

# **The Louisiana Property and Casualty Insurance Commission**



## **A Summary of Legislative Considerations Annual Report 2006 - 2007**

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

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# **Louisiana Property and Casualty Insurance Commission**

## **Summary of Legislative Considerations Annual Report 2006 – 2007**

### **I. Brief Legislative History and Purpose**

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

Due to C.A.I.R.E.'s thorough studies of law enforcement and the automobile insurance situation in the state, the 2001 Louisiana Legislature expanded C.A.I.R.E.'s realm of study 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, R.S. 22:15). The Louisiana Property and Casualty Insurance Commission, 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.

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 designates the ad-hoc committee memberships.

### **II. Membership**

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.

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, and chairperson of the Louisiana Insurance Rating Commission, 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, Department of Labor and consumers.

### **Louisiana Property and Casualty Insurance Commission Members as of December, 2006.**

**Jeff Albright**

Independent Insurance Agents/Brokers of Louisiana

**Lorrie K. Brouse**

AAI Representative

**H. Marcus "Marc" Carter**

LAFAC, Inc. Representative

**Colonel James Champagne**

Louisiana Highway Safety Commission

**The Honorable Rick Farrar**

Vice Chair, House Committee on Insurance

**Theodore M. "Ted" Haik, Jr.**, Chairman/Commission  
Consumer Representative, House of Representatives

**Terry Lisotta**

Property Insurance Association of Louisiana

**Tom O'Neal**

Consumer Representative, Louisiana Senate

**The Honorable Earl Taylor**

Louisiana District Attorneys Association

**James J. Donelon**

Commissioner of Insurance

**Chad M. Brown**

Chairman, Louisiana Insurance Rating Commission

**The Honorable James D. Cain**

Chairman, Senate Committee on Insurance

**The Honorable Karen R. Carter**

Chairperson, House Committee on Insurance

**Richard A. Clements**, Vice Chairman/Commission  
Professional Insurance Agents of Louisiana

**Nicholas Gachassin**

Attorney General's Representative

**Steve Hymel**

Acting Commissioner, Office of Motor Vehicles

**F. Charles "Chuck" McMains**

PCI Representative

**Richard L. Stalder**

Secretary, Department of Public Safety&Corrections

**Aubrey T. Temple, Jr.**

Chairman, LWCC Board of Directors

**Vacancies**

Office of the Governor  
Senate Committee on Insurance  
Department of Labor

### **Louisiana Property and Casualty Insurance Commission Members as of February, 2007**

**Christine T. Berry, Ph.D.**

Louisiana Insurance Rating Commission Representative

**The Honorable Julie Quinn**

Senate Committee on Insurance

**Kimberly L. Robinson**

Office of the Governor

**Vacancy**

Department of Labor

**Staff:**

**Terrell Moss**, Director

**David Evans**, Supervisor/Research Analyst

**Katie Walsh**, Admin. Assistant/Research Analyst

### **III. Meetings and Presentations**

The Louisiana Property and Casualty Insurance Commission met regularly throughout the year of 2006 to study and discuss the issues and problems that are affecting the property and casualty insurance market in the state.

Since the devastation created by Hurricanes Katrina and Rita, legislative issues have been carefully monitored and discussed from each session beginning with the 2005 Special Session, through the 2006 Regular Session, including the first 2006 Special Session. Act 12, adopting a statewide building code, was of significant importance towards the recovery effort for the state. Other new legislation discussed dealt with licensing adjusters, use of credit scoring, flood insurance education for agents and needed adjustments dealing with Louisiana Citizens Property Insurance Corporation (Citizens).

In accordance with House Concurrent Resolution 24, the Commission addressed the study subject of working to bring more insurers who write supplemental flood insurance coverage into the state.

During this reporting period, the Commission received company updates from Citizens, Allstate Insurance Company and State Farm Insurance Company. The companies reported on claims information, losses and methods for responding appropriately to the catastrophic management issues.

A significant report entitled "An Insurance Data Overview," which explained the rating process incorporating actuarial principles, was presented to the Commission by the chief actuary of the Department of Insurance. Key considerations from Louisiana homeowner rate filings from the top ten companies in the state (as ranked by market share) were discussed, along with homeowner rate activity from October 2005 through May 2006, categorizing filings that fell under flex band or the Louisiana Insurance Rating Commission.

One of the major problems in the state concerning the capacity to write business was addressed with a Catastrophe Fund/Wind Pool analysis. Presenting the different viewpoints were representatives of the Property Casualty Insurers Association of America, the coalition Protecting America.org, the Reinsurance Association of America, and the American Insurance Association.

The Coalition to Insure Louisiana presented their recommended public policy options for improving the availability and affordability of property insurance in Louisiana. This report involved a comprehensive study developed from viable solutions to improve the insurance market in Louisiana. Recommendations to improve highway safety were introduced to the Commission for consideration and approval.

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 regional and national

experts for reporting and analysis on all issues deemed pertinent to satisfy its statutory responsibilities.

#### **IV. Legislative Considerations Adopted at the 2/22/07 Meeting**

- **Support the existing tax credit to offset the Louisiana Citizens Property Insurance Corporation's assessment and such tax credit be renewed in any year in which an assessment occurs.**

**Support Summary:** Act 4, passed during the 2006 Second Extraordinary Session, allows for tax credits effective for all taxable periods beginning on or after January 1, 2006, which applies to any assessments, surcharges and market equalization charges levied by Louisiana Citizens Property Insurance Corporation (Citizens) due to Hurricanes Katrina and Rita. Citizens was compelled to invoke the regular and emergency assessment provisions provided for in the law in order to repay the bond issued to pay the claims of its policyholders following Hurricane Katrina.

In 2006, the regular assessment was fixed at 18.27 percent of the net premiums. In addition, for 2007, each homeowner and/or commercial property policyholder, at issuance or renewal of each policy, will pay an emergency assessment of 3.6 percent of the net annual premium. Barring other action by the Legislature, annual emergency assessments will continue until the bond that provided payment of Citizens' Hurricane Katrina claims is retired.

*The Louisiana Property and Casualty Insurance Commission recognizes and endorses this relief mechanism that the Legislature has provided, and supports its use should some future event cause a similar LA Citizens assessment.*

- **Encourage the Legislature to abolish the Louisiana Insurance Rating Commission, adopt a file and use system, and encourage the continued development of a strong consumer advocate department within the Department of Insurance, and a strong and viable actuarial staff.**

**Support Summary:** At this time, Louisiana is the only state in the country that relies upon an independent appointed panel, the Louisiana Insurance Rating Commission (LIRC), to approve or disapprove insurance company rate adjustments or rate filings prior to their implementation. The LIRC consists of seven members, six who are appointed by the governor, and the seventh member is the commissioner of insurance or his designee. Louisiana became the last state to utilize such a panel in June 2004, when Oklahoma extended the "file and use" system it had in place for commercial lines to personal lines.

The cost and availability of property insurance has become a major concern for homeowners, businesses and many government officials in the state. The insurance industry has long opposed the LIRC, perceived by many to artificially set rates because of "political pressure," therefore, many companies have been reluctant to conduct business in Louisiana. This perception leads many companies to feel the business

environment can change as easily as the commission members could change. The perception needs to be a positive message that the state is committed to building a healthy insurance marketplace by modernizing the rating process which would encourage insurers to consider conducting business in Louisiana.

Rate levels are found to be lower in competitive rating states than in states with prior approval laws such as Louisiana. The LIRC is one more form of bureaucracy companies must deal with to operate in the state. Eliminating the LIRC and moving to a file and use system is viewed by insurance companies as encouragement to write more business in the state.

In general, under file and use laws, rate changes are filed with the Department of Insurance prior to their use. While specific approval is not required, the Department retains the right of subsequent disapproval. The purpose of all rating laws is to ensure that the rates are not excessive, inadequate or unfairly discriminatory.

The Department of Insurance has maintained, and will continue to maintain, a strong, competent consumer affairs division and actuarial division, with the present chief actuary in place since 1993.

In October 2003, the Department of Insurance received an Accreditation Award from the National Association of Insurance Commissioners (NAIC) Financial Regulation Standards and Accreditation Program. The Department received its highest score since 1993, a major accomplishment, and has remained accredited since its initial accreditation in 1993. Accredited insurance departments are required to undergo a comprehensive review every five years to maintain this recognition, meeting the high standards required by the NAIC.

*The Louisiana Property and Casualty Insurance Commission strongly endorses this legislative concept to abolish the Louisiana Insurance Rating Commission.*

- **Motorcycle endorsements on a driver's license would only be issued after the applicant successfully completed a motorcycle safety awareness course and an operator program provided to meet state standards, only subject to appropriation by the Legislature for sufficient tutorial resources throughout the state of Louisiana.**

**Support Summary:** According to Colonel James Champagne, Executive Director of the Louisiana Highway Safety Commission, there are 115,000 motorcycles registered in the state of Louisiana. Over the past two years, 158 motorcyclists have been killed and 2,800 have been injured in motorcycle crashes. According to the Highway Safety Research Group Web site administered by Louisiana State University, there were 74 fatalities in 2005, and 85 in 2006 (which includes a projection for December 2006) and there were 1,497 injuries in 2005, and 1,366 in 2006 (which includes a projection for December 2006). There is no current requirement under state law that a motorcyclist completes a training program.

Currently, R.S. 17:282, which established this voluntary program, provides that satisfactory completion of the course exempts the graduate from the motorcycle endorsement operator's skill test and allow the program to charge \$25 per student (law enforcement officers are exempt from the fee). Funding for the program is both

dedicated and self-generated with the dedicated portion being \$5 of the \$8 motorcycle endorsement fee, and the self-generated portion being the \$25 course fee plus \$75 for a rental of a training motorcycle if necessary. The current 2006-07 budget for the training program is reported as \$131,576.

Currently, 18 to 22 instructors train 1,800 to 2,000 students a year through 150 courses at training sites located in Alexandria, Baton Rouge, Hammond, Lafayette, Shreveport, Thibodaux, and West Monroe. Suitable training sites to replace those located in Lake Charles and Harvey, prior to the 2005 hurricanes, have not yet been established. The Basic Rider course, developed by the Motorcycle Safety Foundation, consists of a total of 15 hours of classroom instruction and range exercises.

The Commission believes that making the current voluntary motorcycle training program a mandatory prerequisite of licensure will reduce the number of motorcycle crashes, which should ultimately be reflected in lower insurance rates. However, the Commission also believes that current funding and availability of the training program will be inadequate to the demand for a mandatory course without an additional appropriation by the Legislature.

*The Louisiana Property and Casualty Insurance Commission supports the motorcycle endorsement with appropriate monetary resources provided through legislation.*

- **Endorse the concept of enhancing the penalty when one engages in drag racing and causes serious bodily injury to another human being.**

**Support Summary:** According to Colonel James Champagne, Executive Director of the Louisiana Highway Safety Commission, four people died in 2006 as a result of drag racing on public roads in Louisiana. “Although the total killed is not significant when compared with the nearly 1,000 killed in other traffic crashes, it is a number that we should immediately address through legislation. In conversing with police officers from around the state, drag racing is a growing problem, and we need to address it now,” reported Col. Champagne.

Drag racing, as defined at R.S. 32:65, is punishable for a first offense by a fine of not more than \$175.00 or by imprisonment for not more than 30 days, or both. A subsequent violation is punishable by a fine of not more than \$500.00 or by imprisonment for not more than 90 days, or both, which is found at R.S. 22:57.

*The Louisiana Property and Casualty Insurance Commission endorses the concept that an enhanced penalty may discourage drag racing and save lives.*

- **Require mandatory alcohol ignition interlock devices as a component of any restricted hardship driver’s license where the suspension of the license occurs due to operation of a vehicle under the influence of alcohol or refusal to submit to a chemical analysis test for blood alcohol content subsequent to a DWI arrest.**

**Support Summary:** Louisiana continues to hold one of the worst records for alcohol-related traffic fatalities. The state also made the list of the 15 deadliest states in

the country for impaired driving, two years in a row. These states are facing an epidemic of senseless deaths, injury and destruction due to alcohol-related crashes.

The threat of arrest and punishment is no longer working to reduce the death toll. Officials are turning to technology. A campaign has started to require that even first offenders install a device that tests drivers and shuts down the car if it detects alcohol.

Many states require ignition interlocks for people who have been convicted several times, however, New Mexico became the first state to make them mandatory after a first offense. The state saw an 11.3 percent drop in alcohol-related fatalities in 2005 in less than six months.

People who have previous DWI convictions make up approximately one-third of the drunk drivers in the country as reported by Mothers Against Drunk Driving. Statistics show that about 13,000 people die each year in car crashes in which the driver was legally drunk. More than 4,000 lives could be saved by preventing those convicted DWI drivers from recommitting the offense of drinking and driving.

In 2005, Louisiana had 874 crashes, of which 367 were alcohol-related, resulting in 404 deaths. In 2006, there were 889 crashes, of which 390 were alcohol-related, resulting in 438 deaths. The percentage point went from 42 percent in 2005, to 44 percent in 2006. The statistics are not improving, but getting worse.

Officials say interlock devices for the first offenders will reduce repeat offenses. Over the past decade the number of alcohol-related deaths has not changed. New, innovative methods need to reduce this number of approximately 17,000 impaired motorist deaths. With an ignition interlock device issued for first offenders, you keep them licensed, keep them insured and keep them from drinking and driving.

*The Louisiana Property and Casualty Insurance Commission endorses this concept for mandatory alcohol ignition interlock devices to effectively discourage repeat DWI offenders.*

- **Ban radar detectors while operating a motor vehicle. The presence of such a device would be punishable by a fine.**

**Support Summary:** Speeding was a contributing factor in 30 percent of all fatal crashes in the country in 2005. Speed-related crashes cost Americans \$40.4 billion each year as reported by the National Highway Transportation Safety Administration. Louisiana law enforcement data, compiled by the Highway Safety Research Group/Louisiana State University for 2006, directly attributes exceeding the posted speed limit to 581 traffic crashes that resulted in 40 deaths and 264 injuries.

One of the chief speed enforcement tools available to law officers is the radar gun. The standard radar gun bounces radio waves off a moving vehicle to determine that the vehicle's speed based upon the moderated change in the returning waves' frequency. Available in more recent years is a radar gun that uses pulsed laser light rather than radio waves to monitor vehicle speed. The laser radar gun (LIDAR) is a more reliable enforcement tool, particularly in higher traffic density areas.

A variety of radar detectors and jammers are available commercially to the motoring public to elude law enforcement speed detection.

Radar detectors are illegal to operate in Virginia, Washington, D.C. and on all military bases, and are banned from commercial vehicles weighing over 10,000 pounds in all 50 states under the Federal Transportation Act.

Radar jammers, promoted as “scrambling” or “absorbing” radar, are illegal to own or operate in all 50 states under FCC regulations. In addition, California, Colorado, Illinois, Minnesota, Nebraska, Oklahoma, Utah, Virginia and Washington, D.C. prohibit radar jammers.

Laser radar jammers operate on the principle of destructive interference to “jam” most LIDAR guns in most circumstances. LIDAR jammers, like police LIDAR guns are regulated by the FDA for eye safety as Class I devices. Laser jammer operation is illegal in California, Colorado, Illinois, Minnesota, Nebraska, Oklahoma, Utah, Virginia and Washington, D.C.

The Commission recognizes radar detectors and jammers subvert enforcement of speed limits on Louisiana roads, which results in more crashes, which affects insurance rates.

*The Louisiana Property and Casualty Insurance Commission supports the concept of prohibiting the use radar detectors.*

- **Extends the requirement of safety belts in vehicles to include all occupants in the vehicle. Penalty would be punishable by increasing fines for each subsequent offense.**

**Support Summary:** Seat belt use in the United States stood at 81 percent in 2006, basically unchanged from 82 percent in 2005. In Louisiana, the statistics were 78 percent in 2005, and dropping to 75 percent in 2006, well below the average of 85 percent usage in primary law states (which includes Louisiana). Normally the states with secondary enforcement laws average 74 percent usage.

In July 2006, 25 states and the District of Columbia and Puerto Rico have primary enforcement safety belt laws, 25 states have secondary laws, and one state (New Hampshire) has no seat belt law for adults. States that strengthen their laws from secondary to primary show a seven percent decline in driver death rates.

It is time for the state of Louisiana to require that all occupants wear a seat belt to promote seat belt compliance and improve the dismal statistics of the state. A common cause of death and injury to children in motor vehicles is being crushed by adults who are not wearing safety belts. One out of four serious injuries to passengers is caused by occupants being thrown into each other.

Motorists are 25 times more likely to be killed or seriously injured when they are thrown clear of the vehicle than when they remain inside their vehicle. In fatal crashes, 75 percent of the occupants totally ejected are killed. When seat belts are properly used, serious injuries are reduced by 50 percent and fatalities by 60 to 70 percent. For every one percent increase in seat belt use, 172 lives and approximately \$100 million could be saved in annual injury and death costs.

More than 90 percent of all motorists believe seat belts are a good idea but obviously they do not buckle up when driving. In a 30 miles per hour collision, an unbelted 160 pound person can strike another passenger, crash through a windshield

and/or slam into the vehicle's interior with a 4,800 pound force. That alone should be enough to convince everyone to always wear a seat belt!

*The Louisiana Property and Casualty Insurance Commission endorses the use of seat belts for all occupants and increasing the fines for non-compliance.*

## **V. Legislative Considerations Adopted 2/28/07 by Mail Ballot**

- **Strong Enforcement of Statewide Building Code.**

**Support Summary:** In the 2005 First Extraordinary Session, Act 12 was passed by the Legislature which established a uniform building code for the state. Effective January 2007, the purpose of the law was to adopt the 2003 International Building Codes (I-Codes, IBC) statewide, and to establish a 19 member Louisiana State Uniform Construction Code Council to enforce the new construction standards, certify building inspectors and update the code every three years. The Joint Louisiana Budget Committee approved \$14 million for government funding to implement the new law. The budget includes money for initial set-up costs for offices and training facilities to expand technology and certified staff, and provide money for the State Fire Marshall to hire additional commercial plan reviews for the code. Throughout the state, there is a great need for code officials and inspectors, and money for their training and certification. These costs were also figured into the budget.

Prior to the new statewide code being signed into law, most of Louisiana's parishes had no fortified building requirement whatsoever. The purpose of the I-Codes is to build more durable structures, protecting against natural disasters, fires and electrical malfunctions. The stricter standards address windows, roofs, garages, siding, glazing and door protections, wind anchors and bracing, based on studies conducted on recorded wind speeds of previous hurricanes. Reports have estimated that over \$8 billion in cleanup and recovery costs would have been spared had the codes been enacted before Hurricanes Katrina and Rita.

Sound, existing structures are exempt from complying with the IBC standards. The code will only be imposed on homes and buildings requiring extensive renovations, repairs, or new construction (50 percent or more). The code is also not imposed upon hunting and fishing camps.

Studies project that the cost of the fortified materials may increase the cost of construction anywhere from one to eight percent statewide. While some residents may be hesitant to comply with the new IBC standards because of an increase in construction costs, the studies further illustrate that adhering to these standards will provide a long-term savings of \$3 to \$16 for every \$1 spent on construction costs. The code may bring about additional benefits for citizens, including a potential cost savings for policyholders. State officials also anticipate that this code uniformity will encourage insurance companies to bring their business back to the state, making coverage options more available for residents.

The I-Codes have been adopted in Florida, Georgia, Texas, South Carolina, North Carolina and Virginia, and have proven to be very successful. Since the code was enforced, the numbers of claims reported in Florida has decreased by over 30 percent.

State officials and insurers anticipate that the program will bring overwhelming success to Louisiana as well.

*The Louisiana Property and Casualty Insurance Commission supports the statewide building code and believes it is essential in rebuilding and protecting Louisiana.*

- **Limit Flood Risk.**

**Support Summary:** Much of the devastation wrought by Hurricanes Katrina and Rita in 2005 was attributable to flood inundation from the failure or design of levees, levee systems and navigation channels, and the years of coastal erosion and the subsequent loss of buffering marshes and coastal forests. In recognition of the need for a comprehensive solution that would unify the efforts of disparate federal, state, and local entities, as well as the general citizenry, the Legislature reacted quickly in November 2005 to create the Coastal Protection and Restoration Authority (CPRA) as the single state entity authorized to focus development and implementation efforts for comprehensive coastal protection. Through the CPRA's Integrated Planning Team, a master plan has been developed that will be presented to the Legislature during the 2007 Regular Session.

The master plan's approach to flood protection relies heavily on restoration of natural barriers and buffers, and the mechanisms to achieve them. An example would be the major river diversion projects of the Mississippi and Atchafalaya to provide vital sediment and fresh water. Levees are crucial aspects of the master plan, as many South Louisiana communities cannot exist in these high risk areas without such protection. However, where a levee is recommended, the plan makes clear that the structure must be integrated into the landscape in such a way that it does not destroy the viability of the ecosystem or encourage unwise development.

The process of restoring coastal Louisiana and protecting it from flooding will be long, expensive and require the continued cooperation and shared vision of the various government entities engaged, as well as the public.

Successful restoration of the coast and its natural storm barriers and judicious use of levees to limit flood risk exposure will have the inevitable consequence of more available and affordable property insurance in South Louisiana.

*The Louisiana Property and Casualty Insurance Commission recommends the concept of limiting flood risk exposure.*

- **Increase Consumer Education.**

**Support Summary:** The state of Louisiana faced two of the most devastating acts of nature in recorded history in 2005. In the aftermath of the disasters, the citizens of the state were faced with many unprecedented obstacles. It was apparent that many policyholders had to learn the ABC's of insurance the hard way. Perhaps many of these problems could have been resolved more quickly if consumers had been more educated

and prepared for such an event. In the wakes of Hurricanes Katrina and Rita, the necessity of consumer education became more evident.

The Louisiana Department of Insurance (DOI) strives to provide the consumers of the state with a wealth of information to educate and prepare them for any insurance-related issues. In November 2006, Commissioner Jim Donelon implemented the “Consumer 101” program. Members of the DOI Property and Casualty Consumer Affairs staff travel throughout the state, speaking to groups on the following topics:

- The role of the Insurance Commissioner and the Department of Insurance
- How to read policy language, coverage types, structure, laws and options
- What affects insurance rates
- How to file an insurance complaint
- Claims mediation
- Storm advice, hurricane tracking maps, storm preparedness, personal property inventory checklist
- Consumers’ Guides to Homeowners and Auto Insurance
- Contact phone numbers
- Frequently Asked Questions

Brochures on all these topics are provided for the audience, which are produced at the Department. All brochures are available to consumers through the DOI’s Public Affairs and Consumer Affairs divisions.

The Department’s Web site, [www.lidi.state.la.us](http://www.lidi.state.la.us), also offers a variety of resources to the consumer. Included on the Web site are links to current news, hurricane information (including emergency rules, directives and media releases), upcoming meetings and seminars, online complaint forms, information on fraud, comparison guides and summary reports. There is also a link on the Web site for the DOI’s “Ask a Question” program. Consumers can submit a specific question or problem to be answered by the appropriate staff.

In a weekly feature published in newspapers across the state, the “Ask the Commissioner” column spotlights current topics, problems and questions addressed by the Commissioner.

Statistics released after the hurricanes show that an alarmingly small percent of the population have a flood insurance policy. Less than half of the victims of Hurricane Katrina had flood coverage placed on their home. Only about 20 percent of homeowners living in flood prone zones purchased federal flood insurance if it was not required. According to the *Insurance Journal*, studies show that only one percent of Americans living outside flood zones buy federal flood insurance. Commissioner Donelon stresses the importance of flood insurance, even when the home is not in a marked flood zone. During “Get Smart About Insurance Week,” the Commissioner urges consumers to get educated about insurance, know the importance of coverage and contact their agent to familiarize themselves with their policy. The Department of Insurance continues to make progress in educating consumers on the importance of emergency preparedness and better awareness regarding insurance policies.

*The Louisiana Property and Casualty Insurance Commission recognizes and supports the importance of increasing consumer education.*

- **Maintain the Economic Viability of Louisiana Citizens Property Insurance Corporation.**

**Support Summary:** During the 2003 Regular Legislative Session, Act 1133 created the Louisiana Citizens Property Insurance Corporation (Citizens) to operate the FAIR and Coastal plans. The act changed the financing mechanism for the plans, enabling Citizens' income to be exempt from federal income tax. The corporation would be able to build tax-free reserves for catastrophe losses and issue tax exempt bonds. The plan had the ability to pay out losses over a longer period of time for catastrophic events and provided the provisions for bonding authority.

The corporation would operate these insurance plans for applicants unable to get insurance in a voluntary market. However, the average rates must be at least 10 percent above the competitive voluntary market rates in each parish in which the coverage is sought as specified in R.S. 22:1430.12(A)(1). This ensures that Citizens policyholders adequately cover their risks and the voluntary market is allowed to share the catastrophe exposures and compete in the market.

Citizens must be kept as a non-competitive residual market. Citizens must have the ability to levy emergency assessments in order to repay bonding agreements. Citizens must not lose its federal tax exempt status. The concept of Citizens has worked, and there is insurance available. The plan accomplished what it was legislatively created to do.

*The Louisiana Property and Casualty Insurance Commission recommends maintaining the economic viability of the Louisiana Citizens Property Insurance Corporation.*

- **Long Term Investment in Louisiana.**

**Support Summary:** A recurring problem in recent years is the lack of a competitive voluntary property insurance market in the state. The commissioner of insurance and the governor have recently traveled to various areas of the country in an effort to attract more insurers to the state. They were able to report that the state has created a more attractive insurance industry environment by reforming the levee boards, forming a master plan to restore the natural coastal storm barriers, and adopting a statewide building code.

With noted improvements, the entry of financially sound insurance companies into Louisiana is an important factor in building a strong market. The basic financial criteria for an insurer is set by law and administered by the Department of Insurance (DOI).

The minimum capital and surplus is \$3 million, but the DOI would generally prefer the capital and surplus to be at least \$5 million. There is a subjective process that includes some of the following factors: holding company structure, amount and type of reinsurance, anticipated premium volume and location of the risk.

A program has been proposed to encourage new and qualified insurers to the state to write property insurance and help to depopulate Louisiana Citizens Property Insurance Corporation. The program would provide a state matching grant for the

insurance company provided that the company writes new business for a minimum of five years.

*The Property and Casualty Insurance Commission recommends all efforts to encourage long term investment by insurance companies in Louisiana.*

- **Modernize/Streamline Insurance Policy Forms.**

**Support Summary:** In an ongoing effort to make Louisiana a more favorable market for insurance companies, the Department of Insurance's Policy Forms Division continues to make advances within their department to modernize and streamline policy form filing procedures to better accommodate insurers. Allowing insurance companies to respond to conditions in the marketplace is an important issue.

The Property and Casualty Policy Forms Division maintains what is referred to as an "open door policy." Implementing a communicative relationship with insurers has proven to be successful in the past. Throughout the filing and reviewing process, the staff establishes communication with the filing company to offer suggestions or changes to make sure the filing has met all submittal requirements.

Along with a cooperative attitude, the staff also takes a hands-on approach in improving the Forms Division. The annual Form Filing Seminar is organized by the staff and has grown to include all facets of the Property and Casualty Division of the Department, including the Consumer Affairs Division and the Insurance Rating Division. The staff is always available to attend national conferences, such as the Association of Insurance Compliance Professionals, Insurance Regulatory Examiners Society and the National Association of Insurance Commissioners. They are encouraged to participate and speak on panels when needed. The online "Ask a Question" program encourages consumers to submit any questions or concerns to the Policy Form Division to be answered by a member of the staff.

In addition to a knowledgeable staff, technical advances within the division are also being implemented. The Policy Form Matrix provides insurers with the ability to search for the filing and legal requirements applicable to specific product types and is available through the Department's Web site, [www.ldi.state.la.us](http://www.ldi.state.la.us). Insurers also have access to required documents including a statement of compliance, certification of compliance and transmittal document, all of which are mandated under DOI Regulation 78. Also the Policy Forms Division has been working on the new Consumer Rates and Forms Tracking System, or "CRAFT System," and hopes to have the program up and running by the summer of 2007. The CRAFT System is similar to that of Florida's I-File system, and gives insurance companies the option of submitting a filing electronically, but still leaves the option of submitting a paper filing open to the filing company.

*The Louisiana Property and Casualty Insurance Commission recognizes and supports the continuing modernization and streamlining of the policy form filing procedures.*

- **Protect Insurance Contracts.**

**Support Summary:** Louisiana is a state with strong statutes pertaining to contract law. However, when a state-of-emergency exists in a region or state, government officials have the right and duty to take unprecedented actions. Such was the case following the aftermath of Hurricanes Katrina and Rita. In order to protect the health and welfare of the residents of the state and accommodate their needs, emergency rules, directives and advisory letters were issued to deal with the overwhelming problems. In accordance with the Administrative Procedure Act, the commissioner of insurance issued the following rules.

Emergency Rules 15 and 19 were issued to prevent insurers from cancelling or non-renewing policies due to non-payment of premium. These were necessary because of the disruption of mail service in the storm areas, and the displacement of thousands of policyholders. These rules expired before the end of 2005.

Emergency Rule 22 established a claims mediation program as an alternative method for solving claims disputes due to the large number of unresolved claims still pending months following the storms.

Emergency Rule 23 prohibited the cancellation or non-renewal of policies until 60 days after repairs to the damaged structures had been completed. This notice was issued because of the length of time it was taking policyholders to complete repairs to their homes due to the lack of available contractors and materials in the area. The rule expired December 31, 2006.

Directive 199 mandated that all insurance companies extend the period in which a policyholder can take legal action against their insurance company for a Hurricane Katrina and/or Rita claim. The prescriptive period was extended from one year to two years from the date of the inception of loss.

Some insurers have argued that the emergency measures violated contract law and will discourage insurers from doing business in the state. During the existing conditions at the time, extraordinary measures were needed to protect the public interest as set forth in R.S.22:2.

*The Louisiana Property and Casualty Insurance Commission endorses protecting insurance contracts.*

- **Region or Line of Business Deductible.**

**Support Summary:** Currently, provisions found at R.S. 22:635.3(C) and 636.2(D) prohibit an insurer from increasing the deductible on a homeowners policy of insurance that has been in effect and renewed for more than three years unless based on nonpayment of premium, fraud of the insured, a material change in the risk being insured, two or more claims within a three-year period, or if continuation of such policy endangers the solvency of the insurer. Both laws provide an exception if an insurer increases policy deductibles for all homeowner policies in the state.

It should be noted that these two laws were enacted in 1992. The laws originated as Senate Bill 195, which according to committee minutes, was amended at that time to

accommodate insurance industry concerns. The bill, as amended, was voted out of both the Senate and House Insurance Committees unanimously.

The deductible can be used by the insurer to reduce its risk to certain covered perils and by the insured to reduce premium, if the insured is allowed to elect a higher deductible. The policy deductible is that portion of the total risk covered by the insurance policy that is assumed by the insured in a claims-paying event. This predetermined amount is subtracted from the total loss with the remainder of the claim payable by the insurer to the insured. An insurer may offer one or more deductibles from which a prospective insured may choose at the time of application and the insurer may impose certain minimum deductibles. Policy deductibles vary by the circumstances in which applied (“all-perils,” “wind and hail,” “named storm,” “hurricane”) and amount (fixed dollar amount, percentage of insured value).

Apparently, Louisiana is the only state in the country that does not allow an insurer to freely manage its statewide homeowner risk by imposing different deductibles dependent on the home’s geographic location within the state. For business that has been with the insurer for less than three years, the insurer can freely manage its exposure to risk by mandating any approved deductible, even if the mandate varies by property location. If the policy has been with the insurer for three or more years, the insurer has no such freedom to manage its risk. Our unique law has been cited favorably by consumer advocates and has preserved the deductible in homeowner policies in the southern portion of the state as they existed prior to the 2005 storms. However, the insurance industry frequently cites these laws as an impediment to writing new business and attracting more homeowner insurers to the state. Some homeowner insurers, conducting business in the state, express concern about being able to properly manage their risk. These insurers contend that repeal of these laws will result in savings to those homeowner-insured that live in those areas of the state less prone to wind/hail/hurricane damage. For those homeowners that live in areas of the state more prone to these wind perils, the higher deductibles that insurers may impose would allow insurers to increase capacity, to write more new business and would encourage the insured to find ways to mitigate exposure to their increased risk.

The amendment of the law to allow insurers more flexibility to territorialize homeowner deductibles will result in greater availability and affordability of homeowners insurance in Louisiana.

*The Louisiana Property and Casualty Insurance Commission endorses this proposal changing the region or line of business deductible.*

- **Provide Government Incentives to Encourage Retrofit of Building Codes.**

**Support Summary:** The Louisiana State Uniform Construction Code became effective January 1, 2007. While some people may be hesitant to adhere to the building code because upfront construction and repairs costs will be slightly higher, in the long run, studies show that adhering to the code will be beneficial to home and business owners. Most government officials and insurers across the state are speaking out about the benefits of adhering to the construction codes.

Trying to motivate insurers to return to the state is an important issue. Some insurance companies have stopped writing new policies in the state, while others are seriously considering whether or not to do business in Louisiana. The adoption of a statewide building code will hopefully provide the motivation needed for the insurance companies to begin writing business again, and in bringing companies back, making insurance coverage options more available for consumers.

An issue to be addressed is the potential cost savings building codes can have on insurance rates statewide. A good comparison is seen with fire ratings. Citizens in a municipality with a good fire rating will see lower homeowners' insurance rates than citizens in communities with a low or worse rating. One can apply that same principle to a statewide uniform building code and better code enforcement.

Since building code enforcement is in its early stages, Louisiana has looked to other states, like Florida, who have enacted the code with very successful results as witnessed during the 2004 and 2005 hurricane season. In the attempt to stress the importance of adhering to the code, Florida has offered several incentives to its residents. According to the *Insurance Journal*, Florida homeowners can apply for matching funds from the state to make recommended improvements. Some low-income homeowners can get grants of up to \$5,000 with no matching requirements. The "My Safe Florida Home" program, enacted last May, provides free home inspections outlining ways in which homeowners can protect their property from storm damage. Detailed inspection reports would tell homeowners which improvements should be made to the home to mitigate hurricane damage, the cost of the improvements, and insurance discounts that would be available for each improvement.

Suggestions have included low interest loans, insurance credits and tax incentives to retrofit existing structures to meet the new code standards. Sales tax exemption from the purchase of hurricane preparedness supplies, before each hurricane season, would provide added incentives for the citizens of the state. Louisiana hopes to learn more ways to persuade the residents of the state to fortify their homes to the new standards with the development of needed incentives.

*The Louisiana Property and Casualty Insurance Commission endorses the concept of providing government incentives to encourage retrofit of building codes.*

## **VI. Issues Requiring Further Study**

- **Land Use Plan.**

**Support Summary:** According to published data, the homes and businesses of half of Louisiana's citizens are located in South Louisiana, the area of our state most severely impacted by, and still recovering from, Hurricanes Katrina and Rita. These two hurricanes eroded roughly 200 square miles of storm-buffering coastline adding to the over 1.2 million acres of coast lost since the 1930's, and which Louisiana continues to lose at the rate of 15,300 acres per year.

In November 2005 in the aftermath of these storms, the Legislature created the Coastal Protection and Restoration Authority (CPRA) as the single entity with the authority to focus development and implementation efforts for comprehensive coastal

protection. CPRA, in turn, created the Integrated Planning Team to coordinate development of a coastal protection master plan with state and federal agencies and political subdivisions. The Legislature will be presented with the final draft of this master plan (currently open for public review) during the 2007 Regular Session.

In its current form, the draft master plan places great emphasis on land use. While the plan envisions comprehensive coastal protection and restoration through barrier islands, healthy marshes, natural ridges, cypress swamps, major river diversion projects, and levees; not every community will receive the same level of hurricane protection. As such, appropriate land use is vital to minimize further destruction of natural coastal barriers, to prevent increased exposure of existing home, businesses, and infrastructure, and to avoid negating the protective effects of the plan as they are implemented by unwise land use in newly restored/protected areas. Transportation, navigation and port projects, oil and gas development, groundwater management, coastal forestry/logging, as well as community residential and business projects, must all be considered within the context of prudent land use planning and zoning.

To accomplish these ends, federal, state and local governments will have to work together in their respective policy-making and legislative capacities. Approximately 80 percent of coastal Louisiana is privately owned and the rights of these landowners must be honored as components of successful land use planning and zoning. Local governments have a necessary role in tempering future development in high risk coastal areas through land use restrictions and zoning actions. However, local government land use planning must remain faithful to the comprehensive CPRA master plan endorsed by the Legislature for that plan to be effective. The master plan suggests examining the need to strengthen the Louisiana Coastal Resources Program and the Louisiana Coastal Zone Management Plan as well as looking for ways to provide incentives to local governing bodies to enact region-wide land use zoning.

The Commission recognizes the necessity for Louisiana to have a unified approach to protection and restoration of its coastline to ensure the future of South Louisiana, and the impact that land use planning by local jurisdictions can have on its success.

*The Louisiana Property and Casualty Insurance Commission remains committed in its interest and further study as the Legislature considers the CPRA's master plan and its complexities.*

- **Claims Mediation Program.**

**Support Summary:** After Hurricanes Katrina and Rita, the state of Louisiana faced many unprecedented obstacles. Among the obstacles were thousands of unresolved claims disputes between insurers and policyholders, and how to deal with them in a fair and timely manner. Emergency Rule 22 was issued to address this problem.

The directive, effective January 2006, implemented a claims mediation program in hopes of arbitrarily settling property claims disputes in excess of the amount of \$500. The goal of the claims mediation program is to arrange a meeting between the insurer and the insured in an informal atmosphere with a neutral third party mediator present.

The role of the mediator, who is appointed by the American Arbitration Association (AAA), is to facilitate open discussion and debate between parties, and explore possible solutions to promote understanding and reconciliation in an attempt to resolve the claim. The cost of the meeting is paid for by the insurer, and therefore, no cost is incurred by the insured.

Mediation is a non-binding process, and abstains from binding litigation and legal fees. Because mediation is non-binding, neither the policyholder nor the insurance company is legally obligated to accept the mediator's recommendation. However, if a settlement is reached, the insured shall have three business days to rescind any settlement agreement.

A representative from the Department of Insurance would be available to participate in the conference if notified in advance, and would be assessable to provide general information on insurance policies and law as contained in the Insurance Code. If an insured elects to have an attorney present, he may do so, provided that he notifies AAA in advance.

The claims mediation program appears to be very successful. To date (3/2007), there have been over 10,479 mediation cases. Of those cases, over 75 percent have reached a favorable settlement. Over \$50 million in defense litigation costs have been spared because of the program.

*The Louisiana Property and Casualty Insurance Commission supports the development of a claims mediation program, and recommends further analysis.*

- **Catastrophe Computer Modeling Safeguards.**

**Support Summary:** Catastrophe modeling is a computer-technology based risk evaluation tool. These models rely upon practitioners of various disciplines (meteorologists, engineers, actuaries, statisticians) to contribute vast data to accurately estimate the likelihood and severity of natural hazards and the insurance cost associated with each event. This tool enables an insurer, reinsurer or insurer rating agency to more responsibly manage risk through development of adequate rates and diversification of its policyholder portfolio.

Insurers are allowed to use catastrophe computer modeling in the formulation of rates in Louisiana. There are no specific laws regarding use or approval of the models. The only requirement imposed by the Department of Insurance (DOI) on insurers using such modeling is for the modeler to complete a DOI form/questionnaire, and file the model with DOI. The insurer using a model must file a DOI form/questionnaire identifying the model, and its direct effect in the calculation of the insurer's rates. DOI considers the model itself as privileged and confidential information and, as such, not subject to public records laws. There are three catastrophe computer models on file with the Department.

*With the widespread use of catastrophe computer modeling and the increasing expense and complexity that goes into development of ever more refined models, the Louisiana Property and Casualty Insurance Commission recommends further study to determine whether specific regulatory law should be enacted to protect and provide for all interested parties.*

**The Louisiana Property and Casualty Insurance Commission** will continue to study various property and casualty issues throughout the year. Several topics of interest presented to the Commission include usage of administrative rulemaking, formation of a state catastrophe fund, and insurance claim adjusters' security and access during catastrophic events.

Topics of continuing study include: red-light cameras, distracted drivers, limited usage of cell phones by certain age groups, speeding, data recording devices and repeat DWI offenders.

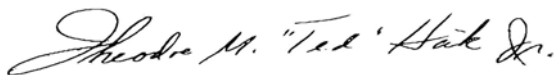
## VII. Overview

**We trust this report will have some impact on legislation in the 2007 Regular Legislative Session.**

**The Louisiana Property and Casualty Insurance Commission understands one of the best ways to respond to the continuing aftermath of the 2005 storm season is to adopt reforms that will promote a healthy, competitive insurance marketplace in Louisiana.**

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

**The Commission will continue to introduce topics for discussion with the intention to inform and promote positive changes in Louisiana and to entice more insurance companies to the state.**



**Theodore M. Haik, Jr.**  
**Chairman**



**Richard A. Clements**  
**Vice Chairman**



**Terrell Barham Moss**  
**Director**