

By: Representative Robinson

To: Insurance

## HOUSE BILL NO. 785

1 AN ACT TO AMEND SECTION 83-21-17, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE PROVISIONS OF LAWS REGARDING THE ELIGIBILITY OF  
3 NONADMITTED INSURERS TO WRITE BUSINESS IN THE STATE OF  
4 MISSISSIPPI; TO CREATE A NEW SECTION OF LAW TO BE CODIFIED AS  
5 SECTION 83-21-18, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE  
6 COMMISSIONER OF INSURANCE TO ENTER INTO AN AGREEMENT WITH OTHER  
7 STATES TO ESTABLISH PROCEDURES FOR ALLOCATING PREMIUM TAXES; TO  
8 AMEND SECTION 83-21-19, MISSISSIPPI CODE OF 1972, TO REVISE THE  
9 LICENSING PROVISIONS FOR RESIDENT AND NONRESIDENT SURPLUS LINES  
10 INSURANCE PRODUCERS; TO AMEND SECTION 83-21-21, MISSISSIPPI CODE  
11 OF 1972, TO PROVIDE THAT STAMPING PROCEDURES MAY APPLY TO THE  
12 REPORTING, PAYMENT, COLLECTION AND ALLOCATION OF PREMIUM TAXES FOR  
13 NONADMITTED INSURANCE CONSISTENT WITH ANY AGREEMENT, COMPACT OR  
14 PROCEDURES ENTERED INTO BY THE COMMISSIONER OF INSURANCE; TO AMEND  
15 SECTION 83-21-23, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT, WHEN  
16 PLACING NONADMITTED INSURANCE FOR AN EXEMPT COMMERCIAL PURCHASER,  
17 A SURPLUS LINES INSURANCE PRODUCER IS NOT REQUIRED TO MAKE A DUE  
18 DILIGENCE SEARCH TO DETERMINE WHETHER THE FULL AMOUNT OR TYPE OF  
19 INSURANCE CAN BE OBTAINED FROM ADMITTED INSURERS; TO AMEND  
20 SECTIONS 83-21-25, 83-21-27 AND 83-21-29, MISSISSIPPI CODE OF  
21 1972, TO MAKE CERTAIN TECHNICAL AND NONSUBSTANTIVE CHANGES; TO  
22 AMEND SECTION 83-34-4, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT  
23 EACH INSURED IN THIS STATE WHO DIRECTLY PROCURES OR RENEWS  
24 INSURANCE WITH A NONADMITTED INSURER ON PROPERTIES, RISKS OR  
25 EXPOSURES LOCATED IN THIS STATE, OTHER THAN INSURANCE PROCURED  
26 THROUGH A SURPLUS LINES LICENSEE, SHALL BE SUBJECT TO THE  
27 NONADMITTED POLICY FEE WHICH SHALL BE PAID PURSUANT TO THE  
28 PROCEDURES PROVIDED FOR PREMIUM TAXES; AND FOR RELATED PURPOSES.

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

30 **SECTION 1.** Section 83-21-17, Mississippi Code of 1972, is  
31 amended as follows:

32 83-21-17. (1) The Commissioner of Insurance shall annually  
33 promulgate a list of nonadmitted insurers found eligible for  
34 writing business in the State of Mississippi, provided each such  
35 insurer qualifies under one (1) of the following paragraphs:

36 (a) Has capital and surplus or its equivalent under the  
37 laws of its domiciliary jurisdiction which is the greater of:



38                   (i) The same requirements as to capital and  
39 surplus as is required of a company licensed to do business in the  
40 State of Mississippi; or

41                   (ii) Fifteen Million Dollars (\$15,000,000.00).

42                   (b) The requirements of paragraph (a) of this  
43 subsection may be satisfied by an insurer's possessing of less  
44 than the minimum capital and surplus upon an affirmative finding  
45 of acceptability by the commissioner. The finding shall be based  
46 upon such factors as quality of management, capital and surplus of  
47 any parent company, company underwriting profit and investment  
48 income trends, market availability and company record and  
49 reputation within the industry. In no event shall the  
50 commissioner make an affirmative finding of acceptability when the  
51 nonadmitted insurer's capital and surplus is less than Four  
52 Million Five Hundred Thousand Dollars (\$4,500,000.00).

53                   (c) In the case of a Lloyd's plan or other similar  
54 group of insurers, which consists of unincorporated individual  
55 insurers, or a combination of both incorporated and unincorporated  
56 insurers:

57                   (i) The plan or group maintains a trust fund that  
58 shall consist of a trusteed account representing the group's  
59 liabilities attributable to business written in the United States;

60                   (ii) In addition, the group shall establish and  
61 maintain in trust a surplus in the amount of One Hundred Million  
62 Dollars (\$100,000,000.00), which shall be available for the  
63 benefit of United States surplus lines policyholders of any member  
64 of the group;

65                   (iii) The incorporated members of the group shall  
66 not be engaged in any business other than underwriting as a member  
67 of the group and shall be subject to the same level of solvency  
68 regulation and control by the group's domiciliary regulator as are  
69 the unincorporated members; and



70                   (iv) The trust funds shall be maintained in an  
71 irrevocable trust account in the United States in a qualified  
72 financial institution, consisting of cash, securities, letters of  
73 credit or investments of substantially the same character and  
74 quality as those which are eligible investments for the capital  
75 and statutory reserves of admitted insurers to write like kinds of  
76 insurance in this state and, in addition, the trust required by  
77 subparagraph (ii) of this paragraph shall satisfy the requirements  
78 of the Standard Trust Agreement required for listing with the  
79 National Association of Insurance Commissioners' (NAIC)  
80 International Insurers Department.

81                   (d) In the case of a group of incorporated insurers  
82 under common administration, which has continuously transacted an  
83 insurance business outside the United States for at least three  
84 (3) years immediately prior to this time, and which submits to  
85 this state's authority to examine its books and records and bears  
86 the expense of the examination:

87                   (i) The group shall maintain an aggregate  
88 policyholders' surplus of Ten Billion Dollars  
89 (\$10,000,000,000.00); and

90                   (ii) The group shall maintain in trust a surplus  
91 in the amount of One Hundred Million Dollars (\$100,000,000.00),  
92 which shall be available for the benefit of United States surplus  
93 lines policyholders of any member of the group; and

94                   (iii) Each insurer shall individually maintain  
95 capital and surplus of not less than Twenty-five Million Dollars  
96 (\$25,000,000.00) per company; and

97                   (iv) The trust funds shall satisfy the  
98 requirements of the Standard Trust Agreement requirement for  
99 listing with the NAIC's International Insurers Department, and  
100 shall be maintained in an irrevocable trust account in the United  
101 States in a qualified financial institution, and shall consist of  
102 cash, securities, letters of credit or investments of



103 substantially the same character and quality as those which are  
104 eligible investments for the capital and statutory reserves of  
105 admitted insurers to write like kinds of insurance in this state;  
106 and

107 (v) Additionally, each member of the group shall  
108 make available to the commissioner an annual certification of the  
109 member's solvency by the member's domiciliary regulator and its  
110 independent public accountant.

111 (e) Except for a plan complying with paragraphs (c) or  
112 (d) of this subsection, an insurer not domiciled in one (1) of the  
113 United States or its territories shall satisfy the capital and  
114 surplus requirements of paragraph (a) and shall have in force a  
115 trust fund of not less than the greater of:

116 (i) Five Million Four Hundred Thousand Dollars  
117 (\$5,400,000.00); or

118 (ii) Thirty percent (30%) of the United States  
119 surplus lines gross liabilities, excluding aviation, wet marine  
120 and transportation insurance liabilities, not to exceed Sixty  
121 Million Dollars (\$60,000,000.00) to be determined annually on the  
122 basis of accounting practices and procedures substantially  
123 equivalent to those promulgated by this state, as of December 31  
124 next preceding the date of determination, where:

125 1. The liabilities are maintained in an  
126 irrevocable trust account in the United States in a qualified  
127 financial institution, on behalf of United States policyholders  
128 consisting of cash, securities, letters of credit or other  
129 investments of substantially the same character and quality as  
130 those which are eligible investments under Section 83-19-51 for  
131 the capital and statutory reserves of admitted insurers to write  
132 like kinds of insurance in this state. The trust fund, which  
133 shall be included in any calculation of capital and surplus or its  
134 equivalent, shall satisfy the requirements of the Standard Trust



135 Agreement required for listing with the NAIC's International  
136 Insurers Department; and

137 2. The insurer may request approval from the  
138 commissioner to use the trust fund to pay valid surplus lines  
139 claims; provided, however, that the balance of the trust fund is  
140 never less than the greater of Five Million Four Hundred Thousand  
141 Dollars (\$5,400,000.00) or thirty percent (30%) of the insurer's  
142 current gross United States surplus lines liabilities, excluding  
143 aviation, wet marine and transportation insurance liabilities; and

144 3. In calculating the trust fund amount  
145 required by this subsection, credit shall be given for surplus  
146 lines deposits separately required and maintained for a particular  
147 state or United States territory, not to exceed the amount of the  
148 insurer's loss and loss adjustment reserves in the particular  
149 state or territory.

150 (f) An insurer or group of insurers meeting the  
151 requirements to do a surplus lines business in this state at the  
152 effective date of this law shall have two (2) years from the date  
153 of enactment to meet the requirements of paragraph (e) of this  
154 subsection as follows:

155 **Year Following Enactment**

**Trust Fund Requirement**

156 1  
157 Fifteen percent (15%) of U.S.  
158 surplus lines liabilities,  
159 excluding aviation, wet marine  
160 and transportation insurance,  
161 with a maximum of Thirty  
162 Million Dollars  
163 (\$30,000,000.00)

164 2  
165 Thirty percent (30%) of U.S.  
166 surplus lines liabilities,  
167 excluding aviation, wet marine  
and transportation insurance,  
with a maximum of Sixty



168 Million Dollars

169 (\$60,000,000.00)

170 (g) The commissioner shall have the authority to  
171 adjust, in response to inflation, the trust fund amounts required  
172 by paragraph (e) of this subsection.

173 (h) An alien insurer shall be listed with the Quarterly  
174 Listing of Alien Insurers maintained by the International Insurers  
175 Department of the National Association of Insurance  
176 Commissioners. \* \* \*

177 (2) The Commissioner of Insurance is specifically vested  
178 with authority to promulgate such rules and regulations as deemed  
179 necessary to carry out the provisions hereof.

180 (3) The commissioner shall publish a list of nonadmitted  
181 insurers found eligible for writing business in the State of  
182 Mississippi on a nonadmitted basis. The commissioner may, by  
183 giving seven (7) days' notice, at any time remove a nonadmitted  
184 insurer from such eligible list when it appears that such insurer  
185 no longer meets the requirements of the statute or regulations of  
186 the commissioner. When a nonadmitted insurer is placed upon or  
187 removed from the eligible list, all surplus lines insurance  
188 producers holding licenses under Sections 83-21-17 through  
189 83-21-31 shall be notified of such eligibility or removal. \* \* \*

190 (4) Each nonadmitted insurer shall annually pay a filing fee  
191 of Five Hundred Dollars (\$500.00) in order to be eligible for  
192 certification as a nonadmitted insurer.

193 (5) (a) Each insured in this state who directly procures or  
194 renews insurance with a nonadmitted insurer on properties, risks  
195 or exposures located or to be performed, in whole or in part, in  
196 this state, other than insurance procured through a surplus lines  
197 licensee, shall, within thirty (30) days after the date the  
198 insurance was so procured or renewed, file a written report with  
199 the commissioner, upon forms prescribed by the commissioner,  
200 showing the name and address of the insured or insureds, name and



201 address of the insurer, the subject of the insurance, a general  
202 description of the coverage, the amount of premium currently  
203 charged, and additional pertinent information reasonably requested  
204 by the commissioner.

205 (b) Gross premiums charged for the independently  
206 procured insurance, less any return premiums, are subject to the  
207 same premium tax rate as set forth in Section 83-21-25. At the  
208 time of filing the report required in paragraph (a) of this  
209 subsection (5), the insured shall pay the tax to the commissioner.

210 **SECTION 2.** The following shall be codified as Section  
211 83-21-18, Mississippi Code of 1972:

212 83-21-18. (1) The Commissioner of Insurance may enter into  
213 an agreement, compact, or otherwise establish procedures to  
214 allocate among the states the premium taxes paid to an insured's  
215 home state according to the Nonadmitted and Reinsurance Reform Act  
216 of 2010 (NRRA), which was incorporated intact into the Dodd-Frank  
217 Financial Reform Bill, H.R. 4173, which provides that only an  
218 insured's "home state" may require a premium tax payment for  
219 nonadmitted insurance, and that the placement of all nonadmitted  
220 insurance shall be subject solely to the statutory and regulatory  
221 requirements imposed by the insured's "home state."

222 (a) The agreement, compact, or procedures may provide  
223 for the adoption of nationwide uniform requirements, forms and  
224 procedures which provide for the reporting, payment, collection  
225 and allocation of premium taxes for nonadmitted insurance  
226 consistent with the NRRA.

227 (b) This agreement may allow the commissioner to  
228 collect and disburse to reciprocal states any funds collected  
229 under a policy that may be allocated to another reciprocal state  
230 where the insurance covers properties, risks or exposures located  
231 or to be performed both in and out of this state. The sum payable  
232 may include the amount of gross premiums and fees allocated to  
233 this state, plus an amount equal to the portion of premium and



234 fees allocated to other states or territories, on the basis of the  
235 tax rates and fees applicable to properties, risks or exposures  
236 located or to be performed outside of this state. To the extent  
237 that other states where portions of the properties, risks or  
238 exposures reside have failed to enter into a compact or reciprocal  
239 allocation procedures with this state, the net premium tax may be  
240 retained by this state.

241 (c) The commissioner is authorized to enter into a  
242 cooperative agreement or interstate agreement or compact to  
243 establish additional and alternative nationwide uniform  
244 eligibility requirements that shall be applicable to nonadmitted  
245 insurers domiciled in another state or territory of the United  
246 States.

247 (2) For the purposes of this chapter, the following  
248 definitions shall apply:

249 (a) "Home state" means:

250 (i) In general, except as provided in subparagraph

251 (ii), the term "home state" means, with respect to an insured:

252 1. The state in which an insured maintains  
253 its principal place of business or, in the case of an individual,  
254 the individual's principal residence; or

255 2. If one hundred percent (100%) of the  
256 insured risk is located outside the state referred to in item 1 of  
257 this subparagraph (i), the state to which the greatest percentage  
258 of the insured's taxable premium for that insurance contract is  
259 allocated.

260 (ii) If more than one (1) insured from an  
261 affiliated group are named insureds on a single nonadmitted  
262 insurance contract, the term "home state" means the home state, as  
263 determined according to subparagraph (i)1 of this paragraph (a),  
264 of the member of the affiliated group that the largest percentage  
265 of premium attributed to it under such insurance contract.





266 (b) "Independently procured insurance" means any  
267 property and casualty insurance permitted in a state to be placed  
268 directly with a nonadmitted insurer eligible to accept such  
269 business.

270 (c) "Multistate risk" means a risk covered by a  
271 nonadmitted insurer with insured exposures in more than one (1)  
272 state.

273 (d) "Nonadmitted insurance" means any property and  
274 casualty insurance permitted in a state to be placed directly or  
275 through a surplus lines insurance producer with a nonadmitted  
276 insurer eligible to accept such insurance.

277 (e) "Principal place of business" means, with respect  
278 to determining the home state of the insured, the state where the  
279 insured maintains its headquarters and where the insured's  
280 high-level officers direct, control and coordinate the business  
281 activities.

282 (f) "Principal residence" means, with respect to  
283 determining the home state of the individual, the state where the  
284 individual resides for the greatest number of days during a  
285 calendar year.

286 (g) "Single-state risk" means a risk covered by a  
287 nonadmitted insurer with insured exposures in only one (1) state.

288 (h) "Surplus lines insurance" means any property and  
289 casualty insurance permitted in a state to be placed through a  
290 surplus lines insurance producer with a nonadmitted insurer  
291 eligible to accept such insurance.

292 (i) "Surplus lines insurance producer" means an  
293 individual who is licensed in this state to sell, solicit or  
294 negotiate insurance on properties, risks or exposures located or  
295 to be performed in this state with nonadmitted insurers.

296 (3) The provisions set forth in Sections 83-21-19 through  
297 83-21-27 shall only apply if Mississippi is the home state as  
298 defined herein.



299           **SECTION 3.** Section 83-21-19, Mississippi Code of 1972, is  
300 amended as follows:

301           83-21-19. (1) Surplus lines insurance may be placed by a  
302 surplus lines insurance producer if:

303           (a) Each insurer is an eligible surplus lines insurer;  
304 and

305           (b) Each insurer is authorized to write the line of  
306 insurance in its domiciliary jurisdiction; and

307           (c) The full amount or type of insurance cannot be  
308 obtained from insurers who are admitted to do business in this  
309 state. The full amount or type of insurance may be procured from  
310 eligible surplus lines insurers, provided that a diligent search  
311 is made among the insurers who are admitted to transact and are  
312 actually writing the particular type of insurance in this state,  
313 if any are writing it; and

314           (d) All other requirements as set forth by law are met.

315           (2) The Commissioner of Insurance, upon the biennial payment  
316 of a fee of One Hundred Dollars (\$100.00) and submission of a  
317 completed license application on a form approved by the  
318 commissioner, may issue a surplus lines insurance producer license  
319 to a qualified holder of an insurance producer license with a  
320 property, casualty and/or personal lines line of authority, who is  
321 regularly commissioned to represent two (2) or more fire and  
322 casualty \* \* \* insurance companies licensed to do business in the  
323 state \* \* \*.

324           (3) The privilege license shall continue from the date of  
325 issuance until the last day of the month of the licensee's  
326 birthday in the second year following issuance or renewal of the  
327 license, with a minimum term of twelve (12) months.

328           (4) A nonresident person shall receive a surplus lines  
329 insurance producer license if:



330           (a) The person is currently licensed as a surplus lines  
331 insurance producer or equivalent and in good standing in his or  
332 her home state;

333           (b) The person has submitted the proper request for  
334 licensure and has paid the biennial fee of One Hundred Dollars  
335 (\$100.00); and

336           (c) The person's home state awards nonresident surplus  
337 lines licenses to residents of this state on the same basis.

338           (5) A nonresident person shall not be required to hold an  
339 insurance producer license with a property, casualty and/or  
340 personal lines line of authority if the person is not required to  
341 perform a diligent search of admitted insurers as set forth in  
342 Section 83-21-23.

343           (6) The commissioner may verify a person's licensing status  
344 through the National Producer Database maintained by the National  
345 Association of Insurance Commissioners, its affiliates or  
346 subsidiaries.

347           (7) A nonresident surplus lines insurance producer licensee  
348 who moves from one (1) state to another state, or a resident  
349 surplus lines licensee who moves from this state to another state,  
350 shall file a change of address and provide certification from the  
351 new resident state within thirty (30) days of the change of legal  
352 residence. No fee or license application is required.

353           (8) The commissioner may deny, suspend, revoke or refuse the  
354 license of a surplus lines insurance producer licensee and/or levy  
355 a civil penalty in an amount not to exceed Two Thousand Five  
356 Hundred Dollars (\$2,500.00) per violation, after notice and  
357 hearing as provided hereunder, for one or more of the following  
358 grounds:

359           (a) Providing incorrect, misleading, incomplete or  
360 materially untrue information in the license application;



361           (b) Violating any insurance laws, or violating any  
362 regulation, subpoena or order of the commissioner or of another  
363 state's commissioner;

364           (c) Obtaining or attempting to obtain a license through  
365 misrepresentation or fraud;

366           (d) Improperly withholding, misappropriating or  
367 converting any monies or properties received in the course of  
368 doing the business of insurance;

369           (e) Intentionally misrepresenting the terms of an  
370 actual or proposed insurance contract or application for  
371 insurance;

372           (f) Having been convicted of a felony;

373           (g) Having admitted or been found to have committed any  
374 insurance unfair trade practice or fraud;

375           (h) Using fraudulent, coercive or dishonest practices  
376 or demonstrating incompetence, untrustworthiness or financial  
377 irresponsibility in the conduct of business in this state or  
378 elsewhere;

379           (i) Having an insurance producer license, or its  
380 equivalent, denied, suspended or revoked in any other state,  
381 province, district or territory;

382           (j) Forging another's name to an application for  
383 insurance or to any document related to an insurance transaction;

384           (k) Improperly using notes or any other reference  
385 material to complete an examination for an insurance license;

386           (l) Knowingly accepting insurance business from an  
387 individual who is not licensed;

388           (m) Failing to comply with an administrative or court  
389 order imposing a child support obligation; or

390           (n) Failing to pay state income tax or comply with any  
391 administrative or court order directing payment of state income  
392 tax.



393       (9) If the action by the commissioner is to nonrenew,  
394 suspend, revoke or to deny an application for a license, the  
395 commissioner shall notify the applicant or licensee and advise, in  
396 writing, the applicant or licensee of the reason for the denial or  
397 nonrenewal of the applicant's or licensee's license. The  
398 applicant or licensee may make written demand upon the  
399 commissioner within ten (10) days for a hearing before the  
400 commissioner to determine the reasonableness of the commissioner's  
401 action. The hearing shall be held within thirty (30) days.

402       (10) Every surplus lines insurance contract procured and  
403 delivered according to Sections 83-21-17 through 83-21-31 shall  
404 have stamped upon it in bold ten-point type, and bear the name of  
405 the surplus lines insurance producer who procured it, the  
406 following: "NOTE: This insurance policy is issued pursuant to  
407 Mississippi law covering surplus lines insurance. The company  
408 issuing the policy is not licensed by the State of Mississippi,  
409 but is authorized to do business in Mississippi as a nonadmitted  
410 company. The policy is not protected by the Mississippi Insurance  
411 Guaranty Association in the event of the insurer's insolvency."  
412 No diminution of the license fee herein provided shall occur as to  
413 any license effective after January 1 of any year. \* \* \*

414       **SECTION 4.** Section 83-21-21, Mississippi Code of 1972, is  
415 amended as follows:

416       83-21-21. (1) The Commissioner of Insurance may establish a  
417 stamping procedure for all eligible nonadmitted/surplus lines  
418 insurance policies sold on risks subject to the payment of premium  
419 taxes to the State of Mississippi.

420       (2) The Commissioner of Insurance may rely upon the advice  
421 and assistance of a duly constituted association of surplus lines  
422 insurance producers in carrying out the purposes of this chapter,  
423 if the association files with the commissioner:

424       (a) A copy of the association's constitution and  
425 articles of agreement of association or the association's



426 certificate of incorporation and bylaws and any rules and  
427 regulations governing the association's activities;

428 (b) A list of the association's members; and

429 (c) The name and address of a resident of this state  
430 upon whom notices or orders of the commissioner or process issued  
431 by the commissioner may be served.

432 (3) The Commissioner of Insurance may examine the  
433 association's records concerning the functions or duties performed  
434 on behalf of the commissioner by the association.

435 (4) The association shall provide a means for the  
436 examination of all surplus lines coverages written to determine  
437 whether such coverages comply with the law and such rules or  
438 regulations as may be issued by the Commissioner of Insurance.

439 (5) The Commissioner of Insurance may refuse to accept, or  
440 may suspend or revoke the acceptance of, an association for any of  
441 the following reasons:

442 (a) It reasonably appears that the association will not  
443 be able to carry out the purposes of this chapter;

444 (b) The association does not maintain and enforce rules  
445 and regulations which will ensure that members of the association  
446 and persons associated with those members will comply with this  
447 chapter, other applicable state law or rules or regulations  
448 promulgated under either;

449 (c) The rules or regulations of the association do not  
450 ensure a fair representation of its members in the selection of  
451 directors and in the administration of its affairs;

452 (d) The rules or regulations of the association do not  
453 provide for an equitable allocation of reasonable dues, fees and  
454 other charges among members;

455 (e) The rules or regulations of the association impose  
456 an undue burden on competition; or

457 (f) The association fails to meet other applicable  
458 requirements prescribed in this chapter.



459 (6) A surplus lines insurance producer shall cooperate with  
460 the association and the Commissioner of Insurance in fulfilling  
461 the surplus lines agent's statutory responsibility under this  
462 chapter.

463 (7) Upon request from the association, the Commissioner of  
464 Insurance may approve the levy of an examination fee of not more  
465 than one percent (1%) of premiums charged under this chapter for  
466 the operation of the association to the extent that such operation  
467 relieves the commissioner of duties otherwise required of the  
468 Commissioner of Insurance under this chapter.

469 (8) The association may revoke the membership of, and the  
470 Commissioner of Insurance may revoke the license in this state of,  
471 any licensee who fails to pay the examination fee when due, if the  
472 examination fee has been approved by the Commissioner of  
473 Insurance.

474 (9) The fees levied and collected by the association  
475 pursuant to this section shall be subject to transfer to the  
476 Department of Insurance Special Fund by act of the Legislature.

477 (10) The association, the association's board members and  
478 employees shall not be subject to liability for any functions or  
479 duties performed in good faith, from and after May 9, 2008, by the  
480 association pursuant to this chapter. \* \* \*

481 (11) In the alternative, the Commissioner of Insurance may  
482 contract with a third party to assist the commissioner with  
483 carrying out the purposes of this chapter. The third party may  
484 collect an examination fee in an amount determined by the  
485 commissioner but not more than one percent (1%) of premiums  
486 charged under this chapter. The fees shall be collected and  
487 deposited into the Department of Insurance Special Fund, and from  
488 this fund the department may pay the third party a reasonable fee  
489 for its services.

490 (12) Notwithstanding the provisions of Section 83-21-18(3),  
491 any stamping procedure established under this section may apply to



492 the reporting, payment, collection and allocation of premium taxes  
493 for nonadmitted insurance consistent with any agreement, compact  
494 or procedures entered into by the commissioner under Section  
495 83-21-18(1).

496 (13) The commissioner may promulgate rules and regulations  
497 necessary for the implementation of this section.

498 **SECTION 5.** Section 83-21-23, Mississippi Code of 1972, is  
499 amended as follows:

500 83-21-23. (1) When any policy of insurance or certificate  
501 of insurance is procured under the authority of such license,  
502 there shall be executed by the surplus lines insurance producer an  
503 affidavit setting forth facts in complete detail as to what was  
504 done to place such kind of insurance and showing that such surplus  
505 lines insurance producer therein was unable, after diligent  
506 effort, to procure from any licensed company or companies the full  
507 amount of insurance required to protect the property, liability,  
508 or risk desired to be insured, and further showing that the amount  
509 of insurance procured from the eligible nonadmitted insurer or  
510 insurers is only the excess over the amount so procurable from  
511 licensed companies. Each such affidavit, which shall be effective  
512 for the term of the policy, shall be filed with the Commissioner  
513 of Insurance along with the report required in Section 83-21-25.

514 The Commissioner of Insurance may promulgate rules and  
515 regulations and establish appropriate fees for the implementation  
516 of Sections 83-21-17 through 83-21-31. \* \* \*

517 (2) (a) A surplus lines insurance producer is not required  
518 to make a due diligence search to determine whether the full  
519 amount or type of insurance can be obtained from admitted insurers  
520 when the surplus lines insurance producer is seeking to procure or  
521 place nonadmitted insurance for an exempt commercial purchaser  
522 provided:

523 (i) The surplus lines insurance producer procuring  
524 or placing the surplus lines insurance has disclosed to the exempt





525 commercial purchaser that such insurance may or may not be  
526 available from the admitted market that may provide greater  
527 protection with more regulatory oversight; and

528 (ii) The exempt commercial purchaser has  
529 subsequently requested in writing for the surplus lines insurance  
530 producer to procure or place such insurance from a nonadmitted  
531 insurer.

532 (b) The term "exempt commercial purchaser" means any  
533 person purchasing commercial insurance that, at the time of  
534 placement, meets the following requirements:

535 (i) The person employs or retains a qualified risk  
536 manager, as defined in Section 527(13) of the Nonadmitted and  
537 Reinsurance Reform Act of 2010, to negotiate insurance coverage.

538 (ii) The person has paid aggregate nationwide  
539 commercial property and casualty insurance premiums in excess of  
540 One Hundred Thousand Dollars (\$100,000.00) in the immediately  
541 preceding twelve (12) months.

542 (iii) 1. The person meets at least one (1) of the  
543 following criteria:

544 a. The person possesses a net worth  
545 in excess of Twenty Million Dollars (\$20,000,000.00) as such  
546 amount is adjusted according to item 2 of this subparagraph (iii).

547 b. The person generates annual  
548 revenues in excess of Fifty Million Dollars (\$50,000,000.00) as  
549 such amount is adjusted according to item 2 of this subparagraph  
550 (iii).

551 c. The person employs more than  
552 five hundred (500) full-time or full-time equivalent employees per  
553 individual insured or is a member of an affiliated group employing  
554 more than one thousand (1,000) employees in the aggregate.

555 d. The person is a not-for-profit  
556 organization or public entity generating annual budgeted  
557 expenditures of at least Thirty Million Dollars (\$30,000,000.00)



558 as such amount is adjusted according to item 2 of this  
559 subparagraph (iii).

560 e. The person is a municipality  
561 with a population in excess of fifty thousand (50,000) persons.

562 2. Effective on January 1, 2015, and  
563 every five (5) years thereafter, the amounts in items 1a, 1b and  
564 1d of this subparagraph (iii) shall be adjusted to reflect the  
565 percentage change for such five-year period in the Consumer Price  
566 Index for All Urban Consumers published by the Federal Bureau of  
567 Labor Statistics of the United States Department of Labor.

568 **SECTION 6.** Section 83-21-25, Mississippi Code of 1972, is  
569 amended as follows:

570 83-21-25. The surplus lines insurance producer shall report  
571 under oath to the Commissioner of Insurance, within thirty (30)  
572 days from the first of January and July of each year, the amount  
573 of gross premiums received by him for such insurance in  
574 nonadmitted insurers, and shall pay to the Commissioner of  
575 Insurance a tax of four percent (4%) thereon. The term "gross  
576 premiums" shall mean the total gross amount of premiums received  
577 on each and every surplus lines insurance contract, less returned  
578 premiums. In default of the payment of any sum which may be due  
579 the state under this law, the Commissioner of Insurance may sue  
580 for the same. The surplus lines insurance producer shall keep a  
581 separate record of all transactions, as herein provided, open at  
582 all times to the inspection of the Commissioner of Insurance. The  
583 surplus lines insurance producer may designate another surplus  
584 lines insurance producer that actually procured the insurance from  
585 the nonadmitted insurer to report and pay, on behalf of the  
586 surplus lines insurance producer, to the Commissioner of Insurance  
587 the tax due the state under this law. The surplus lines insurance  
588 producer designated to pay the tax shall be deemed to have the  
589 same obligations and responsibilities for reporting and paying the  
590 tax due the state on the insurance procured from the nonadmitted



591 insurer as the surplus lines insurance producer who was initially  
592 responsible for reporting and paying the tax, and the Commissioner  
593 of Insurance may sue such surplus lines insurance producer  
594 designated to pay the tax in the event such surplus lines  
595 insurance producer is in default of any sum which is due the state  
596 for which the designated surplus lines insurance producer is  
597 responsible or obligated to pay.

598         **SECTION 7.** Section 83-21-27, Mississippi Code of 1972, is  
599 amended as follows:

600         83-21-27. Nothing contained in Sections 83-21-17 to 83-21-31  
601 shall authorize any person, firm, association, or corporation to  
602 guarantee or otherwise validate or secure the performance or  
603 legality of any agreement, instrument, or policy of insurance of  
604 any nonadmitted insurer \* \* \*, nor to permit or authorize any  
605 nonadmitted insurer to do any insurance business by or through any  
606 person or surplus lines insurance producer acting within this  
607 state; but surplus lines insurance producers licensed hereunder  
608 acting pursuant to the cited sections may issue and deliver to  
609 their clients, the insured, binders, policies, and other  
610 confirmation of direct insurance so lawfully placed, and shall not  
611 be personally liable to the holder of any policy of insurance so  
612 issued or delivered for any loss covered thereby.

613         **SECTION 8.** Section 83-21-29, Mississippi Code of 1972, is  
614 amended as follows:

615         83-21-29. A nonadmitted insurer may be sued upon any cause  
616 of action arising in this state under any contract issued by it as  
617 hereinabove authorized, in a court of competent jurisdiction in  
618 any county in which the plaintiff may reside, or in which the  
619 cause of action arose. Any such policy or contract shall contain  
620 a provision authorizing service of citation or other legal process  
621 upon a person or firm whose name and address shall be set out  
622 therein, which said person, or at least one (1) member of a firm,  
623 shall be a resident of Mississippi. In lieu thereof any such



624 policy or contract shall contain a provision authorizing service  
625 of citation or other legal process upon the Commissioner of  
626 Insurance, designating the person to whom said Commissioner of  
627 Insurance shall mail citation or other legal process. In the  
628 event service of legal process against a nonadmitted insurer is  
629 made by service upon the Commissioner of Insurance, he shall  
630 forthwith mail citation or other document or process required to  
631 the person designated by the nonadmitted insurer in the policy for  
632 the purpose by registered mail or certified mail with return  
633 receipt requested. In the event of service of citation or other  
634 legal process upon the Commissioner of Insurance, the nonadmitted  
635 insurer shall have thirty (30) days from date of service upon said  
636 Commissioner of Insurance within which to plead, answer, or  
637 otherwise defend the action. Upon service of process upon the  
638 Insurance Commissioner in accordance with this law, or upon the  
639 person or firm designated in the policy or contract in accordance  
640 with this law, or as provided for by the Mississippi Rules of  
641 Civil Procedure, the court shall be deemed to have jurisdiction in  
642 personam of the nonadmitted insurer. A nonadmitted insurer  
643 issuing such insurance policy or contract shall be deemed thereby  
644 to have authorized service of process upon it in the manner and  
645 effect as provided in Sections 83-21-17 through 83-21-31, and as  
646 provided in the Mississippi Rules of Civil Procedure.

647 **SECTION 9.** Section 83-34-4, Mississippi Code of 1972, is  
648 amended as follows:

649 83-34-4. (1) Nonadmitted insurers shall not be assessable  
650 insurers of the association. All surplus lines insurance  
651 producers placing insurance through nonadmitted insurers shall  
652 collect from the insured and remit to the association a  
653 nonadmitted policy fee on all premiums collected after January 1,  
654 2008, for all insurance written by such surplus lines insurance  
655 producer for a policy from a nonadmitted insurer for any and all  
656 risks \* \* \* in this state. By procuring or selling insurance on



657 property in this state from a nonadmitted insurer, each surplus  
658 lines insurance producer placing insurance through a nonadmitted  
659 insurer agrees to be bound by the provisions of this chapter and  
660 to collect and remit the nonadmitted policy fee provided for  
661 herein.

662 (2) The nonadmitted policy fee shall be a percentage of the  
663 total policy premium but the nonadmitted policy fee shall not be  
664 considered premium and is not subject to premium taxes or  
665 commissions. However, failure to pay the nonadmitted policy fee  
666 shall be treated the same as failure to pay premium. "Total  
667 policy premium" includes taxes and commissions.

668 (3) The nonadmitted policy fee percentage shall be set by  
669 the commissioner. Such percentage may be changed from time to  
670 time in the discretion of the commissioner, but in no event shall  
671 the nonadmitted policy fee percentage be less than five percent  
672 (5%).

673 (4) Within twenty (20) days of the end of the quarter,  
674 surplus lines insurance producers placing insurance through  
675 nonadmitted insurers shall remit directly to the association all  
676 nonadmitted policy fees collected in the preceding quarter. In  
677 addition to the nonadmitted policy fee provided for herein,  
678 surplus lines insurance producers placing insurance through  
679 nonadmitted insurers shall collect and remit surcharges as  
680 provided by this chapter. Surplus lines insurance producers  
681 placing insurance through nonadmitted insurers may designate  
682 another surplus lines insurance producer that actually procured  
683 the insurance from the nonadmitted carrier to collect and remit  
684 the nonadmitted policy fees \* \* \*.

685 (5) Each insured in this state who directly procures or  
686 renews insurance with a nonadmitted insurer on properties, risks  
687 or exposures located or to be performed, in whole or in part, in  
688 this state, other than insurance procured through a surplus lines  
689 licensee, shall be subject to the nonadmitted policy fee which



690 shall be paid by the insured according to the procedures provided  
691 for premium taxes in Section 83-21-17(5).

692         **SECTION 10.** This act shall take effect and be in force from  
693 and after its passage.

