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Chapter No. 414
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HOUSE BILL NO. 534

Originated in House _____ Clerk

HOUSE BILL NO. 534

AN ACT TO AMEND SECTION 83-5-205, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO CONDUCT FINANCIAL AND MARKET ANALYSIS REVIEW OF ALL INSURERS AUTHORIZED TO DO BUSINESS IN THIS STATE; TO AMEND SECTION 83-5-209, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE CONFIDENTIALITY OF ANCILLARY INFORMATION RECEIVED BY THE COMMISSIONER OF INSURANCE DURING AN EXAMINATION, FINANCIAL REVIEW AND MARKET ANALYSIS REVIEW; TO AMEND SECTIONS 83-5-401 THROUGH 83-5-405, 83-5-417 AND 83-5-427, MISSISSIPPI CODE OF 1972, TO INCLUDE HEALTH ORGANIZATION INSURERS UNDER THE RISK BASED CAPITAL LAWS; TO AMEND SECTION 83-6-1, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERM "ENTERPRISE RISK" AS USED IN THE INSURANCE HOLDING COMPANY REGISTRATION ACT; TO AMEND SECTION 83-6-5, MISSISSIPPI CODE OF 1972, TO REVISE THE FORM AND CONTENTS OF THE REGISTRATION STATEMENT FILED WITH THE COMMISSIONER OF INSURANCE; TO AMEND SECTION 83-6-17, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A DISCLAIMER OF AFFILIATION SHALL BE DEEMED TO HAVE BEEN GRANTED UNLESS THE COMMISSIONER NOTIFIES THE FILING PARTY THE DISCLAIMER IS DISALLOWED; TO AMEND SECTION 83-6-21, MISSISSIPPI CODE OF 1972, TO REVISE THE NOTICE REQUIREMENTS TO THE COMMISSIONER OF INSURANCE OF CERTAIN INTENDED TRANSACTIONS WITHIN THE HOLDING COMPANY SYSTEM; TO AMEND SECTION 83-6-24, MISSISSIPPI CODE OF 1972, TO REVISE THE FILING REQUIREMENTS OF PERSONS SEEKING TO DIVEST OR ACQUIRE A CONTROLLING INTEREST IN A DOMESTIC INSURER; TO CREATE NEW SECTION 83-6-26, MISSISSIPPI CODE OF 1972, TO PROVIDE CERTAIN MANAGEMENT REQUIREMENTS OF DOMESTIC INSURERS SUBJECT TO REGISTRATION; TO AMEND SECTION 83-6-27, MISSISSIPPI CODE OF 1972, TO MAKE A TECHNICAL CORRECTION TO REFERENCE THE CHAPTER OF LAWS; TO AMEND SECTION 83-6-29, MISSISSIPPI CODE OF 1972, TO REVISE THE CONFIDENTIAL TREATMENT OF DOCUMENTS, MATERIALS OR OTHER INFORMATION IN THE POSSESSION OR CONTROL OF THE

DEPARTMENT OF INSURANCE THAT ARE OBTAINED BY OR DISCLOSED TO THE COMMISSIONER OR ANY OTHER PERSON DURING CERTAIN EXAMINATIONS OR INVESTIGATIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 83-5-205, Mississippi Code of 1972, is amended as follows:

83-5-205. (1) The commissioner or any of his examiners may conduct an examination under Sections 83-5-201 through 83-5-217 of any company as often as the commissioner, in his or her sole discretion, deems appropriate but, at a minimum, shall conduct an examination of every insurer licensed in this state not less frequently than once every five (5) years. In scheduling and determining the nature, scope and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners and in effect when the commissioner exercises discretion under this section.

(2) For purposes of completing an examination of any company under Sections 83-5-201 through 83-5-217, the commissioner may examine or investigate any person, or the business of any person, insofar as such examination or investigation, in the sole discretion of the commissioner, is necessary or material to the examination of the company.

(3) In lieu of an examination under Sections 83-5-201 through 83-5-217 of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, such reports may only be accepted if (a) the insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or (b) the examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by such an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(4) In addition to those examinations performed by the commissioner pursuant to subsection (1) of this section, the commissioner shall conduct financial and market analysis review of all insurers authorized to do business in this state and may conduct regulatory review of entities regulated by the department. The reviews may include the annual statement and the market conduct annual statement of the insurer or regulated entity reviewed, company financial reports rendered pursuant to good and acceptable accounting practices, results of insurance solvency

standards testing as performed by the National Association of Insurance Commissioners, results of prior examinations and office reviews, management changes, consumer complaints, and such other relevant information as from time to time may be required by the commissioner.

(5) In lieu of conducting a financial or market analysis under this section of any foreign or alien insurer licensed in this state, the commissioner may rely upon the financial or market analysis conducted by the insurance department of the company's state of domicile or port-of-entry accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program.

(6) Every insurer or regulated entity shall produce and make freely accessible to the commissioner the accounts, records, documents and files in its possession or control. Failure by an insurer or regulated entity to supply information requested by the department during a course of financial or market analysis may subject the insurer or regulated entity to revocation or suspension of its license, or, in lieu thereof, a fine not to exceed Ten Thousand Dollars ($10,000.00) per occurrence.

SECTION 2. Section 83-5-209, Mississippi Code of 1972, is amended as follows:

83-5-209. (1) All examination reports shall be comprised of only facts appearing upon the books, records or other documents of the company, its agents or other persons examined, or as

ascertained from the testimony of its officers or agents or other persons examined concerning its affairs and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(2) No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within thirty (30) days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of examiner work papers and enter an order:

(a) Adopting the examination report as filed, or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such violation; or

(b) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information and refiling in accordance with subsections (1) and (2) of this section; or

(c) Calling for an investigatory hearing with no less than twenty (20) days' notice to the company for purposes of obtaining additional documentation, data, information and testimony.

(4) All orders entered in accordance with subsection (3)(a) of this section shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner work papers, and any written submissions or rebuttals. Any such order shall be considered a final administrative decision and may be appealed under the Mississippi Administrative Procedures Act and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty (30) days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(5) Any hearing conducted under subsection (3)(c) of this section by the commissioner or authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the

filed examination report or raised by or as a result of the commissioner's review of relevant work papers or by the written submission or rebuttal of the company. Within twenty (20) days of the conclusion of any such hearing, the commissioner shall enter an order in accordance with subsection (3)(a) of this section.

(a) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to examiner work papers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or his representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the department, the company or other persons. The documents produced shall be included in the record, and testimony taken by the commissioner or his representative shall be under oath and preserved for the record.

Nothing contained in this section shall require the department to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(b) The hearing shall proceed with the commissioner or his representative posing questions to the persons subpoenaed. Thereafter, the company and the department may present testimony relevant to the investigation. Cross-examination shall be

conducted only by the commissioner or his representative. The company and the department shall be permitted to make closing statements and may be represented by counsel of their choice.

(6) (a) Upon the adoption of the examination report under subsection (3)(a) of this section, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of ten (10) days except to the extent provided in subsection (2) of this section. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(b) Nothing contained in Sections 83-5-201 through 83-5-217 shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with Sections 83-5-201 through 83-5-217.

(c) If the commissioner determines that regulatory action is appropriate as a result of any examination, he may initiate any proceedings or actions as provided by law.

(7) * * * (a) (i) Except as provided in subsection (6) and in this subsection (7), documents, materials or other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in the course of an examination made under Sections 83-5-201 through 83-5-217, or in the course of analysis by the commissioner of the financial condition or market conduct of a company, shall be confidential by law and privileged, shall not be subject to the Mississippi Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(ii) Documents, materials or other information, including, but not limited to, all working papers, and copies thereof, in the possession or control of the National Association of Insurance Commissioners and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action, if they are:

1. Created, produced or obtained by or disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries in the course of the National Association of Insurance Commissioners and its affiliates and

subsidiaries assisting an examination made under Sections 83-5-201 through 83-5-217, or the laws of another state or jurisdiction that is substantially similar to Sections 83-5-201 through 83-5-217, or assisting a commissioner in the analysis of the financial condition or market conduct of a company; or

2. Disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries under paragraph (c) of this subsection by a commissioner.

(b) Neither the commissioner nor any person who received the documents, material or other information while acting under the authority of the commissioner, including the National Association of Insurance Commissioners and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to paragraph (a) of this subsection.

(c) In order to assist in the performance of the commissioner's duties, the commissioner:

(i) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to paragraph (a) of this subsection, with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged

status of the document, material, communication or other information;

(ii) May receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

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

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

(e) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.

(f) For the purposes of this subsection, the terms "department," "insurance department," "law enforcement agency,"

"regulatory agency," and the "National Association of Insurance Commissioners" include, but are not limited to, their employees, agents, consultants and contractors.

SECTION 3. Section 83-5-401, Mississippi Code of 1972, is amended as follows:

83-5-401. As used in Sections 83-5-401 through 83-5-427, the following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Adjusted RBC report" means a risk-based capital report which has been adjusted by the commissioner in accordance with Section 83-5-403(5).

(b) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

(c) "Domestic insurer" means any insurance company domiciled in this state.

(d) "Foreign insurer" means any insurance company which is licensed to do business in this state under Section 83-21-1 et seq., but is not domiciled in this state.

(e) "NAIC" means the National Association of Insurance Commissioners.

(f) "Life and/or health insurer" means any insurance company licensed under Section 83-19-1 et seq., or a licensed property and casualty insurer writing only accident and health insurance.

(g) "Property and casualty insurer" means any insurance company licensed under Section 83-19-1 et seq., but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(h) "Negative trend" means, with respect to a life and/or health insurer, negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the Life RBC instructions.

(i) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC, as such RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(j) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(i) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;

(ii) "Regulatory action level RBC" means the product of 1.5 and its authorized control level RBC;

(iii) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(iv) "Mandatory control level RBC" means the product of .70 and the authorized control level RBC.

(k) "RBC plan" means a comprehensive financial plan containing the elements specified in Section 83-5-405(2). If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(l) "RBC report" means the report required in Section 83-5-403.

(m) "Total adjusted capital" means the sum of:

(i) An insurer's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under Section 83-5-55; and

(ii) Such other items, if any, as the RBC instructions may provide.

(n) "Domestic health organization insurer" means a health organization insurer domiciled in this state.

(o) "Foreign health organization insurer" means a health organization insurer that is licensed to do business in this state under Section 83-21-1 et seq., but is not domiciled in this state.

(p) "Health organization insurer" means a health maintenance organization, limited health service organization, dental or vision plan, hospital, medical and dental indemnity or service corporation or other managed care organization that holds a certificate of authority under Section 83-41-305. This

definition does not include an organization that is licensed as either a life and health insurer or property and casualty insurer and that is otherwise subject to either the life or property and casualty RBC requirements.

SECTION 4. Section 83-5-403, Mississippi Code of 1972, is amended as follows:

83-5-403. (1) Every domestic insurer shall, on or before each March 1, the filing date, prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. In addition, every domestic insurer shall file its RBC report:

(a) With the NAIC in accordance with the RBC instructions; and

(b) With the insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC report not later than the later of:

(i) Fifteen (15) days from the receipt of notice to file its RBC report with that state; or

(ii) The filing date.

(2) A life and health insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account, and may adjust for the

covariance between, the following factors determined in each case by applying the factors in the manner set forth in the RBC instructions.

(a) The risk with respect to the insurer's assets;

(b) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) The interest rate risk with respect to the insurer's business; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(3) A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account, and may adjust for the covariance between, determined in each case by applying the factors in the manner set forth in the RBC instructions:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(4) A health organization insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account (and may adjust

for the covariance between) determined in each case by applying the factors in the manner set forth in the RBC instructions:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(* * *5) An excess of capital over the amount produced by the risk-based capital requirements contained in Sections 83-5-401 through 83-5-427 and the formulas, schedules and instructions referenced in Sections 83-5-401 through 83-5-427, is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by Sections 83-5-401 through 83-5-427. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in Sections 83-5-401 through 83-5-427.

(* * *6) If a domestic insurer files a RBC report which in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. A RBC report as so adjusted is referred to as an "adjusted RBC report."

SECTION 5. Section 83-5-405, Mississippi Code of 1972, is amended as follows:

83-5-405. (1) "Company action level event" means any of the following events:

(a) The filing of a RBC report by an insurer which indicates that:

(i) The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

(ii) If a life and/or health insurer, the insurer has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 2.5 and has a negative trend; or

(iii) If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty RBC instructions;

(iv) If a health organization insurer, the insurer has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculations included in the health RBC instructions;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in paragraph (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under Section 83-5-413; or

(c) If, under Section 83-5-413, an insurer challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the commissioner a RBC plan which shall:

(a) Identify the conditions which contribute to the company action level event;

(b) Contain proposals of corrective actions which the insurer intends to take and would be expected to result in the elimination of the company action level event;

(c) Provide projections of the insurer's financial results in the current year and at least the four (4) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and surplus. The projections for both new and renewal business might include separate projections for each major line of business and

separately identify each significant income, expense and benefit component;

(d) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the insurer's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(3) The RBC plan shall be submitted:

(a) Within forty-five (45) days of the company action level event; or

(b) If the insurer challenges an adjusted RBC report under Section 83-5-413, within forty-five (45) days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) Within sixty (60) days after the submission by an insurer of a RBC plan to the commissioner, the commissioner shall notify the insurer whether the RBC plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC plan satisfactory, in the judgment of the

commissioner. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) Within forty-five (45) days after the notification from the commissioner; or

(b) If the insurer challenges the notification from the commissioner under Section 83-5-413, within forty-five (45) days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) In the event of a notification by the commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may at the commissioner's discretion, subject to the insurer's right to a hearing under Section 83-5-413, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic insurer that files a RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) Such state has a RBC provision substantially similar to Section 83-5-415(1); and

(b) The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in

which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(i) Fifteen (15) days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

(ii) The date on which the RBC plan or revised RBC plan is filed under Section 83-5-405(3) and (4).

SECTION 6. Section 83-5-417, Mississippi Code of 1972, is amended as follows:

83-5-417. (1) The provisions of Sections 83-5-401 through 83-5-427 are supplemental to any other provisions of the laws of this state and shall not preclude or limit any other powers or duties of the commissioner under such laws.

(2) The commissioner may promulgate rules and regulations necessary for the implementation of Sections 83-5-401 through 83-5-427.

(3) The commissioner may exempt from the application of Sections 83-5-401 through 83-5-427 any domestic insurer, other than a domestic health organization insurer, that:

(a) Writes direct business only in this state;

(b) Writes direct annual premiums of Two Million Dollars ($2,000,000.00) or less; and

(c) Assumes no reinsurance in excess of five percent (5%) of direct premium written.

(4) The commissioner may exempt from the application of Sections 83-5-401 through 83-5-427 a domestic health organization insurer that:

(a) Writes direct business only in this state;

(b) Assumes no reinsurance in excess of five percent (5%) of direct premium written; and

(c) Writes direct annual premiums for comprehensive medical business of Two Million Dollars ($2,000,000.00) or less, or is a limited health service organization that covers less than two thousand (2,000) lives.

SECTION 7. Section 83-5-427, Mississippi Code of 1972, is amended as follows:

83-5-427. (1) For RBC reports required to be filed by life insurers with respect to 1996, the following requirements shall apply in lieu of the provisions of Sections 83-5-405, 83-5-407, 83-5-409, and 83-5-411.

(a) In the event of a company action level event with respect to a domestic insurer, the commissioner shall take no regulatory action hereunder.

(b) In the event of a regulatory action level event under Section 83-5-407(1)(a), (b) or (c), the commissioner shall take the actions required under Section 83-5-405.

(c) In the event of a regulatory action level event under Section 83-5-407(1)(d), (e), (f), (g), (h) or (i), or an authorized control level event, the commissioner shall take the

actions required under Section 83-5-407 with respect to the insurer.

(d) In the event of a mandatory control level event with respect to an insurer, the commissioner shall take the actions required under Section 83-5-409 with respect to the insurer.

(2) For RBC reports required to be filed by property and casualty insurers with respect to 1996, the following requirements shall apply in lieu of the provisions of Sections 83-5-405, 83-5-407, 83-5-409, and 83-5-411:

(a) In the event of a company action level event with respect to a domestic insurer, the commissioner shall take no regulatory action hereunder.

(b) In the event of a regulatory action level event under Section 83-5-407(1)(a), (b) or (c), the commissioner shall take the actions required under Section 83-5-405.

(c) In the event of a regulatory action level event under Section 83-5-407(1)(d), (e), (f), (g), (h) or (i), or an authorized control level event, the commissioner shall take the actions required under Section 83-5-407 with respect to the insurer.

(d) In the event of a mandatory control level event with respect to an insurer, the commissioner shall take the actions required under Section 83-5-409 with respect to the insurer.

(3) For RBC reports required to be filed by health organization insurers with respect to 2013, the following requirements shall apply in lieu of the provisions of Sections 83-5-405, 83-5-407, 83-5-409 and 83-5-411:

(a) In the event of a company action level event with respect to a domestic health organization insurer, the commissioner shall take no regulatory action hereunder;

(b) In the event of a regulatory action level event under Section 83-5-407(1)(a), (b) or (c), the commissioner shall take the actions required under Section 83-5-405;

(c) In the event of a regulatory action level event under Section 83-5-407(1)(d), (e), (f), (g), (h) or (i), or an authorized control level event, the commissioner shall take the actions required under Section 83-5-407 with respect to the health organization insurer; and

(d) In the event of a mandatory control level event with respect to a health organization insurer, the commissioner shall take the actions required under Section 83-5-409 with respect to the health organization insurer.

SECTION 8. Section 83-6-1, Mississippi Code of 1972, is amended as follows:

83-6-1. As used in this chapter the following terms have the respective meanings herein set forth unless the context shall require otherwise:

(a) An "affiliate of" or person "affiliated" with a specific person means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

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

(c) "Control" (including the terms "controlling," "controlled by" and "under common control with") means the possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services or otherwise, unless the power is the result of an official position with or corporate office held by the person. "Control" shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided in Section 83-6-17 that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(d) An "insurance holding company system" consists of two (2) or more affiliated persons, one or more of which is an insurer.

(e) "Insurer" means only those companies subject to the jurisdiction of the commissioner as provided in Section 83-5-1; however, burial associations regulated pursuant to Chapter 37 * * *, Title 83, Mississippi Code of 1972, are excluded from this definition.

(f) "Person" means an individual, corporation, partnership, association, joint-stock company, trust, unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

(g) A "security holder" of a specified person means one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

(h) "Subsidiary" of a specified person means an affiliate controlled by a person, directly or indirectly, through one or more intermediaries.

(i) The term "voting security" includes any security convertible into or evidencing a right to acquire a voting security.

(j) "Enterprise risk" shall mean any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's Risk-Based Capital to fall into company action level as provided in Section 83-5-405 or would cause the insurer to be in hazardous financial condition as provided in Section 83-5-411.

SECTION 9. Section 83-6-5, Mississippi Code of 1972, is amended as follows:

83-6-5. (1) Every insurer subject to registration is required to file a registration statement on a form provided by the commissioner which shall contain current information setting forth:

(a) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(b) The identity of every member of the insurance holding company system;

(c) The following agreements in force, relationships subsisting and transactions currently outstanding between such insurer and its affiliates:

(i) Loans, other investments or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales or exchanges of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles; * * *

(vi) Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements.

(d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(e) If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements

may include, but are not limited to, annual audited financial statements filed with the United States Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC;

(* * *f) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner * * *;

(g) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures.

(2) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(3) Subject to Section 83-6-25, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof.

(4) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.

(5) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

SECTION 10. Section 83-6-17, Mississippi Code of 1972, is amended as follows:

83-6-17. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. * * * A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty (30) days following receipt of a complete

disclaimer, notifies the filing party that the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The * * * disclaiming party is relieved of any duty to register or report under * * * this chapter which may arise out of the insurer's relationship with such person * * * if approval of the disclaimer has been granted by the commissioner, until the commissioner disallows such a disclaimer. * * *

SECTION 11. Section 83-6-21, Mississippi Code of 1972, is amended as follows:

83-6-21. (1) Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(a) The terms shall be fair and reasonable;

(b) Charges or fees for services performed shall be reasonable;

(c) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(d) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(e) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in subsection (1)(a) through (e) of this section, shall not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within such period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported within thirty (30) days after a termination of a previously filed agreement to the commissioner for determination of the type of filing required, if any.

(a) Sales, purchases, exchanges, loans or extension of credit, guarantees or investments provided such transactions are equal to or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and (ii) with respect to life insurers, three percent (3%) of the

insurer's admitted assets; each as of * * * December 31 next preceding:

(b) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extension of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of * * * December 31 next preceding;

(c) Reinsurance agreements or modifications thereto, including (i) all reinsurance pooling agreements; and (ii) agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of * * * December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;

(d) All management agreements that would place control of the insurer outside of the insurance holding company system;

(e) All service contracts or cost-sharing arrangements wherein the annual aggregate cost to the insurer would equal or exceed the amounts specified in paragraph (a) of this subsection * * *;

(f) All tax allocation agreements;

(g) Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one percent (.5%) of the insurer's admitted assets or ten percent (10%) of surplus as regards policyholders as of December 31 next preceding. Further, all guarantees which are not quantifiable as to amounts are subject to the notice requirements of this paragraph;

(h) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent (2.5%) of the insurer's surplus as to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to Section 83-6-2, or in nonsubsidiary insurance affiliates that are subject to the provisions of this chapter, are exempt from this requirement; and

(i) Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

(3) A domestic insurer shall not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and avoid the review that would occur otherwise. If the commissioner determines that such separate transactions were entered into over any twelve-month period for such purpose, he may exercise his authority under Section 83-6-35.

(4) The commissioner, in reviewing transactions pursuant to subsection (2) of this section, shall consider whether the transactions comply with the standards set forth in subsection (1) of this section and whether they may adversely affect the interests of policyholders.

(5) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one (1) corporation if the total investment in such corporation by the insurance holding company system exceeds ten percent (10%) of such corporation's voting securities.

(6) Insurance companies within a holding company system shall not sell or exchange their stock among each other unless the companies have obtained stock company permits before conducting such transactions.

SECTION 12. Section 83-6-24, Mississippi Code of 1972, is amended as follows:

83-6-24. (1) (a) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

(b) For the purposes of this section, "a domestic insurer" shall include any person controlling a domestic insurer unless such person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, such person shall file a preacquisition notification with the commissioner

containing the information set forth in this section thirty (30) days prior to the proposed effective date of the acquisition. For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary brokers function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.

(c) For purposes of this section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least thirty (30) days prior to the cessation of control. The commissioner shall determine those instances in which the party(ies) seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in his discretion, determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in paragraph (b) of this subsection is otherwise filed, this paragraph shall not apply.

(2) The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) is to be effected (hereinafter called "acquiring party"), and

(i) If such person is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years;

(ii) If such person is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph (i).

(b) The source, nature and amount of consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose (including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing such consideration, provided, however, that where a source of such

consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.

(d) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(e) The number of shares of any security referred to in subsection (1) which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in subsection (1), and a statement as to the method by which the fairness of the proposal was determined.

(f) The amount of each class of any security referred to in subsection (1) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(g) A full description of any contracts, arrangements or understandings with respect to any security referred to in

subsection (1) in which any acquiring party is involved, including but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

(h) A description of the purchase of any security referred to in subsection (1) during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid therefor.

(i) A description of any recommendations to purchase any security referred to in subsection (1) made during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(j) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities referred to in subsection (1) and (if distributed) of additional soliciting material relating thereto.

(k) The terms of any agreement, contract or understanding made with or proposed to be made with any

broker-dealer as to solicitation of securities referred to in subsection (1) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(l) An agreement by the person required to file the statement referred to in subsection (1) that it will provide the annual report, specified in Section 83-6-5(5), for so long as control exists.

(m) An acknowledgment by the person required to file the statement referred to in subsection (1) that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer.

(* * *n) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (1) is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by paragraphs (a) through (l) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If any such partner, member or person is a corporation, or the person required to file

the statement referred to in subsection (1) is a corporation, the commissioner may require that the information called for by paragraphs (a) through (l) shall be given with respect to such corporation, each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two (2) business days after the person learns of such change.

(3) If any offer, request, invitation, agreement or acquisition referred to in subsection (1) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) may utilize such documents in furnishing the information called for by that statement.

(4) (a) The commissioner shall approve any merger or other acquisition of control referred to in subsection (1) unless, after a public hearing thereon, he finds that:

(i) After the change of control, the domestic insurer referred to in subsection (1) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(iv) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(v) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(vi) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

(b) The public hearing referred to in paragraph (a) of this subsection shall be commenced not less than thirty (30) days after the statement required by subsection (1) is filed, and at least twenty (20) days' notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven (7) days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within thirty (30) days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.

(c) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

(d) If the proposed acquisition of control will require the approval of more than one (1) commissioner, the public hearing referred to in paragraph (a) of subsection (4) may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (1) of this section. Such person shall file the statement referred to in subsection (1) with the National Association of Insurance Commissioners (NAIC) within five (5) days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within ten (10) days of the receipt of the statement referred to in subsection (1). A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. Such commissioners shall hear and receive evidence. A commissioner may attend such hearing, in person or by telecommunication.

(e) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than sixty (60) days after the date of notification of the change in control submitted pursuant to Section 83-6-24(1).

(5) The provisions of this section shall not apply to any offer, request, invitation, agreement or acquisition which the

commissioner by order shall exempt therefrom as (i) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended within the purposes of this section.

(6) The following shall be violations of this section:

(a) The failure to file any statement, amendment or other material required to be filed pursuant to subsection (1) or (2); or

(b) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

(7) The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner under this section, and overall actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last-known address.

SECTION 13. The following shall be codified as Section 83-6-26, Mississippi Code of 1972:

83-6-26. **Management of Domestic Insurers Subject To Registration.** (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this section.

(2) Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of Section 83-6-21.

(3) Not less than one-third (1/3) of the directors of a domestic insurer, and not less than one-third (1/3) of the members of each committee of the board of directors of any domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one (1) such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

(4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.

(5) The provisions of subsections (3) and (4) shall not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of subsections (3) and (4) with respect to such controlling entity.

(6) An insurer may make application to the commissioner for a waiver from the requirements of this section, if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than Three Hundred Million Dollars ($300,000,000.00). An insurer may also make application to the commissioner for a waiver from the requirements of this section

based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.

SECTION 14. Section 83-6-27, Mississippi Code of 1972, is amended as follows:

83-6-27. (1) The commissioner is authorized to order any insurer registered under * * * this chapter to produce such records, books, or other information papers in the possession of the insurer or its affiliates which are necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner is authorized to examine such affiliates to obtain such information.

(2) The commissioner shall exercise his authority under subsection (1) of this section only if the interests of the policyholders of such insurer may be adversely affected.

(3) The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff which are reasonably necessary to assist in the conduct of the examination under subsection (1) of this section. Any persons so retained are under the direction and control of the commissioner and shall act in a purely advisory capacity.

(4) Each registered insurer producing for examination records, books and papers pursuant to subsection (1) of this section is liable for the expense of such examination.

SECTION 15. Section 83-6-29, Mississippi Code of 1972, is amended as follows:

83-6-29. * * *

(1) Documents, materials or other information in the possession or control of the Department of Insurance that are obtained by or disclosed to the commissioner or any other person during an examination or investigation made pursuant to Section 83-6-27 and all information reported pursuant to Sections 83-6-24(2)(l) and (m), Sections 83-6-3, 83-6-5 and 83-6-21 shall be confidential by law and privileged, shall not be subject to the Mississippi Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the

publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.

(2) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner or with whom such documents, materials or other information are shared pursuant to this section shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (1) of this section.

(3) In order to assist in the performance of the commissioner's duties, the commissioner:

(a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (1) of this section, with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners (NAIC) and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality.

(b) Notwithstanding paragraph (a) of this subsection, the commissioner may only share confidential and privileged documents, material or information reported pursuant to Section

83-6-5(5) with commissioners of states having statutes or regulations substantially similar to subsection (1) of this section and who have agreed in writing not to disclose such information.

(c) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

(d) Shall enter into written agreements with the NAIC governing sharing and use of information provided pursuant to this section consistent with this subsection that shall:

(i) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to this section, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators;

(ii) Specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this section remains with the commissioner and the NAIC's use of the information is subject to the direction of the commissioner;

(iii) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC pursuant to this section is subject to a request or subpoena to the NAIC for disclosure or production; and

(iv) Require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to this section.

(4) The sharing of information by the commissioner pursuant to this section shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this section.

(5) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(6) Documents, materials or other information in the possession or control of the NAIC pursuant to this section shall be confidential by law and privileged, shall not be subject to the Mississippi Public Records Act, shall not be subject to

subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

SECTION 16. This act shall take effect and be in force from and after July 1, 2014, except for the provisions contained in Sections 3 through 14, which shall take effect and be in force from and after July 1, 2013.

PASSED BY THE HOUSE OF REPRESENTATIVES
January 24, 2013

Philip Gunn
SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 7, 2013

Tate Reeves
PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

Phil Bryant
GOVERNOR

4:41pm
3/20/13