

By: Senator(s) Baria

To: Insurance; Elections

SENATE BILL NO. 2386

1 AN ACT TO SET FORTH THE MISSISSIPPI CONSUMER INSURANCE
 2 POLICYHOLDER BILL OF RIGHTS; TO PROVIDE THAT, IN ANY ACTION FOR
 3 DAMAGES BY THE POLICYHOLDER AGAINST AN INSURER UNDER A HOMEOWNER'S
 4 POLICY, THE INSURER HAS THE BURDEN OF PROOF AS TO THE APPLICATION
 5 OF ANY EXCLUSION IN THE POLICY AND ANY EXCEPTION TO OR OTHER
 6 AVOIDANCE OF COVERAGE BY THE INSURER; TO AMEND SECTION 83-5-35,
 7 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN POLICIES
 8 CONTAINING CONCURRENT CAUSATION EXCLUSIONS ARE DEFINED AS UNFAIR
 9 METHODS OF COMPETITION AND UNFAIR AND DECEPTIVE ACTS OR PRACTICES
 10 IN THE BUSINESS OF INSURANCE; TO AMEND SECTION 83-1-3, MISSISSIPPI
 11 CODE OF 1972, TO PROHIBIT THE COMMISSIONER OF INSURANCE FROM
 12 RECEIVING GIFTS OR CAMPAIGN CONTRIBUTIONS FROM ANY INSURANCE
 13 COMPANY DOING BUSINESS AND REGULATED WITHIN THE STATE OF
 14 MISSISSIPPI; AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** (1) The Commissioner of Insurance shall:

17 (a) Require each property and casualty insurer writing
 18 homeowner's personal lines residential insurance property
 19 coverage, including renter's/tenant's insurance and mobile
 20 home/manufactured housing property coverage, to attach a copy of
 21 the "Mississippi Consumer Insurance Policyholder Bill of Rights"
 22 specified in Section 2 of this act to any policy providing such
 23 coverage that is sold to any person in the state.

24 (b) Provide a toll-free telephone number, toll-free
 25 facsimile number and the necessary forms to contact the
 26 Mississippi Department of Insurance to obtain information about
 27 any of the rights specified in Section 2 of this act or to make a
 28 complaint based on any of the rights enumerated in Section 2 of
 29 this act.

30 (c) Make an annual report to all Mississippi residents,
 31 by means of Internet access or providing paper copies of the
 32 report to any resident requesting same, evaluating the performance



33 of insurance companies offering the types of insurance described
34 in paragraph (a), with regard to property claims based on damage
35 incurred within the state, including the number of insurance
36 claims paid, the total dollar amount of claims paid, the number of
37 claims denied, and the number of claims filed against each such
38 insurance company.

39 (2) The bill of rights described in Section 2 of this act
40 shall supercede any bill of rights pertaining to the same subject
41 matter that may be promulgated by the Commissioner of Insurance.

42 **SECTION 2.** The following shall be attached to every policy
43 providing residential insurance property coverage, including
44 renters/tenants insurance and mobile home/manufactured housing
45 property coverage, that is sold in this state:

46 **"MISSISSIPPI CONSUMER INSURANCE POLICYHOLDER BILL OF RIGHTS**

47 This bill of rights is a summary of your rights and does not
48 become a part of your policy. The Mississippi Legislature adopted
49 the bill of rights and requires insurance companies to provide you
50 with a copy when they issue your policy.

51 Mississippi law gives you certain rights regarding insurance
52 companies providing residential insurance property coverage,
53 including renters/tenants insurance and mobile home/manufactured
54 housing property coverage, that are regulated within the state.
55 This bill of rights identifies your rights specified by this
56 statute, but it does not include all your rights. If your agent,
57 company or adjuster tells you that one of these rights does not
58 apply to you, contact the Mississippi Department of Insurance.

59 You have the right to call the department, free of charge at
60 [insert toll-free telephone number of the Mississippi Department
61 of Insurance] to learn more about:

- 62 • Your rights as an insurance consumer;
- 63 • The license status of an insurance company or agent;
- 64 • The financial condition of an insurance company;



- 65 • The complaint ratio and type of consumer complaints filed
66 against an insurance company;
- 67 • The use of credit information by insurance companies,
68 including which insurance companies use it and access to each
69 company's credit scoring model;
- 70 • An insurance company's rates filed with the state;
- 71 • An insurance company's underwriting guidelines (subject to
72 any exemptions contained in the Mississippi Public Records Act of
73 1983).

74 **WHAT YOU SHOULD KNOW BEFORE YOU BUY INSURANCE**

75 **1. PROHIBITED STATEMENTS.** Your insurance company or agent
76 is prohibited from making false, misleading, or deceptive
77 statements to you relating to insurance.

78 **2. LENDER-REQUIRED INSURANCE.** A lender cannot require you
79 to purchase insurance on your property in an amount that exceeds
80 the replacement cost of the property and its contents as a
81 condition of financing or providing other financing arrangements
82 for the property, regardless of the amount of the mortgage or
83 other financing arrangements. In determining the replacement cost
84 of the dwelling, a lender cannot include the fair market value of
85 the land on which a dwelling is located.

86 **3. EXCESS LIMITS.** An insurer or agent cannot require you to
87 purchase insurance for coverage limits greater than the limits
88 required by law or require you to purchase other types of coverage
89 as a condition of offering insurance or continued insurance to
90 you.

91 **4. CREDIT INFORMATION.** An insurance company cannot deny you
92 insurance solely on the basis of credit information. Insurers who
93 use credit information must also consider other underwriting
94 factors independent of credit information when deciding whether to
95 offer coverage.

96 **5. PAYMENT PLANS.** You have the right to pay your insurance
97 premium in installments. Insurance companies may charge a



98 reasonable fee for each installment. Your initial down payment on
99 a premium cannot exceed the cost of two (2) months of coverage.
100 For a twelve-month policy, you have the right to pay the balance
101 in at least ten (10) equal monthly installments.

102 **6. WINDSTORM COVERAGE.** For property located in areas
103 designated by the commissioner in certain counties on or near the
104 Coast, you have the right to buy windstorm and hail coverage from
105 the Mississippi Windstorm Underwriting Association created under
106 Section 83-34-1 et seq., Mississippi Code of 1972. Your property
107 must meet certain requirements, and the basic coverage is limited
108 to a maximum amount set each year by the Commissioner of
109 Insurance. This right applies whether or not you buy other
110 insurance for your house. In all other counties, your homeowners
111 or dwelling policy includes this coverage.

112 **7. CONCURRENT CAUSATION EXCLUSIONS.** An insurer or agent
113 cannot issue a policy containing a provision excluding claims that
114 arise out of concurrent causation or containing any
115 anti-concurrent causation exclusionary language.

116 **8. EXPLANATION OF DENIAL.** Upon request, you have the right
117 to be told in writing why you have been denied coverage. The
118 written statement must fully explain the decision, including the
119 precise incidents, circumstances, or risk factors that
120 disqualified you. It must also state the sources of information
121 used.

122 **NOTE:** The obligation to provide a written explanation
123 applies to insurance companies directly. An independent agent has
124 a specific duty to quote the lowest possible rate to a consumer or
125 to provide a written statement explaining why the agent did not
126 offer the consumer the lowest possible rate.

127 **9. NOTICE OF REDUCED COVERAGE.** If an insurer uses an
128 endorsement to reduce the amount of coverage provided by your
129 policy, the insurer must give you a written explanation of the
130 change made by the endorsement. The insurer must provide the



131 explanation before the effective date of the new or renewal
132 policy. An insurance company cannot reduce coverage during the
133 policy period unless you request the change. If you request the
134 change, the company is not required to provide notice.

135 **10. NOTICE OF PREMIUM INCREASE.** If your insurer intends to
136 increase your premium by ten percent (10%) or more upon renewal,
137 the insurer must send you notice of the rate increase at least
138 thirty (30) days before your renewal date.

139 **11. LIMITATION ON CANCELLATION.** After your initial policy
140 with your company has been in effect for sixty (60) days or more,
141 that insurance company cannot cancel your policy unless:

- 142 • You do not pay your premium when due;
- 143 • You file a fraudulent claim;
- 144 • The Mississippi Department of Insurance determines that
145 the continuation of the policy would result in violation of
146 insurance laws.

147 **12. RIGHT TO PRIVACY.** You have the right to prevent an
148 insurance company, agent, adjuster or financial institution from
149 disclosing your personal financial information to companies that
150 are not affiliated with the insurance company or financial
151 institution. Some examples are income, social security number,
152 credit history and premium payment history. If you apply for a
153 policy, the insurance company or financial institution must notify
154 you if it intends to share financial information about you and
155 give you at least thirty (30) days to refuse. This refusal is
156 called "opting out."

157 **13. POLICYHOLDER'S RIGHT TO CANCEL.** You have the right to
158 cancel your policy at any time and receive a refund of the
159 remaining premium. The refund will be paid to you unless your
160 premium was financed through a premium finance company, in which
161 case, the refund will be paid to the premium finance company to
162 reduce the amount you owe on your loan.



163 **14. NOTICE OF NONRENEWAL.** If the insurance company does not
164 mail you notice of nonrenewal at least thirty (30) days before
165 your policy expires, you have the right to require the insurance
166 company to renew your policy.

167 **15. EXPLANATION OF CANCELLATION OR NONRENEWAL.** Upon
168 request, you have the right to a written explanation of an
169 insurance company's decision to cancel or not renew your policy.
170 The written statement must fully explain the decision, including
171 the precise incidents, circumstances, or risk factors that
172 disqualified you. It must also state the sources of information
173 used.

174 **16. NOTICE OF CHANGE IN POLICY FORM.** Your insurer must
175 notify you in writing of any difference between your current
176 policy and each policy offered to you when the policy renews.

177 **WHAT YOU SHOULD KNOW WHEN YOU FILE A CLAIM**

178 **17. FAIR TREATMENT.** You have the right to be treated fairly
179 and honestly when you make a claim. If you believe an insurance
180 company has treated you unfairly, call the Mississippi Department
181 of Insurance at [insert toll-free telephone number of the
182 Mississippi Department of Insurance] or download a complaint form
183 from the Mississippi Department of Insurance's Web site. You can
184 complete a complaint form online via the Internet or fax it to the
185 department at [insert toll-free fax number of the Mississippi
186 Department of Insurance].

187 **18. EXPLANATION OF CLAIM DENIAL.** Your insurance company
188 must tell you in writing why your claim or part of your claim was
189 denied.

190 **19. SETTLEMENT OFFER.** You have the right to reject any
191 settlement amount, including any unfair evaluation, offered by the
192 insurance company.

193 **20. TIME FRAMES FOR CLAIM PROCESSING AND PAYMENT.** When you
194 file a claim on your own policy, you have the right to have your
195 claim processed and paid promptly. If the insurance company fails



196 to meet required claims processing and payment deadlines, you have
197 the right to collect eighteen percent (18%) annual interest and
198 attorney's fees in addition to your claim amount.

199 Generally, within fifteen (15) **calendar** days, your insurance
200 company must acknowledge receipt of your claim and request any
201 additional information reasonably related to your claim. Within
202 fifteen (15) **business** days after receipt of all requested
203 information, the company must approve or deny your claim in
204 writing. The insurance company may extend this deadline up to
205 thirty (30) days if it notifies you that more time is needed and
206 tells you why. After notifying you that your claim is approved,
207 your insurance company must pay the claim within five (5) **business**
208 days. If your claim results from a weather-related catastrophe or
209 other major natural disaster as defined by the Commissioner of
210 Insurance, your insurance company may take forty-five (45)
211 additional **calendar** days to approve or deny your claim and fifteen
212 (15) additional **calendar** days to pay your claim.

213 **21. INFORMATION NOT REQUIRED FOR PROCESSING A CLAIM.** You
214 have the right to refuse to provide your insurance company with
215 information that does not relate to your claim. In addition, you
216 may refuse to provide your federal income tax records, unless your
217 insurer gets a court order or your claim involves lost income or a
218 fire loss.

219 **22. EQUAL TREATMENT.** Unless based on sound actuarial
220 principles, an insurance company may not treat you differently
221 from other individuals of the same class and essentially the same
222 hazard. If you sustain economic damages as a result of such
223 unfair discrimination, you have the right to sue that insurance
224 company. If your suit prevails, you may recover economic damages,
225 court costs and attorney and necessary expert witness fees. If
226 the court finds the insurance company knowingly violated your
227 rights, it may award up to an additional Two Hundred Fifty
228 Thousand Dollars (\$250,000.00) per claimant. You must file the



229 suit on or before the second anniversary of the date you were
230 denied insurance or the unfair act occurred or the date you
231 reasonably should have discovered the occurrence of the unfair
232 act. If the court determines your suit was groundless and you
233 brought the lawsuit in bad faith, or brought it for the purposes
234 of harassment, you will be required to pay the insurance company's
235 court costs and attorney's fees.

236 **23. FILING COMPLAINTS OR LAWSUITS.** You have the right to
237 complain to the Mississippi Department of Insurance about any
238 insurance company and/or insurance matter and to receive a prompt
239 investigation and response to your complaint. If you sue to
240 recover under your insurance policy, the insurance company has the
241 burden of proof as to the application of any **exclusion** in the
242 policy and any **exception** to or other avoidance of coverage claimed
243 by the insurer."

244 **SECTION 3.** (1) In any civil action against a property and
245 casualty insurer under an insurance policy providing homeowners
246 personal lines residential insurance property coverage, including
247 renters/tenants insurance and mobile home/manufactured housing
248 property coverage, by the policyholder under the policy for
249 failure of the insurer to pay a lawful claim made under the
250 policy, including any damages related to the failure to pay, the
251 insurer has the burden of proving by a preponderance of clear and
252 convincing evidence that any exclusion in the policy, and any
253 exception to or other avoidance of coverage by the insurer,
254 applies to the cause of action.

255 (2) The provisions of this section shall apply to any action
256 filed on or after July 1, 2009, regardless of the date that the
257 cause of such action may have accrued.

258 **SECTION 4.** Section 83-5-35, Mississippi Code of 1972, is
259 amended as follows:



260 83-5-35. The following are hereby defined as unfair methods
261 of competition and unfair and deceptive acts or practices in the
262 business of insurance.

263 (a) **Misrepresentations and false advertising of policy**
264 **contracts.** Making, issuing, circulating, or causing to be made,
265 issued, or circulated, any estimate, illustration, circular, or
266 statement misrepresenting the terms of any policy issued or to be
267 issued, or the benefits or advantages promised thereby, or the
268 dividends or share of the surplus to be received thereon; or
269 making any false or misleading statement as to the dividends or
270 share of surplus previously paid on similar policies; or making
271 any misleading representation or any misrepresentation as to the
272 financial condition of any insurer, or as to the legal reserve
273 system upon which any life insurer operates; or using any name or
274 title of any policy or class of policies misrepresenting the true
275 nature thereof; or making any misrepresentation to any
276 policyholder insured in any company for the purpose of inducing or
277 tending to induce such policyholder to lapse, forfeit, or
278 surrender his insurance.

279 (b) **False information and advertising generally.**
280 Making, publishing, disseminating, circulating, or placing before
281 the public, or causing, directly or indirectly, to be made,
282 published, disseminated, circulated, or placed before the public,
283 in a newspaper, magazine, or other publication, or in the form of
284 a notice, circular, pamphlet, letter, or poster, or over any radio
285 or television station, or in any other way, an advertisement,
286 announcement, or statement containing any assertion,
287 representation, or statement with respect to the business of
288 insurance, or with respect to any person in the conduct of his
289 insurance business, which is untrue, deceptive, or misleading.

290 (c) **Defamation.** Making, publishing, disseminating, or
291 circulating, directly or indirectly, or aiding, abetting, or
292 encouraging the making, publishing, disseminating, or circulating



293 of any oral or written statement or any pamphlet, circular,
294 article, or literature which is false and maliciously critical of
295 or derogatory to the financial condition of an insurer, and which
296 is calculated to injure any person engaged in the business of
297 insurance.

298 (d) **Boycott, coercion and intimidation.** Entering into
299 any agreement to commit, or by any concerted action committing,
300 any act of boycott, coercion, or intimidation resulting in or
301 tending to result in unreasonable restraint of, or monopoly in,
302 the business of insurance.

303 (e) **False financial statements.** Filing with any
304 supervisory or other public official, or making, publishing,
305 disseminating, circulating, or delivering to any person, or
306 placing before the public, or causing directly or indirectly to be
307 made, published, disseminated, circulated, delivered to any
308 person, or placed before the public, any false statement of
309 financial condition of an insurer, with intent to deceive.

310 Making any false entry in any book, report, or statement of
311 any insurer with intent to deceive any agent or examiner lawfully
312 appointed to examine into its condition or into any of its
313 affairs, or any public official to whom such insurer is required
314 by law to report or file, or who has authority by law to examine
315 into its condition or into any of its affairs, or, with like
316 intent, willfully omitting to make a true entry of any material
317 fact pertaining to the business of such insurer in any book,
318 report, or statement of such insurer.

319 (f) **Stock operations and insurance company advisory**
320 **board contracts.** Issuing or delivering, or permitting agents,
321 officers, or employees to issue or deliver, agency company stock
322 or other capital stock, or benefit certificates or shares in any
323 corporation, or securities, or any special or any insurance
324 company advisory board contracts or other contracts of any kind
325 promising returns and profit as an inducement to insurance.



326 (g) **Unfair discrimination.** (i) Making or permitting
327 any unfair discrimination between individuals of the same class
328 and equal expectation of life in the rates charged for any
329 contract of life insurance or of life annuity or in the dividends
330 or other benefits payable thereon, or in any other of the terms
331 and conditions of such contract.

332 (ii) Making or permitting any unfair
333 discrimination between individuals of the same class and of
334 essentially the same hazard in the amount of premium, policy fees,
335 or rates charged for any policy or contract of accident or health
336 insurance or in the benefits payable thereunder, or in any of the
337 terms or conditions of such contract, or in any other manner
338 whatsoever.

339 (h) **Designation of agent, solicitor, or insurer.**
340 Requiring as a condition precedent to the purchase or the lending
341 of money upon the security of real or personal property that any
342 insurance covering such property or liability arising from the
343 ownership, maintenance, or use thereof, to be procured by or on
344 behalf of the vendee or by borrower in connection with such
345 purchase or loan, be so procured through any particular person,
346 agent, solicitor, or in any particular insurer.

347 This section shall not prevent the reasonable exercise by any
348 such vendor or lender of his right to approve or disapprove the
349 insurer selected to underwrite the insurance, and to determine the
350 adequacy of the insurance offered.

351 (i) **Policies containing concurrent causation**
352 **exclusions.** Issuing, delivering, or causing to be issued or
353 delivered, a homeowners or commercial property policy containing a
354 provision which excludes claims that arise out of concurrent
355 causation.

356 (j) Any violation of Sections 83-3-33 and 83-3-121,
357 Mississippi Code of 1972.



358 **SECTION 5.** Section 83-1-3, Mississippi Code of 1972, is
359 amended as follows:

360 83-1-3. (1) The chief officer of the department shall be
361 denominated the Commissioner of Insurance, who shall be elected at
362 the general election as other state officers, and who shall
363 possess the same qualifications as required for the Secretary of
364 State. His term of office shall be four (4) years, as that of
365 other state officials. No person shall be Commissioner of
366 Insurance who is in any way connected with the management or
367 control of any company, corporation, association, or order
368 affected by this title, and his term of office shall immediately
369 cease if at any time he shall become so interested. Before
370 entering on the discharge of his duties, the commissioner shall
371 take the oath of office required of state officers and give a
372 corporate bond in favor of the state in the penal sum of
373 Twenty-five Thousand Dollars (\$25,000.00) in some company or
374 companies duly authorized to transact business in this state, to
375 be approved by the Governor and conditioned for the faithful
376 performance of the duties of said office during his term, which
377 bond and oath of office shall be filed with the Secretary of
378 State.

379 (2) No person seeking the elected office of Commissioner of
380 Insurance and no person serving as commissioner may receive,
381 accept or become the beneficiary of, directly or indirectly, any
382 contribution or gift of money or other thing of monetary value,
383 whether offered, received or accepted for campaign expenses under
384 Sections 23-15-801 et seq., or otherwise, from any insurance
385 company that is doing business in the State of Mississippi and
386 regulated by the commissioner or the Mississippi Department of
387 Insurance. Any person violating the provisions of this subsection
388 by giving or receiving such contribution or other thing of
389 monetary value shall be guilty of a felony, and upon conviction,
390 shall be punished by a fine of not less than One Thousand Dollars



391 (\$1,000.00) or by imprisonment in the custody of the Department of
392 Corrections for not more than three (3) years, or by both such
393 fine and imprisonment. In addition to the criminal penalties set
394 forth in this subsection, if the person violating the provisions
395 of this subsection is the commissioner, his term of office shall
396 immediately cease.

397 **SECTION 6.** The Attorney General of the State of Mississippi
398 shall submit Section 5 of this act, immediately upon approval by
399 the Governor, or upon approval by the Legislature subsequent to a
400 veto, to the Attorney General of the United States or to the
401 United States District Court for the District of Columbia in
402 accordance with the provisions of the Voting Rights Act of 1965,
403 as amended and extended.

404 **SECTION 7.** Sections 1 through 4 of this act shall take
405 effect and be in force from and after July 1, 2009. Section 5 of
406 the Voting Rights Act of 1965, as amended and extended.

