

By: Watson

To: Insurance

HOUSE BILL NO. 496

1 AN ACT TO PROVIDE FOR A DIRECT ACTION AGAINST AN INSURER; TO  
2 PROVIDE THAT A POLICY SHALL CONTAIN PROVISIONS THAT INSOLVENCY OR  
3 BANKRUPTCY OF THE INSURED SHALL NOT RELEASE THE INSURER FROM  
4 LIABILITY; TO PROVIDE THAT AN ACTION MAY BE BROUGHT AGAINST THE  
5 INSURER ALONE IN CERTAIN SITUATIONS; AND FOR RELATED PURPOSES.

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

7 SECTION 1. (1) No policy or contract of liability insurance  
8 shall be issued or delivered in this state unless it contains  
9 provisions to the effect that the insolvency or bankruptcy of the  
10 insured shall not release the insurer from the payment of damages  
11 for injuries sustained or loss occasioned during the existence of  
12 the policy. Any judgment which may be rendered against the  
13 insured for which the insurer is liable which shall have become  
14 executory shall be deemed prima facie evidence of the insolvency  
15 of the insured, and an action may thereafter be maintained within  
16 the terms and limits of the policy by the injured person or his or  
17 her survivors or heirs against the insurer.

18 (2) (a) The injured person or his or her survivors or heirs  
19 mentioned in subsection (1) of this section, at their option,  
20 shall have a right of direct action against the insurer within the  
21 terms and limits of the policy; and such action may be brought  
22 against the insurer alone, or against both the insured and insurer

23 jointly and in solido, in the county in which the accident or  
24 injury occurred or in the county in which an action could be  
25 brought against either the insured or the insurer under the  
26 general rules of venue prescribed by the Rules of Civil Procedure  
27 only. However, such action may be brought against the insurer  
28 alone only when:

29 (i) The insured has been adjudged a bankrupt by a  
30 court of competent jurisdiction or when proceedings to adjudge an  
31 insured a bankrupt have been commenced before a court of competent  
32 jurisdiction;

33 (ii) The insured is insolvent;

34 (iii) Service of citation or other process cannot  
35 be made on the insured;

36 (iv) When the cause of action is for damages as a  
37 result of an offense or quasi-offense between children and their  
38 parents or between married persons; or

39 (v) When the insurer is an uninsured motorist  
40 carrier.

41 (b) This right of direct action shall exist whether or  
42 not the policy of insurance sued upon was written or delivered in  
43 the State of Mississippi and whether or not such policy contains a  
44 provision forbidding such direct action, provided the accident or  
45 injury occurred within the State of Mississippi. Nothing  
46 contained in this section shall be construed to affect the  
47 provisions of the policy or contract if such provisions are not in  
48 violation of the laws of this state.

49 (3) It is the intent of this section that any action brought  
50 under the provisions of this section shall be subject to all of  
51 the lawful conditions of the policy or contract and the defenses  
52 which could be urged by the insurer to a direct action brought by  
53 the insured, provided the terms and conditions of such policy or

54 contract are not in violation of the laws of this state.

55 (4) It is also the intent of this section that all liability  
56 policies within their terms and limits are executed for the  
57 benefit of all injured persons and their survivors or heirs to  
58 whom the insured is liable and that it is the purpose of all  
59 liability policies to give protection and coverage to all  
60 insureds, whether they are named insureds or additional insureds  
61 under the omnibus clause, for any legal liability such insured may  
62 have as or for a tort-feasor within the terms and limits of such  
63 policy.

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