

By: Senator(s) Michel

To: Insurance

SENATE BILL NO. 2412

1 AN ACT TO AMEND SECTIONS 83-6-1, 83-6-3, 83-6-5, 83-6-7,
2 83-6-21 AND 83-6-29 TO INCLUDE NAIC GROUP CAPITAL CALCULATION AND
3 LIQUIDITY STRESS TEST REQUIREMENTS IN THE INSURANCE HOLDING
4 COMPANY ACT; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 83-6-1, Mississippi Code of 1972, is
7 amended as follows:

8 83-6-1. As used in this chapter the following terms have the
9 respective meanings herein set forth unless the context shall
10 require otherwise:

11 (a) An "affiliate of" or person "affiliated" with a
12 specific person means a person that directly, or indirectly
13 through one or more intermediaries, controls, or is controlled by,
14 or is under common control with, the person specified.

15 (b) "Commissioner" means the Commissioner of Insurance.

16 (c) "Control" (including the terms "controlling,"
17 "controlled by" and "under common control with") means the
18 possession of the power to direct or cause the direction of the
19 management and policies of a person, whether through the ownership



20 of voting securities, by contract other than a commercial contract
21 for goods or nonmanagement services or otherwise, unless the power
22 is the result of an official position with or corporate office
23 held by the person. "Control" shall be presumed to exist if any
24 person, directly or indirectly, owns, controls, holds with the
25 power to vote or holds proxies representing ten percent (10%) or
26 more of the voting securities of any other person. This
27 presumption may be rebutted by a showing made in the manner
28 provided in Section 83-6-17 that control does not exist in fact.
29 The commissioner may determine, after furnishing all persons in
30 interest notice and opportunity to be heard and making specific
31 findings of fact to support such determination, that control
32 exists in fact, notwithstanding the absence of a presumption to
33 that effect.

34 (d) An "insurance holding company system" consists of
35 two (2) or more affiliated persons, one or more of which is an
36 insurer.

37 (e) "Insurer" means only those companies subject to the
38 jurisdiction of the commissioner as provided in Section 83-5-1;
39 however, burial associations regulated pursuant to Chapter 37,
40 Title 83, Mississippi Code of 1972, are excluded from this
41 definition.

42 (f) "Person" means an individual, corporation,
43 partnership, association, joint-stock company, trust,
44 unincorporated organization, any similar entity or any combination



of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

(g) A "security holder" of a specified person means one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

(h) "Subsidiary" of a specified person means an affiliate controlled by a person, directly or indirectly, through one or more intermediaries.

(i) The term "voting security" includes any security convertible into or evidencing a right to acquire a voting security.

(j) "Enterprise risk" shall mean any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's Risk-Based Capital to fall into company action level as provided in Section 83-5-405 or would cause the insurer to be in hazardous financial condition as provided in Part 1, Chapter 39, Title 19 of the Mississippi Administrative Code.



69 (k) "Group-wide supervisor" means the regulatory
70 official authorized to engage in conducting and coordinating
71 group-wide supervision activities who is determined or
72 acknowledged by the commissioner under Section 83-6-47 to have
73 sufficient significant contacts with the internationally active
74 insurance group.

75 (1) "Internationally active insurance group" means an
76 insurance holding company system that:

77 (i) Includes an insurer registered under Section
78 83-6-3; and

79 (ii) Meets the following criteria:

80 1. Premiums written in at least three (3)
81 countries;

82 2. The percentage of gross premiums written
83 outside the United States is at least ten percent (10%) of the
84 insurance holding company system's total gross written premiums;
85 and

86 3. Based on a three-year rolling average, the
87 total assets of the insurance holding company system are at least
88 Fifty Billion (\$50,000,000,000.00) or the total gross written
89 premiums of the insurance holding company system are at least Ten
90 Billion Dollars (\$10,000,000,000.00).

91 (m) Group Capital Calculation instructions" means the
92 group capital calculation instructions as adopted by the NAIC and



as amended by the NAIC from time to time in accordance with the
procedures adopted by the NAIC.

(n) "NAIC" means the National Association of Insurance
Commissioners.

(o) "NAIC" Liquidity Stress Test Framework. The "NAIC
Liquidity Stress Test Framework" is a separate NAIC publication
which includes a history of the NAIC's development of regulatory
liquidity stress testing, the Scope Criteria applicable for a
specific data year, and the Liquidity Stress Test Framework
instructions and reporting templates for a specific data year,
such Scope Criteria, instructions and reporting template being as
adopted by the NAIC and as amended by the NAIC from time to time
in accordance with the procedures adopted by the NAIC.

(p) "Scope Criteria." The "Scope Criteria," as
detailed in the NAIC Liquidity Stress Test Framework, are the
designated exposure bases, along with minimum magnitudes thereof
for the specified data year, used to establish a preliminary list
of insurers considered scoped into the NAIC Liquidity Stress Test
Framework for that data year.

SECTION 2. Section 83-6-3, Mississippi Code of 1972, is
amended as follows:

83-6-3. Every insurer which is authorized to do business in
this state and which is a member of an insurance holding company
system, except a foreign insurer subject to disclosure
requirements and standards adopted by statute or regulation in the



jurisdiction of its domicile which are substantially similar to those contained in Sections 83-6-3 through 83-6-19, is required to register with the commissioner. Any insurer which is subject to registration under Sections 83-6-3 through 83-6-19 is required to register within * * * fifteen (15) days after it becomes subject to registration, whichever is later, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under Sections 83-6-3 through 83-6-19 to furnish a copy of the registration statement or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction.

SECTION 3. Section 83-6-5, Mississippi Code of 1972, is amended as follows:

83-6-5. (1) Every insurer subject to registration is required to file a registration statement on a form provided by the commissioner which shall contain current information setting forth:

(a) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(b) The identity of every member of the insurance holding company system;



(c) The following agreements in force, relationships subsisting and transactions currently outstanding between such insurer and its affiliates:

(i) Loans, other investments or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales or exchanges of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles;

(vi) Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements.

(d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;



(e) If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the United States Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC;

(f) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner;

(g) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures.

(h) Any other information required by the commissioner by rule or regulation.

(2) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.



(3) Subject to Section 83-6-25, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof.

(4) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.

(5) Enterprise Risk Filings. (* * *a) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the * * * Commissioner of Insurance of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(b) Group Capital Calculation. Except as provided below, the ultimate controlling person of every insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the Commissioner of Insurance. The report shall be completed in accordance with the NAIC Group Capital Calculation Instructions, which may permit



the Commissioner of Insurance to allow a controlling person that
is not the ultimate controlling person to file the group capital
calculation. The report shall be filed with the insurance holding
company system as determined by the commissioner in accordance
with the procedures within the Financial Analysis Handbook adopted
by the NAIC. Insurance holding company systems described below
are exempt from filing the group capital calculation:

(i) An insurance holding company system that has
only one (1) insurer within its holding company structure, that
only writes business and is only licensed in its domestic state,
and assumes no business from any other insurer;

(ii) An insurance holding company system that is
required to perform a group capital calculation specified by the
United States Federal Reserve Board. The Commissioner of
Insurance shall request the calculation from the Federal Reserve
Board under the terms of information sharing agreements in effect.
If the Federal Reserve Board cannot share the calculation with the
Commissioner of Insurance, the insurance holding company system is
not exempt from the group capital calculation filing;

(iii) An insurance holding company system whose
non-U.S. group-wide supervisor is located within a reciprocal
jurisdiction as described in Section 83-19-151(f)(1) that
recognizes the U.S. State Regulatory approach to group supervision
and group capital;

(iv) An insurance holding company system:



242 1. That provides information to the
243 Commissioner of Insurance that meets the requirements for
244 accreditation under the NAIC financial standards and accreditation
245 program, either directly or indirectly through the group-wide
246 supervisor, who has determined such information is satisfactory to
247 allow the Commissioner of Insurance to comply with the NAIC group
248 supervision approach, as detailed in the NAIC Financial Analysis
249 Handbook, and

250 2. Whose non-U.S. group-wide supervisor who
251 is not in a reciprocal jurisdiction recognizes and accepts, as
252 specified by the commissioner in regulation, the group capital
253 calculation as the world-wide group capital assessment for U.S.
254 insurance groups who operate in that jurisdiction.

255 (v) Notwithstanding the provisions of Sections
256 83-6-5(5) (b) (iii) and 83-6-5(5) (b) (iv), a Commissioner of
257 Insurance shall require the group capital calculation for U.S.
258 operations of any non-U.S. based insurance holding company system
259 where, after any necessary consultation with other supervisors or
260 officials, it is deemed appropriate by the Commissioner of
261 Insurance for prudential oversight and solvency monitoring
262 purposes or for ensuring the competitiveness of the insurance
263 marketplace.

264 (vi) Notwithstanding the exemptions from filing
265 the group capital calculation stated in Sections 83-6-5(5) (b) (i)
266 through 83-6-5(5) (b) (iv), the Commissioner of Insurance has the



discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the commissioner in regulation.

(vii) If the Commissioner of Insurance determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this section, the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the Commissioner of Insurance based on reasonable grounds shown.

(c) Liquidity Stress Test. The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC Liquidity Stress Test Framework shall file the results of a specific year's Liquidity Stress Test. The filing shall be made to the Commissioner of Insurance of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners:

(i) The NAIC Liquidity Stress Test Framework includes Scope Criteria applicable to a specific data year. These Scope Criteria are reviewed at least annually by the Financial Stability Task Force or its successor. Any change to the NAIC Liquidity Stress Test Framework or to the data year for which the Scope Criteria are to be measured shall be effective on January 1



of the year following the calendar year when such changes are adopted. Insurers meeting at least one (1) threshold of the Scope Criteria are considered scoped into the NAIC Liquidity Stress Test Framework for the specified data year unless the Commissioner of Insurance, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the NAIC Liquidity Stress Test Framework for that data year. Similarly, insurers that do not trigger at least one (1) threshold of the Scope Criteria are considered scoped out of the NAIC Liquidity Stress Test Framework for the specified data year, unless the Commissioner of Insurance, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the NAIC Liquidity Stress Test Framework for that data year.

Regulators wish to avoid having insurers scoped in and out of the NAIC Liquidity Stress Test Framework on a frequent basis. The Commissioner of Insurance, in consultation with the Financial Stability Task Force or its successor, will assess this concern as part of the determination for an insurer.

(ii) The performance of, and filing of the results from, a specific year's Liquidity Stress Test shall comply with the NAIC Liquidity Stress Test Framework's instructions and reporting templates for that year and any Commissioner of Insurance determinations, in consultation with the Financial



316 Stability Task Force or its successor, provided within the
317 Framework.

318 (6) **Violations.** The failure to file a registration
319 statement or any summary of the registration state or enterprise
320 risk filing required by this section within the time specified for
321 filing shall be a violation of this section.

322 **SECTION 4.** Section 83-6-7, Mississippi Code of 1972, is
323 amended as follows:

324 83-6-7. No information need be disclosed on the registration
325 statement filed pursuant to Section 83-6-5 if such information is
326 not material for the purposes of Sections 83-6-3 through 83-6-19.
327 Unless the commissioner by rule, regulation or order provides
328 otherwise, sales, purchases, exchanges, loans or extensions of
329 credit or investments involving one-half of one percent (1/2 of
330 1%) or less of an insurer's admitted assets as of the thirty-first
331 day of December next preceding are not to be deemed material for
332 purposes of Sections 83-6-3 through 83-6-19. The definition of
333 materiality provided in this section shall not apply for purposes
334 of the Group Capital Calculation or the Liquidity Stress Test
335 Framework.

336 **SECTION 5.** Section 83-6-21, Mississippi Code of 1972, is
337 amended as follows:

338 83-6-21. (1) Transactions within a holding company system
339 to which an insurer subject to registration is a party shall be
340 subject to the following standards:



341 (a) The terms shall be fair and reasonable;

342 (b) Agreements for cost-sharing services and management
343 shall include such provisions as required by rule and regulation
344 issued by the commissioner;

345 (c) Charges or fees for services performed shall be
346 reasonable;

347 (d) Expenses incurred and payment received shall be
348 allocated to the insurer in conformity with customary insurance
349 accounting practices consistently applied;

350 (e) The books, accounts and records of each party to
351 all such transactions shall be so maintained as to clearly and
352 accurately disclose the nature and details of the transactions
353 including such accounting information as is necessary to support
354 the reasonableness of the charges or fees to the respective
355 parties; * * *

356 (f) The insurer's surplus as regards policyholders
357 following any dividends or distributions to shareholder affiliates
358 shall be reasonable in relation to the insurer's outstanding
359 liabilities and adequate to its financial needs * * *;

360 (g) If an insurer subject to the act is deemed by the
361 commissioner to be in a hazardous financial condition as defined
362 by 19 Miss. Admin. Code, Part 1, Chapter 39: Define Standards and
363 Commissioner's Authority for Companies Deemed to be in Hazardous
364 Financial Condition Regulation or a condition that would be
365 grounds for supervision, conservation or delinquency proceeding,



366 then the commissioner may require the insurer to secure and
367 maintain either a deposit, held by the commissioner, or a bond, as
368 determined by the insurer at the insurer's discretion, for the
369 protection of the insurer for the duration of the contract(s) or
370 agreement(s), or the existence of the condition for which the
371 commissioner required the deposit or the bond.

372 In determining whether a deposit or a bond is required, the
373 commissioner should consider whether concerns exist with respect
374 to the affiliated person's ability to fulfill the contract(s) or
375 agreement(s) if the insurer were to be put into liquidation. Once
376 the insurer is deemed to be in a hazardous financial condition or
377 a condition that would be grounds for supervision, conservation or
378 a delinquency proceeding, and a deposit or bond is necessary, the
379 commissioner has discretion to determine the amount of the deposit
380 or bond, not to exceed the value of the contract(s) or
381 agreement(s) in any one (1) year, and whether such deposit or bond
382 should be required for a single contract, multiple contracts or a
383 contract only with a specific person(s);

384 (h) All records and data of the insurer held by an
385 affiliate are and remain the property of the insurer, are subject
386 to control of the insurer, are identifiable, and are segregated or
387 readily capable of segregation, at no additional cost to the
388 insurer, from all other persons' records and data. This includes
389 all records and data that are otherwise the property of the
390 insurer, in whatever form maintained, including, but not limited



to, claims and claim files, policyholder lists, application files,
litigation files, premium records, rate books, underwriting
manuals, personnel records, financial records or similar records
within the possession, custody or control of the affiliate. At
the request of the insurer, the affiliate shall provide that the
receiver can obtain a complete set of all records of any type that
pertain to the insurer's business; obtain access to the operating
systems on which the data is maintained; obtain the software that
runs those systems either through assumption of licensing
agreements or otherwise; and restrict the use of the data by the
affiliate if it is not operating the insurer's business. The
affiliate shall provide a waiver of any landlord lien or other
encumbrance to give the insurer access to all records and data in
the event of the affiliate's default under a lease or other
agreement; and

(i) Premiums or other funds belonging to the insurer
that are collected by or held by an affiliate are the exclusive
property of the insurer and are subject to the control of the
insurer. Any right of offset in the event an insurer is placed
into receivership shall be subject to the Insurers Rehabilitation
and Liquidation Act, Sections 83-24-1 through 83-24-119.

(2) The following transactions involving a domestic insurer
and any person in its holding company system, including amendments
or modifications of affiliate agreements previously filed pursuant
to this section, which are subject to any materiality standards



416 contained in paragraphs (a) through (i) of this subsection, shall
417 not be entered into unless the insurer has notified the
418 commissioner in writing of its intention to enter into such
419 transaction at least thirty (30) days prior thereto, or such
420 shorter period as the commissioner may permit, and the
421 commissioner has not disapproved it within such period. The
422 notice for amendments or modifications shall include the reasons
423 for the change and the financial impact on the domestic insurer.
424 Informal notice shall be reported within thirty (30) days after a
425 termination of a previously filed agreement to the commissioner
426 for determination of the type of filing required, if any.

427 (a) Sales, purchases, exchanges, loans or extension of
428 credit, guarantees or investments provided such transactions are
429 equal to or exceed: (i) with respect to nonlife insurers, the
430 lesser of three percent (3%) of the insurer's admitted assets or
431 twenty-five percent (25%) of surplus as regards policyholders; and
432 (ii) with respect to life insurers, three percent (3%) of the
433 insurer's admitted assets; each as of December 31 next preceding:

434 (b) Loans or extensions of credit to any person who is
435 not an affiliate, where the insurer makes such loans or extension
436 of credit with the agreement or understanding that the proceeds of
437 such transactions, in whole or in substantial part, are to be used
438 to make loans or extensions of credit to, to purchase assets of or
439 to make investments in, any affiliate of the insurer making such
440 loans or extensions of credit provided such transactions are equal



441 to or exceed: (i) with respect to nonlife insurers, the lesser of
442 three percent (3%) of the insurer's admitted assets or twenty-five
443 percent (25%) of surplus as regards policyholders; and (ii) with
444 respect to life insurers, three percent (3%) of the insurer's
445 admitted assets; each as of December 31 next preceding;

446 (c) Reinsurance agreements or modifications thereto,
447 including (i) all reinsurance pooling agreements; and (ii)
448 agreements in which the reinsurance premium or a change in the
449 insurer's liabilities equals or exceeds five percent (5%) of the
450 insurer's surplus as regards policyholders, as of December 31 next
451 preceding, including those agreements which may require as
452 consideration the transfer of assets from an insurer to a
453 nonaffiliate, if an agreement or understanding exists between the
454 insurer and nonaffiliate that any portion of such assets will be
455 transferred to one or more affiliates of the insurer;

456 (d) All management agreements that would place control
457 of the insurer outside of the insurance holding company system;

458 (e) All service contracts or cost-sharing arrangements
459 wherein the annual aggregate cost to the insurer would equal or
460 exceed the amounts specified in paragraph (a) of this subsection;

461 (f) All tax allocation agreements;

462 (g) Guarantees when made by a domestic insurer;
463 provided, however, that a guarantee which is quantifiable as to
464 amount is not subject to the notice requirements of this paragraph
465 unless it exceeds the lesser of one-half of one percent (.5%) of



the insurer's admitted assets or ten percent (10%) of surplus as regards policyholders as of December 31 next preceding. Further, all guarantees which are not quantifiable as to amounts are subject to the notice requirements of this paragraph;

(h) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent (2.5%) of the insurer's surplus as to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to Section 83-6-2, or in nonsubsidiary insurance affiliates that are subject to the provisions of this chapter, are exempt from this requirement; and

(i) Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this subsection (2) shall be determined to authorize or permit any transactions which, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

(3) A domestic insurer shall not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and avoid the review that would occur otherwise. If the



491 commissioner determines that such separate transactions were
492 entered into over any twelve-month period for such purpose, he may
493 exercise his authority under Section 83-6-35.

494 (4) The commissioner, in reviewing transactions pursuant to
495 subsection (2) of this section, shall consider whether the
496 transactions comply with the standards set forth in subsection (1)
497 of this section and whether they may adversely affect the
498 interests of policyholders.

499 (5) The commissioner shall be notified within thirty (30)
500 days of any investment of the domestic insurer in any one (1)
501 corporation if the total investment in such corporation by the
502 insurance holding company system exceeds ten percent (10%) of such
503 corporation's voting securities.

504 (6) Insurance companies within a holding company system
505 shall not sell or exchange their stock among each other unless the
506 companies have obtained stock company permits before conducting
507 such transactions.

508 (7) Dividends and other distributions. No domestic insurer
509 shall pay any extraordinary dividend or make any other
510 extraordinary distribution to its shareholders until thirty (30)
511 days after the commissioner has received notice of the declaration
512 thereof and has not within that period disapproved the payment, or
513 until the commissioner has approved the payment within the
514 thirty-day period. For purposes of this subsection, an
515 extraordinary dividend or distribution includes any dividend or



distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the lesser of:

(a) Ten percent (10%) of the insurer's surplus as regards policyholders as of the 31st day of December next preceding; or

(b) The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two (2) calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval, and the declaration shall confer no rights upon shareholders until the commissioner has approved the payment of the dividend or



distribution, or the commissioner has not disapproved payment within the thirty-day period referred to above.

(8) Supervision, seizure, conservatorship or receivership proceedings. Any affiliate that is a party to an agreement or contract with a domestic insurer that is subject to subsection (2)(d) of this section shall be subject to the jurisdiction of any supervision, seizure, conservatorship or receivership proceedings against the insurer and to the authority of any supervisor, conservator, rehabilitator or liquidator for the insurer appointed pursuant to supervision and receivership acts for the purpose of interpreting, enforcing and overseeing the affiliate's obligations under the agreement or contract to perform services for the insurer that:

(a) Are an integral part of the insurer's operations, including, but not limited to, management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment or any other similar functions; or

(b) The commissioner may require that an agreement or contract pursuant to subsection (2)(d) of this section for the provision of services described in (i) and (ii) above specify that the affiliate consents to the jurisdiction as set forth in this subsection (8).

SECTION 6. Section 83-6-29, Mississippi Code of 1972, is amended as follows:



83-6-29. (1) Documents, materials or other information in the possession or control of the Department of Insurance that are obtained by or disclosed to the commissioner or any other person during an examination or investigation made pursuant to Section 83-6-27 and all information reported pursuant to Sections 83-6-24(2)(1) and (m), 83-6-3, 83-6-5 and 83-6-21 shall be confidential by law and privileged, shall not be subject to the Mississippi Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.

(a) For purposes of the information reported and provided to the Department of Insurance pursuant to Section 83-6-5(5)(b), the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced



589 within the calculation and any group capital information received
590 from an insurance holding company supervised by the Federal
591 Reserve Board or any non-U.S. group-wide supervisor.

592 (b) For purposes of the information reported and
593 provided to the Department of Insurance pursuant to Section
594 83-6-5(5)(c), the commissioner shall maintain the confidentiality
595 of the Liquidity Stress Test results and supporting disclosures
596 and any liquidity stress test information received from an
597 insurance holding company supervised by the Federal Reserve Board
598 and non-U.S. group-wide supervisors.

599 (2) Neither the commissioner nor any person who received
600 documents, materials or other information while acting under the
601 authority of the commissioner or with whom such documents,
602 materials or other information are shared pursuant to this section
603 shall be permitted or required to testify in any private civil
604 action concerning any confidential documents, materials or
605 information subject to subsection (1) of this section.

606 (3) In order to assist in the performance of the
607 commissioner's duties, the commissioner:

608 (a) May share documents, materials or other
609 information, including the confidential and privileged documents,
610 materials or information subject to subsection (1) of this
611 section, with other state, federal and international regulatory
612 agencies, with the National Association of Insurance Commissioners
613 (NAIC) and its affiliates and subsidiaries, and with state,



614 federal and international law enforcement authorities, provided
615 that the recipient agrees in writing to maintain the
616 confidentiality and privileged status of the document, material or
617 other information, and has verified in writing the legal authority
618 to maintain confidentiality.

619 (b) Notwithstanding paragraph (a) of this subsection,
620 the commissioner may only share confidential and privileged
621 documents, material or information reported pursuant to Section
622 83-6-5(5) with commissioners of states having statutes or
623 regulations substantially similar to subsection (1) of this
624 section and who have agreed in writing not to disclose such
625 information.

626 (c) May receive documents, materials or information,
627 including otherwise confidential and privileged documents,
628 materials or information from the NAIC and its affiliates and
629 subsidiaries and from regulatory and law enforcement officials of
630 other foreign or domestic jurisdictions, and shall maintain as
631 confidential or privileged any document, material or information
632 received with notice or the understanding that it is confidential
633 or privileged under the laws of the jurisdiction that is the
634 source of the document, material or information.

635 (d) Shall enter into written agreements with the NAIC
636 governing sharing and use of information provided pursuant to this
637 section consistent with this subsection that shall:



638 (i) Specify procedures and protocols regarding the
639 confidentiality and security of information shared with the NAIC
640 and its affiliates and subsidiaries pursuant to this section,
641 including procedures and protocols for sharing by the NAIC with
642 other state, federal or international regulators;

643 (ii) Specify that ownership of information shared
644 with the NAIC and its affiliates and subsidiaries pursuant to this
645 section remains with the commissioner and the NAIC's use of the
646 information is subject to the direction of the commissioner;

647 (iii) Require prompt notice to be given to an
648 insurer whose confidential information in the possession of the
649 NAIC pursuant to this section is subject to a request or subpoena
650 to the NAIC for disclosure or production; and

651 (iv) Require the NAIC and its affiliates and
652 subsidiaries to consent to intervention by an insurer in any
653 judicial or administrative action in which the NAIC and its
654 affiliates and subsidiaries may be required to disclose
655 confidential information about the insurer shared with the NAIC
656 and its affiliates and subsidiaries pursuant to this section.

657 (4) The sharing of information by the commissioner pursuant
658 to this section shall not constitute a delegation of regulatory
659 authority or rulemaking, and the commissioner is solely
660 responsible for the administration, execution and enforcement of
661 the provisions of this section.



(5) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(6) Documents, materials or other information in the possession or control of the NAIC pursuant to this section shall be confidential by law and privileged, shall not be subject to the Mississippi Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(7) The group capital calculations and resulting group capital ratio required under Section 83-6-5(b) and the Liquidity Stress Test along with its results and supporting disclosures required under Section 83-6-5(5)(c) are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this act, the making, publishing, disseminating, circulating or placing before the public, or causing directly or indirectly to be made, published, disseminating, circulating or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication, or in the



687 form of a notice, circular, pamphlet, letter or poster, or over
688 any radio or television station or any electronic means of
689 communication available to the public, or in any other way as an
690 advertisement, announcement, or statement containing a
691 representation or statement with regard to the group capital
692 calculation, group capital ratio, the Liquidity Stress Test
693 results, or supporting disclosures for the Liquidity Stress Test
694 of any insurer or any insurer group, or of any component derived
695 in the calculation by any insurer, broker, or other person engaged
696 in any manner in the insurance business would be misleading and is
697 therefore prohibited; provided, however, that if any materially
698 false statement with respect to the group capital calculation,
699 resulting group capital ratio, an inappropriate comparison of any
700 amount to an insurer's or insurance group's group capital
701 calculation or resulting group capital ratio, Liquidity Stress
702 Test result, supporting disclosures for the Liquidity Stress Test,
703 or an inappropriate comparison of any amount to an insurer's or
704 insurance group's Liquidity Stress Test result or supporting
705 disclosures is published in any written publication and the
706 insurer is able to demonstrate to the commissioner with
707 substantial proof the falsity of such statement or the
708 inappropriateness, as the case may be, then the insurer may
709 publish announcements in a written publication if the sole
710 purposed of the announcement is to rebut the materially false
711 statement.



712 **SECTION 7.** This act shall take effect and be in force from
713 and after July 1, 2025.

