

By: Senator(s) Carmichael

To: Insurance

SENATE BILL NO. 2864

1 AN ACT TO AMEND SECTION 83-23-109, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE THAT A COVERED CLAIM UNDER THE MISSISSIPPI INSURANCE
 3 GUARANTY ASSOCIATION LAW SHALL NOT INCLUDE ANY CLAIM THAT HAS BEEN
 4 REJECTED OR DENIED BY ANY OTHER STATE GUARANTY FUND BASED UPON
 5 THAT STATE'S STATUTORY EXCLUSIONS REGARDING THE INSURED'S NET
 6 WORTH; TO AMEND SECTION 83-23-115, MISSISSIPPI CODE OF 1972, TO
 7 PROVIDE THAT A COVERED CLAIM SHALL NOT INCLUDE A CLAIM FILED AFTER
 8 FINAL DATE SET BY THE COURT FOR THE FILING OF CLAIMS AGAINST THE
 9 LIQUIDATOR OR RECEIVER OF AN INSOLVENT INSURER; AND FOR RELATED
 10 PURPOSES.

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

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

14 83-23-109. As used in this article:

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

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



22 (c) "Claimant" means any insured making a first-party
23 claim or any person instituting a liability claim, provided that
24 no person who is an affiliate of the insolvent insurer may be a
25 claimant.

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

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

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



47 the insured event; or * * * (ii) the property from which the claim
48 arises is permanently located in this state. "Covered claim"
49 shall not include any amount awarded as punitive or exemplary
50 damages; or sought as a return of premium under any retrospective
51 rating plan; or due any reinsurer, insurer, insurance pool, or
52 underwriting association, as subrogation recoveries or otherwise
53 and shall preclude recovery thereof from the insured of any
54 insolvent carrier to the extent of the policy limits. "Covered
55 claim" shall not include any claim that would otherwise be a
56 covered claim under this article that has been rejected or denied
57 by any other state guaranty fund based upon that state's statutory
58 exclusions regarding the insured's net worth.

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

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



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

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

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

82 83-23-115. (1) The association shall:

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

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

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



95 (iii) An amount in excess of Fifty Dollars
96 (\$50.00) but not exceeding Three Hundred Thousand Dollars
97 (\$300,000.00) per claimant for all other covered claims.

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

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

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



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

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

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



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

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

155 (2) The association may:

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

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

160 (c) Sue or be sued.

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

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

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



170 association as estimated by the board of directors for the coming
171 year.

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

