MISSISSIPPI LEGISLATURE  REGULAR SESSION 2001

By: Representative Watson  To: Insurance

HOUSE BILL NO. 741

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

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

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

(2) (a) The injured person or his or her survivors or heirs mentioned in subsection (1) of this section, at their option, shall have a right of direct action against the insurer within the terms and limits of the policy; and such action may be brought against the insurer alone, or against both the insured and insurer jointly and in solido, in the county in which the accident or injury occurred or in the county in which an action could be brought against either the insured or the insurer under the general rules of venue prescribed by the Rules of Civil Procedure only. However, such action may be brought against the insurer alone only when:

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

(ii) The insured is insolvent;

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

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

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

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

(3) It is the intent of this section that any action brought under the provisions of this section shall be subject to all of the lawful conditions of the policy or contract and the defenses which could be urged by the insurer to a direct action brought by the insured, provided the terms and conditions of such policy or contract are not in violation of the laws of this state.

(4) It is also the intent of this section that all liability policies within their terms and limits are executed for the benefit of all injured persons and their survivors or heirs to whom the insured is liable and that it is the purpose of all liability policies to give protection and coverage to all insureds, whether they are named insureds or additional insureds under the omnibus clause, for any legal liability such insured may
SECTION 2. This act shall take effect and be in force from and after July 1, 2001.