

By: Moody

To: Insurance

HOUSE BILL NO. 243

1 AN ACT TO AMEND SECTION 83-9-5, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT HEALTH INSURANCE BENEFITS CANNOT BE DENIED BECAUSE  
3 TREATMENT FOR ACCIDENTAL INJURY WAS NOT RENDERED WITHIN A SPECIFIC  
4 TIME; AND FOR RELATED PURPOSES.

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

6 SECTION 1. Section 83-9-5, Mississippi Code of 1972, is  
7 amended as follows:

8 83-9-5. (1) Required provisions. Except as provided in  
9 subsection (3) of this section, each such policy delivered or  
10 issued for delivery to any person in this state shall contain the  
11 provisions specified in this subsection in the words in which the  
12 same appear in this section. However, the insurer may, at its  
13 option, substitute for one or more of such provisions,  
14 corresponding provisions of different wording approved by the  
15 commissioner which are in each instance not less favorable in any  
16 respect to the insured or the beneficiary. Such provisions shall  
17 be preceded individually by the caption appearing in this  
18 subsection or, at the option of the insurer, by such appropriate  
19 individual or group captions or subcaptions as the commissioner  
20 may approve.

21 (a) A provision as follows:

22 Entire contract; changes: This policy, including the

23 endorsements and the attached papers, if any, constitutes the  
24 entire contract of insurance. No change in this policy shall be  
25 valid until approved by an executive officer of the insurer and  
26 unless such approval be endorsed hereon or attached hereto. No  
27 agent has authority to change this policy or to waive any of its  
28 provisions.

29 (b) A provision as follows:

30 Time limit on certain defenses: 1. After two (2) years from  
31 the date of issue of this policy, no misstatements, except  
32 fraudulent misstatements, made by the applicant in the application  
33 for such policy shall be used to void the policy or to deny a  
34 claim for loss incurred or disability (as defined in the policy)  
35 commencing after the expiration of such two-year period.

36 (The foregoing policy provision shall not be so construed as  
37 to effect any legal requirement for avoidance of a policy or  
38 denial of a claim during such initial two-year period, nor to  
39 limit the application of subparagraphs (2) (a) and (2) (b) of this  
40 section in the event of misstatement with respect to age or  
41 occupation.)

42 (A policy which the insured has the right to continue in  
43 force subject to its terms by the timely payment of premium (1)  
44 until at least age fifty (50) or, (2) in the case of a policy  
45 issued after age forty-four (44), for at least five (5) years from  
46 its date of issue, may contain in lieu of the foregoing the  
47 following provision (from which the clause in parentheses may be  
48 omitted at the insurer's option) under the caption  
49 "INCONTESTABLE":

50 After this policy has been in force for a period of two (2)  
51 years during the lifetime of the insured (excluding any period  
52 during which the insured is disabled), it shall become  
53 incontestable as to the statements in the application.)

54           2. No claim for loss incurred or disability (as defined in  
55 the policy) commencing after two (2) years from the date of issue  
56 of this policy shall be reduced or denied on the ground that a  
57 disease or physical condition not excluded from coverage by name  
58 or specific description effective on the date of loss had existed  
59 prior to the effective date of coverage of this policy.

60           (c) A provision as follows:

61           Grace period: A grace period of seven (7) days for weekly  
62 premium policies, ten (10) days for monthly premium policies and  
63 thirty-one (31) days for all other policies will be granted for  
64 the payment of each premium falling due after the first premium,  
65 during which grace period the policy shall continue in force.

66           (A policy which contains a cancellation provision may add, at  
67 the end of the above provision, "subject to the right of the  
68 insurer to cancel in accordance with the cancellation provision  
69 hereof."

70           A policy in which the insurer reserves the right to refuse  
71 any renewal shall have, at the beginning of the above provision,  
72 "unless not less than five (5) days prior to the premium due date  
73 the insurer has delivered to the insured or has mailed to his last  
74 address as shown by the records of the insurer written notice of  
75 its intention not to renew this policy beyond the period for which  
76 the premium has been accepted.")

77           (d) A provision as follows:

78           Reinstatement: If any renewal premium be not paid within the  
79 time granted the insured for payment, a subsequent acceptance of  
80 premium by the insurer or by any agent duly authorized by the  
81 insurer to accept such premium, without requiring in connection

82 therewith an application for reinstatement, shall reinstate the  
83 policy. However, if the insurer or such agent requires an  
84 application for reinstatement and issues a conditional receipt for  
85 the premium tendered, the policy will be reinstated upon approval  
86 of such application by the insurer or, lacking such approval, upon  
87 the forty-fifth day following the date of such conditional receipt  
88 unless the insurer has previously notified the insured in writing  
89 of its disapproval of such application. The reinstated policy  
90 shall cover only loss resulting from such accidental injury as may  
91 be sustained after the date of reinstatement and loss due to such  
92 sickness as may begin more than ten (10) days after such date. In  
93 all other respects the insured and insurer shall have the same  
94 rights thereunder as they had under the policy immediately before  
95 the due date of the defaulted premium, subject to any provisions  
96 endorsed hereon or attached hereto in connection with the  
97 reinstatement. Any premium accepted in connection with a  
98 reinstatement shall be applied to a period for which premium has  
99 not been previously paid, but not to any period more than sixty  
100 (60) days prior to the date of reinstatement. (The last sentence  
101 of the above provision may be omitted from any policy which the  
102 insured has the right to continue in force subject to its terms by  
103 the timely payment of premiums (1) until at least age fifty (50)  
104 or, (2) in the case of a policy issued after age forty-four (44),  
105 for at least five (5) years from its date of issue.)

106 (e) A provision as follows:

107 Notice of claim: Written notice of claim must be given to  
108 the insurer within thirty (30) days after the occurrence or  
109 commencement of any loss covered by the policy, or as soon

110 thereafter as is reasonably possible. Notice given by or on  
111 behalf of the insured or the beneficiary to the insurer at  
112 \_\_\_\_\_, (insert the location of such office as the insurer may  
113 designate for the purpose) or to any authorized agent of the  
114 insurer, with information sufficient to identify the insured,  
115 shall be deemed notice to the insurer.

116 Group policies: In the event of accidental injury,  
117 notification to the employers or group policyholders' designee  
118 shall be deemed sufficient and benefits cannot be reduced or  
119 denied on the basis that treatment was not rendered within a  
120 specified time if notice of the injury is documented.

121 (In a policy providing a loss-of-time benefit which may be  
122 payable for at least two (2) years, an insurer may, at its option,  
123 insert the following between the first and second sentences of the  
124 above provision: "Subject to the qualifications set forth below,  
125 if the insured suffers loss of time on account of disability for  
126 which indemnity may be payable for at least two (2) years, he  
127 shall, at least once in every six (6) months after having given  
128 notice of claim, give to the insurer notice of continuance of said  
129 disability, except in the event of legal incapacity. The period  
130 of six (6) months following any filing of proof by the insured or  
131 any payment by the insurer on account of such claim or any denial  
132 of liability in whole or in part by the insurer shall be excluded  
133 in applying this provision. Delay in the giving of such notice  
134 shall not impair the insured's right to any indemnity which would  
135 otherwise have accrued during the period of six (6) months  
136 preceding the date on which such notice is actually given.")

137 (f) A provision as follows:

138           Claim forms: The insurer, upon receipt of a notice of claim,  
139 will furnish to the claimant such forms as are usually furnished  
140 by it for filing proofs of loss. If such forms are not furnished  
141 within fifteen (15) days after the giving of such notice, the  
142 claimant shall be deemed to have complied with the requirements of  
143 this policy as to proof of loss upon submitting, within the time  
144 fixed in the policy for filing proofs of loss, written proof  
145 covering the occurrence, the character and the extent of the loss  
146 for which claim is made.

147           (g) A provision as follows:

148           Proofs of loss: Written proof of loss must be furnished to  
149 the insurer at its said office, in case of claim for loss for  
150 which this policy provides any periodic payment contingent upon  
151 continuing loss, within ninety (90) days after the termination of  
152 the period for which the insurer is liable, and in case of claim  
153 for any other loss, within ninety (90) days after the date of such  
154 loss. Failure to furnish such proof within the time required  
155 shall not invalidate or reduce any claim if it was not reasonably  
156 possible to give proof within such time, provided such proof is  
157 furnished as soon as reasonably possible and in no event, except  
158 in the absence of legal capacity, later than one (1) year from the  
159 time proof is otherwise required.

160           (h) A provision as follows:

161           Time of payment of claims: 1. All benefits payable under  
162 this policy for any loss, other than loss for which this policy  
163 provides any periodic payment, will be paid within forty-five (45)  
164 days after receipt of due written proof of such loss. Benefits  
165 due under the policies and claims are overdue if not paid within

166 forty-five (45) days after the insurer receives proof of loss,  
167 necessary medical information and other information essential for  
168 the insurer to administer coordination of benefits and subrogation  
169 provisions. If such information is not supplied as to the entire  
170 claim, the amount supported by reasonable proof is overdue if not  
171 paid within forty-five (45) days after such proof is received by  
172 the insurer. Any part or all of the remainder of the claim that  
173 is later supported by such proof is overdue if not paid within  
174 forty-five (45) days after such proof is received by the insurer.  
175 To calculate the extent to which any benefits are overdue, payment  
176 shall be treated as made on the date a draft or other valid  
177 instrument was placed in the United States mail to the last known  
178 address of the claimant or beneficiary in a properly addressed,  
179 postpaid envelope, or, if not so posted, on the date of delivery.

180 2. Subject to due written proof of loss, all accrued  
181 benefits for loss for which this policy provides periodic payment  
182 will be paid \_\_\_\_\_ (insert period for payment which must not  
183 be less frequently than monthly) and any balance remaining unpaid  
184 upon the termination of liability will be paid within forty-five  
185 (45) days after receipt of due written proof.

186 3. If the claim is not denied for valid and proper reasons  
187 by the end of such period of forty-five (45) days, the insurer  
188 must pay the insured interest on accrued benefits at the rate of  
189 one and one-half percent (1-1/2%) per month on the amount of such  
190 claim until it is finally settled or adjudicated.

191 4. In the event the insurer fails to pay benefits when due,  
192 the person entitled to such benefits may bring action to recover  
193 such benefits, any interest which may accrue as provided in

194 subsection (1)(h)3. of this section and any other damages as may  
195 be allowable by law.

196 (i) A provision as follows:

197 Payment of claims: Indemnity for loss of life will be  
198 payable in accordance with the beneficiary designation and the  
199 provisions respecting such payment which may be prescribed herein  
200 and effective at the time of payment. If no such designation or  
201 provision is then effective, such indemnity shall be payable to  
202 the estate of the insured. Any other accrued indemnities unpaid  
203 at the insured's death may, at the option of the insurer, be paid  
204 either to such beneficiary or to such estate. All other  
205 indemnities will be payable to the insured. When payments of  
206 benefits are made to an insured directly for medical care or  
207 services rendered by a health care provider, the health care  
208 provider shall be notified of such payment. The notification  
209 requirement shall not apply to a fixed-indemnity policy, a limited  
210 benefit health insurance policy, medical payment coverage or  
211 personal injury protection coverage in a motor vehicle policy,  
212 coverage issued as a supplement to liability insurance or workers'  
213 compensation.

214 (The following provisions, or either of them, may be included  
215 with the foregoing provision at the option of the insurer: "If  
216 any indemnity of this policy shall be payable to the estate of the  
217 insured, or to an insured or beneficiary who is a minor or  
218 otherwise not competent to give a valid release, the insurer may  
219 pay such indemnity, up to an amount not exceeding \$\_\_\_\_\_,  
220 (insert an amount which must not exceed One Thousand Dollars  
221 (\$1,000.00)) to any relative by blood or connection by marriage of



222 the insured or beneficiary who is deemed by the insurer to be  
223 equitably entitled thereto. Any payment made by the insurer in  
224 good faith pursuant to this provision shall fully discharge the  
225 insurer to the extent of such payment.

226 "Subject to any written direction of the insured in the  
227 application or otherwise, all or a portion of any indemnities  
228 provided by this policy on account of hospital, nursing, medical  
229 or surgical services may, at the insurer's option and unless the  
230 insured requests otherwise in writing not later than the time of  
231 filing proofs of such loss, be paid directly to the hospital or  
232 person rendering such services; but it is not required that the  
233 service be rendered by a particular hospital or person.")

234 (j) A provision as follows:

235 Physical examinations: The insurer at his own expense shall  
236 have the right and opportunity to examine the person of the  
237 insured when and as often as it may reasonably require during the  
238 pendency of a claim hereunder.

239 (k) A provision as follows:

240 Legal actions: No action at law or in equity shall be  
241 brought to recover on this policy prior to the expiration of sixty  
242 (60) days after written proof of loss has been furnished in  
243 accordance with the requirements of this policy. No such action  
244 shall be brought after the expiration of three (3) years after the  
245 time written proof of loss is required to be furnished.

246 (l) A provision as follows:

247 Change of beneficiary: Unless the insured makes an  
248 irrevocable designation of beneficiary, the right to change the  
249 beneficiary is reserved to the insured, and the consent of the

250 beneficiary or beneficiaries shall not be requisite to surrender  
251 or assignment of this policy, or to any change of beneficiary or  
252 beneficiaries, or to any other changes in this policy.

253 (The first clause of this provision, relating to the  
254 irrevocable designation of beneficiary, may be omitted at the  
255 insurer's option.)

256 (2) Other provisions. Except as provided in subsection (3)  
257 of this section, no such policy delivered or issued for delivery  
258 to any person in this state shall contain provisions respecting  
259 the matters set forth below unless such provisions are in the  
260 words in which the same appear in this section. However, the  
261 insurer may, at its option, use in lieu of any such provision a  
262 corresponding provision of different wording approved by the  
263 commissioner which is not less favorable in any respect to the  
264 insured or the beneficiary. Any such provision contained in the  
265 policy shall be preceded individually by the appropriate caption  
266 appearing in this subsection or, at the option of the insurer, by  
267 such appropriate individual or group captions or subcaptions as  
268 the commissioner may approve.

269 (a) A provision as follows:

270 Change of occupation: If the insured be injured or contract  
271 sickness after having changed his occupation to one classified by  
272 the insurer as more hazardous than that stated in this policy or  
273 while doing for compensation anything pertaining to an occupation  
274 so classified, the insurer will pay only such portion of the  
275 indemnities provided in this policy as the premium paid would have  
276 purchased at the rates and within the limits fixed by the insurer  
277 for such more hazardous occupation. If the insured changes his

278 occupation to one classified by the insurer as less hazardous than  
279 that stated in this policy, the insurer, upon receipt of proof of  
280 such change of occupation, will reduce the premium rate  
281 accordingly, and will return the excess pro rata unearned premium  
282 from the date of change of occupation or from the policy  
283 anniversary date immediately preceding receipt of such proof,  
284 whichever is the most recent. In applying this provision, the  
285 classification of occupational risk and the premium rates shall be  
286 such as have been last filed by the insurer prior to the  
287 occurrence of the loss for which the insurer is liable, or prior  
288 to date of proof of change in occupation, with the state official  
289 having supervision of insurance in the state where the insured  
290 resided at the time this policy was issued; but if such filing was  
291 not required, then the classification of occupational risk and the  
292 premium rates shall be those last made effective by the insurer in  
293 such state prior to the occurrence of the loss or prior to the  
294 date of proof of change in occupation.

295 (b) A provision as follows:

296 Misstatement of age: If the age of the insured has been  
297 misstated, all amounts payable under this policy shall be such as  
298 the premium paid would have purchased at the correct age.

299 (c) A provision as follows:

300 Relation of earnings to issuance: If the total monthly  
301 amount of loss of time benefits promised for the same loss under  
302 all valid loss of time coverage upon the insured, whether payable  
303 on a weekly or monthly basis, shall exceed the monthly earnings of  
304 the insured at the time disability commenced or his average  
305 monthly earnings for the period of two (2) years immediately

306 preceding a disability for which claim is made, whichever is the  
307 greater, the insurer will be liable only for such proportionate  
308 amount of such benefits under this policy as the amount of such  
309 monthly earnings or such average monthly earnings of the insured  
310 bears to the total amount of monthly benefits for the same loss  
311 under all such coverage upon the insured at the time such  
312 disability commences and for the return of such part of the  
313 premiums paid during such two (2) years as shall exceed the pro  
314 rata amount of the premiums for the benefits actually paid  
315 hereunder; but this shall not operate to reduce the total monthly  
316 amount of benefits payable under all such coverage upon the  
317 insured below the sum of Two Hundred Dollars (\$200.00) or the sum  
318 of the monthly benefits specified in such coverages, whichever is  
319 the lesser, nor shall it operate to reduce benefits other than  
320 those payable for loss of time.

321 (The foregoing policy provision may be inserted only in a  
322 policy which the insured has the right to continue in force  
323 subject to its terms by the timely payment of premiums (1) until  
324 at least age fifty (50) or, (2) in the case of a policy issued  
325 after age forty-four (44), for at least five (5) years from its  
326 date of issue. The insurer may, at its option, include in this  
327 provision a definition of "valid loss of time coverage," approved  
328 as to form by the commissioner, which definition shall be limited  
329 in subject matter to coverage provided by governmental agencies or  
330 by organizations subject to regulations by insurance law or by  
331 insurance authorities of this or any other state of the United  
332 States or any province of Canada, or to any other coverage the  
333 inclusion of which may be approved by the commissioner, or any

334 combination of such coverages. In the absence of such definition,  
335 such term shall not include any coverage provided for such insured  
336 pursuant to any compulsory benefit statute (including any  
337 workmen's compensation or employer's liability statute), or  
338 benefits provided by union welfare plans or by employer or  
339 employee benefit organizations.)

340 (d) A provision as follows:

341 Unpaid premium: Upon the payment of a claim under this  
342 policy, any premium then due and unpaid or covered by any note or  
343 written order may be deducted therefrom.

344 (e) A provision as follows:

345 Cancellation: The insurer may cancel this policy at any time  
346 by written notice delivered to the insured, or mailed to his last  
347 address as shown by the records of the insurer, stating when, not  
348 less than five (5) days thereafter, such cancellation shall be  
349 effective; and after the policy has been continued beyond its  
350 original term, the insured may cancel this policy at any time by  
351 written notice delivered or mailed to the insurer, effective upon  
352 receipt or on such later date as may be specified in such notice.  
353 In the event of cancellation, the insurer will return promptly the  
354 unearned portion of any premium paid. If the insured cancels, the  
355 earned premium shall be computed by the use of the short-rate  
356 table last filed with the state official having supervision of  
357 insurance in the state where the insured resided when the policy  
358 was issued. If the insurer cancels, the earned premium shall be  
359 computed pro rata. Cancellation shall be without prejudice to any  
360 claim originating prior to the effective date of cancellation.

361 (f) A provision as follows:

362 Conformity with state statutes: Any provision of this policy  
363 which, on its effective date, is in conflict with the statutes of  
364 the state in which the insured resides on such date is hereby  
365 amended to conform to the minimum requirements of such statutes.

366 (g) A provision as follows:

367 Illegal occupation: The insurer shall not be liable for any  
368 loss to which a contributing cause was the insured's commission of  
369 or attempt to commit a felony or to which a contributing cause was  
370 the insured's being engaged in an illegal occupation.

371 (h) A provision as follows:

372 Intoxicants and narcotics: The insurer shall not be liable  
373 for any loss sustained or contracted in consequence of the  
374 insured's being intoxicated or under the influence of any narcotic  
375 unless administered on the advice of a physician.

376 (3) Inapplicable or inconsistent provisions. If any  
377 provision of this section is in whole or in part inapplicable to  
378 or inconsistent with the coverage provided by a particular form of  
379 policy, the insurer, with the approval of the commissioner, shall  
380 omit from such policy any inapplicable provision or part of a  
381 provision, and shall modify any inconsistent provision or part of  
382 the provision in such manner as to make the provision as contained  
383 in the policy consistent with the coverage provided by the policy.

384 (4) Order of certain policy provisions. The provisions  
385 which are the subject of subsections (1) and (2) of this section,  
386 or any corresponding provisions which are used in lieu thereof in  
387 accordance with such subsections, shall be printed in the  
388 consecutive order of the provisions in such subsections or, at the  
389 option of the insurer, any such provision may appear as a unit in

390 any part of the policy, with other provisions to which it may be  
391 logically related, provided the resulting policy shall not be in  
392 whole or in part unintelligible, uncertain, ambiguous, abstruse or  
393 likely to mislead a person to whom the policy is offered,  
394 delivered or issued.

395 (5) Third-party ownership. The word "insured," as used in  
396 Sections 83-9-1 through 83-9-21, Mississippi Code of 1972, shall  
397 not be construed as preventing a person other than the insured  
398 with a proper insurable interest from making application for and  
399 owning a policy covering the insured, or from being entitled under  
400 such a policy to any indemnities, benefits and rights provided  
401 therein.

402 (6) Requirements of other jurisdictions.

403 (a) Any policy of a foreign or alien insurer, when  
404 delivered or issued for delivery to any person in this state, may  
405 contain any provision which is not less favorable to the insured  
406 or the beneficiary than the provisions of Sections 83-9-1 through  
407 83-9-21, Mississippi Code of 1972, and which is prescribed or  
408 required by the law of the state under which the insurer is  
409 organized.

410 (b) Any policy of a domestic insurer may, when issued  
411 for delivery in any other state or country, contain any provision  
412 permitted or required by the laws of such other state or country.

413 (7) Filing procedure. The commissioner may make such  
414 reasonable rules and regulations concerning the procedure for the  
415 filing or submission of policies subject to the cited sections as  
416 are necessary, proper or advisable to the administration of said  
417 sections. This provision shall not abridge any other authority

418 granted the commissioner by law.

419           SECTION 2. This act shall take effect and be in force from  
420 and after July 1, 2000.