To: Insurance

MISSISSIPPI LEGISLATURE REGULAR SESSION 2003
By: Senator(s) Hewes

SENATE BILL NO. 2832

AN ACT TO REENACT SECTIONS 83-35-1 THROUGH 83-35-31, MISSISSIPPI CODE OF 1972, WHICH SET FORTH THE POWERS AND DUTIES OF THE MISSISSIPPI INSURANCE UNDERWRITING ASSOCIATION AND WHICH WERE REPEALED IN 1988 BY OPERATION OF LAW, TO ASSURE AN ADEQUATE MARKET FOR FIRE AND EXTENDED COVERAGE INSURANCE IN THE COASTAL AREA OF MISSISSIPPI; TO REPEAL SECTIONS 83-34-1 THROUGH 83-34-29, MISSISSIPPI CODE OF 1972, WHICH CREATE THE MISSISSIPPI WINDSTORM UNDERWRITING ASSOCIATION AND PRESCRIBE ITS POWERS AND DUTIES; AND FOR RELATED PURPOSES.

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

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

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

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

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

(a) "Essential property insurance" means insurance against direct loss to property as defined and limited in the
standard fire policy and extended coverage endorsement thereon, as approved by the Mississippi Insurance Commissioner.

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

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

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

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

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

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

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

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

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

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

(b) To assume reinsurance from its members;

(c) To cede reinsurance to its members and to purchase reinsurance in behalf of its members.
SECTION 5. Section 83-35-9, Mississippi Code of 1972, is reenacted as follows:

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

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

83-35-11. All member of the association shall participate in its writings, expenses, profits and losses in the proportion that the net direct premium of such member written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association, as certified to the association by the commissioner after review of annual statements, other reports and any other statistics the commissioner shall deem necessary to provide the information herein required and which the commissioner is hereby authorized and empowered to obtain from any member of the association. A member shall annually receive credit for essential property insurance voluntarily written in the coastal area and its participation in the writings in the association shall be reduced in accordance with the provisions of the plan of operation. Each member's participation in the association shall be determined annually in the same manner as the initial determination. Any insurer authorized to write and engage in writing any insurance, the writing of which requires such insurer to be a member of the association pursuant to the provisions of Section 83-35-5, who is authorized and engaged in writing such insurance after passage of
this act, shall become a member of the association on the January
1 immediately following such authorization, and the determination
of such insurer's participation in the association shall be made
as of the date of such membership in the same manner as for all
other members of the association.

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

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

The proposed plan shall be reviewed by the commissioner and
approved if he finds that such plan fulfills the purposes provided
by Section 83-35-1. In the review of the proposed plan the
commissioner may, in his discretion, consult with the directors of
the association and may seek any further information which he
deems necessary for a decision. If the commissioner approves the
proposed plan, he shall certify the approval to the directors, and
the plan shall become effective ten (10) days after certification.
If the commissioner disapproves all or any part of the proposed
plan of operation, he shall return the same to the directors with
his written statement for the reasons for disapproval and any
recommendations he may wish to make. The directors may alter the
plan in accordance with the commissioner's recommendation or may,
within thirty (30) days from the date of disapproval, return a new
plan to the commissioner. Should the directors fail to submit a
proposed plan of operation within ninety (90) days of passage of
this act, or a new plan which is acceptable to the commissioner,
or accept the recommendation of the commissioner within thirty
(30) days after disapproval of the plan, the commissioner shall
promulgate and place into effect a plan of operation certifying
the same to the directors of the association. Any such plan
promulgated by the commissioner shall take effect ten (10) days
after certification to the directors.

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

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

83-13-15. (1) Any person or school having an insurable
interest in insurable property may, on or after the effective date
of the plan of operation, be entitled to apply to the association
for such coverage and for an inspection of the property. Such
application may be made on behalf of the applicant by a licensed
broker or agent authorized by him. Every such application shall
be submitted on forms prescribed by the association after
consultation with the commissioner, which application shall
contain statement as to whether or not there are any unpaid
premiums due from the applicant for fire insurance on the
property.

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

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

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

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

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

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

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

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

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

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

SECTION 12. Section 83-35-23, Mississippi Code of 1972, is
reenacted as follows:
83-35-23. All reports of inspection performed by or on behalf of the association shall be made available to the members of the association, applicants, agent, broker and the commissioner.

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

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

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

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

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

83-35-29. The commissioner may, from time to time, make an examination into the affairs of the association when he deems it to be prudent and, in undertaking such examination, may hold a
public hearing. The expenses of such examination shall be borne
and paid by the association.

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

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

SECTION 17. Sections 83-34-1, 83-34-3, 83-34-5, 83-34-7,
83-34-9, 83-34-11, 83-34-13, 83-34-15, 83-34-17, 83-34-19,
83-34-21, 83-34-23, 83-34-25, 83-34-27 and 83-34-29, Mississippi
Code of 1972, which create the Mississippi Windstorm Underwriting
Association and prescribe its powers and duties, shall stand
repealed from and after July 1, 2004.

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