

By: Senator(s) Kirby

To: Insurance

SENATE BILL NO. 2158

1 AN ACT TO PROHIBIT UNFAIR TRADE PRACTICES IN THE BUSINESS OF
 2 INSURANCE; TO DEFINE CERTAIN TERMS USED IN THIS ACT; TO DEFINE
 3 CERTAIN PRACTICES AS UNFAIR TRADE PRACTICES; TO PROHIBIT FAVORED
 4 AGENTS OR INSURERS AND THE COERCION OF DEBTORS; TO AUTHORIZE THE
 5 COMMISSIONER OF INSURANCE TO ISSUE CEASE AND DESIST ORDERS AND
 6 MONETARY PENALTY ORDERS UPON INSURERS FOUND TO HAVE ENGAGED IN
 7 UNFAIR TRADE PRACTICES; TO PROVIDE FOR JUDICIAL REVIEW OF ORDERS;
 8 TO AUTHORIZE A MONETARY PENALTY FOR VIOLATING THE CEASE AND DESIST
 9 ORDERS; TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO PROMULGATE
 10 REASONABLE RULES, REGULATIONS AND ORDERS AS ARE NECESSARY TO CARRY
 11 OUT THE PROVISIONS OF THIS ACT; TO REPEAL SECTIONS 83-5-29 THROUGH
 12 83-5-51, MISSISSIPPI CODE OF 1972, WHICH REGULATE TRADE PRACTICES
 13 IN THE BUSINESS OF INSURANCE; AND FOR RELATED PURPOSES.

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

15 SECTION 1. **Purpose.** The purpose of this act is to regulate
 16 trade practices in the business of insurance in accordance with
 17 the intent of Congress as expressed in the Act of Congress of
 18 March 9, 1945 (Public Law 15, 79th Congress) and the
 19 Gramm-Leach-Bliley Act (Public Law 106-102, 106th Congress), by
 20 defining, or providing for the determination of, all such
 21 practices in this state that constitute unfair methods of
 22 competition or unfair or deceptive acts or practices and by
 23 prohibiting the trade practices so defined or determined. Nothing
 24 herein shall be construed to create or imply a private cause of
 25 action for a violation of this act.

26 SECTION 2. **Definitions.** When used in this act:

27 (a) "Affiliate" means any company that controls, is
28 controlled by, or is under common control with another company.

29 (b) "Commissioner" means the Commissioner of Insurance
30 of this state.

31 (c) "Customer" means a person who obtains, applies for,
32 or is solicited to obtain insurance.



33 (d) "Depository institution" means a bank or savings
34 association.

35 (e) "Insurance information" means information
36 concerning the premiums, terms and conditions of insurance
37 coverage, including expiration dates and rates, and insurance
38 claims of a customer contained in the records of a depository
39 institution or an affiliate of a depository institution.

40 (f) "Insured" means the party named on a policy or
41 certificate as the individual with legal rights to the benefits
42 provided by such policy.

43 (g) "Insurer" means any person, reciprocal exchange,
44 interinsurer, Lloyds insurer, fraternal benefit society, and any
45 other legal entity engaged in the business of insurance, including
46 agents, producers, brokers, adjusters and third-party
47 administrators. Insurer shall also mean medical service plans,
48 hospital service plans, health maintenance organizations, prepaid
49 limited health care service plans, dental, optometric and other
50 similar health service plans. For purposes of this act, these
51 foregoing entities shall be deemed to be engaged in the business
52 of insurance.

53 (h) "Person" means a natural or artificial entity,
54 including, but not limited to, individuals, partnerships,
55 associations, trusts or corporations.

56 (i) "Policy" or "certificate" means a contract of
57 insurance, indemnity, medical, health or hospital service,
58 suretyship, or annuity issued, proposed for issuance, or intended
59 for issuance by any insurer.

60 (j) "Producer" means a person required to be licensed
61 under the laws of this state to sell, solicit, or negotiate,
62 insurance.

63 SECTION 3. **Unfair trade practices prohibited.** It is an
64 unfair trade practice for any insurer to commit any practice
65 defined in Section 4 of this act if:



66 (a) It is committed flagrantly and in conscious
67 disregard of this act or of any rules promulgated hereunder; or

68 (b) It has been committed with such frequency to
69 indicate a general business practice to engage in that type of
70 conduct.

71 SECTION 4. **Unfair trade practices defined.** Any of the
72 following practices, if committed in violation of Section 3 of
73 this act, are hereby defined as unfair trade practices in the
74 business of insurance:

75 (a) **Misrepresentations and false advertising of**
76 **insurance policies.** Making, issuing, circulating, or causing to
77 be made, issued or circulated, any estimate, illustration,
78 circular or statement, sales presentation, omission or comparison
79 that:

80 (i) Misrepresents the benefits, advantages,
81 conditions or terms of any policy; or

82 (ii) Misrepresents the dividends or share of the
83 surplus to be received on any policy; or

84 (iii) Makes a false or misleading statement as to
85 the dividends or share of surplus previously paid on any policy;
86 or

87 (iv) Is misleading or is a misrepresentation as to
88 the financial condition of any insurer, or as to the legal reserve
89 system upon which any life insurer operates; or

90 (v) Uses any name or title of any policy or class
91 of policies misrepresenting the true nature thereof; or

92 (vi) Is a misrepresentation, including any
93 intentional misquote of premium rate, for the purpose of inducing
94 or tending to induce the purchase, lapse, forfeiture, exchange,
95 conversion or surrender of any policy; or

96 (vii) Is a misrepresentation for the purpose of
97 effecting a pledge or assignment of or effecting a loan against
98 any policy; or



99 (viii) Misrepresents any policy as being shares of
100 stock.

101 (b) **False information and advertising generally.**

102 Making, publishing, disseminating, circulating or placing before
103 the public, or causing, directly or indirectly to be made,
104 published, disseminated, circulated, or placed before the public,
105 in a newspaper, magazine or other publication, or in the form of a
106 notice, circular, pamphlet, letter or poster, or over any radio or
107 television station, or in any other way, an advertisement,
108 announcement or statement containing any assertion, representation
109 or statement with respect to the business of insurance or with
110 respect to any insurer in the conduct of its insurance business,
111 which is untrue, deceptive or misleading.

112 (c) **Defamation.** Making, publishing, disseminating, or
113 circulating, directly or indirectly, or aiding, abetting or
114 encouraging the making, publishing, disseminating or circulating
115 of any oral or written statement or any pamphlet, circular,
116 article or literature which is false, or maliciously critical of
117 or derogatory to the financial condition of any insurer, and which
118 is calculated to injure such insurer.

119 (d) **Boycott, coercion and intimidation.** Entering into
120 any agreement to commit, or by any concerted action committing any
121 act of boycott, coercion or intimidation resulting in or tending
122 to result in unreasonable restraint of, or monopoly in, the
123 business of insurance.

124 (e) **False statements and entries.**

125 (i) Knowingly filing with any supervisory or other
126 public official, or knowingly making, publishing, disseminating,
127 circulating or delivering to any person, or placing before the
128 public, or knowingly causing directly or indirectly, to be made,
129 published, disseminated, circulated, delivered to any person, or
130 placed before the public, any false material statement of fact as
131 to the financial condition of an insurer.



132 (ii) Knowingly making any false entry of a
133 material fact in any book, report or statement of any insurer or
134 knowingly omitting to make a true entry of any material fact
135 pertaining to the business of such insurer in any book, report or
136 statement of such insurer, or knowingly making any false material
137 statement to any insurance department official.

138 (f) **Stock operations and advisory board contracts.**
139 Issuing or delivering or permitting agents, officers or employees
140 to issue or deliver, agency company stock or other capital stock,
141 or benefit certificates or shares in any common law corporation,
142 or securities or any special or advisory board contracts or other
143 contracts of any kind promising returns and profits as an
144 inducement to purchase insurance.

145 (g) **Unfair discrimination.**

146 (i) Making or permitting any unfair discrimination
147 between individuals of the same class and equal expectation of
148 life in the rates charged for any life insurance policy or annuity
149 or in the dividends or other benefits payable thereon, or in any
150 other of the terms and conditions of such policy.

151 (ii) Making or permitting any unfair
152 discrimination between individuals of the same class and of
153 essentially the same hazard in the amount of premium, policy fees
154 or rates charged for any accident or health insurance policy or in
155 the benefits payable thereunder, or in any of the terms or
156 conditions of such policy, or in any other manner.

157 (iii) Making or permitting any unfair
158 discrimination between individuals or risks of the same class and
159 of essentially the same hazard by refusing to insure, refusing to
160 renew, canceling or limiting the amount of insurance coverage on a
161 property or casualty risk solely because of the geographic
162 location of the risk, unless such action is the result of the
163 application of sound underwriting and actuarial principles related
164 to actual or reasonably anticipated loss experience.



165 (iv) Making or permitting any unfair
166 discrimination between individuals or risks of the same class and
167 of essentially the same hazards by refusing to insure, refusing to
168 renew, canceling or limiting the amount of insurance coverage on
169 the residential property risk, or the personal property contained
170 therein, solely because of the age of the residential property.

171 (v) Refusing to insure, refusing to continue to
172 insure, or limiting the amount of coverage available to an
173 individual because of the sex, marital status, race, religion or
174 national origin of the individual; however, nothing in this
175 subsection shall prohibit an insurer from taking marital status
176 into account for the purpose of defining persons eligible for
177 dependent benefits. Nothing in this section shall prohibit or
178 limit the operation of fraternal benefit societies.

179 (vi) To terminate, or to modify coverage or to
180 refuse to issue or refuse to renew any property or casualty policy
181 solely because the applicant or insured or any employee of either
182 is mentally or physically impaired; provided that this subsection
183 shall not apply to accident and health insurance sold by a
184 casualty insurer and, provided further, that this subsection shall
185 not be interpreted to modify any other provision of law relating
186 to the termination, modification, issuance or renewal of any
187 insurance policy or contract.

188 (vii) Refusing to insure solely because another
189 insurer has refused to write a policy, or has cancelled or has
190 refused to renew an existing policy in which that person was the
191 named insured. Nothing herein contained shall prevent the
192 termination of an excess insurance policy on account of the
193 failure of the insured to maintain any required underlying
194 insurance.

195 (h) **Rebates.**

196 (i) Except as otherwise expressly provided by law,
197 knowingly permitting or offering to make or making any life



198 insurance policy or annuity, or accident and health insurance or
199 other insurance, or agreement as to such contract other than as
200 plainly expressed in the policy issued thereon, or paying or
201 allowing, or giving or offering to pay, allow, or give, directly
202 or indirectly, as inducement to such policy, any rebate of
203 premiums payable on the policy, or any special favor or advantage
204 in the dividends or other benefits thereon, or any valuable
205 consideration or inducement whatever not specified in the policy;
206 or giving, or selling, or purchasing or offering to give, sell, or
207 purchase as inducement to such policy or annuity or in connection
208 therewith, any stocks, bonds or other securities of any insurance
209 company or other corporation, association or partnership, or any
210 dividends or profits accrued thereon, or anything of value
211 whatsoever not specified in the policy.

212 (ii) Nothing in paragraph (g), or subparagraph (i)
213 of paragraph (h), shall be construed as including within the
214 definition of discrimination or rebates any of the following
215 practices:

216 1. In the case of life insurance policies or
217 annuities, paying bonuses to policyholders or otherwise abating
218 their premiums in whole or in part out of surplus accumulated from
219 nonparticipating insurance, provided that any such bonuses or
220 abatement of premiums shall be fair and equitable to policyholders
221 and for the best interests of the company and its policyholders;

222 2. In the case of life insurance policies
223 issued on the industrial debit plan, making allowance to
224 policyholders who have continuously for a specified period made
225 premium payments directly to an office of the insurer in an amount
226 that fairly represents the saving in collection expenses;

227 3. Readjusting the rate of premium for a
228 group insurance policy based on the loss or expense thereunder, at
229 the end of the first or any subsequent policy year of insurance



230 thereunder, which may be made retroactive only for such policy
231 year.

232 (i) **Prohibited group enrollments.** No insurer shall
233 offer more than one (1) group policy of insurance through any
234 person unless such person is licensed, at a minimum, as a limited
235 insurance representative. However, this prohibition shall not
236 apply to employer/employee relationships, nor to any such
237 enrollments.

238 (j) **Failure to maintain marketing and performance**
239 **records.** Failure of an insurer to maintain its books, records,
240 documents and other business records in such an order that data
241 regarding complaints, claims, rating, underwriting and marketing
242 are accessible and retrievable for examination by the Insurance
243 Commissioner. Data for at least the current calendar year and the
244 two (2) preceding years shall be maintained.

245 (k) **Failure to maintain complaint handling procedures.**
246 Failure of any insurer to maintain a complete record of all the
247 complaints it received since the date of its last examination
248 under Section 83-5-205. This record shall indicate the total
249 number of complaints, their classification by line of insurance,
250 the nature of each complaint, the disposition of each complaint,
251 and the time it took to process each complaint. For purposes of
252 this subsection, "complaint" shall mean any written communication
253 primarily expressing a grievance.

254 (l) **Misrepresentation in insurance applications.**
255 Making false or fraudulent statements or representations on or
256 relative to an application for a policy, for the purpose of
257 obtaining a fee, commission, money or other benefit from any
258 provider or individual person.

259 (m) **Unfair financial planning practices.** An insurance
260 producer:

261 (i) Holding himself or herself out, directly or
262 indirectly, to the public as a "financial planner," "investment



263 adviser," "consultant," "financial counselor" or any other
264 specialist engaged in the business of giving financial planning or
265 advice relating to investments, insurance, real estate, tax
266 matters or trust and estate matters when such person is in fact
267 engaged only in the sale of policies.

268 (ii) 1. Engaging in the business of financial
269 planning without disclosing to the client prior to the execution
270 of the agreement provided for in subparagraph (iii), or
271 solicitation of the sale of a product or service that

272 a. He or she is also an insurance
273 salesperson; and

274 b. That a commission for the sale of an
275 insurance product will be received in addition to a fee for
276 financial planning, if such is the case.

277 2. The disclosure requirement under this
278 subsection may be met by including it in any disclosure required
279 by federal or state securities law.

280 (iii) 1. Charging fees other than commissions for
281 financial planning by an insurance producer, unless such fees are
282 based upon a written agreement, signed by the party to be charged
283 in advance of the performance of the services under the agreement.
284 A copy of the agreement must be provided to the party to be
285 charged at the time the agreement is signed by the party.

286 a. The services for which the fee is to
287 be charged must be specifically stated in the agreement.

288 b. The amount of the fee to be charged
289 or how it will be determined or calculated must be specifically
290 stated in the agreement.

291 c. The agreement must state that the
292 client is under no obligation to purchase any insurance product
293 through the insurance agent, broker or consultant.

294 2. The insurance producer shall retain a copy
295 of the agreement for not less than three (3) years after



296 completion of services, and a copy shall be available to the
297 commissioner upon request.

298 (n) **Failure to file or to certify information regarding**
299 **the endorsement or sale of long-term care insurance.** Failure of
300 any insurer to:

301 (i) File with the insurance department the
302 following material:

- 303 1. The policy and certificate;
- 304 2. A corresponding outline of coverage; and
- 305 3. All advertisements requested by the
306 insurance department; or

307 (ii) Certify annually that the association has
308 complied with the responsibilities for disclosure, advertising,
309 compensation arrangements, or other information required by the
310 commissioner, as set forth by regulation.

311 (o) **Failure to provide claims history.**

312 (i) Loss information - property and casualty.
313 Failure of a company issuing property and casualty insurance to
314 provide the following loss information for the three (3) previous
315 policy years to the first named insured within thirty (30) days of
316 receipt of the first named insured's written request:

- 317 1. On all claims, date and description of
318 occurrence, and total amount of payments; and
- 319 2. For any occurrence not included in item 1
320 of this subparagraph (i), the date and description of occurrence.

321 (ii) Should the first named insured be requested
322 by a prospective insurer to provide detailed loss information in
323 addition to that required under subparagraph (i), the first named
324 insured may mail or deliver a written request to the insurer for
325 the additional information. No prospective insurer shall request
326 more detailed loss information than reasonably required to
327 underwrite the same line or class of insurance. The insurer shall
328 provide information under this subparagraph to the first named



329 insured as soon as possible, but in no event later than twenty
330 (20) days of receipt of the written request. Notwithstanding any
331 other provision of this section, no insurer shall be required to
332 provide loss reserve information, and no prospective insurer may
333 refuse to insure an applicant solely because the prospective
334 insurer is unable to obtain loss reserve information.

335 (iii) The commissioner may promulgate regulations
336 to exclude the providing of the loss information as outlined in
337 subparagraph (i) for any line or class of insurance where it can
338 be shown that the information is not needed for that line or class
339 of insurance, or where the provision of loss information otherwise
340 is required by law.

341 (iv) Information provided under subparagraph (ii)
342 shall not be subject to discovery by any party other than the
343 insured, the insurer, and the prospective insurer.

344 (p) **Violating any section of Title 83 and any**
345 **applicable regulations.**

346 SECTION 5. **Favored agent or insurer; coercion of debtors.**

347 (a) No person or depository institution, or affiliate
348 of a depository institution may require as a condition precedent
349 to the lending of money or extension of credit, or any renewal
350 thereof, that the person to whom such money or credit is extended
351 or whose obligation a creditor is to acquire or finance, negotiate
352 any policy or renewal thereof through a particular insurer or
353 group of insurers or agent or broker or group of agents or
354 brokers. Further, no person or depository institution, or
355 affiliate of a depository institution, may reject an insurance
356 policy solely because the policy has been issued or underwritten
357 by a person who is not associated with the depository institution
358 or affiliate when insurance is required in connection with a loan
359 or extension of credit.



360 (b) No person or depository institution, or affiliate
361 of a depository institution, who lends money or extends credit
362 may:

363 (i) Solicit insurance for the protection of real
364 property, after a person indicates interest in securing a first
365 mortgage credit extension, until such person has received a
366 commitment in writing from the lender as to a loan or credit
367 extension. However, this provision does not prohibit a person or
368 depository institution, or affiliate of a depository institution
369 from informing a customer or prospective customer that insurance
370 is required in order to obtain a loan or credit, or that loan or
371 credit approval is contingent upon the procurement by the customer
372 of acceptable insurance, or that insurance is available from the
373 person or depository institution, or affiliate of a depository
374 institution;

375 (ii) Unreasonably reject a policy furnished by the
376 customer or borrower for the protection of the property securing
377 the credit or lien. A rejection shall not be deemed unreasonable
378 if it is based on reasonable standards, uniformly applied,
379 relating to the extent of coverage required and the financial
380 soundness and the services of an insurer. Such standards shall
381 not discriminate against any particular type of insurer, nor shall
382 such standards call for rejection of a policy because it contains
383 coverage in addition to that required in the credit transaction;

384 (iii) Require that any customer, borrower,
385 mortgagor, purchaser, insurer, broker or agent pay a separate
386 charge, in connection with the handling of any policy required as
387 security for a loan on real estate, or pay a separate charge to
388 substitute the policy of one (1) insurer for that of another.
389 This paragraph does not include the interest that may be charged
390 on premium loans or premium advancements in accordance with the
391 terms of the loan or credit document. Further, this subparagraph
392 (iii) does not apply to charges that would be required when the



393 person or depository institution or affiliate of a depository
394 institution is the licensed producer providing the insurance;

395 (iv) Use or disclose, without the express consent
396 of the customer, borrower, mortgagor or purchaser taken at a time
397 other than the making of the loan or extension of credit insurance
398 information relative to a policy which is required by the credit
399 transaction, for the purpose of soliciting, selling or replacing
400 such insurance. This provision does not apply in case of a
401 transfer of insurance information to an unaffiliated insurer in
402 connection with transferring insurance in force on an existing
403 insured of the depository institution, or an affiliate thereof, or
404 in connection with a merger with or acquisition of an unaffiliated
405 insurer, or the release of information as otherwise authorized by
406 state or federal law;

407 (v) Require any procedures or conditions of duly
408 licensed producers or insurers not customarily required of those
409 agents, brokers or insurers affiliated or in any way connected
410 with the person who lends money or extends credit;

411 (vi) Use an advertisement that would cause a
412 reasonable person to mistakenly believe that the federal
413 government or the state is responsible for the sales activity of,
414 or stands behind the credit of, the person, depository institution
415 or its affiliate;

416 (vii) Use an advertisement that would cause a
417 reasonable person to mistakenly believe that the federal
418 government or the state guarantees any returns on insurance
419 products or is a source of payment on any insurance obligation of
420 or sold by the person, depository institution or its affiliate.

421 (viii) Act as a producer unless properly licensed;

422 (ix) Pay or receive any commission, brokerage fee
423 or other compensation as a producer, unless the person holds a
424 valid producer's license for the applicable class of insurance.

425 However, an unlicensed person employed by a depository



426 institution, or its affiliate, may refer a customer or potential
427 customer to a licensed producer provided that the person does not
428 discuss specific insurance policy terms and conditions. The
429 unlicensed person may be compensated for the referral only if the
430 compensation is a one-time nominal fixed dollar amount for each
431 referral that does not depend on whether the customer purchases
432 the insurance product from the licensed producer;

433 (x) Use, disclose or release health information
434 obtained from the insurance records of a customer for any purpose
435 other than for its activities as a licensed producer, without the
436 express consent of the customer;

437 (xi) Solicit or sell insurance, other than credit
438 insurance or flood insurance, unless the solicitation or sale is
439 completed through documents separate from any credit transactions;

440 (xii) Include the expense of insurance premiums,
441 other than credit insurance premiums or flood insurance premiums,
442 in the primary credit transaction without the express written
443 consent of the customer;

444 (xiii) Solicit or sell insurance unless its
445 insurance sales activities are, to the extent practicable,
446 physically separated from areas where retail deposits are
447 routinely accepted; or

448 (xiv) Solicit or sell insurance unless it
449 maintains separate and distinct books and records relating to the
450 insurance transactions, including all files relating to and
451 reflecting consumer complaints.

452 (c) Every person or depository institution, or
453 affiliate of a depository institution who lends money or extends
454 credit and who solicits insurance on real and personal property
455 subject to subsection (b) of this section shall disclose to the
456 customer in writing that the insurance related to the credit
457 extension may be purchased from an insurer or producer of the
458 customer's choice, subject only to the lender's right to reject a



459 given insurer or agent as provided in subsection (b)(ii).
460 Further, the disclosure shall inform the customer that the
461 customer's choice of insurer or producer will not affect the
462 credit decision or credit terms in any way, except that the
463 depository institution may impose reasonable requirements
464 concerning the creditworthiness of the insurer and the scope of
465 coverage chosen as provided in subsection (b)(ii).

466 (d) Every person or depository institution, or
467 affiliate of a depository institution who lends money or extends
468 credit and who solicits insurance on real and personal property
469 shall disclose to the customer in writing and in a clear and
470 conspicuous manner, prior to the sale, that the insurance related
471 to such credit extension:

472 (i) Is not a deposit;

473 (ii) Is not insured by the Federal Deposit
474 Insurance Corporation;

475 (iii) Is not guaranteed by the depository
476 institution, its affiliate or any person soliciting or selling
477 insurance on its premises; and

478 (iv) Where appropriate, involves investment risk,
479 including the potential loss of principal.

480 The person, depository institution, or affiliate of the
481 depository institution shall obtain written acknowledgement of the
482 disclosure from the customer at the time the customer receives the
483 disclosure or at the time of the initial purchase of the insurance
484 policy.

485 (e) The commissioner shall have the power to examine
486 and investigate those insurance related activities of any person,
487 depository institution, affiliate of a depository institution or
488 insurer that the commissioner believes may be in violation of this
489 section. The person, depository institution, affiliate of a
490 depository institution or insurer shall make its insurance books
491 and records available to the commissioner and the commissioner's



492 staff for inspection upon reasonable notice. Any affected person
493 may submit to the commissioner a complaint or material pertinent
494 to the enforcement of this section.

495 (f) Nothing herein shall prevent a person or depository
496 institution, or affiliate of a depository institution who lends
497 money or extends credit from placing insurance on real or personal
498 property in the event the mortgagor, borrower or purchaser has
499 failed to provide required insurance in accordance with the terms
500 of the loan or credit document.

501 (g) Nothing contained in this section shall apply to
502 credit life or credit accident and health insurance.

503 SECTION 6. **Power of commissioner.** The commissioner shall
504 have power to examine and investigate the affairs of every insurer
505 in this state in order to determine whether such insurer has been
506 or is engaged in any unfair trade practice prohibited by this act.
507 Further, the commissioner shall have the power to examine and
508 investigate the affairs of every person, depository institution,
509 or affiliate of a depository institution related to the insurance
510 sales activities of the person, depository institution, or
511 affiliate of a depository institution in this state in order to
512 determine whether such person, depository institution, or
513 affiliate of a depository institution has been or is engaged in
514 any unfair trade practice prohibited by this act.

515 SECTION 7. **Hearings, witnesses, appearances, production of**
516 **books, and service of process.**

517 (1) Whenever the commissioner shall have reason to believe
518 that any insurer, person, depository institution or affiliate of a
519 depository institution has been engaged or is engaging in this
520 state in any unfair trade practice whether or not defined in this
521 act, and that a proceeding by the commissioner in respect thereto
522 would be in the interest of the public, the commissioner shall
523 issue and serve upon such insurer a statement of the charges in
524 that respect and a notice of a hearing thereon to be held at a



525 time and place fixed in the notice, which shall not be less than
526 ten (10) days after the date of the service thereof.

527 (2) At the time and place fixed for the hearing, the insurer
528 shall have an opportunity to be heard and to show cause why an
529 order should not be made by the commissioner requiring the insurer
530 to cease and desist from the acts, methods or practices so
531 complained of. Upon good cause shown, the commissioner shall
532 permit any person to intervene, appear and be heard at the hearing
533 by counsel or in person.

534 (3) Nothing contained in this act shall require the
535 observance at the hearing of formal rules of pleading or evidence.

536 (4) The commissioner, at the hearing, may administer oaths,
537 examine and cross examine witnesses, receive oral and documentary
538 evidence, and shall have the power to subpoena witnesses, compel
539 their attendance, and require the production of books, papers,
540 records, correspondence or other documents the commissioner deems
541 relevant to the inquiry. The commissioner, may, and upon the
542 request of any party shall, cause to be made a stenographic record
543 of all the evidence and all the proceedings at the hearing. If no
544 stenographic record is made and if a judicial review is sought,
545 the commissioner shall prepare a statement of the evidence and
546 proceeding for use on review. In case of a refusal of any person
547 to comply with any subpoena or to testify with respect to any
548 matter concerning which he may be lawfully interrogated, the
549 Circuit Court of Hinds County, on application of the commissioner,
550 may issue an order requiring such person to comply with the
551 subpoena and to testify; and any failure to obey any order of the
552 court may be punished by the court as contempt.

553 (5) Statements of charges, notices, orders and other
554 processes of the commissioner under this act may be served by
555 anyone duly authorized by the commissioner, either in the manner
556 provided by law for service of process in civil actions, or by
557 registering and mailing a copy thereof to the person affected by



558 the statement, notice, order or other process at the person's
559 residence or principal office or place of business. The verified
560 return by the person so serving the statement, notice, order, or
561 other process, setting forth the manner of service, shall be proof
562 of the same, and the return postcard receipt for the statement,
563 notice, order or other process, registered and mailed as
564 specified, shall be proof of the service of the same.

565 SECTION 8. **Cease and desist and penalty orders.** If, after
566 hearing, the commissioner finds that an insurer, person,
567 depository institution or affiliate of a depository institution
568 has engaged in an unfair trade practice, the commissioner shall
569 reduce the findings to writing and shall issue and cause to be
570 served upon the insurer charged with the violation, a copy of the
571 findings in an order requiring the insurer to cease and desist
572 from engaging in the act or practice and the commissioner may, at
573 the commissioner's discretion order:

574 (a) Payment of a monetary penalty of not more than One
575 Thousand Dollars (\$1,000.00) for each violation, but not to exceed
576 an aggregate penalty of One Hundred Thousand Dollars (\$100,000.00)
577 unless the violation was committed flagrantly in a conscious
578 disregard of this act, in which case the penalty shall not be more
579 than Twenty-five Thousand Dollars (\$25,000.00) for each violation
580 not to exceed an aggregate penalty of Two Hundred Fifty Thousand
581 Dollars (\$250,000.00); and/or

582 (b) Suspension or revocation of the insurer's license
583 if the insurer knew or reasonably should have known that it was in
584 violation of this act.

585 SECTION 9. **Judicial review of orders.**

586 (1) Any insurer, person, depository institution or affiliate
587 of a depository institution subject to an order of the
588 commissioner under Section 8 or Section 11 of this act may obtain
589 a review of such order by filing in the Circuit Court of Hinds
590 County, within thirty (30) days from the date of the service of



591 such order, a written petition praying that the order of the
592 commissioner be set aside. A copy of such petition shall be
593 forthwith served upon the commissioner, and thereupon the
594 commissioner forthwith shall certify and file in such court a
595 transcript of the entire record in the proceeding, including all
596 the evidence taken and the report and order of the commissioner.
597 Upon filing of the petition and transcript the court shall have
598 jurisdiction of the proceeding and of the question determined
599 therein, shall determine whether the filing of such petition shall
600 operate as a stay of the order of the commissioner, and shall have
601 power to make and enter upon the pleadings, evidence and
602 proceedings set forth in the transcript a decree modifying,
603 affirming or reversing the order of the commissioner, in whole or
604 in part. The findings of the commissioner as to the facts, if
605 supported by substantial evidence, shall be conclusive.

606 (2) To the extent that the order of the commissioner is
607 affirmed, the court shall thereupon issue its own order commanding
608 obedience to the terms of such order of the commissioner. If
609 either party shall apply to the court for leave to adduce
610 additional evidence, and shall show to the satisfaction of the
611 court that the additional evidence is material and that there were
612 reasonable grounds for the failure to adduce such evidence in the
613 proceeding before the commissioner, the court may order such
614 additional evidence to be taken before the commissioner and to be
615 adduced upon the hearing in such manner and upon such terms and
616 conditions as the court may deem proper. The commissioner may
617 modify the findings of fact, or make new findings by reason of the
618 additional evidence so taken, and shall file such modified or new
619 findings that are supported by substantial evidence with a
620 recommendation if any, for the modification or setting aside of
621 the original order, with the return of such additional evidence.

622 (3) An order issued by the commissioner under Section 8 of
623 this act shall become final:



624 (a) Upon the expiration of the time allowed for filing
625 a petition for review if no such petition has been duly filed
626 within such time; except that the commissioner may thereafter
627 modify or set aside the order to the extent provided in Section 8
628 of this act; or

629 (b) Upon the final decision of the court if the court
630 directs that the order of the commissioner be affirmed or the
631 petition for review dismissed.

632 (4) No order of the commissioner under this act or order of
633 a court to enforce the same shall in any way relieve or absolve
634 any person affected by such order from any liability under any
635 other laws of this state.

636 SECTION 10. **Judicial review by intervenor.** If after any
637 hearing under Section 7 or Section 11 of this act, the report of
638 the commissioner does not charge a violation of this act, then any
639 intervenor in the proceedings may within ten (10) days after the
640 service of the report, cause a notice of appeal to be filed in the
641 Circuit Court of Hinds County for a review of such report. Upon
642 review, the court shall have authority to issue appropriate orders
643 and decrees in connection therewith, including, if the court finds
644 that it is to the interest of the public, orders enjoining and
645 restraining the continuance of any method of competition, act or
646 practice which it finds, notwithstanding the report of the
647 commissioner, constitutes a violation of this act, and containing
648 penalties pursuant to Section 8 of this act.

649 SECTION 11. **Penalty for violation of cease and desist**
650 **orders.** Any insurer, person, depository institution or affiliate
651 of a depository institution that violates a cease and desist order
652 of the commissioner and while such order is in effect, may after
653 notice and hearing and upon order of the commissioner, be subject
654 at the discretion of the commissioner to:

655 (a) A monetary penalty of not more than Twenty-five
656 Thousand Dollars (\$25,000.00) for each and every act or violation



657 not to exceed an aggregate of Two Hundred Fifty Thousand Dollars
658 (\$250,000.00) pursuant to any such hearing; and/or

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

660 SECTION 12. Regulations. The commissioner may, after notice
661 and hearing, promulgate reasonable rules, regulations and orders
662 as are necessary or proper to carry out and effectuate the
663 provisions of this act. Such regulations shall be subject to
664 review in accordance with Section 25-43-1 et seq.

665 SECTION 13. Provisions of act additional to existing law.

666 The powers vested in the commissioner by this act shall be
667 additional to any other powers to enforce any penalties, fines or
668 forfeitures authorized by law with respect to the methods, acts
669 and practices hereby declared to be unfair or deceptive.

670 SECTION 14. Immunity from prosecution. If any person shall
671 ask to be excused from attending and testifying or from producing
672 any books, papers, records, correspondence or other documents at
673 any hearing on the ground that the testimony or evidence required
674 may tend to incriminate or subject the person to a penalty or
675 forfeiture, and shall notwithstanding be directed to give such
676 testimony or produce such evidence, the person shall nonetheless
677 comply with such direction, but shall not thereafter be prosecuted
678 or subjected to any penalty or forfeiture for or on account of any
679 transaction, matter or thing concerning which the person may
680 testify or produce evidence thereto, and no testimony so given or
681 evidence produced shall be received against the person upon any
682 criminal action, investigation or proceeding; provided, however,
683 that no such person so testifying shall be exempt from prosecution
684 or punishment for any perjury committed while so testifying and
685 the testimony or evidence so given or produced shall be admissible
686 against the person upon any criminal action, investigation or
687 proceeding concerning such perjury, nor shall the person be exempt
688 from the refusal, revocation or suspension of any license,
689 permission or authority conferred, or to be conferred, pursuant to



690 the Insurance Law of this state. Any such person may execute,
691 acknowledge and file in the office of the commissioner a statement
692 expressly waiving such immunity or privilege in respect to any
693 transaction, matter or thing specified in such statement and
694 thereupon the testimony of such person or such evidence in
695 relation to such transaction, matter or thing may be received or
696 produced before any judge or justice, court, tribunal, grand jury
697 or otherwise, and if so received or produced such person shall not
698 be entitled to any immunity or privilege on account of any
699 testimony the person may so give or evidence so produced.

700 SECTION 15. **Separability provision.** If any provision of
701 this act, or the application of such provision to any person or
702 circumstances, shall be held invalid, the remainder of the act,
703 and the application of such provision to person or circumstances
704 other than those as to which it is held invalid, shall not be
705 affected thereby.

706 SECTION 16. Sections 83-5-29, 83-5-30, 83-5-31, 83-5-33,
707 83-5-35, 83-5-37, 83-5-39, 83-5-41, 83-5-43, 83-5-45, 83-5-47,
708 83-5-49 and 83-5-51, Mississippi Code of 1972, which regulate
709 trade practices in the business of insurance, are hereby repealed.

710 SECTION 17. This act shall take effect and be in force from
711 and after July 1, 2001.

