

By: Representative Martinson

To: Insurance; Conservation
and Water Resources

HOUSE BILL NO. 562

1 AN ACT TO REQUIRE THAT CERTAIN VESSELS OPERATED ON THE WATERS
2 OF THIS STATE SHALL HAVE AN INSURANCE CARD MAINTAINED IN THE
3 VESSEL AS PROOF OF LIABILITY INSURANCE; TO PROVIDE PENALTIES FOR
4 FAILURE TO HAVE THE INSURANCE CARD IN THE VESSEL; TO REQUIRE THAT
5 VESSEL LIABILITY INSURANCE POLICIES SHALL CONTAIN PROVISIONS FOR
6 UNINSURED VESSEL COVERAGE; TO PROVIDE DEFINITIONS; TO PROVIDE FOR
7 THE REPORTING OF AN ACCIDENT; TO PROVIDE FOR SUBROGATION TO THE
8 INSURER PAYING AN UNINSURED VESSEL CLAIM; TO ALLOW CERTAIN EXCESS
9 INSURANCE COVERAGE; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** (1) For purposes of this act:

12 (a) "Vessel" means every description of motorized,
13 self-propelled watercraft used or capable of being used as a means
14 of transportation on water. "Vessel" includes a boat that is:

15 (i) Less than sixteen (16) feet in length that has
16 an outboard motor or which has an inboard motor which uses an
17 internal combustion engine powering a water jet pump as its
18 primary source of mobile propulsion; and

19 (ii) Is designed with the concept that the
20 operator and passenger ride on the outside surfaces of the vessel
21 as opposed to riding inside the vessel.

22 (b) "Operator" means the person who has charge of the
23 navigation or use of a vessel.

24 (c) "Owner" means the person who claims lawful
25 possession of a vessel by virtue of legal title.

26 (2) The following vessels are exempted from the requirements
27 of this section:

28 (a) Vessels that are propelled with less than fifteen
29 (15) horsepower motors;

30 (b) Vessels that are operated on privately owned ponds
31 or lakes which are not used for boat rentals or the charging of
32 fees for fishing thereon.

33 (3) (a) Every vessel operated in this state shall have an
34 insurance card maintained in the vessel as proof of liability
35 insurance that meets the same liability limits required by Section
36 63-15-3(j) for motor vehicles. The insured parties shall be
37 responsible for maintaining the insurance card in each vessel.

38 (b) An insurance company issuing a policy of vessel
39 liability insurance as required by this section shall furnish to
40 the insured an insurance card for each vessel at the time the
41 insurance policy becomes effective.

42 (4) Upon stopping a vessel for any other statutory
43 violation, a law enforcement officer, who is authorized to issue
44 citations for violations on the public waters of this state, as
45 defined in Section 59-21-5(m), shall verify that the insurance
46 card required by this section is in the vessel. However, no
47 operator shall be stopped or detained solely for the purpose of
48 verifying that an insurance card is in the vessel.

49 (5) Failure of the owner or the operator of a vessel to have
50 the insurance card in the vessel is a misdemeanor and, upon
51 conviction, is punishable by a fine of One Thousand Dollars
52 (\$1,000.00). Fraudulent use of an insurance card shall be
53 punishable in accordance with Section 97-7-10. The funds from
54 such fines shall be deposited in the State General Fund in the
55 State Treasury.

56 (6) If, at the hearing date or the date of payment of the
57 fine, the vessel owner shows proof of vessel liability insurance
58 in the same amounts required by Section 63-15-3(j) for motor
59 vehicles, the fine shall be reduced to One Hundred Dollars
60 (\$100.00). If the owner shows proof that such insurance was in
61 effect at the time of citation, the fine of One Hundred Dollars
62 (\$100.00) and court costs shall be waived.

63 SECTION 2. (1) No vessel liability insurance policy or
64 contract shall be issued or delivered after January 1, 2005,
65 unless it contains an endorsement or provisions undertaking to pay
66 the insured all sums which he shall be legally entitled to recover
67 as damages for bodily injury or death from the owner or operator
68 of an uninsured vessel, within limits which shall be no less than
69 those set forth in the Mississippi Motor Vehicle Safety
70 Responsibility Law, as amended, under provisions approved by the
71 Commissioner of Insurance; however, at the option of the insured,
72 the uninsured vessel limits may be increased to limits not to
73 exceed those provided in the policy of bodily injury liability
74 insurance of the insured or such lesser limits as the insured
75 elects to carry over the minimum requirement set forth by this
76 section. The coverage herein required shall not be applicable
77 where any insured named in the policy shall reject the coverage in
78 writing and provided further, that unless the named insured
79 requests such coverage in writing, such coverage need not be
80 provided in any renewal policy where the named insured had
81 rejected the coverage in connection with a policy previously
82 issued to him by the same insurer.

83 (2) No vessel liability insurance policy or contract shall
84 be issued or delivered after January 1, 2006, unless it contains
85 an endorsement or provisions undertaking to pay the insured all
86 sums which he shall be legally entitled to recover as damages for
87 property damage from the owner or operator of an uninsured vessel,
88 within limits which shall be no less than those set forth in the
89 Mississippi Motor Vehicle Safety Responsibility Law, as amended,
90 under provisions approved by the Commissioner of Insurance;
91 however, at the option of the insured, the uninsured vessel limits
92 may be increased to limits not to exceed those provided in the
93 policy of property damage liability insurance of the insured or
94 such lesser limits as the insured elects to carry over the minimum
95 requirement set forth by this section. The coverage herein

96 required shall not be applicable where any insured named in the
97 policy shall reject the coverage in writing and provided further,
98 that unless the named insured requests such coverage in writing,
99 such coverage need not be provided in any renewal policy where the
100 named insured had rejected the coverage in connection with a
101 policy previously issued to him by the same insurer.

102 The property damage provision may provide an exclusion for
103 the first Two Hundred Dollars (\$200.00) of such property damage;
104 however, the uninsured vessel provision need not insure any
105 liability for property damage, for which loss the policyholder has
106 been compensated by insurance or otherwise.

107 (3) The insured may reject the property damage liability
108 insurance coverage required by subsection (2) and retain the
109 bodily injury liability insurance coverage required by subsection
110 (1), but if the insured rejects the bodily injury liability
111 coverage he may not retain the property damage liability coverage.
112 No insured may have property damage liability insurance coverage
113 under this section unless he also has bodily injury liability
114 insurance coverage under this section.

115 **SECTION 3.** As used in this act:

116 (a) "Bodily injury" includes death resulting from such
117 injury.

118 (b) "Insured" means the named insured and, while
119 resident of the same household, the spouse of any such named
120 insured and relatives of either, while in a vessel or otherwise,
121 and any person who uses, with the consent, expressed or implied,
122 of the named insured, the vessel to which the policy applies, and
123 a guest in such vessel to which the policy applies, or the
124 personal representative of any of the above. The definition of
125 the term "insured" given in this section shall apply only to the
126 uninsured vessel portion of the policy.

127 (c) "Uninsured vessel" means:

128 (i) A vessel as to which there is no bodily injury
129 liability insurance; or

130 (ii) A vessel as to which there is such insurance
131 in existence, but the insurance company writing the same has
132 legally denied coverage thereunder or is unable, because of being
133 insolvent at the time of or becoming insolvent during the twelve
134 (12) months following the accident, to make payment with respect
135 to the legal liability of its insured; or

136 (iii) An insured vessel, when the liability
137 insurer of such vessel has provided limits of bodily injury
138 liability for its insured which are less than the limits
139 applicable to the injured person provided under his uninsured
140 vessel coverage; or

141 (iv) A vessel as to which there is no bond or
142 deposit of cash or securities in lieu of such bodily injury and
143 property damage liability insurance as set forth in the
144 Mississippi Motor Vehicle Safety Responsibility Law, or where
145 there is such bond or deposit of cash or securities, but such bond
146 or deposit is less than the legal liability of the injuring party;
147 or

148 (v) A vessel of which the owner or operator is
149 unknown; provided that in order for the insured to recover under
150 the endorsement where the owner or operator of any vessel which
151 causes bodily injury to the insured is unknown, actual physical
152 contact must have occurred between the vessel owned or operated by
153 such unknown person and the person or property of the insured.

154 No vessel shall be considered uninsured that is owned by the
155 United States government and against which a claim may be made
156 under the Federal Tort Claims Act, as amended.

157 (d) "Vessel" means every description of motorized,
158 self-propelled watercraft used or capable of being used as a means
159 of transportation on water. "Vessel" includes a boat that is:

160 (i) Less than sixteen (16) feet in length that has
161 an outboard motor or which has an inboard motor which uses an
162 internal combustion engine powering a water jet pump as its
163 primary source of mobile propulsion; and

164 (ii) Is designed with the concept that the
165 operator and passenger ride on the outside surfaces of the vessel
166 as opposed to riding inside the vessel.

167 **SECTION 4.** In the event the owner or operator of the
168 uninsured vessel causing injury or death is known and action is
169 brought against the owner or operator by the named insured as
170 defined by the policy, then a copy of the process served upon the
171 owner or operator shall also be served by the circuit clerk
172 mailing, registered mail, a copy of the process to the insurance
173 company issuing the policy providing the uninsured vessel coverage
174 as prescribed by law.

175 If the owner or operator of any vessel which causes bodily
176 injury to the insured be unknown, the insured or someone on his
177 behalf, or in the event of a death claim, someone on behalf of the
178 party having such claim in order for the insured to recover under
179 the endorsement, shall report the accident to a law enforcement
180 official or department that has authority to issue citations for
181 violations on the public waterways of the state.

182 **SECTION 5.** An insurer paying a claim under the endorsement
183 or provisions required by Section 2 of House Bill No. 562, 2005
184 Regular Session, shall be subrogated to the rights of the insured
185 to whom such claim was paid against the person causing such
186 injury, death, or damage to the extent that payment was made,
187 including the proceeds recoverable from the assets of the
188 insolvent insurer. The bringing of an action against the unknown
189 owner or operator, or the conclusion of such an action, shall not
190 constitute a bar to the insured if the identity of the owner or
191 operator who caused the injury or damages complained of becomes
192 known, provided that in any action brought against such owner or

193 operator, the insurance company that has previously made payment
194 as a result of the policyholder's claim against such owner or
195 operator shall be mailed a copy of the summons issued for the
196 defendant or defendants, and that any recovery against such owner
197 or operator shall be paid to the insurance company to the extent
198 that such insurance company paid the named insured in the action
199 brought against such owner or operator, except that such insurance
200 company shall pay its proportionate part of any reasonable costs
201 and expense incurred in connection therewith, including reasonable
202 attorney's fees.

203 **SECTION 6.** No such endorsement or provisions shall contain a
204 provision requiring arbitration of any claim arising under any
205 such endorsement or provisions. The insured shall not be
206 restricted or prevented in any manner from employing legal counsel
207 or instituting or prosecuting to judgment legal proceedings, but
208 the insured may be required to establish legal liability of the
209 uninsured owner or operator.

210 **SECTION 7.** Any policy which grants the coverage required for
211 vessel liability insurance may also grant any lawful coverage in
212 excess of, or in addition to, the coverage specified for a vessel
213 liability policy, and the excess or additional coverage shall not
214 be subject to the provisions of this act, except as otherwise
215 provided in this act. With respect to a policy which grants this
216 excess or additional coverage, the term "vessel liability policy"
217 as used herein shall apply only to that part of the coverage which
218 is required by this act.

219 Any binder issued pending the issuance of a vessel liability
220 policy shall be considered as fulfilling the requirements for such
221 policy.

222 **SECTION 8.** This act shall take effect and be in force from
223 and after July 1, 2005.