

By: Representative Moak

To: Insurance

HOUSE BILL NO. 1545

1 AN ACT TO AMEND SECTION 83-9-5, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE A PROVISION REGARDING SPECIFIED DISEASE POLICIES IN
3 ACCIDENT AND HEALTH INSURANCE POLICIES; AND FOR RELATED PURPOSES.

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

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

7 83-9-5. (1) **Required provisions.** Except as provided in
8 subsection (3) of this section, each such policy delivered or
9 issued for delivery to any person in this state shall contain the
10 provisions specified in this subsection in the words in which the
11 same appear in this section. However, the insurer may, at its
12 option, substitute for one or more of such provisions,
13 corresponding provisions of different wording approved by the
14 commissioner which are in each instance not less favorable in any
15 respect to the insured or the beneficiary. Such provisions shall
16 be preceded individually by the caption appearing in this
17 subsection or, at the option of the insurer, by such appropriate
18 individual or group captions or subcaptions as the commissioner
19 may approve.

20 As used in this section, the term "insurer" means a health
21 maintenance organization, an insurance company or any other entity
22 responsible for the payment of benefits under a policy or contract
23 of accident and sickness insurance; however, the term "insurer"
24 shall not mean a liquidator, rehabilitator, conservator or
25 receiver or third-party administrator of any health maintenance
26 organization, insurance company or other entity responsible for
27 the payment of benefits which is in liquidation, rehabilitation or

28 conservation proceedings, nor shall it mean any responsible
29 guaranty association. Further, no cause of action shall accrue
30 against a liquidator, rehabilitator, conservator or receiver or
31 third-party administrator of any health maintenance organization,
32 insurance company or other entity responsible for the payment of
33 benefits which is in liquidation, rehabilitation or conservation
34 proceedings or any responsible guaranty association under
35 subsection (1)(h)3 of this section or any policy provision in
36 accordance therewith.

37 (a) A provision as follows:

38 Entire contract; changes: This policy, including the
39 endorsements and the attached papers, if any, constitutes the
40 entire contract of insurance. No change in this policy shall be
41 valid until approved by an executive officer of the insurer and
42 unless such approval be endorsed hereon or attached hereto. No
43 agent has authority to change this policy or to waive any of its
44 provisions.

45 (b) A provision as follows:

46 Time limit on certain defenses:

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

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

59 (A policy which the insured has the right to continue in
60 force subject to its terms by the timely payment of premium (1)

61 until at least age fifty (50) or, (2) in the case of a policy
62 issued after age forty-four (44), for at least five (5) years from
63 its date of issue, may contain in lieu of the foregoing the
64 following provision (from which the clause in parentheses may be
65 omitted at the insurer's option) under the caption
66 "INCONTESTABLE":

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

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

78 (c) A provision as follows:

79 Grace period:

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

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

89 A policy in which the insurer reserves the right to refuse
90 any renewal shall have, at the beginning of the above provision,
91 "unless not less than five (5) days prior to the premium due date
92 the insurer has delivered to the insured or has mailed to his last
93 address as shown by the records of the insurer written notice of

94 its intention not to renew this policy beyond the period for which
95 the premium has been accepted.")

96 (d) A provision as follows:

97 Reinstatement:

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

126 (e) A provision as follows:

127 Notice of claim:

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

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

153 (f) A provision as follows:

154 Claim forms:

155 The insurer, upon receipt of a notice of claim, will furnish
156 to the claimant such forms as are usually furnished by it for
157 filing proofs of loss. If such forms are not furnished within
158 fifteen (15) days after the giving of such notice, the claimant
159 shall be deemed to have complied with the requirements of this

160 policy as to proof of loss upon submitting, within the time fixed
161 in the policy for filing proofs of loss, written proof covering
162 the occurrence, the character and the extent of the loss for which
163 claim is made.

164 (g) A provision as follows:

165 Proofs of loss:

166 Written proof of loss must be furnished to the insurer at its
167 said office, in case of claim for loss for which this policy
168 provides any periodic payment contingent upon continuing loss,
169 within ninety (90) days after the termination of the period for
170 which the insurer is liable, and in case of claim for any other
171 loss, within ninety (90) days after the date of such loss.

172 Failure to furnish such proof within the time required shall not
173 invalidate or reduce any claim if it was not reasonably possible
174 to give proof within such time, provided such proof is furnished
175 as soon as reasonably possible and in no event, except in the
176 absence of legal capacity, later than one (1) year from the time
177 proof is otherwise required.

178 (h) A provision as follows:

179 Time of payment of claims:

180 1. All benefits payable under this policy for any
181 loss, other than loss for which this policy provides any periodic
182 payment, will be paid within twenty-five (25) days after receipt
183 of due written proof of such loss in the form of a clean claim
184 where claims are submitted electronically, and will be paid within
185 thirty-five (35) days after receipt of due written proof of such
186 loss in the form of clean claim where claims are submitted in
187 paper format. Benefits due under the policies and claims are
188 overdue if not paid within twenty-five (25) days or thirty-five
189 (35) days, whichever is applicable, after the insurer receives a
190 clean claim containing necessary medical information and other
191 information essential for the insurer to administer preexisting
192 condition, coordination of benefits and subrogation provisions. A

193 "clean claim" means a claim received by an insurer for
194 adjudication and which requires no further information, adjustment
195 or alteration by the provider of the services or the insured in
196 order to be processed and paid by the insurer. A claim is clean
197 if it has no defect or impropriety, including any lack of
198 substantiating documentation, or particular circumstance requiring
199 special treatment that prevents timely payment from being made on
200 the claim under this provision. A clean claim includes
201 resubmitted claims with previously identified deficiencies
202 corrected.

203 A clean claim does not include any of the following:

204 a. A duplicate claim, which means an original
205 claim and its duplicate when the duplicate is filed within thirty
206 (30) days of the original claim;

207 b. Claims which are submitted fraudulently or
208 that are based upon material misrepresentations;

209 c. Claims that require information essential
210 for the insurer to administer preexisting condition, coordination
211 of benefits or subrogation provisions; or

212 d. Claims submitted by a provider more than
213 thirty (30) days after the date of service; if the provider does
214 not submit the claim on behalf of the insured, then a claim is not
215 clean when submitted more than thirty (30) days after the date of
216 billing by the provider to the insured.

217 Not later than twenty-five (25) days after the date the
218 insurer actually receives an electronic claim, the insurer shall
219 pay the appropriate benefit in full, or any portion of the claim
220 that is clean, and notify the provider (where the claim is owed to
221 the provider) or the insured (where the claim is owed to the
222 insured) of the reasons why the claim or portion thereof is not
223 clean and will not be paid and what substantiating documentation
224 and information is required to adjudicate the claim as clean. Not
225 later than thirty-five (35) days after the date the insurer

226 actually receives a paper claim, the insurer shall pay the
227 appropriate benefit in full, or any portion of the claim that is
228 clean, and notify the provider (where the claim is owed to the
229 provider) or the insured (where the claim is owed to the insured)
230 of the reasons why the claim or portion thereof is not clean and
231 will not be paid and what substantiating documentation and
232 information is required to adjudicate the claim as clean. Any
233 claim or portion thereof resubmitted with the supporting
234 documentation and information requested by the insurer shall be
235 paid within twenty (20) days after receipt.

236 For purposes of this provision, the term "pay" means that the
237 insurer shall either send cash or a cash equivalent by United
238 States mail, or send cash or a cash equivalent by other means such
239 as electronic transfer, in full satisfaction of the appropriate
240 benefit due the provider (where the claim is owed to the provider)
241 or the insured (where the claim is owed to the insured). To
242 calculate the extent to which any benefits are overdue, payment
243 shall be treated as made on the date a draft or other valid
244 instrument was placed in the United States mail to the last known
245 address of the provider (where the claim is owed to the provider)
246 or the insured (where the claim is owed to the insured) in a
247 properly addressed, postpaid envelope, or, if not so posted, or
248 not sent by United States mail, on the date of delivery of payment
249 to the provider or insured.

250 2. Subject to due written proof of loss, all
251 accrued benefits for loss for which this policy provides periodic
252 payment will be paid _____ (insert period for payment
253 which must not be less frequently than monthly), and any balance
254 remaining unpaid upon the termination of liability will be paid
255 within thirty (30) days after receipt of due written proof.

256 3. If the claim is not denied for valid and proper
257 reasons by the end of the applicable time period prescribed in
258 this provision, the insurer must pay the provider (where the claim

259 is owed to the provider) or the insured (where the claim is owed
260 to the insured) interest on accrued benefits at the rate of one
261 and one-half percent (1-1/2%) per month accruing from the day
262 after payment was due on the amount of the benefits that remain
263 unpaid until the claim is finally settled or adjudicated.

264 Whenever interest due pursuant to this provision is less than One
265 Dollar (\$1.00), such amount shall be credited to the account of
266 the person or entity to whom such amount is owed.

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

272 (i) A provision as follows:

273 Payment of claims:

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

290 (The following provisions, or either of them, may be included
291 with the foregoing provision at the option of the insurer: "If

292 any indemnity of this policy shall be payable to the estate of the
293 insured, or to an insured or beneficiary who is a minor or
294 otherwise not competent to give a valid release, the insurer may
295 pay such indemnity, up to an amount not exceeding \$_____

296 (insert an amount which must not exceed One Thousand Dollars
297 (\$1,000.00)), to any relative by blood or connection by marriage
298 of the insured or beneficiary who is deemed by the insurer to be
299 equitably entitled thereto. Any payment made by the insurer in
300 good faith pursuant to this provision shall fully discharge the
301 insurer to the extent of such payment."

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

310 (j) A provision as follows:

311 Physical examinations:

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

316 (k) A provision as follows:

317 Legal actions:

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

324 (l) A provision as follows:

325 Change of beneficiary:

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

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

335 (m) A provision as follows:

336 Specified disease policy:

337 A specified disease policy provides coverage for a
338 specifically named disease or diseases. An individual or group
339 specified disease insurance policy that uses the term "actual
340 charge" or "actual fee" must define the terms as the amount
341 actually paid by or on behalf of the insured and accepted by a
342 provider for services provided.

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

356 (a) A provision as follows:

357 Change of occupation:

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

383 (b) A provision as follows:

384 Misstatement of age:

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

388 (c) A provision as follows:

389 Relation of earnings to issuance:

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

410 (The foregoing policy provision may be inserted only in a
411 policy which the insured has the right to continue in force
412 subject to its terms by the timely payment of premiums (1) until
413 at least age fifty (50) or, (2) in the case of a policy issued
414 after age forty-four (44), for at least five (5) years from its
415 date of issue. The insurer may, at its option, include in this
416 provision a definition of "valid loss of time coverage," approved
417 as to form by the commissioner, which definition shall be limited
418 in subject matter to coverage provided by governmental agencies or
419 by organizations subject to regulations by insurance law or by
420 insurance authorities of this or any other state of the United
421 States or any province of Canada, or to any other coverage the
422 inclusion of which may be approved by the commissioner, or any

423 combination of such coverages. In the absence of such definition,
424 such term shall not include any coverage provided for such insured
425 pursuant to any compulsory benefit statute (including any workers'
426 compensation or employer's liability statute), or benefits
427 provided by union welfare plans or by employer or employee benefit
428 organizations.)

429 (d) A provision as follows:

430 Unpaid premium:

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

434 (e) A provision as follows:

435 Cancellation:

436 The insurer may cancel this policy at any time by written
437 notice delivered to the insured, or mailed to his last address as
438 shown by the records of the insurer, stating when, not less than
439 five (5) days thereafter, such cancellation shall be effective;
440 and after the policy has been continued beyond its original term,
441 the insured may cancel this policy at any time by written notice
442 delivered or mailed to the insurer, effective upon receipt or on
443 such later date as may be specified in such notice. In the event
444 of cancellation, the insurer will return promptly the unearned
445 portion of any premium paid. If the insured cancels, the earned
446 premium shall be computed by the use of the short-rate table last
447 filed with the state official having supervision of insurance in
448 the state where the insured resided when the policy was issued.
449 If the insurer cancels, the earned premium shall be computed pro
450 rata. Cancellation shall be without prejudice to any claim
451 originating prior to the effective date of cancellation.

452 (f) A provision as follows:

453 Conformity with state statutes:

454 Any provision of this policy which, on its effective date, is
455 in conflict with the statutes of the state in which the insured

456 resides on such date is hereby amended to conform to the minimum
457 requirements of such statutes.

458 (g) A provision as follows:

459 Illegal occupation:

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

464 (h) A provision as follows:

465 Intoxicants and narcotics:

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

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

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

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

496 (6) **Requirements of other jurisdictions.**

497 (a) Any policy of a foreign or alien insurer, when
498 delivered or issued for delivery to any person in this state, may
499 contain any provision which is not less favorable to the insured
500 or the beneficiary than the provisions of Sections 83-9-1 through
501 83-9-21, Mississippi Code of 1972, and which is prescribed or
502 required by the law of the state under which the insurer is
503 organized.

504 (b) Any policy of a domestic insurer may, when issued
505 for delivery in any other state or country, contain any provision
506 permitted or required by the laws of such other state or country.

507 (7) **Filing procedure.** The commissioner may make such
508 reasonable rules and regulations concerning the procedure for the
509 filing or submission of policies subject to the cited sections as
510 are necessary, proper or advisable to the administration of said
511 sections. This provision shall not abridge any other authority
512 granted the commissioner by law.

513 (8) **Administrative penalties.**

514 (a) If the commissioner finds that an insurer, during
515 any calendar year, has paid at least eighty-five percent (85%),
516 but less than ninety-five percent (95%), of all clean claims
517 received from all providers during that year in accordance with
518 the provisions of subsection (1)(h) of this section, the
519 commissioner may levy an aggregate penalty in an amount not to
520 exceed Ten Thousand Dollars (\$10,000.00). If the commissioner
521 finds that an insurer, during any calendar year, has paid at least

522 fifty percent (50%), but less than eighty-five percent (85%), of
523 all clean claims received from all providers during that year in
524 accordance with the provisions of subsection (1)(h) of this
525 section, the commissioner may levy an aggregate penalty in an
526 amount of not less than Ten Thousand Dollars (\$10,000.00) nor more
527 than One Hundred Thousand Dollars (\$100,000.00). If the
528 commissioner finds that an insurer, during any calendar year, has
529 paid less than fifty percent (50%) of all clean claims received
530 from all providers during that year in accordance with the
531 provisions of subsection (1)(h) of this section, the commissioner
532 may levy an aggregate penalty in an amount not less than One
533 Hundred Thousand Dollars (\$100,000.00) nor more than Two Hundred
534 Thousand Dollars (\$200,000.00). In determining the amount of any
535 fine, the commissioner shall take into account whether the failure
536 to achieve the standards in subsection (1)(h) of this section were
537 due to circumstances beyond the control of the insurer. The
538 insurer may request an administrative hearing to contest the
539 assessment of any administrative penalty imposed by the
540 commissioner pursuant to this subsection within thirty (30) days
541 after receipt of the notice of assessment.

542 (b) Examinations to determine compliance with
543 subsection (1)(h) of this section may be conducted by the
544 commissioner or any of his examiners. The commissioner may
545 contract with qualified impartial outside sources to assist in
546 examinations to determine compliance. The expenses of any such
547 examinations shall be paid by the insurer examined.

548 (c) Nothing in the provisions of subsection (1)(h) of
549 this section shall require an insurer to pay claims that are not
550 covered under the terms of a contract or policy of accident and
551 sickness insurance.

552 (d) An insurer and a provider may enter into an express
553 written agreement containing timely claim payment provisions which
554 differ from, but are at least as stringent as, the provisions set

555 forth under subsection (1)(h) of this section, and in such case,
556 the provisions of the written agreement shall govern the timely
557 payment of claims by the insurer to the provider. If the express
558 written agreement is silent as to any interest penalty where
559 claims are not paid in accordance with the agreement, the interest
560 penalty provision of subsection (1)(h)3 of this section shall
561 apply.

562 (e) The commissioner may adopt rules and regulations
563 necessary to ensure compliance with this subsection.

564 **SECTION 2.** (1) Except as provided by subsection (2) of this
565 section, the change in law made by this act applies to an
566 insurance policy delivered, issued for delivery, or renewed on or
567 after the effective date of this act.

568 (2) If an insurance policy in effect on the effective date
569 of this act does not define "actual charge" or "actual fee," the
570 definitions in this act shall apply.

571 **SECTION 3.** This act shall take effect and be in force from
572 and after its passage.