

By: Representative Formby

To: Insurance

HOUSE BILL NO. 1321

1 AN ACT TO AMEND SECTION 83-17-5, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT AN INSURANCE AGENT MUST OBTAIN AN AGENT'S CERTIFICATE
3 OF AUTHORIZATION BUT NOT A CONTINUOUS CERTIFICATE OF
4 AUTHORIZATION; TO AMEND SECTION 83-17-71, MISSISSIPPI CODE OF
5 1972, TO PROVIDE FOR PENALTIES ON INSURANCE AGENTS WHO KNOWINGLY
6 ACCEPT INSURANCE BUSINESS FROM AN INDIVIDUAL WHO IS NOT LICENSED
7 OR APPOINTED; TO AMEND SECTION 83-17-75, MISSISSIPPI CODE OF 1972,
8 TO PROVIDE THAT AN INSURANCE PRODUCER WHO IS NOT ACTING AS AN
9 AGENT OF AN INSURER IS NOT REQUIRED TO BECOME APPOINTED; TO REPEAL
10 SECTION 83-17-43, MISSISSIPPI CODE OF 1972, WHICH REQUIRED THAT
11 ALL INSURANCE SOLICITORS FILE WITH THE COMMISSIONER OF INSURANCE
12 AN APPLICATION FOR CERTIFICATE OF APPOINTMENT AS SOLICITOR; AND
13 FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 83-17-5, Mississippi Code of 1972, is
16 amended as follows:

17 83-17-5. Every agent of any insurance company, fraternal
18 order or association authorized to do business in this state shall
19 be required to obtain from the Commissioner of Insurance a * * *
20 certificate under the seal of his office showing that the company
21 for which he or she is licensed to do business in this state, and
22 that he or she is an agent of said company and duly authorized to
23 do business for it. Such certificate shall remain valid as long
24 as the insurance company, fraternal order or association pays to
25 the commissioner an annual certificate fee to continue the
26 authorization. The insurance company, fraternal order or
27 association must notify the agent within thirty (30) days if the
28 authority is nonrenewed or cancelled.

29 **SECTION 2.** Section 83-17-71, Mississippi Code of 1972, is
30 amended as follows:

31 83-17-71. (1) The commissioner may place on probation,
32 suspend, revoke or refuse to issue or renew an insurance

33 producer's license or may levy a civil penalty in an amount not to
34 exceed One Thousand Dollars (\$1,000.00) per violation and such
35 penalty shall be deposited into the special fund of the State
36 Treasury designated as the "Insurance Department Fund" for any one
37 or more of the following causes:

38 (a) Providing incorrect, misleading, incomplete or
39 materially untrue information in the license application;

40 (b) Violating any insurance laws, or violating any
41 regulation, subpoena or order of the commissioner or of another
42 state's commissioner;

43 (c) Obtaining or attempting to obtain a license through
44 misrepresentation or fraud;

45 (d) Improperly withholding, misappropriating or
46 converting any monies or properties received in the course of
47 doing insurance business;

48 (e) Intentionally misrepresenting the terms of an
49 actual or proposed insurance contract or application for
50 insurance;

51 (f) Having been convicted of a felony;

52 (g) Having admitted or been found to have committed any
53 insurance unfair trade practice or fraud;

54 (h) Using fraudulent, coercive or dishonest practices
55 or demonstrating incompetence, untrustworthiness or financial
56 irresponsibility in the conduct of business in this state or
57 elsewhere;

58 (i) Having an insurance producer license, or its
59 equivalent, denied, suspended or revoked in any other state,
60 province, district or territory;

61 (j) Forging another's name to an application for
62 insurance or to any document related to an insurance transaction;

63 (k) Improperly using notes or any other reference
64 material to complete an examination for an insurance license;

65 (1) Knowingly accepting insurance business from an
66 individual who is not licensed or appointed;

67 (m) Failing to comply with an administrative or court
68 order imposing a child support obligation; or

69 (n) Failing to pay state income tax or comply with any
70 administrative or court order directing payment of state income
71 tax.

72 (2) If the action by the commissioner is to nonrenew or to
73 deny an application for a license, the commissioner shall notify
74 the applicant or licensee and advise, in writing, the applicant or
75 licensee of the reason for the denial or nonrenewal of the
76 applicant's or licensee's license. The applicant or licensee may
77 make written demand upon the commissioner within ten (10) days for
78 a hearing before the commissioner to determine the reasonableness
79 of the commissioner's action. The hearing shall be held within
80 thirty (30) days.

81 (3) The license of a business entity may be suspended,
82 revoked or refused if the commissioner finds, after hearing, that
83 an individual licensee's violation was known or should have been
84 known by one or more of the partners, officers or managers acting
85 on behalf of the partnership or corporation and the violation was
86 neither reported to the commissioner nor corrective action taken.

87 (4) In addition to, or in lieu of, any applicable denial,
88 suspension or revocation of a license, a person may, after
89 hearing, be subject to a civil fine not to exceed One Thousand
90 Dollars (\$1,000.00) per violation and such fine shall be deposited
91 into the special fund in the State Treasury designated as the
92 "Insurance Department Fund."

93 (5) The commissioner shall retain the authority to enforce
94 the provisions of and impose any penalty or remedy authorized by
95 this article and Title 83, Mississippi Code of 1972, against any
96 person who is under investigation for or charged with a violation
97 of this article or Title 83, Mississippi Code of 1972, even if the

98 person's license or registration has been surrendered or has
99 lapsed by operation of law.

100 (6) No licensee whose license has been revoked hereunder
101 shall be entitled to file another application for a license as a
102 producer within one (1) year from the effective date of such
103 revocation or, if judicial review of such revocation is sought,
104 within one (1) year from the date of final court order or decree
105 affirming such revocation. Such application, when filed, may be
106 refused by the commissioner unless the applicant shows good cause
107 why the revocation of his license shall not be deemed a bar to the
108 issuance of a new license.

109 **SECTION 3.** Section 83-17-75, Mississippi Code of 1972, is
110 amended as follows:

111 83-17-75. (1) An insurance producer shall not act as an
112 agent of an insurer unless the insurance producer becomes an
113 appointed agent of that insurer. An insurance producer who is not
114 acting as an agent of an insurer is not required to become
115 appointed.

116 (2) To appoint a producer as its agent, the appointing
117 insurer shall file, in a format approved by the commissioner, a
118 notice of appointment within fifteen (15) days from the date the
119 agency contract is executed or the first insurance application is
120 submitted. An insurer may also elect to appoint a producer to all
121 or some insurers within the insurer's holding company system or
122 group by the filing of a single appointment request.

123 (3) Upon receipt of the notice of appointment, the
124 commissioner shall verify within a reasonable time not to exceed
125 thirty (30) days that the insurance producer is eligible for
126 appointment. If the insurance producer is determined to be
127 ineligible for appointment, the commissioner shall notify the
128 insurer within five (5) days of its determination.

129 (4) An insurer shall pay an appointment fee, in the amount
130 and method of payment set forth in Section 83-5-73 for each
131 insurance producer appointed by the insurer.

132 (5) An insurer shall remit, in a manner prescribed by the
133 commissioner, a renewal appointment fee in the amount set forth in
134 Section 83-5-73.

135 (6) Before the issuance of a license or certificate of
136 authority, the commissioner shall require the company requesting
137 appointment of the applicant as producer for the first time to
138 furnish a certificate to the commissioner, verified by an
139 executive officer or managing general or special agent of such
140 company, that the company has duly investigated the character and
141 record of such person and has satisfied itself that such person is
142 of good moral character and is qualified, fit and trustworthy to
143 act as its producer. The Commissioner of Insurance may at any
144 time require any company to obtain a credit report on a producer
145 if the commissioner deems such request advisable. Should such
146 credit report reflect information regarding an offense or
147 violation in relation to which the Department of Insurance has
148 taken action, such information shall not render the applicant
149 ineligible for a license if applicant has complied with the order
150 of the commissioner regarding such offense.

151 **SECTION 4.** Section 83-17-43, Mississippi Code of 1972, which
152 requires all insurance solicitors to file with the Commissioner of
153 Insurance an application for certificate of appointment as
154 solicitor, is repealed.

155 **SECTION 5.** This act shall take effect and be in force from
156 and after July 1, 2005.