

By: Representatives McBride, Jennings, Mayo

To: Insurance

HOUSE BILL NO. 792

1 AN ACT TO ESTABLISH THE "COMMANDER DAVID ERWIN MITCHELL
2 UNINSURED MOTORIST CLARIFICATION ACT OF 2003"; TO AMEND SECTION
3 83-11-101, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT UNINSURED
4 MOTORIST COVERAGE SHALL INCLUDE COVERAGE FOR BODILY INJURY ARISING
5 OUT OF A MOTOR VEHICLE ACCIDENT CAUSED BY AN AUTOMOBILE WHICH HAS
6 NO PHYSICAL CONTACT WITH THE INJURED PARTY IF THE INJURED PARTY
7 PROVES, BY AN INDEPENDENT AND DISINTERESTED WITNESS, THAT THE
8 INJURY WAS THE RESULT OF THE ACTIONS OF THE DRIVER OF ANOTHER
9 VEHICLE WHOSE IDENTITY IS UNKNOWN; TO AMEND SECTION 83-11-103,
10 MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF AN UNINSURED
11 MOTOR VEHICLE TO ELIMINATE THE NEED FOR PHYSICAL CONTACT BETWEEN A
12 COVERED MOTOR VEHICLE AND AN UNINSURED MOTOR VEHICLE WHEN THE
13 INJURED PARTY PROVES, BY AN INDEPENDENT AND DISINTERESTED WITNESS,
14 THAT THE INJURY WAS THE RESULT OF THE ACTIONS OF THE DRIVER OF
15 ANOTHER VEHICLE WHOSE IDENTITY IS UNKNOWN; AND FOR RELATED
16 PURPOSES.

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

18 **SECTION 1.** This act shall be known and may be cited as the
19 "Commander David Erwin Mitchell Uninsured Motorist Clarification
20 Act of 2003."

21 **SECTION 2.** Section 83-11-101, Mississippi Code of 1972, is
22 amended as follows:

23 83-11-101. (1) No automobile liability insurance policy or
24 contract shall be issued or delivered after January 1, 1967,
25 unless it contains an endorsement or provisions undertaking to pay
26 the insured all sums which he shall be legally entitled to recover
27 as damages for bodily injury or death from the owner or operator
28 of an uninsured motor vehicle, within limits which shall be no
29 less than those set forth in the Mississippi Motor Vehicle Safety
30 Responsibility Law, as amended, under provisions approved by the
31 Commissioner of Insurance; however, at the option of the insured,
32 the uninsured motorist limits may be increased to limits not to
33 exceed those provided in the policy of bodily injury liability
34 insurance of the insured or such lesser limits as the insured



35 elects to carry over the minimum requirement set forth by this
36 section. The coverage herein required shall not be applicable
37 where any insured named in the policy shall reject the coverage in
38 writing and provided further, that unless the named insured
39 requests such coverage in writing, such coverage need not be
40 provided in any renewal policy where the named insured had
41 rejected the coverage in connection with a policy previously
42 issued to him by the same insurer.

43 (2) No automobile liability insurance policy or contract
44 shall be issued or delivered after January 1, 1980, unless it
45 contains an endorsement or provisions undertaking to pay the
46 insured all sums which he shall be legally entitled to recover as
47 damages for property damage from the owner or operator of an
48 uninsured motor vehicle, within limits which shall be no less than
49 those set forth in the Mississippi Motor Vehicle Safety
50 Responsibility Law, as amended, under provisions approved by the
51 Commissioner of Insurance; however, at the option of the insured,
52 the uninsured motorist limits may be increased to limits not to
53 exceed those provided in the policy of property damage liability
54 insurance of the insured or such lesser limits as the insured
55 elects to carry over the minimum requirement set forth by this
56 section. The coverage herein required shall not be applicable
57 where any insured named in the policy shall reject the coverage in
58 writing and provided further, that unless the named insured
59 requests such coverage in writing, such coverage need not be
60 provided in any renewal policy where the named insured had
61 rejected the coverage in connection with a policy previously
62 issued to him by the same insurer.

63 The property damage provision may provide an exclusion for
64 the first Two Hundred Dollars (\$200.00) of such property damage;
65 however, the uninsured motorist provision need not insure any
66 liability for property damage, for which loss the policyholder has
67 been compensated by insurance or otherwise.



68 (3) The insured may reject the property damage liability
69 insurance coverage required by subsection (2) and retain the
70 bodily injury liability insurance coverage required by subsection
71 (1), but if the insured rejects the bodily injury liability
72 coverage he may not retain the property damage liability coverage.
73 No insured may have property damage liability insurance coverage
74 under this section unless he also has bodily injury liability
75 insurance coverage under this section.

76 (4) Uninsured motorist coverage shall include coverage for
77 bodily injury arising out of a motor vehicle accident caused by an
78 automobile which has no physical contact with the injured party or
79 with a vehicle which the injured party is occupying at the time of
80 the accident if the injured party proves, by an independent and
81 disinterested witness, that the injury was the result of the
82 actions of the driver of another vehicle whose identity is
83 unknown.

84 **SECTION 3.** Section 83-11-103, Mississippi Code of 1972, is
85 amended as follows:

86 83-11-103. As used in this article:

87 (a) The term "bodily injury" shall include death
88 resulting from such injury.

89 (b) The term "insured" shall mean the named insured
90 and, while resident of the same household, the spouse of any such
91 named insured and relatives of either, while in a motor vehicle or
92 otherwise, and any person who uses, with the consent, expressed or
93 implied, of the named insured, the motor vehicle to which the
94 policy applies, and a guest in such motor vehicle to which the
95 policy applies, or the personal representative of any of the
96 above. The definition of the term "insured" given in this section
97 shall apply only to the uninsured motorist portion of the policy.

98 (c) The term "uninsured motor vehicle" shall mean:

99 (i) A motor vehicle as to which there is no bodily
100 injury liability insurance; or



101 (ii) A motor vehicle as to which there is such
102 insurance in existence, but the insurance company writing the same
103 has legally denied coverage thereunder or is unable, because of
104 being insolvent at the time of or becoming insolvent during the
105 twelve (12) months following the accident, to make payment with
106 respect to the legal liability of its insured; or

107 (iii) An insured motor vehicle, when the liability
108 insurer of such vehicle has provided limits of bodily injury
109 liability for its insured which are less than the limits
110 applicable to the injured person provided under his uninsured
111 motorist coverage; or

112 (iv) A motor vehicle as to which there is no bond
113 or deposit of cash or securities in lieu of such bodily injury and
114 property damage liability insurance or other compliance with the
115 state financial responsibility law, or where there is such bond or
116 deposit of cash or securities, but such bond or deposit is less
117 than the legal liability of the injuring party; or

118 (v) A motor vehicle of which the owner or operator
119 is unknown; provided that in order for the insured to recover
120 under the endorsement where the owner or operator of any motor
121 vehicle which causes bodily injury to the insured is unknown,
122 actual physical contact must have occurred between the motor
123 vehicle owned or operated by such unknown person and the person or
124 property of the insured unless the injured party can show by an
125 independent and disinterested witness that the injury was the
126 result of the actions of the driver of another vehicle whose
127 identity is unknown.

128 No vehicle shall be considered uninsured that is owned by the
129 United States government and against which a claim may be made
130 under the Federal Tort Claims Act, as amended.

131 **SECTION 4.** This act shall take effect and be in force from
132 and after July 1, 2003.

