

2021 Regular Session

HOUSE BILL NO. 457

BY REPRESENTATIVE FIRMENT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE CLAIMS-ADJISTR: Provides for claims adjusters

1 AN ACT

2 To enact R.S. 22:1674.1 and repeal R.S. 22:1662(3) and 1674, relative to insurance claims
3 adjusters; to define certain terms; to provide for the standards of conduct for claims
4 adjusters; to require newly licensed claims adjusters and claims adjusters renewing
5 their license to read and acknowledge the claims adjuster standards of conduct; to
6 provide for penalties for violation of the standards of conduct; to repeal the
7 exemption from licensure for certain persons; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 22:1674.1 is hereby enacted to read as follows:

10 §1674.1. Standards of conduct; acknowledgment required

11 A. As used in this Section, the following definitions shall apply:

12 (1) "Client" includes both clients and potential clients and means any person
13 who consults with or hires an adjuster to provide adjusting services.

14 (2) "Person" means natural persons and juridical persons.

15 B. The following standards of conduct shall be binding on all claims
16 adjusters:

17 (1) An adjuster shall not have a direct or indirect financial interest in any
18 aspect of the claim, other than the salary, fee, or other consideration established with
19 the insurer.

1 (2) An adjuster shall not directly or indirectly refer or steer any claimant
2 needing repairs or other services in connection with a loss to any person with whom
3 the adjuster has an undisclosed financial interest, or who will or is reasonably
4 anticipated to provide the adjuster any direct or indirect compensation for the referral
5 or for any resulting business.

6 (3) An adjuster shall treat all claimants equally.

7 (4) An adjuster shall not provide favored treatment to any claimant.

8 (5) An adjuster shall adjust all claims strictly in accordance with the
9 insurance contract.

10 (6) An adjuster shall not approach investigations, adjustments, and
11 settlements in a manner prejudicial to the insured.

12 (7) An adjuster shall make truthful and unbiased reports of the facts after
13 making a complete investigation.

14 (8) An adjuster shall handle every adjustment and settlement with honesty
15 and integrity, and allow a fair adjustment or settlement to all parties without any
16 remuneration to himself except that to which he is legally entitled.

17 (9) An adjuster, upon undertaking the handling of a claim, shall act with
18 dispatch and due diligence in achieving a proper disposition of the claim.

19 (10) An adjuster shall promptly report to the department any conduct by any
20 licensed insurance representative of this state which violates any provision of this
21 Title or department rule.

22 (11) An adjuster shall exercise extraordinary care when dealing with elderly
23 clients to assure that they are not disadvantaged in their claims transactions by failing
24 memory or impaired cognitive processes.

25 (12) An adjuster shall not negotiate or effect settlement directly or indirectly
26 with any third-party claimant represented by an attorney, if the adjuster has
27 knowledge of such representation, except with the consent of the attorney. For
28 purposes of this Paragraph, the term "third-party claimant" does not include the
29 insured or the insured's resident relatives.

1 (13) An adjuster may interview any witness, or prospective witness, without
2 the consent of opposing counsel or party. In doing so, however, the adjuster shall
3 scrupulously avoid any suggestion calculated to induce a witness to suppress or
4 deviate from the truth, or in any degree affect the witness's appearance or testimony
5 during deposition or at the trial. If any witness making or giving a signed or
6 recorded statement so requests, the witness shall be given a copy of the statement.

7 (14) An adjuster shall not advise a claimant to refrain from seeking legal
8 advice, nor advise against the retention of counsel to protect the claimant's interest.

9 (15) An adjuster shall not attempt to negotiate with or obtain any statement
10 from a claimant or witness at a time that the claimant or witness is, or would
11 reasonably be expected to be, in shock or serious mental or emotional distress as a
12 result of physical, mental, or emotional trauma associated with a loss. The adjuster
13 shall not conclude a settlement when the settlement would be disadvantageous to, or
14 to the detriment of, a claimant who is in the traumatic or distressed state described
15 above.

16 (16) An adjuster shall not knowingly fail to advise a claimant of the
17 claimant's claim rights in accordance with the terms and conditions of the contract
18 and of the applicable laws of this state.

19 (17) An adjuster shall not undertake the adjustment of any claim for which
20 the adjuster is not currently competent and knowledgeable as to the terms and
21 conditions of the insurance coverage, or which otherwise exceeds the adjuster's
22 current expertise.

23 (18) An adjuster shall not permit an unlicensed employee or representative
24 of the adjuster to conduct business for which a license is required under this Part.

25 (19) No adjuster, while so licensed by the department, may represent or act
26 as a public adjuster.

27 (20) No adjuster shall materially misrepresent to an insured or other
28 interested party the terms and coverage of an insurance contract with intent and for
29 the purpose of effecting settlement of a claim for loss or damage or benefit under

1 such contract on less favorable terms than those provided in and contemplated by the
2 insurance contract.

3 C. Upon license issuance and license renewal claims adjusters shall read and
4 acknowledge the claims adjuster standards of conduct provided in this Section, in a
5 manner prescribed by the commissioner.

6 D. Violation of any provision of Subsection B shall be grounds for
7 administrative action against the licensee. In addition to administrative action, a
8 claims adjuster who violates the provisions in Subsection B of this Section shall be
9 deemed to have violated the unfair claims settlement practices law contained in R.S.
10 22:1964, and the penalties contained in R.S. 22:1969 may be enforced by the
11 commissioner.

12 Section 2. R.S. 22:1662(3) and 1674 are hereby repealed in their entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 457 Original

2021 Regular Session

Firment

Abstract: Provides for claims adjusters.

Present law provides for certain standards of conduct for claims adjusters including:

- (1) An adjuster shall not permit an unlicensed employee or his representative to conduct business for which a license is required.
- (2) An adjuster shall not have a financial interest in any aspect of the claim, other than the salary, fee, or other consideration established with the insurer.
- (3) An adjuster shall not acquire any interest in salvage of property subject to the contract with the insurer.
- (4) An insurer shall not solicit employment for a any attorney, contractor, or subcontractor in connection with any loss the adjuster is concerned or employed.
- (5) An adjuster shall not solicit or accept compensation from any contractor or subcontractor on behalf of any insured for which the adjuster is employed.
- (6) An adjuster shall not undertake the adjustment of any claim if the adjuster is not competent or knowledgeable.
- (7) An adjuster shall not knowingly make a material misrepresentation intended to injure any person engaged in the business of insurance.

- (8) An adjuster shall not represent or act as a public adjuster.
- (9) An adjuster shall not materially misrepresent the terms and coverage of an insurance contract to an insured for the purpose of effecting settlement of a claim on less favorable terms than those provided in the insurance contract.

Proposed law repeals present law and codifies some of the provisions of present law (R.S. 22:1674).

Proposed law defines the terms "client", "department", and "person".

Proposed law provides standards of conduct for claims adjusters including:

- (1) An adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, or other consideration established with the insurer.
- (2) An adjuster shall not refer any claimant needing repairs or other services in connection with a loss to any person with whom the adjuster has an undisclosed financial interest.
- (3) An adjuster shall treat all claimants equally.
- (4) An adjuster shall not approach investigations, adjustments, and settlements in a manner prejudicial to the insured.
- (5) An adjuster shall make truthful and unbiased reports of the facts after making a complete investigation.
- (6) An adjuster shall handle every adjustment and settlement with honesty and integrity.
- (7) An adjuster shall act due diligence in achieving a proper disposition of the claim.
- (8) An adjuster shall promptly report violations of any provision of the Insurance Code.
- (9) An adjuster shall exercise extraordinary care when dealing with elderly clients.
- (10) An adjuster shall not negotiate or effect settlement with any third-party claimant represented by an attorney, except with the consent of the attorney.
- (11) An adjuster shall avoid any suggestion calculated to induce a witness to suppress or deviate from the truth.
- (12) An adjuster shall not advise a claimant to refrain from seeking legal advice, nor advise against the retention of counsel to protect the claimant's interest.
- (13) An adjuster shall not attempt to negotiate with or obtain any statement from a claimant in shock or serious mental or emotional distress.
- (14) An adjuster shall not knowingly fail to advise a claimant of the claimant's claim rights.
- (15) An adjuster shall not undertake the adjustment of any claim that exceeds the adjuster's current expertise.
- (16) An adjuster shall not permit an unlicensed employee or representative of the adjuster to conduct business for which a license is required under this Part.
- (17) An adjuster shall not act as a public adjuster.

- (18) An adjuster shall not materially misrepresent to an insured or other interested party the terms and coverage of an insurance contract.

Proposed law requires claims adjusters to read and acknowledge the claims adjuster standards of conduct upon license issuance and upon license renewal.

Proposed law provides that violation of the claims adjuster standards and conduct shall constitute grounds for administrative action against the licensee and a violation of unfair claims practices law.

Present law provides that a person employed only to furnish technical assistance to a licensed adjuster, including but not limited to an investigator, an attorney, an engineer, an estimator, a handwriting expert, a photographer, and a private detective, is exempt from the present law provisions of Part IV of Chapter 5 of Title 22 of the Louisiana Revised Statutes of 1950 regarding claims adjusters.

Proposed law repeals present law.

(Adds R.S. 22:1674.1; Repeals R.S. 22:1662(3) and 1674)