

2020 Regular Session

SENATE BILL NO. 495

BY SENATOR CARTER

INSURANCE POLICIES. Creates the Business Compensation Fund. (gov sig)

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AN ACT

To enact R.S. 22:1272, relative to property insurance; to create the Business Compensation Fund; to provide for participation and funding; to provide for eligibility for and computation of payments from the fund; to provide for dispute resolution and rulemaking; to provide terms, conditions, and procedures; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

§1272. Business Compensation Fund; creation; contributions; payments

A.(1) There is hereby created the Business Compensation Fund to be administered as further provided in this Section, for the purpose of providing a method for expediting certain property insurance claims, resolving disputes, and providing coverage for losses sustained as a result of the COVID-19 pandemic.

(2) Any entity writing commercial insurance of any kind in this state may participate in the fund. To participate in the fund, the entity shall submit to the commissioner of insurance an application on a form prescribed by the

1 commissioner. A fund participant shall contribute to the fund an amount that
2 is the greater of fifty million dollars or eighty percent of the aggregate policy
3 limits for all commercial insurance policies that the entity has in force in this
4 state on March 11, 2020, or anytime thereafter during the emergency declared
5 in Proclamation Number 25 JBE 2020, and any extension thereof. By
6 participating in the fund, the entity agrees to be bound by the provisions of this
7 Section. A fund participant shall be immune from claims of bad faith brought
8 by any person seeking payment for claims under a policy written in this state
9 for losses associated with the COVID-19 pandemic. An entity shall be allowed
10 to participate only if the application is received by the commissioner sixty days
11 or less after the emergency declaration expires.

12 (3) All monies collected pursuant to the provisions of this Section shall
13 be considered self-generated revenues, promptly deposited in the Business
14 Compensation Fund. The assets of the fund shall not be state property, subject
15 to appropriation by the legislature, or required to be deposited in the state
16 treasury. The state recognizes and acknowledges that the contributions to the
17 fund and any income from the investment of the contributions are not public
18 monies, but rather are private monies that shall be held in trust as a private
19 custodial fund by the commissioner for the use, benefit, and protection of the
20 insureds and participants, and all assets of this fund shall be subject to use and
21 disposition only as provided by this Section.

22 (4) The commissioner shall collect and deposit the contributions to and
23 disburse the payments from the fund.

24 (5) After final disposition of all claims, any remaining monies in the fund
25 shall be returned to the participating entities in proportion to each entity's
26 contribution.

27 B. An insured holding a commercial insurance policy in this state may
28 apply for a payment from the fund, on a form prescribed by the commissioner,
29 if all of the following apply:

1 (1) A policy for commercial loss in Louisiana was in force on March 11,
2 2020, or anytime thereafter during the emergency declared in Proclamation
3 Number 25 JBE 2020 and any extension thereof.

4 (2) The insured sustained loss of commercial income or revenue due to
5 the imminent threat posed by COVID-19 as provided in Proclamation Number
6 25 JBE 2020, declaring the existence of a statewide public health emergency,
7 and any extension thereof.

8 (3) In satisfaction of all claims for the income or revenue losses in
9 Paragraph (2) of this Subsection, the insured agrees to accept eighty percent of
10 actual losses up to the policy limits.

11 (4) The application is received by the commissioner no later than ninety
12 days after the expiration of the emergency declaration.

13 C. A fund participant may challenge a claim as fraudulent and may
14 contest the amount of a claim but waives the right to contest liability. A
15 challenge shall be settled by a private, binding arbitration with no right of
16 appeal, pursuant to rules promulgated by the commissioner. The challenging
17 participant shall pay the cost of the arbitration. If the claimant prevails in the
18 arbitration, all costs to the claimant of the arbitration, including attorney fees,
19 shall be borne by the participant.

20 D. The commissioner of insurance shall promulgate rules and
21 regulations pursuant to the Administrative Procedure Act to implement the
22 provisions of this Section, including the provisions relating to arbitration.
23 Notwithstanding the provisions of R.S. 49:953(B)(1), the commissioner may use
24 the emergency rule-making procedure to facilitate the swift implementation of
25 the provisions of this Section.

26 Section 2. This Act shall become effective upon signature by the governor or, if not
27 signed by the governor, upon expiration of the time for bills to become law without signature
28 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
29 vetoed by the governor and subsequently approved by the legislature, this Act shall become

1 effective on the day following such approval.

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

DIGEST

SB 495 Original 2020 Regular Session Carter

Proposed law creates a private fund, called the Business Compensation Fund, to expedite certain property insurance claims, resolve disputes, and provide coverage for losses sustained as a result of the COVID-19 pandemic. Provides for contributions to and disbursements from the fund.

Proposed law requires an insurer choosing to participate in the fund to contribute to the fund the greater of \$50 million or 80% of the aggregate policy limits for that insurer's policies in force in La. during the gubernatorially declared pandemic emergency. Provides participants immunity from claims of bad faith brought by insureds seeking payments for claims for losses under proposed law. Requires an insurer to apply to participate within 60 days of the expiration of the emergency declaration.

Proposed law allows an insured to apply for a payment under proposed law if all of the following apply:

- (1) A policy for commercial loss in La. was in force during the gubernatorially declared pandemic emergency.
- (2) The insured sustained commercial income or revenue loss due to the COVID-19 threat.
- (3) The insured agrees to accept 80% of actual losses up to the policy limits in satisfaction of all claims for the income or revenue losses due to the COVID-19 pandemic.
- (4) The application is received by the commissioner within 90 days of the expiration of the emergency declarations.

Proposed law allows a fund participant to challenge a claim as fraudulent and to contest the amount of a claim but not to contest the issue of liability. Provides for private, binding arbitration with no right of appeal to settle any challenge. Requires the challenging participant shall pay the cost of the arbitration and if the claimant prevails in the arbitration, all of the claimant's costs of the arbitration, including attorney fees.

Proposed law requires the commissioner of insurance to provide forms for insurers and insureds to utilize proposed law, to collect the contributions to and disburse the payments from the fund, and to promulgate rules for the implementation of proposed law including the arbitration provisions.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 22:1272)