AN ACT

To amend and reenact R.S. 22:1892(A)(3) and (4), (B)(1), and (H), to enact R.S. 22:1892(A)(7), (B)(7), (I), (J), and (K), and 1892.2, and to repeal R.S. 22:1973, relative to claims settlement practices; to provide for definitions; to provide for loss adjustment; to provide for the payment of claims; to provide for practices following a catastrophe; to provide for good faith duty; to provide for breach of good faith duty; to provide for certain notices; to provide for penalties; to provide for causes of action; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1892(A)(3) and (4), (B)(1), and (H) are hereby amended and reenacted and R.S. 22:1892(A)(7), (B)(7), (I), (J), and (K), and 1892.2 are hereby enacted to read as follows:

§1892. Payment and adjustment of claims; policies other than life and health and accident; good faith duty; breach of good faith duty; vehicle damage claims; extension of time to respond to claims during emergency or disaster; penalties; arson-related claims suspension; definitions

A.(1) * * *

(3) Except in the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim and of a claim for reasonable medical expenses within fourteen days after notification of loss by the claimant. In the case of catastrophic loss, as defined in this Section, the insurer shall initiate loss adjustment of a property damage claim within thirty days after notification of loss by the claimant except that the commissioner may promulgate a rule for extending the time period for initiating a loss adjustment for damages arising from a...
presidentially declared emergency or disaster or a gubernatorially declared emergency or disaster up to an additional thirty days. Thereafter, only one additional extension of the period of time for initiating a loss adjustment may be allowed and must shall be approved by the Senate Committee on Insurance and the House Committee on Insurance, voting separately. Failure to comply with the provisions of this Paragraph shall subject the insurer to the penalties provided in R.S. 22:1973 a penalty of the greater of five thousand dollars or the amount provided for in Subsection 1 of this Section.

(4) All insurers shall make a written offer to settle any property damage claim, including a third-party claim, within thirty the applicable number of days after receipt of satisfactory proofs of loss of that claim; that is provided pursuant to this Section or R.S. 22:1892.2, provided that this period shall be extended by the number of days, if any, the insurer initiates loss adjustment earlier than the deadline provided in Paragraph (3) of this Subsection.

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(7) The provisions of this Subsection do not apply to surety bonds.

B.(1)(a) Except as provided in Subparagraph (b) of this Paragraph, failure to make such payment within thirty days after receipt of such satisfactory written proofs and demand therefor or failure to make a written offer to settle any property damage claim, including a third-party claim, within thirty days after receipt of satisfactory proofs of loss of that claim, as provided in Paragraphs (A)(1) and (4) of this Section, respectively, or failure to make such the payment within thirty days after written agreement or settlement as provided in Paragraph (A)(2) of this Section when such the failure is found to be arbitrary, capricious, or without probable cause, shall subject the insurer to a penalty, in addition to the amount of the loss, of fifty percent damages on the amount found to be due from the insurer to the insured, plus any proven economic damages sustained as a result of the breach, or one thousand dollars, whichever is greater, payable to the insured, or in the event a partial payment or tender has been made, fifty percent of the difference between the amount paid or tendered and the amount found to be due, plus any proven economic
damages sustained as a result of the breach, as well as, in either instance, reasonable attorney fees and costs. Such The penalties, if awarded, shall not be used by the insurer in computing either past or prospective loss experience for the purpose of setting rates or making rate filings.

(b) In the case of a presidentially or gubernatorially declared disaster, failure to make such payment within thirty days after receipt of such satisfactory written proofs and demand therefor or failure to make a written offer to settle any property damage claim, including a third-party claim, within thirty days after receipt of satisfactory proofs of loss of that claim, as provided in Paragraphs (A)(1) and (4) of this Section, respectively, or failure to make such payment within thirty days after written agreement or settlement as provided in Paragraph (A)(2) of this Section when such failure is found to be arbitrary, capricious, or without probable cause, shall subject the insurer to a penalty, in addition to the amount of the loss, of fifty percent damages on the amount found to be due from the insurer to the insured, or two thousand five hundred dollars, whichever is greater, payable to the insured, or in the event a partial payment or tender has been made, fifty percent of the difference between the amount paid or tendered and the amount found to be due as well as reasonable attorney fees and costs or two thousand five hundred dollars, whichever is greater. The penalties, if awarded, shall not be used by the insurer in computing either past or prospective loss experience for the purpose of setting rates or making rate filings catastrophic loss, any penalty for payment and adjustment of a first-party claim arising under an insurance policy for immovable property shall be subject to penalty pursuant to the provisions of R.S. 22:1892.2, and the provisions of this Paragraph shall not apply.

c) For the purposes of this Section and R.S. 22:1892.2, the following definitions apply:

(i) "Catastrophic loss" means a loss that arose from a natural disaster, windstorm, or significant weather-related event that was a presidentially declared emergency or disaster.
(ii) "Immovable property" means a tract of land with its component part, including a factory-built or modular home as defined in R.S. 51:911.22.

(iii) "Residential property" means property defined as improvements for residential purposes pursuant to R.S. 47:2322.

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(7) Claims for penalties and attorney fees pursuant to this Subsection are subject to a liberative prescriptive period of two years.

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H. The Louisiana Insurance Guaranty Association, as provided in R.S. 22:2051 et seq., and the Louisiana Citizens Property Insurance Corporation, as provided in R.S. 22:2291 et seq., shall not be subject to the provisions of Code of Civil Procedure Article 591 et seq., or any other provision allowing a class action, for any damages including any penalties awarded pursuant to the provisions of this Section. The Louisiana Insurance Guaranty Association, as provided in R.S. 22:2051 et seq., shall also not be liable for any special damages or penalties provided for in this Section.

I.(1)(a) An insurer, including but not limited to a foreign line or surplus line insurer, owes to its insured a duty of good faith and fair dealing. The insurer has an affirmative duty to adjust claims fairly and promptly and to make a reasonable effort to settle claims with the insured or the claimant, or both. Any insurer that breaches the duties of this Subsection shall be liable for any proven economic damages sustained as a result of the breach. For claims not involving loss to an insured's immovable property, the insured may be awarded penalties in an amount not to exceed fifty percent of the damages sustained or five thousand dollars, whichever is greater, together with attorney fees and costs actually incurred due to the breach. Any penalty for breach of a duty imposed by this Subsection based solely upon a failure to pay the amount of any claim due to any person insured by the contract within the period provided by law following receipt of satisfactory proof of loss shall be awarded only if the breach is found to be arbitrary, capricious, or without probable
cause.

(b) For claims arising under an insurance policy covering loss to
immovable property, the insurer shall instead be subject to the provisions of
Subsection B of this Section or R.S. 22:1892.2, as appropriate.

(2) Any one of the following acts, if knowingly committed or performed
by an insurer or representative of the insurer, constitutes a breach of the
insurer's duties imposed in Paragraph (1) of this Subsection:

(a) A misrepresentation of pertinent facts or insurance policy provisions
relating to any coverages at issue.

(b) A failure to pay a settlement within thirty days after an agreement
is reduced to writing.

(c) A denial of coverage or attempting to settle a claim on the basis of an
application which the insurer knows was altered without notice to, or
knowledge or consent of, the insured.

(d) A misrepresentation to a claimant as to the applicable prescriptive
period.

(e) A failure to pay claims pursuant to R.S. 22:1893 when the failure is
arbitrary, capricious, or without probable cause.

(3) The provisions of this Subsection shall not create a separate cause of
action against a representative of the insurer distinct and apart from the cause
of action against the insurer.

J.(1) The insured, claimant, or a representative of the insured or
claimant has a duty of good faith and fair dealing when asserting a claim for
insurance coverage.

(2) Any one of the following acts, if knowingly committed or performed
by an insured, claimant, or representative of the insured or claimant, constitutes
a breach of the insured's duties imposed in Paragraph (1) of this Subsection:

(a) A failure to comply with affirmative contractual duties or obligations
established in the insurance policy, including the duty to act in good faith in
providing information regarding the claim, in making demands of the insurer,
in setting deadlines, and in attempting to settle the claim.

(b) A misrepresentation of pertinent facts or insurance policy provisions relating to any coverages at issue.

(c) A submission of an estimate or claim for damages that lacks a basis for coverage under the terms of the policy or lacks a good faith evidentiary basis.

(3) The duty imposed by this Subsection does not create a separate cause of action but shall be considered in accordance with Paragraph (4) of this Subsection.

(4) In any action against an insurer pursuant to this Section or R.S. 22:1892.2, if the trier of fact determines that the insured, claimant, or representative of the insured or claimant violated the provisions of this Subsection, the trier of fact shall consider that conduct in determining whether or not the insurer is to be awarded penalties or attorney fees otherwise provided for in accordance with R.S. 22:1892 and 1892.2.

(5) This Subsection does not impact any right or remedy available to the insurer, including but not limited to the right to void the policy or contract or deny coverage.

K. The provisions of this Section do not apply to claims made under life and health and accident insurance policies.

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§1892.2. Catastrophic loss claims settlement practices; penalties and attorney fees

A.(1) An insurer shall not violate any provision of this Section or R.S. 22:1892(A)(4) or (I).

(2) For catastrophic losses arising under an insurance policy for residential property, an insurer shall transmit payment of the amount of any claim due to any insured within sixty days after receipt of satisfactory written proof of loss.

(3) For catastrophic losses arising under an insurance policy for

Coding: Words which are struck through are deletions from existing law; words in boldface type and underscored are additions.
immovable property, other than residential property, an insurer shall transmit
payment of the amount of any claim due to any insured within ninety days after
receipt of satisfactory written proof of loss. The timeline provided for in this
Paragraph may be extended up to thirty additional days by the commissioner
for commercial policies insuring multiple locations.

B.(1) Failure to comply with Subsection A of this Section, when the
failure is found to be arbitrary, capricious, or without probable cause, shall
subject the insurer to a penalty payable to the insured, in addition to the
amount of the loss, of only the greater of fifty percent of the amount found to
be due from the insurer to the insured, or in the event a partial payment or
tender has been made, fifty percent of the difference between the amount timely
paid or tendered and the amount found to be due, plus proven economic
damages sustained as a result of the breach, or two thousand five hundred
dollars, whichever is greater, together with, in either instance, reasonable
attorney fees and costs actually incurred. The penalties, if awarded, shall not be
used by the insurer in computing either past or prospective loss experience for
the purpose of setting rates or making rate filings.

(2) Claims for penalties and attorney fees pursuant to this Section are
subject to a liberative prescription of two years.

C.(1) As a condition precedent to bringing an action pursuant to this
Section, the insurer shall be given sixty days' written notice of the violation by
the insured or his representative, hereinafter referred to in this Section as the
"cure period notice".

(2) The cure period notice may be provided through either a form
transmitted by the department or by formal written demand providing
sufficient notice of the facts and circumstances of the dispute.

(3) If the insurer pays within sixty days after the insurer receives a cure
period notice the full amount alleged to be due in the notice, together with any
actual expenses incurred by the insured and claimed in the notice, including any
attorney fees, not to exceed twenty percent of the amount alleged to be due
under the policy, there shall be no further cause of action pursuant to this Section regarding that noticed demand.

(4) If the insurer does not pay the full amount demanded by the cure period notice as provided for in Paragraph (3) of this Subsection but does make a partial payment within sixty days of the insurer’s receipt of the cure period notice, the penalty otherwise due, if any, on the amount actually paid by the insurer within sixty days of the insurer’s receipt of the cure period shall be reduced by half.

(5) The insurer that is the recipient of a cure period notice shall respond to the insured or his representative within sixty days.

(6) If a cure period notice is transmitted within the last ninety days prior to the running of prescription, the applicable prescriptive period for an action filed pursuant to the provisions of this Section, or for an action concerning the underlying policy dispute, shall be suspended for a period until thirty days after the insurer transmits its written response to the cure period notice.

(7) If any suit is filed prior to transmitting the cure period notice required by this Subsection, it shall be automatically stayed until sixty days after the cure period notice is received. The delay for answering any suit shall automatically be extended until thirty days after the end of the cure period. If the insurer timely pays the full amount demanded as provided for in Paragraph (3) of this Subsection, any cause of action prematurely filed shall be subject to dismissal at the insured’s cost.

D.(1) An insurer may make additional requests for information or inspection if during its investigation of the claim the additional requests are considered necessary. A request for information that is in the possession of the insurer or its representatives shall not extend any of the insurer’s deadlines.

(2) Nothing in this Subsection shall be construed to relieve an insurer of its obligation to transmit payment of the amount of any claim due to any insured within the deadline following receipt of satisfactory proof of loss concerning the amount as set forth in Paragraphs (A)(2) and (A)(3) of this
Section, nor to extend any deadline for payment when the requested information or inspection is found by the trier of fact to be unnecessary considering all other proof of the loss then available to the insurer.

(3) Nothing in this Subsection shall be construed to prohibit an insured from making a supplemental claim, nor to relieve an insurer from the obligation to conduct a supplemental investigation, or to make a supplemental payment, if warranted by the facts of a supplemental claim. A supplemental claim adds newly found damage or additional costs to the original claim. The fact that an insurer makes a supplemental payment shall not itself be construed as evidence of a violation of this Section or R.S. 22:1892.

(4) An insurer's tender of undisputed additional amounts due to the insured within thirty days of the insurer's receipt of a valid appraisal award does not itself constitute evidence of bad faith on the part of the insurer.

E. The provisions of this Section do not apply to claims made under any type of policy or contract of insurance specified in R.S. 22:1811 or 1821 or Chapter 10 of this Title.

F. The Louisiana Insurance Guaranty Association, as provided in R.S. 22:2051 et seq., and the Louisiana Citizens Property Insurance Corporation, as provided in R.S. 22:2291 et seq., shall not be subject to the provisions of Code of Civil Procedure Article 591 et seq., or any other provision allowing a class action, for any damages, that includes any penalties awarded pursuant to the provisions of this Section. The Louisiana Insurance Guaranty Association, as provided in R.S. 22:2051 et seq., shall also not be liable for any special damages or penalties provided for in this Section.

Section 2. R.S. 22:1973 is hereby repealed in its entirety.

Section 3. The Louisiana State Law Institute is hereby authorized and directed to revise the Code of Evidence and Title 22 of the Louisiana Revised Statutes of 1950, to change all references from "R.S. 22:1973" to "R.S. 22:1892" or "R.S. 22:1892.2", including but not limited to Code of Evidence Article 411(B)(3) and R.S. 22:41(13), 1296(B)(3)(d), 1332(B)(4), and 1893(D).
Section 4. This Act shall become effective on July 1, 2024. If vetoed by the governor and subsequently approved by this legislature, this Act shall become effective on the day following such approval or July 1, 2024, whichever is later.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: ____________