

By: Representatives Compretta, Bentz

To: Sel Cmte on Hurricane
RecoveryHOUSE BILL NO. 1319
(As Passed the House)

1 AN ACT TO PROVIDE THAT ANY INSURER PROVIDING A HOMEOWNERS
 2 PROTECTION POLICY, WIND POLICY, WINDSTORM POLICY, HURRICANE
 3 POLICY, OR LIKE POLICY FOR A DWELLING LOCATED IN THE STATE OF
 4 MISSISSIPPI WHICH EXEMPTS FLOOD DAMAGE FROM COVERAGE, WHETHER OR
 5 NOT DRIVEN BY WIND, MUST OBTAIN FROM THE INSURED A STATEMENT OF
 6 EXPLANATION OF FLOOD EXCLUSION; ANY INSURER PROVIDING A HOMEOWNERS
 7 PROTECTION POLICY, WIND POLICY, WINDSTORM POLICY, OR LIKE POLICY,
 8 FOR A DWELLING LOCATED IN THE STATE OF MISSISSIPPI, WHICH EXEMPTS
 9 FROM COVERAGE DAMAGES CAUSED BY AN EARTHQUAKE SHALL OBTAIN FROM
 10 THE INSURED A "STATEMENT OF EXPLANATION OF EARTHQUAKE EXCLUSION;
 11 TO PROVIDE THAT SUCH STATEMENT MUST BE IN WRITING AND EXECUTED BY
 12 THE INSURED IN WHICH THE INSURED ACKNOWLEDGES AN UNDERSTANDING
 13 THAT SUCH HOMEOWNERS PROTECTION POLICY DOES NOT PROVIDE FOR FLOOD
 14 OR EARTHQUAKE PROTECTION; TO PROVIDE CIVIL PENALTIES FOR FAILURE
 15 TO COMPLY WITH THE PROVISIONS OF THIS ACT; AND FOR RELATED
 16 PURPOSES.

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

18 **SECTION 1.** As used in this act, the following words and
 19 phrases shall have the meanings ascribed herein unless the context
 20 clearly indicates otherwise:

21 (a) "Commissioner" means the State Commissioner of
 22 Insurance.

23 (b) "Dwelling" means a structure and land located at
 24 the address stated on the insured's policy declaration which is
 25 covered under the policy.

26 (c) "Insurer" means an insurance company and any person
 27 authorized to represent the insurer with respect to a claim and
 28 who is acting within the scope of the person's authority.

29 **SECTION 2.** (1) An insurer providing a homeowners protection
 30 policy, wind policy, windstorm policy, hurricane policy, or like
 31 policy, for a dwelling located in the State of Mississippi which
 32 exempts from coverage damages caused by a flood, including, but
 33 not limited to, surface water, storm surge, rising water from a
 34 storm, waves, tidal water or overflow of any body of water, or

35 spray from any of these, whether or not driven by wind, shall
36 obtain from the insured a "statement of explanation of flood
37 exclusion."

38 (2) An insurer providing a homeowners protection policy,
39 wind policy, windstorm policy, or like policy, for a dwelling
40 located in the State of Mississippi, which exempts from coverage
41 damages caused by an earthquake shall obtain from the insured a
42 "statement of explanation of earthquake exclusion."

43 (3) A statement of explanation of either flood or earthquake
44 exclusion shall be in a written form prescribed by the
45 commissioner and executed by the insured in which the insured
46 acknowledges an understanding that such homeowners protection
47 policy does not provide for flood or earthquake protection, as the
48 case may be. The statement is to explicitly list the stated terms
49 if such occasions or situations are excluded under the policy.
50 The statement is to be separate and apart from the policy and is
51 to be typed in bold print with no smaller than ten-point type.
52 The statement is to be executed by the insured before the insured
53 pays the initial premium and is to be obtained every three (3)
54 years thereafter on the anniversary date of the policy's purchase.
55 Execution by the insured is not delegable to the insurer or any
56 representative of the insurer. Failure or refusal of an insured
57 to execute the statement, either at the initial time the policy is
58 purchased or on a third-year anniversary date as required in this
59 provision, shall not be grounds for the insurer to cancel the
60 policy. Failure or refusal of an insured to execute the statement
61 on a third-year anniversary date shall not constitute a violation
62 of this act on the part of the insurer, provided that the insurer
63 has provided the insured with information explaining that
64 execution of the statement is required under this act at least
65 sixty (60) days before each third-year anniversary date. The
66 notification to the insured by the insurer of the requirement to
67 execute the statement on each third anniversary date of the

68 policy's purchase shall be in a written form prescribed by the
69 commissioner. The insured shall be considered notified under this
70 provision if the written notice is deposited by the insurer in the
71 United States mail and is affixed with first class postage. Any
72 claim that the notice was not in fact received by the insured
73 shall not be grounds to allege that an insurer has violated this
74 act.

75 If the insurance company is responsible for mailing the
76 notification to the insured, then the agent or other person
77 representing the insurance company with respect to the purchase or
78 renewal of the policy shall not be subject to any civil penalty
79 under this act.

80 **SECTION 3.** Any insurer required to obtain a statement of
81 explanation of flood exclusion or a statement of explanation of
82 earthquake exclusion under this act who fails to secure such
83 statement shall be subject to a civil penalty to be assessed by
84 the commissioner for each violation, in an amount to be determined
85 by the commissioner on a case by case basis, but not to exceed Ten
86 Thousand Dollars (\$10,000.00) per violation. Any civil penalty
87 levied and collected by the commissioner shall be deposited into
88 the State General Fund, and any penalty not voluntarily paid may
89 be collected, along with the expenses of collection including
90 attorney's fees, by civil suit brought by the commissioner or the
91 Attorney General. The civil penalties assessed against an insurer
92 under this act may not be included in determining the cost of a
93 premium charged to an insured for any policy as described in
94 Section 2 of this act.

95 **SECTION 4.** This act shall take effect and be in force from
96 and after July 1, 2006.