

By: Representative Stevens

To: Insurance

HOUSE BILL NO. 656

1 AN ACT TO CREATE THE "UNFAIR CLAIMS SETTLEMENT PRACTICES  
2 ACT"; TO SET FORTH STANDARDS FOR THE INVESTIGATION AND DISPOSITION  
3 OF CLAIMS ARISING UNDER POLICIES OR CERTIFICATES OF INSURANCE; TO  
4 PROVIDE DEFINITIONS OF UNFAIR CLAIMS PRACTICES; TO PROVIDE HEARING  
5 PROCEDURES; TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS ACT; AND  
6 FOR RELATED PURPOSES.

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

8 SECTION 1. This act shall be known and may be cited as the  
9 "Unfair Claims Settlement Practices Act."

10 SECTION 2. The purpose of this act is to set forth standards  
11 for the investigation and disposition of claims arising under  
12 policies or certificates of insurance issued to residents of  
13 Mississippi. It is not intended to cover claims involving  
14 workers' compensation, fidelity, suretyship or boiler and  
15 machinery insurance. Nothing herein shall be construed to create  
16 or imply a private cause of action for violation of this act.

17 SECTION 3. When used in this act:

18 (a) "Commissioner" means the Commissioner of Insurance  
19 of this state.

20 (b) "Insured" means the party named on a policy or  
21 certificate as the individual with legal rights to the benefits  
22 provided by such policy.

23 (c) "Insurer" means any person, reciprocal exchange,  
24 interinsurer, Lloyds insurer, fraternal benefit society and any  
25 other legal entity engaged in the business of insurance, including  
26 agents, brokers, adjusters and third party administrators.

27 Insurer shall also mean medical service plans, hospital service  
28 plans, health maintenance organizations, prepaid limited health  
29 care service plans, dental, optometric and other similar health



30 service plans. For purposes of this act, these foregoing entities  
31 shall be deemed to be engaged in the business of insurance.

32 (d) "Person" means any natural or artificial entity,  
33 including, but not limited to, individuals, partnerships,  
34 associations, trusts or corporations.

35 (e) "Policy" or "certificate" means any contract of  
36 insurance, indemnity, medical, health or hospital service or  
37 annuity issued. "Policy" or "certificate" for purposes of this  
38 act, shall not mean contracts of workers' compensation, fidelity,  
39 suretyship or boiler and machinery insurance.

40 SECTION 4. It is an improper claims practice for any  
41 domestic, foreign or alien insurer transacting business in this  
42 state to commit any act defined in Section 4 of this act if:

43 (a) It is committed flagrantly and in conscious  
44 disregard of this act or any rules promulgated hereunder; or

45 (b) It has been committed with such frequency to  
46 indicate a general business practice to engage in that type of  
47 conduct.

48 SECTION 5. Any of the following acts by an insurer, if  
49 committed in violation of Section 3, of this act, constitutes an  
50 unfair claims practice:

51 (a) Knowingly misrepresenting to claimants and insureds  
52 relevant facts or policy provisions relating to coverages at  
53 issue;

54 (b) Failing to acknowledge with reasonable promptness  
55 pertinent communications with respect to claims arising under its  
56 policies;

57 (c) Failing to adopt and implement reasonable standards  
58 for the prompt investigation and settlement of claims arising  
59 under its policies;

60 (d) Not attempting in good faith to effectuate prompt,  
61 fair and equitable settlement of claims submitted in which  
62 liability has become reasonably clear;



63           (e) Compelling insureds or beneficiaries to institute  
64 suits to recover amounts due under its policies by offering  
65 substantially less than the amounts ultimately recovered in suits  
66 brought by them;

67           (f) Refusing to pay claims without conducting a  
68 reasonable investigation;

69           (g) Failing to affirm or deny coverage of claims within  
70 a reasonable time after having completed its investigation related  
71 to such claim or claims;

72           (h) Attempting to settle or settling claims for less  
73 than the amount so that a reasonable person would believe the  
74 insured or beneficiary was entitled by reference to written or  
75 printed advertising material accompanying or made part of an  
76 application;

77           (i) Attempting to settle or settling claims on the  
78 basis of an application that was materially altered without notice  
79 to, or knowledge or consent of, the insured;

80           (j) Making claims payments to an insured or beneficiary  
81 without indicating the coverage under which each payment is being  
82 made;

83           (k) Unreasonably delaying the investigation or payment  
84 of claims by requiring both a formal proof of loss form and  
85 subsequent verification that would result in duplication of  
86 information and verification appearing in the formal proof of loss  
87 form;

88           (l) Failing in the case of claims denials or offers of  
89 compromise settlement to promptly provide a reasonable and  
90 accurate explanation of the basis for such actions;

91           (m) Failing to provide forms necessary to present  
92 claims within fifteen (15) calendar days of a request with  
93 reasonable explanations regarding their use;



94           (n) Failing to adopt and implement reasonable standards  
95 to assure that the repairs of a repairer owned by or required to  
96 be used by the insurer are performed in a workmanlike manner.

97           SECTION 6. Whenever the commissioner has reasonable cause to  
98 believe that any insurer doing business in this state is engaging  
99 in any unfair claims practice and that a proceeding in respect  
100 thereto would be in the public interest, the commissioner shall  
101 issue and serve upon such insurer a statement of the charges in  
102 that respect and a notice of hearing thereon, which notice shall  
103 set a hearing date not less than thirty (30) days from the date of  
104 the notice.

105           SECTION 7. If, after hearing, the commissioner finds an  
106 insurer has engaged in an unfair claims practice, the commissioner  
107 shall reduce the findings to writing and shall issue and cause to  
108 be served upon the insurer charged with the violation a copy of  
109 the findings and an order requiring such insurer to cease and  
110 desist from engaging in the act or practice and the commissioner  
111 may, at the commissioner's discretion, order:

112           (a) Payment of a monetary penalty of not more than One  
113 Thousand Dollars (\$1,000.00) for each violation but not to exceed  
114 an aggregate penalty of One Hundred Thousand Dollars (\$100,000.00)  
115 unless the violation was committed flagrantly and in conscious  
116 disregard of this act, in which case the penalty shall not be more  
117 than Twenty-five Thousand Dollars (\$25,000.00) for each violation,  
118 but not to exceed an aggregate penalty of Two Hundred Fifty  
119 Thousand Dollars (\$250,000.00) pursuant to any such hearing; or

120           (b) Suspension or revocation of the insurer's license  
121 if the insurer knew or reasonably should have known it was in  
122 violation of this act, or both penalty and suspension or  
123 revocation of the license.

124           SECTION 8. Any insurer which violates a cease and desist  
125 order of the commissioner while such order is in effect, after



126 notice and hearing and upon order of the commissioner, may be  
127 subject, at the discretion of the commissioner, to:

128           (a) A monetary penalty of not more than Twenty-five  
129 Thousand Dollars (\$25,000.00) for each and every act or violation  
130 not to exceed an aggregate of Two Hundred Fifty Thousand Dollars  
131 (\$250,000.00) pursuant to any such hearing; or

132           (b) Suspension or revocation of the insurer's license  
133 or both penalty and suspension or revocation of the license.

134           SECTION 9. The commissioner, after notice and hearing, may  
135 promulgate reasonable rules, regulations and orders as are  
136 necessary or proper to carry out and effectuate the provisions of  
137 this act. Such regulations shall be subject to review in  
138 accordance with Section 25-43-1 et seq.

139           SECTION 10. If any provision of this act, or the application  
140 of such provision to any person or circumstances, shall be held  
141 invalid, the remainder of the act, and the application of such  
142 provision to person or circumstances other than those as to which  
143 it is held invalid, shall not be affected thereby.

144           SECTION 11. This act shall take effect and be in force from  
145 and after July 1, 2001.

