

TECHNICAL ADVISORY

TA 354

Subject

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August 15, 2022

**Standardized
Hurricane/Windstorm
Deductible Form**

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EXECUTIVE SUMMARY

- A [law passed in Louisiana's 2022 legislative session](#) requires insurers to provide policyholders with a standardized form which states the amount of any applicable Hurricane, Named Storm, or Wind/Hail deductibles on new Homeowners' insurance policies and request that the insured sign the form.
- A new copy of the form is required to be sent to the policyholder any time the amount of the deductible is changed, but it is not required to be sent on every renewal, if there was no change in the deductible. Changes in the amount of the insured value (which would by default change the amount of a percentage deductible) do not require a new form – only changes to the percentage (i.e. moving from 2% to 3%).
- Although the statute says that “insurers” must send the form, IIABL anticipates that most insurance companies that rely on independent agents for distribution will include the form in the documents that agents must get signed at the time a policy is bound.
- The Department of Insurance [promulgated a regulation](#) which included the template for the form to be used.
- The legislation and the Department's subsequent bulletin both clearly indicate that there is NO cause of action in the event of a failure to provide or secure a signature on the form, but agents should still get the form signed as a matter of compliance and best practices.

TECHNICAL ADVISORY

Necessary Action

- All personal lines agents and staff should be made aware of the new form requirement.
- On ALL new Homeowners policies with an effective date after January 1, 2023 and on any Homeowners policies that experience a change in any wind deductibles after that date, agents should:
 - Provide the form to the insured
 - Get a signature from the named insured
 - Maintain a copy of the signed form in their agency management system (this is an excellent E&O defense in the event of a claim on that policy)

BACKGROUND

In the wake of Hurricanes Laura, Delta, and Zeta in 2020 and then again after Hurricane Ida in 2021, some number of policyholders cried out that they were unaware of the wind deductibles on their insurance policies and shocked by the (in many cases) multi-thousand dollar retentions. Legislators heard these concerns, and they wanted a solution. While we know that any agent worth his salt will explain a policy's various deductible in detail, legislators wanted a statutory requirement that the insurer tell the policyholder specifically how big the wind deductible on their policy is and get a signature showing that the insured received the information.

2021 BILL

In the 2021 session, Senator Jay Luneau brought a bill which was modeled after the UM Selection form. It said that the Department of Insurance should promulgate a single, standardized form for disclosing wind deductibles to policyholders. Insurers would be required to provide the form to the insured and get a signature before the policy was bound and maintain a copy of the signed form. In practice, of course, that meant that agents would be required to acquire and maintain copy of the signed form for any carrier distributed through independent agents. The bill went on to say that the signed form would become a part of the policy. Further, agents would be required to get and maintain a new signed form any time the deductible changed, which would also then become a part of the policy.

IIABL's legislative team believed this bill to be extremely dangerous to agents, and those of you that remember the litigation nightmare that we experienced after the introduction of UM selection forms on auto insurance will immediately understand why. When UM selection forms were implemented, any time an insurer (or in our case, usually the agent) was unable to produce the signed rejection form, Louisiana courts ruled that the coverage could not be excluded (despite the policy language showing that it was excluded). This meant that the company had to pay a claim for a coverage for which they had collected no premium, so they virtually always subrogated that loss against the agent. The agent ends up

with an E&O claim. This was compounded by the courts' extremely narrow view of what a "properly completed" form consists of. Forms have been thrown out as inadmissible and therefore coverage applied (again, despite the policy language showing an exclusion) for the smallest of "mistakes" in the form, such as: signature in a different color ink from the date, producer made a mark showing where to sign the form, or in my favorite recent example: the owner's assistant used a stamp with the owner's signature to sign the form. To be clear, in that case the owner admits that he told the assistant to stamp the form with the intent to reject coverage, but because she was the one that physically signed the form instead of him, the form was thrown out, and coverage was applied.

IIABL feared that because the law was modeled after the UM selection form, this new deductible form would create those same problems that we experienced with UM. Because of this potential for litigation and the related increase in Agent's E&O exposure, IIABL opposed the bill in the 2021 legislative session. The bill would eventually die in the House Insurance Committee.

2022 BILL

In the 2022 session, the bill came back in force. Senator Luneau brought back a nearly identical bill in the Senate, and Representative Matthew Willard brought a companion bill with the same language in the House. IIABL worked through the process to defend agents again. The legislative team met repeatedly with Representative Willard to discuss our concerns regarding the danger of litigation arising out of these forms, and he agreed to work with us. His goal was to make sure that policyholders were able to make an informed decision – that they knew what they were getting with a policy when they bought it. We used that common ground, since that is one of the fundamental roles of our member agents in the insurance process, to work towards a better piece of legislation.

By the time the bill had made it through the House and landed in the Senate Insurance Committee, it had been amended to its final form. Representative Willard worked with our legislative team and others in the industry to ensure that the bill required the new form be provided to the insured – giving them the information necessary to make an informed decision – but stripping out the language in the bill which might lead to litigation of the kind we've seen with UM selection forms. The bill flew through the Senate, was signed by the governor, and will go into effect on 1/1/2023.

STATUTORY LANGUAGE

The full text of the final act is available online, but we'll break down the key language here:

- The commissioner will generate a standardized form that can be used to disclose the amount of any Hurricane, Named Storm, and/or Wind/Hail deductibles on property policies.
 - The amount can be expressed as either a specific amount or as a percentage.
- The form must be provided for signature by the insurer (or agent) on any new policies written after 1/1/2023.
- The form must also be provided for signature by the insured any time a Hurricane, Named Storm, or Wind/Hail deductible changes.
 - If the policy uses a percentage deductible, a change in the insured value does not necessitate a new form, only if the percentage changes (i.e. going from 2% to 3%).
- The form is only for informational purposes: it does not affect coverage.
- This statutory requirement will not create any "cause of action" – meaning you can't sue because of this form or a lack thereof.

DEPARTMENT ADVISORY

The Department Advisory (including the form template) is also available online, but the highlights are:

- Clarifies that while the insurer (or in our case agent) must provide the form, the insured is NOT required to sign it.
- States that there is no standard for the method of collecting and maintaining the forms. Each insurer may do so as they please
- Confirms that neither the failure by the insurer (or agent) to provide this form to the insured nor the failure by the insured to sign the form will create a new cause of action.
- Includes a copy of the form for distribution by insurers

CONCLUSION

The new law requires that insurers provide Louisiana homeowners policyholders with a standard form which has been promulgated by the department to disclose the amount of any wind deductibles on their policy. In most cases, insurers will deputize agents as the ones who are required to present the policyholder with the form. However, because the form is clearly stated to be for informational purposes only and because there is no cause of action created by a failure to procure the form, agents should not be exposed to litigation because they failed to secure one of these forms. The standard in the law is that the insurer (or agent) “shall provide the form and request that it be signed by the named insured” but there is no obligation for the insured to sign the form or for the agent to enforce that the form be returned – providing the form to the insured satisfies the letter of the law.

That being said, agents SHOULD always make reasonable efforts to inform the policyholder about the deductibles that apply to their policies, and, in as complete a manner as possible, agents should document the policyholder’s acknowledgement of those deductibles. A signed copy of the newly prescribed form can be an invaluable piece of evidence in the event of a lawsuit against the agent down the line. At the end of the day, it is in everyone’s best interest that the policyholder is aware of the complete terms of their policy.

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PREPARED BY

Independent Insurance Agents & Broker of Louisiana

18153 East Petroleum Drive, Baton Rouge, LA 70809

Phone: 225.819.8007 | Fax: 225.819.8027

Email: info@IIABL.com | Web: www.IIABL.com