By: Senator(s) Kirby

To: Insurance

SENATE BILL NO. 2605

1 AN ACT TO AMEND SECTION 83-9-5, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE PENALTIES ON INSURERS FOR FAILURE TO PAY CERTAIN HEALTH
3 INSURANCE CLAIMS IN A TIMELY MANNER; AND FOR RELATED PURPOSES.

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

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

7 83-9-5. (1) Required provisions. Except as provided in
8 subsection (3) of this section, each such policy delivered or
9 issued for delivery to any person in this state shall contain the
10 provisions specified in this subsection in the words in which the
11 same appear in this section. However, the insurer may, at its
12 option, substitute for one or more of such provisions,
13 corresponding provisions of different wording approved by the
14 commissioner which are in each instance not less favorable in any
15 respect to the insured or the beneficiary. Such provisions shall
16 be preceded individually by the caption appearing in this
17 subsection or, at the option of the insurer, by such appropriate
18 individual or group captions or subcaptions as the commissioner
19 may approve.

20 (a) A provision as follows:

21 Entire contract; changes:

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

28 (b) A provision as follows:
29 Time limit on certain defenses:
30 1. After two (2) years from the date of issue of this
31 policy, no misstatements, except fraudulent misstatements, made by
32 the applicant in the application for such policy shall be used to
33 void the policy or to deny a claim for loss incurred or disability
34 (as defined in the policy) commencing after the expiration of such
35 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:

62 A grace period of seven (7) days for weekly premium policies, 63 ten (10) days for monthly premium policies and thirty-one (31) 64 days for all other policies will be granted for the payment of 65 each premium falling due after the first premium, during which 66 grace period the policy shall continue in force.

67 (A policy which contains a cancellation provision may add, at 68 the end of the above provision, "subject to the right of the 69 insurer to cancel in accordance with the cancellation provision 70 hereof."

71 A policy in which the insurer reserves the right to refuse 72 any renewal shall have, at the beginning of the above provision, 73 "unless not less than five (5) days prior to the premium due date 74 the insurer has delivered to the insured or has mailed to his last 75 address as shown by the records of the insurer written notice of 76 its intention not to renew this policy beyond the period for which 77 the premium has been accepted.")

78 (d) A provision as follows:

79 Reinstatement:

80 If any renewal premium be not paid within the time granted 81 the insured for payment, a subsequent acceptance of premium by the 82 insurer or by any agent duly authorized by the insurer to accept 83 such premium, without requiring in connection therewith an 84 application for reinstatement, shall reinstate the policy. 85 However, if the insurer or such agent requires an application for 86 reinstatement and issues a conditional receipt for the premium 87 tendered, the policy will be reinstated upon approval of such 88 application by the insurer or, lacking such approval, upon the 89 forty-fifth day following the date of such conditional receipt 90 unless the insurer has previously notified the insured in writing 91 of its disapproval of such application. The reinstated policy 92 shall cover only loss resulting from such accidental injury as may 93 be sustained after the date of reinstatement and loss due to such

94 sickness as may begin more than ten (10) days after such date. In
95 all other respects the insured and insurer shall have the same
96 rights thereunder as they had under the policy immediately before
97 the due date of the defaulted premium, subject to any provisions
98 endorsed hereon or attached hereto in connection with the
99 reinstatement. Any premium accepted in connection with a
100 reinstatement shall be applied to a period for which premium has
101 not been previously paid, but not to any period more than sixty
102 (60) days prior to the date of reinstatement. (The last sentence
103 of the above provision may be omitted from any policy which the
104 insured has the right to continue in force subject to its terms by
105 the timely payment of premiums (1) until at least age fifty (50)
106 or, (2) in the case of a policy issued after age forty-four (44),
107 for at least five (5) years from its date of issue.)
108 (e) A provision as follows:
109 Notice of claim:
110 Written notice of claim must be given to the insurer within
111 thirty (30) days after the occurrence or commencement of any loss
112 covered by the policy, or as soon thereafter as is reasonably
113 possible. Notice given by or on behalf of the insured or the
114 beneficiary to the insurer at __________, (insert the location of
115 such office as the insurer may designate for the purpose) or to
116 any authorized agent of the insurer, with information sufficient
117 to identify the insured, shall be deemed notice to the insurer.
118 (In a policy providing a loss-of-time benefit which may be
119 payable for at least two (2) years, an insurer may, at its option,
120 insert the following between the first and second sentences of the
121 above provision: "Subject to the qualifications set forth below,
122 if the insured suffers loss of time on account of disability for
123 which indemnity may be payable for at least two (2) years, he
124 shall, at least once in every six (6) months after having given
125 notice of claim, give to the insurer notice of continuance of said
126 disability, except in the event of legal incapacity. The period

127 of six (6) months following any filing of proof by the insured or
128 any payment by the insurer on account of such claim or any denial
129 of liability in whole or in part by the insurer shall be excluded
130 in applying this provision. Delay in the giving of such notice
131 shall not impair the insured's right to any indemnity which would
132 otherwise have accrued during the period of six (6) months
133 preceding the date on which such notice is actually given.")
134 (f) A provision as follows:
135 Claim forms:
136 The insurer, upon receipt of a notice of claim, will furnish
137 to the claimant such forms as are usually furnished by it for
138 filing proofs of loss. If such forms are not furnished within
139 fifteen (15) days after the giving of such notice, the claimant
140 shall be deemed to have complied with the requirements of this
141 policy as to proof of loss upon submitting, within the time fixed
142 in the policy for filing proofs of loss, written proof covering
143 the occurrence, the character and the extent of the loss for which
144 claim is made.
145 (g) A provision as follows:
146 Proofs of loss:
147 Written proof of loss must be furnished to the insurer at its
148 said office, in case of claim for loss for which this policy
149 provides any periodic payment contingent upon continuing loss,
150 within ninety (90) days after the termination of the period for
151 which the insurer is liable, and in case of claim for any other
152 loss, within ninety (90) days after the date of such loss.
153 Failure to furnish such proof within the time required shall not
154 invalidate or reduce any claim if it was not reasonably possible
155 to give proof within such time, provided such proof is furnished
156 as soon as reasonably possible and in no event, except in the
157 absence of legal capacity, later than one (1) year from the time
158 proof is otherwise required.
159 (h) A provision as follows:

160 Time of payment of claims:

161 1. All benefits payable under this policy for any loss,
162 other than loss for which this policy provides any periodic
163 payment, will be paid within forty-five (45) days after receipt of
164 due written proof in the form of a clean claim of such loss.
165 Benefits due under the policies and claims are overdue if not paid
166 within forty-five (45) days after the insurer receives a clean
167 claim containing necessary medical information and other
168 information essential for the insurer to administer coordination
169 of benefits and subrogation provisions. A "clean claim" means a
170 claim received by a health insurance entity for adjudication, and
171 which requires no further information, adjustment or alteration by
172 the provider of the services in order to be processed and paid by
173 the health insurer. A claim is clean if it has no defect or
174 impropriety, including any lack of substantiating documentation,
175 or particular circumstance requiring special treatment that
176 prevents timely payment from being made on the claim under this
177 section. A clean claim does not include a duplicate claim. A
178 duplicate claim means an original claim and its duplicate when the
179 duplicate is filed within thirty (30) days of the original claim.
180 A clean claim does not include any claim submitted more than
181 ninety (90) days after the date of service. Not later than ten
182 (10) days after the date the insurer actually receives an
183 electronic claim, the insurer shall pay the total covered amount
184 or any portion of the claim that is clean or notify the provider
185 electronically of the reasons why the claim or portion of the
186 claim is not clean and will not be paid and what substantiating
187 documentation and information is required to adjudicate the claim
188 as clean. The insurer shall within twenty-one (21) days of
189 receipt of a paper claim pay the total covered amount of the claim
190 or any portion of the claim that is clean and notify the provider
191 in writing of the reasons why the claim or portion of the claim is
192 not clean and will not be paid and what substantiating

193 documentation and information is required to adjudicate the claim
194 as clean. Any electronic claim resubmitted after denial with the
195 documentation and information requested by the insurer shall be
196 paid within ten (10) days after receipt. Any paper claim
197 resubmitted after denial with the documentation and information
198 set forth by the insurer shall be paid within fifteen (15) days
199 after receipt. If such information is not supplied as to the
200 entire claim, the amount supported by reasonable proof is overdue
201 if not paid within forty-five (45) days after such proof is
202 received by the insurer. Any part or all of the remainder of the
203 claim that is later supported by such proof is overdue if not paid
204 within forty-five (45) days after such proof is received by the
205 insurer. To calculate the extent to which any benefits are
206 overdue, payment shall be treated as made on the date a draft or
207 other valid instrument was placed in the United States mail to the
208 last known address of the claimant or beneficiary in a properly
209 addressed, postpaid envelope, or, if not so posted, on the date of
210 delivery.

211 2. Subject to due written proof of loss, all accrued
212 benefits for loss for which this policy provides periodic payment
213 will be paid __________ (insert period for payment which must not
214 be less frequently than monthly) and any balance remaining unpaid
215 upon the termination of liability will be paid within forty-five
216 (45) days after receipt of due written proof.

217 3. If the claim is not denied for valid and proper reasons
218 by the end of such period of forty-five (45) days, the insurer
219 must pay the insured interest on accrued benefits at the rate of
220 one and one-half percent (1-1/2%) per month on the amount of such
221 claim until it is finally settled or adjudicated. If the
222 commissioner finds that any insurer has failed during any calendar
223 year to properly process and pay ninety-eight percent (98%) of all
224 clean claims received from all providers during that year, the
225 commissioner may levy an aggregate penalty of up to Ten Thousand

226 Dollars ($10,000.00). If the commissioner finds that an insurer
227 has failed during any calendar year to properly process and pay
228 eight-five percent (85%) of all clean claims received from
229 providers during that year, the commissioner may levy an aggregate
230 penalty in an amount not less than Ten Thousand Dollars
231 ($10,000.00) nor more than One Hundred Thousand Dollars
232 ($100,000.00). If the commissioner finds that an insurer has
233 failed during any calendar year to properly process and pay sixty
234 percent (60%) of all clean claims received from all providers
235 during that year, the commissioner may levy an aggregate penalty
236 in an amount not less than One Hundred Thousand Dollars
237 ($100,000.00) nor more than Two Hundred Thousand Dollars
238 ($200,000.00). The commissioner shall by rule set forth factors
239 that determine whether or not a penalty shall be levied. The
240 commissioner may also enter an order directing a health insurer to
241 cease and desist from engaging in any act or practice in violation
242 of this section. Within fifteen (15) days after service of the
243 cease and desist order, the respondent may request a hearing on
244 the question of whether acts or practices in violation of this
245 section have occurred. Examinations to determine compliance with
246 this section may be conducted by the commissioner's staff upon
247 reasonable belief that a violation of this section has occurred.
248 The commissioner may, if necessary, contract with qualified
249 impartial outside sources to assist in examinations to determine
250 compliance. The expenses of any such examinations shall be paid
251 by the insurers examined.
252 4. In the event the insurer fails to pay benefits when due,
253 the person entitled to such benefits may bring action to recover
254 such benefits, any interest which may accrue as provided in
255 subsection (1)(h)3. of this section and any other damages as may
256 be allowable by law.
257 (i) A provision as follows:
258 Payment of claims:

259 Indemnity for loss of life will be payable in accordance with
260 the beneficiary designation and the provisions respecting such
261 payment which may be prescribed herein and effective at the time
262 of payment. If no such designation or provision is then
263 effective, such indemnity shall be payable to the estate of the
264 insured. Any other accrued indemnities unpaid at the insured's
265 death may, at the option of the insurer, be paid either to such
266 beneficiary or to such estate. All other indemnities will be
267 payable to the insured. When payments of benefits are made to an
268 insured directly for medical care or services rendered by a health
269 care provider, the health care provider shall be notified of such
270 payment. The notification requirement shall not apply to a
271 fixed-indemnity policy, a limited benefit health insurance policy,
272 medical payment coverage or personal injury protection coverage in
273 a motor vehicle policy, coverage issued as a supplement to
274 liability insurance or workers' compensation.

275 (The following provisions, or either of them, may be included
276 with the foregoing provision at the option of the insurer: "If
277 any indemnity of this policy shall be payable to the estate of the
278 insured, or to an insured or beneficiary who is a minor or
279 otherwise not competent to give a valid release, the insurer may
280 pay such indemnity, up to an amount not exceeding $__________,
281 (insert an amount which must not exceed One Thousand Dollars
282 ($1,000.00)) to any relative by blood or connection by marriage of
283 the insured or beneficiary who is deemed by the insurer to be
284 equitably entitled thereto. Any payment made by the insurer in
285 good faith pursuant to this provision shall fully discharge the
286 insurer to the extent of such payment.

287 "Subject to any written direction of the insured in the
288 application or otherwise, all or a portion of any indemnities
289 provided by this policy on account of hospital, nursing, medical
290 or surgical services may, at the insurer's option and unless the
291 insured requests otherwise in writing not later than the time of

292 filing proofs of such loss, be paid directly to the hospital or
293 person rendering such services; but it is not required that the
294 service be rendered by a particular hospital or person.")

295 (j) A provision as follows:

296 Physical examinations:

297 The insurer at his own expense shall have the right and
298 opportunity to examine the person of the insured when and as often
299 as it may reasonably require during the pendency of a claim
300 hereunder.

301 (k) A provision as follows:

302 Legal actions:

303 No action at law or in equity shall be brought to recover on
304 this policy prior to the expiration of sixty (60) days after
305 written proof of loss has been furnished in accordance with the
306 requirements of this policy. No such action shall be brought
307 after the expiration of three (3) years after the time written
308 proof of loss is required to be furnished.

309 (l) A provision as follows:

310 Change of beneficiary:

311 Unless the insured makes an irrevocable designation of
312 beneficiary, the right to change the beneficiary is reserved to
313 the insured, and the consent of the beneficiary or beneficiaries
314 shall not be requisite to surrender or assignment of this policy,
315 or to any change of beneficiary or beneficiaries, or to any other
316 changes in this policy.

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

320 (2) Other provisions. Except as provided in subsection (3)
321 of this section, no such policy delivered or issued for delivery
322 to any person in this state shall contain provisions respecting
323 the matters set forth below unless such provisions are in the
324 words in which the same appear in this section. However, the

325 insurer may, at its option, use in lieu of any such provision a
326 corresponding provision of different wording approved by the
327 commissioner which is not less favorable in any respect to the
328 insured or the beneficiary. Any such provision contained in the
329 policy shall be preceded individually by the appropriate caption
330 appearing in this subsection or, at the option of the insurer, by
331 such appropriate individual or group captions or subcaptions as
332 the commissioner may approve.

333 (a) A provision as follows:

334 Change of occupation:

335 If the insured be injured or contract sickness after having
336 changed his occupation to one classified by the insurer as more
337 hazardous than that stated in this policy or while doing for
338 compensation anything pertaining to an occupation so classified,
339 the insurer will pay only such portion of the indemnities provided
340 in this policy as the premium paid would have purchased at the
341 rates and within the limits fixed by the insurer for such more
342 hazardous occupation. If the insured changes his occupation to
343 one classified by the insurer as less hazardous than that stated
344 in this policy, the insurer, upon receipt of proof of such change
345 of occupation, will reduce the premium rate accordingly, and will
346 return the excess pro rata unearned premium from the date of
347 change of occupation or from the policy anniversary date
348 immediately preceding receipt of such proof, whichever is the most
349 recent. In applying this provision, the classification of
350 occupational risk and the premium rates shall be such as have been
351 last filed by the insurer prior to the occurrence of the loss for
352 which the insurer is liable, or prior to date of proof of change
353 in occupation, with the state official having supervision of
354 insurance in the state where the insured resided at the time this
355 policy was issued; but if such filing was not required, then the
356 classification of occupational risk and the premium rates shall be
357 those last made effective by the insurer in such state prior to

358 the occurrence of the loss or prior to the date of proof of change
359 in occupation.
360 (b) A provision as follows:
361 Misstatement of age:
362 If the age of the insured has been misstated, all amounts
363 payable under this policy shall be such as the premium paid would
364 have purchased at the correct age.
365 (c) A provision as follows:
366 Relation of earnings to issuance:
367 If the total monthly amount of loss of time benefits promised
368 for the same loss under all valid loss of time coverage upon the
369 insured, whether payable on a weekly or monthly basis, shall
370 exceed the monthly earnings of the insured at the time disability
371 commenced or his average monthly earnings for the period of two
372 (2) years immediately preceding a disability for which claim is
373 made, whichever is the greater, the insurer will be liable only
374 for such proportionate amount of such benefits under this policy
375 as the amount of such monthly earnings or such average monthly
376 earnings of the insured bears to the total amount of monthly
377 benefits for the same loss under all such coverage upon the
378 insured at the time such disability commences and for the return
379 of such part of the premiums paid during such two (2) years as
380 shall exceed the pro rata amount of the premiums for the benefits
381 actually paid hereunder; but this shall not operate to reduce the
382 total monthly amount of benefits payable under all such coverage
383 upon the insured below the sum of Two Hundred Dollars ($200.00) or
384 the sum of the monthly benefits specified in such coverages,
385 whichever is the lesser, nor shall it operate to reduce benefits
386 other than those payable for loss of time.
387 (The foregoing policy provision may be inserted only in a
388 policy which the insured has the right to continue in force
389 subject to its terms by the timely payment of premiums (1) until
390 at least age fifty (50) or, (2) in the case of a policy issued

391 after age forty-four (44), for at least five (5) years from its
392 date of issue. The insurer may, at its option, include in this
393 provision a definition of "valid loss of time coverage," approved
394 as to form by the commissioner, which definition shall be limited
395 in subject matter to coverage provided by governmental agencies or
396 by organizations subject to regulations by insurance law or by
397 insurance authorities of this or any other state of the United
398 States or any province of Canada, or to any other coverage the
399 inclusion of which may be approved by the commissioner, or any
400 combination of such coverages. In the absence of such definition,
401 such term shall not include any coverage provided for such insured
402 pursuant to any compulsory benefit statute (including any
403 workmen's compensation or employer's liability statute), or
404 benefits provided by union welfare plans or by employer or
405 employee benefit organizations.)

406 (d) A provision as follows:

407 Unpaid premium:

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

411 (e) A provision as follows:

412 Cancellation:

413 The insurer may cancel this policy at any time by written
414 notice delivered to the insured, or mailed to his last address as
415 shown by the records of the insurer, stating when, not less than
416 five (5) days thereafter, such cancellation shall be effective;
417 and after the policy has been continued beyond its original term,
418 the insured may cancel this policy at any time by written notice
419 delivered or mailed to the insurer, effective upon receipt or on
420 such later date as may be specified in such notice. In the event
421 of cancellation, the insurer will return promptly the unearned
422 portion of any premium paid. If the insured cancels, the earned
423 premium shall be computed by the use of the short-rate table last

424 filed with the state official having supervision of insurance in
425 the state where the insured resided when the policy was issued.
426 If the insurer cancels, the earned premium shall be computed pro
427 rata. Cancellation shall be without prejudice to any claim
428 originating prior to the effective date of cancellation.
429 (f) A provision as follows:
430 Conformity with state statutes:
431 Any provision of this policy which, on its effective date, is
432 in conflict with the statutes of the state in which the insured
433 resides on such date is hereby amended to conform to the minimum
434 requirements of such statutes.
435 (g) A provision as follows:
436 Illegal occupation:
437 The insurer shall not be liable for any loss to which a
438 contributing cause was the insured's commission of or attempt to
439 commit a felony or to which a contributing cause was the insured's
440 being engaged in an illegal occupation.
441 (h) A provision as follows:
442 Intoxicants and narcotics:
443 The insurer shall not be liable for any loss sustained or
444 contracted in consequence of the insured's being intoxicated or
445 under the influence of any narcotic unless administered on the
446 advice of a physician.
447 (3) Inapplicable or inconsistent provisions. If any
448 provision of this section is in whole or in part inapplicable to
449 or inconsistent with the coverage provided by a particular form of
450 policy, the insurer, with the approval of the commissioner, shall
451 omit from such policy any inapplicable provision or part of a
452 provision, and shall modify any inconsistent provision or part of
453 the provision in such manner as to make the provision as contained
454 in the policy consistent with the coverage provided by the policy.
455 (4) Order of certain policy provisions. The provisions
456 which are the subject of subsections (1) and (2) of this section,

457 or any corresponding provisions which are used in lieu thereof in
458 accordance with such subsections, shall be printed in the
459 consecutive order of the provisions in such subsections or, at the
460 option of the insurer, any such provision may appear as a unit in
461 any part of the policy, with other provisions to which it may be
462 logically related, provided the resulting policy shall not be in
463 whole or in part unintelligible, uncertain, ambiguous, abstruse or
464 likely to mislead a person to whom the policy is offered,
465 delivered or issued.

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

473 (6) Requirements of other jurisdictions.

474 (a) Any policy of a foreign or alien insurer, when
475 delivered or issued for delivery to any person in this state, may
476 contain any provision which is not less favorable to the insured
477 or the beneficiary than the provisions of Sections 83-9-1 through
478 83-9-21, Mississippi Code of 1972, and which is prescribed or
479 required by the law of the state under which the insurer is
480 organized.

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

484 (7) Filing procedure. The commissioner may make such
485 reasonable rules and regulations concerning the procedure for the
486 filing or submission of policies subject to the cited sections as
487 are necessary, proper or advisable to the administration of said
488 sections. This provision shall not abridge any other authority
489 granted the commissioner by law.

490 SECTION 2. This act shall take effect and be in force from
491 and after its passage.

ST: Health insurance; provide for penalties on insurers who fail to pay certain claims in a timely manner.