of operation in accordance with Section 83-35-13, and shall serve
102 until the permanent board of directors shall take office in
103 accordance with the plan of operation. The permanent board shall
104 include at least two (2), but not more than three (3), agents who
105 shall have a voice but no vote.

106 **SECTION 6.** Section 83-35-11, Mississippi Code of 1972, is
107 reenacted as follows:

108 83-35-11. All member of the association shall participate in
109 its writings, expenses, profits and losses in the proportion that
110 the net direct premium of such member written in this state during
111 the preceding calendar year bears to the aggregate net direct
112 premiums written in this state by all members of the association,
113 as certified to the association by the commissioner after review
114 of annual statements, other reports and any other statistics the
115 commissioner shall deem necessary to provide the information
116 herein required and which the commissioner is hereby authorized
117 and empowered to obtain from any member of the association. A
118 member shall annually receive credit for essential property
119 insurance voluntarily written in the coastal area and its
120 participation in the writings in the association shall be reduced
121 in accordance with the provisions of the plan of operation. Each
122 member's participation in the association shall be determined
123 annually in the same manner as the initial determination. Any
124 insurer authorized to write and engage in writing any insurance,
125 the writing of which requires such insurer to be a member of the
126 association pursuant to the provisions of Section 83-35-5, who is
127 authorized and engaged in writing such insurance after passage of



128 this act, shall become a member of the association on the January
129 1 immediately following such authorization, and the determination
130 of such insurer's participation in the association shall be made
131 as of the date of such membership in the same manner as for all
132 other members of the association.

133 **SECTION 7.** Section 83-35-13, Mississippi Code of 1972, is
134 reenacted as follows:

135 83-35-13. Within thirty (30) days after passage of this act,
136 the directors of the association shall submit to the commission
137 for review and approval a proposed plan of operation. Such
138 proposed plan shall set forth the number, qualifications, terms of
139 office and manner of election of the members of the board of
140 directors, shall grant proper credit annually to each member of
141 the association for essential property insurance voluntarily
142 written in the coastal area and shall provide for the efficient,
143 economical, fair and nondiscriminatory administration of the
144 association. Such proposed plan may include a preliminary
145 assessment of all members for initial expenses necessary to the
146 commencement of operation, the establishment of necessary
147 facilities, management of the association, plan for the assessment
148 of members to defray losses and expenses, underwriting standards,
149 procedures for the acceptance and cession of reinsurance,
150 procedures for determining the amounts of insurance to be provide
151 to specific risks, time limits and procedures for processing
152 applications for insurance, and for such other provisions as may
153 be deemed necessary by the commissioner to carry out the purposes
154 of this chapter.

155 The proposed plan shall be reviewed by the commissioner and
156 approved if he finds that such plan fulfills the purposes provided
157 by Section 83-35-1. In the review of the proposed plan the
158 commissioner may, in his discretion, consult with the directors of
159 the association and may seek any further information which he
160 deems necessary for a decision. If the commissioner approves the



161 proposed plan, he shall certify the approval to the directors, and
162 the plan shall become effective ten (10) days after certification.
163 If the commissioner disapproves all or any part of the proposed
164 plan of operation, he shall return the same to the directors with
165 his written statement for the reasons for disapproval and any
166 recommendations he may wish to make. The directors may alter the
167 plan in accordance with the commissioner's recommendation or may,
168 within thirty (30) days from the date of disapproval, return a new
169 plan to the commissioner. Should the directors fail to submit a
170 proposed plan of operation within ninety (90) days of passage of
171 this act, or a new plan which is acceptable to the commissioner,
172 or accept the recommendation of the commissioner within thirty
173 (30) days after disapproval of the plan, the commissioner shall
174 promulgate and place into effect a plan of operation certifying
175 the same to the directors of the association. Any such plan
176 promulgated by the commissioner shall take effect ten (10) days
177 after certification to the directors.

178 The directors of the association may, subject to the approval
179 of the commissioner, amend the plan of operation at any time. The
180 commissioner may review the plan of operation at any time he deems
181 expedient or prudent, but not less than once in each calendar
182 year. After review of such plan, the commissioner may amend the
183 plan after consultation with the directors of the association and
184 upon certification to the directors of such amendment.

185 **SECTION 8.** Section 83-13-15, Mississippi Code of 1972, is
186 reenacted as follows:

187 83-13-15. (1) Any person or school having an insurable
188 interest in insurable property may, on or after the effective date
189 of the plan of operation, be entitled to apply to the association
190 for such coverage and for an inspection of the property. Such
191 application may be made on behalf of the applicant by a licensed
192 broker or agent authorized by him. Every such application shall
193 be submitted on forms prescribed by the association after



194 consultation with the commissioner, which application shall
195 contain statement as to whether or not there are any unpaid
196 premiums due from the applicant for fire insurance on the
197 property.

198 The commissions paid to the submitting broker or agent shall
199 not be less than eighty percent (80%) of the commission rates
200 which would otherwise have been payable on like kinds of policies
201 written under ordinary underwriting procedures.

202 The term "insurable interest" as used in this subsection
203 shall be deemed to include any lawful and substantial economic
204 interest in the safety or preservation of property from loss,
205 destruction or pecuniary damage.

206 (2) If the association determines that the property is
207 insurable and that there is no unpaid premium due from the
208 applicant for prior insurance on the property, the association,
209 upon receipt of the premium or such portion thereof as is
210 prescribed in the plan of operation, shall cause to be issued a
211 policy of essential property insurance for a term of one (1) year.
212 Any policy issued pursuant to the provisions of this section shall
213 be renewed annually, upon application therefor, so long as the
214 property meets the definition of "insurance property" set forth in
215 Section 83-35-3(d).

216 (3) If the association for any reason denies an application
217 and refuses to cause to be issued an insurance policy on insurable
218 property to any applicant, or takes no action on an application
219 within the time prescribed in the plan of operation, such
220 applicant may appeal to the commissioner and the commissioner or a
221 member of his staff designed by him, after reviewing the facts,
222 may direct the association to issue or cause to be issued an
223 insurance policy to the applicant. In carrying out his duties
224 pursuant to this section, the commissioner may request, and the
225 association shall provide, any information the commissioner deems



226 necessary to a determination concerning the reasons for the denial
227 or delay of the application.

228 **SECTION 9.** Section 83-35-17, Mississippi Code of 1972, is
229 reenacted as follows:

230 83-35-17. Any member of the association may cede to the
231 association essential property insurance written on insurable
232 property to the extent, if any, and on the terms and conditions
233 set forth in the plan of operation.

234 **SECTION 10.** Section 83-35-19, Mississippi Code of 1972, is
235 reenacted as follows:

236 83-35-19. The rates, rating plans and rating rules
237 applicable to the insurance written by the association shall be
238 those approved for use of the association by the commissioner.
239 Surcharges may be used as approved by the commissioner; provided,
240 however, the surcharges may only be used in the area covered under
241 the plan of operation prior to January 1, 1971. Rates shall be
242 nondiscriminatory as to the same class of risk.

243 **SECTION 11.** Section 83-35-21, Mississippi Code of 1972, is
244 reenacted as follows:

245 83-35-21. Any person insured pursuant to this chapter, or
246 his representative, or any affected insurer who may be aggrieved
247 by an act, ruling or decision of the association may, within
248 thirty (30) days after such ruling, appeal to the commissioner.
249 Any hearings held by the commissioner pursuant to such an appeal
250 shall be in accordance with the procedure set forth in the
251 insurance laws of Mississippi. The commissioner is authorized to
252 appoint a member of his staff for the purpose of hearing such
253 appeals, and a ruling based upon such hearing shall have the same
254 effect as if heard by the commissioner. All persons or insureds
255 aggrieved by any order or decision of the commissioner may appeal
256 as is provided by the insurance laws of the State of Mississippi.

257 **SECTION 12.** Section 83-35-23, Mississippi Code of 1972, is
258 reenacted as follows:



259 83-35-23. All reports of inspection performed by or on
260 behalf of the association shall be made available to the members
261 of the association, applicants, agent, broker and the
262 commissioner.

263 **SECTION 13.** Section 83-35-25, Mississippi Code of 1972, is
264 reenacted as follows:

265 83-35-25. There shall be no liability on the part of and no
266 cause of action of any nature shall arise against the Insurance
267 Commissioner or any of his staff, the association or its agents or
268 employees, or against any participating insurer for any
269 inspections made hereunder or any statements made in good faith by
270 them in any reports or communications concerning risks submitted
271 to the association, or at any administrative hearings conducted in
272 connection therewith under the provisions of this chapter.

273 **SECTION 14.** Section 83-35-27, Mississippi Code of 1972, is
274 reenacted as follows:

275 83-35-27. The association shall file in the office of the
276 commissioner on or before March 1 of each year a statement which
277 shall summarize the transactions, conditions, operations and
278 affairs of the association during the preceding fiscal year ending
279 December 31. Such statement shall contain such matters and
280 information as are prescribed by the commissioner and shall be in
281 such form as is required by him. The commissioner may at any time
282 require the association to furnish to him any additional
283 information with respect to its transactions or any other matter
284 which the commissioner deems to be material to assist him in
285 evaluating the operation and experience of the association.

286 **SECTION 15.** Section 83-35-29, Mississippi Code of 1972, is
287 reenacted as follows:

288 83-35-29. The commissioner may, from time to time, make an
289 examination into the affairs of the association when he deems it
290 to be prudent and, in undertaking such examination, may hold a



291 public hearing. The expenses of such examination shall be borne
292 and paid by the association.

293 **SECTION 16.** Section 83-35-31, Mississippi Code of 1972, is
294 reenacted as follows:

295 83-35-31. The commissioner shall have authority to make
296 reasonable rules and regulations, not inconsistent with law, to
297 enforce, carry out and make effective the provisions of this
298 chapter.

299 **SECTION 17.** Sections 83-34-1, 83-34-3, 83-34-5, 83-34-7,
300 83-34-9, 83-34-11, 83-34-13, 83-34-15, 83-34-17, 83-34-19,
301 83-34-21, 83-34-23, 83-34-25, 83-34-27 and 83-34-29, which create
302 the Mississippi Windstorm Underwriting Association, shall stand
303 repealed from and after July 1, 2004.

304 **SECTION 18.** This act shall take effect and be in force from
305 and after July 1, 2003.

