

By: Senator(s) Carmichael, Watson

To: Insurance

SENATE BILL NO. 2330  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 83-34-4, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT THE MISSISSIPPI WINDSTORM UNDERWRITING ASSOCIATION  
3 MAY USE THE MONIES FROM THE NONADMITTED POLICY FEES FOR CERTAIN  
4 PROGRAMS TARGETED TO REDUCE THE NUMBER OF POLICIES WITHIN THE  
5 ASSOCIATION; TO EXTEND THE REPEALER ON THE SECTION OF LAW THAT  
6 PROVIDES FOR THE NONADMITTED POLICY FEE; TO EXEMPT CERTAIN TYPES  
7 OF POLICIES FROM THE NONADMITTED POLICY FEE; TO AMEND SECTION  
8 83-34-3, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING  
9 PROVISION; AND FOR RELATED PURPOSES.

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

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

13 83-34-4. (1) Nonadmitted insurers shall not be assessable  
14 insurers of the association. All surplus lines insurance  
15 producers placing insurance through nonadmitted insurers shall  
16 collect from the insured and remit to the association a  
17 nonadmitted policy fee on all premiums for all insurance written  
18 by such surplus lines insurance producer for a policy from a  
19 nonadmitted insurer for any and all risks in this state, except  
20 that policies or portions thereof that cover residential  
21 earthquake risks or residential flood risks that are not written



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

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

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

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



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

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

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

62 (7) This section shall stand repealed from and after July 1,  
63 2018.

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

66 83-34-3. (1) From and after March 22, 2007, the Mississippi  
67 Windstorm Underwriting Association, as created by Chapter 459,  
68 Laws of 1987, shall be a separate and independent entity as  
69 provided for herein. At its option, the association may  
70 incorporate. All assets belonging to the association on or before  
71 March 22, 2007, shall hereinafter belong to and remain with the



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

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

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



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

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

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

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



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

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

129 (8) The association shall operate as a private enterprise  
130 and shall not be subject to the procurement provisions of Section  
131 31-7-13, and policies and decisions of the association, including,  
132 but not limited to, decisions relating to incurring debt, levying  
133 of assessments, the issuance and sale of bonds, claims decisions  
134 under association policies, hiring and firing of employees, and  
135 all services relating to the operation of the association shall  
136 not be subject to the provisions of Section 25-9-101 et seq. The  
137 association shall not be required to obtain or to hold a license  
138 or certificate of authority issued by the commissioner or any  
139 other office. The association shall not be required to  
140 participate as a member insurer of the Mississippi Insurance  
141 Guaranty Association.

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

