HOUSE BILL NO. 505

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

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

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

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

(a) A provision as follows:

Entire contract; changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.
(b) A provision as follows:

Time limit on certain defenses:

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

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

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

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

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

Grace period:

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

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

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

(d) A provision as follows:

Reinstatement:

If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy. However, if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may
be sustained after the date of reinstatement and loss due to such
sickness as may begin more than ten (10) days after such date. In
all other respects the insured and insurer shall have the same
rights thereunder as they had under the policy immediately before
the due date of the defaulted premium, subject to any provisions
endorsed hereon or attached hereto in connection with the
reinstatement. Any premium accepted in connection with a
reinstatement shall be applied to a period for which premium has
not been previously paid, but not to any period more than sixty
days prior to the date of reinstatement. (The last sentence
of the above provision may be omitted from any policy which the
insured has the right to continue in force subject to its terms by
the timely payment of premiums (1) until at least age fifty (50)
or, (2) in the case of a policy issued after age forty-four (44),
for at least five (5) years from its date of issue.)

(e) A provision as follows:

Notice of claim:

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

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

(f) A provision as follows:

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

(g) A provision as follows:

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

(h) A provision as follows:

Time of payment of claims:

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

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

3. If the claim is not denied for valid and proper
reasons by the end of such period of forty-five (45) days, the
insurer must pay the insured interest on accrued benefits at the
rate of one and one-half percent (1-1/2%) per month on the amount
of such claim until it is finally settled or adjudicated. In addition to such interest payment, the insurer shall be assessed a civil penalty of Five Hundred Dollars ($500.00) per day until such claim is finally settled or adjudicated. The proceeds from such fine shall be deposited in the State General Fund.

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

   (i) A provision as follows:

   Payment of claims:

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

   (The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer: "If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the
insurer may pay such indemnity, up to an amount not exceeding $,226
(insert an amount which must not exceed One Thousand Dollars
($1,000.00)) to any relative by blood or connection by marriage of
the insured or beneficiary who is deemed by the insurer to be
equitably entitled thereto. Any payment made by the insurer in
good faith pursuant to this provision shall fully discharge the
insurer to the extent of such payment.

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

(j) A provision as follows:

Physical examinations:

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

(k) A provision as follows:

Legal actions:

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

(l) A provision as follows:

Change of beneficiary:

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

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

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

(a) A provision as follows:

Change of occupation:

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

(b) A provision as follows:

Misstatement of age:

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

(c) A provision as follows:

Relation of earnings to issuance:

If the total monthly amount of loss of time benefits
promised for the same loss under all valid loss of time coverage
upon the insured, whether payable on a weekly or monthly basis,
shall exceed the monthly earnings of the insured at the time
disability commenced or his average monthly earnings for the
period of two (2) years immediately preceding a disability for
which claim is made, whichever is the greater, the insurer will be
liable only for such proportionate amount of such benefits under
this policy as the amount of such monthly earnings or such average
monthly earnings of the insured bears to the total amount of
monthly benefits for the same loss under all such coverage upon
the insured at the time such disability commences and for the
return of such part of the premiums paid during such two (2) years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of Two Hundred Dollars ($200.00) or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

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

(d) A provision as follows:

Unpaid premium:

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

(e) A provision as follows:
Cancellation:

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

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

(f) A provision as follows:

Conformity with state statutes:

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

(g) A provision as follows:

Illegal occupation:

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

(h) A provision as follows:

Intoxicants and narcotics:

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

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

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

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

(6) Requirements of other jurisdictions.
(a) Any policy of a foreign or alien insurer, when
delivered or issued for delivery to any person in this state, may
contain any provision which is not less favorable to the insured
or the beneficiary than the provisions of Sections 83-9-1 through
ST: Insurance companies; revise penalties if
fail to pay claims within reasonable time.

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

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

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