

The background of the document is a large, circular stained glass window. The window features a central figure, possibly a religious or historical figure, rendered in various colors including red, blue, and gold. The figure is surrounded by intricate geometric and floral patterns in shades of blue, green, and yellow. The entire scene is set within a double-lined gold border.

LOUISIANA DEPARTMENT OF INSURANCE

HCR 199 of the 2014 Regular Session

**EFFECT OF INSURED'S CLAIMS
BELOW THE DEDUCTIBLE ON
CANCELLATION, FAILURE TO RENEW
OR INCREASE IN THE DEDUCTIBLE**

**JAMES J. DONELON
COMMISSIONER OF INSURANCE**

Louisiana Department of Insurance

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HCR 199

Effect of Insureds' Claims below the Deductible on Cancellation, Failure to Renew or Increase in the Deductible

Louisiana Department of Insurance

January 15, 2015

Introduction

House Concurrent Resolution 199 by Representative Stokes urged and requested the Louisiana Department of Insurance (LDI) to study La. R.S. 22:1265, in conjunction with the laws of other states, to determine if the statutory provision enables an insurer to consider claims submitted by insureds/policyholders that do not exceed the respective deductible selected by the insureds/policyholders for the purpose of cancellation or nonrenewal of coverage or raising the deductible of a homeowner's policy. The LDI was also charged with the task of contacting companies that are active in the Louisiana homeowners insurance marketplace to inquire as to how these companies currently handle claims that do not exceed a policyholder's deductible.

History of the Issue

From 1958 when the Insurance Code was enacted until 1991, laws governing cancellation and nonrenewal of property and casualty insurance policies were limited to how and when insurers were required to provide notice of the cancellation or nonrenewal to the named insured and any other party (such as a lender or mortgagee) who had an interest in a loss which may occur.

In 1991, the legislature began restricting the reasons for which cancellations and nonrenewals were permitted, with the first restriction prohibiting cancellation or nonrenewal of homeowner's policies where the named insured owned or possessed an all-terrain vehicle. Subsequently in 1992, the legislature limited cancellations, nonrenewals and increases in deductibles (with some exceptions) by prohibiting such actions by the insurer on policyholders having renewed coverage for more than three years. One of the exceptions was on properties for which two or more non-"Act of God" claims had occurred within a three-year period of coverage. This led to clarification of the definition of a claim in 2004 and, in 2014, limitation on the look-back period for insurers to apply the three-year timespan that included two or more non-"Act of God" claims.

Also in 2014, legislation was proposed to exclude from the definition of claim an insured's loss that does not exceed the insured's deductible and for which the insurer does not make payment to or on behalf of the insured. This bill, which the author deferred amid industry opposition, became the basis for HCR 199 urging and requesting the LDI to study the issue and report on its findings.

The primary focus of HCR 199 is the definition of a "claim," as defined in La. R.S. 22:1265 (D). The provision states that "an incident shall be deemed a claim only when there is a demand for payment by the insured or the insured's representative under the terms of the policy." In responding to the request as stated in HCR 199, it is imperative to note that the classification of a "claim" or demand for payment

is driven by the terms of an individual insurance policy. At the present, the statute is silent as to how an insurer should handle demands for payment that do not exceed the stated deductible in the policy.

Survey of Insurers

Methodology

To gather data responsive to HCR 199, on October 27, 2014, the LDI asked the top 20 (by premium volume, excluding Louisiana Citizens Property Insurance Corporation) homeowner's insurers about their respective practices in handling claims that do not exceed a deductible. A copy of LDI's correspondence is included in this report as Appendix B. This survey letter asked companies if they currently considered claims that fall below a policyholder's deductible for the purpose of cancelling or nonrenewing coverage or raising an insured's deductible or premium, as well as if the companies' continued willingness to write homeowner's insurance in Louisiana would be affected by a statutory prohibition from considering claims below the deductible as a claim under La. R.S. 22:1265. Insurers included in this survey were: AIG Insurance Group, Allstate Insurance Group, American Modern Home Insurance Company, ANPAC Group, ASI Lloyds Insurance Company, Assurant Insurance Group, Bankers Insurance Group, Centauri Specialty Insurance Company, Chubb Insurance Group, GeoVera Insurance Company, Gulfstream Property and Casualty Company, Liberty Mutual Insurance, Lighthouse Property Insurance Corporation, Louisiana Farm Bureau Insurance Group, Republic Insurance Group, Shelter Insurance Company, Southern Fidelity Insurance Company, Inc., State Farm Insurance Companies, Travelers Insurance Group, and USAA Insurance Group. These insurers represent 70 percent of the Louisiana homeowner's market by premium.

Results

Responses were received from 11 insurers. The responding insurers represent about 38 percent of the Louisiana homeowner's market by premium.

Six of the respondents indicated that they do not use claims closed without payment to effect cancellation, nonrenewal or increases in premium or deductibles. These six companies represent 10.69 percent of the Louisiana homeowner's market.

Only one of these six companies stated that depending on how broadly such a statutory prohibition would be written, the prohibition on using claims under the deductible from being considered could impact its willingness to do business in Louisiana.

Four respondents indicated limited use of claims closed below the deductible in their underwriting decisions. These companies represent about 20.6 percent of the homeowner's market. They offered the following descriptions of their limited used of claims closed below the deductible:

- One company stated that a claim without payment, including those which are below the deductible, will not *solely* result in a nonrenewal or cancellation of a policy or trigger an increase in the premium.
- One company stated that it is not its general practice to use such claims; however, abnormal frequency of small claims might be indicative of future poor loss experience. This company

indicated that broadly drafted legislation of this sort may prevent companies from taking action in certain property maintenance situations.

- Another company stated that such claims would not be considered for existing policyholders with policies in force over 60 days; however, the company may use such claims during the first 60 days for acceptability, but not rating purposes.
- Another company indicated that greater than three zero pays would trigger further investigation of the risk.
- Another company confirmed it underwrites for losses less than the deductible but does not surcharge for these losses.

Six of the respondents representing a combined market share of 13.34 percent indicated that a prohibition on using claims closed below the deductible to influence decisions to cancel or non-renew coverage or raise the premium or the deductible would have no impact on their willingness to continue offering homeowner's coverage in Louisiana. Five respondents representing a combined market share of 17.75 percent indicated that such a prohibition would affect their willingness to continue writing homeowner's coverage in Louisiana. Some offered these concerns:

- One company would not consider legislation that prohibited the consideration of a claim that does not exceed the deductible as the *sole* cause of cancellation, nonrenewal, increasing premium or deductible to be an insurmountable barrier to its willingness to be in the homeowner's market in Louisiana.
- One company whose writings are limited to Louisiana stated that the company would need to change its underwriting guidelines and would likely discontinue writing homeowner's coverage if the legislation impeded the company's ability to take action in certain property maintenance situations, such as several water claims that don't reach the deductible but indicate faulty or failing plumbing.
- One company indicated that the drafting of the legislation would need to be narrow so as not to prevent an insurer from using the knowledge of such claims to underwrite the risk at renewal to determine if, for example, proper repairs have been undertaken or there is a deterioration in the risk.

Other States' Actions Regarding Use of a Claim below the Deductible

The LDI researched the statutory provisions in the other 49 states and concluded that the wording used by all other states to define the term "claim" is consistent with Louisiana's definition of a "claim" as currently set forth in La. R.S. 22:1265. Should the Legislature decide to exclude from the definition of "claim" a demand for payment that does not exceed the respective deductible in a policy, Louisiana law would no longer conform to the law of the other 49 states regarding the term "claim."

Recommendation for Amendment to R.S. 22:1265

Insurers representing 13.54 percent of the market find the proposed prohibition to be consistent with their existing practices and not disruptive of their willingness to continue writing coverage for Louisiana homeowners. However 17.75 percent of the market expressed concern that, depending how restrictive the statute might be, it could/would affect their willingness to continue writing coverage for Louisiana

homeowners. The LDI is concerned that carriers representing over two-thirds of the homeowner's market have not weighed in on this subject through the study making it difficult for the LDI to make a specific recommendation. As such, the LDI does not recommend an amendment to the definition of claim at this time, but urges the legislature to consider the concerns expressed by the insurers who stated their hesitation in writing homeowner's insurance in Louisiana if such a prohibition became effective. To further buttress this recommendation, the LDI advises the legislature that no insurer responding to the survey reported that it currently utilizes one claim below the deductible as the sole basis for cancellation, nonrenewal or increase in the deductible.

Appendices

- Appendix A. Copy of HCR 199
- Appendix B. Copy of survey letter to insurers

ENROLLED

Regular Session, 2014

HOUSE CONCURRENT RESOLUTION NO. 199

BY REPRESENTATIVE STOKES

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A CONCURRENT RESOLUTION

To urge and request the Louisiana Department of Insurance to conduct a study to determine whether R.S. 22:1265 permits an insurer to consider an insured's claim that does not exceed the insured's deductible to cancel coverage or raise the deductible; and if it is deemed that the statute allows an insurer to consider these claims, to develop an appropriate disclosure for the insurer to place on the declarations page of the policy to advise the insured of the consequences of filing a claim that does not exceed the deductible, and to report its findings and recommendations to the legislative committees on insurance.

WHEREAS, R.S. 22:1265 provides that an insurer may cancel or fail to renew a homeowner's policy of insurance or to increase the policy deductible when the insured has made two or more claims within a period of three years; and

WHEREAS, R.S. 22:1265 provides that an incident shall be deemed a claim when there is a demand for payment by the insured or the insured's representative under the terms of the homeowner's policy of insurance, but does not define what constitutes a demand for payment; and

WHEREAS, R.S. 22:1265 does not explicitly state that an insurer shall actually pay money to the insured or on behalf of the insured before using the claim as one of the two claims within a period of three years as grounds for canceling or failing to renew a homeowner's policy of insurance or to increase the policy deductible.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby request the Department of Insurance to conduct a study to determine whether R.S. 22:1265 permits an insurer to consider an insured's claim that does not exceed the insured's deductible to cancel coverage or raise the policy's deductible.

BE IT FURTHER RESOLVED that the Legislature of Louisiana requests that the Department of Insurance include in its study whether an insurer should be allowed to

1 consider a claim on which it has paid no money to or on behalf of an insured as grounds for
2 canceling or failing to renew a homeowner's policy of insurance or increasing the policy
3 deductible of a homeowner's policy.

4 BE IT FURTHER RESOLVED that the Legislature of Louisiana does hereby request
5 that the Department of Insurance recommend possible amendments to R.S. 22:1265 based
6 on the findings of this study, including a definition of a demand for payment and whether
7 an insurer should be required to disclose to an insured in a prominent location on the policy's
8 declarations page that making a claim on the policy on which the insurer pays no money to
9 the insured will be deemed a demand for payment under the policy and the consequences of
10 filing a claim that does not exceed the policy's deductible.

11 BE IT FURTHER RESOLVED that such a study shall include a review of other
12 states to determine if other states allow insurers to use claims that do not exceed the insured's
13 deductible as grounds for canceling or failing to renew a homeowner's policy of insurance
14 or raising the homeowner's deductible.

15 BE IT FURTHER RESOLVED that such a study shall determine if prohibiting
16 insurers from considering claims on which no payment is made either to the insured or on
17 behalf of the insured as grounds for canceling or failing to renew a homeowner's policy of
18 insurance or increasing the homeowner's deductible would have upon the willingness of
19 insurers to continue writing homeowner's insurance policies in this state.

20 BE IT FURTHER RESOLVED that the Legislature of Louisiana does hereby request
21 that the Department of Insurance may submit its findings from this study in the form of a
22 report to the House Committee on Insurance and the Senate Committee on Insurance on or
23 before January 15, 2015.

24 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the
25 commissioner of insurance.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON
COMMISSIONER

October 27, 2014

<Company Representative>
<Title>
<Company Name>
<Address>
<City, State, Zip Code>

**Re: House Concurrent Resolution 199
Homeowners' Claims That Fall Below the Policy Deductible**

Dear <Prefix>. <Name>:

During the 2014 Regular Session of the Louisiana Legislature, Representative Stokes authored House Concurrent Resolution 199 (HCR 199) requesting the Louisiana Department of Insurance (LDI) to conduct a study "...to determine whether Louisiana Revised Statute 22:1265 permits an insurer to consider an insured's claim that does not exceed the insured's deductible" as a reason "to cancel coverage or raise the insured's [premium] or deductible." The Louisiana Insurance Code (La. R.S. 22:1, *et seq.*) is silent as to how an insurer is required to address a claim that falls below a policyholder's deductible. La. R.S. 22:1265(D) sets forth the definition of a "claim" and states that "...an incident shall be deemed a claim only when there is a demand for payment by the insured or the insured's representative under the terms of the policy." The provisions of La. R.S. 22:1265(D) states that "[A] report of a loss or a question relating to coverage shall not independently establish a claim." As a point of reference, a copy of HCR 199 has been attached for your convenience.

As per HCR 199, a request has been made of the LDI to issue a report of its findings to the Louisiana House and Louisiana Senate Insurance Committees. In acknowledging that (name of Company) serves as an active participant in the Louisiana homeowners insurance market, the LDI seeks your company's input in regards to how it addresses claims that do not exceed a policyholder's deductible. More specifically, the LDI would request that (name of Company) provide a response to the following:

1. Does your company currently consider claims that fall below a policyholder's deductible for the purpose of cancelling coverage or raising an insured's deductible and/or premium?

2. If the Louisiana Legislature were to pass legislation that would prohibit an insurance company from considering a claim that does not exceed a policy's deductible for the purpose cancelling or failing to renew a homeowner's policy or to justify an increase in a policyholder's deductible and/or premium, what impact would such legislation have on your company's willingness to continue to write, offer or sell homeowners policies in the state of Louisiana?

In an effort to comply with the January 15, 2015 deadline set by HCR 199, the LDI would ask that your response to the aforementioned questions be returned to my attention on or before **Friday, November 28, 2014**. If you have any questions, please feel free to contact me. Thank you for your assistance.

With best wishes and warmest personal regards, I remain,

Very truly yours,

Warren E. Byrd II
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Louisiana Department of Insurance
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Enclosure: HCR 199