

By: Representatives Stevens, Chism, Dedeaux, Eads, Masterson, Broomfield To: Insurance

HOUSE BILL NO. 683

1 AN ACT TO AMEND SECTION 83-9-5, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE ACCIDENT AND HEALTH POLICIES TO CONTAIN CERTAIN PROVISIONS
3 ESTABLISHING PROCEDURES FOR THE PROMPT PAYMENT OF CLEAN CLAIMS; TO
4 DEFINE THE TERM "CLEAN CLAIM"; TO AUTHORIZE THE COMMISSIONER OF
5 INSURANCE TO IMPOSE ADMINISTRATIVE PENALTIES WHEN CLEAN CLAIMS ARE
6 NOT PAID IN ACCORDANCE WITH THE PROVISIONS OF THE POLICIES; AND
7 FOR RELATED PURPOSES.

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

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

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

24 (a) A provision as follows:

25 Entire contract; changes: This policy, including the
26 endorsements and the attached papers, if any, constitutes the
27 entire contract of insurance. No change in this policy shall be
28 valid until approved by an executive officer of the insurer and
29 unless such approval be endorsed hereon or attached hereto. No



30 agent has authority to change this policy or to waive any of its
31 provisions. As used in this section, the term "insurer" means a
32 health maintenance organization, an insurance company or any other
33 entity responsible for the payment of benefits under a policy or
34 contract of accident and sickness insurance.

35 (b) A provision as follows:

36 Time limit on certain defenses:

37 1. After two (2) years from the date of issue of
38 this policy, no misstatements, except fraudulent misstatements,
39 made by the applicant in the application for such policy shall be
40 used to void the policy or to deny a claim for loss incurred or
41 disability (as defined in the policy) commencing after the
42 expiration of such two-year period.

43 (The foregoing policy provision shall not be so construed as
44 to effect any legal requirement for avoidance of a policy or
45 denial of a claim during such initial two-year period, nor to
46 limit the application of subparagraphs (2) (a) and (2) (b) of this
47 section in the event of misstatement with respect to age or
48 occupation.)

49 (A policy which the insured has the right to continue in
50 force subject to its terms by the timely payment of premium (1)
51 until at least age fifty (50) or, (2) in the case of a policy
52 issued after age forty-four (44), for at least five (5) years from
53 its date of issue, may contain in lieu of the foregoing the
54 following provision (from which the clause in parentheses may be
55 omitted at the insurer's option) under the caption
56 "INCONTESTABLE":

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

61 2. No claim for loss incurred or disability (as
62 defined in the policy) commencing after two (2) years from the



63 date of issue of this policy shall be reduced or denied on the
64 ground that a disease or physical condition not excluded from
65 coverage by name or specific description effective on the date of
66 loss had existed prior to the effective date of coverage of this
67 policy.

68 (c) A provision as follows:

69 Grace period:

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

75 (A policy which contains a cancellation provision may add, at
76 the end of the above provision, "subject to the right of the
77 insurer to cancel in accordance with the cancellation provision
78 hereof."

79 A policy in which the insurer reserves the right to refuse
80 any renewal shall have, at the beginning of the above provision,
81 "unless not less than five (5) days prior to the premium due date
82 the insurer has delivered to the insured or has mailed to his last
83 address as shown by the records of the insurer written notice of
84 its intention not to renew this policy beyond the period for which
85 the premium has been accepted.")

86 (d) A provision as follows:

87 Reinstatement:

88 If any renewal premium be not paid within the time granted
89 the insured for payment, a subsequent acceptance of premium by the
90 insurer or by any agent duly authorized by the insurer to accept
91 such premium, without requiring in connection therewith an
92 application for reinstatement, shall reinstate the policy.
93 However, if the insurer or such agent requires an application for
94 reinstatement and issues a conditional receipt for the premium
95 tendered, the policy will be reinstated upon approval of such



96 application by the insurer or, lacking such approval, upon the
97 forty-fifth day following the date of such conditional receipt
98 unless the insurer has previously notified the insured in writing
99 of its disapproval of such application. The reinstated policy
100 shall cover only loss resulting from such accidental injury as may
101 be sustained after the date of reinstatement and loss due to such
102 sickness as may begin more than ten (10) days after such date. In
103 all other respects the insured and insurer shall have the same
104 rights thereunder as they had under the policy immediately before
105 the due date of the defaulted premium, subject to any provisions
106 endorsed hereon or attached hereto in connection with the
107 reinstatement. Any premium accepted in connection with a
108 reinstatement shall be applied to a period for which premium has
109 not been previously paid, but not to any period more than sixty
110 (60) days prior to the date of reinstatement. (The last sentence
111 of the above provision may be omitted from any policy which the
112 insured has the right to continue in force subject to its terms by
113 the timely payment of premiums (1) until at least age fifty (50)
114 or, (2) in the case of a policy issued after age forty-four (44),
115 for at least five (5) years from its date of issue.)

116 (e) A provision as follows:

117 Notice of claim:

118 Written notice of claim must be given to the insurer within
119 thirty (30) days after the occurrence or commencement of any loss
120 covered by the policy, or as soon thereafter as is reasonably
121 possible. Notice given by or on behalf of the insured or the
122 beneficiary to the insurer at _____ (insert the
123 location of such office as the insurer may designate for the
124 purpose), or to any authorized agent of the insurer, with
125 information sufficient to identify the insured, shall be deemed
126 notice to the insurer.

127 (In a policy providing a loss-of-time benefit which may be
128 payable for at least two (2) years, an insurer may, at its option,



129 insert the following between the first and second sentences of the
130 above provision: "Subject to the qualifications set forth below,
131 if the insured suffers loss of time on account of disability for
132 which indemnity may be payable for at least two (2) years, he
133 shall, at least once in every six (6) months after having given
134 notice of claim, give to the insurer notice of continuance of said
135 disability, except in the event of legal incapacity. The period
136 of six (6) months following any filing of proof by the insured or
137 any payment by the insurer on account of such claim or any denial
138 of liability in whole or in part by the insurer shall be excluded
139 in applying this provision. Delay in the giving of such notice
140 shall not impair the insured's right to any indemnity which would
141 otherwise have accrued during the period of six (6) months
142 preceding the date on which such notice is actually given.")

143 (f) A provision as follows:

144 Claim forms:

145 The insurer, upon receipt of a notice of claim, will furnish
146 to the claimant such forms as are usually furnished by it for
147 filing proofs of loss. If such forms are not furnished within
148 fifteen (15) days after the giving of such notice, the claimant
149 shall be deemed to have complied with the requirements of this
150 policy as to proof of loss upon submitting, within the time fixed
151 in the policy for filing proofs of loss, written proof covering
152 the occurrence, the character and the extent of the loss for which
153 claim is made.

154 (g) A provision as follows:

155 Proofs of loss:

156 Written proof of loss must be furnished to the insurer at its
157 said office, in case of claim for loss for which this policy
158 provides any periodic payment contingent upon continuing loss,
159 within ninety (90) days after the termination of the period for
160 which the insurer is liable, and in case of claim for any other
161 loss, within ninety (90) days after the date of such loss.



162 Failure to furnish such proof within the time required shall not
163 invalidate or reduce any claim if it was not reasonably possible
164 to give proof within such time, provided such proof is furnished
165 as soon as reasonably possible and in no event, except in the
166 absence of legal capacity, later than one (1) year from the time
167 proof is otherwise required.

168 (h) A provision as follows:

169 Time of payment of claims:

170 1. All benefits payable under this policy for any
171 loss, other than loss for which this policy provides any periodic
172 payment, will be paid within twenty-five (25) days after receipt
173 of due written proof of such loss in the form of a clean claim
174 where claims are submitted electronically, and will be paid within
175 thirty-five (35) days after receipt of due written proof of such
176 loss in the form of clean claim where claims are submitted in
177 paper format. Benefits due under the policies and claims are
178 overdue if not paid within twenty-five (25) days or thirty-five
179 (35) days, whichever is applicable, after the insurer receives a
180 clean claim containing necessary medical information and other
181 information essential for the insurer to administer preexisting
182 condition, coordination of benefits and subrogation provisions. A
183 "clean claim" means a claim received by an insurer for
184 adjudication and which requires no further information, adjustment
185 or alteration by the provider of the services or the insured in
186 order to be processed and paid by the insurer. A claim is clean
187 if it has no defect or impropriety, including any lack of
188 substantiating documentation, or particular circumstance requiring
189 special treatment that prevents timely payment from being made on
190 the claim under this provision. A clean claim includes
191 resubmitted claims with previously identified deficiencies
192 corrected.

193 A clean claim does not include the following:



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

197 b. Claims which are submitted fraudulently or
198 that are based upon material misrepresentations;

199 c. Claims that require a preexisting
200 condition, coordination of benefits or subrogation investigation;
201 and

202 d. Claims submitted more than thirty (30)
203 days after the date of service.

204 Not later than twenty-five (25) days after the date the
205 insurer actually receives an electronic claim, the insurer shall
206 pay the appropriate benefit in full, or any portion of the claim
207 that is clean, and notify the provider (where the claim is owed to
208 the provider) or the insured (where the claim is owed to the
209 insured) of the reasons why the claim or portion thereof is not
210 clean and will not be paid and what substantiating documentation
211 and information is required to adjudicate the claim as clean. Not
212 later than thirty-five (35) days after the date the insurer
213 actually receives a paper claim, the insurer shall pay the
214 appropriate benefit in full, or any portion of the claim that is
215 clean, and notify the provider (where the claim is owed to the
216 provider) or the insured (where the claim is owed to the insured)
217 of the reasons why the claim or portion thereof is not clean and
218 will not be paid and what substantiating documentation and
219 information is required to adjudicate the claim as clean. Any
220 claim or portion thereof resubmitted with the supporting
221 documentation and information requested by the insurer shall be
222 paid within twenty (20) days after receipt.

223 For purposes of this provision, the term "pay" means that the
224 insurer shall either send cash or a cash equivalent by United
225 States mail, or send cash or a cash equivalent by other means such
226 as electronic transfer, in full satisfaction of the appropriate



227 benefit due the provider (where the claim is owed to the provider)
228 or the insured (where the claim is owed to the insured). To
229 calculate the extent to which any benefits are overdue, payment
230 shall be treated as made on the date a draft or other valid
231 instrument was placed in the United States mail to the last known
232 address of the provider (where the claim is owed to the provider)
233 or the insured (where the claim is owed to the insured) in a
234 properly addressed, postpaid envelope, or, if not so posted, or
235 not sent by United States mail, on the date of delivery of payment
236 to the provider or insured.

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

243 3. If the claim is not denied for valid and proper
244 reasons by the end of the applicable time period prescribed in
245 this provision, the insurer must pay the provider (where the claim
246 is owed to the provider) or the insured (where the claim is owed
247 to the insured) interest on accrued benefits at the rate of one
248 and one-half percent (1-1/2%) per month accruing from the day
249 after payment was due on the amount of the benefits that remain
250 unpaid until the claim is finally settled or adjudicated.
251 Whenever interest due pursuant to this provision is less than One
252 Dollar (\$1.00), such amount shall be credited to the account of
253 the person or entity to whom such amount is owed.

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

259 (i) A provision as follows:



260 Payment of claims:

261 Indemnity for loss of life will be payable in accordance with
262 the beneficiary designation and the provisions respecting such
263 payment which may be prescribed herein and effective at the time
264 of payment. If no such designation or provision is then
265 effective, such indemnity shall be payable to the estate of the
266 insured. Any other accrued indemnities unpaid at the insured's
267 death may, at the option of the insurer, be paid either to such
268 beneficiary or to such estate. All other indemnities will be
269 payable to the insured. When payments of benefits are made to an
270 insured directly for medical care or services rendered by a health
271 care provider, the health care provider shall be notified of such
272 payment. The notification requirement shall not apply to a
273 fixed-indemnity policy, a limited benefit health insurance policy,
274 medical payment coverage or personal injury protection coverage in
275 a motor vehicle policy, coverage issued as a supplement to
276 liability insurance or workers' compensation.

277 (The following provisions, or either of them, may be included
278 with the foregoing provision at the option of the insurer: "If
279 any indemnity of this policy shall be payable to the estate of the
280 insured, or to an insured or beneficiary who is a minor or
281 otherwise not competent to give a valid release, the insurer may
282 pay such indemnity, up to an amount not exceeding \$_____

283 (insert an amount which must not exceed One Thousand Dollars
284 (\$1,000.00)), to any relative by blood or connection by marriage
285 of the insured or beneficiary who is deemed by the insurer to be
286 equitably entitled thereto. Any payment made by the insurer in
287 good faith pursuant to this provision shall fully discharge the
288 insurer to the extent of such payment."

289 "Subject to any written direction of the insured in the
290 application or otherwise, all or a portion of any indemnities
291 provided by this policy on account of hospital, nursing, medical
292 or surgical services may, at the insurer's option and unless the



293 insured requests otherwise in writing not later than the time of
294 filing proofs of such loss, be paid directly to the hospital or
295 person rendering such services; but it is not required that the
296 service be rendered by a particular hospital or person.")

297 (j) A provision as follows:

298 Physical examinations:

299 The insurer at his own expense shall have the right and
300 opportunity to examine the person of the insured when and as often
301 as it may reasonably require during the pendency of a claim
302 hereunder.

303 (k) A provision as follows:

304 Legal actions:

305 No action at law or in equity shall be brought to recover on
306 this policy prior to the expiration of sixty (60) days after
307 written proof of loss has been furnished in accordance with the
308 requirements of this policy. No such action shall be brought
309 after the expiration of three (3) years after the time written
310 proof of loss is required to be furnished.

311 (l) A provision as follows:

312 Change of beneficiary:

313 Unless the insured makes an irrevocable designation of
314 beneficiary, the right to change the beneficiary is reserved to
315 the insured, and the consent of the beneficiary or beneficiaries
316 shall not be requisite to surrender or assignment of this policy,
317 or to any change of beneficiary or beneficiaries, or to any other
318 changes in this policy.

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

322 (2) **Other provisions.** Except as provided in subsection (3)
323 of this section, no such policy delivered or issued for delivery
324 to any person in this state shall contain provisions respecting
325 the matters set forth below unless such provisions are in the



326 words in which the same appear in this section. However, the
327 insurer may, at its option, use in lieu of any such provision a
328 corresponding provision of different wording approved by the
329 commissioner which is not less favorable in any respect to the
330 insured or the beneficiary. Any such provision contained in the
331 policy shall be preceded individually by the appropriate caption
332 appearing in this subsection or, at the option of the insurer, by
333 such appropriate individual or group captions or subcaptions as
334 the commissioner may approve.

335 (a) A provision as follows:

336 Change of occupation:

337 If the insured be injured or contract sickness after having
338 changed his occupation to one classified by the insurer as more
339 hazardous than that stated in this policy or while doing for
340 compensation anything pertaining to an occupation so classified,
341 the insurer will pay only such portion of the indemnities provided
342 in this policy as the premium paid would have purchased at the
343 rates and within the limits fixed by the insurer for such more
344 hazardous occupation. If the insured changes his occupation to
345 one classified by the insurer as less hazardous than that stated
346 in this policy, the insurer, upon receipt of proof of such change
347 of occupation, will reduce the premium rate accordingly, and will
348 return the excess pro rata unearned premium from the date of
349 change of occupation or from the policy anniversary date
350 immediately preceding receipt of such proof, whichever is the most
351 recent. In applying this provision, the classification of
352 occupational risk and the premium rates shall be such as have been
353 last filed by the insurer prior to the occurrence of the loss for
354 which the insurer is liable, or prior to date of proof of change
355 in occupation, with the state official having supervision of
356 insurance in the state where the insured resided at the time this
357 policy was issued; but if such filing was not required, then the
358 classification of occupational risk and the premium rates shall be



359 those last made effective by the insurer in such state prior to
360 the occurrence of the loss or prior to the date of proof of change
361 in occupation.

362 (b) A provision as follows:

363 Misstatement of age:

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

367 (c) A provision as follows:

368 Relation of earnings to issuance:

369 If the total monthly amount of loss of time benefits promised
370 for the same loss under all valid loss of time coverage upon the
371 insured, whether payable on a weekly or monthly basis, shall
372 exceed the monthly earnings of the insured at the time disability
373 commenced or his average monthly earnings for the period of two
374 (2) years immediately preceding a disability for which claim is
375 made, whichever is the greater, the insurer will be liable only
376 for such proportionate amount of such benefits under this policy
377 as the amount of such monthly earnings or such average monthly
378 earnings of the insured bears to the total amount of monthly
379 benefits for the same loss under all such coverage upon the
380 insured at the time such disability commences and for the return
381 of such part of the premiums paid during such two (2) years as
382 shall exceed the pro rata amount of the premiums for the benefits
383 actually paid hereunder; but this shall not operate to reduce the
384 total monthly amount of benefits payable under all such coverage
385 upon the insured below the sum of Two Hundred Dollars (\$200.00) or
386 the sum of the monthly benefits specified in such coverages,
387 whichever is the lesser, nor shall it operate to reduce benefits
388 other than those payable for loss of time.

389 (The foregoing policy provision may be inserted only in a
390 policy which the insured has the right to continue in force
391 subject to its terms by the timely payment of premiums (1) until



392 at least age fifty (50) or, (2) in the case of a policy issued
393 after age forty-four (44), for at least five (5) years from its
394 date of issue. The insurer may, at its option, include in this
395 provision a definition of "valid loss of time coverage," approved
396 as to form by the commissioner, which definition shall be limited
397 in subject matter to coverage provided by governmental agencies or
398 by organizations subject to regulations by insurance law or by
399 insurance authorities of this or any other state of the United
400 States or any province of Canada, or to any other coverage the
401 inclusion of which may be approved by the commissioner, or any
402 combination of such coverages. In the absence of such definition,
403 such term shall not include any coverage provided for such insured
404 pursuant to any compulsory benefit statute (including any workers'
405 compensation or employer's liability statute), or benefits
406 provided by union welfare plans or by employer or employee benefit
407 organizations.)

408 (d) A provision as follows:

409 Unpaid premium:

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

413 (e) A provision as follows:

414 Cancellation:

415 The insurer may cancel this policy at any time by written
416 notice delivered to the insured, or mailed to his last address as
417 shown by the records of the insurer, stating when, not less than
418 five (5) days thereafter, such cancellation shall be effective;
419 and after the policy has been continued beyond its original term,
420 the insured may cancel this policy at any time by written notice
421 delivered or mailed to the insurer, effective upon receipt or on
422 such later date as may be specified in such notice. In the event
423 of cancellation, the insurer will return promptly the unearned
424 portion of any premium paid. If the insured cancels, the earned



425 premium shall be computed by the use of the short-rate table last
426 filed with the state official having supervision of insurance in
427 the state where the insured resided when the policy was issued.
428 If the insurer cancels, the earned premium shall be computed pro
429 rata. Cancellation shall be without prejudice to any claim
430 originating prior to the effective date of cancellation.

431 (f) A provision as follows:

432 Conformity with state statutes:

433 Any provision of this policy which, on its effective date, is
434 in conflict with the statutes of the state in which the insured
435 resides on such date is hereby amended to conform to the minimum
436 requirements of such statutes.

437 (g) A provision as follows:

438 Illegal occupation:

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

443 (h) A provision as follows:

444 Intoxicants and narcotics:

445 The insurer shall not be liable for any loss sustained or
446 contracted in consequence of the insured's being intoxicated or
447 under the influence of any narcotic unless administered on the
448 advice of a physician.

449 (3) **Inapplicable or inconsistent provisions.** If any
450 provision of this section is in whole or in part inapplicable to
451 or inconsistent with the coverage provided by a particular form of
452 policy, the insurer, with the approval of the commissioner, shall
453 omit from such policy any inapplicable provision or part of a
454 provision, and shall modify any inconsistent provision or part of
455 the provision in such manner as to make the provision as contained
456 in the policy consistent with the coverage provided by the policy.



457 (4) **Order of certain policy provisions.** The provisions
458 which are the subject of subsections (1) and (2) of this section,
459 or any corresponding provisions which are used in lieu thereof in
460 accordance with such subsections, shall be printed in the
461 consecutive order of the provisions in such subsections or, at the
462 option of the insurer, any such provision may appear as a unit in
463 any part of the policy, with other provisions to which it may be
464 logically related, provided the resulting policy shall not be in
465 whole or in part unintelligible, uncertain, ambiguous, abstruse or
466 likely to mislead a person to whom the policy is offered,
467 delivered or issued.

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

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

476 (a) Any policy of a foreign or alien insurer, when
477 delivered or issued for delivery to any person in this state, may
478 contain any provision which is not less favorable to the insured
479 or the beneficiary than the provisions of Sections 83-9-1 through
480 83-9-21, Mississippi Code of 1972, and which is prescribed or
481 required by the law of the state under which the insurer is
482 organized.

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

486 (7) **Filing procedure.** The commissioner may make such
487 reasonable rules and regulations concerning the procedure for the
488 filing or submission of policies subject to the cited sections as
489 are necessary, proper or advisable to the administration of said



490 sections. This provision shall not abridge any other authority
491 granted the commissioner by law.

492 (8) Administrative penalties.

493 (a) If the commissioner finds that an insurer has
494 failed during any calendar year to process and pay one hundred
495 percent (100%) of all clean claims received from all providers
496 during that year in accordance with the provisions of subsection
497 (1)(h) of this section, the commissioner may levy an aggregate
498 penalty not to exceed One Thousand Dollars (\$1,000.00). If the
499 commissioner finds that an insurer has failed during any calendar
500 year to process and pay ninety-five percent (95%) of all clean
501 claims received from all providers during that year in accordance
502 with the provisions of subsection (1)(h) of this section, the
503 commissioner may levy an aggregate penalty not to exceed Ten
504 Thousand Dollars (\$10,000.00). If the commissioner finds that an
505 insurer has failed during any calendar year to process and pay
506 eighty-five percent (85%) of all clean claims received from all
507 providers during that year in accordance with the provision of
508 subsection (1)(h) of this section, the commissioner may levy an
509 aggregate penalty in an amount not less than Ten Thousand Dollars
510 (\$10,000.00) nor more than One Hundred Thousand Dollars
511 (\$100,000.00). If the commissioner finds that an insurer has
512 failed during any calendar year to process and pay fifty percent
513 (50%) of all clean claims received from all providers during that
514 year in accordance with the provisions of subsection (1)(h) of
515 this section, the commissioner may levy an aggregate penalty in an
516 amount not less than One Hundred Thousand Dollars (\$100,000.00)
517 nor more than Two Hundred Thousand Dollars (\$200,000.00). In
518 determining the amount of any fine, the commissioner shall take
519 into account whether the failure to achieve the standards in
520 subsection (1)(h) of this section were due to circumstances beyond
521 the control of the insurer. The insurer may request an
522 administrative hearing to contest the assessment of any



523 administrative penalty imposed by the commissioner pursuant to
524 this subsection within thirty (30) days after receipt of the
525 notice of assessment.

526 (b) Examinations to determine compliance with
527 subsection (1)(h) of this section may be conducted by the
528 commissioner or any of his examiners. The commissioner may
529 contract with qualified impartial outside sources to assist in
530 examinations to determine compliance. The expenses of any such
531 examinations shall be paid by the insurer examined.

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

536 (d) An insurer and a provider may enter into an express
537 written agreement containing timely claim payment provisions which
538 differ from, but are at least as stringent as, the provisions set
539 forth under subsection (1)(h) of this section, and in such case,
540 the provisions of the written agreement shall govern the timely
541 payment of claims by the insurer to the provider. If the express
542 written agreement is silent as to any interest penalty where
543 claims are not paid in accordance with the agreement, the interest
544 penalty provision of subsection (1)(h)3 of this section shall
545 apply.

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

548 **SECTION 2.** This act shall take effect and be in force from
549 and after July 1, 2002.

