
DIGEST

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HB 839 Original

2016 Regular Session

Seabaugh

Abstract: Creates the property insurance mediation program.

Proposed law provides for mediation as an option available to the parties to a dispute with respect to property claims under personal lines residential and commercial lines residential policies prior to the commencement of the appraisal process or litigation. Provides that mediation is also available to litigants referred to the commissioner by a court having jurisdiction over such claims. Further provides that mediation pursuant to proposed law is not available for policies or coverages not specified in the proposed law.

Defines for purposes of proposed law that personal lines residential coverage consists of the type of coverage provided by homeowners', mobile home owner, dwelling, tenant, condominium unit owner, cooperative unit owner and similar policies, and commercial lines residential coverage consists of the type of coverage provided by condominium association, cooperative association, apartment building, and similar policies.

Mediation pursuant to the proposed law may only be requested by the policyholder as a first-party claimant, or the insurer, or their respective legal representatives.

Proposed law provides that the insurer shall notify the policyholder of the right to request mediation pursuant to proposed law. Requires the commissioner to prepare a consumer information pamphlet for distribution to policyholders regarding the mediation program.

Proposed law provides that the insurer shall bear the cost of the mediation pursuant to proposed law, which cost shall be reasonable as determined by the commissioner.

Proposed law provides that the commissioner shall promulgate rules or regulations, including emergency rules or regulations, for a property insurance mediation program to be administered by the commissioner pursuant to proposed law. The rules or regulations shall provide for:

- (1) The costs of the mediation.
- (2) The processing of requests for and scheduling of the mediation.
- (3) The qualifications for the mediators.
- (4) The selection of the mediators.

- (5) The attendance of the parties to the mediation.
- (6) The criteria for the conduct of the mediation.
- (7) The attendance of legal counsel.
- (8) The allocation of the costs of the mediation including any actual costs incurred by the parties in the event a party fails or refuses to appear at the mediation.
- (9) The requirement that each party attending the mediation have the legal authority to settle the full value of the claim.
- (10) The requirement that the fees assessed by the administrator include a charge necessary to defray the expenses of the commissioner related to his duties under proposed law.
- (11) Any other matters that the commissioner deems applicable, relevant and appropriate for the implementation and administration of a property insurance mediation program.

Proposed law deems all statements made and documents produced at the mediation to be privileged and confidential pursuant to present law.

Proposed law provides that if the mediation results in a settlement of all or any portion of disputed property claims, the settlement shall be reduced to writing by the mediator, shall be signed by all parties, and shall become enforceable as a transaction or compromise between the parties. Further requires the insurer to pay the sum agreed upon within 30 days of the date the parties execute the written settlement agreement. Provides that any settlement agreement reached between the parties is binding and acts as a release of the disputed property claims that were presented and settled at the mediation. Additionally, provides that the failure or refusal of the insurer to pay the full amount agreed upon in settlement shall entitle the policyholder to a cause of action against the insurer pursuant to the provisions of present law.

Proposed law provides that if the insurer fails to notify a policyholder of his right to request mediation or if the insurer requests the mediation and the mediation results are rejected by either party, the policyholder is not required to submit to or participate in any contractual loss appraisal process regarding the property loss damage as a precondition to legal action for breach of contract against the insurer for its failure to pay the policyholder's claims covered by the policy.

Proposed law provides that the commissioner may designate an administrator to carry out any of the provisions of proposed law and may take this action by means of a written contract or agreement.

Proposed law provides that, for purposes of proposed law, the term "claim" refers to any dispute between an insurer and a policyholder relating to a material issue of fact. However, "claim" shall not include a dispute:

- (1) With respect to which the insurer has a reasonable basis to suspect 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, and the entire request for payment of a loss has been denied on the basis of the material misrepresentation.
- (4) With respect to which the amount in controversy is less than \$1,000, unless the parties mutually agree to mediate a dispute involving a lesser amount.

Effective January 1, 2017.

(Adds R.S. 22:1272)