MISSISSIPPI LEGISLATURE REGULAR SESSION 2017

By: Representative Lamar To: Insurance

HOUSE BILL NO. 521

AN ACT TO AMEND SECTION 83-11-101, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT UNINSURED MOTORIST COVERAGE POLICIES MUST INCLUDE PAYMENT OF DAMAGES BY AN UNINSURED MOTOR VEHICLE WHEN THE UNINSURED MOTOR VEHICLE IS A MOTOR VEHICLE OWNED OR OPERATED BY A PERSON PROTECTED BY IMMUNITY UNDER THE MISSISSIPPI TORT CLAIMS ACT AS LONG AS THE INSURED HAS EXHAUSTED ALL ADMINISTRATIVE REMEDIES UNDER THAT ACT; TO BRING FORWARD SECTION 83-11-103, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 83-11-101, Mississippi Code of 1972, is amended as follows:

83-11-101. (1) No automobile liability insurance policy or contract shall be issued or delivered after January 1, 1967, unless it contains an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages for bodily injury or death from the owner or operator of an uninsured motor vehicle, <u>including payment for damages as provided under subsection (5) of this section,</u> within limits which shall be no less than those set forth in the Mississippi Motor Vehicle Safety Responsibility Law, as amended, under provisions

approved by the Commissioner of Insurance; however, at the option of the insured, the uninsured motorist limits may be increased to limits not to exceed those provided in the policy of bodily injury liability insurance of the insured or such lesser limits as the insured elects to carry over the minimum requirement set forth by this section. The coverage herein required shall not be applicable where any insured named in the policy shall reject the coverage in writing and provided further, that unless the named insured requests such coverage in writing, such coverage need not be provided in any renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer.

(2) No automobile liability insurance policy or contract shall be issued or delivered after January 1, 1980, unless it contains an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages for property damage from the owner or operator of an uninsured motor vehicle, <u>including payment for damages as provided under subsection (5) of this section,</u> within limits which shall be no less than those set forth in the Mississippi Motor Vehicle Safety Responsibility Law, as amended, under provisions approved by the Commissioner of Insurance; however, at the option of the insured, the uninsured motorist limits may be increased to limits not to exceed those provided in the policy of property damage liability insurance of the insured or such lesser limits as the

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

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

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

(4) In the course of the sale or issuance of any automobile liability insurance policy, insurers shall inform the named insured or applicant, on a form approved by the Department of Insurance, of the benefits of and reasons for electing to purchase

uninsured motorist coverage. If the insured named in the policy wishes to reject uninsured motorist coverage, such form shall be signed by or on behalf of the named insured. If this form is signed by or on behalf of the named insured, it is binding upon all persons insured by the automobile liability insurance policy and it shall be presumed that there was an informed, knowing rejection and waiver of uninsured motorist coverage.

(5) Every policy for uninsured motorist coverage under this section shall include payment for damages by an uninsured motor vehicle as defined by Section 83-11-103(c)(vi), as well as any other uninsured motor vehicle as defined by Section 83-11-103(c).

SECTION 2. Section 83-11-103, Mississippi Code of 1972, is brought forward as follows:

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

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

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

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

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

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

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

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

(v) A motor vehicle of which the owner or operator is unknown; provided that in order for the insured to recover under the endorsement where the owner or operator of any motor vehicle which causes bodily injury to the insured is unknown, actual physical contact must have occurred between the motor

vehicle owned or operated by such unknown person and the person or property of the insured; or

(vi) A motor vehicle owned or operated by a person protected by immunity under the Mississippi Tort Claims Act, Title 11, Chapter 46, Mississippi Code of 1972, if the insured has exhausted all administrative remedies under that chapter.

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

SECTION 3. This act shall take effect and be in force from and after July 1, 2017.