

2021 Regular Session

HOUSE BILL NO. 577

BY REPRESENTATIVES MCKNIGHT AND JORDAN

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

INSURANCE/FLOOD: Provides relative to residential flood coverage

1 AN ACT

2 To enact Subpart D-1 of Part IV of Chapter 4 of Title 22 of the Louisiana Revised Statutes  
3 of 1950, to be comprised of R.S. 22:1341 through 1346, relative to residential flood  
4 coverage; to provide for notice to applicants; to provide for types of residential flood  
5 insurance policies; to provide for definitions; to provide for an alternative rate filing  
6 process; to provide an effective date; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Subpart D-1 of Part IV of Chapter 4 of Title 22 of the Louisiana Revised  
9 Statutes of 1950, comprised of R.S. 22:1341 through 1346, is hereby enacted to read as  
10 follows:

11 SUBPART D-1. RESIDENTIAL FLOOD INSURANCE

12 §1341. Definitions

13 For purposes of this Subpart, the following definitions apply:

14 (1) "Flood" means a general and temporary condition of partial or complete  
15 inundation of two or more acres of normally dry land area or of two or more  
16 properties, at least one of which is the policyholder's property, from any of the  
17 following:

18 (a) Overflow of inland or tidal waters.

19 (b) Unusual and rapid accumulation or runoff of surface waters from any  
20 source.

1           (c) Mud flow.

2           (d) Collapse or subsidence of land along the shore of a lake or similar body  
3           of water as a result of erosion or undermining caused by waves or currents of water  
4           exceeding anticipated cyclical levels that result in a flood as defined in this  
5           Paragraph.

6           (2) "Hurricane" means a storm system that has been declared a hurricane by  
7           the National Hurricane Center of the National Weather Service.

8           (3) "Named storm" means a storm system that has been declared a named  
9           storm by the National Hurricane Center of the National Weather Service.

10          (4) "Residential flood coverage" means insurance for the peril of flood for  
11          homeowner's, condominium owner's, renter's, and tenant's dwelling, mobile home,  
12          and manufactured housing, and similar policies.

13          (5) "Separate named storm or hurricane deductible" means a deductible that  
14          applies to flood damage incurred during a named storm or hurricane and may be  
15          expressed as a percentage of the insured value of the property or as a specific dollar  
16          amount. All of the following shall apply to a separate deductible:

17               (a) The insurer shall not apply the separate named storm or hurricane  
18               deductible in addition to another deductible.

19               (b) There shall be one separate named storm or hurricane deductible in a  
20               calendar year, which shall apply to all named storm or hurricane losses during the  
21               calendar year.

22               (c) The insurer may apply to later flood loss events the greater of the  
23               remaining amount of the separate named storm or hurricane deductible or the amount  
24               of any other standard flood deductible.

25               (d) The insurer may require policyholders to maintain receipts or other  
26               records of such losses in order to apply such losses to a subsequent flood loss  
27               incurred during a named storm or hurricane claims.

1           (6) "Standard flood deductible" means a deductible that applies to flood  
2           damage incurred during any event and may be expressed as a percentage of the  
3           insured value of the property or as a specific dollar amount.

4           §1342. Applicability

5           A. Notwithstanding any provision of law to the contrary, this Subpart shall  
6           govern the regulation of any insurance policy, contract, or endorsement providing  
7           residential flood coverage on any structure or the contents of personal property  
8           contained therein.

9           B. This Subpart does not apply to either of the following:

10           (1) Commercial lines insurance.

11           (2) Surplus lines insurance.

12           C. Louisiana Citizens Property Insurance Corporation shall not provide  
13           residential flood coverage.

14           §1343. Residential flood coverage; notices; plan of operation

15           In addition to other requirements, an insurer providing residential flood  
16           coverage shall do all of the following:

17           (1) Notify the commissioner at least thirty days before writing residential  
18           flood policies in this state.

19           (2) File a plan of operation, financial projections, and any revisions to either,  
20           as applicable, with the commissioner.

21           (3) Note prominently on the policy declarations page the residential flood  
22           coverage premiums, deductibles, and policy limits.

23           (4) Notify the commissioner in writing at least sixty days prior to the market  
24           end date of residential flood coverage and advise regarding all of the following:

25           (a) If an approved policy form will no longer be marketed in this state.

26           (b) If an approved policy form will be permanently withdrawn from this  
27           state.

28           (c) Whether residential flood coverage issued in this state under a  
29           discontinued or withdrawn policy form will remain in force.

1           (d) Whether existing residential flood coverage issued in this state under a  
2           discontinued or withdrawn policy form will continue to be renewed.

3           (e) The policy form numbers being discontinued or withdrawn and the dates  
4           of original approval.

5           §1344. Residential flood coverage; policy types

6           A. In addition to excess flood insurance, insurers may issue any of the  
7           following types of residential flood coverage:

8           (1) Standard flood insurance, which covers only losses from the peril of  
9           flood in a manner equivalent to that provided under the National Flood Insurance  
10           Program, including standard flood deductibles and adjustment of losses.

11           (2) Preferred flood insurance, which includes all of the following:

12           (a) The same coverage as standard flood insurance.

13           (b) Coverage for losses from water intrusion originating from outside the  
14           structure that are not otherwise covered by a flood policy.

15           (c) Coverage for additional living expenses.

16           (d) A requirement that any loss under personal property or contents coverage  
17           be adjusted only on the basis of replacement costs up to the policy limits.

18           (3) Customized flood insurance, which includes coverage that is broader than  
19           the coverage provided under standard flood insurance.

20           (4) Flexible flood insurance, which covers losses from the peril of flood and  
21           may also include coverage for losses from water intrusion originating from outside  
22           the structure, that is not otherwise covered. Flexible flood insurance shall include one  
23           or more of the following provisions:

24           (a) An agreement between the insurer and the insured that the flood coverage  
25           is in a specified amount, such as coverage that is limited to the total amount of each  
26           outstanding mortgage applicable to the covered property.

27           (b) A requirement for a separate named storm or hurricane deductible.

1           (c) A requirement that flood loss to a dwelling be adjusted in accordance  
2           with R.S. 22:1264 or adjusted only on the basis of the actual cash value of the  
3           property.

4           (d) A restriction limiting residential flood coverage to the principal building  
5           defined in the policy.

6           (e) A provision including or excluding coverage for additional living  
7           expenses.

8           (f) A provision excluding coverage for personal property and contents as to  
9           the peril of flood.

10           (5) Supplemental flood insurance, which may provide coverage designed to  
11           supplement a flood policy obtained from the National Flood Insurance Program or  
12           from an insurer issuing standard or preferred flood insurance pursuant to this  
13           Section. Supplemental flood insurance may provide coverage for any of the  
14           following:

15           (a) Jewelry.

16           (b) Art.

17           (c) Deductibles.

18           (d) Additional living expenses.

19           (e) Other coverage permitted by law.

20           B.(1) An insurer writing residential flood policies may issue flood insurance  
21           that covers losses from the peril of flood using either or both of the following:

22           (a) A definition of "flood" other than that in R.S. 22:1341.

23           (b) Terms and conditions other than those used in the policy types described  
24           in Subsection A of this Section.

25           (2) An insurer writing flood insurance policies pursuant to this Subsection  
26           shall provide the following written notice to the applicant: "This is a flood insurance  
27           policy that deviates from the flood insurance policy types described in R.S.  
28           22:1344."

1           C. Notwithstanding Subsections A and B of this Section, insurers offering  
2           private flood insurance may continue using policy forms filed and approved before  
3           January 1, 2022.

4           §1345. Residential flood coverage; rates

5           For an insurer writing residential flood coverage, either of the following shall  
6           apply:

7           (1) An insurer may establish and use residential flood coverage rates in  
8           accordance with the provisions of R.S. 22:1451 and 1454.

9           (2) For residential flood coverage rates filed with the commissioner before  
10          January 1, 2027, all of the following shall apply:

11          (a) An insurer shall establish and use rates in accordance with the rates,  
12          rating schedules, or rating manuals filed by the insurer with the commissioner which  
13          allow the insurer a reasonable rate of return on residential flood coverage written in  
14          this state.

15          (b) Rates established pursuant to this Paragraph are not subject to R.S.  
16          22:1451.

17          (c) Within thirty days after the effective date of the change, the insurer shall  
18          notify the commissioner of any change to previously established rates and of the  
19          average statewide percentage change in rates.

20          (d) Actuarial data with regard to rates for residential flood coverage shall be  
21          maintained by the insurer for two years after the effective date of the rate change and  
22          is subject to examination by the commissioner. The commissioner may require the  
23          insurer to incur the costs associated with an examination. Upon examination, the  
24          commissioner, in accordance with generally accepted and reasonable actuarial  
25          techniques, shall consider the rate factors and standards in R.S. 22:1454, to  
26          determine if the rate is excessive, inadequate, or unfairly discriminatory.

27          (e) If the commissioner determines that a rate is excessive or unfairly  
28          discriminatory, the commissioner shall require the insurer to provide appropriate

1 credit to any affected policyholders and an appropriate refund to any affected former  
2 policyholders.

3 §1346. Notices regarding flood coverage

4 A.(1) A producer shall provide written notice to be signed by the applicant  
5 before a producer places residential flood coverage with an authorized or surplus  
6 lines insurer for a property receiving flood coverage from the National Flood  
7 Insurance Program. The notice required by this Subsection shall inform the  
8 applicant of all of the following:

9 (a) Coverage under the National Flood Insurance Program is provided at a  
10 subsidized rate.

11 (b) If the applicant discontinues coverage under the National Flood  
12 Insurance Program, the full risk rate may apply to the property if the applicant later  
13 seeks coverage under the National Flood Insurance Program.

14 (2) If an applicant does not have flood coverage, a producer shall inform the  
15 applicant of the existence of the National Flood Insurance Program.

16 B. (1) An insurer writing standard flood insurance policies, preferred flood  
17 insurance policies, customized flood insurance policies, flexible flood insurance  
18 policies, residential flood insurance policies using a different definition of "flood"  
19 than that used in R.S. 22:1341, or residential flood insurance policies with terms and  
20 conditions other than those described in R.S. 22:1344, shall state whether the  
21 coverage meets, exceeds, or does not meet the coverage of a private flood insurance  
22 policy, as defined in 42 U.S.C. 4012a(b)(7), by making one of the following  
23 certifications:

24 (a) "This flood insurance policy meets or exceeds the coverage of "private  
25 flood insurance" as defined in 42 U.S.C. 4012a(b)(7), applicable federal regulations,  
26 and the standard flood insurance policy under the National Flood Insurance  
27 Program."

1           (b) "This flood insurance policy provides less coverage than "private flood  
 2           insurance" as defined in 42 U.S.C. 4012a(b)(7), applicable federal regulations, or the  
 3           standard flood insurance policy under the National Flood Insurance Program."

4           (2) The certifications required pursuant to this Subsection shall be in writing  
 5           on the declarations page of the policy in bold typed print of not less than a fourteen  
 6           point font.

7           Section 2. This Act shall become effective January 1, 2022.

#### 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 577 Reengrossed

2021 Regular Session

McKnight

**Abstract:** Provides relative to residential flood coverage.

Proposed law defines the terms "flood", "hurricane", "named storm", residential flood coverage", "separate named storm or hurricane deductible", and "standard flood deductible".

Proposed law provides that proposed law shall not apply to commercial lines insurance and surplus lines insurance.

Proposed law provides that the La. Citizens Property Insurance Corporation shall not provide residential flood coverage.

Proposed law provides that insurers providing residential flood coverage shall do all of the following:

- (1) Notify the commissioner at least 30 days before writing residential flood coverage in this state.
- (2) File a plan of operation, financial projections, and any revisions of such with the commissioner.
- (3) Note the residential flood coverage premiums, deductibles and policy limits prominently on the policy declarations page.
- (4) Notify the commissioner in writing at least 60 days prior to the market end date of residential flood coverage and to advise regarding all of the following:
  - (a) When an approved policy form will no longer be marketed in this state.
  - (b) When an approved policy form will be permanently withdrawn from this state.
  - (c) Whether or not residential flood coverage issued in this state under a discontinued or withdrawn policy form shall remain in force.

- (d) Whether existing residential flood coverage issued in this state under a discontinued or withdrawn policy form shall continue to be renewed.
- (e) The policy form numbers being discontinued or withdrawn and the dates of original approval.

Proposed law provides that in addition to excess flood insurance, insurers may issue any of the following types of residential flood coverage:

- (1) Standard flood coverage.
- (2) Preferred flood insurance, which shall include the same coverage as standard flood insurance, losses from water intrusion originating from outside the structure that are not otherwise covered by flood damage, coverage for additional living expenses, and a requirement that any loss under personal property be adjusted only on the basis of replacement costs up to the policy limits.
- (3) Customized flood insurance which includes coverage that is broader than the coverage provided under standard flood insurance.
- (4) Flexible flood insurance, which covers losses from the peril of flood.
- (5) Supplemental flood insurance, which may provide coverage designed to supplement a flood policy obtained from the National Flood Insurance Program or from an insurer issuing standard or preferred flood insurance.

Proposed law authorizes insurers writing residential flood policies to issue flood insurance that covers losses from the peril of flood using a definition of "flood" other than that provided in proposed law (R.S. 22:1341) and authorizes the use of terms and conditions other than those specified in proposed law (R.S. 22:1344), if the policy contains the following: "This is a flood insurance policy that deviates from the flood insurance policy types described in R.S. 22:1344."

Proposed law provides that insurers offering private flood insurance may continue using policy forms filed and approved before January 1, 2022.

Proposed law provides that insurers writing residential flood coverage shall establish flood coverage rates in accordance with present law, and if filed with the commissioner before January 1, 2027, the following shall apply:

- (1) An insurer may establish and use rates in accordance with the rates, rating schedules, or rating manuals filed by the insurer with the commissioner.
- (2) Rates established pursuant to this proposed law are not subject to present law.
- (3) Within 30 days after the effective date of the change, the insurer shall notify the commissioner of any change to previously established rates and of the average statewide percentage change in rates.
- (4) Actuarial data shall be maintained by the insurer for two years after the effective date of the rate change and is subject to examination by the commissioner.
- (5) If the commissioner determines that a rate is excessive or unfairly discriminatory, the commissioner shall require the insurer to provide appropriate credit to affected policyholders and an appropriate refund to affected former policyholders.

Proposed law provides that a producer shall provide written notice to be signed by the applicant before the producer places residential flood coverage with an authorized or surplus

lines insurer for a property receiving flood coverage from the National Flood Insurance Program.

Proposed law provides that notice shall inform the applicant of the following:

- (1) Coverage under the National Flood Insurance Program is provided at a subsidized rate.
- (2) If an applicant discontinues coverage under the National Flood Insurance Program, the full risk rate may apply to the property.

Proposed law provides that if an applicant does not have flood coverage, a producer shall inform the applicant of the National Flood Insurance Program.

Proposed law provides that insurers writing standard flood insurance policies, preferred flood insurance policies, customized flood insurance policies, flexible flood insurance policies, residential flood insurance policies using a different definition of "flood" than that in proposed law, or residential flood insurance policies with terms and conditions other than those described in proposed law shall certify on the declarations page of the policy in bold typed print of at least 14 point font whether the policy meets or exceeds or provides less coverage than "private flood insurance" as defined in 42 U.S.C. 4012a(b)(7), conforms to other applicable federal regulations, and the standard flood insurance policy under the National Flood Insurance Program.

Effective Jan. 1, 2022.

(Adds R.S. 22:1341-1346)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Insurance to the original bill:

1. Make technical changes.
2. Authorize insurers writing residential flood policies to issue flood insurance that covers losses from the peril of flood using a definition of "flood" other than that provided in proposed law (R.S. 22:1341) and authorize the use of terms and conditions other than those specified in proposed law (R.S. 22:1344), if the policy contains the following: "This is a flood insurance policy that deviates from the flood insurance policy types described in R.S. 22:1344."
3. Authorize insurers offering private flood insurance to continue using policy forms filed and approved before January 1, 2022.
4. Provide that insurers may certify that their flood insurance policies meet or exceed the definition of "standard flood policy", as specified in 42 U.S.C. 4012a(b)(7) and applicable federal regulations.

#### The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Make it mandatory, rather than permissive, for insurers writing certain flood insurance policies to certify whether the policy meets or exceeds or offers less coverage than "private flood insurance" as defined in 42 U.S.C. 4012a(b)(7), conforms to other applicable federal regulations, and the standard flood insurance policy under the National Flood Insurance Program.

3. Provide model language for the insurer's certification and provide the location and format for which the certification must appear in the policy.