

By: Representative McBride

To: Insurance

## HOUSE BILL NO. 308

1 AN ACT TO ESTABLISH THE "COMMANDER DAVID ERWIN MITCHELL  
2 UNINSURED MOTORIST CLARIFICATION ACT OF 2004"; TO AMEND SECTION  
3 83-11-101, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT UNINSURED  
4 MOTORIST COVERAGE SHALL INCLUDE COVERAGE FOR BODILY INJURY ARISING  
5 OUT OF A MOTOR VEHICLE ACCIDENT CAUSED BY AN AUTOMOBILE WHICH HAS  
6 NO PHYSICAL CONTACT WITH THE INJURED PARTY IF THE INJURED PARTY  
7 PROVES, BY AN INDEPENDENT AND DISINTERESTED WITNESS, THAT THE  
8 INJURY WAS THE RESULT OF THE ACTIONS OF THE DRIVER OF ANOTHER  
9 VEHICLE WHOSE IDENTITY IS UNKNOWN; TO AMEND SECTION 83-11-103,  
10 MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF AN UNINSURED  
11 MOTOR VEHICLE TO ELIMINATE THE NEED FOR PHYSICAL CONTACT BETWEEN A  
12 COVERED MOTOR VEHICLE AND AN UNINSURED MOTOR VEHICLE WHEN THE  
13 INJURED PARTY PROVES, BY AN INDEPENDENT AND DISINTERESTED WITNESS,  
14 THAT THE INJURY WAS THE RESULT OF THE ACTIONS OF THE DRIVER OF  
15 ANOTHER VEHICLE WHOSE IDENTITY IS UNKNOWN; AND FOR RELATED  
16 PURPOSES.

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

18 **SECTION 1.** This act shall be known and may be cited as the  
19 "Commander David Erwin Mitchell Uninsured Motorist Clarification  
20 Act of 2004."

21 **SECTION 2.** Section 83-11-101, Mississippi Code of 1972, is  
22 amended as follows:

23 83-11-101. (1) No automobile liability insurance policy or  
24 contract shall be issued or delivered after January 1, 1967,  
25 unless it contains an endorsement or provisions undertaking to pay  
26 the insured all sums which he shall be legally entitled to recover  
27 as damages for bodily injury or death from the owner or operator  
28 of an uninsured motor vehicle, within limits which shall be no  
29 less than those set forth in the Mississippi Motor Vehicle Safety  
30 Responsibility Law, as amended, under provisions approved by the  
31 Commissioner of Insurance; however, at the option of the insured,  
32 the uninsured motorist limits may be increased to limits not to  
33 exceed those provided in the policy of bodily injury liability  
34 insurance of the insured or such lesser limits as the insured

35 elects to carry over the minimum requirement set forth by this  
36 section. The coverage herein required shall not be applicable  
37 where any insured named in the policy shall reject the coverage in  
38 writing and provided further, that unless the named insured  
39 requests such coverage in writing, such coverage need not be  
40 provided in any renewal policy where the named insured had  
41 rejected the coverage in connection with a policy previously  
42 issued to him by the same insurer.

43 (2) No automobile liability insurance policy or contract  
44 shall be issued or delivered after January 1, 1980, unless it  
45 contains an endorsement or provisions undertaking to pay the  
46 insured all sums which he shall be legally entitled to recover as  
47 damages for property damage from the owner or operator of an  
48 uninsured motor vehicle, within limits which shall be no less than  
49 those set forth in the Mississippi Motor Vehicle Safety  
50 Responsibility Law, as amended, under provisions approved by the  
51 Commissioner of Insurance; however, at the option of the insured,  
52 the uninsured motorist limits may be increased to limits not to  
53 exceed those provided in the policy of property damage liability  
54 insurance of the insured or such lesser limits as the insured  
55 elects to carry over the minimum requirement set forth by this  
56 section. The coverage herein required shall not be applicable  
57 where any insured named in the policy shall reject the coverage in  
58 writing and provided further, that unless the named insured  
59 requests such coverage in writing, such coverage need not be  
60 provided in any renewal policy where the named insured had  
61 rejected the coverage in connection with a policy previously  
62 issued to him by the same insurer.

63 The property damage provision may provide an exclusion for  
64 the first Two Hundred Dollars (\$200.00) of such property damage;  
65 however, the uninsured motorist provision need not insure any  
66 liability for property damage, for which loss the policyholder has  
67 been compensated by insurance or otherwise.

68 (3) The insured may reject the property damage liability  
69 insurance coverage required by subsection (2) and retain the  
70 bodily injury liability insurance coverage required by subsection  
71 (1), but if the insured rejects the bodily injury liability  
72 coverage he may not retain the property damage liability coverage.  
73 No insured may have property damage liability insurance coverage  
74 under this section unless he also has bodily injury liability  
75 insurance coverage under this section.

76 (4) Uninsured motorist coverage shall include coverage for  
77 bodily injury arising out of a motor vehicle accident caused by an  
78 automobile which has no physical contact with the injured party or  
79 with a vehicle which the injured party is occupying at the time of  
80 the accident if the injured party proves, by an independent and  
81 disinterested witness, that the injury was the result of the  
82 actions of the driver of another vehicle whose identity is  
83 unknown.

84 **SECTION 3.** Section 83-11-103, Mississippi Code of 1972, is  
85 amended as follows:

86 83-11-103. As used in this article:

87 (a) The term "bodily injury" shall include death  
88 resulting from such injury.

89 (b) The term "insured" shall mean the named insured  
90 and, while resident of the same household, the spouse of any such  
91 named insured and relatives of either, while in a motor vehicle or  
92 otherwise, and any person who uses, with the consent, expressed or  
93 implied, of the named insured, the motor vehicle to which the  
94 policy applies, and a guest in such motor vehicle to which the  
95 policy applies, or the personal representative of any of the  
96 above. The definition of the term "insured" given in this section  
97 shall apply only to the uninsured motorist portion of the policy.

98 (c) The term "uninsured motor vehicle" shall mean:

99 (i) A motor vehicle as to which there is no bodily  
100 injury liability insurance; or

101                   (ii) A motor vehicle as to which there is such  
102 insurance in existence, but the insurance company writing the same  
103 has legally denied coverage thereunder or is unable, because of  
104 being insolvent at the time of or becoming insolvent during the  
105 twelve (12) months following the accident, to make payment with  
106 respect to the legal liability of its insured; or

107                   (iii) An insured motor vehicle, when the liability  
108 insurer of such vehicle has provided limits of bodily injury  
109 liability for its insured which are less than the limits  
110 applicable to the injured person provided under his uninsured  
111 motorist coverage; or

112                   (iv) A motor vehicle as to which there is no bond  
113 or deposit of cash or securities in lieu of such bodily injury and  
114 property damage liability insurance or other compliance with the  
115 state financial responsibility law, or where there is such bond or  
116 deposit of cash or securities, but such bond or deposit is less  
117 than the legal liability of the injuring party; or

118                   (v) A motor vehicle of which the owner or operator  
119 is unknown; provided that in order for the insured to recover  
120 under the endorsement where the owner or operator of any motor  
121 vehicle which causes bodily injury to the insured is unknown,  
122 actual physical contact must have occurred between the motor  
123 vehicle owned or operated by such unknown person and the person or  
124 property of the insured unless the injured party can show by an  
125 independent and disinterested witness that the injury was the  
126 result of the actions of the driver of another vehicle whose  
127 identity is unknown.

128           No vehicle shall be considered uninsured that is owned by the  
129 United States government and against which a claim may be made  
130 under the Federal Tort Claims Act, as amended.

131           **SECTION 4.** This act shall take effect and be in force from  
132 and after July 1, 2004.