

By: Senator(s) Carmichael

To: Accountability,  
Efficiency, Transparency;  
Insurance

## SENATE BILL NO. 2801

1 AN ACT TO AMEND SECTION 83-34-1, MISSISSIPPI CODE OF 1972, TO  
2 DEFINE CERTAIN TERMS AS USED IN THE MISSISSIPPI WINDSTORM  
3 UNDERWRITING ASSOCIATION LAW; TO AMEND SECTION 83-34-3,  
4 MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO AMEND REENACTED  
5 SECTION 83-34-4, MISSISSIPPI CODE OF 1972, TO DIVERT A CERTAIN  
6 AMOUNT OF FUNDS DERIVED FROM THE NONADMITTED POLICY FEE INTO THE  
7 RURAL FIRE TRUCK FUND OR SUPPLEMENTARY RURAL FIRE TRUCK FUND, AND  
8 TO EXTEND THE REPEALER ON THE SECTION; TO AMEND SECTION 83-34-5,  
9 MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO AMEND SECTION 83-34-7,  
10 MISSISSIPPI CODE OF 1972, TO REVISE THE MEMBERSHIP OF THE BOARD OF  
11 DIRECTORS OF THE ASSOCIATION; TO AMEND SECTION 83-34-9,  
12 MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO AMEND SECTION  
13 83-34-10, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE ASSOCIATION  
14 TO LEVY RECOUPABLE AND NONRECOUPABLE ASSESSMENTS UPON THE  
15 OCCURRENCE OF CERTAIN EVENTS, TO PROVIDE THAT THE MINIMUM RESERVE  
16 SHALL NOT BE CONSIDERED AS FUNDS AVAILABLE TO THE ASSOCIATION IN  
17 DETERMINING WHETHER TO LEVY A RECOUPABLE OR NONRECOUPABLE  
18 ASSESSMENT, AND TO SET THE MAXIMUM TOTAL OF NONRECOUPABLE  
19 ASSESSMENTS; TO AMEND SECTION 83-34-12, MISSISSIPPI CODE OF 1972,  
20 IN CONFORMITY; TO AMEND SECTION 83-34-13, MISSISSIPPI CODE OF  
21 1972, TO PROVIDE THAT THE ASSOCIATION'S PLAN OF OPERATION MAY  
22 INCLUDE THE ESTABLISHMENT OF A MINIMUM RESERVE; TO AMEND SECTIONS  
23 83-34-23 AND 83-34-31, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO  
24 AMEND SECTION 83-34-33, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE  
25 COMMISSIONER OF INSURANCE TO IMPLEMENT AN EXCESS DEFICIT SURCHARGE  
26 FOR COVERED EVENT LOSSES ON ALL PROPERTY AND CASUALTY PREMIUMS; TO  
27 AMEND SECTION 83-34-35, MISSISSIPPI CODE OF 1972, IN CONFORMITY;  
28 TO REPEAL SECTION 83-34-11, MISSISSIPPI CODE OF 1972, WHICH  
29 IMPLEMENTS A SURCHARGE ON ALL PROPERTY AND CASUALTY PREMIUMS FOR  
30 THE PURPOSE OF REIMBURSING ASSESSABLE INSURERS WHO PAID A REGULAR  
31 ASSESSMENT; AND FOR RELATED PURPOSES.

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



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

35           83-34-1. In this chapter, unless the context otherwise  
36 requires:

37           (a) "Essential property insurance" means insurance  
38 against direct loss to property from the risk of windstorm and  
39 hail in the manner as defined and limited in the standard real  
40 property and contents insurance forms approved by the  
41 commissioner. Essential property insurance \* \* \* may include  
42 coverage for \* \* \* either the actual cash value or replacement  
43 cost value of the structure and contents. Essential property  
44 insurance includes builders risks coverage. The extent of risk  
45 covered, the insuring language and the exclusions are all subject  
46 to approval by the commissioner. Policies, rules and rates shall  
47 be filed with the commissioner in the manner provided for  
48 insurance companies.

49           (b) "Association" means the Mississippi Windstorm  
50 Underwriting Association established pursuant to the provisions of  
51 this chapter.

52           (c) "Plan of operation" means the plan of operation of  
53 the association approved or promulgated by the commissioner  
54 pursuant to the provisions of this chapter.

55           (d) "Insurable property" means real property, and  
56 contents therein when requested, at fixed locations in the coast  
57 area, which property is determined by the association to be in an



58 insurable condition and otherwise meets the underwriting  
59 requirements of the association. Any one- or two-family dwelling  
60 built, rebuilt, altered or remodeled in compliance with the  
61 applicable building codes, including design-wind requirements,  
62 that is not otherwise rendered uninsurable by reason of use,  
63 occupancy or state of repair, shall be an insurable risk.  
64 Neighborhood area, location and environmental hazards beyond the  
65 control of the applicant or owner of the property shall not be  
66 considered in determining insurable condition. "Insurable  
67 property" shall not include insurance on motor vehicles or  
68 creditor placed insurance on mobile homes. "Insurable property"  
69 includes mobile homes, modular homes or manufactured housing that  
70 are installed in compliance with applicable codes.

71 (e) "Commissioner" means the Insurance Commissioner of  
72 the State of Mississippi.

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

75 (g) (i) "Net direct premiums," for purposes of  
76 calculating percentages of participation for assessable insurers  
77 for the year 2007, means gross direct premiums, excluding  
78 reinsurance assumed and ceded, written on property in this state  
79 for the risk of windstorm and hail less return premiums upon  
80 cancelled contracts, dividends paid or credited to policyholders,  
81 or the unused or unabsorbed portion of premium deposits. "Net  
82 direct premiums" includes the premium charge component for the



83 risk of windstorm and hail to property in all policies, including  
84 multiperil and other policies that package or combine coverage for  
85 other risks. The plan of operation shall prescribe the portion of  
86 premium allocated for the risk of windstorm and hail in multiperil  
87 and other policies that package or combine coverage for other  
88 risks. "Net direct premiums" shall not include farm property.  
89 "Net direct premiums" shall not include the property components of  
90 motor vehicles and other mobile property, but includes premiums  
91 for the risks of windstorm and hail for mobile homes, modular  
92 homes or manufactured housing.

93 (ii) "Net direct premiums," for purposes of  
94 calculating percentages of participation for assessable insurers  
95 after the year 2007, means those premiums reported by the  
96 assessable insurers in their annual statements to the Department  
97 of Insurance that were charged for insurance for any and all risks  
98 on real property and contents in the state. The department shall  
99 determine which lines of real property and contents insurance  
100 shall be included in the calculation of net direct premiums. The  
101 included real property and contents insurance lines may be changed  
102 from time to time in the discretion of the commissioner. "Net  
103 direct premiums" shall not include premiums for insuring farm  
104 property that are reported timely to the association as provided  
105 in the plan of operation.

106 (iii) The commissioner is authorized and directed  
107 to provide to the association annual statements, other reports and



any statistics necessary to provide the information herein required and which the commissioner is hereby authorized and empowered to obtain from any assessable insurer.

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

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

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

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

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



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

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

(o) "Minimum reserve" means an amount set forth in the plan of operation which is maintained by the association for the payment of salaries and other expenses necessary for the continuous and ongoing operation of the association.

(p) "Recoupable assessment" means any assessment, in whole or in part, that is levied on and payable by assessable insurers to the association which is directly recoverable from policyholders for any covered event occurring during the calendar year 2019 and approved by the commissioner.

(q) "Nonrecoupable assessment" means any assessment levied on and payable by assessable insurers to the association which is not directly recoverable from policyholders.

(r) "Excess deficit" means a deficit that exceeds available surplus, reinsurance, recoupable and nonrecoupable assessments and other reasonably available assets of the association. The minimum reserve, as set forth in the plan of operation, shall not be considered reasonably available assets of the association when determining whether an excess deficit has occurred.



(s) "Covered event" means an event, such as a hurricane, other windstorm or hailstorm, which causes losses covered by the policies issued by the association to its policyholders.

**SECTION 2.** Section 83-34-3, Mississippi Code of 1972, is amended as follows:

83-34-3. (1) From and after March 22, 2007, the Mississippi Windstorm Underwriting Association, as created by Chapter 459, Laws of 1987, shall be a separate and independent entity as provided for herein. At its option, the association may incorporate. All assets belonging to the association on or before March 22, 2007, shall hereinafter belong to and remain with the association. There shall be no distribution of income or assets other than for the benefit of the association, which shall have the right to invest and reinvest assets.

(2) From and after March 22, 2007, the association shall no longer have members. Former "members" of the association shall be "assessable insurers" and shall have no rights to the assets and profits of the association, but shall have the obligation for regular assessments as provided herein. Former members shall continue to have the obligations provided in this chapter before March 22, 2007, for all policyholder claims, costs, damages of any kind and expenses in any manner resulting from losses that occurred before March 22, 2007, for which the association may assess as needed the former members in the manner provided in this



chapter before March 22, 2007. As a condition of its authority to continue to transact the business of insurance in this state and by transacting business in this state, each licensed insurer agrees to be bound by the provisions of this statute and the plan of operation as approved by the commissioner, and all amendments and revisions thereto.

(3) Any licensed insurer first authorized to write insurance after March 22, 2007, shall become an assessable insurer on the first day of January immediately following such authorization. The determination of such insurer's participation in the association shall be made based upon writings in the prior year in the same manner as for all other assessable insurers of the association.

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





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

(6) Any debt obligations issued by the association, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state and any political subdivision or other instrumentality thereof.

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

(8) The association shall operate as a private enterprise and shall not be subject to the procurement provisions of Section 31-7-13, and policies and decisions of the association, including, but not limited to, decisions relating to incurring debt, levying of recoupable and nonrecoupable assessments, the issuance and sale



of bonds, claims decisions under association policies, hiring and firing of employees, and all services relating to the operation of the association shall not be subject to the provisions of Section 25-9-101 et seq. The association shall not be required to obtain or to hold a license or certificate of authority issued by the commissioner or any other office. The association shall not be required to participate as a member insurer of the Mississippi Insurance Guaranty Association.

**SECTION 3.** Section 83-34-4, Mississippi Code of 1972, is reenacted and amended as follows:

83-34-4. (1) Nonadmitted insurers shall not be assessable insurers of the association. All surplus lines insurance producers placing insurance through nonadmitted insurers shall collect from the insured and remit to the association a nonadmitted policy fee on all premiums for all insurance written by such surplus lines insurance producer for a policy from a nonadmitted insurer for any and all risks in this state, except that policies or portions thereof that cover residential earthquake risks or residential flood risks that are not written through the National Flood Insurance Program shall be exempt from the nonadmitted policy fee. By procuring or selling insurance on property in this state from a nonadmitted insurer, each surplus lines insurance producer placing insurance through a nonadmitted insurer agrees to be bound by the provisions of this chapter and



to collect and remit the nonadmitted policy fee provided for herein.

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

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

(4) Within twenty (20) days of the end of the quarter, surplus lines insurance producers placing insurance through nonadmitted insurers shall remit directly to the association all nonadmitted policy fees collected in the preceding quarter. In addition to the nonadmitted policy fee provided for herein, surplus lines insurance producers placing insurance through nonadmitted insurers shall collect and remit excess deficit surcharges as provided by this chapter. Surplus lines insurance producers placing insurance through nonadmitted insurers may designate another surplus lines insurance producer that actually procured the insurance from the nonadmitted carrier to collect and remit the nonadmitted policy fees.

(5) Each insured in this state who directly procures or renews insurance with a nonadmitted insurer on properties, risks or exposures located or to be performed, in whole or in part, in



279 this state, other than insurance procured through a surplus lines  
280 licensee, shall be subject to the nonadmitted policy fee which  
281 shall be paid by the insured according to the procedures provided  
282 for premium taxes in Section 83-21-17(5).

283 (6) Monies derived from the nonadmitted policy fee collected  
284 under this section may be used by the association, in addition to  
285 any uses provided for in Section 83-34-3(4), for education, public  
286 outreach, training of building officials and other programs  
287 targeted to reduce the number of policies within the association;  
288 however, beginning on July 1, 2018, and ending on June 30, 2019,  
289 before any fees are remitted to the association, One Million Five  
290 Hundred Thousand Dollars (\$1,500,000.00) shall be diverted and  
291 deposited into the Capital Expense Fund, and Four Million Five  
292 Hundred Thousand Dollars (\$4,500,000.00) shall be diverted and  
293 deposited into the Rural Fire Truck Fund or Supplementary Rural  
294 Fire Truck Fund. Further, beginning July 1, 2019, and ending on  
295 June 30, 2020, before any fees are remitted to the association,  
296 Three Million Dollars (\$3,000,000.00) shall be diverted and  
297 deposited into the Rural Fire Truck Fund or Supplementary Rural  
298 Fire Truck Fund.

299 (7) This section shall stand repealed from and after July  
300 1, \* \* \* 2022.

301 **SECTION 4.** Section 83-34-5, Mississippi Code of 1972, is  
302 amended as follows:



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

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

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

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

(d) To levy and collect \* \* \* recoupable and nonrecoupable assessments from assessable insurers;

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

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

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

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



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

**SECTION 5.** Section 83-34-7, Mississippi Code of 1972, is amended as follows:

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

(2) (a) From and after \* \* \* July 1, 2019, the board of directors of the association shall consist of the following:

(i) The State Treasurer, who shall serve as an ex officio, nonvoting member;

(ii) \* \* \* Six (6) of the assessable insurer companies, \* \* \* four (4) to be appointed by the commissioner, one (1) to be appointed by the Governor, and one (1) to be appointed



by the Lieutenant Governor; each such assessable insurer appointed shall designate a representative knowledgeable in the matters of the association and authorize such representative to act and vote on its behalf;

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

(iv) Two (2) business leaders who have \* \* \* no less than ten (10) years' experience in management of a business, one (1) who is not a resident of the coast area to be appointed by the Governor, and one (1) who is a resident of the coast area to be appointed by the Lieutenant Governor. Business leader appointees serving on July 1, 2019, shall be allowed to complete the remainder of their duly appointed terms.

(b) \* \* \* Board members shall serve three-year terms with each term beginning on January 1, and the initial terms shall be staggered in the following manner:

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



378                   (ii) The initial term for one (1) of the  
379 assessable insurers shall begin on March 22, 2007, and expire on  
380 December 31, 2009, thereafter to be appointed for three-year  
381 terms;

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

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

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

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

395                   (vii) The initial term for one (1) of the business  
396 leaders shall begin on March 22, 2007, and expire on December 31,  
397 2010, thereafter to be appointed for three-year terms;

398                   (viii) The initial term for one (1) of the  
399 business leaders shall begin on March 22, 2007, and expire on  
400 December 31, 2008, thereafter to be appointed for three-year  
401 terms \* \* \*;





(ix) The initial term for one (1) of the assessable insurers shall begin on July 1, 2019, and expire on December 31, 2019, and thereafter to be appointed for three-year terms.

(3) On or before March 22, 2007, the appropriate public official shall make such appointments and request such resignations from the existing board as are appropriate to comply with this section.

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

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

**SECTION 6.** Section 83-34-9, Mississippi Code of 1972, is amended as follows:

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



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

(3) The plan of operation shall provide financial incentives or financial penalties, or both, to ensure that assessable insurers write essential property insurance in the coast area. The incentives and penalties may include, but are not limited to, a reduction in \* \* \* recoupable and nonrecoupable assessments, \* \* \* adjustments in the percentage of participation, and other incentives and penalties as provided in the plan of operation. The commissioner shall approve the plan of operation as provided in Section 83-34-13.

**SECTION 7.** Section 83-34-10, Mississippi Code of 1972, is amended as follows:

83-34-10. (1) In the event of a \* \* \* covered event that may produce losses in excess of funds that may be immediately available to the association, or in the event that the association determines that it will otherwise have a claim deficit or any other deficit, then the association, with consent of the commissioner, shall have the power to levy \* \* \* recoupable and nonrecoupable assessments against assessable insurers based upon their percentage of participation. \* \* \*

The minimum reserve, as set forth in the plan of operation, shall not be considered as funds available to the association in determining whether to levy a recoupable or nonrecoupable assessment.



(2) A nonrecoupable assessment levied under this section shall not exceed six percent (6%) of the association's year-end total limits in force for the preceding calendar year, or Two Hundred Fifty Million Dollars (\$250,000,000.00), whichever is less. Further, in any calendar year, the annual total of all nonrecoupable assessment funds collected shall not exceed, in the aggregate, Two Hundred Fifty Million Dollars (\$250,000,000.00).

**SECTION 8.** Section 83-34-12, Mississippi Code of 1972, is amended as follows:

83-34-12. The \* \* \* recoupable or nonrecoupable assessment of an assessable insurer may, after hearing, be ordered deferred, in whole or in part, upon application by the insurer if, in the opinion of the commissioner, payment of the recoupable or nonrecoupable assessment would render the insurer insolvent or in danger of insolvency, or would otherwise leave the insurer in such a condition that further transaction of the insurer's business would be hazardous to its policyholders, creditors, assessable insurers, subscribers, stockholders or the public. If that payment of \* \* \* a recoupable or nonrecoupable assessment against an assessable insurer is deferred by order of the commissioner, in whole or in part, the amount by which the recoupable or nonrecoupable assessment is deferred shall be assessed against other assessable insurers in the same manner as provided in Section 83-34-9.



475           **SECTION 9.** Section 83-34-13, Mississippi Code of 1972, is  
476 amended as follows:

477           83-34-13. (1) Within forty-five (45) days after March 22,  
478 2007, the directors of the association shall submit to the  
479 commissioner for review and approval a proposed plan of operation  
480 revised to be consistent with the provisions of Chapter 425, Laws  
481 of 2007. The association shall maintain a plan of operation. The  
482 plan shall provide for the efficient, economical, fair and  
483 nondiscriminatory administration of the association. The plan may  
484 include the establishment of a minimum reserve, methods for the  
485 nonrecoupable assessment of all assessable insurers for deficits  
486 and expenses, the establishment of necessary facilities,  
487 management of the association, underwriting standards, procedures  
488 for determining the amounts of insurance to be provided to  
489 specific risks, time limits and procedures for processing  
490 applications for insurance, and for such other provisions as may  
491 be deemed necessary by the board to carry out the purposes of this  
492 chapter.

493           (2) The plan of operation shall provide financial incentives  
494 or financial penalties, or both, to ensure that assessable  
495 insurers write essential property insurance in the coast area.  
496 The incentives and penalties may include, but are not limited to,  
497 a reduction in \* \* \* nonrecoupable assessments, \* \* \* adjustments  
498 in the percentage of participation, and other incentives and  
499 penalties as provided in the plan of operation.



500           (3) The plan of operation shall provide (a) that the  
501 association shall offer a two percent (2%) deductible for loss  
502 from named storms; and (b) that the association shall also offer  
503 options for other deductibles for loss from named storms with  
504 appropriate rate reductions that shall include at least a twenty  
505 percent (20%) deductible for loss from named storms.

506           (4) The plan of operation shall provide that the association  
507 use actuarially appropriate geographical zones for rating and for  
508 the use of credits and penalties to encourage voluntary writing in  
509 the coast area.

510           (5) The commissioner shall approve the plan of operation and  
511 all amendments before they become effective. It is the obligation  
512 of the commissioner to confirm that such plan fulfills the  
513 purposes of this chapter. If the commissioner approves a proposed  
514 plan or amendment, he shall certify the approval to the directors,  
515 and the plan, or amendment thereto, shall become effective ten  
516 (10) days after such certification. If the commissioner  
517 disapproves all or any part of the proposed plan of operation, or  
518 amendment thereto, he shall return the same to the directors with  
519 a written statement giving the reasons for disapproval and any  
520 recommendations the commissioner may wish to make. Within ten  
521 (10) days thereafter, the directors may alter the plan or  
522 amendment in accordance with the commissioner's recommendation or  
523 may return a new plan to the commissioner. The commissioner shall  
524 consider the proposals and shall then promulgate and place into



effect a plan of operation certifying the same to the directors of the association after approval by the board of directors. Any such plan promulgated by the commissioner shall take effect ten (10) days after certification to the directors.

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

**SECTION 10.** Section 83-34-23, Mississippi Code of 1972, is amended as follows:

83-34-23. There shall be no liability on the part of the insurance commissioner or any of his staff and representatives for any action taken under and pursuant to the provisions of this chapter. There shall be no liability on the part of the association, its agents, representatives or employees, the members of the board, or any assessable insurer of the association, except for the \* \* \* specific obligations \* \* \* stated in any contract of insurance and the duty to pay nonrecoupable assessments as provided in this chapter.

**SECTION 11.** Section 83-34-31, Mississippi Code of 1972, is amended as follows:

83-34-31. (1) The board of directors, subject to the approval of the commissioner, shall have the power and authority to issue bonds, and the power and authority to enter into loans,



letters of credit, lines of credit, and other forms of indebtedness, as needed for operations, the purchase of reinsurance, claim losses, and incurred but not reported claims.

\* \* \*

( \* \* \*2) \* \* \* The bonds must be in a form approved by the commissioner. With approval of the commissioner, the association may issue bonds or incur other indebtedness to retire or consolidate bonds as appropriate. Bonds and other debt obligations issued by or on behalf of the association are not to be considered "state bonds" and shall not be an obligation of the state.

( \* \* \*3) The state hereby covenants with holders of bonds issued pursuant to this \* \* \* chapter that the state will not limit, alter or deny the duties and obligations of this chapter, and of the association and the commissioner as established by this chapter, necessary to fulfill the terms of any agreements with bondholders, or in any way impair the rights and remedies of such bondholders as long as any such bonds remain outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds.

**SECTION 12.** Section 83-34-33, Mississippi Code of 1972, is amended as follows:

83-34-33. (1) When the association knows or has reason to believe that (a) it has or will incur losses from a \* \* \* covered event that exceeds available surplus, reinsurance, recoupable or



nonrecoupable assessments and other reasonably available assets of the association, such that one or more bond issues or other financing, or both, will be necessary to pay claims losses and other related expenses, or (b) the association has \* \* \* an excess deficit that cannot be reasonably resolved by income available to the association above the minimum reserve, then the association shall immediately give notice to the commissioner and request that the commissioner implement \* \* \* an excess \* \* \* deficit surcharge on all property and casualty insurance premiums for insurance for property and operations in this state designed to recover to the association the amount of all such bonds and other indebtedness resulting from the \* \* \* covered event, or other deficit.

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

(3) If any of the bonds remain unsold sixty (60) days after issuance, the commissioner shall require all assessable insurers to purchase the bonds, which purchased bonds shall be treated as admitted assets; each assessable insurer shall be required to purchase that percentage of the unsold portion of the bond issue that equals the assessable insurer's current percentage of participation. An assessable insurer shall not be required to purchase the bonds to the extent that the commissioner determines





600 that the purchase would endanger or impair the solvency of the  
601 insurer. The bonds must be in a form approved by the  
602 commissioner. With approval of the commissioner, the association  
603 may issue bonds or incur other indebtedness to retire or  
604 consolidate bonds as appropriate. Bonds and other debt  
605 obligations issued by or on behalf of the association are not to  
606 be considered "state bonds" and shall not be an obligation of the  
607 state.

608       ( \* \* \*4) At such time as the commissioner can reasonably  
609 estimate the amount of bonds or indebtedness, or both,  
610 necessitated by a \* \* \* covered event, and in no event more than  
611 ninety (90) days from the notice given by the association, the  
612 commissioner shall have the duty and the power to implement an  
613 excess \* \* \* deficit surcharge on all property and casualty  
614 insurance premiums for insurance for property and activities in  
615 this state. "Premiums" includes premiums for policies issued by  
616 or for the association and by or for the Mississippi Residential  
617 Property Insurance Underwriting Association. "Premiums" shall not  
618 include premiums for workers' compensation coverage, premiums for  
619 medical malpractice liability coverage including medical  
620 malpractice liability coverage issued by companies created under  
621 Section 83-47-1 et seq., nor any premiums for coverage by  
622 insurance pools or plans administered by or through the State of  
623 Mississippi.



624           ( \* \* \*5) If the excess deficit surcharge is designed to  
625 repay bonds, it shall be designated as such and all funds  
626 recovered from the excess deficit surcharge shall be used for  
627 repayment of the bonds for which it was implemented, until such  
628 time as the bonds have been paid or redeemed.

629           ( \* \* \*6) If the excess deficit surcharge is designed to  
630 repay a specific indebtedness incurred for losses from a  
631 specific \* \* \* covered event, it shall be designated as such and  
632 all funds recovered from the excess deficit surcharge shall be  
633 used for repayment of the indebtedness for which it was  
634 implemented, until such time as the indebtedness has been paid or  
635 redeemed.

636           ( \* \* \*7) Such excess deficit surcharge shall be  
637 specifically identified on either the premium statements or the  
638 policy declarations pages or other appropriate policy forms as  
639 relating to the specific \* \* \* covered event losses or bonds or  
640 indebtedness for which it was implemented. The commissioner shall  
641 name each such excess deficit surcharge so that it can be  
642 uniformly identified by insurers and agents.

643           ( \* \* \*8) The excess deficit surcharge shall be a percentage  
644 of the total policy premium but the excess deficit surcharge shall  
645 not be considered premium and is not subject to premium taxes or  
646 commissions. However, failure to pay the excess deficit surcharge  
647 shall be treated the same as failure to pay premium. "Total  
648 policy premium" includes taxes and commissions.



649           ( \* \* \*9)   The commissioner shall implement an appropriate  
650 excess deficit surcharge percentage sufficient to recover the  
651 amount necessary for repayment of bonds and indebtedness  
652 necessitated by a \* \* \* covered event, or the resolution of other  
653 deficit, as applicable. If at any time such surcharge shall be  
654 insufficient, the commissioner shall increase the excess deficit  
655 surcharge as necessary and appropriate. The commissioner shall  
656 cease excess deficit surcharges as he determines appropriate funds  
657 have been collected. However, the commissioner shall endeavor to  
658 apply excess deficit surcharges on a one-year basis in order to  
659 promote consistency, nondiscrimination and fairness among  
660 policyholders purchasing or renewing insurance during that year.  
661 Any collections in excess of the amounts needed shall be assets of  
662 the association for investment and other uses.

663           ( \* \* \*10)   Each licensed insurer issuing insurance for  
664 property and casualty risks in the state and each agent placing  
665 insurance through nonadmitted insurers, shall collect the excess  
666 deficit surcharges established by the commissioner under the  
667 authority of this section. Funds collected by such licensed  
668 insurers and agents placing insurance through nonadmitted insurers  
669 as excess deficit surcharges authorized by this section shall be  
670 collected and held in trust and shall be fully remitted to the  
671 association on a quarterly basis with forms providing appropriate  
672 information as designed by the association. Insurers and agents  
673 shall remit such funds to the association within twenty (20) days



674 after the end of each quarter. At such time the insurers and  
675 agents shall further remit to the association all interest earned  
676 on the excess deficit surcharge funds.

677 ( \* \* \*11) The association and the commissioner are both  
678 specifically given the power to audit licensed insurers and agents  
679 placing insurance through nonadmitted insurers to confirm the  
680 accuracy of remittances of excess deficit surcharges at the  
681 expense of the licensed insurers and agents.

682 ( \* \* \*12) The commissioner has the duty and power to adjust  
683 the percentage of any excess deficit surcharge previously  
684 established as he finds appropriate taking into consideration any  
685 relevant factors, including, but not limited to, consolidation or  
686 replacement of bonds, any additional indebtedness resulting from  
687 a \* \* \* covered event, the rate of recovery, anticipated length of  
688 total recovery, and impact of other \* \* \* covered events; however,  
689 the commissioner shall not reduce the amount of \* \* \* excess  
690 deficit surcharges implemented and designated to pay or redeem  
691 bonds, or other indebtedness below the amount necessary to timely  
692 pay or redeem such bonds, or other indebtedness.

693 ( \* \* \*13) When the association knows or has reason to  
694 believe that excess deficit surcharges authorized by this section  
695 previously established by the commissioner will be insufficient to  
696 timely pay or redeem bonds or indebtedness, the association shall  
697 immediately give notice to the commissioner. The commissioner



698 shall alter such excess deficit surcharge as necessary to timely  
699 pay or redeem bonds or pay other indebtedness.

700 ( \* \* \*14) The association shall report quarterly to the  
701 commissioner providing all financial information for each excess  
702 deficit surcharge authorized by this section, including:

703 (a) The original and current outstanding indebtedness  
704 of all bonds and loans;

705 (b) Total excess deficit surcharge funds recovered to  
706 date; and

707 (c) Any information requested by the commissioner.

708 ( \* \* \*15) The commissioner may request, and the association  
709 shall provide, on an immediate basis to the commissioner any  
710 financial information or other information concerning any excess  
711 deficit surcharge. This section shall not limit the reporting  
712 requirements provided by Section 83-34-25.

713 **SECTION 13.** Section 83-34-35, Mississippi Code of 1972, is  
714 amended as follows:

715 83-34-35. In order to avoid or lessen the possibility and  
716 amount of excess deficit surcharges authorized by this chapter,  
717 the commissioner shall approve rates for policies issued by the  
718 association at least adequate to fund annual reinsurance above a  
719 self-insured retention of One Hundred Million Dollars  
720 (\$100,000,000.00) that, combined with any readily available  
721 reserves of the association, is sufficient to cover at least the  
722 probable maximum losses from a storm expected to occur once every



723 one hundred (100) years as predicted by a model or method approved  
724 by the commissioner for the properties insured by the association  
725 at the time the reinsurance was negotiated. The amount of  
726 reinsurance in the foregoing rate adequacy requirement shall  
727 increase every two (2) years by increasing the probable maximum  
728 loss by five (5) years, until such time as the probable maximum  
729 loss insured is for a storm expected to occur every one hundred  
730 fifty (150) years. The commissioner may approve rates in excess  
731 of the minimums required by this section as consistent with his  
732 duties and the insurance laws of the State of Mississippi.

733       **SECTION 14.** Section 83-34-11, Mississippi Code of 1972,  
734 which implements a surcharge on all property and casualty  
735 insurance premiums in this state, is hereby repealed.

736       **SECTION 15.** This act shall take effect and be in force from  
737 and after July 1, 2019.

