

By: Representative Martinson

To: Insurance

HOUSE BILL NO. 363

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, 2007,  
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 under provisions approved by the Commissioner  
71 of Insurance; however, at the option of the insured, the uninsured  
72 vessel limits may be increased to limits not to exceed those  
73 provided in the policy of bodily injury liability insurance of the  
74 insured or such lesser limits as the insured elects to carry over  
75 the minimum requirement set forth by this section. The coverage  
76 herein required shall not be applicable where any insured named in  
77 the policy shall reject the coverage in writing and provided  
78 further, that unless the named insured requests such coverage in  
79 writing, such coverage need not be provided in any renewal policy  
80 where the named insured had rejected the coverage in connection  
81 with a policy previously issued to him by the same insurer.

82           (2) No vessel liability insurance policy or contract shall  
83 be issued or delivered after January 1, 2007, unless it contains  
84 an endorsement or provisions undertaking to pay the insured all  
85 sums which he shall be legally entitled to recover as damages for  
86 property damage from the owner or operator of an uninsured vessel,  
87 within limits which shall be no less than those set forth in the  
88 Mississippi Motor Vehicle Safety Responsibility Law under  
89 provisions approved by the Commissioner of Insurance; however, at  
90 the option of the insured, the uninsured vessel limits may be  
91 increased to limits not to exceed those provided in the policy of  
92 property damage liability insurance of the insured or such lesser  
93 limits as the insured elects to carry over the minimum requirement  
94 set forth by this section. The coverage herein required shall not  
95 be applicable where any insured named in the policy shall reject

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

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

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

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

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

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

126 (c) "Uninsured vessel" means:

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

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

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

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

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

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

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

159                   (i) Less than sixteen (16) feet in length that has  
160 an outboard motor or which has an inboard motor which uses an

161 internal combustion engine powering a water jet pump as its  
162 primary source of mobile propulsion; and

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

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

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

181 **SECTION 5.** An insurer paying a claim under the endorsement  
182 or provisions required by Section 2 of House Bill No. 562, 2006  
183 Regular Session, shall be subrogated to the rights of the insured  
184 to whom such claim was paid against the person causing such  
185 injury, death, or damage to the extent that payment was made,  
186 including the proceeds recoverable from the assets of the  
187 insolvent insurer. The bringing of an action against the unknown  
188 owner or operator, or the conclusion of such an action, shall not  
189 constitute a bar to the insured if the identity of the owner or  
190 operator who caused the injury or damages complained of becomes  
191 known, provided that in any action brought against such owner or  
192 operator, the insurance company that has previously made payment  
193 as a result of the policyholder's claim against such owner or

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

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

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

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

221       **SECTION 8.** This act shall take effect and be in force from  
222 and after July 1, 2006.