

By: Representative Chism

To: Insurance

HOUSE BILL NO. 322

1 AN ACT TO AMEND SECTION 83-23-109, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DEFINITION OF COVERED CLAIM UNDER THE MISSISSIPPI
3 INSURANCE GUARANTY ASSOCIATION LAW; TO AMEND SECTION 83-23-115,
4 MISSISSIPPI CODE OF 1972, TO FURTHER PROVIDE WHAT A COVERED CLAIM
5 SHALL NOT INCLUDE; AND FOR RELATED PURPOSES.

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

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

9 83-23-109. As used in this article:

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

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

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



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

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

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

33 (f) "Covered claim" means an unpaid claim, including
34 one of unearned premiums, which arises out of and is within the
35 coverage and not in excess of the applicable limits of an
36 insurance policy to which this article applies issued by an

37 insurer, if such insurer becomes an insolvent insurer and * * *

38 (i) the claimant or insured is a resident of this state at the
39 time of the insured event, provided that for entities other than
40 an individual, the residence of a claimant or insured is the state
41 in which its principal place of business is located at the time of
42 the insured event; or * * * (ii) the property from which the claim
43 arises is permanently located in this state. "Covered claim"



44 shall not include any amount awarded as punitive or exemplary
45 damages; or sought as a return of premium under any retrospective
46 rating plan; or due any reinsurer, insurer, insurance pool, or
47 underwriting association, as subrogation recoveries or otherwise
48 and shall preclude recovery thereof from the insured of any
49 insolvent carrier to the extent of the policy limits. "Covered
50 claim" shall not include any claim that would otherwise be a
51 covered claim under this paragraph that has been rejected or
52 denied by any other state guaranty fund based upon that state's
53 statutory exclusions regarding the insured's net worth. "Covered
54 claim" shall not include a claim filed with the association after
55 final date set by the court for the filing of claims against the
56 liquidator or receiver of an insolvent insurer.

57 (g) "Insolvent insurer" means an insurer licensed to
58 transact insurance in this state either at the time the policy was
59 issued or when the insured event occurred and against whom an
60 order of liquidation with a finding of insolvency has been entered
61 by a court of competent jurisdiction, in the insurer's state of
62 domicile or of this state and the order of liquidation has not
63 been stayed or been the subject of a writ of supersedeas or other
64 comparable order.

65 (h) "Member insurer" means any person who * * * (i)
66 writes any kind of insurance to which this article applies under
67 Section 83-23-105, including the exchange of reciprocal or



68 interinsurance contracts, and * * * (ii) is licensed to transact
69 insurance in this state.

70 (i) "Net direct written premiums" means direct gross
71 premiums written in this state on insurance policies to which this
72 article applies, less return premiums thereon and dividends paid
73 or credited to policyholders on such direct business. "Net direct
74 written premiums" does not include premiums on contracts between
75 insurers or reinsurers.

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

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

80 83-23-115. (1) The association shall:

81 (a) Be obligated to the extent of the covered claims
82 existing prior to the determination of insolvency and arising
83 within thirty (30) days after the determination of insolvency, or
84 before the policy expiration date if less than thirty (30) days
85 after the determination, or before the insured replaces the policy
86 or causes its cancellation if he does so within thirty (30) days
87 of the determination. Such obligation shall be satisfied by paying
88 the claimant an amount as follows:

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

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



93 (iii) An amount in excess of Fifty Dollars
94 (\$50.00) but not exceeding Three Hundred Thousand Dollars
95 (\$300,000.00) per claimant for all other covered claims.

96 In no event shall the association be obligated to a
97 policyholder or claimant in an amount in excess of the obligation
98 of the insolvent insurer under the policy from which the claim
99 arises. Notwithstanding any other provisions of law to the
100 contrary, a covered claim shall not include a claim filed with the
101 association after final date set by the court for the filing of
102 claims against the liquidator or receiver of an insolvent insurer.

103 (b) Be deemed the insurer to the extent of its
104 obligation on the covered claims and to such extent shall have all
105 rights, duties, and obligations of the insolvent insurer as if the
106 insurer had not become insolvent.

107 (c) Assess insurers amounts necessary to pay the
108 obligations of the association under paragraph (a) subsequent to
109 an insolvency, the expenses of handling covered claims subsequent
110 to an insolvency, and the cost of examinations under Section
111 83-23-125 and other expenses authorized by this article. The
112 assessments of each member insurer shall be in the proportion that
113 the net direct written premiums of the member insurer for the
114 preceding calendar year bears to the net direct written premiums
115 of all member insurers for the preceding calendar year. Each
116 member insurer shall be notified of the assessment not later than
117 thirty (30) days before it is due. No member insurer may be



118 assessed in any year an amount greater than one percent (1%) of
119 that member insurer's net direct written premiums for the
120 preceding calendar year. If the maximum assessment, together with
121 the other assets of the association, does not provide in any one
122 (1) year an amount sufficient to make all necessary payments, the
123 funds available shall be prorated and the unpaid portion shall be
124 paid as soon thereafter as funds become available. The association
125 may exempt or defer, in whole or in part, the assessment of any
126 member insurer, if the assessment would cause the member insurer's
127 financial statement to reflect amounts of capital or surplus less
128 than the minimum amounts required for a certificate of authority
129 by any jurisdiction in which the member insurer is authorized to
130 transact insurance. Each member insurer may set off, against any
131 assessment, authorized payments made on covered claims and
132 expenses incurred in the payment of such claims by the member
133 insurer.

134 (d) Investigate claims brought against the association;
135 adjust, compromise, settle, and pay covered claims to the extent
136 of the association's obligation; deny all other claims; and may
137 review settlements, releases, and judgments to which the insolvent
138 insurer or its insureds were parties, to determine the extent to
139 which such settlements, releases, and judgments may be properly
140 contested.

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



143 (f) Handle claims through its employees or through one
144 or more insurers or other persons designated as servicing
145 facilities. Designation of a servicing facility is subject to the
146 approval of the commissioner, but such designation may be declined
147 by a member insurer.

148 (g) Reimburse each servicing facility for obligations
149 of the association paid by the facility and for expenses incurred
150 by the facility while handling claims on behalf of the
151 association, and shall pay the other expenses of the association
152 authorized by this article.

153 (2) The association may:

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

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

158 (c) Sue or be sued.

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

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

163 (f) Refund to the member insurers in proportion to the
164 contribution of each member insurer to the association that amount
165 by which the assets of the association exceed the liabilities if,
166 at the end of any calendar year, the board of directors finds that
167 the assets of the association exceed the liabilities of the



168 association as estimated by the board of directors for the coming
169 year.

170 **SECTION 3.** This act shall take effect and be in force from
171 and after July 1, 2019.

