

By: Representative Chism

To: Insurance

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 534

1 AN ACT TO AMEND SECTION 83-5-205, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO CONDUCT FINANCIAL
3 AND MARKET ANALYSIS REVIEW OF ALL INSURERS AUTHORIZED TO DO
4 BUSINESS IN THIS STATE; TO AMEND SECTION 83-5-209, MISSISSIPPI
5 CODE OF 1972, TO PROVIDE FOR THE CONFIDENTIALITY OF ANCILLARY
6 INFORMATION RECEIVED BY THE COMMISSIONER OF INSURANCE DURING AN
7 EXAMINATION, FINANCIAL REVIEW AND MARKET ANALYSIS REVIEW; TO AMEND
8 SECTIONS 83-5-401 THROUGH 83-5-405, 83-5-417 AND 83-5-427,
9 MISSISSIPPI CODE OF 1972, TO INCLUDE HEALTH ORGANIZATION INSURERS
10 UNDER THE RISK BASED CAPITAL LAWS; TO AMEND SECTION 83-6-1,
11 MISSISSIPPI CODE OF 1972, TO DEFINE THE TERM "ENTERPRISE RISK" AS
12 USED IN THE INSURANCE HOLDING COMPANY REGISTRATION ACT; TO AMEND
13 SECTION 83-6-5, MISSISSIPPI CODE OF 1972, TO REVISE THE FORM AND
14 CONTENTS OF THE REGISTRATION STATEMENT FILED WITH THE COMMISSIONER
15 OF INSURANCE; TO AMEND SECTION 83-6-17, MISSISSIPPI CODE OF 1972,
16 TO PROVIDE THAT A DISCLAIMER OF AFFILIATION SHALL BE DEEMED TO
17 HAVE BEEN GRANTED UNLESS THE COMMISSIONER NOTIFIES THE FILING
18 PARTY THE DISCLAIMER IS DISALLOWED; TO AMEND SECTION 83-6-21,
19 MISSISSIPPI CODE OF 1972, TO REVISE THE NOTICE REQUIREMENTS TO THE
20 COMMISSIONER OF INSURANCE OF CERTAIN INTENDED TRANSACTIONS WITHIN
21 THE HOLDING COMPANY SYSTEM; TO AMEND SECTION 83-6-24, MISSISSIPPI
22 CODE OF 1972, TO REVISE THE FILING REQUIREMENTS OF PERSONS SEEKING
23 TO DIVEST OR ACQUIRE A CONTROLLING INTEREST IN A DOMESTIC INSURER;
24 TO CREATE NEW SECTION 83-6-26, MISSISSIPPI CODE OF 1972, TO
25 PROVIDE CERTAIN MANAGEMENT REQUIREMENTS OF DOMESTIC INSURERS
26 SUBJECT TO REGISTRATION; TO AMEND SECTION 83-6-27, MISSISSIPPI
27 CODE OF 1972, TO MAKE A TECHNICAL CORRECTION TO REFERENCE THE
28 CHAPTER OF LAWS; TO AMEND SECTION 83-6-29, MISSISSIPPI CODE OF
29 1972, TO REVISE THE CONFIDENTIAL TREATMENT OF DOCUMENTS, MATERIALS
30 OR OTHER INFORMATION IN THE POSSESSION OR CONTROL OF THE
31 DEPARTMENT OF INSURANCE THAT ARE OBTAINED BY OR DISCLOSED TO THE
32 COMMISSIONER OR ANY OTHER PERSON DURING CERTAIN EXAMINATIONS OR
33 INVESTIGATIONS; AND FOR RELATED PURPOSES.



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

35 **SECTION 1.** Section 83-5-205, Mississippi Code of 1972, is
36 amended as follows:

37 83-5-205. (1) The commissioner or any of his examiners may
38 conduct an examination under Sections 83-5-201 through 83-5-217 of
39 any company as often as the commissioner, in his or her sole
40 discretion, deems appropriate but, at a minimum, shall conduct an
41 examination of every insurer licensed in this state not less
42 frequently than once every five (5) years. In scheduling and
43 determining the nature, scope and frequency of the examinations,
44 the commissioner shall consider such matters as the results of
45 financial statement analyses and ratios, changes in management or
46 ownership, actuarial opinions, reports of independent certified
47 public accountants and other criteria as set forth in the
48 Examiners' Handbook adopted by the National Association of
49 Insurance Commissioners and in effect when the commissioner
50 exercises discretion under this section.

51 (2) For purposes of completing an examination of any company
52 under Sections 83-5-201 through 83-5-217, the commissioner may
53 examine or investigate any person, or the business of any person,
54 insofar as such examination or investigation, in the sole
55 discretion of the commissioner, is necessary or material to the
56 examination of the company.

57 (3) In lieu of an examination under Sections 83-5-201
58 through 83-5-217 of any foreign or alien insurer licensed in this



59 state, the commissioner may accept an examination report on the
60 company as prepared by the insurance department for the company's
61 state of domicile or port-of-entry state until January 1, 1994.
62 Thereafter, such reports may only be accepted if (a) the insurance
63 department was at the time of the examination accredited under the
64 National Association of Insurance Commissioners' Financial
65 Regulation Standards and Accreditation Program; or (b) the
66 examination is performed under the supervision of an accredited
67 insurance department or with the participation of one or more
68 examiners who are employed by such an accredited state insurance
69 department and who, after a review of the examination work papers
70 and report, state under oath that the examination was performed in
71 a manner consistent with the standards and procedures required by
72 their insurance department.

73 (4) In addition to those examinations performed by the
74 commissioner pursuant to subsection (1) of this section, the
75 commissioner shall conduct financial and market analysis review of
76 all insurers authorized to do business in this state and may
77 conduct regulatory review of entities regulated by the department.
78 The reviews may include the annual statement and the market
79 conduct annual statement of the insurer or regulated entity
80 reviewed, company financial reports rendered pursuant to good and
81 acceptable accounting practices, results of insurance solvency
82 standards testing as performed by the National Association of
83 Insurance Commissioners, results of prior examinations and office



84 reviews, management changes, consumer complaints, and such other
85 relevant information as from time to time may be required by the
86 commissioner.

87 (5) In lieu of conducting a financial or market analysis
88 under this section of any foreign or alien insurer licensed in
89 this state, the commissioner may rely upon the financial or market
90 analysis conducted by the insurance department of the company's
91 state of domicile or port-of-entry accredited under the National
92 Association of Insurance Commissioners' Financial Regulation
93 Standards and Accreditation Program.

94 (6) Every insurer or regulated entity shall produce and make
95 freely accessible to the commissioner the accounts, records,
96 documents and files in its possession or control. Failure by an
97 insurer or regulated entity to supply information requested by the
98 department during a course of financial or market analysis may
99 subject the insurer or regulated entity to revocation or
100 suspension of its license, or, in lieu thereof, a fine not to
101 exceed Ten Thousand Dollars (\$10,000.00) per occurrence.

102 **SECTION 2.** Section 83-5-209, Mississippi Code of 1972, is
103 amended as follows:

104 83-5-209. (1) All examination reports shall be comprised of
105 only facts appearing upon the books, records or other documents of
106 the company, its agents or other persons examined, or as
107 ascertained from the testimony of its officers or agents or other
108 persons examined concerning its affairs and such conclusions and



109 recommendations as the examiners find reasonably warranted from
110 the facts.

111 (2) No later than sixty (60) days following completion of
112 the examination, the examiner in charge shall file with the
113 department a verified written report of examination under oath.
114 Upon receipt of the verified report, the department shall transmit
115 the report to the company examined, together with a notice which
116 shall afford the company examined a reasonable opportunity of not
117 more than thirty (30) days to make a written submission or
118 rebuttal with respect to any matters contained in the examination
119 report.

120 (3) Within thirty (30) days of the end of the period allowed
121 for the receipt of written submissions or rebuttals, the
122 commissioner shall fully consider and review the report, together
123 with any written submissions or rebuttals and any relevant
124 portions of examiner work papers and enter an order:

125 (a) Adopting the examination report as filed, or with
126 modification or corrections. If the examination report reveals
127 that the company is operating in violation of any law, regulation
128 or prior order of the commissioner, the commissioner may order the
129 company to take any action the commissioner considers necessary
130 and appropriate to cure such violation; or

131 (b) Rejecting the examination report with directions to
132 the examiners to reopen the examination for purposes of obtaining



133 additional data, documentation or information and refiling in
134 accordance with subsections (1) and (2) of this section; or

135 (c) Calling for an investigatory hearing with no less
136 than twenty (20) days' notice to the company for purposes of
137 obtaining additional documentation, data, information and
138 testimony.

139 (4) All orders entered in accordance with subsection (3) (a)
140 of this section shall be accompanied by findings and conclusions
141 resulting from the commissioner's consideration and review of the
142 examination report, relevant examiner work papers, and any written
143 submissions or rebuttals. Any such order shall be considered a
144 final administrative decision and may be appealed under the
145 Mississippi Administrative Procedures Act and shall be served upon
146 the company by certified mail, together with a copy of the adopted
147 examination report. Within thirty (30) days of the issuance of
148 the adopted report, the company shall file affidavits executed by
149 each of its directors stating under oath that they have received a
150 copy of the adopted report and related orders.

151 (5) Any hearing conducted under subsection (3) (c) of this
152 section by the commissioner or authorized representative shall be
153 conducted as a nonadversarial confidential investigatory
154 proceeding as necessary for the resolution of any inconsistencies,
155 discrepancies or disputed issues apparent upon the face of the
156 filed examination report or raised by or as a result of the
157 commissioner's review of relevant work papers or by the written



158 submission or rebuttal of the company. Within twenty (20) days of
159 the conclusion of any such hearing, the commissioner shall enter
160 an order in accordance with subsection (3)(a) of this section.

161 (a) The commissioner shall not appoint an examiner as
162 an authorized representative to conduct the hearing. The hearing
163 shall proceed expeditiously with discovery by the company limited
164 to examiner work papers which tend to substantiate any assertions
165 set forth in any written submission or rebuttal. The commissioner
166 or his representative may issue subpoenas for the attendance of
167 any witnesses or the production of any documents deemed relevant
168 to the investigation whether under the control of the department,
169 the company or other persons. The documents produced shall be
170 included in the record, and testimony taken by the commissioner or
171 his representative shall be under oath and preserved for the
172 record.

173 Nothing contained in this section shall require the
174 department to disclose any information or records which would
175 indicate or show the existence or content of any investigation or
176 activity of a criminal justice agency.

177 (b) The hearing shall proceed with the commissioner or
178 his representative posing questions to the persons subpoenaed.
179 Thereafter, the company and the department may present testimony
180 relevant to the investigation. Cross-examination shall be
181 conducted only by the commissioner or his representative. The



182 company and the department shall be permitted to make closing
183 statements and may be represented by counsel of their choice.

184 (6) (a) Upon the adoption of the examination report under
185 subsection (3)(a) of this section, the commissioner shall continue
186 to hold the content of the examination report as private and
187 confidential information for a period of ten (10) days except to
188 the extent provided in subsection (2) of this section.
189 Thereafter, the commissioner may open the report for public
190 inspection so long as no court of competent jurisdiction has
191 stayed its publication.

192 (b) Nothing contained in Sections 83-5-201 through
193 83-5-217 shall prevent or be construed as prohibiting the
194 commissioner from disclosing the content of an examination report,
195 preliminary examination report or results, or any matter relating
196 thereto, to the insurance department of this or any other state or
197 country, or to law enforcement officials of this or any other
198 state or agency of the federal government at any time, so long as
199 such agency or office receiving the report or matters relating
200 thereto agrees in writing to hold it confidential and in a manner
201 consistent with Sections 83-5-201 through 83-5-217.

202 (c) If the commissioner determines that regulatory
203 action is appropriate as a result of any examination, he may
204 initiate any proceedings or actions as provided by law.

205 (7) * * * (a) (i) Except as provided in subsection (6) and
206 in this subsection (7), documents, materials or other information,



207 including, but not limited to, all working papers, and copies
208 thereof, created, produced or obtained by or disclosed to the
209 commissioner or any other person in the course of an examination
210 made under Sections 83-5-201 through 83-5-217, or in the course of
211 analysis by the commissioner of the financial condition or market
212 conduct of a company, shall be confidential by law and privileged,
213 shall not be subject to the Mississippi Public Records Act, shall
214 not be subject to subpoena, and shall not be subject to discovery
215 or admissible in evidence in any private civil action. The
216 commissioner is authorized to use the documents, materials or
217 other information in the furtherance of any regulatory or legal
218 action brought as part of the commissioner's official duties.

219 (ii) Documents, materials or other information,
220 including, but not limited to, all working papers, and copies
221 thereof, in the possession or control of the National Association
222 of Insurance Commissioners and its affiliates and subsidiaries
223 shall be confidential by law and privileged, shall not be subject
224 to subpoena, and shall not be subject to discovery or admissible
225 in evidence in any private civil action, if they are:

226 1. Created, produced or obtained by or
227 disclosed to the National Association of Insurance Commissioners
228 and its affiliates and subsidiaries in the course of the National
229 Association of Insurance Commissioners and its affiliates and
230 subsidiaries assisting an examination made under Sections 83-5-201
231 through 83-5-217, or the laws of another state or jurisdiction



232 that is substantially similar to Sections 83-5-201 through
233 83-5-217, or assisting a commissioner in the analysis of the
234 financial condition or market conduct of a company; or

235 2. Disclosed to the National Association of
236 Insurance Commissioners and its affiliates and subsidiaries under
237 paragraph (c) of this subsection by a commissioner.

238 (b) Neither the commissioner nor any person who
239 received the documents, material or other information while acting
240 under the authority of the commissioner, including the National
241 Association of Insurance Commissioners and its affiliates and
242 subsidiaries, shall be permitted to testify in any private civil
243 action concerning any confidential documents, materials or
244 information subject to paragraph (a) of this subsection.

245 (c) In order to assist in the performance of the
246 commissioner's duties, the commissioner:

247 (i) May share documents, materials or other
248 information, including the confidential and privileged documents,
249 materials or information subject to paragraph (a) of this
250 subsection, with other state, federal and international regulatory
251 agencies, with the National Association of Insurance Commissioners
252 and its affiliates and subsidiaries, and with state, federal and
253 international law enforcement authorities, provided that the
254 recipient agrees to maintain the confidentiality and privileged
255 status of the document, material, communication or other
256 information;



257 (ii) May receive documents, materials,
258 communications or information, including otherwise confidential
259 and privileged documents, materials or information, from the
260 National Association of Insurance Commissioners and its affiliates
261 and subsidiaries, and from regulatory and law enforcement
262 officials of other foreign or domestic jurisdictions, and shall
263 maintain as confidential or privileged any document, material or
264 information received with notice or the understanding that it is
265 confidential or privileged under the laws of the jurisdiction that
266 is the source of the document, material or information; and

267 (iii) May enter into agreements governing the
268 sharing and use of information consistent with this subsection.

269 (d) No waiver of any applicable privilege or claim of
270 confidentiality in the documents, materials or information shall
271 occur as a result of disclosure to the commissioner under this
272 section or as a result of sharing as authorized in paragraph (c)
273 of this subsection.

274 (e) A privilege established under the law of any state
275 or jurisdiction that is substantially similar to the privilege
276 established under this subsection shall be available and enforced
277 in any proceeding in, and in any court of, this state.

278 (f) For the purposes of this subsection, the terms
279 "department," "insurance department," "law enforcement agency,"
280 "regulatory agency," and the "National Association of Insurance



281 Commissioners" include, but are not limited to, their employees,
282 agents, consultants and contractors.

283 **SECTION 3.** Section 83-5-401, Mississippi Code of 1972, is
284 amended as follows:

285 83-5-401. As used in Sections 83-5-401 through 83-5-427, the
286 following words and phrases shall have the meanings ascribed
287 herein unless the context clearly indicates otherwise:

288 (a) "Adjusted RBC report" means a risk-based capital
289 report which has been adjusted by the commissioner in accordance
290 with Section 83-5-403(5).

291 (b) "Corrective order" means an order issued by the
292 commissioner specifying corrective actions which the commissioner
293 has determined are required.

294 (c) "Domestic insurer" means any insurance company
295 domiciled in this state.

296 (d) "Foreign insurer" means any insurance company which
297 is licensed to do business in this state under Section 83-21-1 et
298 seq., but is not domiciled in this state.

299 (e) "NAIC" means the National Association of Insurance
300 Commissioners.

301 (f) "Life and/or health insurer" means any insurance
302 company licensed under Section 83-19-1 et seq., or a licensed
303 property and casualty insurer writing only accident and health
304 insurance.



305 (g) "Property and casualty insurer" means any insurance
306 company licensed under Section 83-19-1 et seq., but shall not
307 include monoline mortgage guaranty insurers, financial guaranty
308 insurers and title insurers.

309 (h) "Negative trend" means, with respect to a life
310 and/or health insurer, negative trend over a period of time, as
311 determined in accordance with the "Trend Test Calculation"
312 included in the Life RBC instructions.

313 (i) "RBC instructions" means the RBC report including
314 risk-based capital instructions adopted by the NAIC, as such RBC
315 instructions may be amended by the NAIC from time to time in
316 accordance with the procedures adopted by the NAIC.

317 (j) "RBC level" means an insurer's company action level
318 RBC, regulatory action level RBC, authorized control level RBC, or
319 mandatory control level RBC where:

320 (i) "Company action level RBC" means, with respect
321 to any insurer, the product of 2.0 and its authorized control
322 level RBC;

323 (ii) "Regulatory action level RBC" means the
324 product of 1.5 and its authorized control level RBC;

325 (iii) "Authorized control level RBC" means the
326 number determined under the risk-based capital formula in
327 accordance with the RBC instructions;

328 (iv) "Mandatory control level RBC" means the
329 product of .70 and the authorized control level RBC.



330 (k) "RBC plan" means a comprehensive financial plan
331 containing the elements specified in Section 83-5-405(2). If the
332 commissioner rejects the RBC plan, and it is revised by the
333 insurer, with or without the commissioner's recommendation, the
334 plan shall be called the "revised RBC plan."

335 (l) "RBC report" means the report required in Section
336 83-5-403.

337 (m) "Total adjusted capital" means the sum of:

338 (i) An insurer's statutory capital and surplus as
339 determined in accordance with the statutory accounting applicable
340 to the annual financial statements required to be filed under
341 Section 83-5-55; and

342 (ii) Such other items, if any, as the RBC
343 instructions may provide.

344 (n) "Domestic health organization insurer" means a
345 health organization insurer domiciled in this state.

346 (o) "Foreign health organization insurer" means a
347 health organization insurer that is licensed to do business in
348 this state under Section 83-21-1 et seq., but is not domiciled in
349 this state.

350 (p) "Health organization insurer" means a health
351 maintenance organization, limited health service organization,
352 dental or vision plan, hospital, medical and dental indemnity or
353 service corporation or other managed care organization that holds
354 a certificate of authority under Section 83-41-305. This



355 definition does not include an organization that is licensed as
356 either a life and health insurer or property and casualty insurer
357 and that is otherwise subject to either the life or property and
358 casualty RBC requirements.

359 **SECTION 4.** Section 83-5-403, Mississippi Code of 1972, is
360 amended as follows:

361 83-5-403. (1) Every domestic insurer shall, on or before
362 each March 1, the filing date, prepare and submit to the
363 commissioner a report of its RBC levels as of the end of the
364 calendar year just ended, in a form and containing such
365 information as is required by the RBC instructions. In addition,
366 every domestic insurer shall file its RBC report:

367 (a) With the NAIC in accordance with the RBC
368 instructions; and

369 (b) With the insurance commissioner in any state in
370 which the insurer is authorized to do business, if the insurance
371 commissioner has notified the insurer of its request in writing,
372 in which case the insurer shall file its RBC report not later than
373 the later of:

374 (i) Fifteen (15) days from the receipt of notice
375 to file its RBC report with that state; or

376 (ii) The filing date.

377 (2) A life and health insurer's RBC shall be determined in
378 accordance with the formula set forth in the RBC instructions.

379 The formula shall take into account, and may adjust for the



380 covariance between, the following factors determined in each case
381 by applying the factors in the manner set forth in the RBC
382 instructions.

383 (a) The risk with respect to the insurer's assets;

384 (b) The risk of adverse insurance experience with
385 respect to the insurer's liabilities and obligations;

386 (c) The interest rate risk with respect to the
387 insurer's business; and

388 (d) All other business risks and such other relevant
389 risks as are set forth in the RBC instructions.

390 (3) A property and casualty insurer's RBC shall be
391 determined in accordance with the formula set forth in the RBC
392 instructions. The formula shall take the following into account,
393 and may adjust for the covariance between, determined in each case
394 by applying the factors in the manner set forth in the RBC
395 instructions:

396 (a) Asset risk;

397 (b) Credit risk;

398 (c) Underwriting risk; and

399 (d) All other business risks and such other relevant
400 risks as are set forth in the RBC instructions.

401 (4) A health organization insurer's RBC shall be determined
402 in accordance with the formula set forth in the RBC instructions.
403 The formula shall take the following into account (and may adjust



404 for the covariance between) determined in each case by applying
405 the factors in the manner set forth in the RBC instructions:

406 (a) Asset risk;

407 (b) Credit risk;

408 (c) Underwriting risk; and

409 (d) All other business risks and such other relevant
410 risks as are set forth in the RBC instructions.

411 (* * *5) An excess of capital over the amount produced by
412 the risk-based capital requirements contained in Sections 83-5-401
413 through 83-5-427 and the formulas, schedules and instructions
414 referenced in Sections 83-5-401 through 83-5-427, is desirable in
415 the business of insurance. Accordingly, insurers should seek to
416 maintain capital above the RBC levels required by Sections
417 83-5-401 through 83-5-427. Additional capital is used and useful
418 in the insurance business and helps to secure an insurer against
419 various risks inherent in, or affecting, the business of insurance
420 and not accounted for or only partially measured by the risk-based
421 capital requirements contained in Sections 83-5-401 through
422 83-5-427.

423 (* * *6) If a domestic insurer files a RBC report which in
424 the judgment of the commissioner is inaccurate, then the
425 commissioner shall adjust the RBC report to correct the inaccuracy
426 and shall notify the insurer of the adjustment. The notice shall
427 contain a statement of the reason for the adjustment. A RBC
428 report as so adjusted is referred to as an "adjusted RBC report."



429 **SECTION 5.** Section 83-5-405, Mississippi Code of 1972, is
430 amended as follows:

431 83-5-405. (1) "Company action level event" means any of the
432 following events:

433 (a) The filing of a RBC report by an insurer which
434 indicates that:

435 (i) The insurer's total adjusted capital is
436 greater than or equal to its regulatory action level RBC but less
437 than its company action level RBC;

438 (ii) If a life and/or health insurer, the insurer
439 has total adjusted capital which is greater than or equal to its
440 company action level RBC but less than the product of its
441 authorized control level RBC and 2.5 and has a negative trend; or

442 (iii) If a property and casualty insurer, the
443 insurer has total adjusted capital which is greater than or equal
444 to its company action level RBC but less than the product of its
445 authorized control level RBC and 3.0 and triggers the trend test
446 determined in accordance with the trend test calculation included
447 in the property and casualty RBC instructions;

448 (iv) If a health organization insurer, the insurer
449 has total adjusted capital which is greater than or equal to its
450 company action level RBC but less than the product of its
451 authorized control level RBC and 3.0 and triggers the trend test
452 determined in accordance with the trend test calculations included
453 in the health RBC instructions;



454 (b) The notification by the commissioner to the insurer
455 of an adjusted RBC report that indicates an event in paragraph (a)
456 of this subsection, provided the insurer does not challenge the
457 adjusted RBC report under Section 83-5-413; or

458 (c) If, under Section 83-5-413, an insurer challenges
459 an adjusted RBC report that indicates the event in paragraph (a)
460 of this subsection, the notification by the commissioner to the
461 insurer that the commissioner has, after a hearing, rejected the
462 insurer's challenge.

463 (2) In the event of a company action level event, the
464 insurer shall prepare and submit to the commissioner a RBC plan
465 which shall:

466 (a) Identify the conditions which contribute to the
467 company action level event;

468 (b) Contain proposals of corrective actions which the
469 insurer intends to take and would be expected to result in the
470 elimination of the company action level event;

471 (c) Provide projections of the insurer's financial
472 results in the current year and at least the four (4) succeeding
473 years, both in the absence of proposed corrective actions and
474 giving effect to the proposed corrective actions, including
475 projections of statutory operating income, net income, capital and
476 surplus. The projections for both new and renewal business might
477 include separate projections for each major line of business and



478 separately identify each significant income, expense and benefit
479 component;

480 (d) Identify the key assumptions impacting the
481 insurer's projections and the sensitivity of the projections to
482 the assumptions; and

483 (e) Identify the quality of, and problems associated
484 with, the insurer's business, including, but not limited to, its
485 assets, anticipated business growth and associated surplus strain,
486 extraordinary exposure to risk, mix of business and use of
487 reinsurance, if any, in each case.

488 (3) The RBC plan shall be submitted:

489 (a) Within forty-five (45) days of the company action
490 level event; or

491 (b) If the insurer challenges an adjusted RBC report
492 under Section 83-5-413, within forty-five (45) days after
493 notification to the insurer that the commissioner has, after a
494 hearing, rejected the insurer's challenge.

495 (4) Within sixty (60) days after the submission by an
496 insurer of a RBC plan to the commissioner, the commissioner shall
497 notify the insurer whether the RBC plan shall be implemented or
498 is, in the judgment of the commissioner, unsatisfactory. If the
499 commissioner determines the RBC plan is unsatisfactory, the
500 notification to the insurer shall set forth the reasons for the
501 determination, and may set forth proposed revisions which will
502 render the RBC plan satisfactory, in the judgment of the



503 commissioner. Upon notification from the commissioner, the
504 insurer shall prepare a revised RBC plan, which may incorporate by
505 reference any revisions proposed by the commissioner, and shall
506 submit the revised RBC plan to the commissioner:

507 (a) Within forty-five (45) days after the notification
508 from the commissioner; or

509 (b) If the insurer challenges the notification from the
510 commissioner under Section 83-5-413, within forty-five (45) days
511 after a notification to the insurer that the commissioner has,
512 after a hearing, rejected the insurer's challenge.

513 (5) In the event of a notification by the commissioner to an
514 insurer that the insurer's RBC plan or revised RBC plan is
515 unsatisfactory, the commissioner may at the commissioner's
516 discretion, subject to the insurer's right to a hearing under
517 Section 83-5-413, specify in the notification that the
518 notification constitutes a regulatory action level event.

519 (6) Every domestic insurer that files a RBC plan or revised
520 RBC plan with the commissioner shall file a copy of the RBC plan
521 or revised RBC plan with the insurance commissioner in any state
522 in which the insurer is authorized to do business if:

523 (a) Such state has a RBC provision substantially
524 similar to Section 83-5-415(1); and

525 (b) The insurance commissioner of that state has
526 notified the insurer of its request for the filing in writing, in



527 which case the insurer shall file a copy of the RBC plan or
528 revised RBC plan in that state no later than the later of:

529 (i) Fifteen (15) days after the receipt of notice
530 to file a copy of its RBC plan or revised RBC plan with the state;
531 or

532 (ii) The date on which the RBC plan or revised RBC
533 plan is filed under Section 83-5-405(3) and (4).

534 **SECTION 6.** Section 83-5-417, Mississippi Code of 1972, is
535 amended as follows:

536 83-5-417. (1) The provisions of Sections 83-5-401 through
537 83-5-427 are supplemental to any other provisions of the laws of
538 this state and shall not preclude or limit any other powers or
539 duties of the commissioner under such laws.

540 (2) The commissioner may promulgate rules and regulations
541 necessary for the implementation of Sections 83-5-401 through
542 83-5-427.

543 (3) The commissioner may exempt from the application of
544 Sections 83-5-401 through 83-5-427 any domestic insurer, other
545 than a domestic health organization insurer, that:

546 (a) Writes direct business only in this state;

547 (b) Writes direct annual premiums of Two Million
548 Dollars (\$2,000,000.00) or less; and

549 (c) Assumes no reinsurance in excess of five percent
550 (5%) of direct premium written.



551 (4) The commissioner may exempt from the application of
552 Sections 83-5-401 through 83-5-427 a domestic health organization
553 insurer that:

554 (a) Writes direct business only in this state;

555 (b) Assumes no reinsurance in excess of five percent
556 (5%) of direct premium written; and

557 (c) Writes direct annual premiums for comprehensive
558 medical business of Two Million Dollars (\$2,000,000.00) or less,
559 or is a limited health service organization that covers less than
560 two thousand (2,000) lives.

561 **SECTION 7.** Section 83-5-427, Mississippi Code of 1972, is
562 amended as follows:

563 83-5-427. (1) For RBC reports required to be filed by life
564 insurers with respect to 1996, the following requirements shall
565 apply in lieu of the provisions of Sections 83-5-405, 83-5-407,
566 83-5-409, and 83-5-411.

567 (a) In the event of a company action level event with
568 respect to a domestic insurer, the commissioner shall take no
569 regulatory action hereunder.

570 (b) In the event of a regulatory action level event
571 under Section 83-5-407(1) (a), (b) or (c), the commissioner shall
572 take the actions required under Section 83-5-405.

573 (c) In the event of a regulatory action level event
574 under Section 83-5-407(1) (d), (e), (f), (g), (h) or (i), or an
575 authorized control level event, the commissioner shall take the



576 actions required under Section 83-5-407 with respect to the
577 insurer.

578 (d) In the event of a mandatory control level event
579 with respect to an insurer, the commissioner shall take the
580 actions required under Section 83-5-409 with respect to the
581 insurer.

582 (2) For RBC reports required to be filed by property and
583 casualty insurers with respect to 1996, the following requirements
584 shall apply in lieu of the provisions of Sections 83-5-405,
585 83-5-407, 83-5-409, and 83-5-411:

586 (a) In the event of a company action level event with
587 respect to a domestic insurer, the commissioner shall take no
588 regulatory action hereunder.

589 (b) In the event of a regulatory action level event
590 under Section 83-5-407(1) (a), (b) or (c), the commissioner shall
591 take the actions required under Section 83-5-405.

592 (c) In the event of a regulatory action level event
593 under Section 83-5-407(1) (d), (e), (f), (g), (h) or (i), or an
594 authorized control level event, the commissioner shall take the
595 actions required under Section 83-5-407 with respect to the
596 insurer.

597 (d) In the event of a mandatory control level event
598 with respect to an insurer, the commissioner shall take the
599 actions required under Section 83-5-409 with respect to the
600 insurer.



601 (3) For RBC reports required to be filed by health
602 organization insurers with respect to 2013, the following
603 requirements shall apply in lieu of the provisions of Sections
604 83-5-405, 83-5-407, 83-5-409 and 83-5-411:

605 (a) In the event of a company action level event with
606 respect to a domestic health organization insurer, the
607 commissioner shall take no regulatory action hereunder;

608 (b) In the event of a regulatory action level event
609 under Section 83-5-407(1) (a), (b) or (c), the commissioner shall
610 take the actions required under Section 83-5-405;

611 (c) In the event of a regulatory action level event
612 under Section 83-5-407(1) (d), (e), (f), (g), (h) or (i), or an
613 authorized control level event, the commissioner shall take the
614 actions required under Section 83-5-407 with respect to the health
615 organization insurer; and

616 (d) In the event of a mandatory control level event
617 with respect to a health organization insurer, the commissioner
618 shall take the actions required under Section 83-5-409 with
619 respect to the health organization insurer.

620 **SECTION 8.** Section 83-6-1, Mississippi Code of 1972, is
621 amended as follows:

622 83-6-1. As used in this chapter the following terms have the
623 respective meanings herein set forth unless the context shall
624 require otherwise:



625 (a) An "affiliate of" or person "affiliated" with a
626 specific person means a person that directly, or indirectly
627 through one or more intermediaries, controls, or is controlled by,
628 or is under common control with, the person specified.

629 (b) "Commissioner" means the Commissioner of Insurance.

630 (c) "Control" (including the terms "controlling,"
631 "controlled by" and "under common control with") means the
632 possession of the power to direct or cause the direction of the
633 management and policies of a person, whether through the ownership
634 of voting securities, by contract other than a commercial contract
635 for goods or nonmanagement services or otherwise, unless the power
636 is the result of an official position with or corporate office
637 held by the person. "Control" shall be presumed to exist if any
638 person, directly or indirectly, owns, controls, holds with the
639 power to vote or holds proxies representing ten percent (10%) or
640 more of the voting securities of any other person. This
641 presumption may be rebutted by a showing made in the manner
642 provided in Section 83-6-17 that control does not exist in fact.
643 The commissioner may determine, after furnishing all persons in
644 interest notice and opportunity to be heard and making specific
645 findings of fact to support such determination, that control
646 exists in fact, notwithstanding the absence of a presumption to
647 that effect.



648 (d) An "insurance holding company system" consists of
649 two (2) or more affiliated persons, one or more of which is an
650 insurer.

651 (e) "Insurer" means only those companies subject to the
652 jurisdiction of the commissioner as provided in Section 83-5-1;
653 however, burial associations regulated pursuant to Chapter
654 37 * * *, Title 83, Mississippi Code of 1972, are excluded from
655 this definition.

656 (f) "Person" means an individual, corporation,
657 partnership, association, joint-stock company, trust,
658 unincorporated organization, any similar entity or any combination
659 of the foregoing acting in concert, but shall not include any
660 securities broker performing no more than the usual and customary
661 broker's function.

662 (g) A "security holder" of a specified person means one
663 who owns any security of such person, including common stock,
664 preferred stock, debt obligations and any other security
665 convertible into or evidencing the right to acquire any of the
666 foregoing.

667 (h) "Subsidiary" of a specified person means an
668 affiliate controlled by a person, directly or indirectly, through
669 one or more intermediaries.

670 (i) The term "voting security" includes any security
671 convertible into or evidencing a right to acquire a voting
672 security.



673 (j) "Enterprise risk" shall mean any activity,
674 circumstance, event or series of events involving one or more
675 affiliates of an insurer that, if not remedied promptly, is likely
676 to have a material adverse effect upon the financial condition or
677 liquidity of the insurer or its insurance holding company system
678 as a whole, including, but not limited to, anything that would
679 cause the insurer's Risk-Based Capital to fall into company action
680 level as provided in Section 83-5-405 or would cause the insurer
681 to be in hazardous financial condition as provided in Section
682 83-5-411.

683 **SECTION 9.** Section 83-6-5, Mississippi Code of 1972, is
684 amended as follows:

685 83-6-5. (1) Every insurer subject to registration is
686 required to file a registration statement on a form provided by
687 the commissioner which shall contain current information setting
688 forth:

689 (a) The capital structure, general financial condition,
690 ownership and management of the insurer and any person controlling
691 the insurer;

692 (b) The identity of every member of the insurance
693 holding company system;

694 (c) The following agreements in force, relationships
695 subsisting and transactions currently outstanding between such
696 insurer and its affiliates:



697 (i) Loans, other investments or purchases, sales
698 or exchanges of securities of the affiliates by the insurer or of
699 the insurer by its affiliates;
700 (ii) Purchases, sales or exchanges of assets;
701 (iii) Transactions not in the ordinary course of
702 business;
703 (iv) Guarantees or undertakings for the benefit of
704 an affiliate which result in an actual contingent exposure of the
705 insurer's assets to liability, other than insurance contracts
706 entered into in the ordinary course of the insurer's business;
707 (v) All management and service contracts and all
708 cost-sharing arrangements, other than cost allocation arrangements
709 based upon generally accepted accounting principles; * * *
710 (vi) Reinsurance agreements covering all or
711 substantially all of one or more lines of insurance of the ceding
712 company;
713 (vii) Dividends and other distributions to
714 shareholders; and
715 (viii) Consolidated tax allocation agreements.
716 (d) Any pledge of the insurer's stock, including stock
717 of any subsidiary or controlling affiliate, for a loan made to any
718 member of the insurance holding company system;
719 (e) If requested by the commissioner, the insurer shall
720 include financial statements of or within an insurance holding
721 company system, including all affiliates. Financial statements



722 may include, but are not limited to, annual audited financial
723 statements filed with the United States Securities and Exchange
724 Commission (SEC) pursuant to the Securities Act of 1933, as
725 amended, or the Securities Exchange Act of 1934, as amended. An
726 insurer required to file financial statements pursuant to this
727 paragraph may satisfy the request by providing the commissioner
728 with the most recently filed parent corporation financial
729 statements that have been filed with the SEC;

730 (* * * f) Other matters concerning transactions between
731 registered insurers and any affiliates as may be included from
732 time to time in any registration forms adopted or approved by the
733 commissioner * * *;

734 (g) Statements that the insurer's board of directors
735 oversees corporate governance and internal controls and that the
736 insurer's officers or senior management have approved,
737 implemented, and continue to maintain and monitor corporate
738 governance and internal control procedures.

739 (2) All registration statements shall contain a summary
740 outlining all items in the current registration statement
741 representing changes from the prior registration statement.

742 (3) Subject to Section 83-6-25, each registered insurer
743 shall report to the commissioner all dividends and other
744 distributions to shareholders within fifteen (15) business days
745 following the declaration thereof.



746 (4) Any person within an insurance holding company system
747 subject to registration shall be required to provide complete and
748 accurate information to an insurer, where the information is
749 reasonably necessary to enable the insurer to comply with the
750 provisions of this chapter.

751 (5) The ultimate controlling person of every insurer subject
752 to registration shall also file an annual enterprise risk report.
753 The report shall, to the best of the ultimate controlling person's
754 knowledge and belief, identify the material risks within the
755 insurance holding company system that could pose enterprise risk
756 to the insurer. The report shall be filed with the lead state
757 commissioner of the insurance holding company system as determined
758 by the procedures within the Financial Analysis Handbook adopted
759 by the National Association of Insurance Commissioners.

760 **SECTION 10.** Section 83-6-17, Mississippi Code of 1972, is
761 amended as follows:

762 83-6-17. Any person may file with the commissioner a
763 disclaimer of affiliation with any authorized insurer or such a
764 disclaimer may be filed by such insurer or any member of an
765 insurance holding company system. The disclaimer shall fully
766 disclose all material relationships and bases for affiliation
767 between such person and such insurer as well as the basis for
768 disclaiming such affiliation. * * * A disclaimer of affiliation
769 shall be deemed to have been granted unless the commissioner,
770 within thirty (30) days following receipt of a complete



771 disclaimer, notifies the filing party that the disclaimer is
772 disallowed. In the event of disallowance, the disclaiming party
773 may request an administrative hearing, which shall be granted.
774 The * * * disclaiming party is relieved of any duty to register or
775 report under * * * this chapter which may arise out of the
776 insurer's relationship with such person * * * if approval of the
777 disclaimer has been granted by the commissioner, until the
778 commissioner disallows such a disclaimer. * * *

779 **SECTION 11.** Section 83-6-21, Mississippi Code of 1972, is
780 amended as follows:

781 83-6-21. (1) Transactions within a holding company system
782 to which an insurer subject to registration is a party shall be
783 subject to the following standards:

784 (a) The terms shall be fair and reasonable;

785 (b) Charges or fees for services performed shall be
786 reasonable;

787 (c) Expenses incurred and payment received shall be
788 allocated to the insurer in conformity with customary insurance
789 accounting practices consistently applied;

790 (d) The books, accounts and records of each party to
791 all such transactions shall be so maintained as to clearly and
792 accurately disclose the nature and details of the transactions
793 including such accounting information as is necessary to support
794 the reasonableness of the charges or fees to the respective
795 parties; and



796 (e) The insurer's surplus as regards policyholders
797 following any dividends or distributions to shareholder affiliates
798 shall be reasonable in relation to the insurer's outstanding
799 liabilities and adequate to its financial needs.

800 (2) The following transactions involving a domestic insurer
801 and any person in its holding company system, including amendments
802 or modifications of affiliate agreements previously filed pursuant
803 to this section, which are subject to any materiality standards
804 contained in subsection (1)(a) through (e) of this section, shall
805 not be entered into unless the insurer has notified the
806 commissioner in writing of its intention to enter into such
807 transaction at least thirty (30) days prior thereto, or such
808 shorter period as the commissioner may permit, and the
809 commissioner has not disapproved it within such period. The
810 notice for amendments or modifications shall include the reasons
811 for the change and the financial impact on the domestic insurer.
812 Informal notice shall be reported within thirty (30) days after a
813 termination of a previously filed agreement to the commissioner
814 for determination of the type of filing required, if any.

815 (a) Sales, purchases, exchanges, loans or extension of
816 credit, guarantees or investments provided such transactions are
817 equal to or exceed: (i) with respect to nonlife insurers, the
818 lesser of three percent (3%) of the insurer's admitted assets or
819 twenty-five percent (25%) of surplus as regards policyholders; and
820 (ii) with respect to life insurers, three percent (3%) of the



821 insurer's admitted assets; each as of * * * December 31 next
822 preceding:

823 (b) Loans or extensions of credit to any person who is
824 not an affiliate, where the insurer makes such loans or extension
825 of credit with the agreement or understanding that the proceeds of
826 such transactions, in whole or in substantial part, are to be used
827 to make loans or extensions of credit to, to purchase assets of or
828 to make investments in, any affiliate of the insurer making such
829 loans or extensions of credit provided such transactions are equal
830 to or exceed: (i) with respect to nonlife insurers, the lesser of
831 three percent (3%) of the insurer's admitted assets or twenty-five
832 percent (25%) of surplus as regards policyholders; and (ii) with
833 respect to life insurers, three percent (3%) of the insurer's
834 admitted assets; each as of * * * December 31 next preceding;

835 (c) Reinsurance agreements or modifications thereto,
836 including (i) all reinsurance pooling agreements; and (ii)
837 agreements in which the reinsurance premium or a change in the
838 insurer's liabilities equals or exceeds five percent (5%) of the
839 insurer's surplus as regards policyholders, as of * * * December
840 31 next preceding, including those agreements which may require as
841 consideration the transfer of assets from an insurer to a
842 nonaffiliate, if an agreement or understanding exists between the
843 insurer and nonaffiliate that any portion of such assets will be
844 transferred to one or more affiliates of the insurer;



845 (d) All management agreements that would place control
846 of the insurer outside of the insurance holding company system;

847 (e) All service contracts or cost-sharing arrangements
848 wherein the annual aggregate cost to the insurer would equal or
849 exceed the amounts specified in paragraph (a) of this
850 subsection * * *;

851 (f) All tax allocation agreements;

852 (g) Guarantees when made by a domestic insurer;
853 provided, however, that a guarantee which is quantifiable as to
854 amount is not subject to the notice requirements of this paragraph
855 unless it exceeds the lesser of one-half of one percent (.5%) of
856 the insurer's admitted assets or ten percent (10%) of surplus as
857 regards policyholders as of December 31 next preceding. Further,
858 all guarantees which are not quantifiable as to amounts are
859 subject to the notice requirements of this paragraph;

860 (h) Direct or indirect acquisitions or investments in a
861 person that controls the insurer or in an affiliate of the insurer
862 in an amount which, together with its present holdings in such
863 investments, exceeds two and one-half percent (2.5%) of the
864 insurer's surplus as to policyholders. Direct or indirect
865 acquisitions or investments in subsidiaries acquired pursuant to
866 Section 83-6-2, or in nonsubsidiary insurance affiliates that are
867 subject to the provisions of this chapter, are exempt from this
868 requirement; and



869 (i) Any material transactions, specified by regulation,
870 which the commissioner determines may adversely affect the
871 interests of the insurer's policyholders.

872 (3) A domestic insurer shall not enter into transactions
873 which are part of a plan or series of like transactions with
874 persons within the holding company system if the purpose of those
875 separate transactions is to avoid the statutory threshold amount
876 and avoid the review that would occur otherwise. If the
877 commissioner determines that such separate transactions were
878 entered into over any twelve-month period for such purpose, he may
879 exercise his authority under Section 83-6-35.

880 (4) The commissioner, in reviewing transactions pursuant to
881 subsection (2) of this section, shall consider whether the
882 transactions comply with the standards set forth in subsection (1)
883 of this section and whether they may adversely affect the
884 interests of policyholders.

885 (5) The commissioner shall be notified within thirty (30)
886 days of any investment of the domestic insurer in any one (1)
887 corporation if the total investment in such corporation by the
888 insurance holding company system exceeds ten percent (10%) of such
889 corporation's voting securities.

890 (6) Insurance companies within a holding company system
891 shall not sell or exchange their stock among each other unless the
892 companies have obtained stock company permits before conducting
893 such transactions.



894 **SECTION 12.** Section 83-6-24, Mississippi Code of 1972, is
895 amended as follows:

896 83-6-24. (1) (a) No person other than the issuer shall
897 make a tender offer for or a request or invitation for tenders of,
898 or enter into any agreement to exchange securities, or seek to
899 acquire, or acquire, in the open market or otherwise, any voting
900 security of a domestic insurer if, after the consummation thereof,
901 such person would, directly or indirectly (or by conversion or by
902 exercise of any right to acquire) be in control of such insurer,
903 and no person shall enter into an agreement to merge with or
904 otherwise to acquire control of a domestic insurer or any person
905 controlling a domestic insurer unless, at the time any such offer,
906 request, or invitation is made or any such agreement is entered
907 into, or prior to the acquisition of such securities if no offer
908 or agreement is involved, such person has filed with the
909 commissioner and has sent to such insurer, a statement containing
910 the information required by this section and such offer, request,
911 invitation, agreement or acquisition has been approved by the
912 commissioner in the manner hereinafter prescribed.

913 (b) For the purposes of this section, "a domestic
914 insurer" shall include any person controlling a domestic insurer
915 unless such person as determined by the commissioner is either
916 directly or through its affiliates primarily engaged in business
917 other than the business of insurance. However, such person shall
918 file a preacquisition notification with the commissioner



919 containing the information set forth in this section thirty (30)
920 days prior to the proposed effective date of the acquisition. For
921 the purposes of this section, "person" shall not include any
922 securities broker holding, in the usual and customary brokers
923 function, less than twenty percent (20%) of the voting securities
924 of an insurance company or of any person which controls an
925 insurance company.

926 (c) For purposes of this section, any controlling
927 person of a domestic insurer seeking to divest its controlling
928 interest in the domestic insurer, in any manner, shall file with
929 the commissioner, with a copy to the insurer, confidential notice
930 of its proposed divestiture at least thirty (30) days prior to the
931 cessation of control. The commissioner shall determine those
932 instances in which the party(ies) seeking to divest or to acquire
933 a controlling interest in an insurer will be required to file for
934 and obtain approval of the transaction. The information shall
935 remain confidential until the conclusion of the transaction unless
936 the commissioner, in his discretion, determines that confidential
937 treatment will interfere with enforcement of this section. If the
938 statement referred to in paragraph (b) of this subsection is
939 otherwise filed, this paragraph shall not apply.

940 (2) The statement to be filed with the commissioner
941 hereunder shall be made under oath or affirmation and shall
942 contain the following information:



943 (a) The name and address of each person by whom or on
944 whose behalf the merger or other acquisition of control referred
945 to in subsection (1) is to be effected (hereinafter called
946 "acquiring party"), and

947 (i) If such person is an individual, his principal
948 occupation and all offices and positions held during the past five
949 (5) years, and any conviction of crimes other than minor traffic
950 violations during the past ten (10) years;

951 (ii) If such person is not an individual, a report
952 of the nature of its business operations during the past five (5)
953 years or for such lesser period as such person and any
954 predecessors thereof shall have been in existence; an informative
955 description of the business intended to be done by such person and
956 such person's subsidiaries; and a list of all individuals who are
957 or who have been selected to become directors or executive
958 officers of such person, or who perform or will perform functions
959 appropriate to such positions. Such list shall include for each
960 such individual the information required by subparagraph (i).

961 (b) The source, nature and amount of consideration used
962 or to be used in effecting the merger or other acquisition of
963 control, a description of any transaction wherein funds were or
964 are to be obtained for any such purpose (including any pledge of
965 the insurer's stock, or the stock of any of its subsidiaries or
966 controlling affiliates), and the identity of persons furnishing
967 such consideration, provided, however, that where a source of such



968 consideration is a loan made in the lender's ordinary course of
969 business, the identity of the lender shall remain confidential, if
970 the person filing such statement so requests.

971 (c) Fully audited financial information as to the
972 earnings and financial condition of each acquiring party for the
973 preceding five (5) fiscal years of each such acquiring party (or
974 for such lesser period as such acquiring party and any
975 predecessors thereof shall have been in existence), and similar
976 unaudited information as of a date not earlier than ninety (90)
977 days prior to the filing of the statement.

978 (d) Any plans or proposals which each acquiring party
979 may have to liquidate such insurer, to sell its assets or merge or
980 consolidate it with any person, or to make any other material
981 change in its business or corporate structure or management.

982 (e) The number of shares of any security referred to in
983 subsection (1) which each acquiring party proposes to acquire, and
984 the terms of the offer, request, invitation, agreement or
985 acquisition referred to in subsection (1), and a statement as to
986 the method by which the fairness of the proposal was determined.

987 (f) The amount of each class of any security referred
988 to in subsection (1) which is beneficially owned or concerning
989 which there is a right to acquire beneficial ownership by each
990 acquiring party.

991 (g) A full description of any contracts, arrangements
992 or understandings with respect to any security referred to in



993 subsection (1) in which any acquiring party is involved, including
994 but not limited to, transfer of any of the securities, joint
995 ventures, loan or option arrangements, puts or calls, guarantees
996 of loans, guarantees against loss or guarantees of profits,
997 division of losses or profits or the giving or withholding of
998 proxies. Such description shall identify the persons with whom
999 such contracts, arrangements or understandings have been entered
1000 into.

1001 (h) A description of the purchase of any security
1002 referred to in subsection (1) during the twelve (12) calendar
1003 months preceding the filing of the statement, by any acquiring
1004 party, including the dates of purchase, names of the purchasers
1005 and consideration paid or agreed to be paid therefor.

1006 (i) A description of any recommendations to purchase
1007 any security referred to in subsection (1) made during the twelve
1008 (12) calendar months preceding the filing of the statement, by any
1009 acquiring party, or by anyone based upon interviews or at the
1010 suggestion of such acquiring party.

1011 (j) Copies of all tender offers for, requests, or
1012 invitations for tenders of, exchange offers for and agreements to
1013 acquire or exchange any securities referred to in subsection (1)
1014 and (if distributed) of additional soliciting material relating
1015 thereto.

1016 (k) The terms of any agreement, contract or
1017 understanding made with or proposed to be made with any



1018 broker-dealer as to solicitation of securities referred to in
1019 subsection (1) for tender, and the amount of any fees, commissions
1020 or other compensation to be paid to broker-dealers with regard
1021 thereto.

1022 (l) An agreement by the person required to file the
1023 statement referred to in subsection (1) that it will provide the
1024 annual report, specified in Section 83-6-5(5), for so long as
1025 control exists.

1026 (m) An acknowledgment by the person required to file
1027 the statement referred to in subsection (1) that the person and
1028 all subsidiaries within its control in the insurance holding
1029 company system will provide information to the commissioner upon
1030 request as necessary to evaluate enterprise risk to the insurer.

1031 (* * * n) Such additional information as the
1032 commissioner may by rule or regulation prescribe as necessary or
1033 appropriate for the protection of policyholders of the insurer or
1034 in the public interest.

1035 If the person required to file the statement referred to in
1036 subsection (1) is a partnership, limited partnership, syndicate or
1037 other group, the commissioner may require that the information
1038 called for by paragraphs (a) through (l) shall be given with
1039 respect to each partner of such partnership or limited
1040 partnership, each member of such syndicate or group and each
1041 person who controls such partner or member. If any such partner,
1042 member or person is a corporation, or the person required to file



1043 the statement referred to in subsection (1) is a corporation, the
1044 commissioner may require that the information called for by
1045 paragraphs (a) through (1) shall be given with respect to such
1046 corporation, each officer and director of such corporation and
1047 each person who is directly or indirectly the beneficial owner of
1048 more than ten percent (10%) of the outstanding voting securities
1049 of such corporation.

1050 If any material change occurs in the facts set forth in the
1051 statement filed with the commissioner and sent to such insurer
1052 pursuant to this section, an amendment setting forth such change,
1053 together with copies of all documents and other material relevant
1054 to such change, shall be filed with the commissioner and sent to
1055 such insurer within two (2) business days after the person learns
1056 of such change.

1057 (3) If any offer, request, invitation, agreement or
1058 acquisition referred to in subsection (1) is proposed to be made
1059 by means of a registration statement under the Securities Act of
1060 1933 or in circumstances requiring the disclosure of similar
1061 information under the Securities Exchange Act of 1934, or under a
1062 state law requiring similar registration or disclosure, the person
1063 required to file the statement referred to in subsection (1) may
1064 utilize such documents in furnishing the information called for by
1065 that statement.



1066 (4) (a) The commissioner shall approve any merger or other
1067 acquisition of control referred to in subsection (1) unless, after
1068 a public hearing thereon, he finds that:

1069 (i) After the change of control, the domestic
1070 insurer referred to in subsection (1) would not be able to satisfy
1071 the requirements for the issuance of a license to write the line
1072 or lines of insurance for which it is presently licensed;

1073 (ii) The effect of the merger or other acquisition
1074 of control would be substantially to lessen competition in
1075 insurance in this state or tend to create a monopoly therein;

1076 (iii) The financial condition of any acquiring
1077 party is such as might jeopardize the financial stability of the
1078 insurer, or prejudice the interest of its policyholders;

1079 (iv) The plans or proposals which the acquiring
1080 party has to liquidate the insurer, sell its assets or consolidate
1081 or merge it with any person, or to make any other material change
1082 in its business or corporate structure or management, are unfair
1083 and unreasonable to policyholders of the insurer and not in the
1084 public interest;

1085 (v) The competence, experience and integrity of
1086 those persons who would control the operation of the insurer are
1087 such that it would not be in the interest of policyholders of the
1088 insurer and of the public to permit the merger or other
1089 acquisition of control; or



1090 (vi) The acquisition is likely to be hazardous or
1091 prejudicial to the insurance buying public.

1092 (b) The public hearing referred to in paragraph (a) of
1093 this subsection shall be commenced not less than thirty (30) days
1094 after the statement required by subsection (1) is filed, and at
1095 least twenty (20) days' notice thereof shall be given by the
1096 commissioner to the person filing the statement. Not less than
1097 seven (7) days' notice of such public hearing shall be given by
1098 the person filing the statement to the insurer and to such other
1099 persons as may be designated by the commissioner. The
1100 commissioner shall make a determination within thirty (30) days
1101 after the conclusion of such hearing. At such hearing, the person
1102 filing the statement, the insurer, any person to whom notice of
1103 hearing was sent, and any other person whose interest may be
1104 affected thereby shall have the right to present evidence, examine
1105 and cross-examine witnesses, and offer oral and written arguments
1106 and in connection therewith shall be entitled to conduct discovery
1107 proceedings. All discovery proceedings shall be concluded not
1108 later than three (3) days prior to the commencement of the public
1109 hearing.

1110 (c) The commissioner may retain at the acquiring
1111 person's expense any attorneys, actuaries, accountants and other
1112 experts not otherwise a part of the commissioner's staff as may be
1113 reasonably necessary to assist the commissioner in reviewing the
1114 proposed acquisition of control.



1115 (d) If the proposed acquisition of control will require
1116 the approval of more than one (1) commissioner, the public hearing
1117 referred to in paragraph (a) of subsection (4) may be held on a
1118 consolidated basis upon request of the person filing the statement
1119 referred to in subsection (1) of this section. Such person shall
1120 file the statement referred to in subsection (1) with the National
1121 Association of Insurance Commissioners (NAIC) within five (5) days
1122 of making the request for a public hearing. A commissioner may
1123 opt out of a consolidated hearing, and shall provide notice to the
1124 applicant of the opt-out within ten (10) days of the receipt of
1125 the statement referred to in subsection (1). A hearing conducted
1126 on a consolidated basis shall be public and shall be held within
1127 the United States before the commissioners of the states in which
1128 the insurers are domiciled. Such commissioners shall hear and
1129 receive evidence. A commissioner may attend such hearing, in
1130 person or by telecommunication.

1131 (e) In connection with a change of control of a
1132 domestic insurer, any determination by the commissioner that the
1133 person acquiring control of the insurer shall be required to
1134 maintain or restore the capital of the insurer to the level
1135 required by the laws and regulations of this state shall be made
1136 not later than sixty (60) days after the date of notification of
1137 the change in control submitted pursuant to Section 83-6-24(1).

1138 (5) The provisions of this section shall not apply to any
1139 offer, request, invitation, agreement or acquisition which the



1140 commissioner by order shall exempt therefrom as (i) not having
1141 been made or entered into for the purpose and not having the
1142 effect of changing or influencing the control of a domestic
1143 insurer, or (ii) as otherwise not comprehended within the purposes
1144 of this section.

1145 (6) The following shall be violations of this section:

1146 (a) The failure to file any statement, amendment or
1147 other material required to be filed pursuant to subsection (1) or
1148 (2); or

1149 (b) The effectuation or any attempt to effectuate an
1150 acquisition of control of, or merger with, a domestic insurer
1151 unless the commissioner has given his approval thereto.

1152 (7) The courts of this state are hereby vested with
1153 jurisdiction over every person not resident, domiciled or
1154 authorized to do business in this state who files a statement with
1155 the commissioner under this section, and overall actions involving
1156 such person arising out of violations of this section, and each
1157 such person shall be deemed to have performed acts equivalent to
1158 and constituting an appointment by such a person of the
1159 commissioner to be his true and lawful attorney upon whom may be
1160 served all lawful process in any action, suit or proceeding
1161 arising out of violations of this section. Copies of all such
1162 lawful process shall be served on the commissioner and transmitted
1163 by registered or certified mail by the commissioner to such person
1164 at his last-known address.



1165 **SECTION 13.** The following shall be codified as Section
1166 83-6-26, Mississippi Code of 1972:

1167 83-6-26. **Management of Domestic Insurers Subject To**

1168 **Registration.** (1) Notwithstanding the control of a domestic
1169 insurer by any person, the officers and directors of the insurer
1170 shall not thereby be relieved of any obligation or liability to
1171 which they would otherwise be subject by law, and the insurer
1172 shall be managed so as to assure its separate operating identity
1173 consistent with this section.

1174 (2) Nothing in this section shall preclude a domestic
1175 insurer from having or sharing a common management or cooperative
1176 or joint use of personnel, property or services with one or more
1177 other persons under arrangements meeting the standards of Section
1178 83-6-21.

1179 (3) Not less than one-third (1/3) of the directors of a
1180 domestic insurer, and not less than one-third (1/3) of the members
1181 of each committee of the board of directors of any domestic
1182 insurer shall be persons who are not officers or employees of the
1183 insurer or of any entity controlling, controlled by, or under
1184 common control with the insurer and who are not beneficial owners
1185 of a controlling interest in the voting stock of the insurer or
1186 entity. At least one (1) such person must be included in any
1187 quorum for the transaction of business at any meeting of the board
1188 of directors or any committee thereof.



1189 (4) The board of directors of a domestic insurer shall
1190 establish one or more committees comprised solely of directors who
1191 are not officers or employees of the insurer or of any entity
1192 controlling, controlled by, or under common control with the
1193 insurer and who are not beneficial owners of a controlling
1194 interest in the voting stock of the insurer or any such entity.
1195 The committee or committees shall have responsibility for
1196 nominating candidates for director for election by shareholders or
1197 policyholders, evaluating the performance of officers deemed to be
1198 principal officers of the insurer and recommending to the board of
1199 directors the selection and compensation of the principal
1200 officers.

1201 (5) The provisions of subsections (3) and (4) shall not
1202 apply to a domestic insurer if the person controlling the insurer,
1203 such as an insurer, a mutual insurance holding company, or a
1204 publicly held corporation, has a board of directors and committees
1205 thereof that meet the requirements of subsections (3) and (4) with
1206 respect to such controlling entity.

1207 (6) An insurer may make application to the commissioner for
1208 a waiver from the requirements of this section, if the insurer's
1209 annual direct written and assumed premium, excluding premiums
1210 reinsured with the Federal Crop Insurance Corporation and Federal
1211 Flood Program, is less than Three Hundred Million Dollars
1212 (\$300,000,000.00). An insurer may also make application to the
1213 commissioner for a waiver from the requirements of this section



1214 based upon unique circumstances. The commissioner may consider
1215 various factors including, but not limited to, the type of
1216 business entity, volume of business written, availability of
1217 qualified board members, or the ownership or organizational
1218 structure of the entity.

1219 **SECTION 14.** Section 83-6-27, Mississippi Code of 1972, is
1220 amended as follows:

1221 83-6-27. (1) The commissioner is authorized to order any
1222 insurer registered under * * * this chapter to produce such
1223 records, books, or other information papers in the possession of
1224 the insurer or its affiliates which are necessary to ascertain the
1225 financial condition or legality of conduct of such insurer. In
1226 the event such insurer fails to comply with such order, the
1227 commissioner is authorized to examine such affiliates to obtain
1228 such information.

1229 (2) The commissioner shall exercise his authority under
1230 subsection (1) of this section only if the interests of the
1231 policyholders of such insurer may be adversely affected.

1232 (3) The commissioner may retain at the registered insurer's
1233 expense such attorneys, actuaries, accountants and other experts
1234 not otherwise a part of the commissioner's staff which are
1235 reasonably necessary to assist in the conduct of the examination
1236 under subsection (1) of this section. Any persons so retained are
1237 under the direction and control of the commissioner and shall act
1238 in a purely advisory capacity.



1239 (4) Each registered insurer producing for examination
1240 records, books and papers pursuant to subsection (1) of this
1241 section is liable for the expense of such examination.

1242 **SECTION 15.** Section 83-6-29, Mississippi Code of 1972, is
1243 amended as follows:

1244 83-6-29. * * *

1245 (1) Documents, materials or other information in the
1246 possession or control of the Department of Insurance that are
1247 obtained by or disclosed to the commissioner or any other person
1248 during an examination or investigation made pursuant to Section
1249 83-6-27 and all information reported pursuant to Sections
1250 83-6-24(2)(1) and (m), Sections 83-6-3, 83-6-5 and 83-6-21 shall
1251 be confidential by law and privileged, shall not be subject to the
1252 Mississippi Public Records Act, shall not be subject to subpoena,
1253 and shall not be subject to discovery or admissible in evidence in
1254 any private civil action. However, the commissioner is authorized
1255 to use the documents, materials or other information in the
1256 furtherance of any regulatory or legal action brought as a part of
1257 the commissioner's official duties. The commissioner shall not
1258 otherwise make the documents, materials or other information
1259 public without the prior written consent of the insurer to which
1260 it pertains unless the commissioner, after giving the insurer and
1261 its affiliates who would be affected thereby notice and
1262 opportunity to be heard, determines that the interest of
1263 policyholders, shareholders or the public will be served by the



1264 publication thereof, in which event the commissioner may publish
1265 all or any part in such manner as may be deemed appropriate.

1266 (2) Neither the commissioner nor any person who received
1267 documents, materials or other information while acting under the
1268 authority of the commissioner or with whom such documents,
1269 materials or other information are shared pursuant to this section
1270 shall be permitted or required to testify in any private civil
1271 action concerning any confidential documents, materials or
1272 information subject to subsection (1) of this section.

1273 (3) In order to assist in the performance of the
1274 commissioner's duties, the commissioner:

1275 (a) May share documents, materials or other
1276 information, including the confidential and privileged documents,
1277 materials or information subject to subsection (1) of this
1278 section, with other state, federal and international regulatory
1279 agencies, with the National Association of Insurance Commissioners
1280 (NAIC) and its affiliates and subsidiaries, and with state,
1281 federal and international law enforcement authorities, provided
1282 that the recipient agrees in writing to maintain the
1283 confidentiality and privileged status of the document, material or
1284 other information, and has verified in writing the legal authority
1285 to maintain confidentiality.

1286 (b) Notwithstanding paragraph (a) of this subsection,
1287 the commissioner may only share confidential and privileged
1288 documents, material or information reported pursuant to Section



1289 83-6-5(5) with commissioners of states having statutes or
1290 regulations substantially similar to subsection (1) of this
1291 section and who have agreed in writing not to disclose such
1292 information.

1293 (c) May receive documents, materials or information,
1294 including otherwise confidential and privileged documents,
1295 materials or information from the NAIC and its affiliates and
1296 subsidiaries and from regulatory and law enforcement officials of
1297 other foreign or domestic jurisdictions, and shall maintain as
1298 confidential or privileged any document, material or information
1299 received with notice or the understanding that it is confidential
1300 or privileged under the laws of the jurisdiction that is the
1301 source of the document, material or information.

1302 (d) Shall enter into written agreements with the NAIC
1303 governing sharing and use of information provided pursuant to this
1304 section consistent with this subsection that shall:

1305 (i) Specify procedures and protocols regarding the
1306 confidentiality and security of information shared with the NAIC
1307 and its affiliates and subsidiaries pursuant to this section,
1308 including procedures and protocols for sharing by the NAIC with
1309 other state, federal or international regulators;

1310 (ii) Specify that ownership of information shared
1311 with the NAIC and its affiliates and subsidiaries pursuant to this
1312 section remains with the commissioner and the NAIC's use of the
1313 information is subject to the direction of the commissioner;



1314 (iii) Require prompt notice to be given to an
1315 insurer whose confidential information in the possession of the
1316 NAIC pursuant to this section is subject to a request or subpoena
1317 to the NAIC for disclosure or production; and

1318 (iv) Require the NAIC and its affiliates and
1319 subsidiaries to consent to intervention by an insurer in any
1320 judicial or administrative action in which the NAIC and its
1321 affiliates and subsidiaries may be required to disclose
1322 confidential information about the insurer shared with the NAIC
1323 and its affiliates and subsidiaries pursuant to this section.

1324 (4) The sharing of information by the commissioner pursuant
1325 to this section shall not constitute a delegation of regulatory
1326 authority or rulemaking, and the commissioner is solely
1327 responsible for the administration, execution and enforcement of
1328 the provisions of this section.

1329 (5) No waiver of any applicable privilege or claim of
1330 confidentiality in the documents, materials or information shall
1331 occur as a result of disclosure to the commissioner under this
1332 section or as a result of sharing as authorized in subsection (3)
1333 of this section.

1334 (6) Documents, materials or other information in the
1335 possession or control of the NAIC pursuant to this section shall
1336 be confidential by law and privileged, shall not be subject to
1337 the Mississippi Public Records Act, shall not be subject to



1338 subpoena, and shall not be subject to discovery or admissible in
1339 evidence in any private civil action.

1340 **SECTION 16.** This act shall take effect and be in force from
1341 and after July 1, 2014, except for the provisions contained in
1342 Sections 3 through 14, which shall take effect and be in force
1343 from and after July 1, 2013.

