



LOUISIANA DEPARTMENT OF INSURANCE

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ADVISORY LETTER NO. 07-04

September 20, 2007

TO: ALL PROPERTY AND CASUALTY INSURERS ENGAGED IN THE BUSINESS OF INSURANCE IN THE STATE OF LOUISIANA AND ALL PROPERTY AND CASUALTY INSURERS REGULATED PURSUANT TO THE LOUISIANA INSURANCE CODE (LSA-R.S. 22:1 ET SEQ.)

RE: 2007 ACTS OF THE LOUISIANA LEGISLATURE

The 2007 Regular Session of the Louisiana Legislature resulted in the enactment of legislation that will have a significant impact on the operations of the Louisiana Department of Insurance (LDOI). In order to ensure that the insurance industry is aware of the newly enacted provisions of the Louisiana Insurance Code, the LDOI hereby issues Advisory Letter No. 07-04. The following content serves as a summary of the newly enacted legislation.

LEGISLATION AFFECTING THE FILING OF INSURANCE RATES

Act 235 of the 2007 Regular Session: Adjustment of assessments imposed upon insurers and insureds by the Louisiana Citizens Property Insurance Corporation

Act 235 of the 2007 Regular Session, which will be codified as LSA-R.S. 22:1430.10, provides that the Louisiana Citizens Property Insurance Corporation shall adjust emergency assessments and regular assessments, accordingly, based upon the cancellation of a policy, or addition made to a policy, or the making of any change to an existing policy that may result in an increase or a decrease in its premium. Adjustments to either type of assessment shall be computed on a pro-rata basis for the remaining term of the policy.

Act 323 of the 2007 Regular Session: Premium discounts and credits given for damage mitigation and compliance with the State of Louisiana Uniform Construction Code

Act 323 of the 2007 Regular Session, which will be codified as LSA-R.S. 22:1426, provides that insurers shall submit rate filings to the LDOI that reflect the issuance of an actuarially justified discount, credit or adjustment in premium to those insured persons or entities that build or retrofit a structure to comply with the State Uniform Construction Code. Act 323 of the 2007 Regular Session also provides that insurers shall submit rate filings that reflect the issuance of an actuarially justified discount, credit or adjustment in the premium to those insured persons or entities that retrofit a structure with mitigation improvements or construction techniques that will reduce the potential amount of loss from a hurricane or windstorm. The LDOI is promulgating Regulation 94 to further clarify this provision. Proposed Regulation 94 will require insurers to submit new rate/rule and form filings to the LDOI that reflect the creation and implementation of a discount plan. Additionally, insurers will be required to create a wind mitigation certification form that will be completed by the insured and certified by a qualified professional. Qualified professionals will include building inspectors, registered/licensed architects, registered/licensed engineers and certified building code officials.

Act 459 of the 2007 Regular Session: Abolishment of the Louisiana Insurance Rating Commission and the implementation of a forty-five (45) day "File and Use" rate system

Act 459 of the 2007 Regular Session provides for the abolishment of the Louisiana Insurance Rating Commission (LIRC) effective January 1, 2008. Act 459 of the 2007 Regular Session calls for the transfer of the duties, powers and functions of the LIRC to the Louisiana Commissioner of Insurance (Commissioner). The Commissioner shall have the exclusive authority to "accept, review and approve" all insurance rate filings for all lines of property and casualty insurance. Additionally, all rate filings must be on file with the Commissioner for a period of forty-five (45) days before becoming effective. However, an insurer can, by written application, request an earlier effective date. If the Commissioner does not approve or disapprove a submitted rate filing within the forty-five (45) period after such filing is deemed complete, the filing will be deemed approved. However, such "deemed" approval is still subject to the review authority granted to the Commissioner. Act 459 of the 2007 Regular Session will not apply to filings for commercial lines of coverage as outlined in LSA-R.S. 22:1401.1. Additionally, all references made to the LIRC will be removed from the Louisiana Insurance Code. The LDOI Insurance Rating and Policy Form Filing Handbook will be updated to reflect appropriate filing instructions.

LEGISLATION AFFECTING THE FILING OF POLICY FORMS

Act 43 of the 2007 Regular Session: Provides an insurance policy may not limit the insured's right of action against the insurer to a period of less than two years

Act 43 of the 2007 Regular Session, which will be codified as LSA-R.S. 22:629(B) and LSA-R.S. 22:691(F), provides that no insurance contract delivered or issued for delivery in this state shall limit the insured's right of action against the insurer to a period of less than 24 months after the inception of the loss when the claim is a first-party claim and arises under a policy of burglary and forgery, glass, fire and extended coverage, steam boiler and sprinkler leakage, crop and livestock, inland marine and homeowners insurance. The prescriptive period for the standard fire insurance policy is also amended to 24 months for first-party claims. Policy form language shall be revised to correct any provisions that limit the insured's right of action to a period less than 24 months. The revised policy form language shall be attached at policy renewal and insurers shall comply with this law, regardless of current policy form language. The revised policy form language shall be submitted to the LDOI for approval no later than December 31, 2007.

Act 156 of the 2007 Regular Session: Provides for the protection of innocent co-insured's and the effect of misrepresentation of an insured to an insurer

Act 156 of the 2007 Regular Session, which will be codified as LSA-R.S. 22:615 and LSA-R.S. 22:692.1, provides for two major changes. First, LSA-R.S. 22:615 provides, with regard to a fire loss, that if the intentional acts of a named insured are determined to be the cause of the loss to the insured property, the intentional act or cause shall not be imputed to an innocent co-insured. In the case of arson, the policy proceeds may only be reduced by the proper interest attributable to the arsonist. In the case of multiple named insureds, an innocent insured shall receive his proportionate share of the policy proceeds. Second, LSA-R.S. 22:692.1 provides that the assertion of a defense of material misrepresentation made by an insurer against an insured, subsequent to a fire loss, shall not entitle the insurer to void total coverage of the policy based on such misrepresentation, unless a court determines and adjudicates that the subject insured was guilty of a material misrepresentation directly related to the coverage at issue. Such judicial determination and adjudication shall only apply to the claim that is the subject of the litigation and shall not apply retroactively to any prior claim submitted by an insured. This protection of innocent co-insureds and the effect of a material misrepresentation of an insured to an insurer has been the long standing position of the LDOI and is consistent with past and current policy form review procedures and requirements.

Act 381 of the 2007 Regular Session: Provides for changes in homeowners insurance policy deductibles

Act 381 of the 2007 Regular Session, which will be codified as LSA-R.S. 22:635.3(C) and LSA-R.S. 636.2(D), provides that an insurer is prohibited from cancelling, failing to renew, or increasing a policy deductible on a homeowners policy that has been in effect and renewed for more than three (3) years unless based upon nonpayment of premium, fraud of the insured, a material change in the risk being insured, two or more claims within a period of three (3) years, or if continuation of such policy endangers the solvency of the insurer. As used in these statutes, the phrase "two or more claims within a period of three (3) years" shall not include any claim for loss incurred or arising from an incident that qualifies as an "Act of God" incident. An "Act of God" incident is an incident due directly to forces of nature and exclusively without human intervention. Policy form language shall be revised accordingly. The revised policy form language shall be attached at policy renewal and the insurer shall be in compliance with this law, regardless of current policy form language. Specific cancellation or non-renewal provisions addressing policies that have been in effect for more than three (3) years shall clarify that cancellations or non-renewals will not be based upon a loss caused by an "Act of God." The revised policy form language shall be submitted to the Policy Forms Division for approval no later than December 31, 2007. This clarification of the "Act of God" incident is consistent with the long standing position of the LDOI.

LEGISLATION AFFECTING MISCELLANEOUS PROVISIONS

Act 222 of the 2007 Regular Session: Creation of the Office of Consumer Advocacy and the formal enactment of the Louisiana Policyholder Bill of Rights

Act 222 of the 2007 Regular Session, which will be codified as LSA-R.S. 36:681 and LSA-R.S. 36:696, provides for the creation of the Office of Consumer Advocacy within the LDOI. Moreover, Act 222 of the 2007 Regular Session states that this office of Consumer Advocacy shall be under the direction of a Deputy Commissioner of Consumer Advocacy, who will be appointed by the Commissioner. The duties of the Office of Consumer Advocacy will include, but not be limited to: 1) providing direct assistance to and advocacy for consumers upon request and 2) ensuring that insurers are in compliance with the Louisiana Policyholder Bill of Rights. The portion of Act 222 of the 2007 Regular Session that sets forth the provisions of the Louisiana Policyholder Bill of Rights will be codified as LSA-R.S. 22:1455. As stated in Act 222 of the 2007 Regular Session, the provisions of the Louisiana Policyholder Bill of Rights currently exist within various provisions of the Louisiana Revised Statutes. Therefore, the enactment of LSA-R.S. 22:1455 does not create additional causes of action or penalties.

Act 449 of the 2007 Regular Session: Provides for the option to exclude personal property coverage after a gubernatorially declared disaster

Act 449 of the 2007 Regular Session, which will be codified as LSA-R.S. 22:667.1, provides that in the gubernatorially declared disaster areas for Hurricane Katrina or Hurricane Rita, any insurance company that issues a homeowners policy which includes personal property coverage, except for rental insurance, must, upon the written request of the policyholder, offer one of the following options: (1) a homeowners policy that provides dwelling coverage without personal property coverage beginning July 20, 2007, or (2) a homeowners policy that allows for an exclusion of personal property coverage that will be accompanied by an appropriate reduction in premium beginning January 1, 2008. Such substitute policy or an exclusion of personal property coverage during the term of the policy shall not be considered a new policy. Act 449 of the 2007 Regular Session only applies to homeowners insurance policies written on structures that have been rendered uninhabitable by Hurricane Katrina or Hurricane Rita on the basis that these structures have sustained extensive damage to more than fifty percent of the structures' dwelling areas. In addition, the insurer may withdraw the exclusion or substitute policy after the covered structure has been repaired to the point that it is again habitable or the homeowners policy has been terminated by the insured.

CORRECTION RELATIVE TO ACT 449 OF THE 2007 REGULAR SESSION:

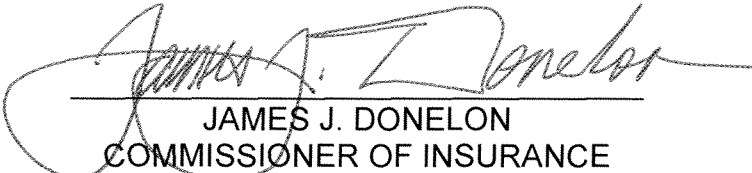
It has been discovered that the citation referencing a homeowners insurance policy in Act 449 of the 2007 Regular Session is in error. The correct citation should be **R.S. 22:6(15)**.

Copies of the aforementioned Acts can be obtained from the Louisiana Legislative website www.legis.state.la.us. For questions or comments, please contact:

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Baton Rouge, Louisiana, this 20th day of September, 2007



JAMES J. DONELON
COMMISSIONER OF INSURANCE