

By: Representatives Moore, Formby, Chism

To: Insurance

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1212

1 AN ACT TO AMEND SECTION 83-23-109, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE TERMS OF "AFFILIATE" AND "COVERED CLAIM" AS THEY
3 RELATE TO THE MISSISSIPPI INSURANCE GUARANTY ASSOCIATION LAW; TO
4 AMEND SECTION 83-23-115, MISSISSIPPI CODE OF 1972, TO REVISE THE
5 POWERS AND DUTIES OF THE ASSOCIATION; TO AMEND SECTION 83-23-135,
6 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE ASSOCIATION SHALL BE
7 ENTITLED TO AN AUTOMATIC STAY OF EXECUTION OF A MONEY JUDGMENT AND
8 SHALL NOT BE REQUIRED TO POST A SUPERSEDEAS BOND PENDING APPEAL OF
9 ANY LEGAL PROCEEDING IN WHICH THE ASSOCIATION IS A PARTY; AND FOR
10 RELATED PURPOSES.

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

12 **SECTION 1.** Section 83-23-109, Mississippi Code of 1972, is
13 amended as follows:

14 83-23-109. As used in this article:

15 (a) "Affiliate" means an entity or person who directly
16 or indirectly through one or more intermediaries, controls, is
17 controlled by or is under common control with another person or
18 entity.

19 (b) "Affiliate of an insolvent insurer" means a person
20 or entity who directly, or indirectly, through one or more
21 intermediaries, controls, is controlled by, or is under common
22 control with an insolvent insurer on December 31 of the year next
23 preceding the date the insurer becomes an insolvent insurer.

24 (c) "Association" means the Mississippi Insurance
25 Guaranty Association created under Section 83-23-111.

26 (d) "Claimant" means any insured making a first-party
27 claim or any person instituting a liability claim, provided that
28 no person who is an affiliate of the insolvent insurer may be a
29 claimant.

30 (e) "Commissioner" means the Commissioner of Insurance.

31 (f) "Control" means the possession, direct or indirect,
32 of the power to direct or cause direction of the management and
33 policies of a person, whether through the ownership of voting
34 securities, by contract other than a commercial contract for goods
35 or nonmanagement services, or otherwise, unless the power is the
36 result of an official position with or corporate office held by
37 the person. Control shall be presumed to exist if any person,
38 directly or indirectly, owns, controls, holds with the power to
39 vote, or holds proxies representing ten percent (10%) or more of
40 the voting securities of any other person. This presumption may
41 be rebutted by a showing that control does not exist in fact.

42 (g) (i) "Covered claim" means an unpaid claim,
43 including one of unearned premiums, which arises out of and is
44 within the coverage and not in excess of the applicable limits of
45 an insurance policy to which this article applies issued by an
46 insurer, if such insurer becomes an insolvent insurer and 1. the
47 claimant or insured is a resident of this state at the time of the
48 insured event, provided that for entities other than an
49 individual, the residence of a claimant or insured is the state in
50 which its principal place of business is located at the time of
51 the insured event; or 2. the property from which the claim arises
52 is permanently located in this state.

53 (ii) "Covered claim" shall not include:

- 54 1. Any amount awarded as punitive or
55 exemplary damages;
56 2. Prejudgment interest;
57 3. Post-judgment interest;
58 4. Awards of penalties of any type;
59 5. Any extra-contractual damages;
60 6. Amounts * * * sought as a return of
61 premium under any retrospective rating plan;
62 7. Any amount * * * due any reinsurer,
63 insurer, insurance pool or underwriting association, as

64 subrogation recoveries or otherwise and shall preclude recovery
65 thereof from the insured of any insolvent carrier to the extent of
66 the policy limits.

67 8. Any first-party claim by an insured or
68 third party liability claim against any insured where either the
69 third party liability claimant's net worth or the insured's net
70 worth exceeds Twenty-five Million Dollars (\$25,000,000.00) on
71 December 31 of the year preceding the date of the determination of
72 the insolvency of the insurer. An insured's net worth or third
73 party liability claimant's net worth on such date shall be deemed
74 to include the aggregate net worth of the insured or third party
75 liability claimant and all of its affiliates as calculated on a
76 consolidated basis. This net worth provision shall not apply to
77 workers' compensation and employers' liability claims;

78 9. Any claim that would otherwise be a
79 covered claim, but is an obligation to or on behalf of a claimant
80 or insured who has a net worth greater than that allowed by the
81 insurance guaranty association law of the state of residence of
82 the claimant or insured at the time specified by such law, and
83 which association has or can deny coverage to that claimant or
84 insured on the basis of that state guaranty association's net
85 worth provision;

86 10. A claim filed with the association after
87 the earlier of:

88 a. Twenty-four (24) months after the
89 date of the order of liquidation;

90 b. The final date set by the court for
91 the filing of claims against the liquidator or receiver of an
92 insolvent insurer; or

93 c. The earliest date set by any other
94 insurance guaranty association or similar law in any other state
95 which is applicable to the same claim.

96 The requirement of filing within twenty-four (24) months
97 after the date of the order of liquidation shall not apply to
98 claims by injured employees for workers' compensation benefits
99 where the basis for the claim is a latent occupational illness or
100 disease that does not manifest itself within the twenty-four-month
101 period.

102 (h) "Insolvent insurer" means an insurer licensed to
103 transact insurance in this state either at the time the policy was
104 issued or when the insured event occurred and against whom an
105 order of liquidation with a finding of insolvency has been entered
106 by a court of competent jurisdiction, in the insurer's state of
107 domicile or of this state and the order of liquidation has not
108 been stayed or been the subject of a writ of supersedeas or other
109 comparable order.

110 (i) "Member insurer" means any person who (i) writes
111 any kind of insurance to which this article applies under Section
112 83-23-105, including the exchange of reciprocal or interinsurance
113 contracts, and (ii) is licensed to transact insurance in this
114 state.

115 (j) "Net direct written premiums" means direct gross
116 premiums written in this state on insurance policies to which this
117 article applies, less return premiums thereon and dividends paid
118 or credited to policyholders on such direct business. "Net direct
119 written premiums" does not include premiums on contracts between
120 insurers or reinsurers.

121 (k) "Person" means any individual, corporation,
122 partnership, association or voluntary organization.

123 **SECTION 2.** Section 83-23-115, Mississippi Code of 1972, is
124 amended as follows:

125 83-23-115. (1) The association shall:

126 (a) Be obligated to insured and claimants for covered
127 claims existing prior to the determination of insolvency and
128 arising within thirty (30) days after the determination of

129 insolvency, or before the policy expiration date if less than
130 thirty (30) days after the determination, or before the insured
131 replaces the policy or causes its cancellation if he does so
132 within thirty (30) days of the determination. Such obligations to
133 an insured or claimant are limited to the following:

134 (i) The full amount of a covered claim for
135 benefits under a workers' compensation insurance coverage;
136 (ii) An amount in excess of Fifty Dollars (\$50.00)
137 but not exceeding Ten Thousand Dollars (\$10,000.00) per policy for
138 a covered claim for the return of unearned premium;

139 (iii) An amount in excess of Fifty Dollars
140 (\$50.00) but not exceeding Three Hundred Thousand Dollars
141 (\$300,000.00) per claim for all other covered claims.

142 For purposes of this limitation, all claims of any kind
143 including, but not limited to, claims arising out of, or related
144 to, bodily injury or death to any one person shall constitute a
145 single claim, regardless of the number of insurance policies
146 issued, the number of claims made or the number of claimants.

147 (iv) In no event shall the association be
148 obligated to a policyholder or claimant in an amount in excess of
149 the obligation of the insolvent insurer under the policy from
150 which the claim arises.

151 (b) (i) Have the duty and obligations of the insolvent
152 insurer from the policy for contractual benefits to the extent the
153 benefits are "covered claims" as provided herein.

154 (ii) Have all rights of the insolvent insurer as
155 if the insurer had not become insolvent.

156 (c) Assess insurers amounts necessary to pay the
157 obligations of the association under paragraph (a) subsequent to
158 an insolvency, the expenses of handling covered claims subsequent
159 to an insolvency, and the cost of examinations under Section
160 83-23-125 and other expenses authorized by this article. The
161 assessments of each member insurer shall be in the proportion that

162 the net direct written premiums of the member insurer for the
163 preceding calendar year bears to the net direct written premiums
164 of all member insurers for the preceding calendar year. Each
165 member insurer shall be notified of the assessment not later than
166 thirty (30) days before it is due. No member insurer may be
167 assessed in any year an amount greater than one percent (1%) of
168 that member insurer's net direct written premiums for the
169 preceding calendar year. If the maximum assessment, together with
170 the other assets of the association, does not provide in any one
171 (1) year an amount sufficient to make all necessary payments, the
172 funds available shall be prorated and the unpaid portion shall be
173 paid as soon thereafter as funds become available. The
174 association may exempt or defer, in whole or in part, the
175 assessment of any member insurer, if the assessment would cause
176 the member insurer's financial statement to reflect amounts of
177 capital or surplus less than the minimum amounts required for a
178 certificate of authority by any jurisdiction in which the member
179 insurer is authorized to transact insurance. Each member insurer
180 may set off, against any assessment, authorized payments made on
181 covered claims and expenses incurred in the payment of such claims
182 by the member insurer.

183 (d) Investigate claims brought against the association;
184 adjust, compromise, settle and pay covered claims to the extent of
185 the association's obligation; deny all other claims; and may
186 review settlements, releases and judgments to which the insolvent
187 insurer or its insureds were parties, to determine the extent to
188 which such settlements, releases and judgments may be properly
189 contested.

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

192 (f) Handle claims through its employees or through one
193 or more insurers or other persons designated as servicing
194 facilities. Designation of a servicing facility is subject to the

195 approval of the commissioner, but such designation may be declined
196 by a member insurer.

197 (g) Reimburse each servicing facility for obligations
198 of the association paid by the facility and for expenses incurred
199 by the facility while handling claims on behalf of the
200 association, and shall pay the other expenses of the association
201 authorized by this article.

202 (2) The association may:

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

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

207 (c) Sue or be sued.

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

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

212 (f) Refund to the member insurers in proportion to the
213 contribution of each member insurer to the association that amount
214 by which the assets of the association exceed the liabilities if,
215 at the end of any calendar year, the board of directors finds that
216 the assets of the association exceed the liabilities of the
217 association as estimated by the board of directors for the coming
218 year.

219 **SECTION 3.** Section 83-23-135, Mississippi Code of 1972, is
220 amended as follows:

221 83-23-135. All proceedings in which the insolvent insurer is
222 a party or is obligated to defend a party in any court in this
223 state shall be stayed for six (6) months and for such additional
224 time thereafter as may be determined by the court from the date
225 the insolvency is determined or an ancillary proceeding is
226 instituted in the state, whichever is later, to permit proper
227 defense by the association of all pending causes of action as to

228 any covered claims arising from a judgment under any decision,
229 verdict, or finding based on the default of the insolvent insurer
230 or its failure to defend an insured. The association, either on
231 its own behalf or on behalf of such insured, may apply to have
232 such judgment, order, decision, verdict, or finding set aside by
233 the same court or administrator that made such judgment, order,
234 decision, verdict, or finding, and shall be permitted to defend
235 against such claim on the merits.

236 The liquidator, receiver, or statutory successor of an
237 insolvent insurer covered by this article shall permit access by
238 the board or its authorized representative to the insolvent
239 insurer's records which are necessary for the board in carrying
240 out its functions under this article with regard to covered
241 claims. In addition, the liquidator, receiver or statutory
242 successor shall provide the board or its representative with
243 copies of such records upon the request by the board and at the
244 expense of the board.

245 The association shall be entitled to an automatic stay of
246 execution of a money judgment and shall not be required to post a
247 supersedeas bond pending appeal of any legal proceeding in which
248 the association is a party or any legal proceeding the association
249 is defending on behalf of an insured.

250 **SECTION 4.** This act shall take effect and be in force from
251 and after its passage.