
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 678 Original

2024 Regular Session

Firment

Abstract: Provides exclusive claim settlement practices for immovable property.

Proposed law provides exclusive remedy for claims arising out of insurance policies covering immovable property, including but not limited to manufactured and modular homes defined in present law (R.S. 51:911.22).

Proposed law provides that certain present law penalties (R.S. 22:1892 and R.S. 22:1973) do not apply to proposed law.

Proposed law requires an insurer to acknowledge receipt of a claim and begin investigation of the claim within 15 days of receipt of notice of a claim, or within 30 business days for eligible surplus lines insurers. Requires an insurer to request from the claimant all items the insurer reasonably believes will be required from the claimant and to provide necessary claim forms, instructions, and reasonable assistance to first-party claimants, including forms for filing proof of loss.

Proposed law authorizes an insurer to make additional requests for information if during the investigation the additional requests are necessary.

Proposed law requires the insurer to make a record of an acknowledgment if the acknowledgment of receipt of a claim is not made in writing.

Proposed law requires the 15-day and 30-day timelines in proposed law to be extended by 45 days if the commissioner of insurance (commissioner) declares a catastrophe. Authorizes the commissioner to further extend the timelines with the consent of the respective chairmen of the House and Senate committees on insurance.

Proposed law requires an insurer to notify a claimant in writing of the acceptance or rejection of a claim within 15 business days of the insurer receiving all items required to secure final proof of loss. In the event of a catastrophe declared by the commissioner, the notification period extends to 45 days of the insurer receiving all items, statements, and forms required by the insurer to secure final proof of loss.

Proposed law requires an insurer to notify the claimant in writing of the acceptance or rejection of the claim within 30 days of the insurer receiving all required items for the claim when the insurer has a reasonable belief that a loss resulted from arson.

Proposed law requires an insurer to state the reasons for the objection in the notice required if an

insurer rejects a claim.

Proposed law requires an insurer to notify the claimant of the reasons the insurer may need additional time when an insurer is unable to accept or reject a claim within the proposed law timeframes. Requires an insurer to accept or reject the claim within 45 days of the insurer sending the claimant notice of the reasons the insurer needed additional time.

Proposed law requires timeframes to be tolled if the policyholder fails to provide the insurer with material claims information within 10 days following the request, if the request is made at least 15 days before the insurer is required to pay or deny the claim. Further requires time to be tolled during any statutory mediation or alternative dispute resolution proceeding.

Proposed law provides that if an insurer sends notice that it will pay a claim in whole or in part, the insurer is required to pay the claim within 15 business days of sending the notice. Provides that if payment of a claim in whole or in part is conditioned on the performance of an act by the claimant, the insurer is required to pay the claim within 15 business days of the date the act is performed.

Proposed law requires an insurer to pay the claim within 25 business days of the notice being sent or the date the conditioned act is performed if the insurer is a surplus lines insurer.

Proposed law requires the insurer to pay damages and other items if the insurer delays payment of the claim for more than 60 days after receiving all items related to the claim.

Proposed law does not apply in cases for which it is found, as a result of arbitration or litigation, that a claim received by the insurer is invalid and should not be paid by the insurer.

Proposed law provides that an insurer not in compliance with proposed law is liable to pay the policyholder or the beneficiary making the claim under the policy, in addition to the amount of the claim, and interest on the amount of the claim at the rate of 18% per year as damages, together with reasonable and necessary attorney fees.

Proposed law does not prevent the award of prejudgment interest on the amount of the claim. Further requires attorney fees to be taxed as part of the costs if a suit is filed.

Proposed law requires an insurer to pay the policyholder, in addition to the amount of the claim, simple interest on the amount of the claim as damages each year at the rate determined on the date of judgment by adding 5% to the judicial interest rate, together with reasonable and necessary attorney fees, if an insurer is liable for a claim under an insurance policy and the insurer is not in compliance with proposed law.

Proposed law does not prevent the award of prejudgment interest on the amount of the claim. Further provides that interest awarded as damages accrues beginning on the date the claim was required to be paid.

Proposed law requires the claimant to give written notice to the person of whom the claimant seeks damages, as such notice is a prerequisite to filing an action (presuit notice). Requires the claimant

to give written notice to the person at least 60 days before the claimant files an action.

Proposed law requires the claimant to provide in the notice all of the following:

- (1) A statement of the acts or omissions giving rise to the claim.
- (2) The specific amount alleged to be owed by the insurer on the claim for damage to or loss of covered property.
- (3) The amount of reasonable and necessary attorney fees incurred by the claimant, calculated by multiplying the number of hours actually worked by the claimant's attorney, as of the date the notice is given and as reflected in contemporaneously kept time records, by an hourly rate that is customary for similar legal services.

Proposed law requires the attorney or representative to provide a copy of the notice to the claimant and include in the notice a statement that a copy of the notice was provided to the claimant.

Proposed law provides that the presuit notice is not required if giving notice is impracticable.

Proposed law requires the court to dismiss without prejudice an action relating to the claim for which presuit notice is given by the claimant and commenced within 60 days of the date the claimant provides presuit notice to ensure a claimant is not prejudiced by having given the presuit notice required in proposed law.

Proposed law provides that a claimant who gives presuit notice is not relieved of the obligation to give notice pursuant to any other applicable law. Provides that presuit notice given may be combined with notice required pursuant to any other law.

Proposed law provides that presuit notice given is admissible as evidence in a civil action or alternative dispute resolution proceeding relating to the claim for which the notice is given. Further provides that giving of a notice does not provide a basis for limiting the evidence of attorney fees, damage, or loss a claimant may offer at trial.

Proposed law authorizes a person to whom a presuit notice is given, within 30 days following receipt of the notice, to send a written request to the claimant to inspect, photograph, or evaluate the property that is the subject of the claim. If reasonably possible, requires the inspection, photography, and evaluation to be completed within 60 days following the person's receipt of the presuit notice.

Proposed law provides that if the person did not receive a presuit notice or requested an inspection and was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim, the person may move to have the case dismissed as premature no later than 30 days after the date the person files an original answer in the court in which the action is pending.

Proposed law requires the court to dismiss the action as being premature if the court finds that the

person filing the exception did not, for any reason, receive a presuit notice or requested an inspection and was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim.

Proposed law provides that an action is automatically dismissed as premature on the 11th day after the date the exception of prematurity is filed, if either of the following occurs:

- (1) The exception is verified and alleges that the person against whom the action is pending did not receive a presuit notice.
- (2) The insurer requested an inspection and was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim, and this fact is not controverted by an affidavit filed by the claimant within 11 days after the date the exception of prematurity is filed.

Proposed law provides that an affidavit controverting whether the person against whom the action is pending should state the date on which the presuit notice was given and include as an attachment a copy of the document the claimant sent to give notice of the claimant's action.

Proposed law provides that an action dismissed as being premature is premature until the later of either 60 days after the date a notice is given or 15 days after the date of the requested inspection, photographing, or evaluating of the property is completed.

Proposed law provides that if an action is dismissed as being premature, the court is prohibited from compelling participation in an alternative dispute resolution proceeding until the action ceases being premature.

Proposed law authorizes an insurer that is a party to the action to elect to accept whatever liability an agent might have to the claimant for the agent's acts or omissions related to the claim by providing written notice to the claimant.

Proposed law requires the court to dismiss an action with prejudice if an insurer makes an election before a claimant files an action. Provides that if the claimant files an action against the agent, a cause of action does not exist against the agent related to the claimant's claim.

Proposed law requires the court to dismiss the action against the agent with prejudice if a claimant files an action against an agent and the insurer thereafter makes an election with respect to the agent.

Proposed law provides that if an insurer makes an election but, after having been served with a notice of intent to take a deposition of the agent who is the subject of the election, fails to make that agent available at a reasonable time and place to give deposition testimony, proposed law does not apply with respect to an election to which the insurer made the election unless the court finds that any of the following apply:

- (1) It is impracticable for the insurer to make the agent available due to a change in

circumstances arising after the insurer made the election.

- (2) The agent whose liability was assumed would not have been a proper party to the action.
- (3) Obtaining the agent's deposition testimony is not warranted under the law.

Proposed law provides that an insurer's election is ineffective to obtain the dismissal of an action against an agent if the insurer's election is conditioned in a way that will result in the insurer avoiding liability for any claim-related damage caused to the claimant by the agent's acts or omissions.

Proposed law prohibits an insurer from revoking an insurer's election.

Proposed law provides that if an insurer makes an election and the agent is not a party to the action, evidence of the agent's acts or omissions may be offered at trial and, if supported by sufficient evidence, the trier of fact may be asked to resolve fact issues as if the agent were a defendant. Requires a judgment against the insurer to include any liability that would have been assessed against the agent.

Proposed law prohibits the insurer from making an election and requires the court to disregard any prior election made by the insurer relating to the claimant's claim if an insurer is in receivership at the time the claimant begins an action against the insurer,

Proposed law provides for an insurer's election to not be made known to the jury in an action tried by a jury.

Proposed law requires the amount of attorney fees that may be awarded to a claimant in an action to be the lesser of the following:

- (1) The amount of reasonable and necessary attorney fees supported at trial by sufficient evidence and determined by the trier of fact to have been incurred by the claimant in bringing the action.
- (2) The amount of attorney fees that may be awarded to the claimant pursuant to other applicable provisions of law.
- (3) The amount calculated by both of the following:
 - (a) Dividing the amount to be awarded in the judgment to the claimant for the claimant's claim under the insurance policy for damage to or loss of covered property by the amount alleged to be owed on the claim for that damage or loss in a notice given.
 - (b) Multiplying the amount calculated by the total amount of reasonable and necessary attorney fees supported at trial by sufficient evidence and determined by the trier of fact to have been incurred by the claimant in bringing the action.

Proposed law requires the court to award to the claimant the full amount of reasonable and necessary attorney fees supported at trial by sufficient evidence and determined by the trier of fact to have been incurred by the claimant in bringing the action if the amount calculated meets all of the following:

- (1) The amount is greater than or equal to 0.8.
- (2) The amount is not limited by law.
- (3) The amount is otherwise recoverable by law.

Proposed law prohibits the court from awarding attorney fees to the claimant if the amount calculated is less than 0.2.

Proposed law provides that if a defendant in an action pleads and proves that the defendant was entitled to but was not given a presuit notice stating the specific amount alleged to be owed by the insurer, at least 60 days before the date the action was filed by the claimant, the court is prohibited from awarding the claimant any attorney fees incurred after the date the defendant files the pleading with the court. Further requires a pleading to be filed within 30 days after the date the defendant files an original answer in the court in which the action is pending.

Proposed law authorizes the commissioner to promulgate and adopt rules in accordance with the APA for providing a claims process alternative to proposed law in the event of a catastrophe.

(Adds R.S. 22:1899.1-1899.12)