MISSISSIPPI LEGISLATURE REGULAR SESSION 2007

By: Senator(s) Kirby To: Insurance

SENATE BILL NO. 2882

1 AN ACT TO AMEND SECTION 83-9-5, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT AN INDIVIDUAL OR GROUP SPECIFIED DISEASE INSURANCE
3 POLICY THAT USES THE TERM "ACTUAL CHARGE" OR "ACTUAL FEE" MUST
4 DEFINE THE TERMS AS THE AMOUNT ACTUALLY PAID BY OR ON BEHALF OF
5 THE INSURED AND ACCEPTED BY A PROVIDER FOR SERVICES PROVIDED; AND
6 FOR RELATED PURPOSES.

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

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

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

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

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

40 (a) A provision as follows:

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

48 (b) A provision as follows:

49 Time limit on certain defenses:

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

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

62 (A policy which the insured has the right to continue in
63 force subject to its terms by the timely payment of premium (1)
64 until at least age fifty (50) or, (2) in the case of a policy
65 issued after age forty-four (44), for at least five (5) years from
66 its date of issue, may contain in lieu of the foregoing the
67 following provision (from which the clause in parentheses may be
68 omitted at the insurer's option) under the caption
69 "INCONTESTABLE":
70 After this policy has been in force for a period of two (2)
71 years during the lifetime of the insured (excluding any period
72 during which the insured is disabled), it shall become
73 incontestable as to the statements in the application.)
74 2. No claim for loss incurred or disability (as
75 defined in the policy) commencing after two (2) years from the
76 date of issue of this policy shall be reduced or denied on the
77 ground that a disease or physical condition not excluded from
78 coverage by name or specific description effective on the date of
79 loss had existed prior to the effective date of coverage of this
80 policy.
81 (c) A provision as follows:
82 Grace period:
83 A grace period of seven (7) days for weekly premium policies,
84 ten (10) days for monthly premium policies and thirty-one (31)
85 days for all other policies will be granted for the payment of
86 each premium falling due after the first premium, during which
87 grace period the policy shall continue in force.
88 (A policy which contains a cancellation provision may add, at
89 the end of the above provision, "subject to the right of the
90 insurer to cancel in accordance with the cancellation provision
91 hereof."
92 A policy in which the insurer reserves the right to refuse
93 any renewal shall have, at the beginning of the above provision,
94 "unless not less than five (5) days prior to the premium due date

95 the insurer has delivered to the insured or has mailed to his last
96 address as shown by the records of the insurer written notice of
97 its intention not to renew this policy beyond the period for which
98 the premium has been accepted.")

99 (d) A provision as follows:

100 Reinstatement:

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

127 or, (2) in the case of a policy issued after age forty-four (44),
128 for at least five (5) years from its date of issue.)
129 (e) A provision as follows:
130 Notice of claim:
131 Written notice of claim must be given to the insurer within
132 thirty (30) days after the occurrence or commencement of any loss
133 covered by the policy, or as soon thereafter as is reasonably
134 possible. Notice given by or on behalf of the insured or the
135 beneficiary to the insurer at ________________ (insert the
136 location of such office as the insurer may designate for the
137 purpose), or to any authorized agent of the insurer, with
138 information sufficient to identify the insured, shall be deemed
139 notice to the insurer.
140 (In a policy providing a loss of time benefit which may be
141 payable for at least two (2) years, an insurer may, at its option,
142 insert the following between the first and second sentences of the
143 above provision: "Subject to the qualifications set forth below,
144 if the insured suffers loss of time on account of disability for
145 which indemnity may be payable for at least two (2) years, he
146 shall, at least once in every six (6) months after having given
147 notice of claim, give to the insurer notice of continuance of said
148 disability, except in the event of legal incapacity. The period
149 of six (6) months following any filing of proof by the insured or
150 any payment by the insurer on account of such claim or any denial
151 of liability in whole or in part by the insurer shall be excluded
152 in applying this provision. Delay in the giving of such notice
153 shall not impair the insured's right to any indemnity which would
154 otherwise have accrued during the period of six (6) months
155 preceding the date on which such notice is actually given.")
156 (f) A provision as follows:
157 Claim forms:
158 The insurer, upon receipt of a notice of claim, will furnish
159 to the claimant such forms as are usually furnished by it for

160 filing proofs of loss. If such forms are not furnished within
161 fifteen (15) days after the giving of such notice, the claimant
162 shall be deemed to have complied with the requirements of this
163 policy as to proof of loss upon submitting, within the time fixed
164 in the policy for filing proofs of loss, written proof covering
165 the occurrence, the character and the extent of the loss for which
166 claim is made.

167 (g) A provision as follows:

168 Proofs of loss:

169 Written proof of loss must be furnished to the insurer at its
170 said office, in case of claim for loss for which this policy
171 provides any periodic payment contingent upon continuing loss,
172 within ninety (90) days after the termination of the period for
173 which the insurer is liable, and in case of claim for any other
174 loss, within ninety (90) days after the date of such loss.
175 Failure to furnish such proof within the time required shall not
176 invalidate or reduce any claim if it was not reasonably possible
177 to give proof within such time, provided such proof is furnished
178 as soon as reasonably possible and in no event, except in the
179 absence of legal capacity, later than one (1) year from the time
180 proof is otherwise required.

181 (h) A provision as follows:

182 Time of payment of claims:

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

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

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

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

210 b. Claims which are submitted fraudulently or
211 that are based upon material misrepresentations;

212 c. Claims that require information essential
213 for the insurer to administer preexisting condition, coordination
214 of benefits or subrogation provisions; or

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

220 Not later than twenty-five (25) days after the date the
221 insurer actually receives an electronic claim, the insurer shall
222 pay the appropriate benefit in full, or any portion of the claim
223 that is clean, and notify the provider (where the claim is owed to
224 the provider) or the insured (where the claim is owed to the
225 insured) of the reasons why the claim or portion thereof is not

226 clean and will not be paid and what substantiating documentation
227 and information is required to adjudicate the claim as clean. Not
228 later than thirty-five (35) days after the date the insurer
229 actually receives a paper claim, the insurer shall pay the
230 appropriate benefit in full, or any portion of the claim that is
231 clean, and notify the provider (where the claim is owed to the
232 provider) or the insured (where the claim is owed to the insured)
233 of the reasons why the claim or portion thereof is not clean and
234 will not be paid and what substantiating documentation and
235 information is required to adjudicate the claim as clean. Any
236 claim or portion thereof resubmitted with the supporting
237 documentation and information requested by the insurer shall be
238 paid within twenty (20) days after receipt.

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

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

259 3. If the claim is not denied for valid and proper
260 reasons by the end of the applicable time period prescribed in
261 this provision, the insurer must pay the provider (where the claim
262 is owed to the provider) or the insured (where the claim is owed
263 to the insured) interest on accrued benefits at the rate of one
264 and one-half percent (1-1/2%) per month accruing from the day
265 after payment was due on the amount of the benefits that remain
266 unpaid until the claim is finally settled or adjudicated.
267 Whenever interest due pursuant to this provision is less than One
268 Dollar ($1.00), such amount shall be credited to the account of
269 the person or entity to whom such amount is owed.
270 4. In the event the insurer fails to pay benefits
271 when due, the person entitled to such benefits may bring action to
272 recover such benefits, any interest which may accrue as provided
273 in subsection (1)(h)3 of this section and any other damages as may
274 be allowable by law.
275 (i) A provision as follows:
276 Payment of claims:
277 Indemnity for loss of life will be payable in accordance with
278 the beneficiary designation and the provisions respecting such
279 payment which may be prescribed herein and effective at the time
280 of payment. If no such designation or provision is then
281 effective, such indemnity shall be payable to the estate of the
282 insured. Any other accrued indemnities unpaid at the insured's
283 death may, at the option of the insurer, be paid either to such
284 beneficiary or to such estate. All other indemnities will be
285 payable to the insured. When payments of benefits are made to an
286 insured directly for medical care or services rendered by a health
287 care provider, the health care provider shall be notified of such
288 payment. The notification requirement shall not apply to a
289 fixed-indemnity policy, a limited benefit health insurance policy,
290 medical payment coverage or personal injury protection coverage in

291 a motor vehicle policy, coverage issued as a supplement to
292 liability insurance or workers' compensation.
293 (The following provisions, or either of them, may be included
294 with the foregoing provision at the option of the insurer: "If
295 any indemnity of this policy shall be payable to the estate of the
296 insured, or to an insured or beneficiary who is a minor or
297 otherwise not competent to give a valid release, the insurer may
298 pay such indemnity, up to an amount not exceeding $______________
299 (insert an amount which must not exceed One Thousand Dollars
300 ($1,000.00)), to any relative by blood or connection by marriage
301 of the insured or beneficiary who is deemed by the insurer to be
302 equitably entitled thereto. Any payment made by the insurer in
303 good faith pursuant to this provision shall fully discharge the
304 insurer to the extent of such payment."
305 "Subject to any written direction of the insured in the
306 application or otherwise, all or a portion of any indemnities
307 provided by this policy on account of hospital, nursing, medical
308 or surgical services may, at the insurer's option and unless the
309 insured requests otherwise in writing not later than the time of
310 filing proofs of such loss, be paid directly to the hospital or
311 person rendering such services; but it is not required that the
312 service be rendered by a particular hospital or person.")
313 (j) A provision as follows:
314 Physical examinations:
315 The insurer at his own expense shall have the right and
316 opportunity to examine the person of the insured when and as often
317 as it may reasonably require during the pendency of a claim
318 hereunder.
319 (k) A provision as follows:
320 Legal actions:
321 No action at law or in equity shall be brought to recover on
322 this policy prior to the expiration of sixty (60) days after
323 written proof of loss has been furnished in accordance with the

324 requirements of this policy. No such action shall be brought
325 after the expiration of three (3) years after the time written
326 proof of loss is required to be furnished.
327 (l) A provision as follows:
328 Change of beneficiary:
329 Unless the insured makes an irrevocable designation of
330 beneficiary, the right to change the beneficiary is reserved to
331 the insured, and the consent of the beneficiary or beneficiaries
332 shall not be requisite to surrender or assignment of this policy,
333 or to any change of beneficiary or beneficiaries, or to any other
334 changes in this policy.
335 (The first clause of this provision, relating to the
336 irrevocable designation of beneficiary, may be omitted at the
337 insurer's option.)
338 (2) **Other provisions.** Except as provided in subsection (3)
339 of this section, no such policy delivered or issued for delivery
340 to any person in this state shall contain provisions respecting
341 the matters set forth below unless such provisions are in the
342 words in which the same appear in this section. However, the
343 insurer may, at its option, use in lieu of any such provision a
344 corresponding provision of different wording approved by the
345 commissioner which is not less favorable in any respect to the
346 insured or the beneficiary. Any such provision contained in the
347 policy shall be preceded individually by the appropriate caption
348 appearing in this subsection or, at the option of the insurer, by
349 such appropriate individual or group captions or subcaptions as
350 the commissioner may approve.
351 (a) A provision as follows:
352 Change of occupation:
353 If the insured be injured or contract sickness after having
354 changed his occupation to one classified by the insurer as more
355 hazardous than that stated in this policy or while doing for
356 compensation anything pertaining to an occupation so classified,

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

378 (b) A provision as follows:

379 Misstatement of age:

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

383 (c) A provision as follows:

384 Relation of earnings to issuance:

385 If the total monthly amount of loss of time benefits promised
386 for the same loss under all valid loss of time coverage upon the
387 insured, whether payable on a weekly or monthly basis, shall
388 exceed the monthly earnings of the insured at the time disability
389 commenced or his average monthly earnings for the period of two

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

405 (The foregoing policy provision may be inserted only in a
406 policy which the insured has the right to continue in force
407 subject to its terms by the timely payment of premiums (1) until
408 at least age fifty (50) or, (2) in the case of a policy issued
409 after age forty-four (44), for at least five (5) years from its
410 date of issue. The insurer may, at its option, include in this
411 provision a definition of "valid loss of time coverage," approved
412 as to form by the commissioner, which definition shall be limited
413 in subject matter to coverage provided by governmental agencies or
414 by organizations subject to regulations by insurance law or by
415 insurance authorities of this or any other state of the United
416 States or any province of Canada, or to any other coverage the
417 inclusion of which may be approved by the commissioner, or any
418 combination of such coverages. In the absence of such definition,
419 such term shall not include any coverage provided for such insured
420 pursuant to any compulsory benefit statute (including any workers'
421 compensation or employer's liability statute), or benefits

422 provided by union welfare plans or by employer or employee benefit
423 organizations.)
424 (d) A provision as follows:
425 Unpaid premium:
426 Upon the payment of a claim under this policy, any premium
427 then due and unpaid or covered by any note or written order may be
428 deducted therefrom.
429 (e) A provision as follows:
430 Cancellation:
431 The insurer may cancel this policy at any time by written
432 notice delivered to the insured, or mailed to his last address as
433 shown by the records of the insurer, stating when, not less than
434 five (5) days thereafter, such cancellation shall be effective;
435 and after the policy has been continued beyond its original term,
436 the insured may cancel this policy at any time by written notice
437 delivered or mailed to the insurer, effective upon receipt or on
438 such later date as may be specified in such notice. In the event
439 of cancellation, the insurer will return promptly the unearned
440 portion of any premium paid. If the insured cancels, the earned
441 premium shall be computed by the use of the short-rate table last
442 filed with the state official having supervision of insurance in
443 the state where the insured resided when the policy was issued.
444 If the insurer cancels, the earned premium shall be computed pro
445 rata. Cancellation shall be without prejudice to any claim
446 originating prior to the effective date of cancellation.
447 (f) A provision as follows:
448 Conformity with state statutes:
449 Any provision of this policy which, on its effective date, is
450 in conflict with the statutes of the state in which the insured
451 resides on such date is hereby amended to conform to the minimum
452 requirements of such statutes.
453 (g) A provision as follows:
454 Illegal occupation:

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

459 (h) A provision as follows:

460 Intoxicants and narcotics:

461 The insurer shall not be liable for any loss sustained or
462 contracted in consequence of the insured's being intoxicated or
463 under the influence of any narcotic unless administered on the
464 advice of a physician.

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

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

484 (5) **Third-party ownership.** The word "insured," as used in
485 Sections 83-9-1 through 83-9-21, Mississippi Code of 1972, shall
486 not be construed as preventing a person other than the insured
487 with a proper insurable interest from making application for and

488 owning a policy covering the insured, or from being entitled under
489 such a policy to any indemnities, benefits and rights provided
490 therein.

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

492 (a) Any policy of a foreign or alien insurer, when
493 delivered or issued for delivery to any person in this state, may
494 contain any provision which is not less favorable to the insured
495 or the beneficiary than the provisions of Sections 83-9-1 through
496 83-9-21, Mississippi Code of 1972, and which is prescribed or
497 required by the law of the state under which the insurer is
498 organized.

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

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

508 (8) **Administrative penalties.**

509 (a) If the commissioner finds that an insurer, during
510 any calendar year, has paid at least eighty-five percent (85%),
511 but less than ninety-five percent (95%), of all clean claims
512 received from all providers during that year in accordance with
513 the provisions of subsection (1)(h) of this section, the
514 commissioner may levy an aggregate penalty in an amount not to
515 exceed Ten Thousand Dollars ($10,000.00). If the commissioner
516 finds that an insurer, during any calendar year, has paid at least
517 fifty percent (50%), but less than eighty-five percent (85%), of
518 all clean claims received from all providers during that year in
519 accordance with the provisions of subsection (1)(h) of this
520 section, the commissioner may levy an aggregate penalty in an

521 amount of not less than Ten Thousand Dollars ($10,000.00) nor more
522 than One Hundred Thousand Dollars ($100,000.00). If the
523 commissioner finds that an insurer, during any calendar year, has
524 paid less than fifty percent (50%) of all clean claims received
525 from all providers during that year in accordance with the
526 provisions of subsection (1)(h) of this section, the commissioner
527 may levy an aggregate penalty in an amount not less than One
528 Hundred Thousand Dollars ($100,000.00) nor more than Two Hundred
529 Thousand Dollars ($200,000.00). In determining the amount of any
530 fine, the commissioner shall take into account whether the failure
531 to achieve the standards in subsection (1)(h) of this section were
532 due to circumstances beyond the control of the insurer. The
533 insurer may request an administrative hearing to contest the
534 assessment of any administrative penalty imposed by the
535 commissioner pursuant to this subsection within thirty (30) days
536 after receipt of the notice of assessment.
537 (b) Examinations to determine compliance with
538 subsection (1)(h) of this section may be conducted by the
539 commissioner or any of his examiners. The commissioner may
540 contract with qualified impartial outside sources to assist in
541 examinations to determine compliance. The expenses of any such
542 examinations shall be paid by the insurer examined.
543 (c) Nothing in the provisions of subsection (1)(h) of
544 this section shall require an insurer to pay claims that are not
545 covered under the terms of a contract or policy of accident and
546 sickness insurance.
547 (d) An insurer and a provider may enter into an express
548 written agreement containing timely claim payment provisions which
549 differ from, but are at least as stringent as, the provisions set
550 forth under subsection (1)(h) of this section, and in such case,
551 the provisions of the written agreement shall govern the timely
552 payment of claims by the insurer to the provider. If the express
553 written agreement is silent as to any interest penalty where

554 claims are not paid in accordance with the agreement, the interest
555 penalty provision of subsection (1)(h)3 of this section shall
556 apply.

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

559 (9) **Specified disease policies.** A specified disease policy
560 provides coverage for a specifically named disease or diseases.
561 An individual or group specified disease insurance policy that
562 uses the term "actual charge" or "actual fee" must define the
563 terms as the amount actually paid by or on behalf of the insured
564 and accepted by a provider for services provided.

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

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

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

ST: Specified disease insurance policies; define certain terms.