

THE LOUISIANA INSURANCE RATING COMMISSION PROVES LOUISIANA IS “SUI GENERIS”

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The State of Louisiana, well known for its colorful politics, has spawned the Louisiana Insurance Rating Commission (“LIRC”) which has traditionally set the rates for insurance companies in the state of Louisiana. The Commission is established under Louisiana law, Title 22, which provides for a Rating Commission composed of seven Commissioners. The Insurance Commissioner is one of the members and the remaining six are appointed by the Governor of the State of Louisiana.

The LIRC has been described as “great” or “terrible,” depending on whether you are a consumer or an insurance company. The truth probably lies somewhere in between. The Rating Commission has the power to approve insurance rates on property and casualty insurance policies in Louisiana.

The original Louisiana Insurance Rating Commission was set up by state Revised Statute Title 22 which provided that a seven person rating commission would set the rates for property and casualty insurance and the other classes of insurance described in the statute. The purpose of the statute was to provide for stable rates and to avoid the peaks and valleys of the insurance market cycles.

The Rating Commission became the center of a controversy several years ago when the Governor discharged five of the Commissioners, who had voted for a rate increase after he had appointed them, but before they had been confirmed by the Senate. He withdrew their nominations and appointed five new members whom he thought would be more attuned to consumer issues. The insurance industry has often introduced bills to try to do away with the Rating Commission or take away its rate making powers, but these bills have always been defeated.

In the 2001 session of the Legislature, acting in the vacuum left by the legal situation of the incumbent Insurance Commissioner, the insurance industry put together a bill entitled Senate Bill 1107 which was a substitute for Senate Bill No. 972 which basically removed the Insurance Rating Commission from the rate making process. House Bill 1107, which was formerly Senate Bill 972, was proposed by Senator Hainkel, the President of the Senate. The bill amended the statute as follows:

To amend and reenact R.S. 22 . . . relative to insurance rate regulation; to limit the authority of the Louisiana Insurance Rating Commission; to provide for transition of certain functions, duties and obligations from the commission to the Department of Insurance; to limit the authority of the department; to replace the commission with the department for receipt of certain reports, plans, and revenues; to permit the department to review and approve certain filings; to eliminate the rate making requirements for certain property and casualty insurers; to permit the department to enforce certain rate reductions; to permit the attorney general to represent the citizens of the state before the department; to provide for appeals to the Louisiana Insurance Rating Commission; and to provide for related matters.”¹

Under Revised Statute 22:1401 as amended, the Property and Casualty Department of the Insurance Department would regulate insurance rates other than those rates negotiated by large commercial policyholders. The Property and Casualty Division may approve in whole or in part any application for rate or rate change filed by any insurer.² This statute takes away the rate making power from the Louisiana Insurance Rating Commission and gives the power to the Property and Casualty Division of the Department of Insurance.

Section B1 provides that:

The Louisiana Insurance Rating Commission is hereby continued for the purpose of considering appeals of decisions by the property and casualty division of the Department of Insurance relative to applications for rate or rate changes.³

The Commission would continue to be composed of seven members, six of whom would be appointed by the Governor. In Section 22:1402.1 the law provides that a competitive market for a line of insurance is presumed to exist unless the Commissioner decides otherwise.

A(1). A competitive market for a line of insurance is presumed to exist unless the commissioner, after giving reasonable notice and after conducting a hearing, determines that a reasonable degree of competition does not exist within a market and issues a ruling that a reasonable degree of competition in the market for a particular line of insurance does not exist. In any hearing to determine whether a competitive market exists for a line of insurance, the party alleging that competition does not exist shall have the burden of proving that market competition does not exist.”⁴

The statute goes on to say that the Commissioner shall identify those factors that cause the market to be non-competitive. Each ruling will only be effective for one year, after which it will expire.

Section B requires that the following factors shall be considered by the Commissioner in determining if a reasonable degree of competition exists in a particular line of insurance.

- (1) The number of insurers or groups of affiliated insurers providing coverage in the market.
- (2) Measures of market concentration and changes of market concentration over time.
- (3) Ease of entry into the market and the existence of financial or economic barriers preventing new insurers from entering the market.
- (4) The extent to which any insurer or group of affiliated insurers control all or a portion of the market.
- (5) Where the total number of companies writing the line of insurance in this state is sufficient to provide multiple options.
- (6) The availability of insurance coverage to consumers in the market.
- (7) The opportunities available to consumers in the market to acquire pricing and other consumer information.⁵

Section 1402(2) gives a new definition for rating standards and methods:

A. Rates shall not be inadequate or unfairly discriminatory in a competitive market. Rates shall not be excessive, inadequate, or unfairly discriminatory in a noncompetitive market. Risks may be classified using any criteria except that no risk shall be classified on the basis of race, color, creed or national origin.⁶

Under Section 1407(C) the insurer can use the rates within 30 days unless they are objected to by the Department.

C. Each rate filing shall be kept on file with the division for a period of thirty days before it becomes effective. Unless notified by the division that a filing is incomplete, or that the filing is disapproved pursuant to R.S. 22:1408, the insurer or rating organization may commence use of the filed rates upon expiration of thirty days from the date of receipt by the division.”⁷

Senate Bill 1107 passed the Senate. The fight against the bill was led by David Chozen, a Lake Charles businessman who had been serving on the Rating Commission for four years. Chozen is the son of Harry Chozen, who was a noted professional baseball player and manager. His father’s claim to fame was that he gave Skip Bertman (the five time national championship baseball coach of LSU) his first job as a bat boy for a minor league team. According to The Advocate, Chozen was outspoken in his opposition to the bill.

The insurance industry wants to get rid of us. Their problem is they can’t control us so they want to get rid of us. The Foster appointees have earned a reputation of being tough on industry rate-hike requests the past four years.⁸

LIRC Commissioner Seth Keener, one of the most knowledgeable people in the state on insurance matters, who is instrumental in the operation of the Louisiana Department of Risk Management, was vocal in his opposition. “If we take the Insurance Rating Commission out of the equation, car insurance rates will go sky high, people will stop

buying insurance and the streets will be filled with uninsured motorists,” said Keener in his remarks to The Advocate.⁹ Continuing, he stated, “Several commissioners, who now have the sole power to set insurance rates, say tampering with their authority will drive up insurance premiums for motorists, homeowners and other consumers by 30 to 50 percent. Senate Bill 1107 would take rate-making authority away from the governor’s seven-member Insurance Rating Commission and give it to the elected commissioner of insurance and his staff.”¹⁰

Governor Foster, a no nonsense businessman and contractor, was vocal in his opposition to the bill.

The Lake Charles American Press also summarized the arguments against the bill in an editorial entitled “Don’t Tamper With the Insurance Commission.”¹¹

Bad bills are often referred to as ‘snakes’ in the state Capitol in Baton Rouge according to (New Orleans) Times-Picayune Capital Bureau Chief Jack Wardlaw, who adds that they often slither out in force late in legislative sessions, but should be ‘clubbed to death.’ One such snake is Senate Bill 1107 which seeks to take rate-making authority away from the six-member Louisiana Insurance Commission and give it to the Commissioner of Insurance and his staff. The bill which has already passed the Senate, would make it easy for insurance companies to raise rates, perhaps within 30 days of filing requests with the state. The bill mandates that the Insurance Department would have to act on rate increases within 30 days or ask companies for more supporting information. If the department failed to act, rate increases would take effect automatically. Acting State Insurance Commissioner Robert Wooley said the LIRC takes too long to review rate increases, turns down too many valid ones and frustrates insurers.”¹²

Lobbyists for State Farm Insurance said,

LIRC Commissioners don’t have the experience or knowledge to set rates and it takes too long to get rate increases approved and bring new insurance products to the marketplace. But David Chozen of Lake Charles, an LIRC Commissioner, said the insurance industry wants to abolish the panel because it is independent and doesn’t bend to the insurance industry’s wishes. ‘We have \$6 billion dollars or more of insurance premiums in this state,’ Chozen said. ‘We’ve stopped hundreds of millions of dollars in increases in the past. No wonder the insurance companies want to get rid of us.’ As for the charge that the rating commission blocks legitimate increases, Chozen said ‘You haven’t seen insurance companies go broke.’ LIRC Commissioner Michael Frank said, ‘If the panel is stripped of its powers, the insurance industry will run roughshod over the consumers. The small guy will be hurt.’ In a countermove, State Representative Dan Flavin, R- Lake Charles, filed House Bill 1911 which mandates the people who testify before the Insurance Rating Commission do so under oath and that anyone who willfully withholds information or provides false or misleading information is subject to losing his license and to either being fined or sentenced to prison. Said Chozen, ‘Our major problem within the Louisiana Insurance Rating Commission is that we cannot depend on the information coming forth in the rate filings to be a true and accurate representation. What we find is that a great deal of information written and/or presented in oral testimony lacks a great deal of true fact. Often, there is spin, erroneous information and untruth, to be kind.’ Governor Mike Foster, who appoints the members of the LIRC, has vowed that he will veto SB 1107 if it passes the House. We hope the House sees fit to club this snake to death, and, if not, the governor sticks to his word.”¹³

According to John Maginnis’ Louisiana Political Fax Weekly, Commissioner David Chozen said that the Insurance Department did not inform LIRC members when SB 1107 would be heard in the House Insurance Committee last week.

‘Here is the Chairman of IRC testifying to abolish the commission and he did not notify us,’ said Chozen. While Wooley and insurance company lobbyists spoke in favor of the measure, no one was on hand to oppose it. ‘We were totally kept out of the loop,’ said Chozen, who said he was paged by committee members during the hearing wanting to know where he was. . . . The 75-page Hainkel bill moved quietly out of the Senate and without being noticed by the press. Only when it passed the House Insurance Committee did the Foster administration realize what the bill did. Governor Mike Foster then criticized the measure and said he would veto it,” according to John Maginnis.¹⁴

The Acting State Insurance Commissioner said:

‘Too many insurers are fleeing the state because it takes several months to get rate requests approved and politics sometimes outweighs actuarial sense. . . . The commission takes too long to review rate requests and that frustrates most insurers,’ Wooley said. ‘The first half of this year, 16 companies have left the state.’¹⁵

According to The Advocate, Governor Foster felt that the insurance firms would win if the bill passed.

Gov. Mike Foster said Monday he opposes a bill pending in the Legislature that would take away the power from the State Insurance Rating Commission. ‘I don’t think this is going to make it through the process. It came out of the Senate pretty easily, but I don’t think it will be that easy in the House. It is a bad idea.’ Foster’s comments came in connection with the battle raging in the Legislature over the powers of the seven person State Insurance Commission. Foster appoints all but one of the members. . . . Foster said lawmakers who want to strip the rating commission of authority apparently want to help insurance companies. ‘The truth is, I have a Commission that is smart, objective and asks questions,’ the governor said. ‘I think that has caused problems (for insurers).’¹⁶

The bill basically removed the Rating Commission from the process of fixing rates and gave all the rate fixing power to the Insurance Department and the Insurance Commissioner. If the rates filed were not proven in thirty (30) days by the Department, they became effective, subject to later action by the Department. The Rating Commission was reduced to an Appellate Board that could only be activated to appeal a granting of a rate. The bill was maneuvered through the Senate by almost unanimous passage and came up in the House. It proceeded through the Senate almost unnoticed by the Rating Commission. It was only when one of the House Committee Members called one of the unsuspecting Rating Commission members to let him know that the bill was appearing before his Committee that the opposition mobilized.

Representative Jim Donelon, Chairman of the House Committee, was in support of the bill and was quoted as saying, “A free market and an unregulated system (without the Commission) would be better for the consumer.”¹⁷

The House did pass the bill and it was sent to the Governor. In the end, Governor Foster vetoed the bill, effectively killing the bill for 2001. Thus, the Rating Commission survived for another year. The LIRC continues to be “sui generis” or “one of a kind.” Louisiana is the only state with such an Insurance Rating Commission. If the insurance industry cannot have it abolished in the next legislative session, many think it will become a hot issue in the next Governor’s race. Shades of the Ghost of Huey Long!

Endnotes

1. Senate Bill No. 1107, Section 22:1401.
2. Senate Bill No. 1107, Section 22:1401.
3. Senate Bill No. 1107, Section B1.
4. Senate Bill No. 1107, Section 1402.1 A(1).
5. Senate Bill No. 1107, Section 1402.1 B.
6. Senate Bill No. 1107, Section 1402.2(A).
7. Senate Bill No. 1107, Section 1407(C).
8. Randy McClain, “Bill Streamlines Insurance Rate Requests,” Capital News Bureau, The Advocate (Baton Rouge), Wednesday, June 6, 2001.
9. Randy McClain, “Bill Streamlines Insurance Rate Requests,” Capital News Bureau, The Advocate (Baton

Rouge), June 6, 2001.

10. Randy McClain, "Bill Streamlines Insurance Rate Requests," Capital News Bureau, The Advocate (Baton Rouge), June 6, 2001.
11. Jim Bean, "Don't Tamper With Insurance Commission," American Press, (Lake Charles), Friday June 15, 2001.
12. Jim Bean, "Don't Tamper With Insurance Commission," American Press, (Lake Charles), Friday June 15, 2001.
13. Jim Bean, "Don't Tamper With Insurance Commission," American Press, (Lake Charles), Friday June 15, 2001.
14. John Maginnis, "Insurance Panel Miffed at Commissioner," Political Fax Weekly, June 15, 2001.
15. Randy McClain, "Bill Streamlines Insurance Rate Requests," Capitol News Bureau, The Advocate (Baton Rouge), Wednesday June 6, 2001.
16. Randy McClain, "Insurance Firms Win With Bill, Foster Says," Capitol News Bureau, The Advocate (Baton Rouge), Tuesday June 12, 2001.
17. Ed Anderson, "Foster Delivers, Vetoes Bill on Insurance Rates," Capitol Bu reau, The Times-Picayune (New Orleans), June 13, 2001.