

Regular Session, 2006

ACT No. 802

HOUSE BILL NO. 1302

BY REPRESENTATIVES BURNS, BAUDOIN, BRUCE, K. CARTER, DARTEZ, GRAY,
HARRIS, HEBERT, HONEY, LABRUZZO, LANCASTER, ODINET, PIERRE,
RICHMOND, JACK SMITH, AND TOWNSEND AND SENATOR MURRAY

1 AN ACT

2 To provide relative to the interruption of prescription for property damage claims related to
3 Hurricanes Katrina and Rita; to establish legislative intent; to provide for the
4 interruption of prescription for one year; to authorize suit for declaratory judgment;
5 to provide an emergency effective date; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. The Louisiana Legislature finds that Hurricanes Katrina and Rita created
8 a statewide emergency and inflicted immediate undue and unimaginable hardships on
9 hundreds of thousands of Louisiana citizens, including forced evacuation or rescue,
10 difficulty in finding shelter, multiple relocations, and coping with the death or uncertainty
11 of the whereabouts of loved ones. The legislature further notes that subsequent hardships
12 have included delayed reentry into hurricane-affected areas, massive clean-up and debris
13 removal efforts, the attempted salvage of personal effects, the severity of the damage to
14 homes and businesses and difficulty in determining the extent of the damage, the difficulty
15 of obtaining information regarding rebuilding, the loss of personal legal documents including
16 insurance contracts, the complexity of legal issues, discerning the distinctions between flood
17 insurance, hurricane insurance, and homeowner's insurance and understanding how these
18 types of coverage work together, possible multiple insurance carriers, the limited availability
19 of adjusters and the time constraints on such adjusters in processing the more than one and
20 one-half million claims filed for Hurricane Katrina and Hurricane Rita combined, complex
21 negotiations with insurance companies, and decisions as to whether to enter into mediation
22 offered by the Louisiana Department of Insurance. The legislature further recognizes
23 additional and ongoing emotional and psychological hardships, including the difficulties
24 imposed by remaining separated from family members, facing the devastating loss of life

1 and property, being displaced from one's home, neighborhood, school, church, and
2 community, and post-traumatic stress and depression as evidenced by continued mental
3 anguish and related suicides. This uncodified law is enacted to prevent additional hardship
4 to property owners who have already been overwhelmed and daunted by these hardships and
5 have endured so much grief and suffering and who soon will be forced to decide whether to
6 institute a lawsuit to preserve their cause of action, possibly causing unnecessary litigation
7 or compromising ongoing settlement discussions and, as such, shall be liberally construed
8 to effect its purposes.

9 Section 2. Civil Code Article 3467 provides that prescription runs against all persons
10 unless exception is established by legislation. Additionally, Louisiana jurisprudence has
11 recognized the ancient civilian doctrine of *Contra non valentem agere nulla currit*
12 *praescriptio*, based in equity and fairness, to prevent the running of liberative prescription
13 in certain cases. Recognizing the magnitude of the unprecedented destruction caused by
14 Hurricanes Katrina and Rita, the breaches in the levee systems, the widespread and life-
15 altering hardships suffered as a result of the hurricanes and the devastation, and the need for
16 equity and fairness particularly in these trying times, the Louisiana Legislature hereby
17 establishes an additional, limited exception to the running of prescription and, as such,
18 prevents the running of prescription for one year on any claim seeking to recover for loss or
19 damage to property against an insurer on any homeowners' insurance policy, including
20 tenant and condominium policies, personal property insurance policy, commercial property
21 insurance policy, or flood insurance policy, on any automobile or fleet policy for loss or
22 damage to an insured's vehicle caused by flood, wind, or rain, or on any policy for loss or
23 damage to crop or livestock, when such loss or damage was caused by or as a result of
24 Hurricane Katrina or Hurricane Rita, or both. Accordingly, any such claim for damages
25 caused by Hurricane Katrina shall be instituted on or before August 30, 2007, and any suit
26 not instituted within that time and any claims relating thereto shall be forever barred unless
27 a contract or the parties thereto provide for a later date. Any such claim for damages caused
28 by Hurricane Rita shall be instituted on or before September 25, 2007, and any suit not
29 instituted within that time and any claims relating thereto shall be forever barred unless a
30 contract or the parties thereto provide for a later date.

1 Section 3. The legislature finds and declares that questions of law may be raised by
2 persons, agencies, or industries with respect to the constitutionality of some or all the
3 provisions of this Act, and the public welfare requires that such questions of law be resolved
4 with expedition prior to such time as insurance claims would otherwise be forever barred.
5 The legislature further finds that the remedy of declaratory judgment to determine the
6 constitutionality of the provisions of this Act should be immediately made available in order
7 to avoid confusion by the public. Therefore, any domiciliary in this state may institute, on
8 or before ten days after the effective date of this Act, an action in the Nineteenth Judicial
9 District Court seeking a declaratory judgment to determine the constitutionality of the
10 provisions of this Act or the constitutionality of Acts 2006, No. ___ that originated as House
11 Bill No. 1289 or Acts 2006, No. _____ that originated as Senate Bill No. 740, and such
12 petition for declaratory judgment may seek to determine the constitutionality of any or all
13 of these Acts. Cumulation of any of the actions filed pursuant to this Section is permissible.
14 The attorney general and the commissioner of insurance shall be served with a copy of the
15 proceeding and be entitled to be heard. In the interest of further expediting this procedure,
16 the Nineteenth Judicial District Court, First Circuit Court of Appeal, if applicable, and
17 Louisiana Supreme Court are urged to minimize all unnecessary delays and may suspend all
18 applicable rules of court in contravention hereof and for this limited purpose.

19 Section 4. This Act shall become effective upon signature by the governor or, if not
20 signed by the governor, upon expiration of the time for bills to become law without signature
21 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
22 vetoed by the governor and subsequently approved by the legislature, this Act shall become
23 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____