

SENATE BILL NO. 212

BY SENATORS STINE, FESI AND SMITH

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,**
18 **and timely handling of residential property insurance claims for residential**
19 **properties that are damaged by a hurricane. In the wake of the property**
20 **devastation caused in 2005 from hurricanes Katrina and Rita, the Louisiana**
21 **Department of Insurance, hereinafter referred to as the "department", issued**
22 **Emergency Rule 22, that established a mandatory mediation program. The**

1 mediations conducted pursuant to Emergency Rule 22 resulted in the mediation
2 of approximately 12,000 property damage disputes with a very high success
3 rate. Due to the success of this mediation program, the department issued
4 Bulletin 2021-08 that implemented the "Hurricane Ida Mediation Program".
5 The mediation program was implemented to give property owners a way to
6 settle insurance claims in a timely manner and a low-cost way to resolve a
7 property insurance claim. Giving citizens an alternate way to resolve residential
8 property insurance disputes and assisting citizens in the repair of their property
9 in a timely manner and at a lower cost is a valid public purpose in the best
10 interest of the citizens.

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

15 §2653. Conditions to request mediation

16 A. Every insured may request mediation involving a residential property
17 insurance claim for property damage that involves disputed amounts up to one
18 hundred fifty thousand dollars in situations that the governor declares a state
19 of emergency pursuant to R.S. 29:724 for a named windstorm event, and the
20 insured has a claim for damage to property located within the geographic area
21 that is the subject of the declared state of emergency.

22 B. If the insured decides to mediate a damage dispute through this
23 program, the insured shall contact one of the participating mediation firms
24 listed on the department's website.

25 C. An insured and insurer may agree to mediate and be subject to the
26 provisions of this Chapter, any claim for residential property damage that
27 involves disputed amounts in excess of one hundred fifty thousand dollars, and
28 the property is located within the geographic area that is subject to the declared
29 state of emergency.

30 §2654. Firm and department mediation requirements

1 A. A mediation firm, hereinafter referred to as the "firm", that elects to
2 participate in the program provided in this Chapter shall comply with all of the
3 following:

4 (1) The firm contacts the department regarding participation in the
5 program.

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

7 (3) The firm provides the department with its official name, contact
8 information, municipal address, electronic mail address, and telephone number.

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

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

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

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

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

22 (9) All in-person mediations shall be conducted statewide in a
23 metropolitan statistical area at an office or business location to be selected by
24 the mediation firms. There shall be no charge to the insurer for use of the venue.
25 If the insurer or the insured prefer to participate in the mediation remotely via
26 telephone, video conference, or other similar electronic means is authorized,
27 provided the mediator and all other parties to the mediation are notified of the
28 preference in advance of the mediation, and as needed to accommodate remote
29 participation.

30 (10) The mediation session may last up to ninety minutes of actual

1 mediation with the insurer and the insured. The ninety minutes shall not include
2 time spent on telephone calls, document review, research, or any other
3 administrative tasks that the mediator may find necessary to prepare for the
4 mediation.

5 B. The department shall maintain a list of firms that elect to participate
6 in the program that is provided in this Chapter, and the department shall
7 maintain this list on its website that includes the firm's official name, contact
8 information, municipal address, electronic mail address, and telephone number.

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 the reasonable costs necessary to conducting
13 mediation conferences, except if the insured fails to appear at the mediation
14 conference, the conference shall be rescheduled upon payment by the insured
15 of the costs 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 up to two hundred fifty dollars for
18 expenses incurred in traveling to and from the mediation conference, and then
19 pay any additional reasonable fees or costs incurred in rescheduling the
20 mediation conference. The insurer's failure to appear at the mediation
21 conference may subject the insurer to enforcement consistent with the
22 provisions of R.S. 22:1961, et seq., unless the insurer's failure to attend was due
23 to good cause.

24 (3) Lack of the insurer's representative to appear with settlement
25 authority shall be considered a failure of the insurer to appear at the mediation
26 conference. The insurer shall pay the insured's actual cash expenses up to two
27 hundred fifty dollars for expenses incurred in traveling to and from the
28 mediation conference, and pay any additional reasonable fees or costs incurred
29 in rescheduling the mediation conference. The insurer's failure to appear at the
30 mediation conference may subject the insurer to enforcement consistent with

1 the provisions of R.S. 22:1961, et seq., unless the insurer's failure to attend was
2 due to good cause.

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

4 (a) Name, municipal address, electronic mail address, if applicable,
5 telephone number of the insured and the location of the property if different
6 from the municipal address given by the insured.

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

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

9 (d) The name, municipal address, electronic mail address, and telephone
10 number of the insurer's contact for scheduling mediation.

11 (e) Information with respect to any other policies issued by the insurer
12 to the insured that may provide coverage of the insured property for named
13 perils like a flood or windstorm.

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

18 (6) The firm may request additional documentation from the insurer or
19 the insured. The insurer and the insured shall comply with any reasonable
20 request for additional documentation or give an explanation as to the reason the
21 insurer or insured is not able to comply with the request for additional
22 documentation.

23 (7) The insured may be represented by an attorney or other
24 representative in the mediation, and the insured shall provide the name and
25 contact information for the attorney or other representative to the mediator at
26 least six days before the date of the mediation.

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

28 (9) The insurer and the insured shall be given an opportunity to present
29 each side of the controversy and each side may utilize any relevant documents
30 and bring any individuals with knowledge of the issues, like adjusters,

1 appraisers, or contractors, to address the mediator.

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

5 (11) Any agreement between the insurer and the insured shall be reduced
6 to writing. The insurer and the insured shall sign the agreement signifying the
7 portions of the claim dispute that have been resolved in whole or in part.

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

15 (13) The insurer shall disburse to the insured the specific dollar amount
16 agreed to within thirty days of the conclusion of the mediation.

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

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

30 §2656. Alternative dispute resolution disclosure notice

1 **A. If the governor declares a state of emergency pursuant to R.S. 29:724**
2 **for a named windstorm event, an insurer writing residential property insurance**
3 **in this state shall send a hurricane mediation program disclosure form to an**
4 **insured who has filed a covered residential property insurance claim for**
5 **property that is located within the geographic area of the named storm or**
6 **windstorm that is subject to the declared state of emergency. An insurer shall**
7 **send the disclosure notice prior to the initial investigation by either the United**
8 **States Postal Service, electronic mail, or by hand delivery.**

9 **B. Nothing in this Section shall be construed to provide an insured with**
10 **a civil cause of action.**

11 **C. Nothing in this Chapter shall apply to commercial insurance policies,**
12 **private passenger motor vehicle insurance, or disputes relating to liability**
13 **coverages in policies of property insurance.**

14 **§2657. Rules and regulations**

15 **The commissioner shall promulgate rules and regulations necessary to**
16 **implement this Chapter.**

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____