

By: Representative Turner

To: Insurance; Technology

HOUSE BILL NO. 1169

1 AN ACT TO AMEND SECTION 83-23-109, MISSISSIPPI CODE OF 1972,
2 TO AMEND THE MISSISSIPPI INSURANCE GUARANTY ASSOCIATION LAW TO
3 REVISE THE DEFINITION OF "COVERED CLAIM" AND TO INCLUDE THE
4 DEFINITION OF "CYBERSECURITY INSURANCE"; TO AMEND SECTION
5 83-23-115, MISSISSIPPI CODE OF 1972, TO ESTABLISH THE OBLIGATIONS
6 FOR CLAIMANTS FOR PROPERTY DAMAGE COVERED CLAIMS AND ALL FIRST-AND
7 THIRD-PARTY CLAIMS UNDER A POLICY OR ENDORSEMENT PROVIDING FOR
8 CYBERSECURITY INSURANCE COVERAGE; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 83-23-109, Mississippi Code of 1972, is
11 amended as follows:

12 83-23-109. As used in this article:

13 (a) "Affiliate" means a person who directly, or
14 indirectly, through one or more intermediaries, controls, is
15 controlled by, or is under common control with an insolvent
16 insurer on December 31 of the year next preceding the date the
17 insurer becomes an insolvent insurer.

18 (b) "Association" means the Mississippi Insurance
19 Guaranty Association created under Section 83-23-111.

20 (c) "Claimant" means any insured making a first-party
21 claim or any person instituting a liability claim, provided that



no person who is an affiliate of the insolvent insurer may be a claimant.

(d) "Commissioner" means the Commissioner of Insurance.

(e) "Control" means the possession, direct or indirect, of the power to direct or cause direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

(f) "Covered claim" means an unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this article applies issued by an insurer, if such insurer becomes an insolvent insurer and (i) the claimant or insured is a resident of this state at the time of the insured event, provided that for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event; or (ii) the property from which the claim arises is permanently located in this state. "Covered claim"



shall not include any amount awarded as punitive or exemplary damages; or sought as a return of premium under any retrospective rating plan; or due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise and shall preclude recovery thereof from the insured of any insolvent carrier to the extent of the policy limits. "Covered claim" shall not include any claim that would otherwise be a covered claim under this article that has been rejected or denied by any other state guaranty fund based upon that state's statutory exclusions regarding the insured's net worth. Notwithstanding any other provision of this definition to the contrary, an insurance policy issued by a member insurer and later allocated, transferred, or assumed by, or otherwise made the sole responsibility of another insurer, pursuant to any provision of law of this state providing for the division of an insurance company or the statutory assumption or transfer of designated policies and under which there is no remaining obligation to the transferring entity, shall be considered to have been issued by a member insurer which is an insolvent insurer for the purposes of this chapter in the event that the insurer to which the policy has been allocated, transferred, assumed by, or otherwise made the sole responsibility of is placed in liquidation. An insurance policy that was issued by a nonmember insurer and later allocated, transferred, assumed by, or otherwise made the sole responsibility of a member insurer under any provision of law of this state



72 described in this subparagraph shall not be considered to have
73 been issued by a member insurer for the purposes of this chapter.

74 (g) "Insolvent insurer" means an insurer licensed to
75 transact insurance in this state either at the time the policy was
76 issued or when the insured event occurred and against whom an
77 order of liquidation with a finding of insolvency has been entered
78 by a court of competent jurisdiction, in the insurer's state of
79 domicile or of this state and the order of liquidation has not
80 been stayed or been the subject of a writ of supersedeas or other
81 comparable order.

82 (h) "Member insurer" means any person who (i) writes
83 any kind of insurance to which this article applies under Section
84 83-23-105, including the exchange of reciprocal or interinsurance
85 contracts, and (ii) is licensed to transact insurance in this
86 state.

87 (i) "Net direct written premiums" means direct gross
88 premiums written in this state on insurance policies to which this
89 article applies, less return premiums thereon and dividends paid
90 or credited to policyholders on such direct business. "Net direct
91 written premiums" does not include premiums on contracts between
92 insurers or reinsurers.

93 (j) "Person" means any individual, corporation,
94 partnership, association or voluntary organization.

95 (k) "Cybersecurity insurance" includes first-and
96 third-party coverage, in a policy or endorsement, written on a



97 direct, admitted basis for losses and loss mitigation arising out
98 of or relating to data privacy breaches, unauthorized information
99 network security intrusions, computer viruses, ransomware, cyber
100 extortion, indemnity theft and similar exposures.

101 **SECTION 2.** Section 83-23-115, Mississippi Code of 1972, is
102 amended as follows:

103 83-23-115. (1) The association shall:

104 (a) Be obligated to the extent of the covered claims
105 existing prior to the determination of insolvency and arising
106 within thirty (30) days after the determination of insolvency, or
107 before the policy expiration date if less than thirty (30) days
108 after the determination, or before the insured replaces the policy
109 or causes its cancellation if he does so within thirty (30) days
110 of the determination. Such obligation shall be satisfied by
111 paying the claimant an amount as follows:

112 (i) The full amount of a covered claim for
113 benefits under a workers' compensation insurance coverage;

114 (ii) An amount in excess of Fifty Dollars (\$50.00)
115 per policy for a covered claim for the return of unearned premium;

116 (iii) An amount in excess of Fifty Dollars
117 (\$50.00) but not exceeding Three Hundred Thousand Dollars
118 (\$300,000.00) per claimant for all other covered claims * * *;

119 (iv) An amount in excess of Fifty Dollars (\$50.00)
120 but not exceeding Four Hundred Thousand Dollars (\$400,000.00) per
121 claimant for property damage covered claims;



122 (v) In no event shall the association be obligated
123 to pay an amount in excess of Three Hundred Thousand Dollars
124 (\$300,000.00) for all first-and third-party claims under a policy
125 or endorsement providing or that is found to provide cybersecurity
126 insurance coverages and arising out of a single insured event,
127 regardless of the number of claims made or the number of
128 claimants.

129 In no event shall the association be obligated to a
130 policyholder or claimant in an amount in excess of the obligation
131 of the insolvent insurer under the policy from which the claim
132 arises. Notwithstanding any other provisions of this article, a
133 covered claim shall not include a claim filed with the association
134 after final date set by the court for the filing of claims against
135 the liquidator or receiver of an insolvent insurer.

136 (b) Be deemed the insurer to the extent of its
137 obligation on the covered claims and to such extent shall have all
138 rights, duties, and obligations of the insolvent insurer as if the
139 insurer had not become insolvent.

140 (c) Assess insurers amounts necessary to pay the
141 obligations of the association under paragraph (a) subsequent to
142 an insolvency, the expenses of handling covered claims subsequent
143 to an insolvency, and the cost of examinations under Section
144 83-23-125 and other expenses authorized by this article. The
145 assessments of each member insurer shall be in the proportion that
146 the net direct written premiums of the member insurer for the



preceding calendar year bears to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than one percent (1%) of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off, against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer.

(d) Investigate claims brought against the association; adjust, compromise, settle, and pay covered claims to the extent of the association's obligation; deny all other claims; and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties, to determine the extent to



172 which such settlements, releases, and judgments may be properly
173 contested.

174 (e) Notify such persons as the commissioner directs
175 under Section 83-23-119(2) (a) .

176 (f) Handle claims through its employees or through one
177 or more insurers or other persons designated as servicing
178 facilities. Designation of a servicing facility is subject to the
179 approval of the commissioner, but such designation may be declined
180 by a member insurer.

181 (g) Reimburse each servicing facility for obligations
182 of the association paid by the facility and for expenses incurred
183 by the facility while handling claims on behalf of the
184 association, and shall pay the other expenses of the association
185 authorized by this article.

186 (2) The association may:

187 (a) Employ or retain such persons as are necessary to
188 handle claims and perform other duties of the association.

189 (b) Borrow funds necessary to effect the purposes of
190 this article in accord with the plan of operation.

191 (c) Sue or be sued.

192 (d) Negotiate and become a party to such contracts as
193 are necessary to carry out the purpose of this article.

194 (e) Perform such other acts as are necessary or proper
195 to effectuate the purpose of this article.



196 (f) Refund to the member insurers in proportion to the
197 contribution of each member insurer to the association that amount
198 by which the assets of the association exceed the liabilities if,
199 at the end of any calendar year, the board of directors finds that
200 the assets of the association exceed the liabilities of the
201 association as estimated by the board of directors for the coming
202 year.

203 **SECTION 3.** This act shall take effect and be in force from
204 and after July 1, 2025.

