

By: Representative Formby

To: Insurance

HOUSE BILL NO. 1321
(As Passed the House)

1 AN ACT TO AMEND SECTION 83-17-5, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT AN INSURANCE AGENT MUST OBTAIN AN AGENT'S CERTIFICATE
3 OF AUTHORIZATION BUT NOT A CONTINUOUS CERTIFICATE OF
4 AUTHORIZATION; TO AMEND SECTION 83-17-71, MISSISSIPPI CODE OF
5 1972, TO PROVIDE FOR PENALTIES ON INSURANCE AGENTS WHO KNOWINGLY
6 ACCEPT INSURANCE BUSINESS FROM AN INDIVIDUAL WHO IS NOT LICENSED
7 OR APPOINTED; TO AMEND SECTION 83-17-75, MISSISSIPPI CODE OF 1972,
8 TO PROVIDE THAT AN INSURANCE PRODUCER WHO IS NOT ACTING AS AN
9 AGENT OF AN INSURER IS NOT REQUIRED TO BECOME APPOINTED; TO REPEAL
10 SECTION 83-17-43, MISSISSIPPI CODE OF 1972, WHICH REQUIRED THAT
11 ALL INSURANCE SOLICITORS FILE WITH THE COMMISSIONER OF INSURANCE
12 AN APPLICATION FOR CERTIFICATE OF APPOINTMENT AS SOLICITOR; TO
13 PROVIDE THAT THE COMMISSIONER OF INSURANCE SHALL HAVE FULL
14 REGULATORY AUTHORITY OVER THOSE PERSONS WHO SELL INSURANCE IN THE
15 STATE OF MISSISSIPPI BUT WHO ARE NOT AGENTS; AND FOR RELATED
16 PURPOSES.

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

18 **SECTION 1.** Section 83-17-5, Mississippi Code of 1972, is
19 amended as follows:

20 83-17-5. Every agent of any insurance company, fraternal
21 order or association authorized to do business in this state shall
22 be required to obtain from the Commissioner of Insurance a * * *
23 certificate under the seal of his office showing that the company
24 for which he or she is licensed to do business in this state, and
25 that he or she is an agent of said company and duly authorized to
26 do business for it. Such certificate shall remain valid as long
27 as the insurance company, fraternal order or association pays to
28 the commissioner an annual certificate fee to continue the
29 authorization. The insurance company, fraternal order or
30 association must notify the agent within thirty (30) days if the
31 authority is nonrenewed or cancelled.

32 **SECTION 2.** Section 83-17-71, Mississippi Code of 1972, is
33 amended as follows:

34 83-17-71. (1) The commissioner may place on probation,
35 suspend, revoke or refuse to issue or renew an insurance
36 producer's license or may levy a civil penalty in an amount not to
37 exceed One Thousand Dollars (\$1,000.00) per violation and such
38 penalty shall be deposited into the special fund of the State
39 Treasury designated as the "Insurance Department Fund" for any one
40 or more of the following causes:

41 (a) Providing incorrect, misleading, incomplete or
42 materially untrue information in the license application;

43 (b) Violating any insurance laws, or violating any
44 regulation, subpoena or order of the commissioner or of another
45 state's commissioner;

46 (c) Obtaining or attempting to obtain a license through
47 misrepresentation or fraud;

48 (d) Improperly withholding, misappropriating or
49 converting any monies or properties received in the course of
50 doing insurance business;

51 (e) Intentionally misrepresenting the terms of an
52 actual or proposed insurance contract or application for
53 insurance;

54 (f) Having been convicted of a felony;

55 (g) Having admitted or been found to have committed any
56 insurance unfair trade practice or fraud;

57 (h) Using fraudulent, coercive or dishonest practices
58 or demonstrating incompetence, untrustworthiness or financial
59 irresponsibility in the conduct of business in this state or
60 elsewhere;

61 (i) Having an insurance producer license, or its
62 equivalent, denied, suspended or revoked in any other state,
63 province, district or territory;

64 (j) Forging another's name to an application for
65 insurance or to any document related to an insurance transaction;

66 (k) Improperly using notes or any other reference
67 material to complete an examination for an insurance license;

68 (l) Knowingly accepting insurance business from an
69 individual who is not licensed or appointed;

70 (m) Failing to comply with an administrative or court
71 order imposing a child support obligation; or

72 (n) Failing to pay state income tax or comply with any
73 administrative or court order directing payment of state income
74 tax.

75 (2) If the action by the commissioner is to nonrenew or to
76 deny an application for a license, the commissioner shall notify
77 the applicant or licensee and advise, in writing, the applicant or
78 licensee of the reason for the denial or nonrenewal of the
79 applicant's or licensee's license. The applicant or licensee may
80 make written demand upon the commissioner within ten (10) days for
81 a hearing before the commissioner to determine the reasonableness
82 of the commissioner's action. The hearing shall be held within
83 thirty (30) days.

84 (3) The license of a business entity may be suspended,
85 revoked or refused if the commissioner finds, after hearing, that
86 an individual licensee's violation was known or should have been
87 known by one or more of the partners, officers or managers acting
88 on behalf of the partnership or corporation and the violation was
89 neither reported to the commissioner nor corrective action taken.

90 (4) In addition to, or in lieu of, any applicable denial,
91 suspension or revocation of a license, a person may, after
92 hearing, be subject to a civil fine not to exceed One Thousand
93 Dollars (\$1,000.00) per violation and such fine shall be deposited
94 into the special fund in the State Treasury designated as the
95 "Insurance Department Fund."

96 (5) The commissioner shall retain the authority to enforce
97 the provisions of and impose any penalty or remedy authorized by
98 this article and Title 83, Mississippi Code of 1972, against any

99 person who is under investigation for or charged with a violation
100 of this article or Title 83, Mississippi Code of 1972, even if the
101 person's license or registration has been surrendered or has
102 lapsed by operation of law.

103 (6) No licensee whose license has been revoked hereunder
104 shall be entitled to file another application for a license as a
105 producer within one (1) year from the effective date of such
106 revocation or, if judicial review of such revocation is sought,
107 within one (1) year from the date of final court order or decree
108 affirming such revocation. Such application, when filed, may be
109 refused by the commissioner unless the applicant shows good cause
110 why the revocation of his license shall not be deemed a bar to the
111 issuance of a new license.

112 **SECTION 3.** Section 83-17-75, Mississippi Code of 1972, is
113 amended as follows:

114 83-17-75. (1) An insurance producer shall not act as an
115 agent of an insurer unless the insurance producer becomes an
116 appointed agent of that insurer. An insurance producer who is not
117 acting as an agent of an insurer is not required to become
118 appointed.

119 (2) To appoint a producer as its agent, the appointing
120 insurer shall file, in a format approved by the commissioner, a
121 notice of appointment within fifteen (15) days from the date the
122 agency contract is executed or the first insurance application is
123 submitted. An insurer may also elect to appoint a producer to all
124 or some insurers within the insurer's holding company system or
125 group by the filing of a single appointment request.

126 (3) Upon receipt of the notice of appointment, the
127 commissioner shall verify within a reasonable time not to exceed
128 thirty (30) days that the insurance producer is eligible for
129 appointment. If the insurance producer is determined to be
130 ineligible for appointment, the commissioner shall notify the
131 insurer within five (5) days of its determination.

132 (4) An insurer shall pay an appointment fee, in the amount
133 and method of payment set forth in Section 83-5-73 for each
134 insurance producer appointed by the insurer.

135 (5) An insurer shall remit, in a manner prescribed by the
136 commissioner, a renewal appointment fee in the amount set forth in
137 Section 83-5-73.

138 (6) Before the issuance of a license or certificate of
139 authority, the commissioner shall require the company requesting
140 appointment of the applicant as producer for the first time to
141 furnish a certificate to the commissioner, verified by an
142 executive officer or managing general or special agent of such
143 company, that the company has duly investigated the character and
144 record of such person and has satisfied itself that such person is
145 of good moral character and is qualified, fit and trustworthy to
146 act as its producer. The Commissioner of Insurance may at any
147 time require any company to obtain a credit report on a producer
148 if the commissioner deems such request advisable. Should such
149 credit report reflect information regarding an offense or
150 violation in relation to which the Department of Insurance has
151 taken action, such information shall not render the applicant
152 ineligible for a license if applicant has complied with the order
153 of the commissioner regarding such offense.

154 **SECTION 4.** Section 83-17-43, Mississippi Code of 1972, which
155 requires all insurance solicitors to file with the Commissioner of
156 Insurance an application for certificate of appointment as
157 solicitor, is repealed.

158 **SECTION 5.** The Commissioner of Insurance shall have full
159 regulatory authority over those persons who sell insurance in the
160 State of Mississippi but who are not agents as defined in Section
161 83-17-1.

162 **SECTION 6.** This act shall take effect and be in force from
163 and after July 1, 2005.