AN ACT

To enact Chapter 22 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:2651 through 2657, relative to establishing a mediation program for a catastrophic event; to provide insureds an alternative way to settle residential property insurance claims; to provide terms and conditions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 22 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:2651 through 2657, is hereby enacted to read as follows:

CHAPTER 22. THE HURRICANE PROPERTY INSURANCE CLAIM ALTERNATE DISPUTE RESOLUTION PROGRAM

§2651. Short title

This Chapter shall be known as the "Hurricane Mediation Program", hereinafter referred to as the "program".

§2652. Purposes; public purpose

A. The purpose of this Chapter is to provide a nonadversarial alternative dispute resolution procedure that is prompted by the need for effective, fair, and timely handling of residential property insurance claims for residential properties that are damaged by a hurricane. In the wake of the property devastation caused in 2005 from hurricanes Katrina and Rita, the Louisiana Department of Insurance, hereinafter referred to as the "department", issued

Emergency Rule 22, that established a mandatory mediation program. The
mediations conducted pursuant to Emergency Rule 22 resulted in the mediation of approximately 12,000 property damage disputes with a very high success rate. Due to the success of this mediation program, the department issued Bulletin 2021-08 that implemented the "Hurricane Ida Mediation Program".

The mediation program was implemented to give property owners a way to settle insurance claims in a timely manner and a low-cost way to resolve a property insurance claim. Giving citizens an alternate way to resolve residential property insurance disputes and assisting citizens in the repair of their property in a timely manner and at a lower cost is a valid public purpose in the best interest of the citizens.

B. The Louisiana Legislature finds that the Hurricane Mediation Program is a valid public purpose providing the citizens of this state an alternate resolution dispute program to assist in resolving residential property insurance claims in a timely manner and at a lower cost.

§2653. Conditions to request mediation

A. Every insured may request mediation involving a residential property insurance claim for property damage that involves disputed amounts up to one hundred fifty thousand dollars in situations that the governor declares a state of emergency pursuant to R.S. 29:724 for a named windstorm event, and the insured has a claim for damage to property located within the geographic area that is the subject of the declared state of emergency.

B. If the insured decides to mediate a damage dispute through this program, the insured shall contact one of the participating mediation firms listed on the department's website.

C. An insured and insurer may agree to mediate and be subject to the provisions of this Chapter, any claim for residential property damage that involves disputed amounts in excess of one hundred fifty thousand dollars, and the property is located within the geographic area that is subject to the declared state of emergency.

§2654. Firm and department mediation requirements
A. A mediation firm, hereinafter referred to as the "firm", that elects to participate in the program provided in this Chapter shall comply with all of the following:

1. The firm contacts the department regarding participation in the program.

2. The firm agrees to the terms and conditions set forth in this Chapter.

3. The firm provides the department with its official name, contact information, municipal address, electronic mail address, and telephone number.

4. The cost of mediation shall be reasonable.

5. Within five business days after receiving its assignment as the mediation firm, the firm shall give written notice to the insurer and the insured of its assignment.

6. The firm shall set the matter for mediation to occur within thirty days of assignment.

7. The firm shall be in charge of the mediation and shall establish and describe the procedures to be followed. The firm shall conduct the mediation in accordance with the standards of professional conduct for mediation adopted by the American Bar Association pursuant to R.S. 9:4107.

8. The firm may meet with the insurer and the insured separately to encourage meaningful communications, negotiations, and otherwise assist the insurer and the insured to arrive at a settlement.

9. All in-person mediations shall be conducted statewide in a metropolitan statistical area at an office or business location to be selected by the mediation firms. There shall be no charge to the insurer for use of the venue. If the insurer or the insured prefer to participate in the mediation remotely via telephone, video conference, or other similar electronic means is authorized, provided the mediator and all other parties to the mediation are notified of the preference in advance of the mediation, and as needed to accommodate remote participation.

10. The mediation session may last up to ninety minutes of actual
mediation with the insurer and the insured. The ninety minutes shall not include
time spent on telephone calls, document review, research, or any other
administrative tasks that the mediator may find necessary to prepare for the
mediation.

B. The department shall maintain a list of firms that elect to participate
in the program that is provided in this Chapter, and the department shall
maintain this list on its website that includes the firm's official name, contact
information, municipal address, electronic mail address, and telephone number.

§2655. Insurer and insured requirements for mediation

The insurer and insured that elects to participate in mediation under the
provisions of this Chapter shall agree to the following conditions:

(1) The insurer shall bear the reasonable costs necessary to conducting
mediation conferences, except if the insured fails to appear at the mediation
conference, the conference shall be rescheduled upon payment by the insured
of the costs of a rescheduled conference.

(2) If the insurer fails to appear at the mediation conference, the insurer
shall pay the insured's actual cash expenses up to two hundred fifty dollars for
expenses incurred in traveling to and from the mediation conference, and then
pay any additional reasonable fees or costs incurred in rescheduling the
mediation conference. The insurer's failure to appear at the mediation
conference may subject the insurer to enforcement consistent with the
provisions of R.S. 22:1961, et seq., unless the insurer's failure to attend was due
to good cause.

(3) Lack of the insurer's representative to appear with settlement
authority shall be considered a failure of the insurer to appear at the mediation
conference. The insurer shall pay the insured's actual cash expenses up to two
hundred fifty dollars for expenses incurred in traveling to and from the
mediation conference, and pay any additional reasonable fees or costs incurred
in rescheduling the mediation conference. The insurer's failure to appear at the
mediation conference may subject the insurer to enforcement consistent with
the provisions of R.S. 22:1961, et seq., unless the insurer’s failure to attend was
due to good cause.

(4) The insurer shall provide the mediation firm all of the following:

(a) Name, municipal address, electronic mail address, if applicable, telephone number of the insured and the location of the property if different from the municipal address given by the insured.

(b) The claim and policy number for the insured.

(c) A brief description of the nature of the dispute.

(d) The name, municipal address, electronic mail address, and telephone number of the insurer’s contact for scheduling mediation.

(e) Information with respect to any other policies issued by the insurer to the insured that may provide coverage of the insured property for named perils like a flood or windstorm.

(5) Within five business days after the firm contacts the insurer and the insured, the insurer and the insured shall provide the firm all relevant written documentation regarding the disputed claim and a short statement from each as to why the parties have not been able to reach an amicable resolution.

(6) The firm may request additional documentation from the insurer or the insured. The insurer and the insured shall comply with any reasonable request for additional documentation or give an explanation as to the reason the insurer or insured is not able to comply with the request for additional documentation.

(7) The insured may be represented by an attorney or other representative in the mediation, and the insured shall provide the name and contact information for the attorney or other representative to the mediator at least six days before the date of the mediation.

(8) All parties shall negotiate in good faith.

(9) The insurer and the insured shall be given an opportunity to present each side of the controversy and each side may utilize any relevant documents and bring any individuals with knowledge of the issues, like adjusters,
(10) All statements made and documents produced at mediation shall be considered settlement negotiations in anticipation of litigation and the provisions of R.S. 9:4112 shall apply.

(11) Any agreement between the insurer and the insured shall be reduced to writing. The insurer and the insured shall sign the agreement signifying the portions of the claim dispute that have been resolved in whole or in part.

(12) Mediation is voluntary and nonbinding. If a written settlement is reached, the insured shall have three business days within which to rescind the settlement unless the insured has cashed or deposited any check or draft disbursed to the insured for the disputed matters as a result of the mediation conference. If a settlement agreement is reached and is not rescinded, the written settlement agreement shall be binding and shall act as a release of all specific claims that were presented in that mediation conference.

(13) The insurer shall disburse to the insured the specific dollar amount agreed to within thirty days of the conclusion of the mediation.

(14) If the insurer and the insured reach a partial agreement as to the disputed claim, the insurer and the insured may continue to utilize the service of the mediator after the parties have completed voluntary mediation under the program. If the insurer and the insured agree to further mediation, the parties shall be responsible for any additional mediation expenses at the mediator’s standard rate.

(15) If a partial settlement is reached and reduced to writing, the insured shall have three business days within which to rescind the settlement unless the insured has cashed or deposited any check or draft disbursed to the insured for the disputed matters as a result of the conference. If a settlement agreement is reached and is not rescinded, the written settlement agreement shall be binding and shall act as a release of all specific claims that were presented in that mediation conference.

§2656. Alternative dispute resolution disclosure notice
A. If the governor declares a state of emergency pursuant to R.S. 29:724 for a named windstorm event, an insurer writing residential property insurance in this state shall send a hurricane mediation program disclosure form to an insured who has filed a covered residential property insurance claim for property that is located within the geographic area of the named storm or windstorm that is subject to the declared state of emergency. An insurer shall send the disclosure notice prior to the initial investigation by either the United States Postal Service, electronic mail, or by hand delivery.

B. Nothing in this Section shall be construed to provide an insured with a civil cause of action.

C. Nothing in this Chapter shall apply to commercial insurance policies, private passenger motor vehicle insurance, or disputes relating to liability coverages in policies of property insurance.

§2657. Rules and regulations

The commissioner shall promulgate rules and regulations necessary to implement this Chapter.

Section 2. This Act shall become effective on January 1, 2023.