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

DIGEST

SB 195 Original

2015 Regular Session

Brown

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.)