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DIGEST

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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.

Summary of Amendments Adopted by House

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

1. Make technical changes.