

By: Representatives Peranich, Fleming,
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To: Insurance

HOUSE BILL NO. 1237

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 HOMEOWNERS
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 23-15-193,
7 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE OFFICE OF
8 COMMISSIONER OF INSURANCE SHALL BE AN ELECTED POSITION AND THAT
9 THIS REQUIREMENT MAY NOT BE CHANGED OR AMENDED BY GENERAL LAW; TO
10 AMEND SECTION 83-1-3, MISSISSIPPI CODE OF 1972, TO PROHIBIT THE
11 COMMISSIONER OF INSURANCE FROM RECEIVING GIFTS OR CAMPAIGN
12 CONTRIBUTIONS FROM ANY INSURANCE COMPANY DOING BUSINESS AND
13 REGULATED WITHIN THE STATE OF MISSISSIPPI; AND FOR RELATED
14 PURPOSES.

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

16 **SECTION 1.** (1) The Mississippi State Legislature finds
17 that:

18 (a) The geographic location and coastline bordering the
19 Gulf of Mexico makes the State of Mississippi especially
20 vulnerable to damages caused by hurricanes;

21 (b) The state, and particularly the Mississippi Gulf
22 Coast, suffered enormous losses when Hurricane Katrina hit
23 Mississippi on August 29, 2005;

24 (c) In multitudes of instances, the homes of
25 Mississippi citizens were leveled to the ground leaving those
26 homeowners with only the slabs of their former homes; and

27 (d) The response of insurance companies providing
28 residential insurance coverage to those homeowners was
29 disappointing in that many companies were reported to have relied
30 on water damage exclusions contained in the policies to summarily
31 deny coverage, alleging that the damages to the properties of such
32 homeowners was caused by wind and not water.

33 (2) Despite warning bulletins from the Commissioner of
34 Insurance, reports of insurance companies summarily denying
35 coverage, based solely on water damage exclusions that may not
36 have been adequately proven, continue as of the effective date of
37 this act. On January 4, 2007, the Commissioner of Insurance filed
38 a new proposed regulation with the Secretary of State's Office
39 that outlines a homeowner insurance policyholder bill of rights,
40 on which public hearings will be held in due course; however, this
41 Legislature finds that the proposed regulation does not grant
42 adequate rights to Mississippi citizens. Therefore, the
43 Legislature is enacting the provisions of this act.

44 **SECTION 2.** (1) The Commissioner of Insurance shall:

45 (a) Require each property and casualty insurer writing
46 homeowners personal lines residential insurance property coverage,
47 including renters/tenants insurance and mobile home/manufactured
48 housing property coverage, to attach a copy of the "Mississippi
49 Consumer Insurance Policyholder Bill of Rights" specified in
50 Section 3 of this act to any policy providing such coverage that
51 is sold to any person in the state.

52 (b) Provide a toll-free telephone number, toll-free
53 facsimile number and the necessary forms to contact the
54 Mississippi Department of Insurance to obtain information about
55 any of the rights specified in Section 3 of this act or to make a
56 complaint based on any of the rights enumerated in Section 3 of
57 this act.

58 (c) Make an annual report to all Mississippi residents,
59 by means of Internet access or providing paper copies of the
60 report to any resident requesting same, evaluating the performance
61 of insurance companies offering the types of insurance described
62 in paragraph (a), with regard to property claims based on damage
63 incurred within the state, including the number of insurance
64 claims paid, the total dollar amount of claims paid, the number of

65 claims denied, and the number of claims filed against each such
66 insurance company.

67 (2) The bill of rights described in Section 3 of this act
68 shall supercede any bill of rights pertaining to the same subject
69 matter that may be promulgated by the Commissioner of Insurance.

70 **SECTION 3.** The following shall be attached to every policy
71 providing residential insurance property coverage, including
72 renters/tenants insurance and mobile home/manufactured housing
73 property coverage, that is sold in this state:

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

75 This Bill of Rights is a summary of your rights and does not
76 become a part of your policy. The Mississippi Legislature adopted
77 the Bill of Rights and requires insurance companies to provide you
78 a copy when they issue your policy.

79 Mississippi law gives you certain rights regarding insurance
80 companies providing residential insurance property coverage,
81 including renters/tenants insurance and mobile home/manufactured
82 housing property coverage, that are regulated within the state.
83 This Bill of Rights identifies your rights specified by this
84 statute, but it does not include all your rights. If your agent,
85 company or adjuster tells you that one of these rights does not
86 apply to you, contact the Mississippi Department of Insurance.

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

- 90
- 91 • Your rights as an insurance consumer;
 - 92 • The license status of an insurance company or agent;
 - 93 • The financial condition of an insurance company;
 - 94 • The complaint ratio and type of consumer complaints
94 filed against an insurance company;
 - 95 • The use of credit information by insurance companies,
96 including which insurance companies use it and access to each
97 company's credit scoring model;

98 • An insurance company's rates filed with the state;
99 • An insurance company's underwriting guidelines
100 (subject to any exemptions contained in the Mississippi Public
101 Records Act of 1983).

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

103 1. **PROHIBITED STATEMENTS.** Your insurance company or agent
104 is prohibited from making false, misleading, or deceptive
105 statements to you relating to insurance.

106 2. **LENDER-REQUIRED INSURANCE.** A lender cannot require you
107 to purchase insurance on your property in an amount that exceeds
108 the replacement cost of the property and its contents as a
109 condition of financing or providing other financing arrangements
110 for the property, regardless of the amount of the mortgage or
111 other financing arrangements. In determining the replacement cost
112 of the dwelling, a lender cannot include the fair market value of
113 the land on which a dwelling is located.

114 3. **EXCESS LIMITS.** An insurer or agent cannot require you to
115 purchase insurance for coverage limits greater than the limits
116 required by law or require you to purchase other types of coverage
117 as a condition of offering insurance or continued insurance to
118 you.

119 4. **CREDIT INFORMATION.** An insurance company cannot deny you
120 insurance solely on the basis of credit information. Insurers who
121 use credit information must also consider other underwriting
122 factors independent of credit information when deciding whether to
123 offer coverage.

124 5. **PAYMENT PLANS.** You have the right to pay your insurance
125 premium in installments. Insurance companies may charge a
126 reasonable fee for each installment. Your initial down payment on
127 a premium cannot exceed the cost of two (2) months of coverage.
128 For a twelve-month policy, you have the right to pay the balance
129 in at least ten (10) equal monthly installments.

130 **6. WINDSTORM COVERAGE.** For property located in areas
131 designated by the commissioner in certain counties on or near the
132 Coast, you have the right to buy windstorm and hail coverage from
133 the Mississippi Windstorm Underwriting Association created under
134 Section 83-34-1 et seq., Mississippi Code of 1972. Your property
135 must meet certain requirements, and the basic coverage is limited
136 to a maximum amount set each year by the Commissioner of
137 Insurance. This right applies whether or not you buy other
138 insurance for your house. In all other counties your homeowners
139 or dwelling policy includes this coverage.

140 **7. EXPLANATION OF DENIAL.** Upon request, you have the right
141 to be told in writing why you have been denied coverage. The
142 written statement must fully explain the decision, including the
143 precise incidents, circumstances, or risk factors that
144 disqualified you. It must also state the sources of information
145 used.

146 **NOTE:** The obligation to provide a written explanation
147 applies to insurance companies directly. An independent agent has
148 a specific duty to quote the lowest possible rate to a consumer or
149 to provide a written statement explaining why the agent did not
150 offer the consumer the lowest possible rate.

151 **8. NOTICE OF REDUCED COVERAGE.** If an insurer uses an
152 endorsement to reduce the amount of coverage provided by your
153 policy, the insurer must give you a written explanation of the
154 change made by the endorsement. The insurer must provide the
155 explanation before the effective date of the new or renewal
156 policy. An insurance company cannot reduce coverage during the
157 policy period unless you request the change. If you request the
158 change, the company is not required to provide notice.

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

163 **10. LIMITATION ON CANCELLATION.** After your initial policy
164 with your company has been in effect for sixty (60) days or more,
165 that insurance company cannot cancel your policy unless:

- 166 • You do not pay your premium when due;
- 167 • You file a fraudulent claim;
- 168 • The Mississippi Department of Insurance determines
169 that the continuation of the policy would result in violation of
170 insurance laws.

171 **11. RIGHT TO PRIVACY.** You have the right to prevent an
172 insurance company, agent, adjuster or financial institution from
173 disclosing your personal financial information to companies that
174 are not affiliated with the insurance company or financial
175 institution. Some examples are income, social security number,
176 credit history and premium payment history. If you apply for a
177 policy, the insurance company or financial institution must notify
178 you if it intends to share financial information about you and
179 give you at least thirty (30) days to refuse. This refusal is
180 called "opting out."

181 **12. POLICYHOLDER'S RIGHT TO CANCEL.** You have the right to
182 cancel your policy at any time and receive a refund of the
183 remaining premium. The refund will be paid to you unless your
184 premium was financed through a premium finance company, in which
185 case, the refund will be paid to the premium finance company to
186 reduce the amount you owe on your loan.

187 **13. NOTICE OF NONRENEWAL.** If the insurance company does not
188 mail you notice of nonrenewal at least thirty (30) days before
189 your policy expires, you have the right to require the insurance
190 company to renew your policy.

191 **14. EXPLANATION OF CANCELLATION OR NONRENEWAL.** Upon
192 request, you have the right to a written explanation of an
193 insurance company's decision to cancel or not renew your policy.
194 The written statement must fully explain the decision, including
195 the precise incidents, circumstances, or risk factors that

196 disqualified you. It must also state the sources of information
197 used.

198 **15. NOTICE OF CHANGE IN POLICY FORM.** Your insurer must
199 notify you in writing of any difference between your current
200 policy and each policy offered to you when the policy renews.

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

202 **16. FAIR TREATMENT.** You have the right to be treated fairly
203 and honestly when you make a claim. If you believe an insurance
204 company has treated you unfairly, call the Mississippi Department
205 of Insurance at [insert toll-free telephone number of the
206 Mississippi Department of Insurance] or download a complaint form
207 from the Mississippi Department of Insurance's Web site. You can
208 complete a complaint form on line via the Internet or fax it to
209 the department at [insert toll-free fax number of the Mississippi
210 Department of Insurance].

211 **17. EXPLANATION OF CLAIM DENIAL.** Your insurance company
212 must tell you in writing why your claim or part of your claim was
213 denied.

214 **18. SETTLEMENT OFFER.** You have the right to reject any
215 settlement amount, including any unfair evaluation, offered by the
216 insurance company.

217 **19. TIME FRAMES FOR CLAIM PROCESSING AND PAYMENT.** When you
218 file a claim on your own policy, you have the right to have your
219 claim processed and paid promptly. If the insurance company fails
220 to meet required claims processing and payment deadlines, you have
221 the right to collect eighteen percent (18%) annual interest and
222 attorney's fees in addition to your claim amount.

223 Generally, within fifteen (15) **calendar** days, your insurance
224 company must acknowledge receipt of your claim and request any
225 additional information reasonably related to your claim. Within
226 fifteen (15) **business** days after receipt of all requested
227 information, the company must approve or deny your claim in
228 writing. The insurance company may extend this deadline up to

229 thirty (30) days if it notifies you that more time is needed and
230 tells you why. After notifying you that your claim is approved,
231 your insurance company must pay the claim within five (5) **business**
232 days. If your claim results from a weather-related catastrophe or
233 other major natural disaster as defined by the Commissioner of
234 Insurance, your insurance company may take forty-five (45)
235 additional **calendar** days to approve or deny your claim and fifteen
236 (15) additional **calendar** days to pay your claim.

237 **20. INFORMATION NOT REQUIRED FOR PROCESSING A CLAIM.** You
238 have the right to refuse to provide your insurance company with
239 information that does not relate to your claim. In addition, you
240 may refuse to provide your federal income tax records, unless your
241 insurer gets a court order or your claim involves lost income or a
242 fire loss.

243 **21. EQUAL TREATMENT.** Unless based on sound actuarial
244 principles, an insurance company may not treat you differently
245 from other individuals of the same class and essentially the same
246 hazard. If you sustain economic damages as a result of such
247 unfair discrimination, you have the right to sue that insurance
248 company. If your suit prevails, you may recover economic damages,
249 court costs and attorney and necessary expert witness fees. If
250 the court finds the insurance company knowingly violated your
251 rights, it may award up to an additional Two Hundred Fifty
252 Thousand Dollars (\$250,000.00) per claimant. You must file the
253 suit on or before the second anniversary of the date you were
254 denied insurance or the unfair act occurred or the date you
255 reasonably should have discovered the occurrence of the unfair
256 act. If the court determines your suit was groundless and you
257 brought the lawsuit in bad faith, or brought it for the purposes
258 of harassment, you will be required to pay the insurance company's
259 court costs and attorney's fees.

260 **22. FILING COMPLAINTS OR LAWSUITS.** You have the right to
261 complain to the Mississippi Department of Insurance about any

262 insurance company and/or insurance matter and to receive a prompt
263 investigation and response to your complaint. If you sue to
264 recover under your insurance policy, the insurance company has the
265 burden of proof as to the application of any **exclusion** in the
266 policy and any **exception** to or other avoidance of coverage claimed
267 by the insurer."

268 **SECTION 4.** (1) In any civil action against a property and
269 casualty insurer under an insurance policy providing homeowners
270 personal lines residential insurance property coverage, including
271 renters/tenants insurance and mobile home/manufactured housing
272 property coverage, by the policyholder under the policy for
273 failure of the insurer to pay a lawful claim made under the
274 policy, including any damages related to the failure to pay, the
275 insurer has the burden of proving by a preponderance of clear and
276 convincing evidence that any exclusion in the policy, and any
277 exception to or other avoidance of coverage by the insurer,
278 applies to the cause of action.

279 (2) The provisions of this section shall apply to any action
280 filed on or after the effective date of this act, regardless of
281 the date that the cause of such action may have accrued.

282 **SECTION 5.** Section 23-15-193, Mississippi Code of 1972, is
283 amended as follows:

284 23-15-193. At the election in 1995, and every four (4) years
285 thereafter, there shall be elected a Governor, Lieutenant
286 Governor, Secretary of State, Auditor of Public Accounts, State
287 Treasurer, Attorney General, three (3) public service
288 commissioners, three (3) Mississippi transportation commissioners,
289 Commissioner of Insurance, Commissioner of Agriculture and
290 Commerce, Senators and members of the House of Representatives in
291 the Legislature, district attorneys for the several districts,
292 clerks of the circuit and chancery courts of the several counties,
293 as well as sheriffs, coroners, assessors, surveyors and members of
294 the boards of supervisors, justice court judges and constables,

295 and all other officers to be elected by the people at the general
296 state election. All such officers shall hold their offices for a
297 term of four (4) years, and until their successors are elected and
298 qualified. The state officers shall be elected in the manner
299 prescribed in Section 140 of the Constitution. The office of
300 Commissioner of Insurance shall be an elected office, and this
301 requirement may not be amended or changed by general law.

302 **SECTION 6.** Section 83-1-3, Mississippi Code of 1972, is
303 amended as follows:

304 83-1-3. (1) The chief officer of the department shall be
305 denominated the Commissioner of Insurance, who shall be elected at
306 the general election as other state officers, and who shall
307 possess the same qualifications as required for the Secretary of
308 State. His term of office shall be four (4) years, as that of
309 other state officials. No person shall be Commissioner of
310 Insurance who is in any way connected with the management or
311 control of any company, corporation, association, or order
312 affected by this title, and his term of office shall immediately
313 cease if at any time he shall become so interested. Before
314 entering on the discharge of his duties, the commissioner shall
315 take the oath of office required of state officers and give a
316 corporate bond in favor of the state in the penal sum of
317 Twenty-five Thousand Dollars (\$25,000.00) in some company or
318 companies duly authorized to transact business in this state, to
319 be approved by the Governor and conditioned for the faithful
320 performance of the duties of said office during his term, which
321 bond and oath of office shall be filed with the Secretary of
322 State.

323 (2) No person seeking the elected office of Commissioner of
324 Insurance and no person serving as commissioner may receive,
325 accept or become the beneficiary of, directly or indirectly, any
326 contribution or gift of money or other thing of monetary value,
327 whether offered, received or accepted for campaign expenses under

328 Sections 23-15-801 et seq., or otherwise, from any insurance
329 company that is doing business in the State of Mississippi and
330 regulated by the commissioner or the Mississippi Department of
331 Insurance. Any person violating the provisions of this subsection
332 by giving or receiving such contribution or other thing of
333 monetary value shall be guilty of a felony, and upon conviction,
334 shall be punished by a fine of not less than One Thousand Dollars
335 (\$1,000.00) or by imprisonment in the custody of the Department of
336 Corrections for not more than three (3) years, or by both such
337 fine and imprisonment. In addition to the criminal penalties set
338 forth in this subsection, if the person violating the provisions
339 of this subsection is the commissioner, his term of office shall
340 immediately cease.

341 **SECTION 7.** The Attorney General of the State of Mississippi
342 shall submit this act, immediately upon approval by the Governor,
343 or upon approval by the Legislature subsequent to a veto, to the
344 Attorney General of the United States or to the United States
345 District Court for the District of Columbia in accordance with the
346 provisions of the Voting Rights Act of 1965, as amended and
347 extended.

348 **SECTION 8.** This act shall take effect and be in force from
349 and after the date it is effectuated under Section 5 of the Voting
350 Rights Act of 1965, as amended and extended.