

2022 Regular Session

SENATE BILL NO. 212

BY SENATORS STINE, FESI AND SMITH

INSURANCE CLAIMS. Establishes the Hurricane Mediation Program. (1/1/23)

1 AN ACT

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

7 Be it enacted by the Legislature of Louisiana:

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

10 **CHAPTER 22. THE HURRICANE PROPERTY INSURANCE**

11 **CLAIM ALTERNATE DISPUTE RESOLUTION PROGRAM**

12 **§2651. Short title**

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

15 **§2652. Purposes; public purpose**

16 **A. The purpose of this Chapter is to provide a nonadversarial alternative**  
17 **dispute resolution procedure that is prompted by the need for effective, fair,**

1 and timely handling of residential property insurance claims for residential  
2 properties that are damaged by a hurricane. In the wake of the property  
3 devastation caused in 2005 from hurricanes Katrina and Rita, the Louisiana  
4 Department of Insurance, hereinafter referred to as the "department", issued  
5 Emergency Rule 22, that established a mandatory mediation program. The  
6 mediations conducted pursuant to Emergency Rule 22 resulted in the mediation  
7 of approximately 12,000 property damage disputes with a very high success  
8 rate. Due to the success of this mediation program, the department issued  
9 Bulletin 2021-08 that implemented the "Hurricane Ida Mediation Program".  
10 The mediation program was implemented to give property owners a way to  
11 settle insurance claims in a timely manner and a low-cost way to resolve a  
12 property insurance claim. Giving citizens an alternate way to resolve residential  
13 property insurance disputes and assisting citizens in the repair of their property  
14 in a timely manner and at a lower cost is a valid public purpose in the best  
15 interest of the citizens.

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

20 §2653. Conditions to request mediation

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

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

29 C. An insured and insurer may agree to mediate and be subject to the

1 provisions of this Chapter, any claim involving residential property for damages  
2 in excess of one hundred fifty thousand dollars which property is located within  
3 the geographic area that is subject to the declared state of emergency.

4 §2654. Firm mediation requirements

5 A mediation firm that elects to participate in the dispute resolution  
6 program provided in this Chapter shall comply with all of the following:

7 (1) The firm contacts the department of insurance regarding  
8 participation in the program.

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

10 (3) The firm provides the department with its official name, contact  
11 information, address, and telephone number. The department shall maintain  
12 this list posted on the department's website.

13 (4) The cost of mediation shall be reasonable.

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

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

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

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

26 (9) All in-person mediations shall be conducted statewide in a  
27 metropolitan statistical area at an office or business location to be selected by  
28 the mediation firms. There shall be no charge to the insurer for use of the venue.

29 The insurer or the insured that prefers to participate in the mediation remotely

1 via telephone, Zoom, or similar electronic means is authorized, provided the  
2 mediator and all other parties to the mediation are notified of the preference in  
3 advance of the mediation, and as needed to accommodate remote participation.

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

9 §2655. Insurer and insured requirements for mediation

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

12 (1) The insurer shall bear all of the cost of conducting mediation  
13 conferences, except if the insured fails to appear at the mediation conference,  
14 the conference shall be rescheduled upon payment by the insured of the costs  
15 of a rescheduled conference.

16 (2) If the insurer fails to appear at the mediation conference, the insurer  
17 shall pay the insured's actual cash expenses incurred in attending the  
18 conference and the insurer shall pay a penalty equal to five thousand dollars to  
19 the insured unless the insurer's failure to attend was due to good cause  
20 acceptable to the mediation firm.

21 (3) Lack of the insurer's representative to settle the full value of the  
22 claim shall be considered a failure of the insurer to appear at the mediation  
23 conference and the insurer shall pay any additional fees or costs incurred in  
24 rescheduling the mediation conference.

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

26 (a) Name, address, and daytime telephone number of the insured and the  
27 location of the property if different from the address given by the insured.

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

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

1           (d) The name of the insurer and the name, address, and daytime  
2 telephone number of the insurer's contact for scheduling mediation.

3           (e) Information with respect to any other policies of insurance that may  
4 provide coverage of the insured property for named perils like a flood or  
5 windstorm.

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

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

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

20           (8) All parties shall negotiate in good faith.

21           (9) The insurer and the insured shall be given an opportunity to present  
22 each side of the controversy and may utilize any relevant documents and bring  
23 any individuals with knowledge of the issues, like adjusters, appraisers, or  
24 contractors, to address the mediator.

25           (10) All statements made and documents produced at mediation shall be  
26 considered settlement negotiations in anticipation of litigation and the  
27 provisions of R.S. 9:4112 shall apply.

28           (11) Any agreement between the insurer and the insured shall be reduced  
29 to writing. The insurer and the insured shall sign the agreement signifying the

1 portions of the claim dispute that have been resolved in whole or in part,  
2 including the specific dollar amount agreed by both parties.

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

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

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

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

25 §2656. Alternative dispute resolution disclosure notice

26 A. If the governor declares a state of emergency pursuant to R.S. 29:724,  
27 an insurer writing residential property insurance in this state shall send a  
28 hurricane mediation program disclosure form to a covered insured who has  
29 filed a residential property insurance claim for property that is located within

1           the geographic area of the named storm or windstorm that is subject to the  
 2           declared state of emergency. An insurer shall send the disclosure notice prior  
 3           to the initial investigation by either the United States Postal Service, electronic  
 4           mail, or by hand delivery.

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

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

10           §2657. Rules and regulations

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

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

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The original instrument was prepared by Beth O'Quin. The following digest, which does not constitute a part of the legislative instrument, was prepared by LG Sullivan.

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DIGEST

SB 212 Reengrossed

2022 Regular Session

Stine

Proposed law establishes the "Hurricane Mediation Program" (program).

Proposed law provides every insured may request mediation for a disputed residential property insurance claim for property damage up to \$150,000 if the governor declares a state of emergency, and the property insurance claim arises out of a state of emergency on property damaged that is located in this state and the property is in the geographic area that the named storm or windstorm is the subject of the declared state of emergency.

Proposed law provides that if the insured decides to mediate the disputed amount, the insured must contact one of the participating mediation firms that is listed on the department of insurance's (department) website.

Proposed law allows an insured and insurer to agree to mediate and subject to the provisions of proposed law any claim involving residential property for damages in excess of \$150,000 which property is located within the geographic area that is subject to the declared state of emergency.

Proposed law requires a mediation firm that elects to participate in this program to comply with all of the following:

- (1) The mediation firm contacts the department regarding participation in the program.
- (2) The mediation firm agrees to the terms and conditions set forth in proposed law.

- (3) The mediation firm provides the department its name, contact, address, and telephone number. Requires the department to maintain this list and post it on the department's website.
- (4) Requires the mediation cost be reasonable.
- (5) Requires the mediation firm to notify the insurer and the insured within five business days after receiving the assignment, and requires the mediation firm to notify the insurer and the insured in writing of the assignment to mediating the disputed property insurance claim.
- (6) Requires the mediation firm to set the matter for mediation to occur within 30 days of assignment.
- (7) Requires that the mediation firm is in charge of the mediation and to establish and describe the procedures to be followed. Requires the mediation firm to conduct the mediation in accordance with the standards of professional conduct for mediation adopted by the American Bar Association.
- (8) The mediation firm may meet with the insurer and insured separately to encourage meaningful communications and negotiations, and otherwise assist the insurer or insured to arrive at a settlement.
- (9) Requires in-person mediation be conducted statewide in a metropolitan statistical area at an office or business location that is selected by the mediation firms. The insurer or the insured is not charged for the use of venue. If the insurer or the insured prefer to participate in the mediation remotely via telephone, Zoom, or similar electronic means, it is permitted 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 90 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.

Proposed law requires the insurer and the insured comply with all of the following:

- (1) Requires the insurer to pay all of the cost of conducting mediation conferences, except if an insured fails to appear at the mediation conference, requires the mediation conference to be rescheduled upon the insured's payment of the costs of a rescheduled conference.
- (2) If the insurer fails to appear at the mediation conference, requires the insurer to pay the insured's actual cash expenses incurred in attending the conference and a penalty equal to \$5000 to the insured if the insurer's failure to attend was not due to a good cause acceptable to the mediation firm.
- (3) An insurer is considered to have failed to appear if the insurer's representative lacks authority to settle the full value of the claim. Requires the insurer to pay an additional fee for a rescheduled mediation conference necessitated by the insurer's failure to appear at a scheduled conference.
- (4) Requires the insurer provide the mediation firm all of the following:
  - (a) Name, address, and daytime telephone number of the insured and the location of the property if different from the address given.



- (b) The claim and policy number for the insured.
  - (c) A brief description of the nature of the dispute.
  - (d) The name of the insurer and the name, address, and daytime telephone number of the insurer's contact for scheduling mediation.
  - (e) Information with respect to any other policies of insurance that may provide coverage of the insured property for named perils like a flood or windstorm.
- (5) When the insurer and the insured have been contacted by the mediation firm, within five business days after being contacted, requires the insurer and the insured to provide the mediation firm all relevant written documentation regarding the disputed claim and a short statement from each side as to why the parties have not been able to reach an amicable resolution.
  - (6) The mediation firm may request additional documentation from either the insurer or the insured, or both. Requires the insurer and the insured to comply with any request for additional documentation or provide an explanation as to the reason the insurer or insured is not able to comply.
  - (7) Provides the insured can be represented by an attorney or other representative in the mediation, the insured shall provide the name of the attorney or other representative to the mediator at least six days before the date of the mediation.
  - (8) Requires the insurer and the insured to negotiate in good faith.
  - (9) Requires the insurer and the insured are given an opportunity to present their side of the controversy. The insurer and the insured may utilize any relevant documents and may bring any individuals with knowledge of the issues, like adjusters, appraisers, or contractors, to address the mediator.
  - (10) Requires that all statements made and documents produced at a mediation are considered settlement negotiations in anticipation of litigation as provided by present law.
  - (11) If an agreement is reached between the insurer and the insured, requires the insurer and the insured to reduce the agreement to writing. Requires the insurer and the insured to sign the agreement signifying the portions of the claim dispute that have been resolved in whole or in part, including the specific dollar amount agreed by both the insurer and the insured.
  - (12) Mediation is voluntary and nonbinding, however, if a written settlement is reached, the insured has three business days within which the insured may 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 settlement agreement is binding and acts as a release of all specific claims that were presented in that mediation conference.
  - (13) Requires the insurer to disburse to the insured the specific dollar amount agreed to within ten business days of the conclusion of the mediation.
  - (14) If the insurer and the insured reach a partial agreement as to the claim dispute, allows the insurer and the insured may continue to utilize the service of the mediator after the insurer and insured have completed voluntary mediation. If the insurer and the insured agree to further mediation, requires the insurer and the insured are responsible for any additional mediation expenses at the mediator's standard rate.

- (15) Mediation is voluntary and nonbinding, however, if a partial settlement is reached and is in writing, the insured has three business days within which the insured may 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 settlement agreement is binding and acts as a release of all specific claims that were presented in that mediation conference.

Proposed law provides that if the governor declares a state of emergency the insurer that writes residential property insurance that is located in this state, requires the insurer to send a hurricane mediation program disclosure form (disclosure) to a covered insured who has filed a residential property insurance claim for property that is located in this state and within the geographic area of the named storm or windstorm that is subject to the declared state of emergency. Requires the insurer to send the disclosure notice prior to the initial investigation by either US mail, electronic mail, or by hand delivery.

Proposed law provides that nothing in proposed law provides an insured with a civil cause of action.

Proposed law provides nothing in proposed law applies to commercial insurance policies, private passenger motor vehicle insurance, or disputes relating to liability coverages in policies of property insurance.

Proposed law authorizes the commissioner to promulgate rules and regulations necessary to implement this proposed law.

Effective January 1, 2023.

(Adds R.S. 22:2651-2657)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Insurance to the original bill

1. Makes technical changes.
2. Revises in-person mediations from being in the Baton Rouge or New Orleans area to be conducted statewide in a metropolitan statistical area at an office or business.

##### Senate Floor Amendments to engrossed bill

1. Makes technical changes.
2. Increases from \$50,000 to \$150,000 the maximum for which an insured may request mediation for a disputed residential property insurance claim.
3. Allows an insured and insurer to agree to mediate and subject to the provisions of proposed law any claim involving residential property for damages in excess of \$150,000 which property is located within the geographic area that is subject to the declared state of emergency.
4. Requires an insurer who fails to appear at a mediation conference to pay a penalty equal to \$5000 to the insured.