

By: Senator(s) Kirby

To: Insurance

SENATE BILL NO. 2122

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 to
68 collateralized property as a result of fire, theft, collision or
69 other risks of loss that would either impair a lender, servicer or
70 investor's interest, or adversely affect the value of collateral
71 covered by limited dual interest insurance. Such term is limited
72 to insurance purchased according to the terms of a mortgage
73 agreement as a result of the mortgagor's failure to provide
74 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 is 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 Insurance as of the
159 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 1st of each year, each insurer with
236 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 Insurance the following information for the prior calendar year:

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



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

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

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

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

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

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

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



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

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

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

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

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

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

291 **SECTION 12.** This act shall take effect and be in force from
292 and after July 1, 2024.

