

By: Senator(s) Kirby

To: Insurance

SENATE BILL NO. 2353

1 AN ACT TO AMEND SECTION 83-23-105, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE THAT THE MISSISSIPPI INSURANCE GUARANTY ASSOCIATION LAW
 3 SHALL NOT APPLY TO SELF-INSURANCE COVERAGES; TO AMEND SECTION
 4 83-23-109, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF
 5 THE TERM "COVERED CLAIM"; TO AMEND SECTION 83-23-115, MISSISSIPPI
 6 CODE OF 1972, TO REVISE THE POWERS AND DUTIES OF THE ASSOCIATION;
 7 TO AMEND SECTION 83-23-121, MISSISSIPPI CODE OF 1972, TO PROVIDE
 8 THAT ALL RECOVERIES BY THE ASSOCIATION SHALL NOT BE PROPERTY OF
 9 THE LIQUIDATOR OF THE INSOLVENT CARRIER'S ESTATE BUT THE PROPERTY
 10 OF THE ASSOCIATION FOR ITS USE IN PAYING ITS OBLIGATION ON BEHALF
 11 OF THE INSOLVENT INSURER; TO AMEND SECTION 83-23-123, MISSISSIPPI
 12 CODE OF 1972, TO REVISE THE PROVISION PROHIBITING NONDUPLICATION
 13 OF RECOVERY; TO AMEND SECTION 83-23-135, MISSISSIPPI CODE OF 1972,
 14 TO PROVIDE THAT THE STATE OF PROCEEDINGS IN WHICH THE INSOLVENT
 15 INSURER IS A PARTY IS AUTOMATIC AND MANDATORY AND MAY NOT BE
 16 WAIVED BY ANY PARTIES; TO AMEND SECTION 83-23-137, MISSISSIPPI
 17 CODE OF 1972, TO ALLOW THE COMMISSIONER OF INSURANCE TO INITIATE
 18 PROCEEDINGS TO REQUIRE THE FILING OF A PLAN FOR DISBURSAL OF
 19 ASSETS OF AN INSOLVENT INSURER WHENEVER THE RECEIVER, LIQUIDATOR
 20 OR SUCCESSOR FAILS TO FILE THE PLAN WITHIN 120 DAYS; TO CREATE A
 21 NEW SECTION 83-23-139, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
 22 POLICYHOLDER COLLATERAL, DEDUCTIBLE REIMBURSEMENTS AND OTHER
 23 POLICYHOLDER OBLIGATIONS; AND FOR RELATED PURPOSES.

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

25 **SECTION 1.** Section 83-23-105, Mississippi Code of 1972, is
 26 amended as follows:

27 83-23-105. This article shall apply to all kinds of direct
 28 insurance except the following:

- 29 (a) Life, annuity, health or disability insurance;
- 30 (b) Mortgage guaranty, financial guaranty or other
 31 forms of insurance offering protection against insolvent risks;
- 32 (c) Fidelity or surety bonds, or any other bonding
 33 obligations;
- 34 (d) Credit insurance;
- 35 (e) Insurance of warranties or service contracts;
- 36 (f) Title insurance;
- 37 (g) Ocean marine insurance;

38 (h) Any transaction or combination of transactions
39 between a person (including affiliates of such person) and an
40 insurer (including affiliates of such insurer) which involves the
41 transfer of investment or credit risk unaccompanied by transfer of
42 insurance risk; * * *

43 (i) Any insurance provided by or guaranteed by
44 government; and

45 (j) Self-insurance of any type, including any insurance
46 coverages issued through risk retention groups, self-insurance
47 pooling mechanisms or otherwise.

48 **SECTION 2.** Section 83-23-109, Mississippi Code of 1972, is
49 amended as follows:

50 83-23-109. As used in this article:

51 (a) "Affiliate" means a person who directly, or
52 indirectly, through one or more intermediaries, controls, is
53 controlled by, or is under common control with an insolvent
54 insurer on December 31 of the year next preceding the date the
55 insurer becomes an insolvent insurer.

56 (b) "Association" means the Mississippi Insurance
57 Guaranty Association created under Section 83-23-111.

58 (c) "Claimant" means any insured making a first-party
59 claim or any person instituting a liability claim, provided that
60 no person who is an affiliate of the insolvent insurer may be a
61 claimant.

62 (d) "Commissioner" means the Commissioner of Insurance.

63 (e) "Control" means the possession, direct or indirect,
64 of the power to direct or cause direction of the management and
65 policies of a person, whether through the ownership of voting
66 securities, by contract other than a commercial contract for goods
67 or nonmanagement services, or otherwise, unless the power is the
68 result of an official position with or corporate office held by
69 the person. Control shall be presumed to exist if any person,
70 directly or indirectly, owns, controls, holds with the power to

71 vote, or holds proxies representing ten percent (10%) or more of
72 the voting securities of any other person. This presumption may
73 be rebutted by a showing that control does not exist in fact.

74 (f) "Covered claim" means an unpaid claim, including
75 one of unearned premiums, which arises out of and is within the
76 coverage and not in excess of the applicable limits of an
77 insurance policy to which this article applies issued by an
78 insurer, if such insurer becomes an insolvent insurer and (i) the
79 claimant or insured is a resident of this state at the time of the
80 insured event, provided that for entities other than an
81 individual, the residence of a claimant or insured is the state in
82 which its principal place of business is located at the time of
83 the insured event; or (ii) the property from which the claim
84 arises is permanently located in this state. "Covered claim"
85 shall not include any amount 1. awarded as punitive or exemplary
86 damages; or 2. interest on judgments, awards of penalties or any
87 other extra-contractual damages unless the policy of the insolvent
88 insurer specifically includes coverage for such damages; however,
89 interest on judgments, awards of penalties, or any other
90 extra-contractual damages resulting from the delay in payment due
91 to unresolved issues regarding the liability of the association,
92 shall not be payable; or 3. sought as a return of premium under
93 any retrospective rating plan; or 4. due any reinsurer, insurer,
94 insurance pool, * * * underwriting association, any other
95 insurance guaranty association or similar law in any other state
96 which is applicable to the same claim as subrogation recoveries or
97 otherwise. Recovery under this article shall preclude
98 recovery * * * from the insured of any insolvent carrier to the
99 extent of the policy limits or above. A covered claim shall
100 include a claim for unearned premium only if such claim derives
101 from the payment of a stated premium and shall not include those
102 which derive from an unstated premium such as one calculated from
103 audit, dividend, deposit or retrospective rating plan. However,

104 if any other insurance guaranty association or similar law in any
105 other state which is applicable to the same claim includes a
106 provision which limits a recovery to a claimant because of a net
107 worth or other similar provision of that state's law which is
108 applicable to the claimant or third party, then a covered claim
109 shall not include any first party, third party or any other type
110 claim where the third party claimant's or the insured's net worth
111 exceeds Twenty-five Million Dollars (\$25,000,000.00) on December
112 31 of the year immediately preceding the date the insurer became
113 an insolvent insurer. The net worth provision will be the total
114 gross net worth of all entities, their subsidiaries or affiliates
115 of the third party claimant or the insolvent carrier's insured.
116 The insured's or third party's net worth on such date shall be
117 deemed to include the aggregate net worth of the insured or third
118 party and all of its subsidiaries and affiliates as calculated on
119 a consolidated basis. An affiliate of the insured or of the third
120 party claimant includes any person or entity who directly, or
121 indirectly through one or more intermediaries, controls or is
122 controlled by or is under common control with the insured or third
123 party claimant. "Control" means the possession, direct or
124 indirect, of the power to direct or cause the direction of the
125 management and policies of the controlled person or entity,
126 whether through the ownership of voting securities, by contract,
127 or otherwise. The consolidated net worth of the insured and all
128 of its subsidiaries and affiliates shall be calculated on the
129 basis of their fair market values. The failure or refusal of a
130 person or entity to return a net worth affidavit to the
131 association after two (2) requests therefore shall create a
132 rebuttable presumption that the noncompliant person or entity had
133 a net worth in excess of Twenty-five Million Dollars
134 (\$25,000,000.00) on December 31 of the year immediately preceding
135 the date of the determination of the insolvency of the insurer.

136 An insured for the purposes of this paragraph shall not include
137 any state or local governmental agency or subdivision thereof.

138 (g) "Insolvent insurer" means an insurer licensed to
139 transact insurance in this state either at the time the policy was
140 issued or when the insured event occurred and against whom an
141 order of liquidation with a finding of insolvency has been entered
142 by a court of competent jurisdiction, in the insurer's state of
143 domicile or of this state and the order of liquidation has not
144 been stayed or been the subject of a writ of supersedeas or other
145 comparable order.

146 (h) "Member insurer" means any person who (i) writes
147 any kind of insurance to which this article applies under Section
148 83-23-105, including the exchange of reciprocal or interinsurance
149 contracts, and (ii) is licensed to transact insurance in this
150 state.

151 (i) "Net direct written premiums" means direct gross
152 premiums written in this state on insurance policies to which this
153 article applies, less return premiums thereon and dividends paid
154 or credited to policyholders on such direct business. "Net direct
155 written premiums" does not include premiums on contracts between
156 insurers or reinsurers.

157 (j) "Person" means any individual, corporation,
158 partnership, association or voluntary organization.

159 **SECTION 3.** Section 83-23-115, Mississippi Code of 1972, is
160 amended as follows:

161 83-23-115. (1) The association shall:

162 (a) Be obligated to the extent of the covered claims
163 existing prior to the determination of insolvency and arising
164 within thirty (30) days after the determination of insolvency, or
165 before the policy expiration date if less than thirty (30) days
166 after the determination, or before the insured replaces the policy
167 or causes its cancellation if he does so within thirty (30) days
168 of the determination. In no event shall the association be

169 obligated to pay a claimant an amount in excess of the obligation
170 of the insolvent insurer under the policy or coverage from which
171 the claim arises. Notwithstanding any other provisions of this
172 article, a covered claim shall not include a claim filed with the
173 association after the earlier of: (i) eighteen (18) months after
174 the date of the order of liquidation; or (ii) the final date set
175 by the court for the filing of claims against the liquidator or
176 receiver of an insolvent insurer; or (iii) the earliest date set
177 by any other insurance guaranty association or similar law in any
178 other state which is applicable to the same claim. Such
179 obligation shall be satisfied by paying the claimant an amount as
180 follows:

181 1. The full amount of a covered claim for
182 benefits under a workers' compensation insurance coverage;

183 2. An amount in excess of Fifty Dollars
184 (\$50.00) but not exceeding Twenty-five Thousand Dollars
185 (\$25,000.00) per policy for a covered claim for the return of
186 unearned premium;

187 3. An amount in excess of Fifty Dollars
188 (\$50.00) but not exceeding Three Hundred Thousand Dollars
189 (\$300,000.00) per claimant for all other covered claims.

190 In no event shall the association be obligated to a
191 policyholder or claimant in an amount in excess of the obligation
192 of the insolvent insurer under the policy from which the claim
193 arises or in excess of the applicable limits of the Mississippi
194 Tort Claims Act.

195 (b) Be deemed the insurer to the extent of its
196 obligation on the covered claims and to such extent shall have all
197 rights, duties and obligations of the insolvent insurer as if the
198 insurer had not become insolvent.

199 (c) Assess insurers amounts necessary to pay the
200 obligations of the association under paragraph (a) subsequent to
201 an insolvency, the expenses of handling covered claims subsequent

202 to an insolvency, and the cost of examinations under Section
203 83-23-125 and other expenses authorized by this article. The
204 assessments of each member insurer shall be in the proportion that
205 the net direct written premiums of the member insurer for the
206 preceding calendar year bears to the net direct written premiums
207 of all member insurers for the preceding calendar year. Each
208 member insurer shall be notified of the assessment not later than
209 thirty (30) days before it is due. No member insurer may be
210 assessed in any year an amount greater than one percent (1%) of
211 that member insurer's net direct written premiums for the
212 preceding calendar year. If the maximum assessment, together with
213 the other assets of the association, does not provide in any one
214 year an amount sufficient to make all necessary payments, the
215 funds available shall be prorated and the unpaid portion shall be
216 paid as soon thereafter as funds become available. The
217 association may exempt or defer, in whole or in part, the
218 assessment of any member insurer, if the assessment would cause
219 the member insurer's financial statement to reflect amounts of
220 capital or surplus less than the minimum amounts required for a
221 certificate of authority by any jurisdiction in which the member
222 insurer is authorized to transact insurance. Each member insurer
223 may set off, against any assessment, authorized payments made on
224 covered claims and expenses incurred in the payment of such claims
225 by the member insurer.

226 (d) Investigate claims brought against the association;
227 adjust, compromise, settle and pay covered claims to the extent of
228 the association's obligation; deny all other claims; and may
229 review settlements, releases and judgments to which the insolvent
230 insurer or its insureds were parties, to determine the extent to
231 which such settlements, releases and judgments may be properly
232 contested.

233 (e) Notify such persons as the commissioner directs
234 under Section 83-23-119(2)(a).

235 (f) Handle claims through its employees or through one
236 or more insurers or other persons designated as servicing
237 facilities. Designation of a servicing facility is subject to the
238 approval of the commissioner, but such designation may be declined
239 by a member insurer.

240 (g) Reimburse each servicing facility for obligations
241 of the association paid by the facility and for expenses incurred
242 by the facility while handling claims on behalf of the
243 association, and shall pay the other expenses of the association
244 authorized by this article.

245 (h) Establish procedures for requesting financial
246 information from insureds and claimants on a confidential basis
247 for purposes of applying Section 83-23-109(f) concerning the net
248 worth of claimants, subject to such information being shared with
249 any other association organized under any other state law similar
250 to the association and the liquidator for the insolvent company on
251 the same confidential basis. If the insured or claimant refuses
252 to provide the requested financial information and an auditor's
253 certification of the same where requested and available, the
254 association may deem the net worth of the insured or claimant to
255 be in excess of the amount specified in Section 83-23-109(f) at
256 the relevant time.

257 (i) Obtain from any third party administrator, managing
258 general underwriter or agent, attorney or other representative of
259 an insolvent insurer or its liquidator all files, records and
260 electronic data related to an insolvent insurer, whether located
261 in this state or elsewhere, that are necessary for the association
262 to carry out its duties under this act. The association shall be
263 entitled to recover its costs and expenses, including reasonable
264 attorney's fees, for any unreasonable refusal to release the
265 required information.

266 (j) Respond to requests for information in the
267 possession or control of the association, and share such

268 information in its possession pertaining to an insolvent insurer,
269 with other state, federal and international regulatory agencies,
270 with the National Association of Insurance Commissioners and its
271 affiliates and subsidiaries, and with state, federal and
272 international law enforcement authorities. For purposes of this
273 section, any confidentiality obligations to the conservator or
274 rehabilitator of an insolvent insurer shall end upon the entry of
275 an order of liquidation with a finding of insolvency against the
276 insurer by any court of competent jurisdiction. The disclosure of
277 information as required herein shall not be deemed a waiver of any
278 applicable privilege or claim of confidentiality that the
279 association might otherwise have.

280 (2) The association may:

281 (a) Employ or retain such persons as are necessary to
282 handle claims and perform other duties of the association.

283 (b) Borrow funds necessary to effect the purposes of
284 this article in accord with the plan of operation.

285 (c) Sue or be sued.

286 (d) Negotiate and become a party to such contracts as
287 are necessary to carry out the purpose of this article.

288 (e) Perform such other acts as are necessary or proper
289 to effectuate the purpose of this article.

290 (f) Refund to the member insurers in proportion to the
291 contribution of each member insurer to the association that amount
292 by which the assets of the association exceed the liabilities if,
293 at the end of any calendar year, the board of directors finds that
294 the assets of the association exceed the liabilities of the
295 association as estimated by the board of directors for the coming
296 year.

297 (g) In any lawsuit contesting the applicability of
298 Section 83-23-109(f) or 83-23-115(1)(h) where the insured or
299 claimant has declined to provide financial information under the
300 procedure provided by this article, the insured or claimant shall

301 bear the burden of proving that its net worth at the relevant time
302 was less than the applicable amount, and if the insured or
303 claimant shall fail in sustaining its proof of such, the court
304 shall award the association its full costs, expenses and
305 reasonable attorney's fees in contesting such claim.

306 **SECTION 4.** Section 83-23-121, Mississippi Code of 1972, is
307 amended as follows:

308 83-23-121. (1) Any person recovering under this article
309 shall be deemed to have assigned his rights under the policy to
310 the association to the extent of his recovery from the
311 association. Every insured or claimant seeking the protection of
312 this article shall cooperate with the association to the same
313 extent as such person would have been required to cooperate with
314 the insolvent insurer. The association shall have no cause of
315 action against the insured of the insolvent insurer for any sums
316 it has paid out except such causes of action as the insolvent
317 insurer would have had if such sums had been paid by the insolvent
318 insurer, and except as provided in subsection (2). In the case of
319 an insolvent insurer operating on a plan with assessment
320 liability, payments of claims of the association shall not operate
321 to reduce the liability of insureds to the receiver, liquidator or
322 statutory successor for unpaid assessments.

323 (2) (a) The association shall have the right to recover
324 from the following persons the amount of any "covered claim" paid
325 on behalf of such person pursuant to this article; and

326 (b) Any person who is an affiliate of the insolvent
327 insurer and whose liability obligations to other persons are
328 satisfied in whole or in part by payments made under this article.

329 (3) The receiver, liquidator or statutory successor of an
330 insolvent insurer shall be bound by settlements of covered claims
331 by the association or a similar organization in another state.
332 The court having jurisdiction shall grant such claims priority
333 equal to that which the claimant would have been entitled in the

334 absence of this article against the assets of the insolvent
335 insurer. The expenses of the association or similar organization
336 in handling claims shall be accorded the same priority as the
337 liquidator's expenses.

338 (4) The association shall periodically file with the
339 receiver or liquidator of the insolvent insurer statements of the
340 covered claims paid by the association and estimates of
341 anticipated claims on the association, which shall preserve the
342 rights of the association against the assets of the insolvent
343 insurer.

344 (5) All such recoveries by the association, including, but
345 not limited to, recovery of sums through subrogation and for large
346 deductible reimbursements and self-insured retentions shall not be
347 property of the liquidator of the insolvent carrier's estate but
348 shall be the property of the association for its use in paying its
349 obligations on behalf of the insolvent insurer.

350 **SECTION 5.** Section 83-23-123, Mississippi Code of 1972, is
351 amended as follows:

352 83-23-123. (1) Any person having a claim against an insurer
353 under any provision in an insurance policy other than a policy of
354 an insolvent insurer, which is also a covered claim, shall be
355 required to exhaust first his right under such policy regardless
356 of the nature of the insurance coverage and regardless of whether
357 the coverage is written as first party or third party coverage,
358 including, but not limited to, coverages available to
359 co-defendants or joint tortfeasors in any claim or action,
360 uninsured and underinsured motorists coverages, hospitalization
361 coverages, coverages under self-insured programs or self-insurance
362 guaranty funds, coverages under health maintenance programs or
363 plans, medical payments coverages, worker's compensation
364 insurance, and governmental indemnity plans or programs. Any
365 amount payable on a covered claim under this article shall be
366 reduced by the amount of any recovery under such insurance policy.

367 (2) Any person having a claim which may be recovered under
368 more than one (1) insurance guaranty association or its
369 equivalent, including any self-insurance guaranty fund or its
370 equivalent, shall seek recovery first from the association of the
371 place of residence of the insured, except that if it is a first
372 party claim for damage to property with a permanent location, he
373 shall seek recovery first from the association of the location of
374 the property, and if it is a workers' compensation claim, he shall
375 seek recovery first from the association of the residence of the
376 claimant. If a claimant is found to be a dual resident for more
377 than one (1) state, then coverage under this article shall be
378 prorated between or among the associations according to the
379 proportion of coverage which was available to claimant in this
380 state as compared to the proportion of coverage which was
381 available to claimant in the other state or states.

382 **SECTION 6.** Section 83-23-135, Mississippi Code of 1972, is
383 amended as follows:

384 83-23-135. All proceedings in which the insolvent insurer is
385 a party or is obligated to defend a party in any court in this
386 state shall be stayed for six (6) months and for such additional
387 time thereafter as may be determined by the court from the date
388 the insolvency is determined or an ancillary proceeding is
389 instituted in the state, whichever is later, to permit proper
390 defense by the association of all pending causes of action as to
391 any covered claims arising from a judgment under any decision,
392 verdict or finding based on the default of the insolvent insurer
393 or its failure to defend an insured. The association, either on
394 its own behalf or on behalf of such insured, may apply to have
395 such judgment, order, decision, verdict or finding set aside by
396 the same court or administrator that made such judgment, order,
397 decision, verdict or finding, and shall be permitted to defend
398 against such claim on the merits. This stay of six (6) months is
399 automatic and mandatory and may not be waived by any parties so as

400 to enable the association sufficient time to review, investigate,
401 evaluate and respond to matters effectively and efficiently.

402 The liquidator, receiver or statutory successor of an
403 insolvent insurer covered by this article shall permit access by
404 the board or its authorized representative to the insolvent
405 insurer's records which are necessary for the board in carrying
406 out its functions under this article with regard to covered
407 claims. In addition, the liquidator, receiver or statutory
408 successor shall provide the board or its representative with
409 copies of such records upon the request by the board and at the
410 expense of the board.

411 **SECTION 7.** Section 83-23-137, Mississippi Code of 1972, is
412 amended as follows:

413 83-23-137. (1) Within one hundred twenty (120) days of a
414 final determination of insolvency of an insurer by a court of
415 competent jurisdiction, the receiver, liquidator or statutory
416 successor shall make application to the court for approval of a
417 proposal to disburse assets out of such insurer's marshaled
418 assets, from time to time as such assets become available to each
419 association entitled thereto. For the purposes of this section,
420 the term "association" includes the Mississippi Insurance Guaranty
421 Association and any entity or person performing a function in
422 another state similar to that performed in this state by the
423 Mississippi Insurance Guaranty Association, provided the
424 Mississippi Insurance Guaranty Association is entitled to like
425 payment under the laws of the other's state of domicile with
426 respect to insolvent companies doing business in that state. If
427 the receiver, liquidator or statutory successor of an insolvent
428 insurer fails to file such a plan within the 120-day period, the
429 association may request that the commissioner initiate such
430 proceedings as are appropriate to require the filing of such a
431 plan or to seek approval of the association's plan to disburse
432 assets out of such insurer's marshaled assets residing in this

433 state. In the event the commissioner initiates the filing of the
434 association's plan, such action shall subject the receiver,
435 liquidator or statutory successor of an insolvent insurer to the
436 jurisdiction of this state for those purposes.

437 (2) Such proposal shall at least include provisions for:

438 (a) Reserving amounts for the payment of expenses of
439 administration, the payment of claims of secured creditors to the
440 extent of the value of the security held, and the payment of
441 claims falling within the priorities established in this article.

442 (b) Disbursement of the other assets marshaled to date
443 and subsequent disbursements of assets as they become available.

444 (c) Equitable allocation of disbursements to each
445 association entitled thereto.

446 (d) The securing by the receiver, liquidator or
447 statutory successor, from each association entitled to
448 disbursements pursuant to this section, of an agreement to return
449 to it such assets previously disbursed as may be required to pay
450 claims of secured creditors and claims falling within the
451 priorities established in this article, in accordance with such
452 priorities; however, no bond shall be required of any such
453 association.

454 (e) A full report to be made by each association to the
455 receiver, liquidator or statutory successor, which report shall
456 account for all assets so disbursed to the association, all
457 disbursements made therefrom, any interest earned by the
458 association on such assets, and any other matter as the court may
459 direct.

460 (3) The proposal of the receiver, liquidator or statutory
461 successor shall provide for disbursements to each association in
462 amounts at least equal to the claim payments made, and estimated
463 to be made, by such association for which such association could
464 assert a claim against the receiver, and shall provide that if the
465 assets available for disbursement from time to time do not equal

466 or exceed the amount of such claim payments made, or to be made,
467 by each such association, then disbursements shall be in the
468 amount of available assets.

469 (4) Notice of such application shall be given by the
470 receiver, liquidator or statutory successor to the associations
471 in, and to the commissioners of insurance of, each of the states
472 to which disbursement may be made. Such notice shall be made by
473 certified mail, first-class postage prepaid, at least thirty (30)
474 days prior to submission of such application to the court. Such
475 notice shall be deemed to have been made when deposited in the
476 mail.

477 (5) Action on the application may be taken by the court if
478 notice has been given pursuant to subsection (4) of this section
479 and the proposal of the receiver, liquidator or statutory
480 successor complies with subsection (2) of this section.

481 **SECTION 8.** The following provision shall be codified as
482 Section 83-23-139, Mississippi Code of 1972:

483 83-23-139. **Policyholder Collateral, Deductible**

484 **Reimbursements, and other Policyholder Obligations.** (1) Any
485 collateral held by, for the benefit of, or assigned to the insurer
486 or the receiver of an insolvent insurer to secure the obligations
487 of a policyholder under a deductible insurance agreement shall not
488 be considered an asset of the estate of the insolvent insurer and
489 shall be maintained and administered by the receiver as provided
490 in this section, notwithstanding any other provision of law or
491 contract to the contrary.

492 (2) If the collateral is being held by, for the benefit of,
493 or assigned to the insurer or the receiver of an insolvent insurer
494 to secure obligations under a deductible agreement with a
495 policyholder, subject to the provisions of this section, the
496 collateral shall be used to secure the policyholder's obligation
497 to fund or reimburse claims payment within the agreed deductible
498 amount.

499 (3) Nothing in this section is intended to limit or
500 adversely affect any right the guaranty associations may have
501 under applicable state law to obtain reimbursement from certain
502 classes of policyholders for claims payments made by such guaranty
503 associations under policies of the insolvent insurer, or for
504 related expenses the guaranty associations incur.

505 (4) This section shall apply to all delinquency proceedings
506 which are open and pending as of July 1, 2005.

507 (5) For purposes of this section, a deductible agreement is
508 any combination of one or more policies, endorsements, contracts
509 or security agreements, which provide for the policyholder to bear
510 the risk of loss within a specified amount per claim or occurrence
511 covered under a policy of insurance, and may be subject to an
512 aggregate limit of policyholder reimbursement obligations. This
513 section shall not apply to first party claims, or to claims funded
514 by a guaranty association net of the deductible. The term
515 "noncovered claim" shall mean a claim that is subject to a
516 deductible agreement, may be secured by collateral, and is not
517 covered by a guaranty association.

518 **SECTION 9.** This act shall take effect and be in force from
519 and after July 1, 2005.