

By: Representative Broomfield

To: Insurance

HOUSE BILL NO. 505

1 AN ACT TO AMEND SECTION 83-9-5, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE PENALTIES FOR FAILURE OF AN INSURER TO PAY A CLAIM IN A  
3 TIMELY MANNER; TO AMEND SECTION 83-9-19, MISSISSIPPI CODE OF 1972,  
4 IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

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

21 (a) A provision as follows:

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



29 (b) A provision as follows:

30 Time limit on certain defenses:

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

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

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

51 After this policy has been in force for a period of  
52 two (2) years during the lifetime of the insured (excluding any  
53 period during which the insured is disabled), it shall become  
54 incontestable as to the statements in the application.)

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



62 (c) A provision as follows:

63 Grace period:

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

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

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

80 (d) A provision as follows:

81 Reinstatement:

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



95 be sustained after the date of reinstatement and loss due to such  
96 sickness as may begin more than ten (10) days after such date. In  
97 all other respects the insured and insurer shall have the same  
98 rights thereunder as they had under the policy immediately before  
99 the due date of the defaulted premium, subject to any provisions  
100 endorsed hereon or attached hereto in connection with the  
101 reinstatement. Any premium accepted in connection with a  
102 reinstatement shall be applied to a period for which premium has  
103 not been previously paid, but not to any period more than sixty  
104 (60) days prior to the date of reinstatement. (The last sentence  
105 of the above provision may be omitted from any policy which the  
106 insured has the right to continue in force subject to its terms by  
107 the timely payment of premiums (1) until at least age fifty (50)  
108 or, (2) in the case of a policy issued after age forty-four (44),  
109 for at least five (5) years from its date of issue.)

110 (e) A provision as follows:

111 Notice of claim:

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

120 (In a policy providing a loss-of-time benefit which may  
121 be payable for at least two (2) years, an insurer may, at its  
122 option, insert the following between the first and second  
123 sentences of the above provision: "Subject to the qualifications  
124 set forth below, if the insured suffers loss of time on account of  
125 disability for which indemnity may be payable for at least two (2)  
126 years, he shall, at least once in every six (6) months after  
127 having given notice of claim, give to the insurer notice of



128 continuance of said disability, except in the event of legal  
129 incapacity. The period of six (6) months following any filing of  
130 proof by the insured or any payment by the insurer on account of  
131 such claim or any denial of liability in whole or in part by the  
132 insurer shall be excluded in applying this provision. Delay in  
133 the giving of such notice shall not impair the insured's right to  
134 any indemnity which would otherwise have accrued during the period  
135 of six (6) months preceding the date on which such notice is  
136 actually given.")

137 (f) A provision as follows:

138 Claim forms:

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

148 (g) A provision as follows:

149 Proofs of loss:

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



160 absence of legal capacity, later than one (1) year from the time  
161 proof is otherwise required.

162 (h) A provision as follows:

163 Time of payment of claims:

164 1. All benefits payable under this policy for any  
165 loss, other than loss for which this policy provides any periodic  
166 payment, will be paid within forty-five (45) days after receipt of  
167 due written proof of such loss. Benefits due under the policies  
168 and claims are overdue if not paid within forty-five (45) days  
169 after the insurer receives proof of loss, necessary medical  
170 information and other information essential for the insurer to  
171 administer coordination of benefits and subrogation provisions.  
172 If such information is not supplied as to the entire claim, the  
173 amount supported by reasonable proof is overdue if not paid within  
174 forty-five (45) days after such proof is received by the insurer.  
175 Any part or all of the remainder of the claim that is later  
176 supported by such proof is overdue if not paid within forty-five  
177 (45) days after such proof is received by the insurer. To  
178 calculate the extent to which any benefits are overdue, payment  
179 shall be treated as made on the date a draft or other valid  
180 instrument was placed in the United States mail to the last known  
181 address of the claimant or beneficiary in a properly addressed,  
182 postpaid envelope, or, if not so posted, on the date of delivery.

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

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



193 of such claim until it is finally settled or adjudicated. In  
194 addition to such interest payment, the insurer shall be assessed a  
195 civil penalty of Five Hundred Dollars (\$500.00) per day until such  
196 claim is finally settled or adjudicated. The proceeds from such  
197 fine shall be deposited in the State General Fund.

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

203 (i) A provision as follows:

204 Payment of claims:

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

221 (The following provisions, or either of them, may be  
222 included with the foregoing provision at the option of the  
223 insurer: "If any indemnity of this policy shall be payable to the  
224 estate of the insured, or to an insured or beneficiary who is a  
225 minor or otherwise not competent to give a valid release, the



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

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

241 (j) A provision as follows:

242 Physical examinations:

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

247 (k) A provision as follows:

248 Legal actions:

249 No action at law or in equity shall be brought to  
250 recover on this policy prior to the expiration of sixty (60) days  
251 after written proof of loss has been furnished in accordance with  
252 the requirements of this policy. No such action shall be brought  
253 after the expiration of three (3) years after the time written  
254 proof of loss is required to be furnished.

255 (l) A provision as follows:

256 Change of beneficiary:

257 Unless the insured makes an irrevocable designation of  
258 beneficiary, the right to change the beneficiary is reserved to





259 the insured, and the consent of the beneficiary or beneficiaries  
260 shall not be requisite to surrender or assignment of this policy,  
261 or to any change of beneficiary or beneficiaries, or to any other  
262 changes in this policy.

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

266 (2) Other provisions. Except as provided in subsection (3)  
267 of this section, no such policy delivered or issued for delivery  
268 to any person in this state shall contain provisions respecting  
269 the matters set forth below unless such provisions are in the  
270 words in which the same appear in this section. However, the  
271 insurer may, at its option, use in lieu of any such provision a  
272 corresponding provision of different wording approved by the  
273 commissioner which is not less favorable in any respect to the  
274 insured or the beneficiary. Any such provision contained in the  
275 policy shall be preceded individually by the appropriate caption  
276 appearing in this subsection or, at the option of the insurer, by  
277 such appropriate individual or group captions or subcaptions as  
278 the commissioner may approve.

279 (a) A provision as follows:

280 Change of occupation:

281 If the insured be injured or contract sickness after  
282 having changed his occupation to one classified by the insurer as  
283 more hazardous than that stated in this policy or while doing for  
284 compensation anything pertaining to an occupation so classified,  
285 the insurer will pay only such portion of the indemnities provided  
286 in this policy as the premium paid would have purchased at the  
287 rates and within the limits fixed by the insurer for such more  
288 hazardous occupation. If the insured changes his occupation to  
289 one classified by the insurer as less hazardous than that stated  
290 in this policy, the insurer, upon receipt of proof of such change  
291 of occupation, will reduce the premium rate accordingly, and will



292 return the excess pro rata unearned premium from the date of  
293 change of occupation or from the policy anniversary date  
294 immediately preceding receipt of such proof, whichever is the most  
295 recent. In applying this provision, the classification of  
296 occupational risk and the premium rates shall be such as have been  
297 last filed by the insurer prior to the occurrence of the loss for  
298 which the insurer is liable, or prior to date of proof of change  
299 in occupation, with the state official having supervision of  
300 insurance in the state where the insured resided at the time this  
301 policy was issued; but if such filing was not required, then the  
302 classification of occupational risk and the premium rates shall be  
303 those last made effective by the insurer in such state prior to  
304 the occurrence of the loss or prior to the date of proof of change  
305 in occupation.

306 (b) A provision as follows:

307 Misstatement of age:

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

311 (c) A provision as follows:

312 Relation of earnings to issuance:

313 If the total monthly amount of loss of time benefits  
314 promised for the same loss under all valid loss of time coverage  
315 upon the insured, whether payable on a weekly or monthly basis,  
316 shall exceed the monthly earnings of the insured at the time  
317 disability commenced or his average monthly earnings for the  
318 period of two (2) years immediately preceding a disability for  
319 which claim is made, whichever is the greater, the insurer will be  
320 liable only for such proportionate amount of such benefits under  
321 this policy as the amount of such monthly earnings or such average  
322 monthly earnings of the insured bears to the total amount of  
323 monthly benefits for the same loss under all such coverage upon  
324 the insured at the time such disability commences and for the



325 return of such part of the premiums paid during such two (2) years  
326 as shall exceed the pro rata amount of the premiums for the  
327 benefits actually paid hereunder; but this shall not operate to  
328 reduce the total monthly amount of benefits payable under all such  
329 coverage upon the insured below the sum of Two Hundred Dollars  
330 (\$200.00) or the sum of the monthly benefits specified in such  
331 coverages, whichever is the lesser, nor shall it operate to reduce  
332 benefits other than those payable for loss of time.

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

352 (d) A provision as follows:

353 Unpaid premium:

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

357 (e) A provision as follows:



358 Cancellation:

359 The insurer may cancel this policy at any time by  
360 written notice delivered to the insured, or mailed to his last  
361 address as shown by the records of the insurer, stating when, not  
362 less than five (5) days thereafter, such cancellation shall be  
363 effective; and after the policy has been continued beyond its  
364 original term, the insured may cancel this policy at any time by  
365 written notice delivered or mailed to the insurer, effective upon  
366 receipt or on such later date as may be specified in such notice.  
367 In the event of cancellation, the insurer will return promptly the  
368 unearned portion of any premium paid. If the insured cancels, the  
369 earned premium shall be computed by the use of the short-rate  
370 table last filed with the state official having supervision of  
371 insurance in the state where the insured resided when the policy  
372 was issued. If the insurer cancels, the earned premium shall be  
373 computed pro rata. Cancellation shall be without prejudice to any  
374 claim originating prior to the effective date of cancellation.

375 (f) A provision as follows:

376 Conformity with state statutes:

377 Any provision of this policy which, on its effective  
378 date, is in conflict with the statutes of the state in which the  
379 insured resides on such date is hereby amended to conform to the  
380 minimum requirements of such statutes.

381 (g) A provision as follows:

382 Illegal occupation:

383 The insurer shall not be liable for any loss to which a  
384 contributing cause was the insured's commission of or attempt to  
385 commit a felony or to which a contributing cause was the insured's  
386 being engaged in an illegal occupation.

387 (h) A provision as follows:

388 Intoxicants and narcotics:

389 The insurer shall not be liable for any loss sustained  
390 or contracted in consequence of the insured's being intoxicated or



391 under the influence of any narcotic unless administered on the  
392 advice of a physician.

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

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

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

419 (6) Requirements of other jurisdictions.

420 (a) Any policy of a foreign or alien insurer, when  
421 delivered or issued for delivery to any person in this state, may  
422 contain any provision which is not less favorable to the insured  
423 or the beneficiary than the provisions of Sections 83-9-1 through



424 83-9-21, Mississippi Code of 1972, and which is prescribed or  
425 required by the law of the state under which the insurer is  
426 organized.

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

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

436 **SECTION 2.** Section 83-9-19, Mississippi Code of 1972, is  
437 amended as follows:

438 83-9-19. Any person, partnership, or corporation wilfully  
439 violating any provision of Sections 83-9-1 through 83-9-21, or  
440 order of the commissioner made in accordance with said sections,  
441 shall forfeit to the people of the state a sum not less than fifty  
442 dollars (\$50.00) nor more than one thousand dollars (\$1,000.00)  
443 for each such violation, which may be recovered by a civil action.  
444 However, if an insurer fails to pay a claim in a timely manner,  
445 the insurer shall be penalized in the manner provided in Section  
446 83-9-5. The commissioner may also suspend or revoke the license  
447 of an insurer or agent for any such wilful violation.

448 **SECTION 3.** This act shall take effect and be in force from  
449 and after July 1, 2002.

