

By: Representative Chism

To: Insurance

HOUSE BILL NO. 706

1 AN ACT TO AMEND SECTION 83-6-1, MISSISSIPPI CODE OF 1972, TO
2 DEFINE THE TERMS "GROUP-WIDE SUPERVISOR" AND "INTERNATIONALLY
3 ACTIVE INSURANCE GROUP" AS USED IN THE INSURANCE HOLDING COMPANY
4 ACT; TO AMEND SECTION 83-6-21, MISSISSIPPI CODE OF 1972, TO
5 PROVIDE THAT NO DOMESTIC INSURER SHALL PAY AN EXTRAORDINARY
6 DIVIDEND UNTIL THE COMMISSIONER OF INSURANCE HAS RECEIVED NOTICE
7 OF THE DECLARATION AND HAS NOT DISAPPROVED THE PAYMENT; TO AMEND
8 SECTION 83-6-24, MISSISSIPPI CODE OF 1972, TO REQUIRE THE FILING
9 OF A PREACQUISITION NOTIFICATION WITH THE COMMISSIONER OF
10 INSURANCE; TO CREATE A NEW CODE SECTION TO REGULATE ACQUISITIONS
11 INVOLVING INSURERS NOT OTHERWISE COVERED; TO AMEND SECTION
12 83-6-27, MISSISSIPPI CODE OF 1972, TO REVISE THE AUTHORITY OF THE
13 COMMISSIONER TO CONDUCT A FINANCIAL EXAMINATION OF REGISTERED
14 INSURERS OR AFFILIATES; TO CREATE A NEW CODE SECTION TO AUTHORIZE
15 THE COMMISSIONER OF INSURANCE TO PARTICIPATE IN A SUPERVISORY
16 COLLEGE WITH OTHER INSURANCE REGULATORS IN ORDER TO ASSESS THE
17 BUSINESS STRATEGY, FINANCIAL POSITION, LEGAL AND REGULATORY
18 POSITION, RISK EXPOSURE, RISK MANAGEMENT AND GOVERNANCE PROCESSES,
19 AND AS PART OF THE EXAMINATION OF INDIVIDUAL INSURERS; TO CREATE A
20 NEW CODE SECTION TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO ACT
21 AS THE GROUP-WIDE SUPERVISOR FOR ANY INTERNATIONALLY ACTIVE
22 INSURANCE GROUP; TO AMEND SECTIONS 83-19-151, 83-19-153 AND
23 83-19-157, MISSISSIPPI CODE OF 1972, UNDER THE CREDIT FOR
24 INSURANCE ACT TO REQUIRE MORE COMPREHENSIVE REGULATION OF
25 REINSURANCE AGREEMENTS; TO CREATE NEW CODE SECTION 83-19-159,
26 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE APPLICABILITY OF THE
27 ACT TO REINSURANCE AGREEMENTS; TO CREATE THE "OWN RISK AND
28 SOLVENCY ASSESSMENT ACT"; TO PROVIDE FOR THE PURPOSE AND SCOPE OF
29 THE ACT; TO DEFINE CERTAIN TERMS USED IN THE ACT; TO REQUIRE
30 INSURERS TO CONDUCT AN OWN RISK AND SOLVENCY ASSESSMENT AND FILE
31 WITH THE COMMISSIONER AN ORSA SUMMARY REPORT; TO PROVIDE
32 EXEMPTIONS; TO REQUIRE CERTAIN CONTENTS OF THE ORSA SUMMARY
33 REPORT; TO REQUIRE THE CONFIDENTIALITY OF CERTAIN DOCUMENTS,
34 MATERIALS OR OTHER INFORMATION IN THE POSSESSION OF OR CONTROL OF



35 THE DEPARTMENT OF INSURANCE THAT ARE OBTAINED UNDER THE ACT; TO
36 PROVIDE SANCTIONS FOR FAILING TO TIMELY FILE AN ORSA SUMMARY
37 REPORT; AND FOR RELATED PURPOSES.

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

39 **SECTION 1.** Section 83-6-1, Mississippi Code of 1972, is
40 amended as follows:

41 83-6-1. As used in this chapter the following terms have the
42 respective meanings herein set forth unless the context shall
43 require otherwise:

44 (a) An "affiliate of" or person "affiliated" with a
45 specific person means a person that directly, or indirectly
46 through one or more intermediaries, controls, or is controlled by,
47 or is under common control with, the person specified.

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

49 (c) "Control" (including the terms "controlling,"
50 "controlled by" and "under common control with") means the
51 possession of the power to direct or cause the direction of the
52 management and policies of a person, whether through the ownership
53 of voting securities, by contract other than a commercial contract
54 for goods or nonmanagement services or otherwise, unless the power
55 is the result of an official position with or corporate office
56 held by the person. "Control" shall be presumed to exist if any
57 person, directly or indirectly, owns, controls, holds with the
58 power to vote or holds proxies representing ten percent (10%) or
59 more of the voting securities of any other person. This
60 presumption may be rebutted by a showing made in the manner
61 provided in Section 83-6-17 that control does not exist in fact.



62 The commissioner may determine, after furnishing all persons in
63 interest notice and opportunity to be heard and making specific
64 findings of fact to support such determination, that control
65 exists in fact, notwithstanding the absence of a presumption to
66 that effect.

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

70 (e) "Insurer" means only those companies subject to the
71 jurisdiction of the commissioner as provided in Section 83-5-1;
72 however, burial associations regulated pursuant to Chapter 37,
73 Title 83, Mississippi Code of 1972, are excluded from this
74 definition.

75 (f) "Person" means an individual, corporation,
76 partnership, association, joint-stock company, trust,
77 unincorporated organization, any similar entity or any combination
78 of the foregoing acting in concert, but shall not include any
79 securities broker performing no more than the usual and customary
80 broker's function.

81 (g) A "security holder" of a specified person means one
82 who owns any security of such person, including common stock,
83 preferred stock, debt obligations and any other security
84 convertible into or evidencing the right to acquire any of the
85 foregoing.



86 (h) "Subsidiary" of a specified person means an
87 affiliate controlled by a person, directly or indirectly, through
88 one or more intermediaries.

89 (i) The term "voting security" includes any security
90 convertible into or evidencing a right to acquire a voting
91 security.

92 (j) "Enterprise risk" shall mean any activity,
93 circumstance, event or series of events involving one or more
94 affiliates of an insurer that, if not remedied promptly, is likely
95 to have a material adverse effect upon the financial condition or
96 liquidity of the insurer or its insurance holding company system
97 as a whole, including, but not limited to, anything that would
98 cause the insurer's Risk-Based Capital to fall into company action
99 level as provided in Section 83-5-405 or would cause the insurer
100 to be in hazardous financial condition as provided in * * * Part
101 1, Chapter 39, Title 19 of the Mississippi Administrative Code.

102 (k) "Group-wide supervisor" means the regulatory
103 official authorized to engage in conducting and coordinating
104 group-wide supervision activities who is determined or
105 acknowledged by the commissioner under Section 7 of this act to
106 have sufficient significant contacts with the internationally
107 active insurance group.

108 (l) "Internationally active insurance group" means an
109 insurance holding company system that:



110 (i) Includes an insurer registered under Section
111 83-6-3; and

112 (ii) Meets the following criteria:

113 1. Premiums written in at least three (3)
114 countries;

115 2. The percentage of gross premiums written
116 outside the United States is at least ten percent (10%) of the
117 insurance holding company system's total gross written premiums;
118 and

119 3. Based on a three-year rolling average, the
120 total assets of the insurance holding company system are at least
121 Fifty Billion (\$50,000,000,000.00) or the total gross written
122 premiums of the insurance holding company system are at least Ten
123 Billion Dollars (\$10,000,000,000.00).

124 **SECTION 2.** Section 83-6-21, Mississippi Code of 1972, is
125 amended as follows:

126 83-6-21. (1) Transactions within a holding company system
127 to which an insurer subject to registration is a party shall be
128 subject to the following standards:

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

130 (b) Agreements for cost sharing services and management
131 shall include such provisions as required by rule and regulation
132 issued by the commissioner;

133 (* * *c) Charges or fees for services performed shall
134 be reasonable;



135 (* * *d) Expenses incurred and payment received shall
136 be allocated to the insurer in conformity with customary insurance
137 accounting practices consistently applied;

138 (* * *e) The books, accounts and records of each party
139 to all such transactions shall be so maintained as to clearly and
140 accurately disclose the nature and details of the transactions
141 including such accounting information as is necessary to support
142 the reasonableness of the charges or fees to the respective
143 parties; and

144 (* * *f) The insurer's surplus as regards
145 policyholders following any dividends or distributions to
146 shareholder affiliates shall be reasonable in relation to the
147 insurer's outstanding liabilities and adequate to its financial
148 needs.

149 (2) The following transactions involving a domestic insurer
150 and any person in its holding company system, including amendments
151 or modifications of affiliate agreements previously filed pursuant
152 to this section, which are subject to any materiality standards
153 contained in * * * paragraphs (a) through (* * *i) of this
154 subsection, shall not be entered into unless the insurer has
155 notified the commissioner in writing of its intention to enter
156 into such transaction at least thirty (30) days prior thereto, or
157 such shorter period as the commissioner may permit, and the
158 commissioner has not disapproved it within such period. The
159 notice for amendments or modifications shall include the reasons



160 for the change and the financial impact on the domestic insurer.
161 Informal notice shall be reported within thirty (30) days after a
162 termination of a previously filed agreement to the commissioner
163 for determination of the type of filing required, if any.

164 (a) Sales, purchases, exchanges, loans or extension of
165 credit, guarantees or investments provided such transactions are
166 equal to or exceed: (i) with respect to nonlife insurers, the
167 lesser of three percent (3%) of the insurer's admitted assets or
168 twenty-five percent (25%) of surplus as regards policyholders; and
169 (ii) with respect to life insurers, three percent (3%) of the
170 insurer's admitted assets; each as of December 31 next preceding:

171 (b) Loans or extensions of credit to any person who is
172 not an affiliate, where the insurer makes such loans or extension
173 of credit with the agreement or understanding that the proceeds of
174 such transactions, in whole or in substantial part, are to be used
175 to make loans or extensions of credit to, to purchase assets of or
176 to make investments in, any affiliate of the insurer making such
177 loans or extensions of credit provided such transactions are equal
178 to or exceed: (i) with respect to nonlife insurers, the lesser of
179 three percent (3%) of the insurer's admitted assets or twenty-five
180 percent (25%) of surplus as regards policyholders; and (ii) with
181 respect to life insurers, three percent (3%) of the insurer's
182 admitted assets; each as of December 31 next preceding;

183 (c) Reinsurance agreements or modifications thereto,
184 including (i) all reinsurance pooling agreements; and (ii)



185 agreements in which the reinsurance premium or a change in the
186 insurer's liabilities equals or exceeds five percent (5%) of the
187 insurer's surplus as regards policyholders, as of December 31 next
188 preceding, including those agreements which may require as
189 consideration the transfer of assets from an insurer to a
190 nonaffiliate, if an agreement or understanding exists between the
191 insurer and nonaffiliate that any portion of such assets will be
192 transferred to one or more affiliates of the insurer;

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

195 (e) All service contracts or cost-sharing arrangements
196 wherein the annual aggregate cost to the insurer would equal or
197 exceed the amounts specified in paragraph (a) of this subsection;

198 (f) All tax allocation agreements;

199 (g) Guarantees when made by a domestic insurer;
200 provided, however, that a guarantee which is quantifiable as to
201 amount is not subject to the notice requirements of this paragraph
202 unless it exceeds the lesser of one-half of one percent (.5%) of
203 the insurer's admitted assets or ten percent (10%) of surplus as
204 regards policyholders as of December 31 next preceding. Further,
205 all guarantees which are not quantifiable as to amounts are
206 subject to the notice requirements of this paragraph;

207 (h) Direct or indirect acquisitions or investments in a
208 person that controls the insurer or in an affiliate of the insurer
209 in an amount which, together with its present holdings in such



210 investments, exceeds two and one-half percent (2.5%) of the
211 insurer's surplus as to policyholders. Direct or indirect
212 acquisitions or investments in subsidiaries acquired pursuant to
213 Section 83-6-2, or in nonsubsidiary insurance affiliates that are
214 subject to the provisions of this chapter, are exempt from this
215 requirement; and

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

219 Nothing in this subsection (2) shall be determined to
220 authorize or permit any transactions which, in the case of an
221 insurer not a member of the same insurance holding company system,
222 would be otherwise contrary to law.

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

231 (4) The commissioner, in reviewing transactions pursuant to
232 subsection (2) of this section, shall consider whether the
233 transactions comply with the standards set forth in subsection (1)



234 of this section and whether they may adversely affect the
235 interests of policyholders.

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

241 (6) Insurance companies within a holding company system
242 shall not sell or exchange their stock among each other unless the
243 companies have obtained stock company permits before conducting
244 such transactions.

245 (7) Dividends and other distributions. No domestic insurer
246 shall pay any extraordinary dividend or make any other
247 extraordinary distribution to its shareholders until thirty (30)
248 days after the commissioner has received notice of the declaration
249 thereof and has not within that period disapproved the payment, or
250 until the commissioner has approved the payment within the
251 thirty-day period. For purposes of this subsection, an
252 extraordinary dividend or distribution includes any dividend or
253 distribution of cash or other property, whose fair market value
254 together with that of other dividends or distributions made within
255 the preceding twelve (12) months exceeds the lesser of:

256 (a) Ten percent (10%) of the insurer's surplus as
257 regards policyholders as of the 31st day of December next
258 preceding; or



259 (b) The net gain from operations of the insurer, if the
260 insurer is a life insurer, or the net income, if the insurer is
261 not a life insurer, not including realized capital gains, for the
262 twelve-month period ending the 31st day of December next
263 preceding, but shall not include pro rata distributions of any
264 class of the insurer's own securities.

265 In determining whether a dividend or distribution is
266 extraordinary, an insurer other than a life insurer may carry
267 forward net income from the previous two (2) calendar years that
268 has not already been paid out as dividends. This carry-forward
269 shall be computed by taking the net income from the second and
270 third preceding calendar years, not including realized capital
271 gains, less dividends paid in the second and immediate preceding
272 calendar years. Notwithstanding any other provision of law, an
273 insurer may declare an extraordinary dividend or distribution
274 which is conditional upon the commissioner's approval, and the
275 declaration shall confer no rights upon shareholders until the
276 commissioner has approved the payment of the dividend or
277 distribution, or the commissioner has not disapproved payment
278 within the thirty-day period referred to above.

279 **SECTION 3.** Section 83-6-24, Mississippi Code of 1972, is
280 amended as follows:

281 83-6-24. (1) (a) No person other than the issuer shall
282 make a tender offer for or a request or invitation for tenders of,
283 or enter into any agreement to exchange securities, or seek to



284 acquire, or acquire, in the open market or otherwise, any voting
285 security of a domestic insurer if, after the consummation thereof,
286 such person would, directly or indirectly (or by conversion or by
287 exercise of any right to acquire) be in control of such insurer,
288 and no person shall enter into an agreement to merge with or
289 otherwise to acquire control of a domestic insurer or any person
290 controlling a domestic insurer unless, at the time any such offer,
291 request, or invitation is made or any such agreement is entered
292 into, or prior to the acquisition of such securities if no offer
293 or agreement is involved, such person has filed with the
294 commissioner and has sent to such insurer, a statement containing
295 the information required by this section and such offer, request,
296 invitation, agreement or acquisition has been approved by the
297 commissioner in the manner hereinafter prescribed.

298 (b) For the purposes of this section, "a domestic
299 insurer" shall include any person controlling a domestic insurer
300 unless such person as determined by the commissioner is either
301 directly or through its affiliates primarily engaged in business
302 other than the business of insurance. However, such person shall
303 file a preacquisition notification with the commissioner
304 containing the information set forth in this section thirty (30)
305 days prior to the proposed effective date of the acquisition. For
306 the purposes of this section, "person" shall not include any
307 securities broker holding, in the usual and customary brokers
308 function, less than twenty percent (20%) of the voting securities



309 of an insurance company or of any person which controls an
310 insurance company.

311 (c) For purposes of this section, any controlling
312 person of a domestic insurer seeking to divest its controlling
313 interest in the domestic insurer, in any manner, shall file with
314 the commissioner, with a copy to the insurer, confidential notice
315 of its proposed divestiture at least thirty (30) days prior to the
316 cessation of control. The commissioner shall determine those
317 instances in which the party(ies) seeking to divest or to acquire
318 a controlling interest in an insurer will be required to file for
319 and obtain approval of the transaction. The information shall
320 remain confidential until the conclusion of the transaction unless
321 the commissioner, in his discretion, determines that confidential
322 treatment will interfere with enforcement of this section. If the
323 statement referred to in paragraph (b) of this subsection is
324 otherwise filed, this paragraph shall not apply.

325 (d) With respect to a transaction subject to this
326 section, the acquiring person must also file a preacquisition
327 notification with the commissioner, which shall contain the
328 information set forth in Section 4(3)(a) of this act. A failure
329 to file the notification may be subject to penalties specified in
330 Section 4(5) of this act.

331 (2) The statement to be filed with the commissioner
332 hereunder shall be made under oath or affirmation and shall
333 contain the following information:



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

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

342 (ii) If such person is not an individual, a report
343 of the nature of its business operations during the past five (5)
344 years or for such lesser period as such person and any
345 predecessors thereof shall have been in existence; an informative
346 description of the business intended to be done by such person and
347 such person's subsidiaries; and a list of all individuals who are
348 or who have been selected to become directors or executive
349 officers of such person, or who perform or will perform functions
350 appropriate to such positions. Such list shall include for each
351 such individual the information required by subparagraph (i).

352 (b) The source, nature and amount of consideration used
353 or to be used in effecting the merger or other acquisition of
354 control, a description of any transaction wherein funds were or
355 are to be obtained for any such purpose (including any pledge of
356 the insurer's stock, or the stock of any of its subsidiaries or
357 controlling affiliates), and the identity of persons furnishing
358 such consideration, provided, however, that where a source of such



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

362 (c) Fully audited financial information as to the
363 earnings and financial condition of each acquiring party for the
364 preceding five (5) fiscal years of each such acquiring party (or
365 for such lesser period as such acquiring party and any
366 predecessors thereof shall have been in existence), and similar
367 unaudited information as of a date not earlier than ninety (90)
368 days prior to the filing of the statement.

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

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

378 (f) The amount of each class of any security referred
379 to in subsection (1) which is beneficially owned or concerning
380 which there is a right to acquire beneficial ownership by each
381 acquiring party.

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



384 subsection (1) in which any acquiring party is involved, including
385 but not limited to, transfer of any of the securities, joint
386 ventures, loan or option arrangements, puts or calls, guarantees
387 of loans, guarantees against loss or guarantees of profits,
388 division of losses or profits or the giving or withholding of
389 proxies. Such description shall identify the persons with whom
390 such contracts, arrangements or understandings have been entered
391 into.

392 (h) A description of the purchase of any security
393 referred to in subsection (1) during the twelve (12) calendar
394 months preceding the filing of the statement, by any acquiring
395 party, including the dates of purchase, names of the purchasers
396 and consideration paid or agreed to be paid therefor.

397 (i) A description of any recommendations to purchase
398 any security referred to in subsection (1) made during the twelve
399 (12) calendar months preceding the filing of the statement, by any
400 acquiring party, or by anyone based upon interviews or at the
401 suggestion of such acquiring party.

402 (j) Copies of all tender offers for, requests, or
403 invitations for tenders of, exchange offers for and agreements to
404 acquire or exchange any securities referred to in subsection (1)
405 and (if distributed) of additional soliciting material relating
406 thereto.

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



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

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

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

422 (n) Such additional information as the commissioner may
423 by rule or regulation prescribe as necessary or appropriate for
424 the protection of policyholders of the insurer or in the public
425 interest.

426 If the person required to file the statement referred to in
427 subsection (1) is a partnership, limited partnership, syndicate or
428 other group, the commissioner may require that the information
429 called for by paragraphs (a) through (* * *n) shall be given with
430 respect to each partner of such partnership or limited
431 partnership, each member of such syndicate or group and each
432 person who controls such partner or member. If any such partner,
433 member or person is a corporation, or the person required to file



434 the statement referred to in subsection (1) is a corporation, the
435 commissioner may require that the information called for by
436 paragraphs (a) through (* * *n) shall be given with respect to
437 such corporation, each officer and director of such corporation
438 and each person who is directly or indirectly the beneficial owner
439 of more than ten percent (10%) of the outstanding voting
440 securities of such corporation.

441 If any material change occurs in the facts set forth in the
442 statement filed with the commissioner and sent to such insurer
443 pursuant to this section, an amendment setting forth such change,
444 together with copies of all documents and other material relevant
445 to such change, shall be filed with the commissioner and sent to
446 such insurer within two (2) business days after the person learns
447 of such change.

448 (3) If any offer, request, invitation, agreement or
449 acquisition referred to in subsection (1) is proposed to be made
450 by means of a registration statement under the Securities Act of
451 1933 or in circumstances requiring the disclosure of similar
452 information under the Securities Exchange Act of 1934, or under a
453 state law requiring similar registration or disclosure, the person
454 required to file the statement referred to in subsection (1) may
455 utilize such documents in furnishing the information called for by
456 that statement.



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

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

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

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

470 (iv) The plans or proposals which the acquiring
471 party has to liquidate the insurer, sell its assets or consolidate
472 or merge it with any person, or to make any other material change
473 in its business or corporate structure or management, are unfair
474 and unreasonable to policyholders of the insurer and not in the
475 public interest;

476 (v) The competence, experience and integrity of
477 those persons who would control the operation of the insurer are
478 such that it would not be in the interest of policyholders of the
479 insurer and of the public to permit the merger or other
480 acquisition of control; or



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

483 (b) The public hearing referred to in paragraph (a) of
484 this subsection shall be commenced not less than thirty (30) days
485 after the statement required by subsection (1) is filed, and at
486 least twenty (20) days' notice thereof shall be given by the
487 commissioner to the person filing the statement. Not less than
488 seven (7) days' notice of such public hearing shall be given by
489 the person filing the statement to the insurer and to such other
490 persons as may be designated by the commissioner. The
491 commissioner shall make a determination within thirty (30) days
492 after the conclusion of such hearing. At such hearing, the person
493 filing the statement, the insurer, any person to whom notice of
494 hearing was sent, and any other person whose interest may be
495 affected thereby shall have the right to present evidence, examine
496 and cross-examine witnesses, and offer oral and written arguments
497 and in connection therewith shall be entitled to conduct discovery
498 proceedings. All discovery proceedings shall be concluded not
499 later than three (3) days prior to the commencement of the public
500 hearing.

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



506 (d) If the proposed acquisition of control will require
507 the approval of more than one (1) commissioner, the public hearing
508 referred to in paragraph (a) of subsection (4) may be held on a
509 consolidated basis upon request of the person filing the statement
510 referred to in subsection (1) of this section. Such person shall
511 file the statement referred to in subsection (1) with the National
512 Association of Insurance Commissioners (NAIC) within five (5) days
513 of making the request for a public hearing. A commissioner may
514 opt out of a consolidated hearing, and shall provide notice to the
515 applicant of the opt out within ten (10) days of the receipt of
516 the statement referred to in subsection (1). A hearing conducted
517 on a consolidated basis shall be public and shall be held within
518 the United States before the commissioners of the states in which
519 the insurers are domiciled. Such commissioners shall hear and
520 receive evidence. A commissioner may attend such hearing, in
521 person or by telecommunication.

522 (e) In connection with a change of control of a
523 domestic insurer, any determination by the commissioner that the
524 person acquiring control of the insurer shall be required to
525 maintain or restore the capital of the insurer to the level
526 required by the laws and regulations of this state shall be made
527 not later than sixty (60) days after the date of notification of
528 the change in control submitted pursuant to Section 83-6-24(1).

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



531 commissioner by order shall exempt therefrom as (i) not having
532 been made or entered into for the purpose and not having the
533 effect of changing or influencing the control of a domestic
534 insurer, or (ii) as otherwise not comprehended within the purposes
535 of this section.

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

537 (a) The failure to file any statement, amendment or
538 other material required to be filed pursuant to subsection (1) or
539 (2); or

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

543 (7) The courts of this state are hereby vested with
544 jurisdiction over every person not resident, domiciled or
545 authorized to do business in this state who files a statement with
546 the commissioner under this section, and overall actions involving
547 such person arising out of violations of this section, and each
548 such person shall be deemed to have performed acts equivalent to
549 and constituting an appointment by such a person of the
550 commissioner to be his true and lawful attorney upon whom may be
551 served all lawful process in any action, suit or proceeding
552 arising out of violations of this section. Copies of all such
553 lawful process shall be served on the commissioner and transmitted
554 by registered or certified mail by the commissioner to such person
555 at his last-known address.



556 **SECTION 4. Acquisitions involving insurers not otherwise**

557 **covered.** (1) **Definitions.** The following definitions shall apply
558 for the purposes of this section only:

559 (a) "Acquisition" means any agreement, arrangement or
560 activity the consummation of which results in a person acquiring
561 directly or indirectly the control of another person, and
562 includes, but is not limited to, the acquisition of voting
563 securities, the acquisition of assets, bulk reinsurance and
564 mergers.

565 (b) An "involved insurer" includes an insurer which
566 either acquires or is acquired, is affiliated with an acquirer or
567 acquired, or is the result of a merger.

568 (2) **Scope.** (a) Except as exempted in paragraph (b) of this
569 subsection, this section applies to any acquisition in which there
570 is a change in control of an insurer authorized to do business in
571 this state;

572 (b) This section shall not apply to the following:

573 (i) A purchase of securities solely for investment
574 purposes so long as the securities are not used by voting or
575 otherwise to cause or attempt to cause the substantial lessening
576 of competition in any insurance market in this state. If a
577 purchase of securities results in a presumption of control under
578 Section 83-6-1(c), it is not solely for investment purposes unless
579 the commissioner of the insurer's state of domicile accepts a
580 disclaimer of control or affirmatively finds that control does not



581 exist and the disclaimer action or affirmative finding is
582 communicated by the domiciliary commissioner to the commissioner
583 of this state;

584 (ii) The acquisition of a person by another person
585 when both persons are neither directly nor through affiliates
586 primarily engaged in the business of insurance, if preacquisition
587 notification is filed with the commissioner in accordance with
588 subsection (3)(a) of this section thirty (30) days prior to the
589 proposed effective date of the acquisition. However, such
590 preacquisition notification is not required for exclusion from
591 this section if the acquisition would otherwise be excluded from
592 this section by any other subparagraph of this paragraph (b);

593 (iii) The acquisition of already affiliated
594 persons;

595 (iv) An acquisition if, as an immediate result of
596 the acquisition:

597 1. In no market would the combined market
598 share of the involved insurers exceed five percent (5%) of the
599 total market;

600 2. There would be no increase in any market
601 share; or

602 3. In no market would:

603 a. The combined market share of the
604 involved insurers exceeds twelve percent (12%) of the total
605 market; and



606 b. The market share increase by more
607 than two percent (2%) of the total market. For the purpose of
608 this subsection (2)(b)(iv), a market means direct written
609 insurance premium in this state for a line of business as
610 contained in the annual statement required to be filed by insurers
611 licensed to do business in this state;

612 (v) An acquisition for which a preacquisition
613 notification would be required pursuant to this section due solely
614 to the resulting effect on the ocean marine insurance line of
615 business;

616 (vi) An acquisition of an insurer whose
617 domiciliary commissioner affirmatively finds that the insurer is
618 in failing condition; there is a lack of feasible alternative to
619 improving such condition; the public benefits of improving the
620 insurer's condition through the acquisition exceed the public
621 benefits that would arise from not lessening competition; and the
622 findings are communicated by the domiciliary commissioner to the
623 commissioner of this state.

624 (3) **Preacquisition notification; waiting period.** An
625 acquisition covered by subsection (2) may be subject to an order
626 pursuant to subsection (5) unless the acquiring person files a
627 preacquisition notification and the waiting period has expired.
628 The acquired person may file a preacquisition notification. The
629 commissioner shall give confidential treatment to information



630 submitted under this subsection in the same manner as provided in
631 this chapter.

632 (a) The preacquisition notification shall be in such
633 form and contain such information as prescribed by the National
634 Association of Insurance Commissioners (NAIC) relating to those
635 markets which, under subsection (2)(b)(iv) of this section, cause
636 the acquisition not to be exempted from the provisions of this
637 section. The commissioner may require such additional material
638 and information as deemed necessary to determine whether the
639 proposed acquisition, if consummated, would violate the
640 competitive standard of subsection (4) of this section. The
641 required information may include an opinion of an economist as to
642 the competitive impact of the acquisition in this state
643 accompanied by a summary of the education and experience of such
644 person indicating his or her ability to render an informed
645 opinion.

646 (b) The waiting period required shall begin on the date
647 of receipt of the commissioner of a preacquisition notification
648 and shall end on the earlier of the thirtieth day after the date
649 of receipt, or termination of the waiting period by the
650 commissioner. Prior to the end of the waiting period, the
651 commissioner on a one-time basis may require the submission of
652 additional needed information relevant to the proposed
653 acquisition, in which event the waiting period shall end on the
654 earlier of the thirtieth day after receipt of the additional



655 information by the commissioner or termination of the waiting
656 period by the commissioner.

657 (4) **Competitive standard.** (a) The commissioner may enter
658 an order under subsection (5) (a) of this section with respect to
659 an acquisition if there is substantial evidence that the effect of
660 the acquisition may be substantially to lessen competition in any
661 line of insurance in this state or tend to create a monopoly or if
662 the insurer fails to file adequate information in compliance with
663 subsection (3) of this section.

664 (b) In determining whether a proposed acquisition would
665 violate the competitive standard of paragraph (a) of this
666 subsection, the commissioner shall consider the following:

667 (i) Any acquisition covered under subsection (2)
668 of this section involving two (2) or more insurers competing in
669 the same market is prima facie evidence of violation of the
670 competitive standards.

671 1. If the market is highly concentrated and
672 the involved insurers possess the following shares of the market:

673	Insurer A	Insurer B
674	4%	4% or more
675	10%	2% or more
676	15%	1% or more

677 2. Or, if the market is not highly
678 concentrated and the involved insurers possess the following
679 shares of the market:



680	Insurer A	Insurer B
681	5%	5% or more
682	10%	4% or more
683	15%	3% or more
684	19%	1% or more

685 A highly concentrated market is one in which the share of the
686 four (4) largest insurers is seventy-five percent (75%) or more of
687 the market. Percentages not shown in the tables are interpolated
688 proportionately to the percentages that are shown. If more than
689 two (2) insurers are involved, exceeding the total of the two (2)
690 columns in the table is prima facie evidence of violation of the
691 competitive standard in paragraph (a) of this subsection. For the
692 purpose of this item, the insurer with the largest share of the
693 market shall be deemed to be Insurer A.

694 (ii) There is a significant trend toward increased
695 concentration when the aggregate market share of any grouping of
696 the largest insurers in the market, from the two (2) largest to
697 the eight (8) largest, has increased by seven percent (7%) or more
698 of the market over a period of time extending from any base year
699 five (5) to ten (10) years prior to the acquisition up to the time
700 of the acquisition. Any acquisition or merger covered under
701 subsection (2) of this section involving two (2) or more insurers
702 competing in the same market is prima facie evidence of violation
703 of the competitive standard in paragraph (a) of this subsection
704 if:



705 1. There is a significant trend toward
706 increased concentration in the market;

707 2. One (1) of the insurers involved is one
708 (1) of the insurers in a grouping of large insurers showing the
709 requisite increase in the market share; and

710 3. Another involved insurer's market is two
711 percent (2%) or more.

712 (iii) For the purposes of paragraph (b) of this
713 subsection (4):

714 1. The term "insurer" includes any company or
715 group of companies under common management, ownership or control;

716 2. The term "market" means the relevant
717 product and geographical markets. In determining the relevant
718 product and geographical markets, the commissioner shall give due
719 consideration to, among other things, the definitions or
720 guidelines, if any, promulgated by the NAIC and to information, if
721 any, submitted by parties to the acquisition. In the absence of
722 sufficient information to the contrary, the relevant product
723 market is assumed to be the direct written insurance premium for a
724 line of business, such line being that used in the annual
725 statement required to be filed by insurers doing business in this
726 state, and the relevant geographical market is assumed to be this
727 state;



728 3. The burden of showing prima facie evidence
729 of violation of the competitive standard rests upon the
730 commissioner.

731 (iv) Even though an acquisition is not prima facie
732 violative of the competitive standard under paragraph (b)(i) and
733 (ii) of this subsection (4), the commissioner may establish the
734 requisite anticompetitive effect based upon other substantial
735 evidence. Even though an acquisition is prima facie violative of
736 the competitive standard under paragraph (b)(i) and (ii) of this
737 subsection (4), a party may establish the absence of the requisite
738 anticompetitive effect based upon other substantial evidence.
739 Relevant factors in making a determination under this subparagraph
740 include, but are not limited to, the following: market shares,
741 volatility of ranking of market leaders, number of competitors,
742 concentration, trend of concentration in the industry, and ease of
743 entry and exit into the market.

744 (c) An order may not be entered under subsection (5)(a)
745 of this section if:

746 (i) The acquisition will yield substantial
747 economies of scale or economies in resource utilization that
748 cannot be feasibly achieved in any other way, and the public
749 benefits which would arise from such economies exceed the public
750 benefits which would arise from not lessening competition; or

751 (ii) The acquisition will substantially increase
752 the availability of insurance, and the public benefits of the



753 increase exceed the public benefits which would arise from not
754 lessening competition.

755 (5) **Orders and penalties.** (a) (i) If an acquisition
756 violates the standards of this section, the commissioner may enter
757 an order:

758 1. Requiring an involved insurer to cease and
759 desist from doing business in this state with respect to the line
760 or lines of insurance involved in the violation; or

761 2. Denying the application of an acquired or
762 acquiring insurer for a license to do business in this state.

763 (ii) Such an order shall not be entered unless
764 there is a hearing:

765 1. Notice of the hearing is issued prior to
766 the end of the waiting period and not less than fifteen (15) days
767 prior to the hearing; and

768 2. The hearing is concluded and the order is
769 issued no later than sixty (60) days after the date of the filing
770 of the preacquisition notification with the commissioner.

771 Every order shall be accompanied by a written decision of the
772 commissioner setting forth findings of fact and conclusions of
773 law.

774 (iii) An order pursuant to this paragraph shall
775 not apply if the acquisition is not consummated.

776 (b) Any person who violates a cease and desist order of
777 the commissioner under paragraph (a) of this subsection and while



778 the order is in effect may, after notice and hearing and upon
779 order of the commissioner, be subject at the discretion of the
780 commissioner to one or more of the following:

781 (i) A monetary penalty of not more than Ten
782 Thousand Dollars (\$10,000.00) for every day of violation;

783 (ii) Suspension or revocation of the person's
784 license; or

785 (iii) Any insurer or other person who fails to
786 make any filing required by this section, and who also fails to
787 demonstrate a good faith effort to comply with any filing
788 requirement, shall be subject to a fine of not more than Fifty
789 Thousand Dollars (\$50,000.00).

790 (6) **Inapplicable provisions.** Section 83-6-33(2) and (3) and
791 Section 83-6-39 do not apply to acquisitions covered under this
792 section.

793 **SECTION 5.** Section 83-6-27, Mississippi Code of 1972, is
794 amended as follows:

795 83-6-27. (1) * * * Power of commissioner. Subject to the
796 limitation contained in this section and in addition to the powers
797 which the commissioner has under Sections 83-5-201 through
798 83-5-217 relating to the examination of insurers, the commissioner
799 shall have the power to examine any insurer registered under
800 Section 83-6-3 and its affiliates to ascertain the financial
801 condition of the insurer, including the enterprise risk to the
802 insurer by the ultimate controlling party, or by any entity or



803 combination of entities within the insurance holding company
804 system, or by the insurance holding company system on a
805 consolidated basis.

806 (2) **Access to books and records.** (a) The
807 commissioner * * * may order any insurer registered under Section
808 83-6-3 to produce such records, books, or other information in the
809 possession of the insurer or its affiliates as are reasonably
810 necessary to determine compliance with this chapter.

811 (b) To determine compliance with this chapter, the
812 commissioner may order any insurer registered under Section 83-6-3
813 to produce information not in the possession of the insurer if the
814 insurer can obtain access to such information pursuant to
815 contractual relationships, statutory obligations, or other method.
816 In the event the insurer cannot obtain the information requested
817 by the commissioner, the insurer shall provide the commissioner a
818 detailed explanation of the reason that the insurer cannot obtain
819 the information and the identity of the holder of information.
820 Whenever it appears to the commissioner that the detailed
821 explanation is without merit, the commissioner may require, after
822 notice and hearing, the insurer to pay a penalty of One Hundred
823 Dollars (\$100.00) for each day's delay, or may suspend or revoke
824 the insurer's license.

825 (3) **Use of consultants.** The commissioner may retain at the
826 registered insurer's expense such attorneys, actuaries,
827 accountants and other experts not otherwise a part of the



828 commissioner's staff which are reasonably necessary to assist in
829 the conduct of the examination under subsection (1) of this
830 section. Any persons so retained are under the direction and
831 control of the commissioner and shall act in a purely advisory
832 capacity.

833 (4) **Expenses.** Each registered insurer producing for
834 examination records, books and papers pursuant to subsection (1)
835 of this section * * * shall be liable for and shall pay the
836 expense of * * * examination in accordance with Section 83-5-213.

837 (5) **Compelling production.** In the event the insurer fails
838 to comply with an order, the commissioner shall have the power to
839 examine the affiliates to obtain the information. The
840 commissioner shall also have the power to issue subpoenas, to
841 administer oaths, and to examine under oath any person for
842 purposes of determining compliance with this section. Upon the
843 failure or refusal of any person to obey a subpoena, the
844 commissioner may petition a court of competent jurisdiction, and
845 upon proper showing, the court may enter an order compelling the
846 witness to appear and testify or produce documentary evidence.
847 Failure to obey the court order shall be punishable as contempt of
848 court. Every person shall be obliged to attend as a witness at
849 the place specified in the subpoena, when subpoenaed, anywhere
850 within the state. He or she shall be entitled to the same fees
851 and mileage, if claimed, as a witness in Section 25-7-47, which
852 fees, mileage and actual expense, if any, necessarily incurred in



853 securing the attendance of witnesses, and their testimony, shall
854 be itemized and charged against, and be paid by, the company being
855 examined.

856 **SECTION 6. Supervisory colleges.** (1) **Power of**
857 **commissioner.** With respect to any insurer registered under
858 Section 83-6-3, and in accordance with subsection (3) of this
859 section, the commissioner shall also have the power to participate
860 in a supervisory college for any domestic insurer that is part of
861 an insurance holding company system with international operations
862 in order to determine compliance by the insurer with this chapter.
863 The powers of the commissioner with respect to supervisory
864 colleges include, but are not limited to, the following:

865 (a) Initiating the establishment of a supervisory
866 college;

867 (b) Clarifying the membership and participation of
868 other supervisors in the supervisory college;

869 (c) Clarifying the functions of the supervisory college
870 and the role of other regulators, including the establishment of a
871 group-wide supervisor;

872 (d) Coordinating the ongoing activities of the
873 supervisory college, including planning meetings, supervisory
874 activities, and processes for information sharing; and

875 (e) Establishing a crisis management plan.

876 (2) **Expenses.** Each registered insurer subject to this
877 section shall be liable for and shall pay the reasonable expenses



878 of the commissioner's participation in a supervisory college in
879 accordance with subsection (3) of this section, including
880 reasonable travel expenses. For purposes of this section, a
881 supervisory college may be convened as either a temporary or
882 permanent forum for communication and cooperation between the
883 regulators charged with the supervision of the insurer or its
884 affiliates, and the commissioner may establish a regular
885 assessment to the insurer for the payment of these expenses.

886 (3) **Supervisory college.** In order to assess the business
887 strategy, financial position, legal and regulatory position, risk
888 exposure, risk management and governance processes, and as part of
889 the examination of individual insurers in accordance with Section
890 83-6-27, the commissioner may participate in a supervisory college
891 with other regulators charged with supervision of the insurer or
892 its affiliates, including other state, federal and international
893 regulatory agencies. The commissioner may enter into agreements
894 in accordance with the confidentiality provisions of this chapter
895 providing the basis for cooperation between the commissioner and
896 the other regulatory agencies, and the activities of the
897 supervisory college. Nothing in this section shall delegate to
898 the supervisory college the authority of the commissioner to
899 regulate or supervise the insurer or its affiliates within its
900 jurisdiction.

901 **SECTION 7.** **Group-wide supervision of internationally active**
902 **insurance groups.** (1) The commissioner is authorized to act as



903 the group-wide supervisor for any internationally active insurance
904 group in accordance with the provisions of this section. However,
905 the commissioner may otherwise acknowledge another regulatory
906 official as the group-wide supervisor where the internationally
907 active insurance group:

908 (a) Does not have substantial insurance operations in
909 the United States;

910 (b) Has substantial insurance operations in the United
911 States, but not in this state; or

912 (c) Has substantial insurance operations in the United
913 States and this state, but the commissioner has determined
914 pursuant to the factors set forth in subsections (2) and (6) of
915 this section that the other regulatory official is the appropriate
916 group-wide supervisor.

917 An insurance holding company system that does not otherwise
918 qualify as an internationally active insurance group may request
919 that the commissioner make a determination or acknowledgment as to
920 a group-wide supervisor pursuant to this section.

921 (2) In cooperation with other state, federal and
922 international regulatory agencies, the commissioner will identify
923 a single group-wide supervisor for an internationally active
924 insurance group. The commissioner may determine that the
925 commissioner is the appropriate group-wide supervisor for an
926 internationally active insurance group that conducts substantial
927 insurance operations concentrated in this state. However, the



928 commissioner may acknowledge that a regulatory official from
929 another jurisdiction is the appropriate group-wide supervisor for
930 the internationally active insurance group. The commissioner
931 shall consider the following factors when making a determination
932 or acknowledgment under this subsection:

933 (a) The place of domicile of the insurers within the
934 internationally active insurance group that hold the largest share
935 of the group's written premiums, assets or liabilities;

936 (b) The place of domicile of the top-tiered insurer(s)
937 in the insurance holding company system of the internationally
938 active insurance group;

939 (c) The location of the executive offices or largest
940 operational offices of the internationally active insurance group;

941 (d) Whether another regulatory official is acting or is
942 seeking to act as the group-wide supervisor under a regulatory
943 system that the commissioner determines to be:

944 (i) Substantially similar to the system of
945 regulation provided under the laws of this state; or

946 (ii) Otherwise sufficient in terms of providing
947 for group-wide supervision, enterprise risk analysis, and
948 cooperation with other regulatory officials; and

949 (e) Whether another regulatory official acting or
950 seeking to act as the group-wide supervisor provides the
951 commissioner with reasonably reciprocal recognition and
952 cooperation.



953 However, a commissioner identified under this section as the
954 group-wide supervisor may determine that it is appropriate to
955 acknowledge another supervisor to serve as the group-wide
956 supervisor. The acknowledgment of the group-wide supervisor shall
957 be made after consideration of the factors listed in paragraphs
958 (a) through (e) of this subsection, and shall be made in
959 cooperation with and subject to the acknowledgment of other
960 regulatory officials involved with supervision of members of the
961 internationally active insurance group, and in consultation with
962 the internationally active insurance group.

963 (3) Notwithstanding any other provision of law, when another
964 regulatory official is acting as the group-wide supervisor of an
965 internationally active insurance group, the commissioner shall
966 acknowledge that regulatory official as the group-wide supervisor.
967 However, in the event of a material change in the internationally
968 active insurance group that results in:

969 (a) The internationally active insurance group's
970 insurers domiciled in this state holding the largest share of the
971 group's premiums, assets or liabilities; or

972 (b) This state being the place of domicile of the
973 top-tiered insurer(s) in the insurance holding company system of
974 the internationally active insurance group, the commissioner shall
975 make a determination or acknowledgment as to the appropriate
976 group-wide supervisor for such an internationally active insurance
977 group pursuant to subsection (2) of this section.



978 (4) Pursuant to Section 83-6-27, the commissioner is
979 authorized to collect from any insurer registered pursuant to
980 Section 83-6-3 all information necessary to determine whether the
981 commissioner may act as the group-wide supervisor of an
982 internationally active insurance group or if the commissioner may
983 acknowledge another regulatory official to act as the group-wide
984 supervisor. Prior to issuing a determination that an
985 internationally active insurance group is subject to group-wide
986 supervision by the commissioner, the commissioner shall notify the
987 insurer registered pursuant to Section 83-6-3 and the ultimate
988 controlling person within the internationally active insurance
989 group. The internationally active insurance group shall have not
990 less than thirty (30) days to provide the commissioner with
991 additional information pertinent to the pending determination.
992 The commissioner shall publish in the Mississippi Administrative
993 Code and on its Internet website the identity of internationally
994 active insurance groups that the commissioner has determined are
995 subject to group-wide supervision by the commissioner.

996 (5) If the commissioner is the group-wide supervisor for an
997 internationally active insurance group, the commissioner is
998 authorized to engage in any of the following group-wide
999 supervision activities:

1000 (a) Assess the enterprise risks within the
1001 internationally active insurance group to ensure that:



1002 (i) The material financial condition and liquidity
1003 risks to the members of the internationally active insurance group
1004 that are engaged in the business of insurance are identified by
1005 management; and

1006 (ii) Reasonable and effective mitigation measures
1007 are in place;

1008 (b) Request, from any member of an internationally
1009 active insurance group subject to the commissioner's supervision,
1010 information necessary and appropriate to assess enterprise risk,
1011 including, but not limited to, information about the members of
1012 the internationally active insurance group regarding:

1013 (i) Governance, risk assessment and management;

1014 (ii) Capital adequacy; and

1015 (iii) Material intercompany transactions.

1016 (c) Coordinate and, through the authority of the
1017 regulatory officials of the jurisdictions where members of the
1018 internationally active insurance group are domiciled, compel
1019 development and implementation of reasonable measures designed to
1020 ensure that the internationally active insurance group is able to
1021 timely recognize and mitigate enterprise risks to members of such
1022 internationally active insurance groups that are engaged in the
1023 business of insurance;

1024 (d) Communicate with other state, federal and
1025 international regulatory agencies for members within the
1026 internationally active insurance group and share relevant



1027 information subject to the confidentiality provisions of this
1028 chapter, through supervisory colleges as set forth in Section 6 of
1029 this act or otherwise;

1030 (e) Enter into agreements with or obtain documentation
1031 from any insurer registered under Section 83-6-3, any member of
1032 the internationally active insurance group, and any other state,
1033 federal and international regulatory agencies for members of the
1034 internationally active insurance group, providing the basis for or
1035 otherwise clarifying the commissioner's role as group-wide
1036 supervisor, including provisions for resolving disputes with other
1037 regulatory officials. Such agreements or documentation shall not
1038 serve as evidence in any proceeding that any insurer or person
1039 within an insurance holding company system not domiciled or
1040 incorporated in this state is doing business in this state or is
1041 otherwise subject to jurisdiction in this state; and

1042 (f) Other group-wide supervision activities, consistent
1043 with the authorities and purposes enumerated above, as considered
1044 necessary by the commissioner.

1045 (6) If the commissioner acknowledges that another regulatory
1046 official from a jurisdiction that is not accredited by the NAIC is
1047 the group-wide supervisor, the commissioner is authorized to
1048 reasonably cooperate, through supervisory colleges or otherwise,
1049 with group-wide supervision undertaken by the group-wide
1050 supervisor, provided that:



1051 (a) The commissioner's cooperation is in compliance
1052 with the laws of this state; and

1053 (b) The regulatory official acknowledged as the
1054 group-wide supervisor also recognizes and cooperates with the
1055 commissioner's activities as a group-wide supervisor for other
1056 internationally active insurance groups where applicable. Where
1057 such recognition and cooperation is not reasonably reciprocal, the
1058 commissioner is authorized to refuse recognition and cooperation.

1059 (7) The commissioner is authorized to enter into agreements
1060 with or obtain documentation from any insurer registered under
1061 Section 83-6-3, any affiliate of the insurer, and other state,
1062 federal and international regulatory agencies for members of the
1063 internationally active insurance group, that provide the basis for
1064 or otherwise clarify a regulatory official's role as group-wide
1065 supervisor.

1066 (8) The commissioner may promulgate regulations necessary
1067 for the administration of this section.

1068 (9) A registered insurer subject to this section shall be
1069 liable for and shall pay the reasonable expenses of the
1070 commissioner's participation in the administration of this
1071 section, including the engagement of attorneys, actuaries and any
1072 other professionals and all reasonable travel expenses.

1073 **SECTION 8.** Section 83-19-151, Mississippi Code of 1972, is
1074 amended as follows:



1075 83-19-151. Credit for reinsurance shall be allowed a
1076 domestic ceding insurer as either an asset or a deduction from
1077 liability on account of reinsurance ceded only when the reinsurer
1078 meets the requirements of paragraph (a), (b), (c), (d) * * *, (e)
1079 or (f) of this section; provided further that the commissioner may
1080 adopt by regulation pursuant to Section 83-19-157 specific
1081 additional requirements relating to or setting forth the valuation
1082 of assets or reserve credits, the amount and forms of security
1083 supporting reinsurance arrangements described in Section
1084 83-19-157, and/or the circumstances pursuant to which credit will
1085 be reduced or eliminated. * * * Credit shall be allowed under
1086 paragraph (a), (b) or (c) of this section only as respecting
1087 cessions of those kinds or classes of business which the assuming
1088 insurer is licensed or otherwise permitted to write or assume in
1089 its state of domicile or, in the case of a United States branch of
1090 an alien assuming insurer, in the state through which it is
1091 entered and licensed to transact insurance or reinsurance. Credit
1092 shall be allowed under paragraph (c) or (d) of this section only
1093 if the applicable requirements of paragraph (g) have been
1094 satisfied.

1095 (a) Credit shall be allowed when the reinsurance is
1096 ceded to an assuming insurer which is licensed to transact
1097 insurance or reinsurance in this state.

1098 (b) Credit shall be allowed when the reinsurance is
1099 ceded to an assuming insurer which is accredited as a reinsurer in



1100 this state. * * * In order to be eligible for accreditation, a
1101 reinsurer must:

1102 (i) Files with the commissioner evidence of its
1103 submission to this state's jurisdiction;

1104 (ii) Submits to this state's authority to examine
1105 its books and records;

1106 (iii) * * * Be licensed to transact insurance or
1107 reinsurance in at least one (1) state, or in the case of a United
1108 States branch of an alien assuming insurer * * *, be entered
1109 through and licensed to transact insurance or reinsurance in at
1110 least one (1) state;

1111 (iv) Files annually with the commissioner a copy
1112 of its annual statement filed with the Insurance Department of its
1113 state of domicile and a copy of its most recent audited financial
1114 statement; and * * *

1115 * * *

1116 (v) Demonstrate to the satisfaction of the
1117 commissioner that it has adequate financial capacity to meet its
1118 reinsurance obligations and is otherwise qualified to assume
1119 reinsurance from domestic insurers. An assuming insurer is deemed
1120 to meet this requirement as of the time of its application if it
1121 maintains a surplus as regards policyholders in an amount not less
1122 than Twenty Million Dollars (\$20,000,000.00) and its accreditation
1123 has not been denied by the commissioner within ninety (90) days
1124 after submission of its application.



1125 (c) (i) Credit shall be allowed when the reinsurance
1126 is ceded to an assuming insurer which is domiciled and licensed
1127 in, or in the case of a United States branch of an alien assuming
1128 insurer is entered through, a state which employs standards
1129 regarding credit for reinsurance substantially similar to those
1130 applicable under this statute and the assuming insurer or United
1131 States branch of an alien assuming insurer;

1132 * * *1. Maintains a surplus as regards
1133 policyholders in an amount not less than Twenty Million Dollars
1134 (\$20,000,000.00); and

1135 * * *2. Submits to the authority of this
1136 state to examine its books and records.

1137 (ii) The requirement of item 1 of this paragraph
1138 (c) (i) does not apply to reinsurance ceded and assumed pursuant to
1139 pooling arrangements among insurers in the same holding company
1140 system.

1141 (d) (i) Credit shall be allowed when the reinsurance
1142 is ceded to an assuming insurer which maintains a trust fund in a
1143 qualified United States financial institution, as defined in
1144 paragraph (b) of Section 83-19-155, for the payment of the valid
1145 claims of its United States * * * ceding insurers, their assigns
1146 and successors in interest. To enable the commissioner to
1147 determine the sufficiency of the trust fund, the assuming insurer
1148 shall report annually to the commissioner information
1149 substantially the same as that required to be reported on the



1150 National Association of Insurance Commissioners annual statement
1151 form by licensed insurers * * *. * * * The assuming insurer shall
1152 submit to examination of its books and records by the commissioner
1153 and bear the expense of examination.

1154 (ii) * * * 1. Credit for reinsurance shall not be
1155 granted under this subsection unless the form of the trust and any
1156 amendments to the trust have been approved by:

1157 a. The commissioner of the state where
1158 the trust is domiciled; or

1159 b. The commissioner of another state
1160 who, pursuant to the terms of the trust instrument, has accepted
1161 principal regulatory oversight of the trust.

1162 2. The form of the trust and any trust
1163 amendments also shall be filed with the commissioner of every
1164 state in which the ceding insurer beneficiaries of the trust are
1165 domiciled. The trust instrument shall provide that contested
1166 claims shall be valid and enforceable upon the final order of any
1167 court of competent jurisdiction in the United States. The trust
1168 shall vest legal title to its assets in its trustees for the
1169 benefit of the assuming insurer's United States ceding insurers,
1170 their assigns and successors in interest. The trust and the
1171 assuming insurer shall be subject to examination as determined by
1172 the commissioner.

1173 3. The trust shall remain in effect for as
1174 long as the assuming insurer has outstanding obligations due under



1175 the reinsurance agreements subject to the trust. No later than
1176 February 28 of each year the trustee of the trust shall report to
1177 the commissioner in writing the balance of the trust and listing
1178 the trust's investments at the preceding year-end and shall
1179 certify the date of termination of the trust, if so planned, or
1180 certify that the trust will not expire prior to the following
1181 December 31.

1182 (iii) * * * The following requirements apply to
1183 the following categories of assuming insurer:

1184 1. The trust fund for a single assuming
1185 insurer shall consist of funds in trust in an amount not less than
1186 the assuming insurer's liabilities attributable to reinsurance
1187 ceded by United States ceding insurers, and, in addition, the
1188 assuming insurer shall maintain a trusteed surplus of not less
1189 than Twenty Million Dollars (\$20,000,000.00) except as provided in
1190 item 2 of this paragraph (d)(iii).

1191 2. At any time after the assuming insurer has
1192 permanently discontinued underwriting new business secured by the
1193 trust for at least three (3) full years, the commissioner with
1194 principal regulatory oversight of the trust may authorize a
1195 reduction in the required trusteed surplus, but only after a
1196 finding, based on an assessment of the risk, that the new required
1197 surplus level is adequate for the protection of United States
1198 ceding insurers, policyholders and claimants in light of
1199 reasonably foreseeable adverse loss development. The risk



1200 assessment may involve an actuarial review, including an
1201 independent analysis of reserves and cash flows, and shall
1202 consider all material risk factors, including when applicable the
1203 lines of business involved, the stability of the incurred loss
1204 estimates and the effect of the surplus requirements on the
1205 assuming insurer's liquidity or solvency. The minimum required
1206 trusteed surplus may not be reduced to an amount less than thirty
1207 percent (30%) of the assuming insurer's liabilities attributable
1208 to reinsurance ceded by United States ceding insurers covered by
1209 the trust.

1210 3. a. In the case of a group including
1211 incorporated and individual unincorporated underwriters:

1212 A. For reinsurance ceded under
1213 reinsurance agreements with an inception, amendment or renewal
1214 date on or after January 1, 1993, the trust shall consist of a
1215 trusteed account in an amount not less than the respective
1216 underwriters' several liabilities attributable to business ceded
1217 by United States domiciled ceding insurers to any underwriter of
1218 the group;

1219 B. For reinsurance ceded under
1220 reinsurance agreements with an inception date on or before
1221 December 31, 1992, and not amended or renewed after that date,
1222 notwithstanding the other provisions of this act, the trust shall
1223 consist of a trusteed account in an amount not less than the
1224 respective underwriters' several insurance and reinsurance



1225 liabilities attributable to business written in the United States;
1226 and

1227 C. In addition to these trusts, the
1228 group shall maintain in trust a trusteed surplus of which One
1229 Hundred Million Dollars (\$100,000,000.00) shall be held jointly
1230 for the benefit of the United States domiciled ceding insurers of
1231 any member of the group for all years of account; and

1232 b. The incorporated members of the group
1233 shall not be engaged in any business other than underwriting as a
1234 member of the group and shall be subject to the same level of
1235 regulation and solvency control by the group's domiciliary
1236 regulator as are the unincorporated members.

1237 c. Within ninety (90) days after its
1238 financial statements are due to be filed with the group's
1239 domiciliary regulator, the group shall provide to the commissioner
1240 an annual certification by the group's domiciliary regulator of
1241 the solvency of each underwriter member; or if a certification is
1242 unavailable, financial statements, prepared by independent public
1243 accountants, of each underwriter member of the group.

1244 (iv) * * * In the case of a group of incorporated
1245 underwriters under common administration, the group shall:

1246 1. Have continuously transacted an insurance
1247 business outside the United States for at least three (3) years
1248 immediately prior to making application for accreditation;



1249 2. Maintain aggregate policyholders' surplus
1250 of at least Ten Billion Dollars (\$10,000,000,000.00);

1251 3. Maintain a trust fund in an amount not
1252 less than the group's several liabilities attributable to business
1253 ceded by United States domiciled ceding insurers to any member of
1254 the group pursuant to reinsurance contracts issued in the name of
1255 the group;

1256 4. In addition, maintain a joint trusted
1257 surplus of which One Hundred Million Dollars (\$100,000,000.00)
1258 shall be held jointly for the benefit of United States domiciled
1259 ceding insurers of any member of the group as additional security
1260 for these liabilities; and

1261 5. Within ninety (90) days after its
1262 financial statements are due to be filed with the group's
1263 domiciliary regulator, make available to the commissioner an
1264 annual certification of each underwriter member's solvency by the
1265 member's domiciliary regulator and financial statements of each
1266 underwriter member of the group prepared by its independent public
1267 accountant.

1268 (e) * * * Credit shall be allowed when the reinsurance
1269 is ceded to an assuming insurer that has been certified by the
1270 commissioner as a reinsurer in this state and secures its
1271 obligations in accordance with the requirements of this
1272 subsection.



1273 (i) In order to be eligible for certification, the
1274 assuming insurer shall meet the following requirements:

1275 1. The assuming insurer must be domiciled and
1276 licensed to transact insurance or reinsurance in a qualified
1277 jurisdiction, as determined by the commissioner pursuant to
1278 subparagraph (iii) of this paragraph (e);

1279 2. The assuming insurer must maintain minimum
1280 capital and surplus, or its equivalent, in an amount to be
1281 determined by the commissioner pursuant to regulation;

1282 3. The assuming insurer must maintain
1283 financial strength ratings from two (2) or more rating agencies
1284 deemed acceptable by the commissioner pursuant to regulation;

1285 4. The assuming insurer must agree to submit
1286 to the jurisdiction of this state, appoint the commissioner as its
1287 agent for service of process in this state, and agree to provide
1288 security for one hundred percent (100%) of the assuming insurer's
1289 liabilities attributable reinsurance ceded by United States ceding
1290 insurers if it resists enforcement of a final United States
1291 judgment;

1292 5. The assuming insurer must agree to meet
1293 applicable information filing requirements as determined by the
1294 commissioner, both with respect to an initial application for
1295 certification and on an ongoing basis; and



1296 6. The assuming insurer must satisfy any
1297 other requirements for certification deemed relevant by the
1298 commissioner.

1299 (ii) An association including incorporated and
1300 individual unincorporated underwriters may be a certified
1301 reinsurer. In order to be eligible for certification, in addition
1302 to satisfying requirements of subparagraph (i) of this paragraph
1303 (e):

1304 1. The association shall satisfy its minimum
1305 capital and surplus requirements through the capital and surplus
1306 equivalents (net of liabilities) of the association and its
1307 members, which shall include a joint central fund that may be
1308 applied to any unsatisfied obligation of the association or any of
1309 its members, in an amount determined by the commissioner to
1310 provide adequate protection;

1311 2. The incorporated members of the
1312 association shall not be engaged in any business other than
1313 underwriting as a member of the association and shall be subject
1314 to the same level of regulation and solvency control by the
1315 association's domiciliary regulator as are the unincorporated
1316 members; and

1317 3. Within ninety (90) days after its
1318 financial statements are due to be filed with the association's
1319 domiciliary regulator, the association shall provide to the
1320 commissioner an annual certification by the association's



1321 domiciliary regulator of the solvency of each underwriter member;
1322 or if a certification is unavailable, financial statements,
1323 prepared by independent public accountants, of each underwriter
1324 member of the association.

1325 (iii) The commissioner shall create and publish a
1326 list of qualified jurisdictions, under which an assuming insurer
1327 licensed and domiciled in such jurisdiction is eligible to be
1328 considered for certification by the commissioner as a certified
1329 reinsurer.

1330 1. In order to determine whether the
1331 domiciliary jurisdiction of a non-United States assuming insurer
1332 is eligible to be recognized as a qualified jurisdiction, the
1333 commissioner shall evaluate the appropriateness and effectiveness
1334 of the reinsurance supervisory system of the jurisdiction, both
1335 initially and on an ongoing basis, and consider the rights,
1336 benefits and the extent of reciprocal recognition afforded by the
1337 non-United States jurisdiction to reinsurers licensed and
1338 domiciled in the United States. A qualified jurisdiction must
1339 agree to share information and cooperate with the commissioner
1340 with respect to all certified reinsurers domiciled within that
1341 jurisdiction. A jurisdiction may not be recognized as a qualified
1342 jurisdiction if the commissioner has determined that the
1343 jurisdiction does not adequately and promptly enforce final United
1344 States judgments and arbitration awards. Additional factors may
1345 be considered in the discretion of the commissioner.



1346 2. A list of qualified jurisdictions shall be
1347 published through the NAIC Committee Process. The commissioner
1348 shall consider this list in determining qualified jurisdictions.
1349 If the commissioner approves a jurisdiction as qualified that does
1350 not appear on the list of qualified jurisdictions, the
1351 commissioner shall provide thoroughly documented justification in
1352 accordance with criteria to be developed under regulations.

1353 3. United States jurisdictions that meet the
1354 requirement for accreditation under the NAIC Financial Regulation
1355 Standards and Accreditation Program shall be recognized as
1356 qualified jurisdictions.

1357 4. If a certified reinsurer's domiciliary
1358 jurisdiction ceases to be a qualified jurisdiction, the
1359 commissioner has the discretion to suspend the reinsurer's
1360 certification indefinitely, in lieu of revocation.

1361 (iv) The commissioner shall assign a rating to
1362 each certified reinsurer, giving due consideration to the
1363 financial strength ratings that have been assigned by rating
1364 agencies deemed acceptable to the commissioner pursuant to
1365 regulation. The commissioner shall publish a list of all
1366 certified reinsurers and their ratings.

1367 (v) A certified reinsurer shall secure obligations
1368 assumed from United States ceding insurers under this subsection
1369 at a level consistent with its rating, as specified in regulations
1370 promulgated by the commissioner.



1371 1. In order for a domestic ceding insurer to
1372 qualify for full financial statement credit for reinsurance ceded
1373 to a certified reinsurer, the certified reinsurer shall maintain
1374 security in a form acceptable to the commissioner and consistent
1375 with the provisions of Section 9 of this act or in a
1376 multibeneficiary trust in accordance with paragraph (d) of this
1377 subsection, except as otherwise provided in this subsection.

1378 2. If a certified reinsurer maintains a trust
1379 to fully secure its obligations subject to paragraph (d) of this
1380 subsection, and chooses to secure its obligations incurred as a
1381 certified reinsurer in the form of a multibeneficiary trust, the
1382 certified reinsurer shall maintain separate trust accounts for its
1383 obligations incurred under reinsurance agreements issued or
1384 renewed as a certified reinsurer with reduced security as
1385 permitted by this subsection or comparable laws of other United
1386 States jurisdictions and for its obligations subject to paragraph
1387 (d) of this subsection. It shall be a condition to the grant of
1388 certification under this paragraph (e) that the certified
1389 reinsurer shall have bound itself, by the language of the trust
1390 and agreement with the commissioner with principal regulatory
1391 oversight of each such trust account, to fund, upon termination of
1392 any such trust account, out of the remaining surplus of such trust
1393 any deficiency of any other such trust account.

1394 3. The minimum trustee surplus requirements
1395 provided in paragraph (d) of this subsection are not applicable



1396 with respect to a multibeneficiary trust maintained by a certified
1397 reinsurer for the purpose of securing obligations incurred under
1398 this subsection, except that such trust shall maintain a minimum
1399 trusteed surplus of Ten Million Dollars (\$10,000,000.00).

1400 4. With respect to obligations incurred by a
1401 certified reinsurer under this subsection, if the security is
1402 insufficient, the commissioner shall reduce the allowable credit
1403 by an amount proportionate to the deficiency, and has the
1404 discretion to impose further reductions in allowable credit upon
1405 finding that there is a material risk that the certified
1406 reinsurer's obligations will not be paid in full when due.

1407 5. For purposes of this subsection, a
1408 certified reinsurer whose certification has been terminated for
1409 any reason shall be treated as a certified reinsurer required to
1410 secure one hundred percent (100%) of its obligations.

1411 6. As used in this subsection, the term
1412 "terminated" refers to revocation, suspension, voluntary surrender
1413 and inactive status.

1414 7. If the commissioner continues to assign a
1415 higher rating as permitted by other provisions of this section,
1416 this requirement does not apply to a certified reinsurer in
1417 inactive status or to a reinsurer whose certification has been
1418 suspended.

1419 (vi) If an applicant for certification has been
1420 certified as a reinsurer in an NAIC accredited jurisdiction, the



1421 commissioner has the discretion to defer to that jurisdiction's
1422 certification, and has the discretion to defer to the rating
1423 assigned by that jurisdiction, and such assuming insurer shall be
1424 considered to be a certified reinsurer in this state.

1425 (vii) A certified reinsurer that ceases to assume
1426 new business in this state may request to maintain its
1427 certification in inactive status in order to continue to qualify
1428 for a reduction in security for its in-force business. An
1429 inactive certified reinsurer shall continue to comply with all
1430 applicable requirements of this subsection, and the commissioner
1431 shall assign a rating that takes into account, if relevant, the
1432 reasons why the reinsurer is not assuming new business.

1433 (f) * * * Credit shall be allowed when the reinsurance
1434 is ceded to an assuming insurer not meeting the requirements of
1435 paragraph (a), (b), (c), (d) or (e) of this subsection, but only
1436 as to the insurance of risks located in jurisdictions where the
1437 reinsurance is required by applicable law or regulation of that
1438 jurisdiction.

1439 (g) If the assuming insurer is not licensed, accredited
1440 or certified to transact insurance or reinsurance in this state,
1441 the credit permitted by paragraphs (c) and (d) of this subsection
1442 shall not be allowed unless the assuming insurer agrees in the
1443 reinsurance agreements:

1444 (i) 1. That in the event of the failure of the
1445 assuming insurer to perform its obligations under the terms of the



1446 reinsurance agreement, the assuming insurer, at the request of the
1447 ceding insurer, shall submit to the jurisdiction of any court of
1448 competent jurisdiction in any state of the United States, will
1449 comply with all requirements necessary to give the court
1450 jurisdiction, and will abide by the final decision of the court or
1451 of any appellate court in the event of an appeal; and

1452 2. To designate the commissioner or a
1453 designated attorney as its true and lawful attorney upon whom may
1454 be served any lawful process in any action, suit or proceeding
1455 instituted by or on behalf of the ceding insurer.

1456 (ii) This subsection is not intended to conflict
1457 with or override the obligation of the parties to a reinsurance
1458 agreement to arbitrate their disputes, if this obligation is
1459 created in the agreement.

1460 (h) If the assuming insurer does not meet the
1461 requirements of paragraph (a), (b) or (c) of this subsection the
1462 credit permitted by paragraph (d) or (e) of this subsection shall
1463 not be allowed unless the assuming insurer agrees in the trust
1464 agreements to the following conditions:

1465 (i) Notwithstanding any other provisions in the
1466 trust instrument, if the trust fund is inadequate because it
1467 contains an amount less than the amount required by paragraph
1468 (d)(iii) of this subsection, or if the grantor of the trust has
1469 been declared insolvent or placed into receivership,
1470 rehabilitation, liquidation or similar proceedings under the laws



1471 of its state or country of domicile, the trustee shall comply with
1472 an order of the commissioner with regulatory oversight over the
1473 trust or with an order of a court of competent jurisdiction
1474 directing the trustee to transfer to the commissioner with
1475 regulatory oversight all of the assets of the trust fund.

1476 (ii) The assets shall be distributed by and claims
1477 shall be filed with and valued by the commissioner with regulatory
1478 oversight in accordance with the laws of the state in which the
1479 trust is domiciled that are applicable to the liquidation of
1480 domestic insurance companies.

1481 (iii) If the commissioner with regulatory
1482 oversight determines that the assets of the trust fund or any part
1483 thereof are not necessary to satisfy the claims of the United
1484 States ceding insurers of the grantor of the trust, the assets or
1485 part thereof shall be returned by the commissioner with regulatory
1486 oversight to the trustee for distribution in accordance with the
1487 trust agreement.

1488 (iv) The grantor shall waive any right otherwise
1489 available to it under United States law that is inconsistent with
1490 this provision.

1491 (i) If an accredited or certified reinsurer ceases to
1492 meet the requirements for accreditation or certification, the
1493 commissioner may suspend or revoke the reinsurer's accreditation
1494 or certification.



1495 (i) The commissioner must give the reinsurer
1496 notice and opportunity for hearing. The suspension or revocation
1497 may not take effect until after the commissioner's order on
1498 hearing, unless:

1499 1. The reinsurer waives its right to a
1500 hearing;

1501 2. The commissioner's order is based on
1502 regulatory action by the reinsurer's domiciliary jurisdiction or
1503 the voluntary surrender or termination of the reinsurer's
1504 eligibility to transact insurance or reinsurance business in its
1505 domiciliary jurisdiction or in the primary certifying state of the
1506 reinsurer under paragraph (e) (vi) of this subsection; or

1507 3. The commissioner finds that an emergency
1508 requires immediate action and a court of competent jurisdiction
1509 has not stayed the commissioner's action.

1510 (ii) While a reinsurer's accreditation or
1511 certification is suspended, no reinsurance contract issued or
1512 renewed after the effective date of the suspension qualifies for
1513 credit except to the extent that the reinsurer's obligations under
1514 the contract are secured in accordance with Section 83-19-153. If
1515 a reinsurer's accreditation or certification is revoked, no credit
1516 for reinsurance may be granted after the effective date of the
1517 revocation except to the extent that the reinsurer's obligations
1518 under the contract are secured in accordance with paragraph (e) (v)
1519 of this subsection or Section 83-19-153.



1520 (j) Concentration risk.

1521 (i) A ceding insurer shall take steps to manage
1522 its reinsurance recoverables proportionate to its own book of
1523 business. A domestic ceding insurer shall notify the commissioner
1524 within thirty (30) days after reinsurance recoverables from any
1525 single assuming insurer, or group of affiliated assuming insurers,
1526 exceeds fifty percent (50%) of the domestic ceding insurer's
1527 last-reported surplus to policyholders, or after it is determined
1528 that reinsurance recoverables from any single assuming insurer, or
1529 group of affiliated assuming insurers, is likely to exceed this
1530 limit. The notification shall demonstrate that the exposure is
1531 safely managed by the domestic ceding insurer.

1532 (ii) A ceding insurer shall take steps to
1533 diversify its reinsurance program. A domestic ceding insurer
1534 shall notify the commissioner within thirty (30) days after ceding
1535 to any single assuming insurer, or group of affiliated assuming
1536 insurers, more than twenty percent (20%) of the ceding insurer's
1537 gross written premium in the prior calendar year, or after it has
1538 determined that the reinsurance ceded to any single assuming
1539 insurer, or group of affiliated assuming insurers, is likely to
1540 exceed this limit. The notification shall demonstrate that the
1541 exposure is safely managed by the domestic ceding insurer.

1542 **SECTION 9.** Section 83-19-153, Mississippi Code of 1972, is
1543 amended as follows:



1544 83-19-153. * * * An asset or reduction from liability for
1545 the reinsurance ceded by a domestic insurer to an assuming insurer
1546 not meeting the requirements of Section 83-19-151 shall be allowed
1547 in an amount not exceeding the liabilities carried by the ceding
1548 insurer * * *, provided that the commissioner may adopt by
1549 regulation pursuant to Section 10(2) of this act specific
1550 additional requirements relating to or setting forth: (i) the
1551 valuation of assets or reserves credits; (ii) the amount and forms
1552 of security supporting reinsurance arrangements described in
1553 Section 10(2) of this act; and/or (iii) the circumstances pursuant
1554 to which the credit will be reduced or eliminated. The reduction
1555 shall be in the amount of funds held by or on behalf of the ceding
1556 insurer, including funds held in trust for the ceding insurer,
1557 under a reinsurance contract with such assuming insurer as
1558 security for the payment of obligations thereunder, if such
1559 security is held in the United States subject to withdrawal solely
1560 by, and under the exclusive control of, the ceding insurer; or, in
1561 the case of a trust, held in a qualified United States financial
1562 institution, as defined in paragraph (b) of Section 83-19-155.
1563 This security may be in the form of:

- 1564 (a) Cash;
- 1565 (b) Securities listed by the Securities Valuation
1566 Office of the National Association of Insurance Commissioners,
1567 including those deemed exempt from filing as defined by the



1568 Purposes and Procedures Manual of the Securities Valuation Office,
1569 and qualifying as admitted assets;

1570 (c) (i) Clean, irrevocable, unconditional letters of
1571 credit, issued or confirmed by a qualified United States financial
1572 institution, as defined in paragraph (a) * * * of Section
1573 83-19-155, effective no later than December 31 in respect of the
1574 year for which filing is being made, and in the possession of, or
1575 in trust for, the ceding * * * insurer on or before the filing
1576 date of its annual statement.

1577 (ii) Letters of credit meeting applicable
1578 standards of issuer acceptability as of the dates of their
1579 issuance or confirmation shall, notwithstanding the issuing or
1580 confirming institution's subsequent failure to meet applicable
1581 standards of issuer acceptability, continue to be acceptable as
1582 security until their expiration, extension, renewal, modification
1583 or amendment, whichever first occurs; or

1584 (d) Any other form of security acceptable to the
1585 commissioner.

1586 **SECTION 10.** Section 83-19-157, Mississippi Code of 1972, is
1587 amended as follows:

1588 83-19-157. (1) The commissioner may adopt rules and
1589 regulations implementing the provisions of Sections 83-19-151
1590 through 83-19-157.



1591 (2) The commissioner is further authorized to adopt rules
1592 and regulations applicable to reinsurance arrangements described
1593 in paragraph (a) of this subsection (2).

1594 (a) A regulation adopted pursuant to this subsection
1595 (2) may apply only to reinsurance relating to:

1596 (i) Life insurance policies with guaranteed
1597 nonlevel gross premiums or guaranteed nonlevel benefits;

1598 (ii) Universal life insurance policies with
1599 provisions resulting in the ability of a policyholder to keep a
1600 policy in force over a secondary guarantee period;

1601 (iii) Variable annuities with guaranteed death or
1602 living benefits;

1603 (iv) Long-term care insurance policies; or

1604 (v) Such other life and health insurance and
1605 annuity products as to which the NAIC adopts model regulatory
1606 requirements with respect to credit for reinsurance.

1607 (b) A regulation adopted pursuant to paragraph (a) (i)
1608 or (ii) of this subsection (2) may apply to any treaty containing
1609 (i) policies issued on or after January 1, 2015, and/or (ii)
1610 policies issued prior to January 1, 2015, if risk pertaining to
1611 such pre-2015 policies is ceded in connection with the treaty, in
1612 whole or in part, on or after January 1, 2015.

1613 (c) A regulation adopted pursuant to this subsection
1614 (2) may require the ceding insurer, in calculating the amounts or
1615 forms of security required to be held under regulations



1616 promulgated under this authority, to use the Valuation Manual
1617 adopted by the NAIC under Section 83-7-23(11) (b) (i), including all
1618 amendments adopted by the NAIC and in effect on the date as of
1619 which the calculation is made, to the extent applicable.

1620 (d) A regulation adopted pursuant to this subsection
1621 (2) shall not apply to cessions to an assuming insurer that:

1622 (i) Is certified in this state or, if this state
1623 has not adopted provisions substantially equivalent to Section
1624 83-19-151(e), certified in a minimum of five (5) other states; or

1625 (ii) Maintains at least Two Hundred Fifty Million
1626 Dollars (\$250,000,000.00) in capital and surplus when determined
1627 in accordance with the NAIC Accounting Practices and Procedures
1628 Manual, including all amendments thereto adopted by the NAIC,
1629 excluding the impact of any permitted or prescribed practices; and
1630 is:

1631 1. Licensed in at least twenty-six (26)
1632 states; or

1633 2. Licensed in at least ten (10) states, and
1634 licensed or accredited in a total of at least thirty-five (35)
1635 states.

1636 (e) The authority to adopt regulations pursuant to this
1637 subsection (2) does not limit the commissioner's general authority
1638 to adopt regulations pursuant to subsection (1) of this section.

1639 **SECTION 11.** The following shall be codified as Section
1640 83-19-159, Mississippi Code of 1972:



1641 83-19-159. **Reinsurance agreements affected.** Sections
1642 83-19-151 through 83-19-157 shall apply to all cessions after the
1643 effective date of this act under reinsurance agreements that have
1644 an inception, anniversary or renewal date not less than six (6)
1645 months after the effective date of this act.

1646 **SECTION 12.** **Title.** Sections 12 through 22 of this act shall
1647 be known and may be cited as the "Own Risk and Solvency Assessment
1648 Act."

1649 **SECTION 13.** **Own Risk and Solvency Assessment (ORSA) purpose**
1650 **and scope.** The purpose of Sections 12 through 22 of this act is
1651 to provide the requirements for maintaining a risk management
1652 framework and completing an Own Risk and Solvency Assessment
1653 (ORSA) and provide guidance and instructions for filing an ORSA
1654 Summary Report with the insurance commissioner of this state. The
1655 requirements of Sections 12 through 22 of this act shall apply to
1656 all insurers domiciled in this state unless exempt pursuant to
1657 Section 18 of this act.

1658 **SECTION 14.** **Definitions.** As used in Sections 12 through 22
1659 of this act, the following words shall have the meaning ascribed
1660 herein unless the context clearly requires otherwise:

1661 (a) "Insurance group" means, for the purpose of
1662 conducting an ORSA, those insurers and affiliates included within
1663 an insurance holding company system as defined in Section
1664 83-6-1(d).



1665 (b) "Insurer" shall have the same meaning as set forth
1666 in Section 83-6-1(e), except that it shall not include agencies,
1667 authorities or instrumentalities of the United States, its
1668 possessions and territories, the Commonwealth of Puerto Rico, the
1669 District of Columbia, or a state or political subdivision of a
1670 state.

1671 (c) "Own Risk and Solvency Assessment" or "ORSA" means
1672 a confidential internal assessment, appropriate to the nature,
1673 scale and complexity of an insurer or insurance group, conducted
1674 by that insurer or insurance group of the material and relevant
1675 risks associated with the insurer or insurance group's current
1676 business plan, and the sufficiency of capital resources to support
1677 those risks.

1678 (d) "ORSA Guidance Manual" means the current version of
1679 the Own Risk and Solvency Assessment Guidance Manual developed and
1680 adopted by the National Association of Insurance Commissioners
1681 (NAIC) and as amended from time to time. A change in the ORSA
1682 Guidance Manual shall be effective on January 1 following the
1683 calendar year in which the changes have been adopted by the NAIC.

1684 (e) "ORSA Summary Report" means a confidential
1685 high-level summary of an insurer or insurance group's ORSA.

1686 **SECTION 15. Risk management framework.** An insurer shall
1687 maintain a risk management framework to assist the insurer with
1688 identifying, assessing, monitoring, managing and reporting on its
1689 material and relevant risks. This requirement may be satisfied if



1690 the insurance group of which the insurer is a member maintains a
1691 risk management framework applicable to the operations of the
1692 insurer.

1693 **SECTION 16. ORSA requirement.** Subject to Section 18 of this
1694 act, an insurer, or the insurance group of which the insurer is a
1695 member, shall regularly conduct an ORSA consistent with a process
1696 comparable to the ORSA Guidance Manual. The ORSA shall be
1697 conducted no less than annually but also at any time when there
1698 are significant changes to the risk profile of the insurer or the
1699 insurance group of which the insurer is a member.

1700 **SECTION 17. ORSA Summary Report.** (1) Upon the
1701 commissioner's request, and no more than once each year, an
1702 insurer shall submit to the commissioner an ORSA Summary Report or
1703 any combination of reports that together contain the information
1704 described in the ORSA Guidance Manual, applicable to the insurer
1705 and/or the insurance group of which it is a member.

1706 Notwithstanding any request from the commissioner, if the insurer
1707 is a member of an insurance group, the insurer shall submit the
1708 report(s) required by this subsection if the commissioner is the
1709 lead state commissioner of the insurance group as determined by
1710 the procedures within the Financial Analysis Handbook adopted by
1711 the National Association of Insurance Commissioners.

1712 (2) The report(s) shall include a signature of the insurer
1713 or insurance group's chief risk officer or other executive having
1714 responsibility for the oversight of the insurer's enterprise risk



1715 management process attesting to the best of his/her belief and
1716 knowledge that the insurer applies the enterprise risk management
1717 process described in the ORSA Summary Report and that a copy of
1718 the report has been provided to the insurer's board of directors
1719 or the appropriate committee thereof.

1720 (3) An insurer may comply with subsection (1) by providing
1721 the most recent and substantially similar report(s) provided by
1722 the insurer or another member of an insurance group of which the
1723 insurer is a member to the commissioner of another state or to a
1724 supervisor or regulator of a foreign jurisdiction, if that report
1725 provides information that is comparable to the information
1726 described in the ORSA Guidance Manual. Any such report in a
1727 language other than English must be accompanied by a translation
1728 of that report into the English language.

1729 **SECTION 18. Exemption.** (1) An insurer shall be exempt from
1730 the requirements of Sections 12 through 22 of this act, if:

1731 (a) The insurer has annual direct written and
1732 unaffiliated assumed premium, including international direct and
1733 assumed premium but excluding premiums reinsured with the Federal
1734 Crop Insurance Corporation and Federal Flood Program, less than
1735 Five Hundred Million Dollars (\$500,000,000.00); and

1736 (b) The insurance group of which the insurer is a
1737 member has annual direct written and unaffiliated assumed premium
1738 including international direct and assumed premium, but excluding
1739 premiums reinsured with the Federal Crop Insurance Corporation and



1740 Federal Flood Program, less than One Billion Dollars
1741 (\$1,000,000,000.00).

1742 (2) If an insurer qualifies for exemption pursuant to
1743 paragraph (a) of subsection (1), but the insurance group of which
1744 the insurer is a member does not qualify for exemption pursuant to
1745 paragraph (b) of subsection (1), then the ORSA Summary Report that
1746 may be required pursuant to Section 17 of this act shall include
1747 every insurer within the insurance group. This requirement may be
1748 satisfied by the submission of more than one (1) ORSA Summary
1749 Report for any combination of insurers provided any combination of
1750 reports includes every insurer within the insurance group.

1751 (3) If an insurer does not qualify for exemption pursuant to
1752 paragraph (a) of subsection (1), but the insurance group of which
1753 it is a member qualifies for exemption pursuant to paragraph (b)
1754 of subsection (1), then the only ORSA Summary Report that may be
1755 required pursuant to Section 17 of this act shall be the report
1756 applicable to that insurer.

1757 (4) An insurer that does not qualify for exemption pursuant
1758 to subsection (1) may apply to the commissioner for a waiver from
1759 the requirements of Sections 12 through 22 of this act based upon
1760 unique circumstances. In deciding whether to grant the insurer's
1761 request for waiver, the commissioner may consider the type and
1762 volume of business written, ownership and organizational
1763 structure, and any other factor the commissioner considers
1764 relevant to the insurer or insurance group of which the insurer is



1765 a member. If the insurer is part of an insurance group with
1766 insurers domiciled in more than one (1) state, the commissioner
1767 shall coordinate with the lead state commissioner and with the
1768 other domiciliary commissioners in considering whether to grant
1769 the insurer's request for a waiver.

1770 (5) Notwithstanding the exemptions stated in this section:

1771 (a) The commissioner may require that an insurer
1772 maintain a risk management framework, conduct an ORSA and file an
1773 ORSA Summary Report based on unique circumstances including, but
1774 not limited to, the type and volume of business written, ownership
1775 and organizational structure, federal agency requests, and
1776 international supervisor requests.

1777 (b) The commissioner may require that an insurer
1778 maintain a risk management framework, conduct an ORSA and file an
1779 ORSA Summary Report if the insurer has Risk-Based Capital for
1780 company action level event as defined in Sections 83-5-401 through
1781 83-5-427, meets one or more of the standards of an insurer deemed
1782 to be in hazardous financial condition as defined in Part 1,
1783 Chapter 39, Title 19 of the Mississippi Administrative Code, or
1784 otherwise exhibits qualities of a troubled insurer as determined
1785 by the commissioner.

1786 (6) If an insurer that qualifies for an exemption pursuant
1787 to subsection (1) subsequently no longer qualifies for that
1788 exemption due to changes in premium as reflected in the insurer's
1789 most recent annual statement or in the most recent annual



1790 statements of the insurers within the insurance group of which the
1791 insurer is a member, the insurer shall have one (1) year following
1792 the year the threshold is exceeded to comply with the requirements
1793 of Sections 12 through 22 of this act.

1794 **SECTION 19. Contents of ORSA Summary Report.** (1) The ORSA
1795 Summary Report shall be prepared consistent with the ORSA Guidance
1796 Manual, subject to the requirements of subsection (2) of this
1797 section. Documentation and supporting information shall be
1798 maintained and made available upon examination or upon request of
1799 the commissioner.

1800 (2) The review of the ORSA Summary Report, and any
1801 additional requests for information, shall be made using similar
1802 procedures currently used in the analysis and examination of
1803 multistate or global insurers and insurance groups.

1804 **SECTION 20. Confidentiality.** (1) Documents, materials or
1805 other information, including the ORSA Summary Report, in the
1806 possession of or control of the Department of Insurance that are
1807 obtained by, created by or disclosed to the commissioner or any
1808 other person under this act, is recognized by this state as being
1809 proprietary and to contain trade secrets. All such documents,
1810 materials or other information shall be confidential by law and
1811 privileged, shall not be subject to Sections 25-61-1 through
1812 25-61-17, shall not be subject to subpoena, and shall not be
1813 subject to discovery or admissible in evidence in any private
1814 civil action. However, the commissioner is authorized to use the



1815 documents, materials or other information in the furtherance of
1816 any regulatory or legal action brought as a part of the
1817 commissioner's official duties. The commissioner shall not
1818 otherwise make the documents, materials or other information
1819 public without the prior written consent of the insurer.

1820 (2) Neither the commissioner nor any person who received
1821 documents, materials or other ORSA-related information, through
1822 examination or otherwise, while acting under the authority of the
1823 commissioner or with whom such documents, materials or other
1824 information are shared pursuant to Sections 12 through 22 of this
1825 act shall be permitted or required to testify in any private civil
1826 action concerning any confidential documents, materials, or
1827 information subject to subsection (1) of this section.

1828 (3) In order to assist in the performance of the
1829 commissioner's regulatory duties, the commissioner:

1830 (a) May, upon request, share documents, materials or
1831 other ORSA-related information, including the confidential and
1832 privileged documents, materials or information subject to
1833 subsection (1) of this section, including proprietary and trade
1834 secret documents and materials with other state, federal and
1835 international financial regulatory agencies, including members of
1836 any supervisory college with the NAIC and with any third-party
1837 consultants designated by the commissioner, provided that the
1838 recipient agrees in writing to maintain the confidentiality and
1839 privileged status of the ORSA-related documents, materials or



1840 other information and has verified in writing the legal authority
1841 to maintain confidentiality;

1842 (b) May receive documents, materials or other
1843 ORSA-related information, including otherwise confidential and
1844 privileged documents, materials or information, including
1845 proprietary and trade-secret information or documents, from
1846 regulatory officials of other foreign or domestic jurisdictions,
1847 including members of any supervisory college and from the NAIC,
1848 and shall maintain as confidential or privileged any documents,
1849 materials or information received with notice or the understanding
1850 that it is confidential or privileged under the laws of the
1851 jurisdiction that is the source of the document, material or
1852 information; and

1853 (c) Shall enter into a written agreement with the NAIC
1854 or a third-party consultant governing sharing and use of
1855 information provided pursuant to Sections 12 through 22 of this
1856 act, consistent with this subsection that shall:

1857 (i) Specify procedures and protocols regarding the
1858 confidentiality and security of information shared with the NAIC
1859 or a third-party consultant pursuant to Sections 12 through 22 of
1860 this act, including procedures and protocols for sharing by the
1861 NAIC with other state regulators from states in which the
1862 insurance group has domiciled insurers. The agreement shall
1863 provide that the recipient agrees in writing to maintain the
1864 confidentiality and privileged status of the ORSA-related



1865 documents, materials or other information and has verified in
1866 writing the legal authority to maintain confidentiality;

1867 (ii) Specify that ownership of information shared
1868 with the NAIC or a third-party consultant pursuant to Sections 12
1869 through 22 of this act remains with the commissioner and the
1870 NAIC's or a third-party consultant's use of the information is
1871 subject to the direction of the commissioner;

1872 (iii) Prohibit the NAIC or third-party consultant
1873 from storing the information shared pursuant to Sections 12
1874 through 22 of this act in a permanent database after the
1875 underlying analysis is completed;

1876 (iv) Require prompt notice to be given to an
1877 insurer whose confidential information in the possession of the
1878 NAIC or a third-party consultant pursuant to Sections 12 through
1879 22 of this act is subject to a request or subpoena to the NAIC or
1880 a third-party consultant for disclosure or production;

1881 (v) Require the NAIC or a third-party consultant
1882 to consent to intervention by an insurer in any judicial or
1883 administrative action in which the NAIC or a third-party
1884 consultant may be required to disclose confidential information
1885 about the insurer shared with the NAIC or a third-party consultant
1886 pursuant to Sections 12 through 22 of this act; and

1887 (vi) In the case of an agreement involving a
1888 third-party consultant, provide for the insurer's written consent.



1889 (4) The sharing of information and documents by the
1890 commissioner pursuant to Sections 12 through 22 of this act shall
1891 not constitute a delegation of regulatory authority or rulemaking,
1892 and the commissioner is solely responsible for the administration,
1893 execution and enforcement of the provisions of Sections 12 through
1894 22 of this act.

1895 (5) No waiver of any applicable privilege or claim of
1896 confidentiality in the documents, proprietary and trade-secret
1897 materials or other ORSA-related information shall occur as a
1898 result of disclosure of such ORSA-related information or documents
1899 to the commissioner under this section or as a result of sharing
1900 as authorized in Sections 12 through 22 of this act.

1901 (6) Documents, materials or other information in the
1902 possession or control of the NAIC or a third-party consultant
1903 pursuant to Sections 12 through 22 of this act shall be
1904 confidential by law and privileged, shall not be subject to the
1905 provisions of Sections 25-61-1 through 25-61-17, shall not be
1906 subject to subpoena, and shall not be subject to discovery or
1907 admissible in evidence in any private civil action.

1908 **SECTION 21. Sanctions.** Any insurer failing, without just
1909 cause, to timely file the ORSA Summary Report as required in
1910 Sections 12 through 22 of this act shall be required, after notice
1911 and hearing, to pay a penalty of One Hundred Dollars (\$100.00) for
1912 each day's delay, to be recovered by the commissioner and the
1913 penalty so recovered shall be paid into the General Revenue Fund



1914 of this state. The maximum penalty under this section is Ten
1915 Thousand Dollars (\$10,000.00). The commissioner may reduce the
1916 penalty if the insurer demonstrates to the commissioner that the
1917 imposition of the penalty would constitute a financial hardship to
1918 the insurer.

1919 **SECTION 22. Severability clause.** If any provision of
1920 Sections 12 through 22 of this act, or the application thereof to
1921 any person or circumstance, is held invalid, such determination
1922 shall not affect the provisions or applications of Sections 12
1923 through 22 of this act which can be given effect without the
1924 invalid provision or application, and to that end the provisions
1925 of Sections 12 through 22 of this act are severable.

1926 **SECTION 23.** This act shall take effect and be in force from
1927 and after its passage, except Sections 12 through 22 of this act
1928 shall take effect and be in force from and after January 1, 2018.
1929 The first filing of the ORSA Summary Report shall be in 2018
1930 pursuant to Section 17 of this act.

