

By: Nunnelee

To: Insurance

SENATE BILL NO. 2054

1 AN ACT TO AMEND SECTION 83-9-5, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE ACCIDENT AND HEALTH INSURANCE POLICIES TO CONTAIN A
3 PROVISION WHICH WOULD LIMIT THE PERIOD OF TIME IN WHICH AN INSURER
4 MAY FILE AN ACTION FOR RECOVERY OF OVERPAYMENTS; AND FOR RELATED
5 PURPOSES.

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

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

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

22 (a) A provision as follows:

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

30 (b) A provision as follows:

31 Time limit on certain defenses:

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

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

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

52 After this policy has been in force for a period of
53 two (2) years during the lifetime of the insured (excluding any

54 period during which the insured is disabled), it shall become
55 incontestable as to the statements in the application.)

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

63 (c) A provision as follows:

64 Grace period:

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

70 (A policy which contains a cancellation provision may
71 add, at the end of the above provision, "subject to the right of
72 the insurer to cancel in accordance with the cancellation
73 provision hereof."

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

81 (d) A provision as follows:

82 Reinstatement:

83 If any renewal premium be not paid within the time
84 granted the insured for payment, a subsequent acceptance of
85 premium by the insurer or by any agent duly authorized by the
86 insurer to accept such premium, without requiring in connection
87 therewith an application for reinstatement, shall reinstate the
88 policy. However, if the insurer or such agent requires an
89 application for reinstatement and issues a conditional receipt for
90 the premium tendered, the policy will be reinstated upon approval
91 of such application by the insurer or, lacking such approval, upon
92 the forty-fifth day following the date of such conditional receipt
93 unless the insurer has previously notified the insured in writing
94 of its disapproval of such application. The reinstated policy
95 shall cover only loss resulting from such accidental injury as may
96 be sustained after the date of reinstatement and loss due to such
97 sickness as may begin more than ten (10) days after such date. In
98 all other respects the insured and insurer shall have the same
99 rights thereunder as they had under the policy immediately before
100 the due date of the defaulted premium, subject to any provisions
101 endorsed hereon or attached hereto in connection with the
102 reinstatement. Any premium accepted in connection with a
103 reinstatement shall be applied to a period for which premium has
104 not been previously paid, but not to any period more than sixty
105 (60) days prior to the date of reinstatement. (The last sentence
106 of the above provision may be omitted from any policy which the
107 insured has the right to continue in force subject to its terms by
108 the timely payment of premiums (1) until at least age fifty (50)
109 or, (2) in the case of a policy issued after age forty-four (44),

110 for at least five (5) years from its date of issue.)

111 (e) A provision as follows:

112 Notice of claim:

113 Written notice of claim must be given to the insurer
114 within thirty (30) days after the occurrence or commencement of
115 any loss covered by the policy, or as soon thereafter as is
116 reasonably possible. Notice given by or on behalf of the insured
117 or the beneficiary to the insurer at __, (insert the location of
118 such office as the insurer may designate for the purpose) or to
119 any authorized agent of the insurer, with information sufficient
120 to identify the insured, shall be deemed notice to the insurer.

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

138 (f) A provision as follows:

139 Claim forms:

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

149 (g) A provision as follows:

150 Proofs of loss:

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

163 (h) A provision as follows:

164 Time of payment of claims:

165 1. All benefits payable under this policy for any

166 loss, other than loss for which this policy provides any periodic
167 payment, will be paid within forty-five (45) days after receipt of
168 due written proof of such loss. Benefits due under the policies
169 and claims are overdue if not paid within forty-five (45) days
170 after the insurer receives proof of loss, necessary medical
171 information and other information essential for the insurer to
172 administer coordination of benefits and subrogation provisions.
173 If such information is not supplied as to the entire claim, the
174 amount supported by reasonable proof is overdue if not paid within
175 forty-five (45) days after such proof is received by the insurer.

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

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

190 3. If the claim is not denied for valid and proper
191 reasons by the end of such period of forty-five (45) days, the
192 insurer must pay the insured interest on accrued benefits at the
193 rate of one and one-half percent (1-1/2%) per month on the amount

194 of such claim until it is finally settled or adjudicated.

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

200 (i) A provision as follows:

201 Payment of claims:

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

218 (The following provisions, or either of them, may be
219 included with the foregoing provision at the option of the
220 insurer: "If any indemnity of this policy shall be payable to the
221 estate of the insured, or to an insured or beneficiary who is a

222 minor or otherwise not competent to give a valid release, the
223 insurer may pay such indemnity, up to an amount not exceeding \$__,
224 (insert an amount which must not exceed One Thousand Dollars
225 (\$1,000.00)) to any relative by blood or connection by marriage of
226 the insured or beneficiary who is deemed by the insurer to be
227 equitably entitled thereto. Any payment made by the insurer in
228 good faith pursuant to this provision shall fully discharge the
229 insurer to the extent of such payment.

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

238 (j) A provision as follows:

239 Physical examinations:

240 The insurer at his own expense shall have the right and
241 opportunity to examine the person of the insured when and as often
242 as it may reasonably require during the pendency of a claim
243 hereunder.

244 (k) A provision as follows:

245 Legal actions:

246 No action at law or in equity shall be brought to
247 recover on this policy prior to the expiration of sixty (60) days
248 after written proof of loss has been furnished in accordance with
249 the requirements of this policy. No such action shall be brought

250 after the expiration of three (3) years after the time written
251 proof of loss is required to be furnished.

252 (1) A provision as follows:

253 Change of beneficiary:

254 Unless the insured makes an irrevocable designation of
255 beneficiary, the right to change the beneficiary is reserved to
256 the insured, and the consent of the beneficiary or beneficiaries
257 shall not be requisite to surrender or assignment of this policy,
258 or to any change of beneficiary or beneficiaries, or to any other
259 changes in this policy.

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

263 (m) A provision as follows:

264 Recovery of overpayments:

265 No action at law or in equity shall be brought by the
266 insurer for the reimbursement or recovery of any overpayment made
267 on this policy after the expiration of two (2) years after the
268 time the overpayment was made. The foregoing policy provision
269 shall not apply to any overpayments made on this policy as a
270 result of fraudulent activity.

271 (2) Other provisions. Except as provided in subsection (3)
272 of this section, no such policy delivered or issued for delivery
273 to any person in this state shall contain provisions respecting
274 the matters set forth below unless such provisions are in the
275 words in which the same appear in this section. However, the
276 insurer may, at its option, use in lieu of any such provision a
277 corresponding provision of different wording approved by the

278 commissioner which is not less favorable in any respect to the
279 insured or the beneficiary. Any such provision contained in the
280 policy shall be preceded individually by the appropriate caption
281 appearing in this subsection or, at the option of the insurer, by
282 such appropriate individual or group captions or subcaptions as
283 the commissioner may approve.

284 (a) A provision as follows:

285 Change of occupation:

286 If the insured be injured or contract sickness after
287 having changed his occupation to one classified by the insurer as
288 more hazardous than that stated in this policy or while doing for
289 compensation anything pertaining to an occupation so classified,
290 the insurer will pay only such portion of the indemnities provided
291 in this policy as the premium paid would have purchased at the
292 rates and within the limits fixed by the insurer for such more
293 hazardous occupation. If the insured changes his occupation to
294 one classified by the insurer as less hazardous than that stated
295 in this policy, the insurer, upon receipt of proof of such change
296 of occupation, will reduce the premium rate accordingly, and will
297 return the excess pro rata unearned premium from the date of
298 change of occupation or from the policy anniversary date
299 immediately preceding receipt of such proof, whichever is the most
300 recent. In applying this provision, the classification of
301 occupational risk and the premium rates shall be such as have been
302 last filed by the insurer prior to the occurrence of the loss for
303 which the insurer is liable, or prior to date of proof of change
304 in occupation, with the state official having supervision of
305 insurance in the state where the insured resided at the time this

306 policy was issued; but if such filing was not required, then the
307 classification of occupational risk and the premium rates shall be
308 those last made effective by the insurer in such state prior to
309 the occurrence of the loss or prior to the date of proof of change
310 in occupation.

311 (b) A provision as follows:

312 Misstatement of age:

313 If the age of the insured has been misstated, all
314 amounts payable under this policy shall be such as the premium
315 paid would have purchased at the correct age.

316 (c) A provision as follows:

317 Relation of earnings to issuance:

318 If the total monthly amount of loss of time benefits
319 promised for the same loss under all valid loss of time coverage
320 upon the insured, whether payable on a weekly or monthly basis,
321 shall exceed the monthly earnings of the insured at the time
322 disability commenced or his average monthly earnings for the
323 period of two (2) years immediately preceding a disability for
324 which claim is made, whichever is the greater, the insurer will be
325 liable only for such proportionate amount of such benefits under
326 this policy as the amount of such monthly earnings or such average
327 monthly earnings of the insured bears to the total amount of
328 monthly benefits for the same loss under all such coverage upon
329 the insured at the time such disability commences and for the
330 return of such part of the premiums paid during such two (2) years
331 as shall exceed the pro rata amount of the premiums for the
332 benefits actually paid hereunder; but this shall not operate to
333 reduce the total monthly amount of benefits payable under all such

334 coverage upon the insured below the sum of Two Hundred Dollars
335 (\$200.00) or the sum of the monthly benefits specified in such
336 coverages, whichever is the lesser, nor shall it operate to reduce
337 benefits other than those payable for loss of time.

338 (The foregoing policy provision may be inserted only in
339 a policy which the insured has the right to continue in force
340 subject to its terms by the timely payment of premiums (1) until
341 at least age fifty (50) or, (2) in the case of a policy issued
342 after age forty-four (44), for at least five (5) years from its
343 date of issue. The insurer may, at its option, include in this
344 provision a definition of "valid loss of time coverage," approved
345 as to form by the commissioner, which definition shall be limited
346 in subject matter to coverage provided by governmental agencies or
347 by organizations subject to regulations by insurance law or by
348 insurance authorities of this or any other state of the United
349 States or any province of Canada, or to any other coverage the
350 inclusion of which may be approved by the commissioner, or any
351 combination of such coverages. In the absence of such definition,
352 such term shall not include any coverage provided for such insured
353 pursuant to any compulsory benefit statute (including any workers'
354 compensation or employer's liability statute), or benefits
355 provided by union welfare plans or by employer or employee benefit
356 organizations.)

357 (d) A provision as follows:

358 Unpaid premium:

359 Upon the payment of a claim under this policy, any
360 premium then due and unpaid or covered by any note or written
361 order may be deducted therefrom.

362 (e) A provision as follows:

363 Cancellation:

364 The insurer may cancel this policy at any time by
365 written notice delivered to the insured, or mailed to his last
366 address as shown by the records of the insurer, stating when, not
367 less than five (5) days thereafter, such cancellation shall be
368 effective; and after the policy has been continued beyond its
369 original term, the insured may cancel this policy at any time by
370 written notice delivered or mailed to the insurer, effective upon
371 receipt or on such later date as may be specified in such notice.

372 In the event of cancellation, the insurer will return promptly
373 the unearned portion of any premium paid. If the insured cancels,
374 the earned premium shall be computed by the use of the short-rate
375 table last filed with the state official having supervision of
376 insurance in the state where the insured resided when the policy
377 was issued. If the insurer cancels, the earned premium shall be
378 computed pro rata. Cancellation shall be without prejudice to any
379 claim originating prior to the effective date of cancellation.

380 (f) A provision as follows:

381 Conformity with state statutes:

382 Any provision of this policy which, on its effective
383 date, is in conflict with the statutes of the state in which the
384 insured resides on such date is hereby amended to conform to the
385 minimum requirements of such statutes.

386 (g) A provision as follows:

387 Illegal occupation:

388 The insurer shall not be liable for any loss to which a
389 contributing cause was the insured's commission of or attempt to

390 commit a felony or to which a contributing cause was the insured's
391 being engaged in an illegal occupation.

392 (h) A provision as follows:

393 Intoxicants and narcotics:

394 The insurer shall not be liable for any loss sustained
395 or contracted in consequence of the insured's being intoxicated or
396 under the influence of any narcotic unless administered on the
397 advice of a physician.

398 (3) Inapplicable or inconsistent provisions. If any
399 provision of this section is in whole or in part inapplicable to
400 or inconsistent with the coverage provided by a particular form of
401 policy, the insurer, with the approval of the commissioner, shall
402 omit from such policy any inapplicable provision or part of a
403 provision, and shall modify any inconsistent provision or part of
404 the provision in such manner as to make the provision as contained
405 in the policy consistent with the coverage provided by the policy.

406 (4) Order of certain policy provisions. The provisions
407 which are the subject of subsections (1) and (2) of this section,
408 or any corresponding provisions which are used in lieu thereof in
409 accordance with such subsections, shall be printed in the
410 consecutive order of the provisions in such subsections or, at the
411 option of the insurer, any such provision may appear as a unit in
412 any part of the policy, with other provisions to which it may be
413 logically related, provided the resulting policy shall not be in
414 whole or in part unintelligible, uncertain, ambiguous, abstruse or
415 likely to mislead a person to whom the policy is offered,
416 delivered or issued.

417 (5) Third-party ownership. The word "insured," as used in

418 Sections 83-9-1 through 83-9-21, Mississippi Code of 1972, shall
419 not be construed as preventing a person other than the insured
420 with a proper insurable interest from making application for and
421 owning a policy covering the insured, or from being entitled under
422 such a policy to any indemnities, benefits and rights provided
423 therein.

424 (6) Requirements of other jurisdictions.

425 (a) Any policy of a foreign or alien insurer, when
426 delivered or issued for delivery to any person in this state, may
427 contain any provision which is not less favorable to the insured
428 or the beneficiary than the provisions of Sections 83-9-1 through
429 83-9-21, Mississippi Code of 1972, and which is prescribed or
430 required by the law of the state under which the insurer is
431 organized.

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

435 (7) Filing procedure. The commissioner may make such
436 reasonable rules and regulations concerning the procedure for the
437 filing or submission of policies subject to the cited sections as
438 are necessary, proper or advisable to the administration of said
439 sections. This provision shall not abridge any other authority
440 granted the commissioner by law.

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