

First Extraordinary Session, 2005

HOUSE BILL NO. 113

BY REPRESENTATIVE K. CARTER

ATTORNEY GENERAL: Authorizes the attorney general during declared emergencies to order insurance companies to cease and desist from canceling or nonrenewing homeowners' insurance policies (Item #33)

1 AN ACT

2 To enact R.S. 51:1422, relative to cease and desist orders for the attorney general; to provide
3 for unfair and deceptive trade practices; to provide for emergencies; to provide for
4 homeowners' insurance; to provide for cancellations; to provide for nonrenewals; to
5 provide for the authority of the attorney general; to provide for violations and
6 penalties; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 51:1422 is hereby enacted to read as follows:

9 §1422. State of emergency; extraordinary powers; homeowners' insurance

10 A. The legislature finds that conditions giving rise to the necessity of a
11 declaration of emergency or disaster by the governor, particularly due to natural
12 disasters such as hurricanes, also give rise to the need for extraordinary powers by the
13 attorney general to protect the citizens of Louisiana from practices by commercial
14 entities that may be detrimental to the basic needs of our citizens. The legislature
15 further finds that the practice of canceling or nonrenewing homeowners' insurance
16 policies by insurance companies during periods of emergencies and recovery from the
17 emergency conditions may be detrimental to the citizens of Louisiana and that this
18 necessitates authorizing the attorney general to issue cease and desist orders to stop
19 those practices.

1 B. No insurer who was doing business in this state on August 28, 2005, shall
2 cancel or nonrenew any personal lines property insurance policy in this state or issue
3 any notice of cancellation or nonrenewal on the basis of the risk of hurricane claims,
4 unless authorized by the attorney general in writing. All cancellations or nonrenewals
5 must be substantiated by underwriting rules filed with and accepted for use by the
6 Department of Insurance, unless inconsistent with the provisions of this Section.

7 C. As used in this Section, the term "personal lines residential property
8 insurance" includes the following coverages: homeowners'; condominium unit
9 owners'; mobile homeowners', including mobile home coverage written on auto
10 physical damage type policies; and dwelling fire including rental dwelling coverages.
11 This Section does not apply to commercial coverages and does not apply to
12 commercial or private passenger auto coverages.

13 D. This Section shall not apply if the insurer can affirmatively demonstrate
14 that the proposed cancellation or nonrenewal is necessary for the insurer to avoid an
15 unreasonable risk of insolvency. Any determination shall consider the insurer's size,
16 its market concentration, its general financial condition, the degree to which personal
17 lines residential property insurance comprises its insurance business in this state, and
18 the way in which these factors impact on the risk to the insurer's solvency in relation
19 to its probable maximum loss in the event of a hurricane. In no event shall any
20 insurer be required to risk more than its total surplus to any objectively defined
21 probable maximum loss resulting from one Louisiana hurricane loss event. In the
22 event it is determined that the limitation does not apply in whole or in part and the
23 department further determines that the exception affects more than one percent of any
24 class of business within the personal lines residential property insurance market in
25 this state, the attorney general shall in the order set forth a nonrenewal, cancellation,
26 or withdrawal schedule that avoids unnecessary market disruption or exposure to the
27 insureds statewide or in any locale. The attorney general shall respond to an
28 application for a waiver under this Section with a final decision within sixty days after
29 it receives the application for a waiver.

1 E. The Department of Insurance shall provide the attorney general with the
2 expertise needed to administer the provisions of this Section.

3 F. The provisions of this Section may be implemented only by written cease
4 and desist order of the attorney general that is issued during the period of an
5 emergency or disaster declared by the governor. The event giving rise to the
6 declaration shall be one that causes damages in this state that are covered by personal
7 lines property insurance policies. Such order shall expire and terminate no later than
8 one hundred eighty days from the date of issuance, unless an earlier date is provided
9 for in the order.

10 G. Any violation of this Section or an order of the attorney general shall be
11 an unfair or deceptive act or practice and shall subject the violator to any and all
12 actions and penalties provided for in this Chapter.

13 Section 2. This Act shall become effective upon signature by the governor or, if not
14 signed by the governor, upon expiration of the time for bills to become law without signature
15 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
16 vetoed by the governor and subsequently approved by the legislature, this Act shall become
17 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

K. Carter

HB No. 113

Abstract: Authorizes the attorney general to issue cease and desist orders to stop the practice of canceling or nonrenewing homeowners' policies due to the risk of hurricanes.

Proposed law provides for legislative findings and purposes that necessitates empowering the attorney general to issue cease and desist orders to stop the practice of canceling and nonrenewing homeowners' insurance policies.

Proposed law prohibits insurers who were doing business on August 28, 2005, from canceling or nonrenewing homeowners' policies on the basis of hurricane risk unless authorized by the attorney general. Requires cancellations and nonrenewals to be substantiated in writing by underwriting rules filed with and accepted by the department.

Proposed law applies to "personal lines residential property insurance", which includes homeowners', condominium unit owners', and mobile homeowners'. Excludes commercial and auto coverages.

Proposed law provides that the prohibition on cancellation and nonrenewal does not apply if the insurer demonstrates it is necessary to avoid unreasonable risk of insolvency.

Proposed law provides that insurers shall not be required to risk more than its total surplus to a probable maximum loss from one Louisiana hurricane loss event.

Proposed law requires the attorney general, under certain circumstances, to order a withdrawal schedule for an insurance company that avoids unnecessary market disruption or exposure to the insureds.

Proposed law requires the attorney general to respond within 60 days to an application for a waiver.

Proposed law requires the Department of Insurance to provide the expertise needed to administer proposed law.

Proposed law provides that it can only be implemented by written cease and desist order by the attorney general issued during the period of a gubernatorially declared emergency or disaster.

Proposed law provides that the cease and desist order terminates 180 days from issuance unless an earlier date is specified in the order.

Proposed law provides that a violation of proposed law or an order of the attorney general is an unfair and deceptive act or practice.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 51:1422)