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SUBJECT: Loss Runs and Louisiana Law

BACKGROUND: Loss runs have always been important in Commercial Lines underwriting. However, in the current hard market, they are absolutely crucial in marketing and placing a Commercial Lines account.

MAIN POINTS: There are two Louisiana statutes that directly bear on the availability of loss runs. **Both laws require insurers to provide loss run information in a timely manner.**

One law is found in the Unfair Trade Practices Act, which has been a part of the Louisiana Insurance Code for many years.

The other was added to the cancellation and nonrenewal provisions of the Louisiana Insurance Code in 2001.

Unfair Trade Practices Act. Louisiana's Unfair Trade Practices Act is found in the Insurance Code in Part XXVI, which contains sections 22:1211 – 22:1220.

Here is the statutory wording from 22:1214.(20), which requires insurers to provide loss run information to the first named insured.

22:1214.(20) Failure to provide claims history.

(a) Loss information--property and casualty. Failure of a company issuing property and casualty insurance to provide the following loss information for the three previous policy years to the first named insured within thirty days of receipt of the first named insured's written request:

(i) On all claims, date, and description of occurrence, and total amount of payments.

(ii) For any occurrence not included in Item (i) of this Paragraph, the date and description of occurrence.

(b) Should the first named insured be requested by a prospective insurer to provide detailed loss information in addition to that required under Subparagraph (a), the first named insured may mail or deliver a written request to the insurer for the additional information. No prospective insurer shall request more detailed loss information than reasonably required to underwrite the same line or class of insurance. The insurer shall provide information under this Subparagraph to the first named insured as soon as possible, but in no event later than twenty days of receipt of the written request. Notwithstanding any other provision of this Section, no insurer shall be required to provide loss reserve information, and no prospective insurer may refuse to insure an applicant solely because the prospective insurer is unable to obtain loss reserve information.

(c) The commissioner may promulgate regulations to exclude the providing of the loss information as outlined in Subparagraph (a) for any line or class of insurance where it can be shown that the information is not needed for that line or class of insurance or where the provision of loss information otherwise is required by law.

(d) Information provided under Subparagraph (b) shall not be subject to discovery by any party other than the insured, the insurer, and the prospective insurer.

Analysis:

(1) Insurers must provide three years of loss runs containing the prescribed information within thirty days after receiving a written request from the first named insured.

[22:1214. (20) (a)]

(2) Should the first named insured request additional loss run information than is contained in the list prescribed in 22:1214.(20)(a)(i) and (ii), the insurer must provide this information within twenty days after receiving a written request from the first named insured. **[22:1214. (20) (b)]**

(3) Louisiana's Unfair Trade Practices Act applies to both standard and surplus markets, among others. See 22:1212 (C):

Part XXVI. Unfair Trade Practices

22:1212. Definitions. When used in this part:

C. "Insurer" means any person, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, industrial and burial insurer, or any insurer that markets under the Home Service Marketing distribution method and issues a majority of its policies on a weekly or monthly basis, or any other legal entity engaged in the business of insurance, including insurance agents, insurance brokers, surplus lines brokers, and insurance solicitors. Insurer shall also mean medical service plans, hospital service plans, health maintenance organizations, and prepaid limited health care service plans. For the purposes of this Part, these foregoing entities shall be deemed to be engaged in the business of insurance.

Cancellation/Nonrenewal law. In 2001, the cancellation/nonrenewal provisions of the Louisiana Insurance Code were amended in numerous ways, including the requirement that insurers who are nonrenewing Commercial insurance provide three years of loss runs with the nonrenewal notice.

Here is the relevant section of cancellation/nonrenewal provision of the Louisiana Insurance Code, which includes the 2001 amendments in underline/strikethrough format.

22:636.4. Commercial insurance; cancellation and renewal

A. This Section shall apply to commercial property insurance policies and commercial multi-peril insurance policies; workers' compensation insurance, professional errors and omissions policies, commercial liability insurance policies, other than aviation and employers' liability insurance policies. It shall not apply to reinsurance, excess and surplus lines insurance, residual market risks, ~~[worker's compensation insurance,]~~ multistate location risks, policies subject to retrospective rating plans, excess or umbrella policies, and such other policies that are exempted by the commissioner of insurance.

D.(1) An insurer may decide not to renew a policy if it delivers or mails to the first-named insured at the address shown on the policy written notice it will not renew the policy. Such notice of nonrenewal shall be mailed or delivered at least sixty days before the expiration date. Such notice to the insured shall include the insured's loss run information for the period the policy has been in force within, but not to exceed, the last three years of coverage. If the notice is mailed less than sixty days before expiration, coverage shall remain in effect under the same terms and conditions until sixty days after notice is mailed or delivered. Earned premium for any period of coverage that extends beyond the expiration date shall be considered pro rata based upon the previous year's rate. For purposes of this Section, the transfer of a policyholder between companies within the same insurance group shall not be a refusal to renew. In addition, changes in the deductible, changes in rate, changes in the amount of insurance, or reductions in policy limits or coverage shall not be refusals to renew.

Analysis:

(1) For Commercial Lines covered by this part of the Code, notices of nonrenewal must include three years of loss runs. [22:636.4.D. (1)]

(2) Certain lines of Commercial insurance (such as surplus lines) are not covered by this part of the Code – see [22:636.4.A.] above.

Comments:

(1) While surplus lines insurers are exempted from the requirements under the cancellation/nonrenewal statute [22:636.4.D.] to provide three years of loss runs with any nonrenewal notice, they are not exempted by the requirement in the Unfair Trade Practices Act [22:1214.(20)] to provide three years of loss runs within 30 days of a written request of the first named insured.

(2) Insurers failing to comply with these, or any other provisions of the Louisiana Insurance Code, are subject to administrative action by the Louisiana Department of Insurance.

NECESSARY ACTION: Circulate this Technical Advisory to all appropriate Commercial Lines staff.