

By: Representative Stevens

To: Insurance

HOUSE BILL NO. 658

1 AN ACT TO PROVIDE PROCEDURES FOR THE LICENSING OF INSURANCE
2 PRODUCERS; TO PROVIDE DEFINITIONS; TO PROVIDE FOR WRITTEN
3 EXAMINATIONS AND FEES FOR LICENSURE OF INSURANCE PRODUCERS; TO
4 PROVIDE CERTAIN EXEMPTIONS FROM THE WRITTEN EXAMINATION; TO
5 PROVIDE FOR TEMPORARY LICENSURE; TO PROVIDE FOR A HEARING BEFORE
6 THE INSURANCE COMMISSIONER FOR NONRENEWAL OR DENIAL OF LICENSE; TO
7 REQUIRE LICENSURE BEFORE A PERSON MAY ACCEPT A COMMISSION FOR
8 SELLING, SOLICITING OR NEGOTIATING INSURANCE IN THIS STATE; TO
9 PROVIDE CERTAIN IMMUNITIES; TO PROVIDE CERTAIN PENALTIES; TO
10 AUTHORIZE THE COMMISSIONER OF INSURANCE TO PROMULGATE REGULATIONS
11 TO CARRY OUT THE PURPOSES OF THIS ACT; TO AMEND SECTION 83-17-205,
12 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT AN APPLICANT FOR A
13 LICENSE AS AN INSURANCE AGENT MUST BE AT LEAST 18 YEARS OF AGE
14 RATHER THAN 21 YEARS OF AGE; TO AMEND SECTIONS 83-17-1, 83-17-101
15 AND 83-17-203, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;
16 AND FOR RELATED PURPOSES.

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

18 SECTION 1. The purpose of this act is to provide the
19 qualifications and procedures required for the licensing of
20 insurance producers. This act does not apply to excess and
21 surplus lines agents and brokers licensed under Sections 83-21-17
22 through 83-21-31 except as provided in Section 8 and Section 14(3)
23 of this act.

24 SECTION 2. The following words and phrases shall have the
25 meanings ascribed herein unless the context clearly indicates
26 otherwise:

27 (a) "Business entity" means a corporation, association,
28 partnership, limited liability company, limited liability
29 partnership or other legal entity.

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

31 (c) "Home state" means the District of Columbia and any
32 state or territory of the United States in which an insurance

33 producer maintains his or her principal place of residence or
34 principal place of business and is licensed to act as an insurance
35 producer.

36 (d) "Insurance" means any of the lines of authority in
37 Section 83-19-1.

38 (e) "Insurance producer" means a person required to be
39 licensed under the laws of this state to sell, solicit or
40 negotiate insurance.

41 (f) "Insurer" means that as defined in Section 83-6-1.

42 (g) "License" means a document issued by the
43 commissioner authorizing a person to act as an insurance producer
44 for the lines of authority specified in the document. The license
45 itself does not create any authority, actual, apparent or
46 inherent, in the holder to represent or commit an insurance
47 carrier.

48 (h) "Limited line credit insurance" includes credit
49 life, credit disability, credit property, credit unemployment,
50 involuntary unemployment, mortgage life, mortgage guaranty,
51 mortgage disability, guaranteed automobile protection (gap)
52 insurance and any other form of insurance offered in connection
53 with an extension of credit that is limited to partially or wholly
54 extinguishing that credit obligation that the commissioner
55 determines should be designated a form of limited line credit
56 insurance.

57 (i) "Limited line credit insurance producer" means a
58 person who sells, solicits or negotiates one or more forms of
59 limited line credit insurance coverage to individuals through a
60 master, corporate, group or individual policy.

61 (j) "Limited lines insurance" means those lines of
62 insurance defined in Section 83-19-1, Class 1(b), (p) and (q) and
63 Section 83-19-1, Class 2(d) or any other line of insurance that
64 the commissioner deems necessary to recognize for the purposes of
65 complying with Section 8(5) of this act.

66 (k) "Limited lines producer" means a person authorized
67 by the commissioner to sell, solicit or negotiate limited lines
68 insurance.

69 (l) "Negotiate" means the act of conferring directly
70 with or offering advice directly to a purchaser or prospective
71 purchaser of a particular contract of insurance concerning any of
72 the substantive benefits, terms or conditions of the contract, if
73 the person engaged in that act either sells insurance or obtains
74 insurance from insurers for purchasers.

75 (m) "Person" means an individual or a business entity.

76 (n) "Sell" means to exchange a contract of insurance by
77 any means, for money or its equivalent, on behalf of an insurance
78 company.

79 (o) "Solicit" means attempting to sell insurance or
80 asking or urging a person to apply for a particular kind of
81 insurance from a particular company.

82 (p) "Terminate" means the cancellation of the
83 relationship between an insurance producer and the insurer or the
84 termination of a producer's authority to transact insurance.

85 (q) "Uniform business entity application" means the
86 current version of the NAIC uniform business entity application
87 for resident and nonresident business entities.

88 (r) "Uniform application" means the current version of
89 the NAIC uniform application for resident and nonresident producer
90 licensing.

91 SECTION 3. A person shall not sell, solicit or negotiate
92 insurance in this state for any class or classes of insurance
93 unless the person is licensed for that line of authority in
94 accordance with this act.

95 SECTION 4. (1) Nothing in this act shall be construed to
96 require an insurer to obtain an insurance producer license. In
97 this section, the term "insurer" does not include an insurer's
98 officers, directors, employees, subsidiaries or affiliates.

99 (2) A license as an insurance producer shall not be required
100 of the following:

101 (a) An officer, director or employee of an insurer or
102 of an insurance producer, if the officer, director or employee
103 does not receive any commission on policies written or sold to
104 insure risks residing, located or to be performed in this state
105 and:

106 (i) The officer, director or employee's activities
107 are executive, administrative, managerial, clerical or a
108 combination of these and are only indirectly related to the sale,
109 solicitation or negotiation of insurance; or

110 (ii) The officer, director or employee's function
111 relates to underwriting, loss control or inspection of insurance;
112 or

113 (iii) The officer, director or employee is acting
114 in the capacity of a special agent or agency supervisor assisting
115 insurance producers where the person's activities are limited to
116 providing technical advice and assistance to licensed insurance
117 producers and do not include the sale, solicitation or negotiation
118 of insurance;

119 (b) A person who secures and furnishes information for
120 the purpose of group life insurance, group property and casualty
121 insurance, group annuities, group or blanket accident and health
122 insurance or for the purpose of enrolling individuals under plans
123 or issuing certificates under plans or other wise assisting in
124 administering plans; or who performs administrative services
125 related to mass marketed property and casualty insurance where no
126 commission is paid to the person for the service;

127 (c) An employer or association or its officer,
128 directors, employees, or the trustees of an employee trust plan,
129 to the extent that the employers, officers, employees, director or
130 trustees are engaged in the administration or operation of a
131 program of employee benefits for the employer's or association's

own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(d) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risk or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance;

(e) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, if the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state;

(f) A person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one (1) state insured under that contract, if that person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; or

(g) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer if the employee does not sell or solicit insurance or receive a commission.

SECTION 5. (1) A resident individual applying for an insurance producer license shall pass a written examination unless exempt under Section 9 of this act. The examination shall test

the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the commissioner.

(2) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in Sections 83-17-107 and 83-17-209.

(3) Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the commissioner as set forth in Sections 83-17-107 and 83-17-209.

(4) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

SECTION 6. (1) A person applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the individual:

(a) Is at least eighteen (18) years of age;

(b) Has not committed any act that is a ground for denial, suspension or revocation set forth in Section 11 of this act;

(c) Where required by the commissioner, has completed a prelicensing course of study for the lines of authority for which the person has applied;

(d) Has paid the fees set forth in Sections 27-15-87 and 27-15-93; and

(e) Has successfully passed the examinations for the
liens of authority for which the person has applied.

(2) A business entity acting as an insurance producer is
required to obtain an insurance producer license. Application
shall be made using the uniform business entity application.
Before approving the application, the commissioner shall find
that:

(a) The business entity has paid the fees set forth in
Sections 27-15-85 and 27-15-93; and

(b) The business entity has designated a licensed
producer responsible for the business entity's compliance with the
insurance laws, rules and regulations of this state.

(3) The commissioner may require any documents reasonably
necessary to verify the information contained in an application.

(4) Each insurer that sells, solicits or negotiates any form
of limited line credit insurance shall provide to each individual
whose duties include selling, soliciting or negotiating limited
line credit insurance a program of instruction that may be
approved by the commissioner.

SECTION 7. (1) Unless denied licensure under Section 11 of
this act, persons who have met the requirements of Sections 5 and
6 of this act, shall be issued an insurance producer license. An
insurance producer may receive qualification for a license in one
or more of the following lines of authority:

(a) Life: insurance coverage on human lives including
benefits of endowment and annuities and may include benefits in
the event of death or dismemberment by accident and benefits for
disability income.

(b) Accident and health or sickness: insurance
coverage for sickness, bodily injury or accidental death and may
include benefits for disability income.

(c) Property: insurance coverage for the direct or
consequential loss or damage to property of every kind.

(d) Casualty: insurance coverage against legal liability, including that for death, injury or disability or damage to real or personal property.

(e) Variable life and variable annuity products: insurance coverage provided under variable life insurance contracts and variable annuities.

(f) Personal lines: property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.

(g) Credit: limited line credit insurance.

(h) Any other line of insurance permitted under state laws or regulations.

(2) An insurance producer license shall remain in effect unless revoked or suspended as long as the fee set forth in Sections 27-15-87 and 27-15-93 is paid and education requirements for resident individual producers are met by the due date.

(3) An individual insurance producer who allows his or her license to lapse may, within twelve (12) months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. However, a penalty in the amount of double the unpaid renewal fee shall be required for any renewal fee received after the due date.

(4) A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstances, including, but not limited to, a long-term medical disability may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

(5) The license shall contain the licensee's name, address, personal identification number and the date of issuance, the lines of authority, the expiration date and any other information the commissioner deems necessary.

(6) Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within thirty (30) days of the change. Failure to timely inform the commissioner of a change in legal name or address shall result in a penalty under Sections 83-17-123 and 83-17-221.

(7) In order to assist in the performance of the commissioner's duties, the commissioner may contract with nongovernmental entities, including the National Association of Insurance Commissioner (NAIC) or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the commissioner and the nongovernmental entity may deem appropriate.

SECTION 8. (1) Unless denied licensure pursuant to Section 11 of this act, a nonresident person shall receive a nonresident producer license if:

(a) The person is currently licensed as a resident and is in good standing in his or her home state;

(b) The person has submitted the proper request for licensure and has paid the fees required by Sections 27-15-87 and 27-15-93;

(c) The person has submitted or transmitted to the commissioner the application for licensure that the person submitted to his or her home state, or a completed uniform application; and

(d) The person's home state awards nonresident producer licenses to residents of this state on the same basis.

(2) The commissioner may verify the producer's licensing status through the producer database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

(3) A nonresident producer who moves from one state to another state or a resident producer who moves from this state to

another state shall file a change of address and provide certification from the new resident state within thirty (30) days of the change of legal residence. No fee or license application is required.

(4) Notwithstanding any other provision of this act, a person licensed as a surplus lines producer in his or her home state shall receive a nonresident surplus lines producer license in accordance with subsection (1) of this section. Except as to subsection (1) of this section, nothing in this section otherwise amends or supercedes any provision of Sections 83-21-17 through 83-21-31.

(5) Notwithstanding any other provision of this act, a person licensed as a limited line credit insurance or other type of limited lines producer in his or her home state shall receive a nonresident limited lines producer license in accordance with subsection (1) of this section, granting the same scope of authority as granted under the license issued by the producer's home state. For the purposes of this subsection, limited line insurance is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines under Section 7(1)(a) through (f) of this act.

SECTION 9. (1) An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety (90) days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records, maintained by the National Association of Insurance Commissioners, its affiliates or

330 subsidiaries, indicate that the producer is or was licensed in
331 good standing for the line of authority requested.

332 (2) A person licensed as an insurance producer in another
333 state who moves to this state shall make application within ninety
334 (90) days of establishing legal residence to become a resident
335 licensee in accordance with Section 6 of this act. No
336 prelicensing education or examination shall be required of that
337 person to obtain any line of authority previously held in the
338 prior state except where the commissioner determines otherwise by
339 regulation.

340 SECTION 10. (1) The commissioner may issue a temporary
341 insurance producer license for a period not to exceed one hundred
342 eighty (180) days without requiring an examination if the
343 commissioner deems that the temporary license is necessary for the
344 servicing of an insurance business in the following cases:

345 (a) To the surviving spouse or court-appointed personal
346 representative of a licensed insurance producer who dies or
347 becomes mentally or physically disabled to allow adequate time for
348 the sale of the insurance business owned by the producer or for
349 the recovery or return of the producer to the business or to
350 provide for the training and licensing of new personnel to operate
351 the producer's business.

352 (b) To a member or employee of a business entity
353 licensed as an insurance producer, upon the death or disability of
354 an individual designated in the business entity application or the
355 license;

356 (c) To the designee of a licensed insurance producer
357 entering active service in the armed forces of the United States
358 of America; or

359 (d) In any other circumstance where the commissioner
360 deems that the public interest will best be served by the issuance
361 of this license.

(2) The commissioner may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The commissioner may by order revoke a temporary license if the interest of insureds or the public are endangered. A temporary license may not continue after the owner or the personal representative disposes of the business.

SECTION 11. (1) The commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with Sections 83-17-123 and 83-17-221 or any combination of actions for any one or more of the following causes:

(a) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

(b) Violating any insurance laws, or violating any regulation, subpoena or order of the commissioner or of another state's commissioner;

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(d) Improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business;

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(f) Having been convicted of a felony;

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

394 (h) Using fraudulent, coercive or dishonest practices
395 or demonstrating incompetence, untrustworthiness or financial
396 irresponsibility in the conduct of business in this state or
397 elsewhere;

398 (i) Having an insurance producer license, or its
399 equivalent, denied, suspended or revoked in any other state,
400 province, district or territory;

401 (j) Forging another's name to an application for
402 insurance or to any document related to an insurance transaction;

403 (k) Improperly using notes or any other reference
404 material to complete an examination for an insurance license;

405 (l) Knowingly accepting insurance business from an
406 individual who is not licensed;

407 (m) Failing to comply with an administrative or court
408 order imposing a child support obligation; or

409 (n) Failing to pay state income tax or comply with any
410 administrative or court order directing payment of state income
411 tax.

412 (2) If the action by the commissioner is to nonrenew or to
413 deny an application for a license, the commissioner shall notify
414 the applicant or licensee and advise, in writing, the applicant or
415 licensee of the reason for the denial or nonrenewal of the
416 applicant's or licensee's license. The applicant or licensee may
417 make written demand upon the commissioner within ten (10) days for
418 a hearing before the commissioner to determine the reasonableness
419 of the commissioner's action. The hearing shall be held within
420 thirty (30) days and shall be held in accordance with Sections
421 83-17-123 and 83-17-221.

422 (3) The license of a business entity may be suspended,
423 revoked or refused if the commissioner finds, after hearing, that
424 an individual licensee's violation was known or should have been
425 known by one or more of the partners, officers or managers acting

on behalf of the partnership or corporation and the violation was neither reported to the commissioner nor corrective action taken.

(4) In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine according to Sections 83-17-123, 83-17-221 and any other applicable statutes.

(5) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this act and Title 83, Mississippi Code of 1972, against any person who is under investigation for or charged with a violation of this act or Title 83, Mississippi Code of 1972, even if the person's license or registration has been surrendered or has lapsed by operation of law.

SECTION 12. (1) An insurance company or insurance producer shall not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this act and is not so licensed.

(2) A person shall not accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this act and is not so licensed.

(3) Renewal or other deferred commissions may be paid to a person for selling, soliciting or negotiating insurance in this state if the person was required to be licensed under this act at the time of the sale, solicitation or negotiation and was so licensed at that time.

(4) An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate Section 83-17-7 or any other applicable provision of Title 83, Mississippi Code of 1972.

459 SECTION 13. (1) An insurance producer shall not act as an
460 agent of an insurer unless the insurance producer becomes an
461 appointed agent of that insurer. An insurance producer who is not
462 acting as an agent of a noninsurer is not required to become
463 appointed.

464 (2) To appoint a producer as its agent, the appointing
465 insurer shall file, in a format approved by the commissioner, a
466 notice of appointment within fifteen (15) days from the date the
467 agency contract is executed or the first insurance application is
468 submitted. An insurer may also elect to appoint a producer to all
469 or some insurers within the insurer's holding company system or
470 group by the filing of a single appointment request.

471 (3) Upon receipt of the notice of appointment, the
472 commissioner shall verify within a reasonable time not to exceed
473 thirty (30) days that the insurance producer is eligible for
474 appointment. If the insurance producer is determined to be
475 ineligible for appointment, the commissioner shall notify the
476 insurer within five (5) days of its determination.

477 (4) An insurer shall pay an appointment fee, in the amount
478 and method of payment set forth in Section 83-17-5 for each
479 insurance producer appointed by the insurer.

480 (5) An insurer shall remit, in a manner prescribed by the
481 commissioner, a renewal appointment fee in the amount set forth in
482 Section 83-17-5.

483 SECTION 14. (1) An insurer or authorized representative of
484 the insurer that terminates the appointment, employment, contract
485 or other insurance business relationship with a producer shall
486 notify the commissioner within thirty (30) days following the
487 effective date of the termination, using a format prescribed by
488 the commissioner, if the reason for termination is one of the
489 reasons set forth in Section 11 of this act or the insurer has
490 knowledge the producer was found by a court government body or
491 self-regulatory organization authorized by law to have engaged in

any of the activities in Section 11 of this act. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination or activity of the producer.

(2) An insurer or authorized representative of the insurer that terminates the appointment, employment or contract with a producer for any reason not set forth in Section 11 of this act shall notify the commissioner within thirty (30) days following the effective date of the termination using a format prescribed by the commissioner. Upon written request of the commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination.

(3) The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner in accordance with subsection (1) of this section had the insurer then known of its existence.

(4) (a) Within fifteen (15) days after making the notification required by subsections (1), (2) and (3) of this section, the insurer shall mail a copy of the notification to the producer at his or her last known address. If the producer is terminated for cause for any of the reasons listed in Section 11 of this section, the insurer shall provide a copy of the notification to the producer at his or her last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

(b) Within thirty (30) days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the commissioner. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting

insurer, and the comments shall become a part of the commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under subsection (6) of this section.

(5) (a) In the absence of actual malice, an insurer, the authorized representative of the insurer, a producer, the commissioner or an organization of which the commissioner is a member and that compiles the information and makes it available to other commissioners or regulatory or law enforcement agencies shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided under this section or any information relating to any statement that may be requested in writing by the commissioner from an insurer or producer or a statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to whether a termination for cause under subsection (1) of this section was reported to the commissioner if the propriety of any termination for cause under subsection (1) of this section is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.

(b) In any action brought against a person that may have immunity under paragraph (a) of this subsection for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that paragraph (a) of this subsection does not apply because the person making the statement or providing the information did so with actual malice.

(c) Paragraph (a) or (b) of this subsection shall not abrogate or modify any existing statutory or common law privileges or immunities.

558 (6) (a) Any documents, materials or other information in
559 the control or possession of the department of insurance that is
560 furnished by an insurer, producer or an employee or agent thereof
561 acting on behalf of the insurer or producer or obtained by the
562 commissioner in an investigation under this section shall be
563 confidential by law and privileged, shall not be subject to the
564 Public Records Act, shall not be subject to subpoena and shall not
565 be subject to discovery or admissible in evidence in any private
566 civil action. However, the commissioner is authorized to use the
567 documents, materials or other information in the furtherance of
568 any regulatory or legal action brought as a part of the
569 commissioner's duties.

570 (b) Neither the commissioner nor any person who
571 received documents, materials or other information while acting
572 under the authority of the commissioner shall be permitted or
573 required to testify in any private civil action concerning any
574 confidential documents, materials or information subject to
575 paragraph (a) of this subsection.

576 (c) In order to assist in the performance of the
577 commissioner's duties under this act, the commissioner:

578 (i) May share documents, materials or other
579 information, including the confidential and privileged documents,
580 materials or information subject to paragraph (a) of this
581 subsection, with other state, federal and international regulatory
582 agencies, with the National Association of Insurance
583 Commissioners, its affiliates or subsidiaries and with state,
584 federal and international law enforcement authorities, if the
585 recipient agrees to maintain the confidentiality and privileged
586 status of the document, material or other information;

587 (ii) May receive documents, materials or
588 information, including otherwise confidential and privileged
589 documents, materials or information, from the National Association
590 of Insurance Commissioners, its affiliates or subsidiaries and

591 from regulatory and law enforcement officials of other foreign or
592 domestic jurisdictions and shall maintain as confidential or
593 privileged any document, material or information received with
594 notice or the understanding that it is confidential or privileged
595 under the laws of the jurisdiction that is the source of the
596 document, material or information; and

597 (iii) May enter into agreements governing sharing
598 and use of information consistent with this subsection.

599 (d) No waiver of any applicable privilege or claim of
600 confidentiality in the documents, materials or information shall
601 occur as a result of disclosure to the commissioner under this
602 section or as a result of sharing as authorized in paragraph (c)
603 of this subsection.

604 (e) Nothing in this act shall prohibit the commissioner
605 from releasing final, adjudicated actions including for cause
606 terminations that are open to public inspection pursuant to the
607 Public Records Act to a database or other clearinghouse service
608 maintained by the National Association of Insurance Commissioners,
609 its affiliates or subsidiaries of the National Association of
610 Insurance Commissioners.

611 (7) An insurer, the authorized representative of the insurer
612 or producer that fails to report as required under the provisions
613 of this section or that is found to have reported with actual
614 malice by a court of competent jurisdiction may, after notice and
615 hearing, have its license or certificate of authority suspended or
616 revoked and may be fined in accordance with all applicable
617 statutes.

618 SECTION 15. (1) The commissioner shall waive any
619 requirements for a nonresident license applicant with a valid
620 license from his or her home state, except the requirements
621 imposed by Section 8 of this act, if the applicant's home state
622 awards nonresident licenses to residents of this state on the same
623 basis.

(2) A nonresident producer's satisfaction of his or her home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

SECTION 16. (1) A producer shall report to the commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order or other relevant legal documents.

(2) Within thirty (30) days of the initial pretrial hearing date, a producer shall report to the commissioner any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

SECTION 17. The commissioner may, in accordance with Section 25-43-1 et seq., promulgate reasonable regulations as are necessary or proper to carry out the purposes of this act.

SECTION 18. If any provisions of this act, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the act, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

SECTION 19. Section 83-17-1, Mississippi Code of 1972, is amended as follows:

83-17-1. Every person, including those required to be licensed as a producer, who solicits insurance on behalf of any insurance company, or who takes or transmits, other than for himself, an application for insurance or a policy of insurance, or who advertises or otherwise gives notice that he will receive or

657 transmit the same, or who shall receive or deliver a policy of
658 insurance of any such company, or who shall examine or inspect any
659 risk, or receive, collect, or transmit any premium of insurance,
660 or make or forward a diagram of any building, or do or perform any
661 other act or thing in the making or consummation of any contract
662 of insurance for or with any such insurance company, other than
663 for himself, or who shall examine into or adjust or aid in
664 adjusting any loss for or on behalf of any such insurance company,
665 whether any of such acts shall be done at the instance or request
666 or by the employment of the insurance company, or of or by any
667 broker or other person, shall be held to be the agent of the
668 company for which the act is done or the risk is taken as to all
669 the duties and liabilities imposed by law, whatever conditions or
670 stipulations may be contained in the policy or contract. The term
671 "agent" shall also include all creditors whose officers, employees
672 or legal representatives are authorized to act in any manner,
673 directly or indirectly, in the solicitation of, negotiation for,
674 or procurement or making of a contract of property insurance,
675 under a small loan property insurance license, where such
676 insurance coverage is written on collateral in which the creditor
677 has an insurable interest. As used herein, the term "credit
678 property insurance" means insurance on personal property or
679 household goods pursuant to or in connection with a specific loan
680 or other credit transactions, including lease payments and
681 residual, which protects the lender or the borrower from damage or
682 destruction to such personal property or household goods pledged
683 as collateral for the loan. Such person knowingly procuring, by
684 fraudulent representations, payment or the obligation for the
685 payment of a premium of insurance shall be punished by a fine of
686 not less than One Hundred Dollars (\$100.00) nor more than Five
687 Hundred Dollars (\$500.00), or be imprisoned for not more than one
688 (1) year.

SECTION 20. Section 83-17-101, Mississippi Code of 1972, is amended as follows:

83-17-101. Whenever used in this article, certain terms shall be defined as follows:

(a) The term "agent" shall include all individuals, partnerships, * * * corporations, and all those required to be licensed as producers who act in any manner, directly or indirectly, as such in the solicitation of, negotiation for, or procurement or making of a contract of life, health or accident insurance, or making of an annuity contract, and includes hospital service association agents; except that the term "agent" shall not include any regular salaried officer or employee of a licensed insurer or of a licensed insurance agent who does not solicit or accept from the public applications for any such contract. A regular salaried officer or employee of an insurer authorized to do business in this state shall not be deemed to be an "agent" by reason of rendering assistance to or on behalf of a licensed insurance agent, provided that such salaried officer or employee devotes substantially all of his time to activities other than the solicitation of applications for life, health or accident insurance or annuity contracts and receives no commission or other compensation directly dependent upon the amount of business obtained. The possessor of an insurable interest in any risk or subject of insurance shall not be deemed an agent by reason of procuring or maintaining, or agreeing to procure or maintain, insurance extending to such interests, together with the interest or interests of others in such risk or subject of insurance, however the cost may be borne.

(b) The term "inactive agent" shall mean an individual who is retired, disabled or has not obtained from the Commissioner of Insurance a current continuous certificate. An inactive agent shall not solicit new business or service existing business, but may receive renewal commissions.

722 (c) The term "supervising general agent" as used in
723 this article refers to and includes any person, partnership,
724 association or corporation, having authority to serve as trustees,
725 managers or administrators, except attorneys at law, for such
726 licensed insurance companies or their insureds in the handling of
727 insurance programs underwritten by such licensed insurance
728 companies, or in which they may be participating.

729 (d) The term "insurance contract" shall mean any
730 contract or policy affecting life, health or accident insurance or
731 any annuity contract on behalf of any company or insurer engaged
732 in the business of writing life, health or accident insurance or
733 annuity contracts.

734 (e) The term "excess risk" shall mean all or any
735 portion of a life, health or accident insurance risk or contract
736 of annuity for which application is made to an agent and which
737 exceeds the amount of insurance or annuity which will be provided
738 by the insurer for which such agent is licensed.

739 (f) The term "rejected risk" shall mean a life, health
740 or accident insurance risk or annuity contract for which
741 application has been made to an agent and which insurance or
742 annuity contract is declined by the insurer for which such agent
743 is licensed.

744 (g) The term "commissioner" shall mean the Commissioner
745 of Insurance of the State of Mississippi.

746 (h) The terms "company" and "insurer" shall mean a
747 corporation, association, hospital and/or medical service
748 association, exchange, order or society writing life, health and
749 accident and/or hospital insurance or annuity contracts, but shall
750 not include fraternal societies as defined in Section 83-29-1.

751 (i) The term "person" shall mean any individual,
752 partnership or corporation incorporated pursuant to Sections
753 79-10-1 through 79-10-117, being the Mississippi Professional
754 Corporation Act, and Sections 79-29-901 through 79-29-933, being

the Mississippi Limited Liability Company Act, except as otherwise limited by Section 83-17-105.

SECTION 21. Section 83-17-203, Mississippi Code of 1972, is amended as follows:

83-17-203. The terms "agent" and "solicitor" as used in this article refer to and include all persons, residents of this state, and all those required to be licensed as producers engaged in any of the activities enumerated in Section 83-17-201, but do not include (1) persons employed by insurance agents or agencies or companies solely for the performance of clerical, stenographic, and similar office duties, or (2) the supervising general, state, special agents or others similarly employed by a supervising general agent or insurance company or carrier, neither of whom shall be eligible to apply for or secure a certificate of authority or license as a resident countersigning agent as defined herein or in other provisions of the insurance laws of this state; and said "supervising general, state, special agents" as used in this article refer to and include all persons, firms, partnerships, and corporations having authority to appoint or supervise resident local agents in this state on behalf of insurance companies; but nothing contained in this subsection (2) shall prohibit the licensing as an agent of a person appointed to act as agent for a company operating through agents who represent only one (1) company or group of companies under the same control or management; or (3) the attorney-in-fact or the traveling salaried representative of a reciprocal insurance exchange; the term "attorney-in-fact" or the "traveling salaried representative" as used in this article refers to and includes all persons, not otherwise licensed under the provisions of this article, who represent or are employed by any underwriter, association, or reciprocal insurance exchange writing policies in Mississippi other than through resident agents, who in any manner solicit business on behalf of such underwriters, associations, or

788 reciprocal insurance exchanges. It is expressly provided,
789 however, that this section shall not prevent the licensing of any
790 person now licensed as an agent who would, but for the provisions
791 of subsection (2) hereof be eligible for such license; provided
792 further, a local agent operating as a general agent may be
793 licensed in such dual capacity so long as the general agency is
794 operated in connection with a local agency, or where the owners or
795 majority of the stockholders have a substantial interest in such
796 local and general agency.

797 The term "inactive agent" shall mean an individual who is
798 retired, disabled or has not obtained from the Commissioner of
799 Insurance a current continuous certificate. An inactive agent
800 shall not solicit new business or service existing business, but
801 may receive renewal commissions.

802 The term "insurance solicitor" as used in this article refers
803 to and includes any person, a resident of this state, directly
804 connected with and principally employed by and authorized by an
805 insurance agent to solicit and negotiate or assist in any manner
806 in the sale and issuance of policies or contracts of insurance
807 solely on behalf of such agents; and no license shall be renewed
808 for any solicitor unless it is conclusively shown that more than
809 fifty percent (50%) of his total annual employment income for the
810 preceding year is derived from commissions on insurance; and for
811 the purposes of this article, life, accident and health insurance
812 commissions shall be included in calculating said fifty percent
813 (50%). The agent appointing such solicitor shall be responsible
814 for the acts of the solicitor. Any violation of the insurance
815 laws by the solicitor may be grounds for revocation of license of
816 both the agent and the solicitor after proper hearing. The
817 commission of any unlawful act by the solicitor shall be prima
818 facie evidence that the agent had knowledge of such act.

819 The term "insurance agent" as used in this article refers to
820 and includes all insurance agents not thus employed as "insurance

solicitors." No license or renewal license as a resident local agent shall be granted to any person to act as said agent who is not actively engaged therein by soliciting and servicing the insurance-buying public as an agent individually, or as a bona fide employee of an agent or agency; and no renewal license shall be issued to any agent until it is conclusively shown by filing an affidavit with the Commissioner of Insurance or otherwise that not more than thirty-five per cent (35%) of the aggregate amount of commissions of the said agent was derived from "controlled business" as referred to and defined hereinafter.

The terms "insurance company" and "insurance carrier" as used in this article refer to and include all stock, mutual, reciprocal, and other types of insurance companies, carriers, associations, or exchanges writing the type or types of insurance to which this article applies.

SECTION 22. Section 83-17-205, Mississippi Code of 1972, is amended as follows:

83-17-205. (1) Before the issuance of a license or certificate of authority under the provisions of this article, the applicant, who shall be a natural person, resident of this state, at least eighteen (18) years of age, and the company or companies which the applicant proposes to represent shall file with the commissioner evidence in such form as the commissioner shall have prescribed, showing that the applicant is qualified, fit and trustworthy to act as an agent and to solicit the kind or kinds of insurance for which a license is requested; and the applicant shall submit evidence in such form as may be required by the commissioner of his intent to act in good faith as an agent and that he is not seeking a license for the purpose of acquiring or saving commissions, premiums or other valuable considerations on policies of insurance to be issued to himself or to his relatives, business associates, employers or employees, or in which they or either of them have an interest. In the event the applicant has

not been previously licensed within the last two (2) years as an agent for the kind or kinds of insurance for which a license is requested, the commissioner shall, as a test of the applicant's knowledge and other qualifications provided for herein, require that the applicant submit to a written examination approved by the commissioner which shall cover the type of license desired, whether the same be a general license to apply to all lines or a limited license applicable to grouping by type, types or kinds as set out hereinafter. Any license issued under this article shall state the kind or kinds of insurance which the agent is authorized to write.

(2) In addition to requirements set out in subsection (1) of this section, the commissioner shall require such company requesting appointment of the applicant as agent for the first time to furnish a certificate to the commissioner, verified by an executive officer or managing general or special agent of such company, that the company has duly investigated the character and record of such person and has satisfied itself that such person is of good moral character and is qualified, fit and trustworthy to act as its agent. The Commissioner of Insurance may at any time require any company to obtain a credit report on an agent if the commissioner deems such request advisable.

Should such credit report reflect information regarding an offense or violation in relation to which the Department of Insurance has taken action, such information shall not render applicant ineligible for license if applicant has complied with the order of the commissioner regarding such offense.

(3) No license shall be issued to any applicant nor shall the Commissioner of Insurance issue a renewal of any license as agent or solicitor until the new or renewal applicant shall file an affidavit with the Commissioner of Insurance that the applicant shall in good faith engage in the insurance business as agent or solicitor, and that he is not seeking a license for the purpose of

887 acquiring or saving commissions, premiums or other valuable
888 considerations on "controlled business"; that is, on policies of
889 insurance to be issued to himself or to his relatives, business
890 associates, employers or employees, or in which they or either of
891 them have an interest. The title retained in connection with
892 conditional sales or title retention contracts shall not be
893 construed to constitute "an interest" in the seller within the
894 meaning of this article. A violation of this provision of this
895 section shall be deemed to be probable if the commissioner finds
896 that during any twelve-month period aggregate commissions or other
897 compensations accruing in favor of the applicant based upon the
898 insurance procured or to be procured by or through the applicant
899 with respect to his own interests or those of his family,
900 relatives, employers, employees or business associates, as
901 provided herein, have exceeded or will exceed thirty-five percent
902 (35%) of the aggregate amount of commissions or compensations
903 accruing to him as agent or his agency during such period of time.

904 Nothing herein contained shall prohibit the licensing under a
905 limited license as to motor vehicle physical damage insurance, any
906 person employed by or associated with a motor vehicle sales agency
907 with respect to insurance on a motor vehicle sold, serviced or
908 financed by it. Whenever employment is terminated of any such
909 person employed by or associated with any such agency, the
910 Commissioner of Insurance shall be notified, and the license shall
911 be cancelled immediately.

912 It is further provided that the provisions of this section
913 likewise shall not apply with respect to the interest of a real
914 estate mortgagee in or as to insurance covering such interest or
915 in the real estate subject to such mortgage.

916 (4) Each application or filing made under this section shall
917 include the social security number(s) of the applicant in
918 accordance with Section 93-11-64, Mississippi Code of 1972.

919 SECTION 23. This act shall take effect and be in force from
920 and after January 1, 2002.