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Chapter No. 313
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SENATE BILL NO. 2738

Originated in Senate Jeanette Hughes Secretary

SENATE BILL NO. 2738

AN ACT TO AMEND SECTION 83-1-191, MISSISSIPPI CODE OF 1972, TO MAKE DISCRETIONARY, INSTEAD OF MANDATORY, CERTAIN DUTIES UNDER THE COMPREHENSIVE HURRICANE DAMAGE MITIGATION PROGRAM, AND TO CLARIFY THAT THE DEPARTMENT OF INSURANCE SHALL NOT BE PROHIBITED FROM ENTERING INTO AN AGREEMENT WITH ANY OTHER APPROPRIATE STATE AGENCY TO ASSIST WITH OR PERFORM THE DUTIES SET FORTH UNDER THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 83-1-191, Mississippi Code of 1972, is amended as follows:

83-1-191. (1) There is established within the Department of Insurance a Comprehensive Hurricane Damage Mitigation Program. This section does not create an entitlement for property owners or obligate the state in any way to fund the inspection or retrofitting of residential property or commercial property in this state. Implementation of this program is subject to the availability of funds that may be appropriated by the Legislature for this purpose. The program may develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that may include the following:

(a) **Cost-benefit study on wind hazard mitigation construction measures.** The performance of a cost-benefit study to establish the most appropriate wind hazard mitigation construction measures for both new construction and the retrofitting of existing construction for both residential and commercial facilities within the wind-borne debris regions of Mississippi as defined by the International Building Code. The recommended wind construction techniques shall be based on both the newly adopted Mississippi building code sections for wind load design and the

wind-borne debris region. The list of construction measures to be considered for evaluation in the cost-benefit study shall be based on scientifically established and sound, but common, construction techniques that go above and beyond the basic recommendations in the adopted building codes. This allows residents to utilize multiple options that will further reduce risk and loss and still be awarded for their endeavors with appropriate wind insurance discounts. It is recommended that existing accepted scientific studies that validate the wind hazard construction techniques benefits and effects be taken into consideration when establishing the list of construction techniques that homeowners and business owners can employ. This will ensure that only established construction measures that have been studied and modeled as successful mitigation measures will be considered to reduce the chance of including risky or unsound data that will cost both the property owner and state unnecessary losses. The cost-benefit study shall be based on actual construction cost data collected for both several types of residential construction and commercial construction materials, building techniques and designs that are common to the region. The study shall provide as much information as possible that will enhance the data and options provided to the public, so that homeowners and business owners can make informed and educated decisions as to their level of involvement. Based on the construction data, modeling shall be performed on a variety of residential and commercial designs, so that a broad enough representative spectrum of data can be obtained. The data from the study will be utilized in a report to establish tables reflecting actuarially appropriate levels of wind insurance discounts (in percentages) for each mitigation construction technique/combination of techniques. This report will be utilized as a guide for the Department of Insurance and the insurance industry for developing actuarially appropriate discounts, credits or other rate differentials, or appropriate reductions in

deductibles, for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. Additional data that will enhance the program, such as studies to reflect property value increases for retrofitting or building to the established wind hazard mitigation construction techniques and cost comparison data collected to establish the value of this program against the investment required to include the mitigation measures, also may be provided.

(b) **Wind certification and hurricane mitigation inspections.**

(i) Home-retrofit inspections of site-built, residential property, including single-family, two-family, three-family or four-family residential units, and a set of representative commercial facilities may be offered to determine what mitigation measures are needed and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage. A state program may be established within the Department of Insurance to provide homeowners and business owners wind certification and hurricane mitigation inspections. The inspections provided to homeowners and business owners, at a minimum, must include:

1. A home inspection and report that summarizes the results and identifies corrective actions a homeowner may take to mitigate hurricane damage.

2. A range of cost estimates regarding the mitigation features.

3. Insurer-specific information regarding premium discounts correlated to recommended mitigation features identified by the inspection.

4. A hurricane resistance rating scale specifying the home's current as well as projected wind resistance capabilities.

This data may be provided by trained and certified inspectors in standardized reporting formats and forms * * * to ensure all data collected during inspections is equivalent in style and content that allows construction data, estimates and discount information to be easily assimilated into a database. * * * Data pertaining to the number of inspections and inspection reports * * * may be stored in a state database for evaluation of the program's success and review of state goals in reducing wind hazard loss in the state.

(ii) To qualify for selection by the department as a provider of wind certification and hurricane mitigation inspections services, the entity shall, at a minimum, and on a form and in the manner prescribed by the commissioner:

1. Use wind certification and hurricane mitigation inspectors who:

a. Have prior experience in residential and/or commercial construction or inspection and have received specialized training in hurricane mitigation procedures through the state certified program. In order to qualify for training in the inspection process, the individual should be either a licensed building code official, a licensed contractor or inspector in the State of Mississippi, or a civil engineer.

b. Have undergone drug testing and background checks.

c. Have been certified through a state mandated training program, in a manner satisfactory to the department, to conduct the inspections.

d. Have not been convicted of a felony crime of violence or of a sexual offense; have not received a first-time offender pardon or nonadjudication order for a felony crime of violence or of a sexual offense; or have not entered a plea of guilty or nolo contendere to a felony charge of * * * violence or of a sexual offense.

e. Submit a statement authorizing the Commissioner of Insurance to order fingerprint analysis or any other analysis or documents deemed necessary by the commissioner for the purpose of verifying the criminal history of the individual. The commissioner shall have the authority to conduct criminal history verification on a local, state or national level, and shall have the authority to require the individual to pay for the costs of such criminal history verification.

2. Provide a quality assurance program including a reinspection component.

3. Have data collection equipment and computer systems, so that data can be submitted electronically to the state's database of inspection reports, insurance certificates, and other industry information related to this program. It is mandatory that all inspectors provide original copies to the property owner of any inspection reports, estimates, etc., pertaining to the inspection and keep a copy of all inspection materials on hand for state audits.

(c) **Financial grants to retrofit properties.** Financial grants may be used to encourage single-family, site-built, owner-occupied, residential property owners or commercial property owners to retrofit their properties to make them less vulnerable to hurricane damage.

(d) **Education and consumer awareness.** Multimedia public education, awareness and advertising efforts designed to specifically address mitigation techniques may be employed, as well as a component to support ongoing consumer resources and referral services. In addition, all insurance companies shall provide notification to their clients regarding the availability of this program, participation details, and directions to the state Web site promoting the program, along with appropriate contact phone numbers to the state agency administrating the program. The notification to the clients must be sent by the

insurance company within thirty (30) days after filing their insurance discount schedules with the Department of Insurance.

(e) **Advisory council.** There is created an advisory council to provide advice and assistance to the program administrator with regard to his or her administration of the program. The advisory council shall consist of:

(i) An agent, selected by the Independent Insurance Agents of Mississippi.

(ii) Two (2) representatives of residential property insurers, selected by the Department of Insurance.

(iii) One (1) representative of homebuilders, selected by the Home Builders Association of Mississippi.

(iv) The Chairman of the House Insurance Committee, or his designee.

(v) The Chairman of the Senate Insurance Committee, or his designee.

(vi) The Executive Director of the Mississippi Windstorm Underwriting Association, or his designee.

(vii) The Director of the Mississippi Emergency Management Agency, or his designee.

Members appointed under subparagraphs (i) and (ii) shall serve at the pleasure of the Department of Insurance. All other members shall serve as voting ex officio members. Members of the advisory council who are not legislators, state officials or state employees shall be compensated at the per diem rate authorized by Section 25-3-69, and shall be reimbursed in accordance with Section 25-3-41, for mileage and actual expenses incurred in the performance of their duties. Legislative members of the advisory council shall be paid from the contingent expense funds of their respective houses in the same manner as provided for committee meetings when the Legislature is not in session; however, no per diem or expense for attending meetings of the advisory council may be paid while the Legislature is in session. No advisory council

member may incur per diem, travel or other expenses unless previously authorized by vote, at a meeting of the council, which action shall be recorded in the official minutes of the meeting. Nonlegislative members shall be paid from any funds made available to the advisory council for that purpose.

(f) **Rules and regulations.** The Department of Insurance may adopt rules and regulations governing the Comprehensive Hurricane Damage Mitigation Program. The department also may adopt rules and regulations establishing priorities for grants provided under this section based on objective criteria that gives priority to reducing the state's probable maximum loss from hurricanes. However, pursuant to this overall goal, the department may further establish priorities based on the insured value of the dwelling, whether or not the dwelling is insured by the Mississippi Windstorm Underwriting Association and whether or not the area under consideration has sufficient resources and the ability to perform the retrofitting required.

(2) Nothing in this section shall prohibit the Department of Insurance from entering into an agreement with any other appropriate state agency to assist with or perform any of the duties set forth hereunder.

(3) This section shall stand repealed from and after July 1, 2012.

SECTION 2. This act shall take effect and be in force from and after its passage.

PASSED BY THE SENATE
February 3, 2010

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
February 25, 2010

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

GOVERNOR

3/9/10