

By: Representatives Chism, Arnold,
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To: Insurance

HOUSE BILL NO. 948

1 AN ACT TO REENACT AND AMEND SECTION 83-34-4, MISSISSIPPI CODE
2 OF 1972, TO REQUIRE MONIES DERIVED FROM THE NONADMITTED POLICY FEE
3 TO BE DEPOSITED INTO THE STATE GENERAL FUND AND TO EXTEND THE
4 REPEALER THEREON; TO AMEND SECTION 83-34-5, MISSISSIPPI CODE OF
5 1972, TO AUTHORIZE THE WINDSTORM UNDERWRITING ASSOCIATION TO
6 EMPLOY AN EXECUTIVE DIRECTOR; TO AMEND SECTION 83-34-35,
7 MISSISSIPPI CODE OF 1972, TO REQUIRE THE ASSOCIATION TO OBTAIN
8 APPROVAL FROM THE COMMISSIONER BEFORE OBTAINING REINSURANCE
9 GREATER THAN THE PROBABLE MAXIMUM LOSS FOR A STORM EXPECTED TO
10 OCCUR EVERY ONE HUNDRED FIFTY YEARS, AND TO REQUIRE ANY PURCHASE
11 OF REINSURANCE TO INCLUDE AT A MINIMUM A SELF-INSURED RETENTION OF
12 ONE HUNDRED MILLION DOLLARS; TO REQUIRE THE COMMISSIONER OF
13 INSURANCE TO SUBMIT A STUDY OF THE ASSOCIATION TO THE LEGISLATURE;
14 TO AMEND SECTION 83-21-21, MISSISSIPPI CODE OF 1972, TO CONFORM;
15 AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** Section 83-34-4, Mississippi Code of 1972, is
18 reenacted and amended as follows:

19 83-34-4. (1) Nonadmitted insurers shall not be assessable
20 insurers of the association. All surplus lines insurance
21 producers placing insurance through nonadmitted insurers shall
22 collect from the insured and remit to the Department of Insurance
23 a nonadmitted policy fee on all premiums for all insurance written
24 by such surplus lines insurance producer for a policy from a



25 nonadmitted insurer for any and all risks in this state, except
26 that policies or portions thereof that cover residential
27 earthquake risks or residential flood risks that are not written
28 through the National Flood Insurance Program shall be exempt from
29 the nonadmitted policy fee. By procuring or selling insurance on
30 property in this state from a nonadmitted insurer, each surplus
31 lines insurance producer placing insurance through a nonadmitted
32 insurer agrees to be bound by the provisions of this chapter and
33 to collect and remit the nonadmitted policy fee provided for
34 herein.

35 (2) The nonadmitted policy fee shall be a percentage of the
36 total policy premium but the nonadmitted policy fee shall not be
37 considered premium and is not subject to premium taxes or
38 commissions. However, failure to pay the nonadmitted policy fee
39 shall be treated the same as failure to pay premium. "Total
40 policy premium" includes taxes and commissions.

41 (3) The nonadmitted policy fee percentage shall be three
42 percent (3%).

43 (4) Within twenty (20) days of the end of the quarter,
44 surplus lines insurance producers placing insurance through
45 nonadmitted insurers shall remit directly to the Department of
46 Insurance all nonadmitted policy fees collected in the preceding
47 quarter. In addition to the nonadmitted policy fee provided for
48 herein, surplus lines insurance producers placing insurance
49 through nonadmitted insurers shall collect and remit surcharges as



50 provided by this chapter. Surplus lines insurance producers
51 placing insurance through nonadmitted insurers may designate
52 another surplus lines insurance producer that actually procured
53 the insurance from the nonadmitted carrier to collect and remit
54 the nonadmitted policy fees.

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

62 (6) Monies derived from the nonadmitted policy fee collected
63 under this section * * * shall be deposited into the State General
64 Fund.

65 (7) This section shall stand repealed from and after July
66 1, * * * 2021.

67 **SECTION 2.** Section 83-34-5, Mississippi Code of 1972, is
68 amended as follows:

69 83-34-5. The association shall, pursuant to the provisions
70 of this chapter and the plan of operation, and with respect to
71 essential property insurance on insurable property, have the
72 power:

73 (a) To issue policies of essential property insurance
74 on insurable property to applicants;



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

78 (c) To purchase reinsurance for all or part of the
79 risks of the association;

80 (d) To levy and collect regular assessments from
81 assessable insurers;

82 (e) To issue bonds or incur other forms of
83 indebtedness, including, but not limited to, loans, lines of
84 credit or letters of credit;

85 (f) To establish underwriting criteria consistent with
86 the provisions of this chapter and as approved by the
87 commissioner;

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

90 (h) To enter into contractual agreements with third
91 parties, including the Mississippi Windstorm Mitigation
92 Coordinating Council, for the purposes of developing and
93 implementing windstorm mitigation programs; * * *

94 (i) To employ an executive director; and

95 (* * *j) All other powers necessary to carry out the
96 provisions and intent of this chapter.

97 **SECTION 3.** Section 83-34-35, Mississippi Code of 1972, is
98 amended as follows:



99 83-34-35. (1) In order to avoid or lessen the possibility
100 and amount of surcharges authorized by this chapter, the
101 commissioner shall approve rates for policies issued by the
102 association at least adequate to fund annual reinsurance above a
103 self-insured retention of One Hundred Million Dollars
104 (\$100,000,000.00) that, combined with any readily available
105 reserves of the association, is sufficient to cover at least the
106 probable maximum losses from a storm expected to occur once every
107 one hundred (100) years as predicted by a model or method approved
108 by the commissioner for the properties insured by the association
109 at the time the reinsurance was negotiated. The amount of
110 reinsurance in the foregoing rate adequacy requirement shall
111 increase every two (2) years by increasing the probable maximum
112 loss by five (5) years, until such time as the probable maximum
113 loss insured is for a storm expected to occur every one hundred
114 fifty (150) years. The commissioner may approve rates in excess
115 of the minimums required by this section as consistent with his
116 duties and the insurance laws of the State of Mississippi.

117 (2) The association must receive approval from the
118 commissioner before purchasing reinsurance in excess of the amount
119 to cover the probable maximum loss for a storm expected to occur
120 every one hundred fifty (150) years.

121 (3) Any purchase of reinsurance by the association shall
122 include at a minimum a self-insured retention of One Hundred
123 Million Dollars (\$100,000,000.00).



124 **SECTION 4.** Not later than September 1, 2019, the
125 Commissioner of Insurance shall submit to the Legislature a report
126 on the Windstorm Underwriting Association which shall include an
127 organizational analysis of the association. This report shall at
128 a minimum include an analysis of any problems identified, and any
129 recommendations for any legislative action necessary to address
130 those problems and to foster stability, availability, and
131 competition within the windstorm insurance industry. The
132 commissioner, at his discretion, may retain professionals or
133 specialists to assist with the report, and the costs thereof shall
134 be borne by the association.

135 **SECTION 5.** Section 83-21-21, Mississippi Code of 1972, is
136 amended as follows:

137 83-21-21. (1) The Commissioner of Insurance may establish a
138 stamping procedure for all eligible nonadmitted/surplus lines
139 insurance policies sold on risks subject to the payment of premium
140 taxes to the State of Mississippi.

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

145 (a) A copy of the association's constitution and
146 articles of agreement of association or the association's
147 certificate of incorporation and bylaws and any rules and
148 regulations governing the association's activities;



149 (b) A list of the association's members; and
150 (c) The name and address of a resident of this state
151 upon whom notices or orders of the commissioner or process issued
152 by the commissioner may be served.

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

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

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

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

165 (b) The association does not maintain and enforce rules
166 and regulations which will ensure that members of the association
167 and persons associated with those members will comply with this
168 chapter, other applicable state law or rules or regulations
169 promulgated under either;

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



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

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

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

180 (6) A surplus lines insurance producer shall cooperate with
181 the association and the Commissioner of Insurance in fulfilling
182 the surplus lines agent's statutory responsibility under this
183 chapter and Section 83-34-4.

184 (7) Upon request from the association, the Commissioner of
185 Insurance may approve the levy of an examination fee of not more
186 than one percent (1%) of premiums charged under this chapter for
187 the operation of the association to the extent that such operation
188 relieves the commissioner of duties otherwise required of the
189 Commissioner of Insurance under this chapter and Section 83-34-4.

190 (8) The association may revoke the membership of, and the
191 Commissioner of Insurance may revoke the license in this state of,
192 any licensee who fails to pay the examination fee when due, if the
193 examination fee has been approved by the Commissioner of
194 Insurance.

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



198 (10) The association, the association's board members and
199 employees shall not be subject to liability for any functions or
200 duties performed in good faith, from and after May 9, 2008, by the
201 association pursuant to this chapter.

202 (11) In the alternative, the Commissioner of Insurance may
203 contract with a third party to assist the commissioner with
204 carrying out the purposes of this chapter and Section 83-34-4.
205 The third party may collect an examination fee in an amount
206 determined by the commissioner but not more than one percent (1%)
207 of premiums charged under this chapter. The fees shall be
208 collected and deposited into the Department of Insurance Special
209 Fund, and from this fund the department may pay the third party a
210 reasonable fee for its services.

211 (12) Notwithstanding the provisions of Section 83-21-18(3),
212 any stamping procedure established under this section may apply to
213 the reporting, payment, collection and allocation of premium taxes
214 and fees for nonadmitted insurance consistent with any agreement,
215 compact or procedures entered into by the commissioner under
216 Section 83-21-18(1).

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

219 **SECTION 6.** This act shall take effect and be in force from
220 and after its passage.

