

2015 Regular Session

SENATE BILL NO. 195

BY SENATOR BROWN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE CLAIMS. Provides for an Insurance Mediation Program. (8/1/15)

AN ACT

To enact R.S. 22:1272, relative to an alternative procedure for resolution of disputed property insurance claims; to provide procedures and requirements of the mediation program; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1272 is hereby enacted to read as follows:

§1272. Insurance mediation program

A. This Section sets forth a nonadversarial alternative dispute resolution procedure for a mediated claim resolution conference prompted by the need for effective, fair, and timely handling of property insurance claims. There is a particular need for an informal forum for helping parties who elect this procedure to resolve their claims disputes because most homeowners and commercial residential insurance policies obligate policyholders to participate in a potentially expensive and time-consuming adversarial appraisal process before litigation. The procedure set forth in this Section is designed to bring the parties together for a mediated claims settlement conference without any of the trappings or drawbacks of an adversarial process. Before resorting to a dispute

1 resolution procedure provided in this Section, policyholders and insurers are
2 encouraged to resolve claims as quickly and fairly as possible. The program
3 contained in this Section may be used for property claims under personal lines
4 residential and commercial lines residential policies before commencing the
5 appraisal process, or before commencing litigation. For purposes of this Section,
6 personal lines residential coverage consists of the type of coverage provided by
7 homeowners', mobile home owner, dwelling, tenant, condominium unit owner,
8 cooperative unit owner and similar policies, and commercial lines residential
9 coverage consists of the type of coverage provided by condominium association,
10 cooperative association, apartment building and similar policies. Mediation may
11 be requested only by the policyholder, as a first-party claimant, or the insurer.
12 If requested by the policyholder, participation by legal counsel is permitted.
13 Mediation under this Section is also available to litigants referred to the
14 department by a district court or municipal court. The mediation procedure
15 contained in this Section does not apply to commercial coverages, to private
16 passenger motor vehicle insurance coverages, or to disputes relating to liability
17 coverages in policies of property insurance.

18 B. Within fourteen days of the policyholder filing a first-party claim
19 under the provisions of this Section, the insurer shall notify the policyholder of
20 its right to participate in the mediation program under this Section. The
21 department shall prepare a consumer information pamphlet for distribution to
22 persons participating in mediation.

23 C. The costs of mediation shall be reasonable, and the insurer shall bear
24 all of the cost of conducting mediation conferences, except as otherwise
25 provided in this Section. If an insured fails to appear at the conference, the
26 conference shall be rescheduled upon the insured's payment of the costs of a
27 rescheduled conference. If the insurer fails to appear at the conference, the
28 insurer shall pay the insured's actual cash expenses incurred in attending the
29 conference if the insurer's failure to attend was not due to a good cause

1 acceptable to the department. An insurer will be deemed to have failed to
2 appear if the insurer's representative lacks authority to settle the full value of
3 the claim. The insurer shall incur an additional fee for a rescheduled conference
4 necessitated by the insurer's failure to appear at a scheduled conference. The
5 fees assessed by the administrator shall include a charge necessary to defray the
6 expenses of the department related to its duties under this Section.

7 D. The department shall adopt rules and regulations implementing an
8 insurance mediation program to be administered by the department or its
9 designee. The department may also adopt special rules which are applicable in
10 cases of an emergency within the state. The rules shall provide for:

11 (1) Reasonable requirements for processing and scheduling of requests
12 for mediation.

13 (2) Qualifications for mediators seeking to participate in the mediation
14 program under this Section.

15 (3) The selection of mediators.

16 (4) Provisions governing who may attend mediation conferences.

17 (5) Criteria for the conduct of mediation conferences.

18 (6) The right to legal counsel.

19 E. All statements made and documents produced at a mediation
20 conference shall be deemed privileged and confidential within the scope of R.S.
21 9:4112. All parties to the mediation must negotiate in good faith and must have
22 the full authority to settle the claim immediately.

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

1 G. If the insurer fails to comply with Subsection B of this Section by
2 failing to notify a policyholder of his right to participate in the mediation
3 program under this Section or if the insurer requests the mediation, and the
4 mediation results are rejected by either party, the policyholder is not required
5 to submit to or participate in any contractual loss appraisal process as a
6 precondition to legal action for breach of contract against the insurer for its
7 failure to pay the policyholder's claims covered by the policy.

8 H. The department may designate an entity or person to serve as
9 administrator to carry out any of the provisions of this Section and may take
10 this action by means of a written contract or agreement.

11 I. For purposes of this Section, the term "claim" refers to any dispute
12 between an insurer and a policyholder relating to a material issue of fact other
13 than a dispute:

14 (1) With respect to which the insurer has a reasonable basis to suspect
15 fraud;

16 (2) Where, based on agreed upon facts as to the cause of loss, there is no
17 coverage under the policy;

18 (3) With respect to which the insurer has a reasonable basis to believe
19 that the policyholder has intentionally made a material misrepresentation of
20 fact which is relevant to the claim, and the entire request for payment of a loss
21 has been denied on the basis of the material misrepresentation; or

22 (4) With respect to which the amount in controversy is less than \$1,000,
23 unless the parties otherwise agree to mediate the dispute.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Cheryl Horne.

Proposed law sets forth a nonadversarial alternative dispute resolution procedure, otherwise called mediation, with respect to property claims under personal lines residential and commercial lines residential policies before the appraisal process or before commencing litigation.

Proposed law permits mediation to be requested only by the policyholder as a first-party claimant, or the insurer. Provides that if the policyholder requests mediation, participation by legal counsel is permitted.

Proposed law does not apply to commercial coverages, to private passenger motor vehicle insurance coverages, or to disputes relating to liability coverages in policies of property insurance.

Proposed law requires the insurer to notify the policyholder of his right to mediation within 14 days of the policyholder filing a first-party claim.

Proposed law requires the insurer to bear all the costs of mediation conferences except when the insured fails to appear at the conference. If the insurer fails to appear at the conference, the insurer shall pay the insured's actual cash expenses incurred in attending the conference if the insurer's failure to attend was not due to a good cause acceptable to the department. Provides that an insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle the full value of the claim.

Proposed law requires the department to adopt by rule a property insurance mediation program to be administered by the department or its designee. The rules shall provide:

- (1) Reasonable requirements for processing and scheduling of requests for mediation.
- (2) Qualifications for mediators seeking to participate in the mediation program.
- (3) The selection of mediators.
- (4) Provisions governing who may attend mediation conferences.
- (5) Criteria for the conduct of mediation conferences.
- (6) The right to legal counsel.

Proposed law requires all statements and documents produced at mediation to be deemed privileged and confidential pursuant to present law. Requires all parties to the mediation to negotiate in good faith and have full authority to settle the claim immediately.

Proposed law provides that mediation is 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 by the insurer. If a settlement agreement is reached and is not rescinded, it shall be binding and considered a release of specific claims.

Proposed law provides that if the insurer fails to notify the insured of their right to participate in mediation or if the insurer requests the mediation and the mediation results are rejected by either party, the insured is not required to submit to or participate in any loss appraisal process as a precondition to legal action for breach of contract.

Proposed law defines "claim" as any dispute between an insurer and an insured relating to a material issue of fact other than a dispute:

- (1) With respect to which the insurer suspects fraud.
- (2) Where, based on agreed upon facts as to the cause of loss, there is no coverage under the policy.
- (3) With respect to which the insurer has a reasonable basis to believe that the policyholder has intentionally made a material misrepresentation of fact which is

relevant to the claim.

- (4) With respect to which the amount in controversy is less than \$1,000 unless the parties otherwise agree to mediate the dispute.

Effective August 1, 2015.

(Adds R.S. 22:1272.)