

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 (NRRRA), 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 NRRRA.

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.

