

By: Senator(s) Michel

To: Insurance

SENATE BILL NO. 2635

1 AN ACT TO PROVIDE FOR FRAMEWORK FOR THE DEPARTMENT OF  
2 INSURANCE TO REGULATE LENDER-PLACED INSURANCE ON REAL PROPERTY; TO  
3 PROVIDE CERTAIN EXCLUSIONS TO THE ACT; TO PLACE CERTAIN  
4 REQUIREMENTS ON LENDER-PLACED INSURANCE POLICIES; TO REQUIRE  
5 CERTAIN CALCULATIONS TO BE FOLLOWED FOR DETERMINING THE  
6 REPLACEMENT COST VALUE OF REAL PROPERTY THAT ARE SUBJECT TO SUCH  
7 POLICY; TO PROHIBIT INSURANCE PRODUCERS OR INSURERS FROM ISSUING  
8 LENDER-PLACED INSURANCE OR MORTGAGED PROPERTY IF THE INSURER OR  
9 INSURANCE PRODUCER OR AFFILIATE OF THE INSURER OR INSURANCE  
10 PRODUCER, OWNS, PERFORMS THE SERVICING FOR, OR OWNS THE SERVICING  
11 RIGHT TO THE MORTGAGED PROPERTY; TO PROHIBIT NO INSURER OR  
12 INSURANCE PROVIDER FROM COMPENSATING A LENDER, INSURER, INVESTOR  
13 OR SERVICER, INCLUDING THROUGH THE PAYMENT OF COMMISSIONS, FOR  
14 LENDER-PLACED INSURANCE POLICIES ISSUED BY THE INSURER; TO  
15 ESTABLISH CERTAIN PROHIBITIONS; TO PROVIDE CERTAIN EXCEPTIONS TO  
16 THE APPLICATION OF THE ACT; TO SET CERTAIN REQUIRED ELEMENTS OF  
17 LENDER-PLACED INSURANCE POLICIES; TO AUTHORIZE THE COMMISSIONER OF  
18 INSURANCE TO ENFORCE THE PROVISIONS OF THE ACT; TO AUTHORIZE THE  
19 DEPARTMENT OF INSURANCE TO IMPOSE A MONETARY PENALTY FOR  
20 VIOLATIONS OF THE ACT; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** (1) The provisions of this act shall apply to  
23 all insurers and insurance producers engaged in any transaction  
24 involving lender-placed insurance.

25 (2) All lender-placed insurance written in connection with  
26 mortgaged real property, including manufactured homes and modular  
27 units, shall be subject to the provisions of this act, except:



28 (a) Transactions involving extensions of credit  
29 primarily for business, commercial or agricultural purposes;

30 (b) Insurance offered by the lender or servicer and  
31 elected by the mortgagor at the mortgagor's option;

32 (c) Insurance purchased by a lender or servicer on real  
33 estate owned property; and

34 (d) Insurance for which no specific charge is made to  
35 the mortgagor or the mortgagor's account.

36 **SECTION 2.** As used in this act, the following terms shall  
37 have the meanings ascribed herein:

38 (a) "Affiliate" means a person who directly, or  
39 indirectly through one or more intermediaries, controls, is  
40 controlled by, or is under common control with, the person  
41 specified.

42 (b) "Individual lender-placed insurance" means coverage  
43 for individual real property evidenced by a certificate of  
44 coverage under a master lender-placed insurance policy or a  
45 lender-placed insurance policy for individual real property.

46 (c) "Insurance producer" means a person or entity, or  
47 its affiliates, required to be licensed under the laws of this  
48 state to sell, solicit or negotiate insurance.

49 (d) "Insurer" means an insurance company, association,  
50 or exchange, or its affiliates, authorized to issue lender placed  
51 insurance in this state.



52 (e) "Investor" means a person or entity, or its  
53 affiliates, holding a beneficial interest in loans secured by real  
54 property.

55 (f) "Lapse" means the moment in time in which a  
56 mortgagor has failed to secure or maintain valid or sufficient  
57 insurance upon mortgaged real property as required by a mortgage  
58 agreement.

59 (g) "Lender" means a person or entity, or its  
60 affiliates, making loans secured by an interest in real property.

61 (h) "Lender-placed insurance" means insurance obtained  
62 by a lender or servicer when a mortgagor does not maintain valid  
63 or sufficient insurance upon mortgaged real property as required  
64 by the terms of the mortgage agreement. Such term shall include  
65 insurance purchased unilaterally by the lender or servicer, who is  
66 the named insured, subsequent to the date of the credit  
67 transaction, providing coverage against loss, expense, or damage  
68 to collateralized property as a result of fire, theft, collision,  
69 or other risks of loss that would either impair a lender,  
70 servicer, or investor's interest, or adversely affect the value of  
71 collateral covered by limited dual interest insurance. Such term  
72 is limited to insurance purchased according to the terms of a  
73 mortgage agreement as a result of the mortgagor's failure to  
74 provide evidence of required insurance.

75 (i) "Loss ratio" means the ratio of incurred losses to  
76 earned premium.



77 (j) "Master lender-placed policy" means a group policy  
78 issued to a lender or servicer providing coverage for all loans in  
79 the lender or servicer's loan portfolio as needed.

80 (k) "Mortgage agreement" means the written document  
81 that sets forth an obligation or liability of any kind secured by  
82 a lien on real property and due from, owing, or incurred by a  
83 mortgagor to a lender on account of a mortgage loan, including a  
84 security agreement, deed of trust or any other document of similar  
85 effect, and any other documents incorporated by reference.

86 (l) "Mortgage loan" means a loan, advance, guarantee or  
87 other extension of credit from a lender to a mortgagor.

88 (m) "Mortgage transaction" means a transaction by the  
89 terms of which the repayment of money loaned or payment of real  
90 property sold is to be made at a future date or dates.

91 (n) "Mortgagee" means the person who holds mortgaged  
92 real property as security for repayment of a mortgage agreement.

93 (o) "Mortgagor" means the person who is obligated on a  
94 mortgage loan pursuant to a mortgage agreement.

95 (p) "Person" means an individual or entity.

96 (q) "Real estate owned property" means property owned  
97 or held by a lender or servicer following foreclosure under the  
98 related mortgage agreement or the acceptance of a deed in lieu of  
99 foreclosure.

100 (r) "Replacement cost value" or "RCV" means the  
101 estimated cost to replace covered property at the time of the loss



102 or damage without deduction for depreciation. Replacement cost  
103 value is not market value, but it is instead the cost to replace  
104 covered property to its pre-loss condition.

105 (s) "Servicer" means a person or entity, or its  
106 affiliates, contractually obligated to service one or more  
107 mortgage loans for a lender or investor. Such term shall include  
108 entities involved in subservicing arrangements.

109 **SECTION 3.** (1) Lender-placed insurance shall become  
110 effective no earlier than the date of lapse of insurance upon  
111 mortgaged real property subject to the terms of a mortgage  
112 agreement or any other state or federal law requiring the same.

113 (2) Individual lender-placed insurance shall terminate on  
114 the earliest of the following dates:

115 (a) The date insurance that is acceptable under the  
116 mortgage agreement becomes effective, subject to the mortgagor  
117 providing sufficient evidence of such acceptable insurance;

118 (b) The date the applicable real property no longer  
119 serves as collateral for a mortgage loan pursuant to a mortgage  
120 agreement;

121 (c) Such other date as specified by the individual  
122 policy or certificate of insurance;

123 (d) Such other date as specified by the lender or  
124 servicer; or

125 (e) The termination date of the policy.



126 (3) An insurance charge shall not be made to a mortgagor for  
127 lender-placed insurance for a term longer than the scheduled term  
128 of the lender-placed insurance, nor shall an insurance charge be  
129 made to the mortgagor for lender placed insurance before the  
130 effective date of the lender placed insurance.

131 **SECTION 4.** (1) Any lender-placed insurance coverage, and  
132 subsequent calculation of premium, shall be based upon the  
133 replacement cost value of the property. Replacement cost value of  
134 the property shall be determined as follows:

135 (a) The dwelling coverage amount set forth in the most  
136 recent evidence of insurance coverage provided by the mortgagee  
137 ("last known coverage amount" or "LKCA"), if known to the lender  
138 or servicer;

139 (b) The insurer shall inquire of the insured at least  
140 once as to the LKCA, and if it is not able to obtain the LKCA from  
141 the insured or in another manner, the replacement cost value may  
142 be determined as set forth in paragraph (c) or (d) of this  
143 subsection;

144 (c) If the LKCA is unknown and cannot be obtained from  
145 the insured or in another manner, the replacement cost of the  
146 property serving as collateral as calculated by the insurer,  
147 unless the use of replacement cost for this purpose is prohibited  
148 by other law; and

149 (d) If the LKCA is unknown and cannot be obtained from  
150 the insured or in another manner, and the replacement cost is not



151 available or its use is prohibited, the unpaid principal balance  
152 of the mortgage loan.

153 (2) In the event of a covered loss, any replacement cost  
154 coverage provided by an insurer in excess of the unpaid principal  
155 balance of the mortgage loan shall be paid to the mortgagor.

156 (3) No insurer shall write lender-placed insurance for which  
157 the premium rate differs from that determined by the schedules of  
158 the insurer on file with the Department of Commerce and Insurance  
159 as of the effective date of the policy.

160 **SECTION 5.** (1) No insurer or insurance producer shall issue  
161 lender-placed insurance on mortgaged property if the insurer or  
162 insurance producer, or an affiliate of the insurer or insurance  
163 producer, owns, performs the servicing for, or owns the servicing  
164 right to, the mortgaged property.

165 (2) No insurer or insurance producer shall compensate a  
166 lender, insurer, investor or servicer, including through the  
167 payment of commissions, for lender-placed insurance policies  
168 issued by the insurer.

169 (3) No insurer or insurance producer shall share  
170 lender-placed insurance premium or risk with the lender, investor,  
171 or servicer that obtained the lender-placed insurance.

172 (4) No insurer or insurance producer shall offer contingent  
173 commissions, profit-sharing, or other payments dependent on  
174 profitability or loss ratios to any person affiliated with a



175 servicer or the insurer in connection with lender-placed  
176 insurance.

177 (5) No insurer shall provide free or below-cost outsourced  
178 services to lenders, investors, or servicers, and no insurer shall  
179 outsource its own functions to lenders, insurance producers,  
180 investors, or servicers on an above cost basis.

181 (6) No insurer or insurance producer shall make any  
182 payments, including, but not limited to, the payment of expenses  
183 to a lender, insurer, investor, or servicer, for the purpose of  
184 securing lender-placed insurance business or related outsourced  
185 services.

186 **SECTION 6.** Nothing in this act shall be construed to allow  
187 an insurance producer or an insurer solely underwriting  
188 lender-placed insurance to circumvent the requirements set forth  
189 in this act. Any part of any requirements, limitations or  
190 exclusions provided in this act shall apply in any part to any  
191 insurer or insurance producer involved in lender-placed insurance.

192 **SECTION 7.** (1) Lender-placed insurance shall be set forth  
193 in an individual policy or certificate of insurance. A copy of  
194 the individual policy, certificate of insurance or other evidence  
195 of insurance coverage shall be mailed, first-class mailed, or  
196 delivered in person to the last known address of the mortgagor, or  
197 delivered in accordance with the Mississippi Insurance E-Commerce  
198 Model Act.





199 (2) In addition to any information otherwise required by  
200 law, the individual policy or certificate of insurance coverage  
201 shall include the following information:

202 (a) The address and identification of the insured  
203 property;

204 (b) The coverage amount, or amounts if multiple  
205 coverages are provided;

206 (c) The effective date of the coverage;

207 (d) The term of coverage;

208 (e) The premium charge for the coverage;

209 (f) Contact information for filing a claim; and

210 (g) A complete description of the coverage provided.

211 **SECTION 8.** (1) All policy forms and certificates of  
212 insurance to be delivered or issued for delivery in this state,  
213 and the schedules of premium rates pertaining thereto, shall be  
214 filed with the Department of Insurance.

215 (2) The Department of Insurance shall review the rates to  
216 determine whether the rates are excessive, inadequate or unfairly  
217 discriminatory. This analysis shall include a determination as to  
218 whether expenses included by the insurer in the rate are  
219 appropriate.

220 (3) All insurers shall re-file lender-placed insurance  
221 rates at least once every four (4) years.



222 (4) All insurers writing lender-placed insurance shall have  
223 separate rates for lender-placed insurance and voluntary insurance  
224 obtained by a mortgage servicer on real estate owned property.

225 (5) Upon the introduction of a new lender-placed insurance  
226 program, the insurer shall reference its experience in existing  
227 programs in the associated filings. Nothing in this act shall  
228 limit an insurer's discretion, as actuarially appropriate, to  
229 distinguish different terms, conditions, exclusions, eligibility  
230 criteria or other unique or different characteristics. Moreover,  
231 an insurer may, where actuarially acceptable, rely upon models or,  
232 in the case of flood filings where applicable experience is not  
233 credible, on Federal Emergency Management Agency National Flood  
234 Insurance Program data.

235 (6) No later than April first of each year, each insurer  
236 with at least One Hundred Thousand Dollars (\$100,000.00) in direct  
237 written premium for lender-placed insurance in this state during  
238 the prior calendar year, shall report to the Department of  
239 Commerce and Insurance the following information for the prior  
240 calendar year:

- 241 (a) Actual loss ratio;
- 242 (b) Earned premium;
- 243 (c) Any aggregate schedule rating debit or credit to  
244 earned premium;
- 245 (d) Itemized expenses;
- 246 (e) Paid losses; and



247 (f) Loss reserves, including case reserves and reserves  
248 for incurred but not reported losses.

249 The report under this subsection (6) shall be separately  
250 produced for each lender-placed program and presented on both an  
251 individual jurisdiction and countrywide basis.

252 (7) If an insurer experiences an annual loss ratio of less  
253 than thirty five percent (35%) in any lender-placed program  
254 for two (2) consecutive years, it shall submit a rate filing,  
255 either adjusting its rates or supporting their continuance, to the  
256 Department of Insurance no more than ninety (90) days after the  
257 submission of the data required in subsection (6) of this section.  
258 This subsection (7) shall not apply with regard to lender-placed  
259 flood insurance.

260 (8) Except as otherwise specifically set forth in this  
261 section, rates and forms shall be filed as required under the  
262 insurance laws of this state.

263 **SECTION 9.** (1) The Commissioner of the Department of  
264 Insurance shall have authority to enforce the provisions of this  
265 act.

266 (2) A final order of the commissioner enforcing this act  
267 shall be subject to judicial review.

268 (3) No order of the commissioner enforcing this act or order  
269 of a court to enforce the same shall in any way relieve or absolve  
270 any person affected by such order from any liability under any  
271 other laws of this state.



272 (4) Nothing in this act shall be construed to create or  
273 imply a private cause of action for violations of this act.

274 (5) Nothing in this act shall be construed to extinguish any  
275 mortgagor rights otherwise available under state, federal or  
276 common law.

277 **SECTION 10.** An insurer that violates an order of the  
278 commissioner, while the order is in effect may, after notice and  
279 hearing, and upon order of the commissioner, be subject at the  
280 discretion of the commissioner to either or both of the following:

281 (a) Payment of a monetary penalty of not more than One  
282 Thousand Dollars (\$1,000.00) per violation, not to exceed an  
283 aggregate penalty of One Hundred Thousand Dollars (\$100,000.00),  
284 unless the violation was committed flagrantly in a conscious  
285 disregard of this act, in which case the penalty shall not be more  
286 than Twenty-Five Thousand Dollars (\$25,000.00) for each violation,  
287 not to exceed an aggregate penalty of Two Hundred Fifty Thousand  
288 Dollars (\$250,000.00); or

289 (b) Suspension or revocation of the insurer's license.

290 **SECTION 11.** The Department of Insurance may promulgate rules  
291 as necessary for the implementation of this act.

292 **SECTION 12.** This act shall take effect and be in force from  
293 and after July 1, 2023.

