

By: Robinson (84th)

To: Insurance

HOUSE BILL NO. 315

1 AN ACT TO AMEND SECTION 83-9-5, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE PRIMARY INSURER SHALL FILE CERTAIN CLAIMS
3 INFORMATION WITH THE INSURED'S SECONDARY INSURER; AND FOR RELATED
4 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 (In a policy providing a loss-of-time benefit which may be
117 payable for at least two (2) years, an insurer may, at its option,
118 insert the following between the first and second sentences of the
119 above provision: "Subject to the qualifications set forth below,
120 if the insured suffers loss of time on account of disability for
121 which indemnity may be payable for at least two (2) years, he
122 shall, at least once in every six (6) months after having given
123 notice of claim, give to the insurer notice of continuance of said
124 disability, except in the event of legal incapacity. The period
125 of six (6) months following any filing of proof by the insured or
126 any payment by the insurer on account of such claim or any denial
127 of liability in whole or in part by the insurer shall be excluded
128 in applying this provision. Delay in the giving of such notice
129 shall not impair the insured's right to any indemnity which would
130 otherwise have accrued during the period of six (6) months
131 preceding the date on which such notice is actually given.")

132 (f) A provision as follows:

133 Claim forms: The insurer, upon receipt of a notice of claim,
134 will furnish to the claimant such forms as are usually furnished
135 by it for filing proofs of loss. If such forms are not furnished
136 within fifteen (15) days after the giving of such notice, the
137 claimant shall be deemed to have complied with the requirements of

138 this policy as to proof of loss upon submitting, within the time
139 fixed in the policy for filing proofs of loss, written proof
140 covering the occurrence, the character and the extent of the loss
141 for which claim is made.

142 (g) A provision as follows:

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

155 (h) A provision as follows:

156 Time of payment of claims: 1. All benefits payable under
157 this policy for any loss, other than loss for which this policy
158 provides any periodic payment, will be paid within forty-five (45)
159 days after receipt of due written proof of such loss. Benefits
160 due under the policies and claims are overdue if not paid within
161 forty-five (45) days after the insurer receives proof of loss,
162 necessary medical information and other information essential for
163 the insurer to administer coordination of benefits and subrogation
164 provisions. If such information is not supplied as to the entire
165 claim, the amount supported by reasonable proof is overdue if not

166 paid within forty-five (45) days after such proof is received by
167 the insurer. Any part or all of the remainder of the claim that
168 is later supported by such proof is overdue if not paid within
169 forty-five (45) days after such proof is received by the insurer.
170 To calculate the extent to which any benefits are overdue, payment
171 shall be treated as made on the date a draft or other valid
172 instrument was placed in the United States mail to the last known
173 address of the claimant or beneficiary in a properly addressed,
174 postpaid envelope, or, if not so posted, on the date of delivery.

175 2. Subject to due written proof of loss, all accrued
176 benefits for loss for which this policy provides periodic payment
177 will be paid _____ (insert period for payment which must not
178 be less frequently than monthly) and any balance remaining unpaid
179 upon the termination of liability will be paid within forty-five
180 (45) days after receipt of due written proof.

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

186 4. In the event the insurer fails to pay benefits when due,
187 the person entitled to such benefits may bring action to recover
188 such benefits, any interest which may accrue as provided in
189 subsection (1)(h)3. of this section and any other damages as may
190 be allowable by law.

191 (i) A provision as follows:

192 Payment of claims: Indemnity for loss of life will be
193 payable in accordance with the beneficiary designation and the

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

209 (The following provisions, or either of them, may be included
210 with the foregoing provision at the option of the insurer: "If
211 any indemnity of this policy shall be payable to the estate of the
212 insured, or to an insured or beneficiary who is a minor or
213 otherwise not competent to give a valid release, the insurer may
214 pay such indemnity, up to an amount not exceeding \$_____,
215 (insert an amount which must not exceed One Thousand Dollars
216 (\$1,000.00)) to any relative by blood or connection by marriage of
217 the insured or beneficiary who is deemed by the insurer to be
218 equitably entitled thereto. Any payment made by the insurer in
219 good faith pursuant to this provision shall fully discharge the
220 insurer to the extent of such payment.

221 "Subject to any written direction of the insured in the

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

229 (j) A provision as follows:

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

234 (k) A provision as follows:

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

241 (l) A provision as follows:

242 Change of beneficiary: Unless the insured makes an
243 irrevocable designation of beneficiary, the right to change the
244 beneficiary is reserved to the insured, and the consent of the
245 beneficiary or beneficiaries shall not be requisite to surrender
246 or assignment of this policy, or to any change of beneficiary or
247 beneficiaries, or to any other changes in this policy.

248 (The first clause of this provision, relating to the
249 irrevocable designation of beneficiary, may be omitted at the

250 insurer's option.)

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

264 (a) A provision as follows:

265 Change of occupation: If the insured be injured or contract
266 sickness after having changed his occupation to one classified by
267 the insurer as more hazardous than that stated in this policy or
268 while doing for compensation anything pertaining to an occupation
269 so classified, the insurer will pay only such portion of the
270 indemnities provided in this policy as the premium paid would have
271 purchased at the rates and within the limits fixed by the insurer
272 for such more hazardous occupation. If the insured changes his
273 occupation to one classified by the insurer as less hazardous than
274 that stated in this policy, the insurer, upon receipt of proof of
275 such change of occupation, will reduce the premium rate
276 accordingly, and will return the excess pro rata unearned premium
277 from the date of change of occupation or from the policy

278 anniversary date immediately preceding receipt of such proof,
279 whichever is the most recent. In applying this provision, the
280 classification of occupational risk and the premium rates shall be
281 such as have been last filed by the insurer prior to the
282 occurrence of the loss for which the insurer is liable, or prior
283 to date of proof of change in occupation, with the state official
284 having supervision of insurance in the state where the insured
285 resided at the time this policy was issued; but if such filing was
286 not required, then the classification of occupational risk and the
287 premium rates shall be those last made effective by the insurer in
288 such state prior to the occurrence of the loss or prior to the
289 date of proof of change in occupation.

290 (b) A provision as follows:

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

294 (c) A provision as follows:

295 Relation of earnings to issuance: If the total monthly
296 amount of loss of time benefits promised for the same loss under
297 all valid loss of time coverage upon the insured, whether payable
298 on a weekly or monthly basis, shall exceed the monthly earnings of
299 the insured at the time disability commenced or his average
300 monthly earnings for the period of two (2) years immediately
301 preceding a disability for which claim is made, whichever is the
302 greater, the insurer will be liable only for such proportionate
303 amount of such benefits under this policy as the amount of such
304 monthly earnings or such average monthly earnings of the insured
305 bears to the total amount of monthly benefits for the same loss

306 under all such coverage upon the insured at the time such
307 disability commences and for the return of such part of the
308 premiums paid during such two (2) years as shall exceed the pro
309 rata amount of the premiums for the benefits actually paid
310 hereunder; but this shall not operate to reduce the total monthly
311 amount of benefits payable under all such coverage upon the
312 insured below the sum of Two Hundred Dollars (\$200.00) or the sum
313 of the monthly benefits specified in such coverages, whichever is
314 the lesser, nor shall it operate to reduce benefits other than
315 those payable for loss of time.

316 (The foregoing policy provision may be inserted only in a
317 policy which the insured has the right to continue in force
318 subject to its terms by the timely payment of premiums (1) until
319 at least age fifty (50) or, (2) in the case of a policy issued
320 after age forty-four (44), for at least five (5) years from its
321 date of issue. The insurer may, at its option, include in this
322 provision a definition of "valid loss of time coverage," approved
323 as to form by the commissioner, which definition shall be limited
324 in subject matter to coverage provided by governmental agencies or
325 by organizations subject to regulations by insurance law or by
326 insurance authorities of this or any other state of the United
327 States or any province of Canada, or to any other coverage the
328 inclusion of which may be approved by the commissioner, or any
329 combination of such coverages. In the absence of such definition,
330 such term shall not include any coverage provided for such insured
331 pursuant to any compulsory benefit statute (including any
332 workmen's compensation or employer's liability statute), or
333 benefits provided by union welfare plans or by employer or

334 employee benefit organizations.)

335 (d) A provision as follows:

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

339 (e) A provision as follows:

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

356 (f) A provision as follows:

357 Conformity with state statutes: Any provision of this policy
358 which, on its effective date, is in conflict with the statutes of
359 the state in which the insured resides on such date is hereby
360 amended to conform to the minimum requirements of such statutes.

361 (g) A provision as follows:

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

366 (h) A provision as follows:

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

371 (i) A provision as follows:

372 Coordination of benefits: The primary insurer shall file
373 with the insured's secondary insurer any information regarding the
374 payment of claims by the primary insurer. It shall not be the
375 responsibility of the insured to file such claims information with
376 his secondary carrier.

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

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

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

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

403 (6) Requirements of other jurisdictions.

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

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

414 (7) Filing procedure. The commissioner may make such
415 reasonable rules and regulations concerning the procedure for the
416 filing or submission of policies subject to the cited sections as
417 are necessary, proper or advisable to the administration of said

418 sections. This provision shall not abridge any other authority
419 granted the commissioner by law.

420 (8) The insurer shall require, at the point of the sale of
421 the policy, that the insured sign a statement indicating whether
422 this insurance policy shall be considered as primary coverage or
423 secondary coverage. The primary insurer shall file with the
424 insured's secondary insurer any information regarding the payment
425 of claims by the primary insurer.

426 The insurer shall provide a form to the insured to be
427 completed by the insured in order to change the designation of
428 primary or secondary coverage on the policy.

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