

By: Senator(s) Clarke

To: Insurance

## SENATE BILL NO. 2904

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

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

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

31 83-21-17. (1) The Commissioner of Insurance shall annually  
32 promulgate a list of nonadmitted insurers found eligible for  
33 writing business in the State of Mississippi, provided each such  
34 insurer qualifies under one (1) of the following paragraphs:

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



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

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

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

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

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

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;



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

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

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

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

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



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

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

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

<u>Year Following Enactment</u>	<u>Trust Fund Requirement</u>
<u>1</u>	<u>Fifteen percent (15%) of U.S.</u> <u>surplus lines liabilities,</u> <u>excluding aviation, wet marine</u> <u>and transportation insurance,</u> <u>with a maximum of Thirty</u> <u>Million Dollars</u> <u>(\$30,000,000.00)</u>
<u>2</u>	<u>Thirty percent (30%) of U.S.</u> <u>surplus lines liabilities,</u> <u>excluding aviation, wet marine</u> <u>and transportation insurance,</u> <u>with a maximum of Sixty</u> <u>Million Dollars</u> <u>(\$60,000,000.00)</u>



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

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

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

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

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

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



202 charged, and additional pertinent information reasonably requested  
203 by the commissioner.

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

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

211 83-21-18. (1) The Commissioner of Insurance may enter into  
212 an agreement, compact, or otherwise establish procedures to  
213 allocate among the states the premium taxes paid to an insured's  
214 home state according to the Nonadmitted and Reinsurance Reform Act  
215 of 2010 (NRRA), which was incorporated intact into the Dodd-Frank  
216 Financial Reform Bill, H.R. 4173, which provides that only an  
217 insured's "home state" may require a premium tax payment for  
218 nonadmitted insurance, and that the placement of all nonadmitted  
219 insurance shall be subject solely to the statutory and regulatory  
220 requirements imposed by the insured's "home state."

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

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



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

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

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

248 (a) "Home state" means:

249 (i) In general, except as provided in subparagraph  
250 (ii), the term "home state" means, with respect to an insured:

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

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

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

265 (b) "Independently procured insurance" means any  
266 property and casualty insurance permitted in a state to be placed





267 directly with a nonadmitted insurer eligible to accept such  
268 business.

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

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

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

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

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

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

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

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

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



300           83-21-19. (1) Surplus lines insurance may be placed by a  
301 surplus lines insurance producer if:

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

371           (f) Having been convicted of a felony;

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

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

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

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

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

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

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

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

392           (9) If the action by the commissioner is to nonrenew,  
393 suspend, revoke or to deny an application for a license, the  
394 commissioner shall notify the applicant or licensee and advise, in  
395 writing, the applicant or licensee of the reason for the denial or  
396 nonrenewal of the applicant's or licensee's license. The  
397 applicant or licensee may make written demand upon the



398 commissioner within ten (10) days for a hearing before the  
399 commissioner to determine the reasonableness of the commissioner's  
400 action. The hearing shall be held within thirty (30) days.

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

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

415 83-21-21. (1) The Commissioner of Insurance may establish a  
416 stamping procedure for all eligible nonadmitted/surplus lines  
417 insurance policies sold on risks subject to the payment of premium  
418 taxes to the State of Mississippi.

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

423 (a) A copy of the association's constitution and  
424 articles of agreement of association or the association's  
425 certificate of incorporation and bylaws and any rules and  
426 regulations governing the association's activities;

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

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



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

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

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

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

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

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

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

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

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

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

462 (7) Upon request from the association, the Commissioner of  
463 Insurance may approve the levy of an examination fee of not more



464 than one percent (1%) of premiums charged under this chapter for  
465 the operation of the association to the extent that such operation  
466 relieves the commissioner of duties otherwise required of the  
467 Commissioner of Insurance under this chapter.

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

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

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

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

489 (12) Notwithstanding the provisions of Section 83-21-18(3),  
490 any stamping procedure established under this section may apply to  
491 the reporting, payment, collection and allocation of premium taxes  
492 for nonadmitted insurance consistent with any agreement, compact  
493 or procedures entered into by the commissioner under Section  
494 83-21-18(1).

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



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

499           83-21-23. (1) When any policy of insurance or certificate  
500 of insurance is procured under the authority of such license,  
501 there shall be executed by the surplus lines insurance producer an  
502 affidavit setting forth facts in complete detail as to what was  
503 done to place such kind of insurance and showing that such surplus  
504 lines insurance producer therein was unable, after diligent  
505 effort, to procure from any licensed company or companies the full  
506 amount of insurance required to protect the property, liability,  
507 or risk desired to be insured, and further showing that the amount  
508 of insurance procured from the eligible nonadmitted insurer or  
509 insurers is only the excess over the amount so procurable from  
510 licensed companies. Each such affidavit, which shall be effective  
511 for the term of the policy, shall be filed with the Commissioner  
512 of Insurance along with the report required in Section 83-21-25.

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

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

522                   (i) The surplus lines insurance producer procuring  
523 or placing the surplus lines insurance has disclosed to the exempt  
524 commercial purchaser that such insurance may or may not be  
525 available from the admitted market that may provide greater  
526 protection with more regulatory oversight; and

527                   (ii) The exempt commercial purchaser has  
528 subsequently requested in writing for the surplus lines insurance





529 producer to procure or place such insurance from a nonadmitted  
530 insurer.

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

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

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

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

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

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

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

554 d. The person is a not-for-profit  
555 organization or public entity generating annual budgeted  
556 expenditures of at least Thirty Million Dollars (\$30,000,000.00)  
557 as such amount is adjusted according to item 2 of this  
558 subparagraph (iii).

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



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

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

569 83-21-25. The surplus lines insurance producer shall report  
570 under oath to the Commissioner of Insurance, within thirty (30)  
571 days from the first of January and July of each year, the amount  
572 of gross premiums received by him for such insurance in  
573 nonadmitted insurers, and shall pay to the Commissioner of  
574 Insurance a tax of four percent (4%) thereon. The term "gross  
575 premiums" shall mean the total gross amount of premiums received  
576 on each and every surplus lines insurance contract, less returned  
577 premiums. In default of the payment of any sum which may be due  
578 the state under this law, the Commissioner of Insurance may sue  
579 for the same. The surplus lines insurance producer shall keep a  
580 separate record of all transactions, as herein provided, open at  
581 all times to the inspection of the Commissioner of Insurance. The  
582 surplus lines insurance producer may designate another surplus  
583 lines insurance producer that actually procured the insurance from  
584 the nonadmitted insurer to report and pay, on behalf of the  
585 surplus lines insurance producer, to the Commissioner of Insurance  
586 the tax due the state under this law. The surplus lines insurance  
587 producer designated to pay the tax shall be deemed to have the  
588 same obligations and responsibilities for reporting and paying the  
589 tax due the state on the insurance procured from the nonadmitted  
590 insurer as the insurance producer who was initially responsible  
591 for reporting and paying the tax, and the Commissioner of  
592 Insurance may sue such surplus lines insurance producer designated  
593 to pay the tax in the event such surplus lines insurance producer



594 is in default of any sum which is due the state for which the  
595 designated surplus lines insurance producer is responsible or  
596 obligated to pay.

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

599 83-21-27. Nothing contained in Sections 83-21-17 to 83-21-31  
600 shall authorize any person, firm, association, or corporation to  
601 guarantee or otherwise validate or secure the performance or  
602 legality of any agreement, instrument, or policy of insurance of  
603 any nonadmitted insurer \* \* \*, nor to permit or authorize any  
604 nonadmitted insurer to do any insurance business by or through any  
605 person or surplus lines insurance producer acting within this  
606 state; but surplus lines insurance producers licensed hereunder  
607 acting pursuant to the cited sections may issue and deliver to  
608 their clients, the insured, binders, policies, and other  
609 confirmation of direct insurance so lawfully placed, and shall not  
610 be personally liable to the holder of any policy of insurance so  
611 issued or delivered for any loss covered thereby.

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

614 83-21-29. A nonadmitted insurer may be sued upon any cause  
615 of action arising in this state under any contract issued by it as  
616 hereinabove authorized, in a court of competent jurisdiction in  
617 any county in which the plaintiff may reside, or in which the  
618 cause of action arose. Any such policy or contract shall contain  
619 a provision authorizing service of citation or other legal process  
620 upon a person or firm whose name and address shall be set out  
621 therein, which said person, or at least one (1) member of a firm,  
622 shall be a resident of Mississippi. In lieu thereof any such  
623 policy or contract shall contain a provision authorizing service  
624 of citation or other legal process upon the Commissioner of  
625 Insurance, designating the person to whom said Commissioner of  
626 Insurance shall mail citation or other legal process. In the



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

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

648 83-34-4. (1) Nonadmitted insurers shall not be assessable  
649 insurers of the association. All surplus lines insurance  
650 producers placing insurance through nonadmitted insurers shall  
651 collect from the insured and remit to the association a  
652 nonadmitted policy fee on all premiums collected after January 1,  
653 2008, for all insurance written by such surplus lines insurance  
654 producer for a policy from a nonadmitted insurer for any and all  
655 risks \* \* \* in this state. By procuring or selling insurance on  
656 property in this state from a nonadmitted insurer, each surplus  
657 lines insurance producer placing insurance through a nonadmitted  
658 insurer agrees to be bound by the provisions of this chapter and



659 to collect and remit the nonadmitted policy fee provided for  
660 herein.

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

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

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

684 (5) Each insured in this state who directly procures or  
685 renews insurance with a nonadmitted insurer on properties, risks  
686 or exposures located or to be performed, in whole or in part, in  
687 this state, other than insurance procured through a surplus lines  
688 licensee, shall be subject to the nonadmitted policy fee which  
689 shall be paid by the insured according to the procedures provided  
690 for premium taxes in Section 83-21-17(5).



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

