

By: Senator(s) Kirby

To: Insurance

SENATE BILL NO. 2562

1 AN ACT TO AMEND SECTION 83-6-24 AND 83-6-29, MISSISSIPPI CODE
2 OF 1972, TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO DESIGNATE
3 FOR CONFIDENTIAL TREATMENT ANY FINANCIAL INFORMATION REQUIRED TO
4 BE FILED BY AN ACQUIRING PARTY, AND TO PROVIDE THAT SUCH FINANCIAL
5 INFORMATION SHALL NOT BE MADE PUBLIC BY THE COMMISSIONER OR ANY
6 OTHER PERSON WITHOUT THE PRIOR WRITTEN CONSENT OF THE ACQUIRING
7 PARTY; AND FOR RELATED PURPOSES.

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

9 SECTION 1. Section 83-6-24, Mississippi Code of 1972, is
10 amended as follows:

11 83-6-24. (1) No person other than the issuer shall make a
12 tender offer for or a request or invitation for tenders of, or
13 enter into any agreement to exchange securities, or seek to
14 acquire, or acquire, in the open market or otherwise, any voting
15 security of a domestic insurer if, after the consummation thereof,
16 such person would, directly or indirectly (or by conversion or by
17 exercise of any right to acquire) be in control of such insurer,
18 and no person shall enter into an agreement to merge with or
19 otherwise to acquire control of a domestic insurer or any person
20 controlling a domestic insurer unless, at the time any such offer,
21 request or invitation is made or any such agreement is entered
22 into, or prior to the acquisition of such securities if no offer
23 or agreement is involved, such person has filed with the
24 commissioner and has sent to such insurer, a statement containing
25 the information required by this section and such offer, request,
26 invitation, agreement or acquisition has been approved by the
27 commissioner in the manner hereinafter prescribed.

28 For the purposes of this section, "a domestic insurer" shall
29 include any person controlling a domestic insurer unless such

30 person as determined by the commissioner is either directly or
31 through its affiliates primarily engaged in business other than
32 the business of insurance. However, such person shall file a
33 preacquisition notification with the commissioner containing the
34 information set forth in this section thirty (30) days prior to
35 the proposed effective date of the acquisition. For the purposes
36 of this section, "person" shall not include any securities broker
37 holding, in the usual and customary brokers function, less than
38 twenty percent (20%) of the voting securities of an insurance
39 company or of any person which controls an insurance company.

40 (2) The statement to be filed with the commissioner
41 hereunder shall be made under oath or affirmation and shall
42 contain the following information:

43 (a) The name and address of each person by whom or on
44 whose behalf the merger or other acquisition of control referred
45 to in subsection (1) is to be effected (hereinafter called
46 "acquiring party"), and

47 (i) If such person is an individual, his principal
48 occupation and all offices and positions held during the past five
49 (5) years, and any conviction of crimes other than minor traffic
50 violations during the past ten (10) years;

51 (ii) If such person is not an individual, a report
52 of the nature of its business operations during the past five (5)
53 years or for such lesser period as such person and any
54 predecessors thereof shall have been in existence; an informative
55 description of the business intended to be done by such person and
56 such person's subsidiaries; and a list of all individuals who are
57 or who have been selected to become directors or executive
58 officers of such person, or who perform or will perform functions
59 appropriate to such positions. Such list shall include for each
60 such individual the information required by subparagraph (i).

61 (b) The source, nature and amount of consideration used
62 or to be used in effecting the merger or other acquisition of

63 control, a description of any transaction wherein funds were or
64 are to be obtained for any such purpose (including any pledge of
65 the insurer's stock, or the stock of any of its subsidiaries or
66 controlling affiliates), and the identity of persons furnishing
67 such consideration, provided, however, that where a source of such
68 consideration is a loan made in the lender's ordinary course of
69 business, the identity of the lender shall remain confidential, if
70 the person filing such statement so requests.

71 (c) Fully audited financial information as to the
72 earnings and financial condition of each acquiring party for the
73 preceding five (5) fiscal years of each such acquiring party (or
74 for such lesser period as such acquiring party and any
75 predecessors thereof shall have been in existence), and similar
76 unaudited information as of a date not earlier than ninety (90)
77 days prior to the filing of the statement.

78 (d) Any plans or proposals which each acquiring party
79 may have to liquidate such insurer, to sell its assets or merge or
80 consolidate it with any person, or to make any other material
81 change in its business or corporate structure or management.

82 (e) The number of shares of any security referred to in
83 subsection (1) which each acquiring party proposes to acquire, and
84 the terms of the offer, request, invitation, agreement or
85 acquisition referred to in subsection (1), and a statement as to
86 the method by which the fairness of the proposal was determined.

87 (f) The amount of each class of any security referred
88 to in subsection (1) which is beneficially owned or concerning
89 which there is a right to acquire beneficial ownership by each
90 acquiring party.

91 (g) A full description of any contracts, arrangements
92 or understandings with respect to any security referred to in
93 subsection (1) in which any acquiring party is involved, including
94 but not limited to transfer of any of the securities, joint
95 ventures, loan or option arrangements, puts or calls, guarantees

96 of loans, guarantees against loss or guarantees of profits,
97 division of losses or profits or the giving or withholding of
98 proxies. Such description shall identify the persons with whom
99 such contracts, arrangements or understandings have been entered
100 into.

101 (h) A description of the purchase of any security
102 referred to in subsection (1) during the twelve (12) calendar
103 months preceding the filing of the statement, by any acquiring
104 party, including the dates of purchase, names of the purchasers
105 and consideration paid or agreed to be paid therefor.

106 (i) A description of any recommendations to purchase
107 any security referred to in subsection (1) made during the twelve
108 (12) calendar months preceding the filing of the statement, by any
109 acquiring party, or by anyone based upon interviews or at the
110 suggestion of such acquiring party.

111 (j) Copies of all tender offers for, requests or
112 invitations for tenders of, exchange offers for and agreements to
113 acquire or exchange any securities referred to in subsection (1)
114 and (if distributed) of additional soliciting material relating
115 thereto.

116 (k) The terms of any agreement, contract or
117 understanding made with or proposed to be made with any
118 broker-dealer as to solicitation of securities referred to in
119 subsection (1) for tender, and the amount of any fees, commissions
120 or other compensation to be paid to broker-dealers with regard
121 thereto.

122 (l) Such additional information as the commissioner may
123 by rule or regulation prescribe as necessary or appropriate for
124 the protection of policyholders of the insurer or in the public
125 interest.

126 If the person required to file the statement referred to in
127 subsection (1) is a partnership, limited partnership, syndicate or
128 other group, the commissioner may require that the information

129 called for by paragraphs (a) through (1) shall be given with
130 respect to each partner of such partnership or limited
131 partnership, each member of such syndicate or group and each
132 person who controls such partner or member. If any such partner,
133 member or person is a corporation, or the person required to file
134 the statement referred to in subsection (1) is a corporation, the
135 commissioner may require that the information called for by
136 paragraphs (a) through (1) shall be given with respect to such
137 corporation, each officer and director of such corporation and
138 each person who is directly or indirectly the beneficial owner of
139 more than ten percent (10%) of the outstanding voting securities
140 of such corporation.

141 If any material change occurs in the facts set forth in the
142 statement filed with the commissioner and sent to such insurer
143 pursuant to this section, an amendment setting forth such change,
144 together with copies of all documents and other material relevant
145 to such change, shall be filed with the commissioner and sent to
146 such insurer within two (2) business days after the person learns
147 of such change.

148 (3) If any offer, request, invitation, agreement or
149 acquisition referred to in subsection (1) is proposed to be made
150 by means of a registration statement under the Securities Act of
151 1933 or in circumstances requiring the disclosure of similar
152 information under the Securities Exchange Act of 1934, or under a
153 state law requiring similar registration or disclosure, the person
154 required to file the statement referred to in subsection (1) may
155 utilize such documents in furnishing the information called for by
156 that statement.

157 (4) (a) The commissioner shall approve any merger or other
158 acquisition of control referred to in subsection (1) unless, after
159 a public hearing thereon, he finds that:

160 (i) After the change of control, the domestic
161 insurer referred to in subsection (1) would not be able to satisfy

162 the requirements for the issuance of a license to write the line
163 or lines of insurance for which it is presently licensed;

164 (ii) The effect of the merger or other acquisition
165 of control would be substantially to lessen competition in
166 insurance in this state or tend to create a monopoly therein;

167 (iii) The financial condition of any acquiring
168 party is such as might jeopardize the financial stability of the
169 insurer, or prejudice the interest of its policyholders;

170 (iv) The plans or proposals which the acquiring
171 party has to liquidate the insurer, sell its assets or consolidate
172 or merge it with any person, or to make any other material change
173 in its business or corporate structure or management, are unfair
174 and unreasonable to policyholders of the insurer and not in the
175 public interest;

176 (v) The competence, experience and integrity of
177 those persons who would control the operation of the insurer are
178 such that it would not be in the interest of policyholders of the
179 insurer and of the public to permit the merger or other
180 acquisition of control; or

181 (vi) The acquisition is likely to be hazardous or
182 prejudicial to the insurance buying public.

183 (b) The public hearing referred to in paragraph (a) of
184 this subsection shall be commenced not less than thirty (30) days
185 after the statement required by subsection (1) is filed, and at
186 least twenty (20) days' notice thereof shall be given by the
187 commissioner to the person filing the statement. Not less than
188 seven (7) days' notice of such public hearing shall be given by
189 the person filing the statement to the insurer and to such other
190 persons as may be designated by the commissioner. The
191 commissioner shall make a determination within thirty (30) days
192 after the conclusion of such hearing. At such hearing, the person
193 filing the statement, the insurer, any person to whom notice of
194 hearing was sent, and any other person whose interest may be

195 affected thereby shall have the right to present evidence, examine
196 and cross-examine witnesses, and offer oral and written arguments
197 and in connection therewith shall be entitled to conduct discovery
198 proceedings. All discovery proceedings shall be concluded not
199 later than three (3) days prior to the commencement of the public
200 hearing.

201 (c) The commissioner may retain at the acquiring
202 person's expense any attorneys, actuaries, accountants and other
203 experts not otherwise a part of the commissioner's staff as may be
204 reasonably necessary to assist the commissioner in reviewing the
205 proposed acquisition of control.

206 (5) The provisions of this section shall not apply to any
207 offer, request, invitation, agreement or acquisition which the
208 commissioner by order shall exempt therefrom as (i) not having
209 been made or entered into for the purpose and not having the
210 effect of changing or influencing the control of a domestic
211 insurer, or (ii) as otherwise not comprehended within the purposes
212 of this section, or (iii) being transactions between two (2) or
213 more domestic companies.

214 (6) The following shall be violations of this section:

215 (a) The failure to file any statement, amendment or
216 other material required to be filed pursuant to subsection (1) or
217 (2); or

218 (b) The effectuation or any attempt to effectuate an
219 acquisition of control of, or merger with, a domestic insurer
220 unless the commissioner has given his approval thereto.

221 (7) The courts of this state are hereby vested with
222 jurisdiction over every person not resident, domiciled or
223 authorized to do business in this state who files a statement with
224 the commissioner under this section, and overall actions involving
225 such person arising out of violations of this section, and each
226 such person shall be deemed to have performed acts equivalent to
227 and constituting an appointment by such a person of the

228 commissioner to be his true and lawful attorney upon whom may be
229 served all lawful process in any action, suit or proceeding
230 arising out of violations of this section. Copies of all such
231 lawful process shall be served on the commissioner and transmitted
232 by registered or certified mail by the commissioner to such person
233 at his last known address.

234 (8) The commissioner may designate for confidential
235 treatment any financial information required to be filed by an
236 acquiring party pursuant to this section. Any such financial
237 information so designated for confidential treatment shall not be
238 made public by the commissioner or any other person, except to
239 insurance regulatory agencies of other states, without the prior
240 written consent of the acquiring party to which it pertains.

241 **SECTION 2.** Section 83-6-29, Mississippi Code of 1972, is
242 amended as follows:

243 83-6-29. The commissioner, by rule, may designate for
244 confidential treatment any information, documents and copies
245 thereof obtained by or disclosed to himself or any other person in
246 the course of an examination or investigation made pursuant to
247 Section 83-6-27, any information reported pursuant to Sections
248 83-6-3 through 83-6-19, and any activity, filing and proceeding
249 related to domestic companies under Section 83-6-24. Any
250 information, document or copy so designated shall not be made
251 public by the commissioner or any other person, except to
252 insurance departments of other states, without the prior written
253 consent of the insurer to which it pertains.

254 **SECTION 3.** This act shall take effect and be in force from
255 and after its passage.