

By: Representative Chism

To: Insurance

HOUSE BILL NO. 425

1 AN ACT TO AMEND SECTION 83-34-4, MISSISSIPPI CODE OF 1972, TO
 2 PROVIDE THAT MONIES DERIVED FROM THE NONADMITTED POLICY FEE SHALL
 3 BE DEPOSITED IN THE STATE GENERAL FUND; TO EXTEND THE REPEALER ON
 4 THE SECTION OF LAW PROVIDING FOR THE NONADMITTED POLICY FEE; TO
 5 BRING FORWARD SECTIONS 83-34-1 THROUGH 83-34-37, MISSISSIPPI CODE
 6 OF 1972, WHICH ARE THE MISSISSIPPI WINDSTORM UNDERWRITING
 7 ASSOCIATION LAWS, FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR
 8 RELATED PURPOSES.

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

10 **SECTION 1.** Section 83-34-4, Mississippi Code of 1972, is
 11 amended as follows:

12 83-34-4. (1) Nonadmitted insurers shall not be assessable
 13 insurers of the association. All surplus lines insurance
 14 producers placing insurance through nonadmitted insurers shall
 15 collect from the insured and remit to the association a
 16 nonadmitted policy fee on all premiums for all insurance written
 17 by such surplus lines insurance producer for a policy from a
 18 nonadmitted insurer for any and all risks in this state, except
 19 that policies or portions thereof that cover residential
 20 earthquake risks or residential flood risks that are not written
 21 through the National Flood Insurance Program shall be exempt from



22 the nonadmitted policy fee. By procuring or selling insurance on
23 property in this state from a nonadmitted insurer, each surplus
24 lines insurance producer placing insurance through a nonadmitted
25 insurer agrees to be bound by the provisions of this chapter and
26 to collect and remit the nonadmitted policy fee provided for
27 herein.

28 (2) The nonadmitted policy fee shall be a percentage of the
29 total policy premium but the nonadmitted policy fee shall not be
30 considered premium and is not subject to premium taxes or
31 commissions. However, failure to pay the nonadmitted policy fee
32 shall be treated the same as failure to pay premium. "Total
33 policy premium" includes taxes and commissions.

34 (3) The nonadmitted policy fee percentage shall be three
35 percent (3%).

36 (4) Within twenty (20) days of the end of the quarter,
37 surplus lines insurance producers placing insurance through
38 nonadmitted insurers shall remit directly to the association all
39 nonadmitted policy fees collected in the preceding quarter. In
40 addition to the nonadmitted policy fee provided for herein,
41 surplus lines insurance producers placing insurance through
42 nonadmitted insurers shall collect and remit surcharges as
43 provided by this chapter. Surplus lines insurance producers
44 placing insurance through nonadmitted insurers may designate
45 another surplus lines insurance producer that actually procured



46 the insurance from the nonadmitted carrier to collect and remit
47 the nonadmitted policy fees.

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

55 (6) Monies derived from the nonadmitted policy fee collected
56 under this section * * * shall be deposited in the State General
57 Fund.

58 (7) This section shall stand repealed from and after July
59 1, * * * 2021.

60 **SECTION 2.** Section 83-34-1, Mississippi Code of 1972, is
61 brought forward as follows:

62 83-34-1. In this chapter, unless the context otherwise
63 requires:

64 (a) "Essential property insurance" means insurance
65 against direct loss to property from the risk of windstorm and
66 hail in the manner as defined and limited in the standard real
67 property and contents insurance forms approved by the
68 commissioner. Essential property insurance shall not include
69 coverage for any loss other than the actual cash value of the
70 structure and contents. Essential property insurance includes



71 builders risks coverage. The extent of risk covered, the insuring
72 language and the exclusions are all subject to approval by the
73 commissioner. Policies, rules and rates shall be filed with the
74 commissioner in the manner provided for insurance companies.

75 (b) "Association" means the Mississippi Windstorm
76 Underwriting Association established pursuant to the provisions of
77 this chapter.

78 (c) "Plan of operation" means the plan of operation of
79 the association approved or promulgated by the commissioner
80 pursuant to the provisions of this chapter.

81 (d) "Insurable property" means real property, and
82 contents therein when requested, at fixed locations in the coast
83 area, which property is determined by the association to be in an
84 insurable condition and otherwise meets the underwriting
85 requirements of the association. Any one- or two-family dwelling
86 built, rebuilt, altered or remodeled in compliance with the
87 applicable building codes, including design-wind requirements,
88 that is not otherwise rendered uninsurable by reason of use,
89 occupancy or state of repair, shall be an insurable risk.
90 Neighborhood area, location and environmental hazards beyond the
91 control of the applicant or owner of the property shall not be
92 considered in determining insurable condition. "Insurable
93 property" shall not include insurance on motor vehicles or
94 creditor placed insurance on mobile homes. "Insurable property"



95 includes mobile homes, modular homes or manufactured housing that
96 are installed in compliance with applicable codes.

97 (e) "Commissioner" means the Insurance Commissioner of
98 the State of Mississippi.

99 (f) "Coast area" means Hancock, Harrison, Jackson,
100 Pearl River, Stone and George Counties.

101 (g) (i) "Net direct premiums," for purposes of
102 calculating percentages of participation for assessable insurers
103 for the year 2007, means gross direct premiums, excluding
104 reinsurance assumed and ceded, written on property in this state
105 for the risk of windstorm and hail less return premiums upon
106 cancelled contracts, dividends paid or credited to policyholders,
107 or the unused or unabsorbed portion of premium deposits. "Net
108 direct premiums" includes the premium charge component for the
109 risk of windstorm and hail to property in all policies, including
110 multiperil and other policies that package or combine coverage for
111 other risks. The plan of operation shall prescribe the portion of
112 premium allocated for the risk of windstorm and hail in multiperil
113 and other policies that package or combine coverage for other
114 risks. "Net direct premiums" shall not include farm property.
115 "Net direct premiums" shall not include the property components of
116 motor vehicles and other mobile property, but includes premiums
117 for the risks of windstorm and hail for mobile homes, modular
118 homes or manufactured housing.



119 (ii) "Net direct premiums," for purposes of
120 calculating percentages of participation for assessable insurers
121 after the year 2007, means those premiums reported by the
122 assessable insurers in their annual statements to the Department
123 of Insurance that were charged for insurance for any and all risks
124 on real property and contents in the state. The department shall
125 determine which lines of real property and contents insurance
126 shall be included in the calculation of net direct premiums. The
127 included real property and contents insurance lines may be changed
128 from time to time in the discretion of the commissioner. "Net
129 direct premiums" shall not include premiums for insuring farm
130 property that are reported timely to the association as provided
131 in the plan of operation.

132 (iii) The commissioner is authorized and directed
133 to provide to the association annual statements, other reports and
134 any statistics necessary to provide the information herein
135 required and which the commissioner is hereby authorized and
136 empowered to obtain from any assessable insurer.

137 (h) "Farm property" means property used for farming
138 purposes; however, it shall not include any property used for
139 dwelling purposes or any outbuildings used in connection
140 therewith.

141 (i) "Losses" includes expenses for the adjustment and
142 resolution of claims and operational and other general expenses.



143 (j) "Bonds, loans, lines of credit and indebtedness"
144 include interest, finance charges, and any and all other costs
145 associated with the financing.

146 (k) "Percentage of participation" for an assessable
147 insurer means the percentage determined by dividing the assessable
148 insurers net direct premiums written in this state in the previous
149 year by the aggregate net direct premiums written in this state by
150 all assessable insurers of the association in the previous year.
151 The percentage of participation may be modified as provided in
152 Sections 83-34-9(3) and 83-34-13(2).

153 (l) "Nonadmitted insurers" mean those insurance
154 companies defined in Section 83-21-17, and any other companies and
155 persons selling insurance on risks in Mississippi that are not
156 licensed to do business in the State of Mississippi.

157 (m) "Agents placing insurance through nonadmitted
158 insurers" means those agents defined in Section 83-21-19 and any
159 other agents placing insurance through a nonadmitted insurer.

160 (n) "Assessable insurer" means each and every insurer
161 authorized to write, and engaged in writing, property insurance
162 within this state on a direct basis.

163 **SECTION 3.** Section 83-34-3, Mississippi Code of 1972, is
164 brought forward as follows:

165 83-34-3. (1) From and after March 22, 2007, the Mississippi
166 Windstorm Underwriting Association, as created by Chapter 459,
167 Laws of 1987, shall be a separate and independent entity as



168 provided for herein. At its option, the association may
169 incorporate. All assets belonging to the association on or before
170 March 22, 2007, shall hereinafter belong to and remain with the
171 association. There shall be no distribution of income or assets
172 other than for the benefit of the association, which shall have
173 the right to invest and reinvest assets.

174 (2) From and after March 22, 2007, the association shall no
175 longer have members. Former "members" of the association shall be
176 "assessable insurers" and shall have no rights to the assets and
177 profits of the association, but shall have the obligation for
178 regular assessments as provided herein. Former members shall
179 continue to have the obligations provided in this chapter before
180 March 22, 2007, for all policyholder claims, costs, damages of any
181 kind and expenses in any manner resulting from losses that
182 occurred before March 22, 2007, for which the association may
183 assess as needed the former members in the manner provided in this
184 chapter before March 22, 2007. As a condition of its authority to
185 continue to transact the business of insurance in this state and
186 by transacting business in this state, each licensed insurer
187 agrees to be bound by the provisions of this statute and the plan
188 of operation as approved by the commissioner, and all amendments
189 and revisions thereto.

190 (3) Any licensed insurer first authorized to write insurance
191 after March 22, 2007, shall become an assessable insurer on the
192 first day of January immediately following such authorization.



193 The determination of such insurer's participation in the
194 association shall be made based upon writings in the prior year in
195 the same manner as for all other assessable insurers of the
196 association.

197 (4) Except as provided for in Section 83-34-4(6), the
198 premiums, assessments, fees, investment income and other revenue
199 of the association are funds received for the sole purpose of
200 providing insurance coverage, paying claims for Mississippi
201 citizens insured by the association, securing and repaying debt
202 obligations issued by the association, and conducting all other
203 activities of the association, all as required or permitted by
204 this chapter. Such revenue shall not be considered taxes, fees,
205 licenses or charges for services imposed by the State of
206 Mississippi on individuals, businesses, or agencies, and shall not
207 be used for other purposes.

208 (5) It is the intent of the Legislature that the association
209 be and act as a nonprofit entity. The association shall be free
210 from taxation of every kind by the state and any political
211 subdivision or other instrumentality thereof. It is the intent of
212 the Legislature that the association be tax exempt from all taxes,
213 including federal taxes, and the association is granted the
214 authority to take those steps necessary to obtain federal tax
215 exempt status.

216 (6) Any debt obligations issued by the association, their
217 transfer, and the income therefrom, including any profit made on



218 the sale thereof, shall at all times be free from taxation of
219 every kind by the state and any political subdivision or other
220 instrumentality thereof.

221 (7) In the event of the termination of the association by
222 act of the Legislature, or other means, the assets of the
223 association shall be applied first to pay all debts, liabilities
224 and obligations of the association, including the establishment of
225 reasonable reserves for any contingent liabilities or obligations,
226 and all remaining assets of the association shall become property
227 of the state.

228 (8) The association shall operate as a private enterprise
229 and shall not be subject to the procurement provisions of Section
230 31-7-13, and policies and decisions of the association, including,
231 but not limited to, decisions relating to incurring debt, levying
232 of assessments, the issuance and sale of bonds, claims decisions
233 under association policies, hiring and firing of employees, and
234 all services relating to the operation of the association shall
235 not be subject to the provisions of Section 25-9-101 et seq. The
236 association shall not be required to obtain or to hold a license
237 or certificate of authority issued by the commissioner or any
238 other office. The association shall not be required to
239 participate as a member insurer of the Mississippi Insurance
240 Guaranty Association.

241 **SECTION 4.** Section 83-34-5, Mississippi Code of 1972, is
242 brought forward as follows:



243 83-34-5. The association shall, pursuant to the provisions
244 of this chapter and the plan of operation, and with respect to
245 essential property insurance on insurable property, have the
246 power:

247 (a) To issue policies of essential property insurance
248 on insurable property to applicants;

249 (b) At its option, and with consent of the
250 commissioner, to issue policies of related essential property
251 insurance on insurable property to applicants;

252 (c) To purchase reinsurance for all or part of the
253 risks of the association;

254 (d) To levy and collect regular assessments from
255 assessable insurers;

256 (e) To issue bonds or incur other forms of
257 indebtedness, including, but not limited to, loans, lines of
258 credit or letters of credit;

259 (f) To establish underwriting criteria consistent with
260 the provisions of this chapter and as approved by the
261 commissioner;

262 (g) To invest and reinvest income and assets subject to
263 the oversight of the commissioner;

264 (h) To enter into contractual agreements with third
265 parties, including the Mississippi Windstorm Mitigation
266 Coordinating Council, for the purposes of developing and
267 implementing windstorm mitigation programs; and



268 (i) All other powers necessary to carry out the
269 provisions and intent of this chapter.

270 **SECTION 5.** Section 83-34-7, Mississippi Code of 1972, is
271 brought forward as follows:

272 83-34-7. (1) The Board of Directors of the Mississippi
273 Insurance Underwriting Association as presently constituted shall
274 serve as the temporary board of directors of the association.
275 Such temporary board of directors shall prepare and submit a plan
276 of operation in accordance with Section 83-34-13 and shall serve
277 until the permanent board of directors shall take office in
278 accordance with the plan of operation. The permanent board shall
279 consist of five (5) representatives of the members to be appointed
280 by the temporary board of directors subject to the approval of the
281 commissioner and three (3) agents from the coast area to be
282 appointed by the commissioner. The terms of the members of the
283 board of directors in place before March 22, 2007, shall expire on
284 March 22, 2007, and such persons shall cease to serve on the board
285 and shall relinquish all power and control of the association.

286 (2) (a) From and after March 22, 2007, the board of
287 directors of the association shall consist of the following:

288 (i) The State Treasurer;

289 (ii) Five (5) of the assessable insurer companies,
290 three (3) to be appointed by the commissioner, one (1) to be
291 appointed by the Governor, and one (1) to be appointed by the
292 Lieutenant Governor; each such assessable insurer appointed shall



293 designate a representative knowledgeable in the matters of the
294 association and authorize such representative to act and vote on
295 its behalf;

296 (iii) Three (3) agents with no less than ten (10)
297 years' experience in the property and casualty industry, two (2)
298 of whom are residents in the coast area, and one (1) of whom is
299 not a resident of the coast area; one (1) such coast area agent to
300 be appointed by the Governor, one (1) such coast area agent to be
301 appointed by the Lieutenant Governor, and the noncoast area agent
302 to be appointed by the commissioner; and

303 (iv) Two (2) business leaders who have been
304 residents of the coast area for no less than ten (10) years and
305 who have no less than ten (10) years' experience in management of
306 a business, one (1) to be appointed by the Governor, and one (1)
307 to be appointed by the Lieutenant Governor.

308 (b) Except for the State Treasurer, the board members
309 shall serve three-year terms with each term beginning on January
310 1, and the initial terms shall be staggered in the following
311 manner:

312 (i) The initial term for three (3) of the
313 assessable insurers shall begin on March 22, 2007, and expire on
314 December 31, 2010, thereafter to be appointed for three-year
315 terms;

316 (ii) The initial term for one (1) of the
317 assessable insurers shall begin on March 22, 2007, and expire on



318 December 31, 2009, thereafter to be appointed for three-year
319 terms;

320 (iii) The initial term for one (1) of the
321 assessable insurers shall begin on March 22, 2007, and expire on
322 December 31, 2008, thereafter to be appointed for three-year
323 terms;

324 (iv) The initial term for one (1) of the agents
325 shall begin on March 22, 2007, and expire on December 31, 2010,
326 thereafter to be appointed for three-year terms;

327 (v) The initial term for one (1) of the agents
328 shall begin on March 22, 2007, and expire on December 31, 2009,
329 thereafter to be appointed for three-year terms;

330 (vi) The initial term for one (1) of the agents
331 shall begin on March 22, 2007, and expire on December 31, 2008,
332 thereafter to be appointed for three-year terms;

333 (vii) The initial term for one (1) of the business
334 leaders shall begin on March 22, 2007, and expire on December 31,
335 2010, thereafter to be appointed for three-year terms;

336 (viii) The initial term for one (1) of the
337 business leaders shall begin on March 22, 2007, and expire on
338 December 31, 2008, thereafter to be appointed for three-year
339 terms.

340 (3) On or before March 22, 2007, the appropriate public
341 official shall make such appointments and request such



342 resignations from the existing board as are appropriate to comply
343 with this section.

344 (4) The board shall be staffed by as many employees as it
345 deems necessary.

346 (5) The board of directors has the power to act and make
347 binding decisions on behalf of the association on all issues.

348 **SECTION 6.** Section 83-34-9, Mississippi Code of 1972, is
349 brought forward as follows:

350 83-34-9. (1) All assessable insurers of the association
351 shall participate in regular assessments levied by the association
352 based upon their percentage of participation. The association may
353 allow affiliated insurers to combine their annual net direct
354 premiums and other data, including data that supports any
355 incentives that may be allowed by the association, to the extent
356 that such grouping promotes the voluntary writing of essential
357 property insurance in the coast area. Any provisions for credits
358 and grouping of data shall be prescribed in the plan of operation.

359 (2) All profits of the association shall remain as assets of
360 the association.

361 (3) The plan of operation shall provide financial incentives
362 or financial penalties, or both, to ensure that assessable
363 insurers write essential property insurance in the coast area.
364 The incentives and penalties may include, but are not limited to,
365 a reduction in recovery of regular assessments, a nonrecoverable
366 participation in losses incurred by the association above the



367 amounts covered by the regular assessments, adjustments in the
368 percentage of participation, and other incentives and penalties as
369 provided in the plan of operation. The commissioner shall approve
370 the plan of operation as provided in Section 83-34-13.

371 **SECTION 7.** Section 83-34-10, Mississippi Code of 1972, is
372 brought forward as follows:

373 83-34-10. In the event of a storm that may produce losses in
374 excess of funds that may be immediately available to the
375 association, or in the event that the association determines that
376 it will otherwise have a claim deficit or any other deficit, then
377 the association, with consent of the commissioner, shall have the
378 power to levy regular assessments against assessable insurers
379 based upon their percentage of participation. In any year, the
380 annual total of regular assessments shall not exceed the greater
381 of ten percent (10%) of the deficit or ten percent (10%) of the
382 aggregate statewide direct written premiums for property insurance
383 for the prior calendar year of all association assessable
384 insurers. Regular assessments shall be paid by assessable
385 insurers within sixty (60) days of receipt of the notice of the
386 assessments.

387 **SECTION 8.** Section 83-34-11, Mississippi Code of 1972, is
388 brought forward as follows:

389 83-34-11. (1) Within one hundred twenty (120) days of the
390 levy of any regular assessments, the commissioner shall implement
391 a surcharge on all property and casualty insurance premiums for



392 insurance for property and activities in this state designed to
393 recover to the association within one (1) year the amount of such
394 regular assessment for reimbursement to assessable insurers who
395 paid the regular assessment. "Premiums" includes premiums for
396 policies issued by or for the association and by or for the
397 Mississippi Residential Property Insurance Underwriting
398 Association. "Premiums" shall not include premiums for workers'
399 compensation coverage, premiums for medical malpractice liability
400 coverage including medical malpractice liability coverage issued
401 by companies created under Section 83-47-1 et seq., nor any
402 premiums for coverage by insurance pools or plans administered by
403 or through the State of Mississippi. Such surcharge shall be
404 specifically identified on either the premium statements or the
405 policy declarations pages or other appropriate policy forms as
406 relating to the specific Mississippi Windstorm Underwriting
407 Association regular assessment for which it was implemented. The
408 commissioner shall name each such surcharge so that it can be
409 uniformly identified by insurers and agents placing insurance
410 through nonadmitted insurers.

411 (2) The surcharge shall be a percentage of the total policy
412 premium, but the surcharge shall not be considered premium and is
413 not subject to premium taxes or commissions. However, failure to
414 pay the surcharge shall be treated the same as failure to pay
415 premium. "Total policy premium" includes taxes and commissions.



416 (3) If at any time, the surcharge to repay regular
417 assessments shall be insufficient, the commissioner shall increase
418 the surcharge as necessary and appropriate. However, in no event
419 may the aggregate total of all regular assessments in a year
420 exceed the maximum amounts specified in Section 83-34-10.

421 (4) The commissioner shall cease regular assessment
422 surcharges as he determines appropriate funds have been collected.
423 However, the commissioner shall endeavor to apply surcharges on a
424 one-year basis in order to promote consistency, nondiscrimination
425 and fairness among policyholders purchasing or renewing insurance
426 during that year. Any collections in excess of the amounts needed
427 shall be assets of the association for investment and other uses.

428 (5) Each licensed insurer issuing insurance for property and
429 casualty risks in the state and each agent placing insurance
430 through nonadmitted insurers, shall collect the regular assessment
431 surcharges established by the commissioner under the authority of
432 this section. Funds collected by such insurers and agents as
433 regular assessment surcharges shall be collected and held in trust
434 and shall be fully remitted to the association on a quarterly
435 basis with forms providing appropriate information as designed by
436 the association. Insurers and agents shall remit such funds to
437 the association within twenty (20) days after the end of each
438 quarter. At such time the insurers and agents shall further remit
439 to the association all interest earned on the surcharge funds.
440 However, assessable insurers of the association who have paid to



441 the association the regular assessment that is the basis of the
442 surcharge shall not be required to remit interest earned on
443 collected surcharges from the lines of business on which their
444 regular assessment was based.

445 (6) The association shall reimburse assessable insurers for
446 regular assessments from the funds collected as regular assessment
447 surcharges. Reimbursements shall be made to assessable insurers
448 in the same percentages as the regular assessments were paid by
449 assessable insurers. The association must endeavor to make
450 reimbursements from the surcharge funds collected within sixty
451 (60) days of the end of each quarter. Any funds collected by the
452 association in excess of the amount necessary to reimburse
453 assessable insurers for regular assessments shall be general funds
454 of the association.

455 (7) The reimbursement to assessable insurers for regular
456 assessments as provided in subsection (6) must be refunded to the
457 association by any insurer that reduces its property writings in
458 the state by more than ten percent (10%) in the five-year period
459 beginning January 1 of the year following the regular assessment,
460 unless such insurer is granted an exception by the commissioner
461 after public hearing on the request for exception. The reasons
462 for an exception by the commissioner shall include, but are not
463 limited to, inadequate solvency to continue writing at the
464 previous level. Refunds shall be proportionate to the point in
465 time during the five-year period the assessable insurer drops its



466 property writings more than ten percent (10%). Prior to receiving
467 any reimbursement by the association, each assessable insurer must
468 execute an agreement provided by the association agreeing to
469 comply with the intent of this subsection.

470 (8) The association and the commissioner are both
471 specifically given the power to audit licensed insurers and agents
472 placing insurance through nonadmitted insurers to confirm the
473 accuracy of remittances of surcharges at the expense of the
474 licensed insurers and agents.

475 (9) The association shall report quarterly to the
476 commissioner providing all financial information for each regular
477 assessment surcharge, including:

478 (a) The original amount of the regular assessment and
479 the amount remaining not reimbursed to assessable insurers;

480 (b) Total surcharge funds recovered to date; and

481 (c) Any information requested by the commissioner.

482 **SECTION 9.** Section 83-34-12, Mississippi Code of 1972, is
483 brought forward as follows:

484 83-34-12. The regular assessment of an assessable insurer
485 may, after hearing, be ordered deferred, in whole or in part, upon
486 application by the insurer if, in the opinion of the commissioner,
487 payment of the assessment would render the insurer insolvent or in
488 danger of insolvency, or would otherwise leave the insurer in such
489 a condition that further transaction of the insurer's business
490 would be hazardous to its policyholders, creditors, assessable



491 insurers, subscribers, stockholders or the public. If that
492 payment of an assessment against an assessable insurer is deferred
493 by order of the commissioner, in whole or in part, the amount by
494 which the assessment is deferred shall be assessed against other
495 assessable insurers in the same manner as provided in Section
496 83-34-9.

497 **SECTION 10.** Section 83-34-13, Mississippi Code of 1972, is
498 brought forward as follows:

499 83-34-13. (1) Within forty-five (45) days after March 22,
500 2007, the directors of the association shall submit to the
501 commissioner for review and approval a proposed plan of operation
502 revised to be consistent with the provisions of Chapter 425, Laws
503 of 2007. The association shall maintain a plan of operation. The
504 plan shall provide for the efficient, economical, fair and
505 nondiscriminatory administration of the association. The plan may
506 include methods for the assessment of all assessable insurers for
507 deficits and expenses, the establishment of necessary facilities,
508 management of the association, underwriting standards, procedures
509 for determining the amounts of insurance to be provided to
510 specific risks, time limits and procedures for processing
511 applications for insurance, and for such other provisions as may
512 be deemed necessary by the board to carry out the purposes of this
513 chapter.

514 (2) The plan of operation shall provide financial incentives
515 or financial penalties, or both, to ensure that assessable



516 insurers write essential property insurance in the coast area.
517 The incentives and penalties may include, but are not limited to,
518 a reduction in recovery of regular assessments, a nonrecoverable
519 participation in losses incurred by the association above the
520 amounts covered by the regular assessments, adjustments in the
521 percentage of participation, and other incentives and penalties as
522 provided in the plan of operation.

523 (3) The plan of operation shall provide (a) that the
524 association shall offer a two percent (2%) deductible for loss
525 from named storms; and (b) that the association shall also offer
526 options for other deductibles for loss from named storms with
527 appropriate rate reductions that shall include at least a twenty
528 percent (20%) deductible for loss from named storms.

529 (4) The plan of operation shall provide that the association
530 use actuarially appropriate geographical zones for rating and for
531 the use of credits and penalties to encourage voluntary writing in
532 the coast area.

533 (5) The commissioner shall approve the plan of operation and
534 all amendments before they become effective. It is the obligation
535 of the commissioner to confirm that such plan fulfills the
536 purposes of this chapter. If the commissioner approves a proposed
537 plan or amendment, he shall certify the approval to the directors,
538 and the plan, or amendment thereto, shall become effective ten
539 (10) days after such certification. If the commissioner
540 disapproves all or any part of the proposed plan of operation, or



541 amendment thereto, he shall return the same to the directors with
542 a written statement giving the reasons for disapproval and any
543 recommendations the commissioner may wish to make. Within ten
544 (10) days thereafter, the directors may alter the plan or
545 amendment in accordance with the commissioner's recommendation or
546 may return a new plan to the commissioner. The commissioner shall
547 consider the proposals and shall then promulgate and place into
548 effect a plan of operation certifying the same to the directors of
549 the association after approval by the board of directors. Any
550 such plan promulgated by the commissioner shall take effect ten
551 (10) days after certification to the directors.

552 (6) The commissioner may review the plan of operation at any
553 time he deems expedient or prudent. After review of the plan, the
554 commissioner may amend the plan after consultation with the
555 directors of the association and upon certification to the
556 directors of the amendment.

557 **SECTION 11.** Section 83-34-15, Mississippi Code of 1972, is
558 brought forward as follows:

559 83-34-15. (1) (a) Any person having an insurable interest
560 in insurable property is entitled to apply to the association for
561 such coverage. Applications shall be made on behalf of the owner
562 of the insurable interest by a licensed resident broker or agent
563 authorized by him. Applications shall be submitted on forms
564 prescribed by the association.



565 (b) The association may require an inspection of any
566 properties after application or request for renewal and may charge
567 a fee for such inspection.

568 (c) The term "insurable interest" as used in this
569 subsection shall be deemed to include any lawful and substantial
570 economic interest in the safety or preservation of property from
571 loss, destruction or pecuniary damage.

572 (2) If the association determines that the property is
573 insurable and that there is no unpaid premium due from the
574 applicant for prior insurance on the property, the association,
575 upon receipt of the premium or such portion thereof as is
576 prescribed in the plan of operation, shall cause to be issued, or
577 issue, a policy of essential property insurance. Such coverage
578 shall be dependent upon the timely payment and actual receipt by
579 the association of premiums or premium installments as provided
580 for at the time of application. Coverage limits shall be
581 determined by the value of the insurable property at the time the
582 policy is issued subject to maximum limits which shall be set
583 forth under the plan of operation.

584 (3) If the association for any reason denies an application
585 and refuses to issue or cause to be issued an insurance policy to
586 any applicant, or takes no action on an application within the
587 time prescribed in the plan of operation, such applicant may
588 appeal to the commissioner. The commissioner or a designated
589 member of his staff, after reviewing the facts, may direct the



590 association to issue or cause to be issued an insurance policy to
591 the applicant; however, no coverage shall be in effect until such
592 time as the premium is paid and the policy issued. In carrying
593 out his duties pursuant to this section, the commissioner may
594 request, and the association shall provide, any information the
595 commissioner deems necessary to a determination concerning the
596 reasons for the denial or delay of the application.

597 **SECTION 12.** Section 83-34-16, Mississippi Code of 1972, is
598 brought forward as follows:

599 83-34-16. The Mississippi Windstorm Underwriting Association
600 shall provide a premium discount for any individual who builds a
601 "fortified home" pursuant to the Institute for Business and Home
602 Safety (IBHS). Licensed architects, engineers or inspectors
603 certified by the Department of Insurance shall determine whether a
604 dwelling meets the criteria for a "fortified home" pursuant to the
605 Institute for Business and Home Safety. The Mississippi Windstorm
606 Underwriting Association shall provide a premium discount for any
607 individual who improves his residence with demonstrated mitigation
608 measures that provide protection against damages caused by a
609 windstorm or hurricane.

610 **SECTION 13.** Section 83-34-17, Mississippi Code of 1972, is
611 brought forward as follows:

612 83-34-17. The rates, rating plans, rating rules, forms and
613 endorsements applicable to the insurance written by the
614 association shall be those approved for use of the association by



615 the commissioner. Rates shall be nondiscriminatory as to the same
616 class of risk.

617 **SECTION 14.** Section 83-34-19, Mississippi Code of 1972, is
618 brought forward as follows:

619 83-34-19. (1) Any assessable insurer or other licensed
620 insurer, or agent placing insurance through a nonadmitted insurer,
621 who may be aggrieved by an act, order, ruling or decision of the
622 association may, within thirty (30) days after such ruling, appeal
623 to the commissioner. Any hearings held by the commissioner
624 pursuant to such an appeal shall be in accordance with the
625 procedure set forth in the insurance laws of Mississippi. The
626 commissioner is authorized to appoint a member of his staff for
627 the purpose of hearing such appeals, and a ruling based upon such
628 hearing shall have the same effect as if heard by the
629 commissioner. All assessable insurers or other licensed insurers,
630 or agents placing insurance through a nonadmitted insurer,
631 aggrieved by any order or decision of the commissioner may appeal
632 to the Chancery Court of the First Judicial District of Hinds
633 County, Mississippi, consistent with the insurance laws of the
634 State of Mississippi.

635 (2) The association and any assessable insurer, other
636 licensed insurer or agent placing insurance through a nonadmitted
637 insurer that may be aggrieved by an act, order, ruling or decision
638 of the commissioner may, within thirty (30) days after such act,
639 order, ruling or decision, appeal to the Chancery Court of the



640 First Judicial District of Hinds County, Mississippi, consistent
641 with the insurance laws of the State of Mississippi.

642 **SECTION 15.** Section 83-34-21, Mississippi Code of 1972, is
643 brought forward as follows:

644 83-34-21. All reports of inspection performed by or on
645 behalf of the association shall be made available to the
646 assessable insurers of the association, applicants, agents,
647 brokers and the commissioner.

648 **SECTION 16.** Section 83-34-23, Mississippi Code of 1972, is
649 brought forward as follows:

650 83-34-23. There shall be no liability on the part of the
651 insurance commissioner or any of his staff and representatives for
652 any action taken under and pursuant to the provisions of this
653 chapter. There shall be no liability on the part of the
654 association, its agents, representatives or employees, the members
655 of the board, or any assessable insurer of the association, except
656 for the contractual obligations of any contract of insurance and
657 the duty to pay assessments as provided in this chapter.

658 **SECTION 17.** Section 83-34-25, Mississippi Code of 1972, is
659 brought forward as follows:

660 83-34-25. The association shall file in the office of the
661 commissioner on or before March 1 of each year a statement which
662 shall summarize the transactions, conditions, operations and
663 affairs of the association during the preceding fiscal year ending
664 December 31. Such statement shall contain such matters and



665 information as are prescribed by the commissioner and shall be in
666 such form as required by him. The commissioner may at any time
667 require the association to furnish to him any additional
668 information with respect to its transactions or any other matter
669 which the commissioner deems to be material to assist him in
670 evaluating the operation and experience of the association.

671 **SECTION 18.** Section 83-34-27, Mississippi Code of 1972, is
672 brought forward as follows:

673 83-34-27. The commissioner may from time to time make an
674 examination into the affairs of the association when he deems
675 prudent and, in undertaking such examination, may hold a public
676 hearing. The expenses of such examination shall be borne and paid
677 by the association. The association and the commissioner may from
678 time to time make an examination of the data and payments of
679 assessable insurers or other licensed insurers or agents placing
680 insurance through nonadmitted insurers as it deems prudent. The
681 expenses of such examination shall be borne and paid by the
682 examined party or entity. Any person noticed for such examination
683 may appeal the examination or the cost thereof, or both, to the
684 commissioner.

685 **SECTION 19.** Section 83-34-29, Mississippi Code of 1972, is
686 brought forward as follows:

687 83-34-29. The association is authorized to promulgate rules
688 for the implementation of this chapter, subject to the approval of
689 the commissioner.



690 **SECTION 20.** Section 83-34-31, Mississippi Code of 1972, is
691 brought forward as follows:

692 83-34-31. (1) The board of directors, subject to the
693 approval of the commissioner, shall have the power and authority
694 to issue bonds, and the power and authority to enter into loans,
695 letters of credit, lines of credit, and other forms of
696 indebtedness, as needed for operations, the purchase of
697 reinsurance, claim losses, and incurred but not reported claims.

698 (2) All such bonds and loans are secured by the power and
699 duty of the commissioner to implement surcharges against all
700 property and casualty insurance premiums for insurance for
701 property and activities in this state sufficient to repay the
702 bonds or loans, or both.

703 (3) If any of the bonds remain unsold sixty (60) days after
704 issuance, the commissioner shall require all assessable insurers
705 to purchase the bonds, which purchased bonds shall be treated as
706 admitted assets; each assessable insurer shall be required to
707 purchase that percentage of the unsold portion of the bond issue
708 that equals the assessable insurer's current percentage of
709 participation. An assessable insurer shall not be required to
710 purchase the bonds to the extent that the commissioner determines
711 that the purchase would endanger or impair the solvency of the
712 insurer. The bonds must be in a form approved by the
713 commissioner. With approval of the commissioner, the association
714 may issue bonds or incur other indebtedness to retire or



715 consolidate bonds as appropriate. Bonds and other debt
716 obligations issued by or on behalf of the association are not to
717 be considered "state bonds" and shall not be an obligation of the
718 state.

719 (4) The state hereby covenants with holders of bonds issued
720 pursuant to this section that the state will not limit, alter or
721 deny the duties and obligations of this chapter, and of the
722 association and the commissioner as established by this chapter,
723 necessary to fulfill the terms of any agreements with bondholders,
724 or in any way impair the rights and remedies of such bondholders
725 as long as any such bonds remain outstanding unless adequate
726 provision has been made for the payment of such bonds pursuant to
727 the documents authorizing the issuance of such bonds.

728 **SECTION 21.** Section 83-34-33, Mississippi Code of 1972, is
729 brought forward as follows:

730 83-34-33. (1) When the association knows or has reason to
731 believe that (a) it has or will incur losses from a hurricane that
732 exceed reinsurance and other reasonably available assets of the
733 association, such that one or more bond issues or other financing,
734 or both, will be necessary to pay claims losses and other related
735 expenses, or (b) the association has a deficit that cannot be
736 reasonably resolved by income available to the association, then
737 the association shall immediately give notice to the commissioner
738 and request that the commissioner implement by an excess hurricane
739 loss surcharge on all property and casualty insurance premiums for



740 insurance for property and operations in this state designed to
741 recover to the association the amount of all such bonds and other
742 indebtedness resulting from the hurricane, or other deficit.

743 (2) At such time as the commissioner can reasonably estimate
744 the amount of bonds or indebtedness, or both, necessitated by a
745 hurricane event, and in no event more than ninety (90) days from
746 the notice given by the association, the commissioner shall have
747 the duty and the power to implement an excess hurricane loss
748 surcharge on all property and casualty insurance premiums for
749 insurance for property and activities in this state. "Premiums"
750 includes premiums for policies issued by or for the association
751 and by or for the Mississippi Residential Property Insurance
752 Underwriting Association. "Premiums" shall not include premiums
753 for workers' compensation coverage, premiums for medical
754 malpractice liability coverage including medical malpractice
755 liability coverage issued by companies created under Section
756 83-47-1 et seq., nor any premiums for coverage by insurance pools
757 or plans administered by or through the State of Mississippi.

758 (3) If the surcharge is designed to repay bonds, it shall be
759 designated as such and all funds recovered from the surcharge
760 shall be used for repayment of the bonds for which it was
761 implemented, until such time as the bonds have been paid or
762 redeemed.

763 (4) If the surcharge is designed to repay a specific
764 indebtedness incurred for losses from a specific hurricane, it



765 shall be designated as such and all funds recovered from the
766 surcharge shall be used for repayment of the indebtedness for
767 which it was implemented, until such time as the indebtedness has
768 been paid or redeemed.

769 (5) Such surcharge shall be specifically identified on
770 either the premium statements or the policy declarations pages or
771 other appropriate policy forms as relating to the specific
772 hurricane losses or bonds or indebtedness for which it was
773 implemented. The commissioner shall name each such surcharge so
774 that it can be uniformly identified by insurers and agents.

775 (6) The surcharge shall be a percentage of the total policy
776 premium but the surcharge shall not be considered premium and is
777 not subject to premium taxes or commissions. However, failure to
778 pay the surcharge shall be treated the same as failure to pay
779 premium. "Total policy premium" includes taxes and commissions.

780 (7) The commissioner shall implement an appropriate
781 surcharge percentage sufficient to recover the amount necessary
782 for repayment of bonds and indebtedness necessitated by a
783 hurricane, or the resolution of other deficit, as applicable. If
784 at any time such surcharge shall be insufficient, the commissioner
785 shall increase the surcharge as necessary and appropriate. The
786 commissioner shall cease surcharges as he determines appropriate
787 funds have been collected. However, the commissioner shall
788 endeavor to apply surcharges on a one-year basis in order to
789 promote consistency, nondiscrimination and fairness among



790 policyholders purchasing or renewing insurance during that year.
791 Any collections in excess of the amounts needed shall be assets of
792 the association for investment and other uses.

793 (8) Each licensed insurer issuing insurance for property and
794 casualty risks in the state and each agent placing insurance
795 through nonadmitted insurers, shall collect the surcharges
796 established by the commissioner under the authority of this
797 section. Funds collected by such licensed insurers and agents
798 placing insurance through nonadmitted insurers as surcharges
799 authorized by this section shall be collected and held in trust
800 and shall be fully remitted to the association on a quarterly
801 basis with forms providing appropriate information as designed by
802 the association. Insurers and agents shall remit such funds to
803 the association within twenty (20) days after the end of each
804 quarter. At such time the insurers and agents shall further remit
805 to the association all interest earned on the surcharge funds.

806 (9) The association and the commissioner are both
807 specifically given the power to audit licensed insurers and agents
808 placing insurance through nonadmitted insurers to confirm the
809 accuracy of remittances of surcharges at the expense of the
810 licensed insurers and agents.

811 (10) The commissioner has the duty and power to adjust the
812 percentage of any surcharge previously established as he finds
813 appropriate taking into consideration any relevant factors,
814 including, but not limited to, consolidation or replacement of



815 bonds, any additional indebtedness resulting from a hurricane, the
816 rate of recovery, anticipated length of total recovery, and impact
817 of other hurricanes; however, the commissioner shall not reduce
818 the amount of assessments implemented and designated to pay or
819 redeem bonds, or other indebtedness below the amount necessary to
820 timely pay or redeem such bonds, or other indebtedness.

821 (11) When the association knows or has reason to believe
822 that surcharges authorized by this section previously established
823 by the commissioner will be insufficient to timely pay or redeem
824 bonds or indebtedness, the association shall immediately give
825 notice to the commissioner. The commissioner shall alter such
826 surcharge as necessary to timely pay or redeem bonds or pay other
827 indebtedness.

828 (12) The association shall report quarterly to the
829 commissioner providing all financial information for each
830 surcharge authorized by this section, including:

831 (a) The original and current outstanding indebtedness
832 of all bonds and loans;

833 (b) Total surcharge funds recovered to date; and

834 (c) Any information requested by the commissioner.

835 (13) The commissioner may request, and the association shall
836 provide, on an immediate basis to the commissioner any financial
837 information or other information concerning any surcharge. This
838 section shall not limit the reporting requirements provided by
839 Section 83-34-25.



840 **SECTION 22.** Section 83-34-35, Mississippi Code of 1972, is
841 brought forward as follows:

842 83-34-35. In order to avoid or lessen the possibility and
843 amount of surcharges authorized by this chapter, the commissioner
844 shall approve rates for policies issued by the association at
845 least adequate to fund annual reinsurance above a self-insured
846 retention of One Hundred Million Dollars (\$100,000,000.00) that,
847 combined with any readily available reserves of the association,
848 is sufficient to cover at least the probable maximum losses from a
849 storm expected to occur once every one hundred (100) years as
850 predicted by a model or method approved by the commissioner for
851 the properties insured by the association at the time the
852 reinsurance was negotiated. The amount of reinsurance in the
853 foregoing rate adequacy requirement shall increase every two (2)
854 years by increasing the probable maximum loss by five (5) years,
855 until such time as the probable maximum loss insured is for a
856 storm expected to occur every one hundred fifty (150) years. The
857 commissioner may approve rates in excess of the minimums required
858 by this section as consistent with his duties and the insurance
859 laws of the State of Mississippi.

860 **SECTION 23.** Section 83-34-37, Mississippi Code of 1972, is
861 brought forward as follows:

862 83-34-37. (1) (a) There is created in the State Treasury a
863 special fund to be designated as the "Mississippi Windstorm
864 Underwriting Association Reinsurance Assistance Fund." The fund



865 shall consist of monies deposited therein as provided under
866 Section 83-34-39, monies appropriated by act of the Legislature
867 and monies from any other source designated for deposit into such
868 fund. Unexpended amounts remaining in the fund at the end of a
869 fiscal year shall not lapse into the State General Fund, and any
870 interest earned or investment earnings on amounts in the fund
871 shall be deposited to the credit of the fund; however, any monies
872 in excess of Fifty Million Dollars (\$50,000,000.00) remaining in
873 the fund at the end of a fiscal year that have not been
874 appropriated shall lapse into the State General Fund.

875 (b) Monies in the special fund may be used by the
876 Department of Insurance, upon appropriation by the Legislature,
877 only for the purpose of assisting the Mississippi Windstorm
878 Underwriting Association in defraying expenses and costs for
879 reinsurance under Section 83-34-1 et seq. The association may use
880 any such funds received from the Department of Insurance for the
881 sole purpose of defraying expenses and costs for reinsurance.
882 Monies in the fund used for the purposes described in this
883 paragraph (b) shall be in addition to other funds available from
884 any other source for such purposes.

885 (c) Monies in the special fund may not be used,
886 expended or transferred for any other purpose except upon
887 amendment to this section by a bill enacted by the Legislature
888 with a vote of not less than two-thirds (2/3) of the members of
889 each house present and voting.



890 (2) (a) The Commissioner of Insurance shall file a report
891 with the Joint Legislative Budget Committee not later than
892 September 1 of each year, recommending the amount of assistance,
893 if any, needed by the Mississippi Windstorm Underwriting
894 Association for reinsurance expenses and costs. The Commissioner
895 of Insurance also shall provide a copy of the report to the
896 Attorney General and the Executive Director of the Mississippi
897 Development Authority.

898 (b) The Mississippi Windstorm Underwriting Association
899 shall prepare and file detailed reports with the Clerk of the
900 House of Representatives, Secretary of the Senate, Commissioner of
901 Insurance, Attorney General and Executive Director of the
902 Mississippi Development Authority regarding the receipt and
903 expenditure of monies by the association under this section.

904 **SECTION 24.** This act shall take effect and be in force from
905 and after its passage.

