The Impact of the 2021 Louisiana Legislative Session

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BXS Insurance

The 2021 Louisiana Legislative Session was dominated by bills aimed at addressing concerns over alleged unfair claim practices stemming from the record five hurricanes that struck Louisiana in 2020. While most of the problems experienced by home and business owners were the result of the sheer volume and severity of the claims, coupled with a lack of qualified adjusters to handle them, some legislators seized upon the opportunity to strengthen Louisiana’s already substantial unfair claim practice statutes. While there definitely have been some bad actors in handling some of these claims, the vast majority of the problems arose from a lack of qualified adjusters, and the penalties already in place are sufficient to address unfair acts.

Fortunately, PIA and the industry as a whole were able to defeat or water down these bills so that in the end there will be minimal impact upon our industry, with the biggest change being a 15-day requirement to provide a policyholder with the field adjuster’s report upon request, an increase of the minimum bad faith penalty under RS:1892 by $1,500 (to $2,500) for claims resulting from declared disasters where there is a late payment, along with the standardization of the appraisal clause already found in most, if not all, property insurance policies.

While the list below is far from complete, I believe these are the most significant, and you can see the complete list of bills in the [link](http://www.piaoflouisiana.com/docs/governmentalaffairs/2021SessionListFinal.pdf) named “2021 Session Bill List Final”.

**HB457** by Firment – Became **Act 402** after being signed by the Governor.

This is an interesting bill because it seems to require (by exception to an exception) the licensing of engineers, estimators, or building consultants engaged in the investigation of a residential or commercial building claim resulting from the perils of hurricane, flood, windstorm, hail, or tornado.

The bill also formalizes a list of 21 prohibited adjusting practices that mirror some of the already existing insurance industry’s more basic claim handling standards and practice. The bill addressed issues such as misrepresentation, licensing, adjuster qualifications, and undue influence or pressure upon a claimant or insured. Since these standards are already a claim handling requirement, the PIA did not oppose codification.

**HB 458** by Rep. Firment

This bill would have required payment of additional living expense (ALE) or fair rental value (FRV) if a property was damaged by a storm **and** the utilities or electrical service in the general vicinity of the home was also knocked out. Importantly, since there was no requirement in the language that the power outage had to be caused by direct physical loss or damage to covered property, only a requirement that there be some storm damage to the home, if a home lost just one tab off one shingle during a storm, or one slat out of a fence, and there also just happened to be a general power outage (which is almost expected to occur during storms in Louisiana), the insurer would have been required to pay ALE or FRV until the utilities were restored. Essentially this bill would have expanded coverage under personal line policies to include off premises utility interruption coverage, a coverage that is generally unavailable in the insurance market, and a coverage not contemplated in the premium charged for personal line policies.

While this dangerous bill flew through the House unopposed 98 - 0, after the PIA rallied the troops to strenuously oppose this bill, it was tabled. Our thanks to Chairman Talbot for making sure this bill didn’t make it out of the Senate Insurance Committee.

**HB 467** by Rep. Edmond Jordan

This bill was an attempt to prohibit the use of credit-based insurance scoring. Thanks in part to our PIA Grassroots, the bill was soundly defeated on the House floor 38 - 50 after we were surprised by it making it out of the House Insurance Committee.

**HB469** by Rep. Larvadain

This bill would have increased the bad faith penalties for late payment to 200% of the amount that should have been paid. The bill was soundly defeated on the house floor 36 – 50.

**HB 565** by Rep. Huval, Carter and Green – Distracted Driving

This was the PIA’s Distracted Driving bill that we have been trying to pass for 8 years. While it sailed through the Senate last year only to be derailed by the House, this year it sailed through the House only to be derailed by the Senate. Apparently, there are about 18 Senators that did NOT support this bill.

Those Senators that voted “Nay” are as follows:

Allain, Boudreaux, Bouie, Cloud, Connick, Fesi, Fields, Foil, Hensgens, Hewitt, Johns Mills, R. Mizell, Peacock, Peterson, Price, Tarver, and White.

Wait till next year? If any of these Senators represent your district, please reach out to them to ask for their support next year. Ironically, some of these nay-voting Senators supported the bill last year, and while we believe that we had the votes to pass the Senate this year had it been recalled for a vote, we couldn’t garner enough support to have it called back up. Its defeat is literally a crying shame for the families that will lose loved ones to distracted driving until this bill is finally passed, and an embarrassment to our state.

**HB 585** by Rep. Geymann – Became **Act 344** after being signed by the Governor.

* Insurers have 15 days to provide the adjuster’s report to an insured after being requested;
* Failure to pay the undisputed amount of loss within 30 days may result in a bad faith penalties equal to 50% of amount that should have been paid or $1,000, whichever is greater.
* In the case of a presidentially or gubernatorially declared disaster, failure to pay the undisputed amount of loss within 30 days may result in a bad faith penalties equal to 50% of amount that should have been paid or $2,500, whichever is greater.

The original version of this bill provided for bad faith penalties of 200% of the amount payable, and for a 15-day payment requirement. The PIA worked to restore the 50% penalty and the 30-day payment requirement as outlined in the existing statute and was very happy to see that the conference committee reduced the minimum penalty to $2,500 for presidentially or gubernatorially declared disasters from the $10,000 called for by the original bill.

**HB591** by Firment – Became **Act 345** after being signed by the Governor.

* Prohibits insurers from **requiring** insureds to use a preferred vendor or contractor on property claims;
* Provides that an insurance policy covering damaged property shall provide notice that depreciation may be deducted or withheld, **in a form approved by the commissioner;**
* Contractor overhead and profit (“O&P”) and sales tax cannot be deducted in determining the actual cash value of a claim;
* Codifies a **binding** appraisal process that will trump insurance policy language for claims involving residential property insurance policies issued in this state; and
* Provides that if a lawsuit has been filed, the lawsuit the lawsuit will be held in abatement until the execution of the appraisal award.

**HB 652** by Rep. Glover, Wilford Carter, Cox, Green, Hughes, Jones, Landry, Marcelle, Nelson, Pierre, and Selders. Became **Act 247** after being signed by the Governor

Provides for the lowering of penalties associated with the non-prescription possession and distribution of marijuana in amount less than half an once.

A first conviction **or any subsequent conviction,** wherein the offender **possesses fourteen grams or less,** the offender shall be fined not more than one hundred dollars.

While this isn’t the decriminalization of marijuana that some have suggested, the consequences of possession or use of less than 14 grams (half an ounce) is merely a fine of $100. The bill is silent on if a conviction would appear on your criminal record, but it essentially turns possession of small amounts of marijuana into nothing more than a ticketed offense.

**SB 54** by Sen. Luneau - deferred

This bill would have required the Commissioner of Insurance to prescribe a separate form regarding named storm, hurricane, and wind and hail deductibles in homeowners' insurance policies, signed by the insured and made a part of the policy.

Since most, if not all, polices already contain deductible notices, PIA viewed this bill as unreasonable and unnecessary. PIA also was concerned that member agents might be caught in the middle between clients and insurance companies as is sometimes the case with the current Louisiana UM selection/rejection forms.

After the bill passed unanimously (37 – 0) through the Senate Floor, it was deferred during the House Insurance Committee at our urging.

**SB 70** by Sen. Abraham - Became **Act 164** after being signed by the Governor.

This extends the Named Storm deductible limitation applicable to **authorized** residential policies to **authorized** commercial policies. (Authorized **does not include surplus lines insurers**.)

Authorized commercial property or multi-peril insurers can assess **only one Named Storm deductible per calendar year.** If there are subsequent Named Storms, the insured can take a credit towards the Named Storm deductible to the extent they can document the prior damage. Agents should encourage clients to submit all Named Storm claims even if it appears to be under the deductible to obtain the benefit of any credit towards the Named Storm deductible for any subsequent Named Storm. For subsequent Named Storms, if the Named Storm deductible has already been met, the insurer can still assess the AOP deductible.

And last but not least:

**HB 614** – Rep. Seabaugh – **From the 2020 legislative session** – **Act 283**

During the 2020 session, the DOI passed this bill that is based upon the NAIC Cyber Security Model Act. The bill had previously been introduced by the DOI for several years over the PIA’s objections. While each year the bill was deferred, this time we were able to meet with the DOI along with other interested parties to express our concerns. Through this meeting, we were able to have certain exemptions included in the bill, with the ultimate outcome being that the vast majority of our member agents are exempt.

Importantly, **for those that are in compliance with this statute**, whether exempt or not, **the statute also includes a safe harbor, giving agents that comply with the statute a defense to Cyber liability claims**, with a presumption that they are not negligent for a Cyber breach if they are in compliance with these requirements.

Just as important, and the reason for including it in this discussion of this year’s legislation, is that the compliance deadline is **August 1, 2021**. While the bill is too complex to discuss here, those licensees who have **fewer than twenty-five employees**, **less than five million dollars in gross annual revenue**, or less than ten million dollars in year-end total assets **are exempt from compliance with La. R.S. 22:2504.**

There has also been some confusion surrounding the reporting requirements mandated by the bill. While the bill applies to all licensees, **the reporting requirements** under section I of the statute applies only to *“****each insurer domiciled in this state,”***not to insurance agents or other licensees.