3/24/14 12:16 p.m.

Chapter No. 426
14/SS02/R627SG
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SENATE BILL NO. 2330

Originated in Senate Liz Welch Secretary

SENATE BILL NO. 2330

AN ACT TO AMEND SECTION 83-34-4, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE MISSISSIPPI WINDSTORM UNDERWRITING ASSOCIATION MAY USE THE MONIES FROM THE NONADMITTED POLICY FEES FOR CERTAIN PROGRAMS TARGETED TO REDUCE THE NUMBER OF POLICIES WITHIN THE ASSOCIATION; TO EXTEND THE REPEALER ON THE SECTION OF LAW THAT PROVIDES FOR THE NONADMITTED POLICY FEE; TO EXEMPT CERTAIN TYPES OF POLICIES FROM THE NONADMITTED POLICY FEE; TO AMEND SECTION 83-34-3, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISION; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 83-34-4, Mississippi Code of 1972, is amended as follows:

83-34-4. (1) Nonadmitted insurers shall not be assessable insurers of the association. All surplus lines insurance producers placing insurance through nonadmitted insurers shall collect from the insured and remit to the association a nonadmitted policy fee on all premiums for all insurance written by such surplus lines insurance producer for a policy from a nonadmitted insurer for any and all risks in this state<u>, except that policies or portions thereof that cover residential earthquake risks or residential flood risks that are not written</u>

through the National Flood Insurance Program shall be exempt from the nonadmitted policy fee. By procuring or selling insurance on property in this state from a nonadmitted insurer, each surplus lines insurance producer placing insurance through a nonadmitted insurer agrees to be bound by the provisions of this chapter and to collect and remit the nonadmitted policy fee provided for herein.

(2) The nonadmitted policy fee shall be a percentage of the total policy premium but the nonadmitted policy fee shall not be considered premium and is not subject to premium taxes or commissions. However, failure to pay the nonadmitted policy fee shall be treated the same as failure to pay premium. "Total policy premium" includes taxes and commissions.

(3) The nonadmitted policy fee percentage shall be three percent (3%).

(4) Within twenty (20) days of the end of the quarter, surplus lines insurance producers placing insurance through nonadmitted insurers shall remit directly to the association all nonadmitted policy fees collected in the preceding quarter. In addition to the nonadmitted policy fee provided for herein, surplus lines insurance producers placing insurance through nonadmitted insurers shall collect and remit surcharges as provided by this chapter. Surplus lines insurance producers placing insurance through nonadmitted insurers may designate another surplus lines insurance producer that actually procured

the insurance from the nonadmitted carrier to collect and remit the nonadmitted policy fees.

(5) Each insured in this state who directly procures or renews insurance with a nonadmitted insurer on properties, risks or exposures located or to be performed, in whole or in part, in this state, other than insurance procured through a surplus lines licensee, shall be subject to the nonadmitted policy fee which shall be paid by the insured according to the procedures provided for premium taxes in Section 83-21-17(5).

(6) * * * Monies derived from the nonadmitted policy fee collected under this section may be used by the association, in addition to any uses provided for in Section 83-34-3(4), for education, public outreach, training of building officials and other programs targeted to reduce the number of policies within the association.

(7) This section shall stand repealed from and after July 1, 2018.

SECTION 2. Section 83-34-3, Mississippi Code of 1972, is amended as follows:

83-34-3. (1) From and after March 22, 2007, the Mississippi Windstorm Underwriting Association, as created by Chapter 459, Laws of 1987, shall be a separate and independent entity as provided for herein. At its option, the association may incorporate. All assets belonging to the association on or before March 22, 2007, shall hereinafter belong to and remain with the

association. There shall be no distribution of income or assets other than for the benefit of the association, which shall have the right to invest and reinvest assets.

(2) From and after March 22, 2007, the association shall no longer have members. Former "members" of the association shall be "assessable insurers" and shall have no rights to the assets and profits of the association, but shall have the obligation for regular assessments as provided herein. Former members shall continue to have the obligations provided in this chapter before March 22, 2007, for all policyholder claims, costs, damages of any kind and expenses in any manner resulting from losses that occurred before March 22, 2007, for which the association may assess as needed the former members in the manner provided in this chapter before March 22, 2007. As a condition of its authority to continue to transact the business of insurance in this state and by transacting business in this state, each licensed insurer agrees to be bound by the provisions of this statute and the plan of operation as approved by the commissioner, and all amendments and revisions thereto.

(3) Any licensed insurer first authorized to write insurance after March 22, 2007, shall become an assessable insurer on the first day of January immediately following such authorization. The determination of such insurer's participation in the association shall be made based upon writings in the prior year in

the same manner as for all other assessable insurers of the association.

(4) Except as provided for in Section 83-34-4(6), the premiums, assessments, fees, investment income and other revenue of the association are funds received for the sole purpose of providing insurance coverage, paying claims for Mississippi citizens insured by the association, securing and repaying debt obligations issued by the association, and conducting all other activities of the association, all as required or permitted by this chapter. Such revenue shall not be considered taxes, fees, licenses or charges for services imposed by the State of Mississippi on individuals, businesses, or agencies, and shall not be used for other purposes.

(5) It is the intent of the Legislature that the association be and act as a nonprofit entity. The association shall be free from taxation of every kind by the state and any political subdivision or other instrumentality thereof. It is the intent of the Legislature that the association be tax exempt from all taxes, including federal taxes, and the association is granted the authority to take those steps necessary to obtain federal tax exempt status.

(6) Any debt obligations issued by the association, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of

every kind by the state and any political subdivision or other instrumentality thereof.

(7) In the event of the termination of the association by act of the Legislature, or other means, the assets of the association shall be applied first to pay all debts, liabilities and obligations of the association, including the establishment of reasonable reserves for any contingent liabilities or obligations, and all remaining assets of the association shall become property of the state.

(8) The association shall operate as a private enterprise and shall not be subject to the procurement provisions of Section 31-7-13, and policies and decisions of the association, including, but not limited to, decisions relating to incurring debt, levying of assessments, the issuance and sale of bonds, claims decisions under association policies, hiring and firing of employees, and all services relating to the operation of the association shall not be subject to the provisions of Section 25-9-101 et seq. The association shall not be required to obtain or to hold a license or certificate of authority issued by the commissioner or any other office. The association shall not be required to participate as a member insurer of the Mississippi Insurance Guaranty Association.

SECTION 3. This act shall take effect and be in force from and after July 1, 2014.

PASSED BY THE SENATE
March 13, 2014

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
February 25, 2014

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

GOVERNOR
3/24/2014 12:16pm