

By: Senator(s) Hewes

To: Insurance

SENATE BILL NO. 2832

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4 REPEALED IN 1988 BY OPERATION OF LAW, TO ASSURE AN ADEQUATE MARKET  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 SECTIONS 83-34-1 THROUGH 83-34-29,  
7 MISSISSIPPI CODE OF 1972, WHICH CREATE THE MISSISSIPPI WINDSTORM  
8 UNDERWRITING ASSOCIATION AND PRESCRIBE ITS POWERS AND DUTIES; AND  
9 FOR RELATED 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, Mississippi  
302 Code of 1972, which create the Mississippi Windstorm Underwriting  
303 Association and prescribe its powers and duties, shall stand  
304 repealed from and after July 1, 2004.

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

