Commissioner's Monthly Column

Department of Insurance Proposed Legislation

April 2015

The legislative session is underway in Baton Rouge and budget matters top the agenda. Facing a \$1.6 billion budget shortfall in the coming fiscal year, lawmakers will grapple with ways to find revenue and minimize the impact of cuts. The Louisiana Department of Insurance (LDI) is facing a cut of \$5 million in the next fiscal year in addition to a \$1.4 million mid-year cut in this fiscal year. Because it is a fiscal session, the LDI legislative package is limited to just over a dozen bills and includes measures that address property and casualty issues that are not only of importance in Louisiana, but hot button issues nationally.

The rapid expansion of transportation network companies (TNCs) such as Uber and Lyft raises many issues about insurance coverage for TNCs and their drivers. A TNC arranges transportation for a fee using a digital network usually accessed through a smartphone application (app). The TNC terms of service generally indicate that the TNC does not provide transportation, but rather a service connecting passengers in need of a ride with drivers using their own vehicles.

TNCs operate in dozens of cities, including New Orleans, Baton Rouge and Lafayette. With such rapid growth, questions over potential coverage gaps have emerged because TNC drivers use their personal cars and do not have commercial auto insurance. Personal auto policies generally have a livery exclusion and auto insurers have been concerned about potential losses from the additional exposure.

Our proposed legislation, SB 172, The Transportation Network Company Motor Vehicle Responsibility Law, establishes insurance guidelines for ridesharing companies and their drivers. The bill's provisions include required coverage in what the rideshare industry refers to as "Period 1" when the driver has the app turned on but has not yet been matched with a passenger. While the bill's required coverage was initially 25/50/25, the measure is being amended to reflect a recently released compromise bill that mandates primary insurance coverage of 50/100/25 during Period 1. The compromise model bill has the support of the American Insurance Association (AIA), the Property and Casualty Insurers Association of America (PCIAA), several major insurers as well as Uber and Lyft.

A driver matched with a passenger is in Period 2 and must be covered by a \$1 million policy for death/personal injury/property damage; also uninsured/underinsured motorist coverage in the amount of \$1 million. This coverage is in place from the time that the match is made to the time that the passenger is picked up (Period 2) and continues during the time that the passenger occupies the vehicle (Period 3).

The transportation network company insurance for Periods 1, 2, and 3 may be provided by the driver, the TNC, or a combination of both. Regardless of any insurance carried by a driver, a TNC must maintain at all times a policy of insurance that would assume responsibility for payment of a claim from the first dollar in the event a driver's insurance failed or did not cover the required minimum limits. Nothing in the bill preempts municipal or parochial regulation of ridesharing. Other states enacting similar legislation include California, Colorado, Illinois, Virginia, and Utah as well as the District of Columbia (D.C.) Similar legislation is being considered in Florida, South Carolina, Georgia, Oklahoma, Tennessee, Missouri and other states.

Another proposed measure that the LDI is supporting addresses the use of OEM or original equipment manufacturer safety parts in vehicle repairs. The proposed legislation, HB 337, prohibits the use of aftermarket, non-original equipment manufacturer parts when they affect the safe operation of a vehicle. The legislation also prohibits an insurer from specifying the use of non-OEM parts in the repair of a vehicle – and prohibits a repair facility from using non-OEM parts to repair a vehicle – unless the consumer is advised in writing before the repair takes place. Current law prohibits an insurer from specifying the use of non-OEM aftermarket crash parts (which are metal or plastic parts which generally constitute the exterior of a vehicle) without first notifying the policyholder. HB 337 also states that in the event that only non-OEM aftermarket parts are available, the insurer must provide the customer a disclosure letting them know that OEM parts were not commercially available.

A third proposed P&C bill, SB 195, would implement the Louisiana Property Insurance Mediation Program. The program would provide a non-adversarial alternative dispute resolution procedure that would help avoid a potentially expensive and time-consuming adversarial process before litigation. Following Hurricanes Katrina and Rita, Louisiana implemented a successful mediation program that was designed to serve as a non-adversarial alternative to litigation. Of the more than 12,000 claimants that sought mediation, 80 percent were settled prior to or during the mediation session.

Those eligible for the proposed program would be residential and commercial residential property policyholders who have a claim of at least $1,000. As with the program implemented following Hurricane Katrina, the insurer would bear the costs of the mediation. If the bill is approved, the LDI will develop guidelines for the qualification and selection of mediators and criteria for the conduct of mediation conferences.

The LDI is also supporting a handful of measures that impact surplus lines insurance. HB 259 repeals my authority to enter the Nonadmitted Insurance Multi-State Agreement (NIMA) or other surplus lines tax-sharing compacts or agreements with other states. In addition to withdrawing from NIMA, the bill would lower the surplus lines tax rate from 5 percent to 4.85 percent and expand the tax base to include premium allocated to other states who tax our share of exposure on a policy covering risks in Louisiana to achieve revenue neutrality. Withdrawal from NIMA would also eliminate the clearinghouse fees paid to the Florida Surplus Lines Service Office by Louisiana policyholders.

HB 214 would provide for the creation of “domestic surplus lines insurers” that would be able to sell surplus lines insurance in Louisiana while being a domestic insurer. Currently, Louisiana does not allow for this. A surplus lines insurer is either an approved or eligible unauthorized insurer (pursuant to R.S. 22:435 and 436.) By definition an unauthorized insurer does not hold a certificate of authority from this state, so under current law a domestic insurer may not sell in Louisiana on a surplus lines basis—basically, free from rate and form regulation and guaranty fund participation.

“Domestic surplus lines insurers” would sell surplus lines insurance in the state of domicile—Louisiana—and would not sell authorized or “admitted” insurance in this state. The idea was pioneered in Illinois in the 1990s and it has also been adopted in Oklahoma, Arkansas, Montana, North Dakota, New Hampshire, New Jersey and Delaware.

As always additional proposed insurance legislation will be moving through the session that may impact you and your business in some way. I encourage you to become involved in the legislative process by logging into the Legislature’s website at www.legis.la.gov. You can also connect with the LDI on Social Media by following us on Twitter @LAInsuranceDept for updates on the status of LDI bills.