

2021 Regular Session

HOUSE BILL NO. 591

BY REPRESENTATIVE FIRMENT

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

INSURANCE CLAIMS: Provides for certain claims settlement practices

1 AN ACT
2 To enact R.S. 22:1892(B)(6) and (E) through (H), relative to claims settlement practices; to
3 provide for the definitions; to provide for insurance coverage of damaged property;
4 to prohibit insurers from requiring insureds to use a preferred vendor or contractor;
5 to provide for the adjustment and settlement of first-party losses under fire and
6 extended coverage policies; to provide for policies providing adjustment and
7 settlement of first-party losses based on replacement cost; to provide required
8 adjustment dispute resolution language for residential property policies; and to
9 provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 22:1892(B)(6) and (E) through (H) are hereby enacted to read as
12 follows:

13 §1892. Payment and adjustment of claims, policies other than life and health and
14 accident; ~~personal~~ vehicle damage claims; extension of time to respond to
15 claims during emergency or disaster; penalties; arson-related claims
16 suspension

17 * * *

18 B.

19 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 (6)(a) For the purposes of this Paragraph the following terms have the
2 meanings ascribed to them:

3 (i) "Damaged property" means a dwelling, structure, personal property, or
4 any other property that requires repairs, replacement, restoration or remediation to
5 reestablish its former condition.

6 (ii) "Depreciation" means depreciation including but not limited to the cost
7 of goods, materials, labor, and services necessary to replace, repair, or rebuild
8 damaged property.

9 (b) An insurance policy covering damaged property may allow for
10 depreciation.

11 (c) An insurance policy covering damaged property shall provide notice that
12 depreciation may be deducted or withheld, in a form approved by the commissioner.

13 (d) If depreciation is applied to a loss for damaged property, the insurer shall
14 provide a written explanation as to how the depreciation was calculated.

15 (e) Depreciation shall be reasonable and based on a combination of objective
16 criteria and subjective assessment, including the actual condition of the property
17 prior to loss.

18 * * *

19 E.(1) An insurer shall not require that repairs, replacement, restoration, or
20 remediation be made to an insured's property by a particular preferred vendor or
21 recommended contractor when making a payment on a residential or commercial
22 property damage claim.

23 (2) An insurer shall not recommend the use of a particular preferred vendor
24 or recommended contractor without informing the insured or claimant that the
25 insured or claimant is under no obligation to use the preferred vendor or
26 recommended contractor to complete repairs, replacement, restoration, or
27 remediation of the insured's property.

28 F.(1) In the adjustment or settlement of first-party losses under fire and
29 extended coverage policies, an insurer is required to include general contractor's

1 overhead and profit in payments for losses when the services of a general contractor
2 are reasonably foreseeable. This requirement applies to policies that provide for the
3 adjustment and settlement of losses on a replacement cost basis and to policies that
4 provide for the adjustment and settlement of losses on an actual cash value basis.

5 (2) The deduction of prospective contractor overhead, prospective contractor
6 profit, and sales tax in determining the actual cash value of an adjustment or
7 settlement is not allowed on replacement cost policies or on actual cash value
8 policies.

9 G. The following shall apply to policies providing adjustment and settlement
10 of first-party losses based on replacement cost:

11 (1) If a loss requires repair or replacement of an item or part, any
12 consequential physical damage incurred in making such repair or replacement not
13 otherwise excluded by the policy, shall be included in the loss. The insured shall not
14 be required to pay for betterment or any other cost except for the applicable
15 deductible.

16 (2) If a loss requires replacement of items and the replaced items do not
17 match in quality, color, or size, the insurer shall replace all items in the area to
18 conform to a reasonably uniform appearance. The requirement of this Paragraph
19 applies to interior and exterior losses. The insured shall not bear any cost in excess
20 of the applicable deductible.

21 H. All residential property insurance policies shall contain the following
22 provision (with permission to substitute the word "company" with a more accurate
23 descriptive term for the insurer):

24 "Appraisal. If you and this Company fail to agree as to the amount of loss,
25 either party may demand that the amount of the loss be set by appraisal. If either
26 party makes a written demand for appraisal, each party shall select a competent
27 appraiser and notify the other party of their appraiser's identity within twenty days
28 of receipt of the written demand for appraisal. The appraisers shall select a
29 competent and impartial umpire; but, if after fifteen days the appraisers have not

1 agreed upon who will serve as umpire, the umpire shall be appointed by a judge of
2 the court of record in which the property is located. The appraisers shall then
3 appraise the loss. If the appraisers submit written notice of an agreement as to the
4 amount of the loss to this Company, the amount agreed upon shall set the amount of
5 the loss. If the appraisers fail to agree within thirty days, the appraisers shall submit
6 their differences along with any supporting documentation to the umpire, who shall
7 appraise the loss. The appraisers may extend the time to sixty days for which they
8 must agree upon the amount of loss or submit their differences and supporting
9 documents to the umpire, if the extension is agreed to by the appraisers from both
10 parties. A written agreement signed by the umpire and either party's appraiser shall
11 set the amount of the loss. Each appraiser shall be paid by the party selecting that
12 appraiser. Other expenses of the appraisal and the expenses of the umpire shall be
13 divided and paid in equal shares by you and this Company."

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 591 Engrossed

2021 Regular Session

Firmen

Abstract: Provides relative to certain claims settlement practices.

Proposed law defines "property" and "depreciation" as it relates to proposed law.

Proposed law provides that insurance policies covering damaged property and allow for depreciation must provide notice that depreciation may be deducted, and if depreciation is applied, the insurer shall provide a written explanation as to how the depreciation was calculated.

Proposed law provides that insurers shall not require that repairs, replacement, restoration, or remediation be made to an insured's property by a particular preferred vendor or recommended contractor when making payment on a residential or commercial property claim.

Proposed law provides that insurers shall not recommend the use of a particular preferred vendor or recommended contractor without informing the insured or claimant that the insured or claimant is under no obligation to use the preferred vendor or recommended contractor to complete repairs, replacement, restoration, or remediation of the insured's property.

Proposed law provides that in the adjustment or settlement of first-party losses under fire and extended coverage policies, insurers are required to include general contractor's overhead

and profit in payments for losses when the services of a general contractor are reasonably foreseeable.

Proposed law provides that the deduction of prospective contractor overhead, prospective contractor profit, and sales tax in determining the actual cash value of an adjustment or settlement is not allowed on replacement cost policies or on actual cash value policies.

Proposed law provides that the following shall apply to policies providing for the adjustment and settlement of first-party losses based on replacement cost:

- (1) Any consequential physical damage incurred in making a repair or replacement, not otherwise excluded by the policy, shall be included in the loss.
- (2) If a loss requires replacement of items and the replaced items do not match in quality, color, or size, the insurer shall replace all items in the area so as to conform to a reasonably uniform appearance.

Proposed law provides a mediation process if the insurer and insured disagree on the amount of a loss.

Proposed law provides required language to be included in every residential property insurance policy outlining the mediation process.

(Adds R.S. 22:1892(B)(6) and (E)-(H))

Summary of Amendments Adopted by House

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

1. Delete proposed law concerning insurers issuing policies providing adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage.
2. Delete the model language that must be included in all residential property insurance policies and replace it with new model language that provides a mediation process for situations in which insurers and insureds do not agree upon the amount of a loss.
3. Make technical changes.