

By: Representative Chism

To: Insurance

HOUSE BILL NO. 323

1 AN ACT TO AMEND SECTION 83-5-102, MISSISSIPPI CODE OF 1972,
 2 TO REVISE DEFINITIONS OF CERTAIN TERMS USED IN THE SECTIONS OF LAW
 3 REQUIRING AN AUDIT OF INSURERS; TO AMEND SECTION 83-5-119,
 4 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE AUDIT COMMITTEE OF
 5 AN INSURER SHALL BE RESPONSIBLE FOR OVERSEEING THE INSURER'S
 6 INTERNAL AUDIT FUNCTION; TO CREATE SECTION 83-5-120, MISSISSIPPI
 7 CODE OF 1972, TO REQUIRE INSURERS TO ESTABLISH AN INTERNAL AUDIT
 8 FUNCTION PROVIDING INDEPENDENT, OBJECTIVE AND REASONABLE ASSURANCE
 9 TO THE AUDIT COMMITTEE AND INSURER MANAGEMENT REGARDING THE
 10 INSURER'S GOVERNANCE, RISK MANAGEMENT AND INTERNAL CONTROLS; AND
 11 FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 83-5-102, Mississippi Code of 1972, is
 14 amended as follows:

15 83-5-102. As used in Sections 83-5-102 through
 16 83-5- * * *125, the following terms have the respective meanings
 17 herein set forth unless the context shall require otherwise:

18 (a) "Audited financial report" means and includes those
 19 items specified in Section 83-5-103.

20 (b) "Accountant" or "independent certified public
 21 accountant" means an independent certified public accountant or
 22 accounting firm in good standing with the American Institute of



23 Certified Public Accountants and in all states in which they are
24 licensed to practice; for Canadian and British companies, it means
25 a Canadian chartered or British chartered accountant.

26 (c) "Commissioner" means the Commissioner of Insurance.

27 (d) "Department" means the Department of Insurance.

28 (e) "Indemnification" means an agreement of indemnity
29 or a release from liability where the intent or effect is to shift
30 or limit in any manner the potential liability of the person or
31 firm for failure to adhere to applicable auditing or professional
32 standards, whether or not resulting in part from knowing or other
33 misrepresentations made by the insurer or its representatives.

34 (f) "Insurer" means an insurer as defined in Section
35 83-5-1 or an authorized insurer as defined in Section 83-21-17.

36 (g) "Affiliate" of, or person "affiliated" with, a
37 specific person, is a person that directly, or indirectly through
38 one or more intermediaries, controls, or is controlled by, or is
39 under common control with, the person specified.

40 (h) "Audit committee" means a committee (or equivalent
41 body) established by the board of directors of an entity for the
42 purpose of overseeing the accounting and financial reporting
43 processes of an insurer or group of insurers, the internal audit
44 function of an insurer or group of insurers (if applicable), and
45 external audits of financial statements of the insurer or group of
46 insurers. The audit committee of any entity that controls a group
47 of insurers may be deemed to be the audit committee for one or



48 more of these controlled insurers solely for the purposes of this
49 section at the election of the controlling person. Refer to
50 Section 83-5-119(e) for exercising this election. If an audit
51 committee is not designated by the insurer, the insurer's entire
52 board of directors shall constitute the audit committee.

53 (i) "Independent board member" has the same meaning as
54 described in Section 83-5-119(c).

55 (j) "Group of insurers" means those licensed insurers
56 included in the reporting requirements of Sections 83-6-1 through
57 83-6-43, or a set of insurers as identified by management, for the
58 purpose of assessing the effectiveness of internal control over
59 financial reporting.

60 (k) "Internal control over financial reporting" means a
61 process effected by an entity's board of directors, management and
62 other personnel designed to provide reasonable assurance regarding
63 the reliability of the financial statements and includes those
64 policies and procedures that:

65 (i) Pertain to the maintenance of records that, in
66 reasonable detail, accurately and fairly reflect the transactions
67 and dispositions of assets;

68 (ii) Provide reasonable assurance that
69 transactions are recorded as necessary to permit preparation of
70 the financial statements and that receipts and expenditures are
71 being made only in accordance with authorizations of management
72 and directors; and



73 (iii) Provide reasonable assurance regarding
74 prevention or timely detection of unauthorized acquisition, use or
75 disposition of assets that could have a material effect on the
76 financial statements.

77 (l) "RBC" means risk-based capital pursuant to Sections
78 83-5-401 through 83-5-427.

79 (m) "SEC" means the United States Securities and
80 Exchange Commission.

81 (n) "Section 404" means Section 404 of the
82 Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations
83 promulgated thereunder.

84 (o) "Section 404 Report" means management's report on
85 "internal control over financial reporting" as defined by the SEC
86 and the related attestation report of the independent certified
87 public accountant.

88 (p) "SOX Compliant Entity" means an entity that either
89 is required to be compliant with, or voluntarily is compliant
90 with, all of the following provisions of the Sarbanes-Oxley Act of
91 2002: (i) the preapproval requirements of Section 201 (Section
92 10A(i) of the Securities Exchange Act of 1934); (ii) the audit
93 committee independence requirements of Section 301 (Section
94 10A(m) (3) of the Securities Exchange Act of 1934); and (iii) the
95 internal control over financial reporting requirements of Section
96 404 (Item 308 of SEC Regulation S-K).



97 (q) "Internal audit function" means a person or persons
98 who provide independent, objective and reasonable assurance
99 designed to add value and improve an organization's operations and
100 accomplish its objectives by bringing a systematic disciplined
101 approach to evaluate and improve the effectiveness of risk
102 management control and governance processes.

103 **SECTION 2.** Section 83-5-119, Mississippi Code of 1972, is
104 amended as follows:

105 83-5-119. Every insurer required to file an annual audited
106 financial report pursuant to this section shall designate a group
107 of individuals as constituting its audit committee. The audit
108 committee of an entity that controls an insurer may be deemed to
109 be the insurer's audit committee for purposes of this section at
110 the election of the controlling person.

111 This section shall not apply to foreign or alien insurers
112 licensed in this state or an insurer that is a SOX Compliant
113 Entity or a direct or indirect wholly owned subsidiary of a SOX
114 Compliant Entity.

115 (a) The audit committee shall be directly responsible
116 for the appointment, compensation and oversight of the work of any
117 accountant (including resolution of disagreements between
118 management and the accountant regarding financial reporting) for
119 the purpose of preparing or issuing the audited financial report
120 or related work pursuant to this section. Each accountant shall
121 report directly to the audit committee.



122 (b) Each member of the audit committee shall be a
123 member of the board of directors of the insurer or a member of the
124 board of directors of an entity elected pursuant to paragraph (e)
125 and Section 83-5-102(h).

126 (c) In order to be considered independent for purposes
127 of this section, a member of the audit committee may not, other
128 than in his or her capacity as a member of the audit committee,
129 the board of directors, or any other board committee, accept any
130 consulting, advisory or other compensatory fee from the entity or
131 be an affiliated person of the entity or any subsidiary thereof.
132 However, if law requires board participation by otherwise
133 nonindependent members, that law shall prevail and such members
134 may participate in the audit committee and be designated as
135 independent for audit committee purposes, unless they are an
136 officer or employee of the insurer or one (1) of its affiliates.

137 (d) If a member of the audit committee ceases to be
138 independent for reasons outside the member's reasonable control,
139 that person, with notice by the responsible entity to the state,
140 may remain an audit committee member of the responsible entity
141 until the earlier of the next annual meeting of the responsible
142 entity or one (1) year from the occurrence of the event that
143 caused the member to be no longer independent.

144 (e) To exercise the election of the controlling person
145 to designate the audit committee for purposes of this section, the
146 ultimate controlling person shall provide written notice to the



147 commissioners of the affected insurers. Notification shall be
148 made timely prior to the issuance of the statutory audit report
149 and include a description of the basis for the election. The
150 election can be changed through notice to the commissioner by the
151 insurer, which shall include a description of the basis for the
152 change. The election shall remain in effect for perpetuity, until
153 rescinded.

154 (f) (i) The audit committee shall require the
155 accountant that performs for an insurer any audit required by this
156 section to timely report to the audit committee in accordance with
157 the requirements of Statement on Auditing Standard No. 114, The
158 Auditor's Communication With Those Charged With Governance or its
159 replacement, including:

160 1. All significant accounting policies and
161 material permitted practices;

162 2. All material alternative treatments of
163 financial information within statutory accounting principles that
164 have been discussed with management officials of the insurer,
165 ramifications of the use of the alternative disclosures and
166 treatments, and the treatment preferred by the accountant; and

167 3. Other material written communications
168 between the accountant and the management of the insurer, such as
169 any management letter or schedule of unadjusted differences.

170 (ii) If an insurer is a member of an insurance
171 holding company system, the reports required by paragraph (f) (i)



172 may be provided to the audit committee on an aggregate basis for
173 insurers in the holding company system, provided that any
174 substantial differences among insurers in the system are
175 identified to the audit committee.

176 (g) The proportion of independent audit committee
177 members shall meet or exceed the following criteria:

178 **Prior Calendar Year Direct Written and Assumed Premiums**

179 \$0 - \$300,000,000	Over \$300,000,000 -	Over \$500,000,000
	180 \$500,000,000	
181 No minimum	Majority (50% or more)	Supermajority of
182 requirements. See	of members shall be	members (75% or
183 also Notes A and B.	independent. See	more) shall be
184	also Notes A and B.	independent. See
185		also Note A.

186 **Note A:** The commissioner has authority afforded by state law
187 to require the entity's board to enact improvements to the
188 independence of the audit committee membership if the insurer is
189 in a RBC action level event, meets one or more of the standards of
190 an insurer deemed to be in hazardous financial condition, or
191 otherwise exhibits qualities of a troubled insurer.

192 **Note B:** All insurers with less than Five Hundred Million
193 Dollars (\$500,000,000.00) in prior calendar year direct written
194 and assumed premiums are encouraged to structure their audit
195 committees with at least a supermajority of independent audit
196 committee members.



197 **Note C:** Prior calendar year direct written and assumed
198 premiums shall be the combined total of direct premiums and
199 assumed premiums from nonaffiliates for the reporting entities.

200 (h) An insurer with direct written and assumed premium,
201 excluding premiums reinsured with the Federal Crop Insurance
202 Corporation and Federal Flood Program less than Five Hundred
203 Million Dollars (\$500,000,000.00), may make application to the
204 commissioner for a waiver from the requirements of this section
205 based upon hardship. The insurer shall file, with its annual
206 statement filing, the approval for relief from the requirements of
207 this section with the states that it is licensed or doing
208 business.

209 (i) An insurer or group of insurers that is not
210 required to have independent audit committee members or only a
211 majority of independent audit committee members (as opposed to a
212 supermajority) because the total written and assumed premium is
213 below the threshold and subsequently becomes subject to one (1) of
214 the independence requirements due to changes in premium shall have
215 one (1) year following the year the threshold is exceeded to
216 comply with the independence requirements. Likewise, an insurer
217 that becomes subject to one (1) of the independence requirements
218 as a result of a business combination shall have one (1) calendar
219 year following the date of acquisition or combination to comply
220 with the independence requirements.



221 (j) The audit committee of an insurer or group of
222 insurers shall be responsible for overseeing the insurer's
223 internal audit function and granting the person or persons
224 performing the function suitable authority and resources to
225 fulfill their responsibilities if required by Section 3 of this
226 act.

227 **SECTION 3.** The following shall be codified as Section
228 83-5-120, Mississippi Code of 1972:

229 83-5-120. **Internal audit function requirements.** (1)

230 **Exemption.** An insurer is exempt from the requirements of this
231 section if:

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

237 (b) If the insurer is a member of a group of insurers,
238 the group has annual direct written and unaffiliated assumed
239 premium, including international direct and assumed premium, but
240 excluding premiums reinsured with the Federal Crop Insurance
241 Corporation and Federal Flood Program, less than One Billion
242 Dollars (\$1,000,000,000.00).

243 **Note:** An insurer or group of insurers exempt from the
244 requirements of this section is encouraged, but not required, to
245 conduct a review of the insurer business type, sources of capital,



246 and other risk factors to determine whether an internal audit
247 function is warranted. The potential benefits of an internal
248 audit function should be assessed and compared against the
249 estimated costs.

250 (2) **Function.** The insurer or group of insurers shall
251 establish an internal audit function providing independent,
252 objective and reasonable assurance to the audit committee and
253 insurer management regarding the insurer's governance, risk
254 management and internal controls. This assurance shall be
255 provided by performing general and specific audits, reviews and
256 tests and by employing other techniques deemed necessary to
257 protect assets, evaluate control effectiveness and efficiency, and
258 evaluate compliance with policies and regulations.

259 (3) **Independence.** In order to ensure that internal auditors
260 remain objective, the internal audit function must be
261 organizationally independent. Specifically, the internal audit
262 function will not defer ultimate judgment on audit matters to
263 others, and shall appoint an individual to head the internal audit
264 function who will have direct and unrestricted access to the board
265 of directors. Organizational independence does not preclude
266 dual-reporting relationships.

267 (4) **Reporting.** The head of the internal audit function
268 shall report to the audit committee regularly, but no less than
269 annually, on the periodic audit plan, factors that may adversely
270 impact the internal audit function's independence or



271 effectiveness, material findings from completed audits and the
272 appropriateness of corrective actions implemented by management as
273 a result of audit findings.

274 (5) **Additional requirements.** If an insurer is a member of
275 an insurance holding company system or included in a group of
276 insurers, the insurer may satisfy the internal audit function
277 requirements set forth in this section at the ultimate controlling
278 parent level, an intermediate holding company level or the
279 individual legal entity level.

280 **SECTION 4.** This act shall take effect and be in force from
281 and after January 1, 2020.

