

By: Representatives Moore, Formby, Chism

To: Insurance

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;

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

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

87 a. Eighteen (18) months after the date
88 of the order of liquidation;

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

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

95 The requirement of filing within eighteen (18) months after
96 the date of the order of liquidation shall not apply to claims by

97 injured employees for workers' compensation benefits where the
98 basis for the claim is a latent occupational illness or disease
99 that does not manifest itself within the eighteen-month period.

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

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

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

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

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

123 83-23-115. (1) The association shall:

124 (a) Be obligated to insured and claimants for covered
125 claims existing prior to the determination of insolvency and
126 arising within thirty (30) days after the determination of
127 insolvency, or before the policy expiration date if less than
128 thirty (30) days after the determination, or before the insured
129 replaces the policy or causes its cancellation if he does so

130 within thirty (30) days of the determination. Such obligations to
131 an insured or claimant are limited to the following:

132 (i) The full amount of a covered claim for
133 benefits under a workers' compensation insurance coverage;

134 (ii) An amount in excess of Fifty Dollars (\$50.00)
135 but not exceeding Ten Thousand Dollars (\$10,000.00) per policy for
136 a covered claim for the return of unearned premium;

137 (iii) An amount in excess of Fifty Dollars
138 (\$50.00) but not exceeding Three Hundred Thousand Dollars
139 (\$300,000.00) per claim for all other covered claims.

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

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

149 (v) In the event the claim arises under the
150 Mississippi Tort Claims Act, Section 11-46-1 et seq., the
151 association's liability shall not exceed the amount set forth in
152 subparagraph (iii) of this paragraph (a), or the applicable limit
153 of the Mississippi Tort Claims Act, whichever is less.

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

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

159 (c) Assess insurers amounts necessary to pay the
160 obligations of the association under paragraph (a) subsequent to
161 an insolvency, the expenses of handling covered claims subsequent
162 to an insolvency, and the cost of examinations under Section

163 83-23-125 and other expenses authorized by this article. The
164 assessments of each member insurer shall be in the proportion that
165 the net direct written premiums of the member insurer for the
166 preceding calendar year bears to the net direct written premiums
167 of all member insurers for the preceding calendar year. Each
168 member insurer shall be notified of the assessment not later than
169 thirty (30) days before it is due. No member insurer may be
170 assessed in any year an amount greater than one percent (1%) of
171 that member insurer's net direct written premiums for the
172 preceding calendar year. If the maximum assessment, together with
173 the other assets of the association, does not provide in any one
174 (1) year an amount sufficient to make all necessary payments, the
175 funds available shall be prorated and the unpaid portion shall be
176 paid as soon thereafter as funds become available. The
177 association may exempt or defer, in whole or in part, the
178 assessment of any member insurer, if the assessment would cause
179 the member insurer's financial statement to reflect amounts of
180 capital or surplus less than the minimum amounts required for a
181 certificate of authority by any jurisdiction in which the member
182 insurer is authorized to transact insurance. Each member insurer
183 may set off, against any assessment, authorized payments made on
184 covered claims and expenses incurred in the payment of such claims
185 by the member insurer.

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

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

195 (f) Handle claims through its employees or through one
196 or more insurers or other persons designated as servicing
197 facilities. Designation of a servicing facility is subject to the
198 approval of the commissioner, but such designation may be declined
199 by a member insurer.

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

205 (2) The association may:

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

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

210 (c) Sue or be sued.

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

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

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

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

224 83-23-135. All proceedings in which the insolvent insurer is
225 a party or is obligated to defend a party in any court in this
226 state shall be stayed for six (6) months and for such additional
227 time thereafter as may be determined by the court from the date

228 the insolvency is determined or an ancillary proceeding is
229 instituted in the state, whichever is later, to permit proper
230 defense by the association of all pending causes of action as to
231 any covered claims arising from a judgment under any decision,
232 verdict, or finding based on the default of the insolvent insurer
233 or its failure to defend an insured. The association, either on
234 its own behalf or on behalf of such insured, may apply to have
235 such judgment, order, decision, verdict, or finding set aside by
236 the same court or administrator that made such judgment, order,
237 decision, verdict, or finding, and shall be permitted to defend
238 against such claim on the merits.

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

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

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