

Louisiana Property and Casualty Insurance Commission

Annual Report 2008 – 2009 Legislative Recommendations



**Louisiana Department of Insurance
James J. Donelon, Commissioner**

LOUISIANA DEPARTMENT OF INSURANCE

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State of the Market

In this challenging economy it is essential to have the necessary regulation available in order to protect consumers and maintain the financial stability of the insurance marketplace. It is imperative that our citizens have access to affordable automobile, property and workers' compensation insurance. Louisiana's conservative approach to the market has presented fewer hurdles for insurance companies and has also attracted new insurers to the state.

Competition exists in the auto insurance market even though the majority of business is concentrated with a few insurers. Consumers are able to "shop around" for an affordable rate in many cases. Preferred rates are available for those who qualify. According to the most recent figures from the National Association of Insurance Commissioners, Louisiana ranks third in the nation behind the District of Columbia and the state of New Jersey for combined average auto insurance premiums with costs at \$1,255. Our citizens pay approximately \$318 dollars more than the national average. The factors contributing to the higher auto rates are discussed in this report.

Living in one of the hurricane-prone states, homeowners insurance remains a constant issue for discussion and consideration. In 2007, rates were affected by the storm season of 2005. In 2008, while property insurance rates increased an average of three percent statewide, many consumers were hit with high named storm deductibles caused by Hurricanes Gustav and Ike. The most significant influence on property insurance rates in Louisiana is the threat of a major hurricane. The average cost for homeowners insurance in Louisiana is \$1,257. Louisiana ranks third in the nation behind Texas and Florida. The state has healthy competition in the voluntary market with the exception of the coastal parishes. Improved mitigation efforts and results initiated in these parishes are having a positive influence on rates and should open the market to broader competition. Even though rates may be high, at least companies are still writing policies rather than leaving the state.

The workers' compensation insurance market in Louisiana is healthy and for the third straight year shows a decline in rates based on the National Council on Compensation Insurance rate filings. In 2008, rates decreased 8.6 percent, which followed a 15.8 percent decrease in 2007. For 2009, the rates will decrease an average of 17.4 percent, due to the continuing decline in claim frequency. The leading cause of these rate reductions has been attributed to improved worker safety, resulting in fewer workplace injuries. The Department of Insurance estimates the total Louisiana workers' compensation market at \$1 billion in premiums with the state residual insurer serving approximately one-third of the market.

The approach in Louisiana must remain steadfast in dealing with critical property and casualty insurance issues in order to achieve additional capacity and greater stability in the marketplace.

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I. Brief Legislative History and Purpose

In 1997, the Louisiana Legislature created the Council on Automobile Insurance Rates and Enforcement (CAIRE) to undertake a comprehensive study and provide oversight and recommendations aimed at enforcement of those laws and programs that affect automobile insurance rates. CAIRE researched and studied many ideas that have been beneficial in the area of lowering automobile insurance rates.

Due to CAIRE's thorough studies of law enforcement and the automobile insurance situation in the state, the Louisiana Legislature expanded CAIRE's realm of study in 2001 to include not only automobile insurance but also homeowners insurance and workers' compensation insurance, thus forming the Louisiana Property and Casualty Insurance Commission (Act No. 187 of the 2001 Regular Session). The Louisiana Property and Casualty Insurance Commission (LPCIC), which consists of three ad-hoc committees (Automobile, Homeowners and Workers' Compensation) has been given the task of reviewing and examining the availability and affordability of property and casualty insurance in the state of Louisiana.

II. Membership

During the 2003 Regular Legislative Session, Act No. 590 amended and changed the makeup of the Louisiana Property and Casualty Insurance Commission. The Act also designated the ad-hoc committee memberships.

The amended Commission membership consists of a 22-member panel. A representative of law enforcement or his designee is now selected jointly by the superintendent of the Louisiana State Police, the secretary of the Department of Public Safety and Corrections, the president of the Louisiana Association of Chiefs of Police and the president of the Louisiana

Sheriffs' Association. Representatives of two national trade organizations and one state organization were added to the membership.

During the 2007 Regular Session, Act No. 459 abolished the Louisiana Insurance Rating Commission effective January 1, 2008, therefore eliminating their representative from the LPCIC. Act No. 459 provided an additional appointee for the Commissioner of Insurance. Revised Statute 22:15 is now renumbered as R.S. 22:2171 by Acts 2008, No. 415, §1, effective January 1, 2009.

The Commission is composed of members of the Legislature, designees from the Office of the Governor, Insurance Commissioner, Attorney General, assistant secretary representing the Office of Motor Vehicles, Louisiana Highway Safety Commission, Louisiana District Attorneys Association, along with representatives of the Independent Insurance Agents/Brokers of Louisiana, Professional Insurance Agents of Louisiana, Property Insurance Association of Louisiana, Louisiana Workers' Compensation Corporation, Louisiana Workforce Commission and consumers.

Louisiana Property and Casualty Insurance Commission Members as of March 2009:

Jeff Albright
Independent Insurance Agents & Brokers of Louisiana

Raymond Aleman, Sr.
Commissioner's Appointee

Chris Broadwater
Office of Worker's Comp-LA Workforce Commission

Lorrie Brouse
AAI Representative

Marc Carter
LAFAC Representative

The Honorable Page Cortez
House Committee on Insurance

Manuel DePascual
Professional Insurance Agents of Louisiana

Theodore "Ted" M. Haik, Jr.
Consumer Representative, House of Representatives

The Honorable Troy Hebert
Chairman, Senate Committee on Insurance

Kay Hodges
Commissioner, Office of Motor Vehicles

LTC John LeBlanc
Louisiana Highway Safety Commission

Rick McGimsey
Attorney General's Representative

The Honorable Nickie Monica
House Committee on Insurance

The Honorable Dan "Blade" Morrish
Senate Committee on Insurance

The Honorable Earl Taylor
Louisiana District Attorneys Association

Aubrey T. Temple, Jr.
Chairman, LWCC Board of Directors

James J. Donelon
Commissioner of Insurance

Staff
Terrell B. Moss, Director
Joyce R. Paul, Assistant Director
David M. Evans, Insurance Compliance Examiner Supervisor
Katie C. Walsh, Insurance Compliance Examiner Specialist 2

Vacancies on the Commission: Office of the Governor, Law Enforcement Representative, Property Insurance Association of Louisiana Representative, Consumer Representative-Louisiana Senate, and PCI Representative

III. Meetings

The Louisiana Property and Casualty Insurance Commission held four public meetings during this reporting period to receive relevant information and discuss the issues, trends and problems that are affecting the property and casualty insurance market in the state.

Testimony was received from legislators, state insurance regulators, insurance industry executives, national and state industry trade groups, business and educational leaders and the public in attendance.

There was no action taken by the three ad-hoc committees during this reporting period.

IV. Issues Addressed

Legislation: A review of the property and casualty legislation from the 2008 Regular Session was presented to the Commission. In order to move forward, the Commission recognizes the need to understand and evaluate the most recent changes in these laws.

Particular attention was paid to the adjustments made to the Insure Louisiana Incentive Program. Allowing a third offering of incentive monies increases the likelihood of more insurers participating in what has been a successful initiative. Legislation was adopted to permit zone deductibles which may also attract more property insurers. A 4 percent cap was placed on this “hurricane deductible” and prior approval is required.

For the first time since 1984, the minimum limits for compulsory motor vehicle liability insurance were increased. Although this issue was controversial, the new limits are more in line with the increased costs of repairs and medical expenses associated with vehicular crashes. Effective January 1, 2010, the minimum rates will be 15-30-25 upon application or renewal of one’s automobile insurance policy.

Several bills addressed the problem of distracted drivers resulting from the usage of cell phones and other wireless devices while driving. Restrictions were placed on teen and newly licensed drivers, while text messaging was totally prohibited for all licensed drivers. Violations associated with crashes, fatalities and injuries will be tracked to determine the effectiveness of this legislation.

Issues regarding Louisiana Citizens Property Insurance Corporation (Citizens) remain in the forefront of the Commission’s interest. Legislation was enacted that adjusted Citizens’ rate making authority, exempted St. Mary Parish from the 10 percent premium surcharge and re-enforced eligibility guidelines for applicants.

Captive insurers can now be licensed to operate in the state. Commercial insureds will have greater flexibility to meet their needs.

Additional legislation discussed included: auto insurance discounts for consumers with onboard GPS devices, policy form filing requirements for vehicle mechanical breakdown insurance in expectation of fewer consumer complaints, and an increase in the amount covered through the Louisiana Insurance Guaranty Association from \$150,000 to \$300,000, providing more consumer protection.

Legislative proposals anticipated for the 2009 session were discussed. Among those ideas were a seasonal hurricane deductible and a pre-tax savings account to meet those deductibles.

Louisiana Citizens Property Insurance Corporation: The Commission received regular updates on Citizens' business operations and exposures. Over the course of three appearances before the Commission, it was reported that the 2005, 2006 and 2007 financial statements were completed and audited. The 2008 statement was completed and filed with the Department of Insurance in a timely manner.

Through two rounds of depopulation, the process has resulted in the transfer of approximately 40,000 policies from Citizens to the private market. This represents \$60 million in premium and \$6 billion in total insured values. A third round of depopulation is anticipated before this year's hurricane season to further reduce the remaining number of approximately 130,000 policies in Citizens.

The Commission paid close attention to the rate making process that is annually required by statute. The impact of the 2008 proposed rates on specific parishes drew close examination and warranted further analysis. This prompted the Commission to recommend legislative changes in the rate making process while preserving Citizens' non-competitive status.

Citizens has achieved a proper business posture in terms of accounting systems, service providers and finances over the past year. It was reported that the 2009 emergency assessment will remain at 5 percent and the auction-rate bonds are under renegotiation. Claims information was presented on Hurricanes Gustav and Ike. As of March 1, 2009, 50,000 of 56,000 Gustav claims have been closed and 3,400 of 3,600 Ike claims have been closed. Citizens will meet these obligations without an assessment.

Lawsuits arising from Hurricanes Katrina and Rita, both class action and individual, have been discussed and reported to the membership. A case concerning Louisiana's valued policy law was presented in detail as it moved through the legal system, ultimately reaching the Supreme Court of Louisiana. There were approximately 1,500 individual lawsuits and five class action lawsuits open at the time of the last reporting to the Commission.

Consumer: A continuous effort is made to safeguard and educate the consumers of Louisiana. The Office of Consumer Advocacy gave an account of the educational activities taking place in forums and town hall meetings throughout the state. Part of the consumer outreach program explains the "policyholder bill of rights." If feasible, the office is instrumental in the recovery of funds in dispute for the consumer. A very aggressive

consumer awareness campaign has been established within the past year by the Office of Consumer Advocacy.

Consumer problems and complaints can be early indicators of issues that need to be addressed by the Commission. Discussions centered on complaints reported to the Department of Insurance from Hurricanes Gustav and Ike. The most common complaints were: hurricane deductibles, claim delays, additional living expenses (ALE) and settlement offers.

Automobile Insurance: The legislative members of the Commission urged the group to conduct a thorough examination of the high auto insurance rates and contributing factors. This was made a top priority and prompted a meeting dedicated exclusively to automobile issues. The Senate and House Committees on Insurance were invited to attend.

Due to the pressing issues that consumed the state after the devastation caused by Hurricanes Katrina and Rita in 2005, the status of the automobile market had been tabled for several years. Louisiana currently ranks third in the country for premium costs and has consistently remained in the top 10. Participants from industry and business were asked to prioritize the contributing factors for the higher rates and offer suggestions for legislative changes.

An overview presented current statistics on company market shares and profitability, the modest rate increases over a 10 year period, high frequency and severity of bodily injury (BI) claims, excessive attorney participation, highest jury trial threshold and the existing direct action statute.

The Property Casualty Insurers Association of America's (PCI) top three cost drivers are as follows: a high number of injury claims, costly insurance system due to high injury costs and high attorney involvement and fees. Legislative suggestions included: file and use rate system, limit uninsured motorist damage trigger and judicial modernization (jury trial threshold reduction, eliminate direct action and adopt modified comparative negligence).

The American Insurance Association's observations included: the state's higher than average insurance premiums reflecting higher than average claims cost, particularly in BI liability frequency; competitive but highly concentrated market shares; and the state's loss cost reflecting auto safety issues such as fatality and drunken driving rates as well as fraud/theft concerns. Legislative recommendations include: continued promotion of competition and flexibility in rating (a true file and use system); traffic/auto safety improvements (child restraint usage, adjusting graduated licensing system, seat belt usage in back seats, and tougher repeat offender laws to meet full federal requirements); and working with national insurance organizations to eliminate fraud and crime.

State Farm Insurance Company, the largest writer of auto insurance in the state, agreed that frequency of claims was the main driver of rates. State Farm was also in agreement in regards to eliminating the direct action statute, lowering the jury trial threshold and moving

to modified comparative negligence. An additional suggestion included allowing insurers to rate drivers based on non-at-fault accidents.

The business viewpoint was expressed to the Commission by an Orleans Parish small business owner. In order to operate a fleet of company vehicles, a good experience rating must be maintained and even at those rates, it is a constant struggle to survive in the business climate of New Orleans. This meeting presented a great opportunity for a small business owner to explain the difficulties faced daily resulting from the high auto rates.

The Highway Safety Research Group of Louisiana State University presented information from its 2007-2008 Traffic Records Data Report. The report reinforced the problems derived from non use of seatbelts and driving under the influence. These issues remain cost drivers not only in insurance rates, but in the total economic impact on the state.

The cost from alcohol-related crashes was calculated at \$1.3 billion, equaling \$459 for each licensed driver in the state. Failure to wear seatbelts cost approximately \$950 million, which is equivalent to \$333 for each licensed driver. It will take the combined efforts of legislators, prosecutors, judges and the people of Louisiana to effect the changes necessary.

Conclusion: Recommendations for legislation were considered from the Louisiana Citizens Property Insurance Corporation, the Louisiana Highway Safety Commission, the Governor's Task Force on DWI/Vehicular Homicide and LPCIC members. The legislative members of the LPCIC have provided added leadership and initiative throughout this reporting period.

The Louisiana Property and Casualty Insurance Commission will continue to study various issues from the recommendations of the members, and always welcomes any public comments at all meetings. The Commission will continue to bring in local, regional and national experts for reporting and analysis on all issues deemed pertinent to satisfy its statutory responsibilities.

V. Property and Casualty Legislative Recommendations

During the March 4, 2009 meeting of the LPCIC, the Commission voted to recommend the following concepts after thorough discussion and deliberation. The recommendations for consideration for the 2009 Regular Session of the Legislature are:

1. Address and change Louisiana Citizens Property Insurance Corporation's rate methodology.

To effectively keep Citizens' rates from being competitive with the voluntary market, current law requires Citizens to annually consider the top 10 insurers by premium volume for each line of business in each parish. The highest rate among those top insurers is compared to the actuarially justified rate. The higher of those two rates forms the basis for the rates that Citizens will charge. This system works well in those parishes in which a number of insurers are actively seeking or maintaining marketshare. However, for those parishes in which a few qualifying insurers have no appreciable marketshare, Citizens' rates may be artificially inflated. Statistical outliers should be eliminated from Citizens' rate calculations in order to accurately reflect the prevailing market rates. Further, Citizens' rate methodology should ensure that Citizens' rates are above active writers in each parish.

2. Consolidate the FAIR and Coastal Plans within Louisiana Citizens Property Insurance Corporation.

The 2003 legislation that created Citizens as the successor of the FAIR and Coastal Plans also required the continuance of the plans. The Legislature's intent was primarily "remedial and curative" so that policies and claims existing prior to the effective date of Citizens would continue to be honored. Citizens is required to "maintain separate accounts and records for the Coastal Plan and the FAIR Plan for all policies, revenues, assets, liabilities, losses, and expenses . . ." The continuance of distinguishing between the two plans creates undue record keeping expenses without any public benefit.

3. Amend current safety belt law R.S. 32:295.1, to require all occupants to be belted.

Seatbelts are the most effective means of reducing fatalities and severity of injuries in traffic crashes. Louisiana's statistics show a direct correlation between seatbelt usage and fatalities. In 2007, 65 percent of all fatalities were from the 25 percent of occupants not wearing seatbelts. In 2008, when seatbelt usage increased 1 percent, fatalities decreased 1 percent. Rear seatbelt usage reduces ejections, projectile fatalities and injuries within the vehicle and overall costs associated with crashes. Nineteen states have laws requiring seatbelt usage for all occupants.

4. Amend R.S. 32:677(B)(2) and (4) to increase license suspension penalties for drivers who refuse to take a (breathalyzer) test.

Under the Implied Consent Law, a person has the right to refuse the (breathalyzer) test but will receive a lesser penalty than the harshest penalty imposed upon a person who submits to the test; therefore, many persons refuse the test. Adoption of this recommendation will make the penalty for refusal equal to that of the harshest penalty for a 0.20 BAC. This will equalize the penalties for the test, eliminating the incentive to refuse the test and provide a better method of proving guilt or innocence.

5. Amend R.S. 32:668 by deleting section (A)(6) and adding language prohibiting pre-hearing depositions of law enforcement officers.

The Administrative Hearings procedure to review propriety of driver license suspensions for submitting to and failing or refusing a chemical test for blood alcohol in connection with a DWI arrest currently allows pre-hearing depositions of arresting law enforcement officers. This proposal would limit such testimony to the hearing itself, thereby saving officer time, while still providing due process protection to the accused. The deletion of A(6) would simplify the hearings, reserving the more technical arguments to a judicial review in District Court by trial de novo.

6. Enact R.S. 14:98.3, criminalizing the operation of a motor vehicle while driving privileges are suspended.

Currently under Title 32, driving under suspension for a DWI is a misdemeanor subject to a fine. This new law would allow criminal charges under Title 14, serving as a deterrent for this frequent abuse. The new law would mandate a minimum of 30 days jail time upon conviction. The new law should also allow some discretion for prosecutors to choose between Title 32 and Title 14, depending on circumstances.

7. Add Soma to the Controlled Dangerous Substance Act, Title 40.

Over the last two years the State Police Crime Lab has detected the prescription muscle-relaxant Soma (carisoprodol) in more than 30 percent of the blood tests that come into the lab that involve a serious accident or injury from a DWI-related incident. At present, the drug is not under the Controlled Dangerous Substance Act, Title 40; so therefore, no DWI charges can be pursued for someone who is obviously driving impaired. Sixteen states have added this drug to their “scheduled” drug category and the Drug Enforcement Administration data indicates that Louisiana is an area of higher abuse compared to many other parts of the country.

8. Repeal the Direct Action Clause.

Louisiana is one of only two states that still allow direct action against the insurer. Companies make business decisions based on systems of law with which they are familiar. This statute has been perceived as an impediment to

new insurance companies wanting to enter the state in order to conduct business. The current law inhibits the availability of automobile insurance when companies decide not to enter the state. The repeal of the current law may address the issue of affordability by reducing the costs of claims and increasing market competition.

9. Reduce the Jury Trial Threshold from \$50,000 to \$10,000.

Of the 14 states that have a jury trial threshold, Louisiana has the highest. The next highest thresholds range from \$10,000 to \$15,000, occurring in only four states. Thirty-six states have no jury trial threshold. Less than 1 percent of civil cases ever go to court in states with no jury trial threshold; 20 percent go to court in Louisiana.

10. Endorse the concept of a named storm deductible savings account, direct tax credits and a seasonal hurricane deductible.

Many consumers in the state were ill prepared when faced with the higher named storm deductibles that applied to their homeowners policies. Allowing for a tax free savings account for the purpose of paying deductibles makes it easier to manage and budget for unforeseen catastrophes. The continuation and additional direct tax credits for the Citizens assessments and mitigation efforts for homes and businesses are necessary in today's economy.

Based upon the past storm experiences in 2005 and 2008, the probability of multiple hurricanes within one season is a reality in Louisiana. The costs of multiple deductibles alone could be overwhelming to consumers, even before any additional recovery expenses are addressed. Enacting a seasonal hurricane deductible would have an immediate effect for the consumer with minimal impact on the rates. Florida enacted a seasonal hurricane deductible following the four hurricanes that struck the state in 2004.

The Louisiana Property and Casualty Insurance Commission strongly endorses legislative action in support of these concepts.

VI. Continuing Study Issues

The Louisiana Property and Casualty Insurance Commission will continue to study various property and casualty issues throughout the year. Promoting the return of insurers to the state will continue to be a major focus of the Commission.

The Commission will continue their study and review of the state uniform building code, with emphasis on the results of implementation of the code.

The Commission will continue to monitor all pertinent state and federal legislation. Highway safety issues and enforcement will continue as a priority.

The Commission staff will continue to attend the various meetings around the state that promote and advance these topics.

VII. Future Study Issues

The Commission plans to conduct a study on the impact of the new automobile liability limits following implementation on January 1, 2010, and the uninsured motorist populace in the state.

The Commission plans to conduct a study on the impact of the homeowner premium discounts for compliance with the building code.

The Commission plans to revisit the issues concerning railroad crossing safety, existing red light cameras, auto insurance verification and electronic speed enforcement.

The Commission plans to track the effectiveness of the 2008 legislation restricting cell phone usage while driving.

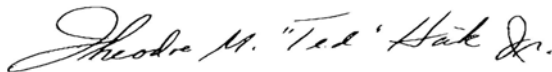
VIII. Final Note

We trust this report will have a positive impact on legislation in the 2009 Regular Session of the Louisiana Legislature.

The members and staff of the Louisiana Property and Casualty Insurance Commission recognize that one of the best ways to respond to the complex insurance environment is to adopt reforms that will promote a healthy, competitive insurance marketplace in Louisiana.

A systematic study of insurance in auto, property and workers' compensation markets will continue to be a hallmark of this Commission.

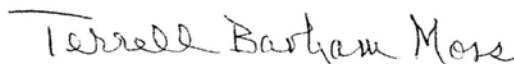
The Louisiana Property and Casualty Insurance Commission is committed to working with the Department of Insurance, the Legislature, the insurance industry and all interested stakeholders to increase the affordability and availability of insurance in the state of Louisiana.



Theodore M. "Ted" Haik, Jr.
Chairman



Jeff Albright
Vice Chairman



Terrell Barham Moss
Director

This report is available on the Louisiana Department of Insurance Web site,
www.lidi.state.la.us - Quick Links - P&C Commission

IX. Appendix A: Legislative Action on LPCIC Recommendations

Legislative Action on 2007 – 2008 LPCIC Annual Report of Legislative Recommendations for the 2008 Regular Session

A. Prohibit those under 18 years of age from driving while using a cell phone or other wireless communication device.

1. Senate Bill 137 – **ACT 665**: Prohibits text messaging by all drivers and the use of cell phones by novice drivers (07/01/08).
2. Senate Bill 159 – **ACT 666**: Prohibits minors from using any wireless telecommunications device while operating a motor vehicle (07/01/08).
3. Senate Bill 342 – **ACT 667**: Prohibits certain drivers from operating a motor vehicle while using a cellular telephone (08/15/08).
4. House Bill 402 – **ACT 355**: Prohibits school bus operators from using cell phones while driving (08/15/08).

B. Ban radar detectors or radar “jammers” while operating a motor vehicle upon the public highways of Louisiana. Presence of the device in the operated motor vehicle creates a presumption that it is operative.

1. Senate Bill 158: Bill **failed** to pass.

C. Prohibit the presence of persons under 21 years of age in bars or microbreweries by creating the crime of unlawful presence.

1. No bill filed.

D. Mandate usage of safety belts by all occupants of cars, vans and pick-up trucks where a safety belt is provided by the vehicle manufacturer for the seating space used.

1. Senate Bill 419: Bill **failed** to pass.
2. Senate Resolution 165: **Requests** the Louisiana Highway Safety Commission to **study and report** by 03/01/2009 the need to amend the safety belt law to require all occupants age 13 and older to wear a safety belt.

E. Increase the fines for refusing to utilize a safety belt while operating a motor vehicle. Penalty would be punishable by increasing fines for each subsequent offense.

1. House Bill 814 – **ACT 300**: Increases penalties for violations for failure to properly restrain child in motor vehicle (08/15/08).

F. License captive insurance companies in Louisiana.

1. Senate Bill 150 – **ACT 403**: Provides for the formation and regulation of domestic captive insurers (01/01/09).

G. Abolish the Property Insurance Association of Louisiana (PIAL) and allow an industry service bureau to assume those functions.

1. No bill filed.

H. Make adjustments to the Insure Louisiana Incentive Program such that:

- **The “claw back” provision is allocated on a pro-rata basis rather than total.**
 - **A “drop dead” date is added for compliance with the grant program.**
 - **A third offering is allowed for companies to apply for the remainder of the \$100 million of dedicated grant money.**
1. Senate Bill 44 – **ACT 390**: Authorizes a third invitation for grant applications under the Insure Louisiana Incentive Program and provides for the recovery of unearned grants (06/21/08).

I. Require Vehicle Mechanical Breakdown insurers to file their policy forms with the Department of Insurance.

1. House Bill 237 – **ACT 818**: Requires vehicle mechanical breakdown insurance policy forms to be filed with the commissioner of insurance (08/15/08).

J. Permit zone deductibles and prohibit the stacking of deductibles on personal lines property insurance claims.

1. Senate Bill 160 – **ACT 854**: Provides for changes in homeowner’s insurance policy deductibles and the application of deductibles in the event of loss (07/09/08).

**X. Appendix B: Minority Reports Submitted by Earl Taylor,
District Attorney, 27th Judicial District
Louisiana District Attorneys Association Representative on the LPCIC**

April 14, 2009

Mr. Theodore M. Haik
Louisiana Property Casualty Insurance Commission
Louisiana Department of Insurance
P.O. Box 94214
Baton Rouge, Louisiana 70804

Dear Chairman Haik:

Thank you for allowing me to file a minority opinion statement regarding some of the legislative recommendations that were voted upon at the commission's meeting on March 4, 2009.

I think that it is important that our elected lawmakers be fully informed about the recommendations of this commission concerning

1. Repeal of Louisiana's Direct Action statute; and
2. Reducing the monetary threshold for a civil jury trial.

Also, I want to draw attention to a positive suggestion that I introduced for discussion but that the commission chose not to include in its report. Increasing the current one-year statute of limitations for personal injury civil cases would benefit individual petitioners and would constructively contribute to the efficiency of the civil justice system in Louisiana.

Attached are briefing points on the issues I mentioned. I appreciate the opportunity to initiate a more comprehensive discussion of these issues.

Sincerely,

Earl Taylor
District Attorney, 27th JD

Direct Action Statute

Louisiana's Direct Action Statute Protects Citizens, Eliminates Multiple Lawsuits

What does Louisiana's direct action statute have to do with the cost of automobile insurance rates? Nothing.

Wisconsin, like Louisiana, has an expansive direct action statute; yet, the average expenditure for automobile insurance in Wisconsin for 2006 was \$590, making it 45 in the nation in rates, as compared to Louisiana's average of \$1094, or third highest in rates, for the same year.¹

Maine does not have a direct action statute in the strictest sense of that term but does have a "reach and apply" statute that makes the liability of every casualty insurer "absolute" whenever the loss of damage for which the insured is responsible occurs.² The average auto insurance expenditure in Maine for 2006 was \$634, ranking it as 42 in the nation.³

Nineteen other states have some form of limited direct action, either by statute or by case law.⁴

The direct action statute allows Louisiana residents to directly file suit against the insurance company that will be responsible for damages caused by the insured defendant. The direct action statute does not apply only to automobile liability claims, but to any claim insured by a policy or contract of liability insurance.⁵

Louisiana's direct action statute does not allow an insurance company to be sued without suing the insured individuals. Amendments to the law in 1988 and 1992 protect an insurance company from being the only defendant, except in limited circumstances that are specifically stated in the law. Current law outlines specifically that an insurance company may not be the sole defendant unless:

1. The insured is insolvent;
2. The insured cannot be served with the suit;
3. The suit is between parents and children or between spouses;
4. The insurer is an uninsured motorist carrier; or
5. The insured is deceased.

Louisiana's direct action statute eliminates filing several lawsuits for the same claim. If direct action is repealed, then the plaintiff will have to file one lawsuit against the person at fault and obtain a judgment, and then file another lawsuit against the insurance company that provided coverage.

Repealing direct action would increase the number of lawsuits. First, the suit against the defendant who caused the injury would be filed. Then, if the plaintiff prevails, a second suit in the same case would need to be filed against the insurance company to recover payment for damages.

The insurance company has a legal duty to defend the insured and will, in fact, be selecting and paying the attorneys who litigate the first suit. Those same attorneys will be paid to defend the second suit, increasing litigation and court costs for both sides. Judicial efficiency suggests that the party who controls the defense of the initial suit and who will pay if the defendant is found liable should be in the lawsuit from the beginning.

Louisiana first enacted direct action legislation in 1918, almost 100 years ago. Since that time, a wealth of case law has developed to resolve questions about how and in what circumstances this law will be applied. The law functions well for all parties. A 2002 article in the *Tulane Maritime Law Journal* traces the development of Louisiana's direct action statute and the role of this statute in protecting the interests of Louisiana citizens in cases under general maritime law.⁶

The state's direct action law allows Louisiana residents to sue out-of-state or foreign defendants who would be difficult to serve with a lawsuit or impossible to serve when the defendant is bankrupt or insolvent.

Some who propose the repeal of direct action law argue that if jurors know an insurance company is involved in the lawsuit, they will be prejudiced against the insurer and inclined to award higher amounts of damages to plaintiffs. However, in Louisiana insurance companies already have the protection that the amount of coverage is not allowed to be disclosed in litigation.

¹ Insurance Information Institute, *The Insurance Fact Book 2009*, p. 58

² 24-A M.R.S.A. Sect. 2903

³ *The Insurance Fact Book 2009*, p. 58

⁴ AL, AR, CA, CO, GA, HI, IL, KS, KY, MA, MN, MO, NE, NJ, NM, NC, RI, TN, VT

⁵ R.S. 22:1269(A)

⁶ Jonathan C. Augustine, *Other States Should "Get with the Program" and Follow Louisiana's Lead: An Examination of Louisiana's Direct Action Statute and Its Application in the Marine Insurance Industry*, 27 Tul. Mar. L.J. 109 (2002)

Direct Action Statute: RS 22:1269

Redesignated from R.S. 22:655 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

§1269. Liability policy; insolvency or bankruptcy of insured and inability to effect service of citation or other process; direct action against insurer

A. No policy or contract of liability insurance shall be issued or delivered in this state, unless it contains provisions to the effect that the insolvency or bankruptcy of the insured shall not release the insurer from the payment of damages for injuries sustained or loss occasioned during the existence of the policy, and any judgment which may be rendered against the insured for which the insurer is liable which shall have become executory, shall be deemed prima facie evidence of the insolvency of the insured, and an action may thereafter be maintained within the terms and limits of the policy by the injured person, or his or her survivors, mentioned in Civil Code Art. 2315.1, or heirs against the insurer.

B.(1) The injured person or his or her survivors or heirs mentioned in Subsection A, at their option, shall have a right of direct action against the insurer within the terms and limits of the policy; and, such action may be brought against the insurer alone, or against both the insured and insurer jointly and in solido, in the parish in which the accident or injury occurred or in the parish in which an action could be brought against either the insured or the insurer under the general rules of venue prescribed by Code of Civil Procedure Art. 42 only. However, such action may be brought against the insurer alone only when:

- (a) The insured has been adjudged a bankrupt by a court of competent jurisdiction or when proceedings to adjudge an insured a bankrupt have been commenced before a court of competent jurisdiction;
- (b) The insured is insolvent;
- (c) Service of citation or other process cannot be made on the insured;
- (d) When the cause of action is for damages as a result of an offense or quasi-offense between children and their parents or between married persons;
- (e) When the insurer is an uninsured motorist carrier; or
- (f) The insured is deceased.

(2) This right of direct action shall exist whether or not the policy of insurance sued upon was written or delivered in the state of Louisiana and whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within the state of Louisiana. Nothing contained in this Section shall be construed to affect the provisions of the policy or contract if such provisions are not in violation of the laws of this state.

C. It is the intent of this Section that any action brought under the provisions of this Section shall be subject to all of the lawful conditions of the policy or contract and the defenses which could be urged by the insurer to a direct action brought by the insured, provided the terms and conditions of such policy or contract are not in violation of the laws of this state.

D. It is also the intent of this Section that all liability policies within their terms and limits are executed for the benefit of all injured persons and their survivors or heirs to whom the insured is liable; and, that it is the purpose of all liability policies to give protection and coverage to all insureds, whether they are named insured or additional insureds under the omnibus clause, for any legal liability said insured may have as or for a tort-feasor within the terms and limits of said policy.

Acts 1958, No. 125. Amended by Act 1962, No. 471, §1; Acts 1988, No. 934, §1, eff. Jan. 1, 1989; Acts 1989, No. 117, §2; Acts 1992, No. 584, §1; Redesignated from R.S. 22:655 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

NOTE: Former R.S. 22:1269 redesignated as R.S. 22:443 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

Civil Jury Trial Monetary Threshold

Currently in Louisiana, the monetary limits of a claim must be at least \$50,000 in order for the case to be assigned to a jury trial. The current threshold was increased from \$20,000 to \$50,000 in 1993.

When the Code of Civil Procedure was adopted in 1960, C.C.P. art. 1733(1) (1963) denied a jury trial, based on a monetary threshold, in "[a] suit demanding less than one thousand dollars exclusive of interest and costs."

Acts 1983, No. 534, the monetary threshold was increased to \$5,000.

Louisiana State Law Institute, stated in Revision Comment (b)[excerpt]:
This increase [in the monetary threshold] is appropriate in the light of the increasing cost of jury trials and is in keeping with the expanded jurisdiction of city courts and parish courts in which there is no right to a jury trial.

Acts 1984, No. 301, increased to \$10,000

Acts 1987, No. 766, increased to \$20,000

Acts 1993, No. 661, increased to the current level of \$50,000.

Lawsuits that claim damages of lower monetary amounts still give petitioners the right to have their claim heard in court by a judge. During the past several years, there have been repeated attempts, all unsuccessful, to lower the monetary threshold for a jury trial.

Lowering the jury trial monetary threshold would have several adverse effects upon the court system:

- take time and resources from criminal jury resources;
- add to a backlog of a cases already on court dockets;
- put more cases on dockets that otherwise could be handled by a judge;
- increase court-related costs to local governments;
- jurors would have to be called more often to serve; and
- create more filing and document preparation by clerks of court and their staff.

The threshold for smaller cases, \$50,000 in state court and \$75,000 in federal court, represents a level at which courts can effectively manage cases in a manner that is both efficient for the system and fair to the litigants. Over the years, both the state and the federal government have raised their thresholds, considering the effect that inflation has had upon the value of a claim.

Monetary Threshold for Civil Jury Trials

Over the past years, the Louisiana District Judges Association has opposed the lowering of monetary thresholds for civil jury trials. There are a number of reasons for our position on this issue.

First and foremost among reasons why reducing the threshold is not a sound proposal for Louisiana, it is a matter of docket management. A typical civil non-jury trial can be conducted in a day or less. A typical civil jury trial takes a minimum of two days and often more.

There are also convincing economic reasons why reducing the monetary threshold would not be beneficial to the state nor its taxpayer citizens. Present law requires posting of a cash or other

bond of more than \$3,000.00 for a jury trial. The actual costs for summoning and impaneling a civil jury usually exceed this amount. Trial preparation for a jury trial is much more extensive, which results in increased litigation costs. Furthermore, many courthouses simply do not have the physical ability to host a vastly increased number of jury trials. An increased number of jury trials would further delay the completion of cases.

In addition, we as judges are on the “front line” of the jury dynamic. It is difficult enough to assemble the number of jury venires we presently utilize. To lower the jury trial monetary threshold and thereby increase the number of jury trials results in a time imposition on a greater number of citizens. Few citizens are very happy to be summoned to begin with, and would in all likelihood be even less delighted to be called to sit for a case of lesser value that otherwise easily could be accommodated as a bench trial.

Furthermore, most jurors are not compensated for their time away from work. Their absence from their jobs results in lost time and production to their employers. It seems to me that this effect of more jury trials is actually an economic disincentive for employers in Louisiana.

Proponents of reducing the monetary threshold for civil jury trials contend that such a move would attract more insurance carriers to Louisiana. I believe that this is purely conjectural and I know of no studies that support such a contention.

Judge Robert H. Morrison, III
Louisiana District Court, 21st Judicial District
March 2009

Statute of Limitations

A statute of limitations, also known as a legal prescriptive period, is the time allowed from when an incident occurs to the deadline for filing a related legal claim. The lengths of prescriptive periods vary from state to state. Louisiana has a one-year prescriptive period for filing personal injury claims and a two-year prescriptive period for filing a lawsuit for injuries resulting from violent crimes.

Louisiana is only one of three states that have a one-year prescriptive period for personal injuries. This amount of time is insufficient and has several negative repercussions:

1. Many claims are complex and a one-year prescriptive period is not long enough to adequately gather evidence, request and receive records and prepare a case. Louisiana's law, which is much more restrictive than filing periods allowed in other states, does not serve the best interest of citizens whose meritorious claims essentially get "shut out" when prescription expires. This especially is a matter of concern for individuals who are undergoing medical treatment and require more than one year to recover from injuries. For these citizens, the

current legal prescription period is simply too short. They are forced into filing a lawsuit because at the end of one year the extent of their recovery remains unclear or unresolved. Will they be able to be employed? What are the anticipated expenses of continued treatment? What limitations do they face?

2. More consideration is due to citizens who have a valid legal claim but are denied the right of access to justice because their injury required longer than one year for evidence to be compiled.
3. Increasing the length of prescriptive period can actually reduce the number of lawsuits filed. Individuals sometimes are forced into filing a lawsuit simply as a placeholder in order to get a claim filed before the prescriptive period expires. Once the prescriptive period runs out, the individual loses the right to file a legal claim.
4. Louisiana's one-year prescriptive period favors the wrongdoer and his insurance company, not the person who is injured.

COMPARISON OF STATES
STATUTE OF LIMITATIONS Civil Law – Personal Injury

State	Statute of Limitations	State Law
Alabama	2 years	Ala. Code Sec. 6-2-38
Alaska	2 years	Alaska Stat. Sec. 9.10.070
Arizona	2 years	Ariz. Rev. Stat. Sec. 12-542
Arkansas	2 years	Ark. Stat. Sec. 16-114-203
California	2 years	Cal. Code of Civ. Proc. Sec. 335.1
Colorado	2 years	Colo. Rev. Stat. Sec. 13-80-102
Connecticut	2 years	Conn. Gen. State. Sec. 52-584
Delaware	2 years	Del. Code Ann. Title 10, Sec. 8119
District of Columbia (D.C.)	3 years	D.C. Code Ann. Sec. 12-301
Florida	4 years	Fla. Stat. Ann. Sec. 95.11
Georgia	2 years	Ga. Code Ann. Sec. 9-3-33
Hawaii	2 years	Haw. Rev. Stat. Sec. 657.7
Idaho	2 years	Idaho Code Sec. 5-219
Illinois	2 years	Ill. Ann. State. Ch. 735, Art. 5, Sec. 13-202
Indiana	2 years	Ind. Code Ann. Sec. 34-11-2-4
Iowa	2 years	Iowa Code Ann. Sec. 614.1
Kansas	2 years	Kan. Stat. Ann. Sec. 60-513
Kentucky	1 year	Ky. Rev. Stat. Sec. 413.140
Louisiana	1 year	La. Civ. Code Ann. Art. 3492
Maine	6 years	Maine Rev. Stat. Ann. Title 14, Ch. 205, Sec. 752
Maryland	3 years	Md. Ann. Code Sec. 5-101
Massachusetts	3 years	Mass. Gen. Laws, Art. 260, Secs. 2A, 4
Michigan	3 years	Mich. Comp Laws Sec. 600.5805(9)
Minnesota	2 years	Minn. Stat. Ann. Sec. 541.05, 541.07
Mississippi	3 years	Miss. Code Ann. Sec. 15-1-49
Missouri	5 years	Missouri Ann. Stat. Title 35, Sec. 516.120

Montana 207	3 years	Mont. Code Ann. Sec. 27-2-204, 27-2-
Nebraska	4 years	Neb. Rev. Stat. Sec. 25-207
Nevada	2 years	Nev. Rev. Stat. Sec 11.190
New Hampshire	3 years	N.H. Rev. State. Sec. 508.4
New Jersey	2 years	N.J. Stat. Ann. Sec. 2A:14-2
New Mexico	3 years	N.M. Stat. Ann. Sec. 37-1-8
New York	3 years	N.Y. Civ. Prac. R. Sec. 214
North Carolina	3 years	N.C. Gen. Stat. Sec. 1-52
North Dakota 18	6 years (2 in wrongful death)	N.D. Cent. Code Sec. 28-01-16, 28-01-
Ohio	2 years	Ohio Rev. Code Sec. 2305.10
Oklahoma	2 years	Okla. Stat. Ann. Title 12, Sec. 95
Oregon	2 years	Ore. Rev. Stat. Sec. 12.110
Pennsylvania	2 years	42 Pa. Con. Stat. Sec. 5524
Rhode Island	3 years	R.I. Gen. Laws Sec. 9-1-14
South Carolina	3 years	S.C. Code Ann. Sec. 15-3-530
South Dakota	3 years	S.D. Comp. Laws Ann. Sec. 15-2-14
Tennessee	1 year	Tenn. Code Ann. Sec. 28-3-104
Texas 16.003	2 years	Tex. Civ. Prac. & Rem. Code Sec.
Utah	4 years	Utah Code Ann. Sec. 78-12-28
Vermont	3 years	Vt. Stat. Ann. Title 12, Sec. 512
Virginia	2 years	Va. Code Sec. 8.01-243
Washington	3 years	Wa. Rev. Code Ann. Sec. 4.16.080
West Virginia	2 years	W. Va. Code Sec. 55-2-12
Wisconsin	3 years	Wisc. Stat. Ann. Sec. 893.54
Wyoming	4 years	Wy. Stat. Ann. Sec. 1-3-105

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