

2021 Regular Session

HOUSE BILL NO. 523

BY REPRESENTATIVE TARVER

(On Recommendation of the Louisiana State Law Institute)

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

INSURANCE: Provides relative to bad faith claims against insurers

1 AN ACT

2 To amend and reenact R.S. 22:1973 and to repeal R.S. 22:1892, relative to bad faith
3 insurance claims; to provide for the duties owed by insurers to insureds and third
4 parties; to provide procedures for the adjustment and settlement of claims; to provide
5 for contingencies in the case of declared emergencies; to provide for remedies in bad
6 faith suits; to provide for the exclusivity of remedies; to provide relative to insurance
7 claims arising from potential arson; to provide for remedies where an insurance
8 claimant is deprived of use of their personal vehicle; to provide for the formulation
9 of actual cash value; to provide for the method and manner of payment of claims; to
10 provide relative to repairs; to provide for an exemption of liability for the Insurance
11 Guaranty Association Fund; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 22:1973 is hereby amended and reenacted to read as follows:

14 §1973. Good faith duty; claims settlement practices; cause of action; penalties

15 A.(1) ~~An insurer, including but not limited to a foreign line and surplus line~~
16 ~~insurer, owes to his insured a duty~~ All insurers owe to their insureds duties of good
17 faith and fair dealing, including. ~~The insurer has an affirmative duty to adjust claims~~
18 ~~fairly and promptly and the duty to make a reasonable effort to adjust and settle~~
19 ~~claims with the insured or the claimant, or both~~ fairly and promptly. ~~Any insurer~~

1 ~~who breaches these duties shall be liable for any damages sustained as a result of the~~
2 ~~breach.~~

3 (2) In addition to the duties of good faith and fair dealing that insurers owe
4 to their insureds, all insurers owe to the insured and third-party claimants the duty
5 to adjust and settle claims in accordance with Subsection B of this Section.

6 B.(1) All insurers issuing any type of contract, other than those specified in
7 R.S. 22:1811 and 1821 and Chapter 10 of Title 23 of the Louisiana Revised Statutes
8 of 1950, shall pay the amount reasonably due any insured within thirty days after
9 receipt of satisfactory proof of loss from the insured or any party in interest. The
10 insurer shall notify the insurance producer of record of all such payments for
11 property damage claims made in accordance with this Paragraph. If the amount due
12 is in dispute, the insurer shall tender to the insured within thirty days after receipt of
13 satisfactory proof of loss the amount that is not reasonably in dispute.

14 (2) Except for claims arising during a declared state of emergency under R.S.
15 29:721 et seq., the insurer shall initiate loss adjustment of a property damage or
16 medical expense claim within fourteen days after notification of loss by the claimant.
17 In the case of a declared state of emergency, the commissioner may promulgate a
18 rule extending this time period by no longer than thirty additional days.

19 (3) All insurers shall make a written offer to settle any third party property
20 damage claim within thirty days after the receipt of satisfactory proof of loss for that
21 claim.

22 (4) Any one of the following acts, if knowingly committed or performed by
23 an insurer, constitutes a breach of the insurer's duties to an insured or third party
24 claimant imposed in Subsection A of this Section:

25 ~~(1)~~(a) Misrepresenting pertinent facts or insurance policy provisions relating
26 to any coverages at issue.

27 ~~(2)~~(b) Failing to pay a settlement within thirty days after an agreement to do
28 so is reduced to writing.

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

4 ~~(4)(d)~~ Misleading a claimant as to the applicable prescriptive period.

5 ~~(5) Failing to pay the amount of any claim due any person insured by the~~
6 ~~contract within sixty days after receipt of satisfactory proof of loss from the claimant~~
7 ~~when such failure is arbitrary, capricious, or without probable cause.~~

8 ~~(6)~~ Failing to pay claims pursuant to R.S. 22:1893 when such failure is
9 arbitrary, capricious, or without probable cause.

10 C.(1) In addition to ~~any general or special damages to which a claimant is~~
11 ~~entitled for breach of the imposed duty, the claimant may be awarded penalties~~
12 ~~assessed against the insurer in an amount not to exceed two times the damages~~
13 ~~sustained or five thousand dollars, whichever is greater. Such penalties, if awarded,~~
14 ~~shall not be used by the insurer in computing either past or prospective loss~~
15 ~~experience for the purpose of setting rates or making rate filings. the insured loss,~~
16 any insurer that violates Subsection A or B of this Section where the trier of fact
17 finds that the insurer's conduct is arbitrary, capricious, or without reasonable cause
18 shall be liable for each of the following:

19 (a) Any general and special damages caused by the violation.

20 (b) Reasonable attorney fees and costs, as determined by the court.

21 (2) At the discretion of the court, any insurer who violates Subsection A or
22 B of this Section where the trier of fact finds that the insurer's conduct is arbitrary,
23 capricious, or without reasonable cause may also be liable for a penalty not to exceed
24 fifty percent of the amount that the insurer would have been liable to pay under the
25 terms of the insurance policy or other agreement, but not less than five thousand
26 dollars.

27 (3) This Subsection shall provide the sole and exclusive remedies for
28 violations of Subsections A and B of this Section.

1 D.~~(1)~~ ~~The provisions of this Section shall not be applicable to claims made~~
2 ~~under health and accident insurance policies.~~ The period set forth in Subsection B
3 of this Section for payment of losses resulting from fire and the penalty provisions
4 for nonpayment within the period shall not apply where the loss from fire was
5 arson-related and the state fire marshal or other state or local investigative bodies
6 have the loss under active arson investigation. The provisions relative to time of
7 payment and penalties shall commence to run upon certification of the investigating
8 authority that there is no evidence of arson or that there is insufficient evidence to
9 warrant further proceedings.

10 (2) The provisions relative to suspension of payment due to arson shall not
11 apply to a bona fide lender which holds a valid recorded mortgage on or a properly
12 perfected security interest in the property in question.

13 (3) Whenever a property damage claim is on a personal vehicle owned by
14 the third party claimant and, as a direct consequence of the inactions of the insurer
15 and the third party claimant's loss, the third party claimant is deprived of use of the
16 personal vehicle for more than five calendar days, excluding Saturdays, Sundays, and
17 holidays, the insurer responsible for payment of the claim shall pay, to the extent
18 legally responsible, for reasonable expenses incurred by the third party claimant in
19 obtaining alternative transportation for the entire period of time during which the
20 third party claimant is without the use of his personal vehicle. Failure to make such
21 payment within thirty days after receipt of satisfactory written proof and demand
22 therefor when such failure is found to be arbitrary, capricious, or without reasonable
23 cause shall subject the insurer to, in addition to the amount of such reasonable
24 expenses incurred, a reasonable penalty not to exceed ten percent of such reasonable
25 expenses or one thousand dollars, whichever is greater, together with reasonable
26 attorney fees for the collection of such expenses.

27 (4)(a) When an insurance policy provides for the adjustment and settlement
28 of first party motor vehicle total losses on the basis of actual cash value or
29 replacement with another motor vehicle of like, kind, and quality, and the insurer

1 elects a cash settlement based on the actual cost to purchase a comparable motor
2 vehicle, such cost shall be derived by using one of the following:

3 (i) A fair market value survey conducted using qualified retail automobile
4 dealers in the local market area as resources. If there are no dealers in the local
5 market area, the nearest reasonable market can be used.

6 (ii) The retail cost as determined from a generally recognized used motor
7 vehicle industry source, such as a guidebook that is available to the general public
8 or an electronic database, if the valuation documents generated by the database are
9 provided to the first party claimant. If the insured demonstrates by presenting two
10 independent appraisals based on measurable and discernable factors, including the
11 vehicle's pre-loss condition, that the vehicle would have a higher cash value in the
12 local market area than the value reflected in the source's database or the guidebook,
13 the local market value shall be used in determining the actual cash value.

14 (iii) A qualified expert appraiser selected and agreed upon by the insured and
15 insurer. The appraiser shall produce a written nonbinding appraisal establishing the
16 actual cash value of the vehicle's pre-loss condition.

17 (b) For the purposes of this Paragraph, "local market area" shall mean a
18 reasonable distance surrounding the area where a motor vehicle is principally
19 garaged, or the usual location of the vehicle covered by the policy.

20 E.(1) All claims brought by insureds, workers' compensation claimants, or
21 third parties against an insurer shall be paid by check or draft of the insurer or, if
22 offered by the insurer and requested by the claimant, electronic transfer of funds to
23 the order of the claimant to whom payment of the claim is due pursuant to the policy
24 provisions, or his attorney, or upon direction of the claimant to a specified recipient.
25 Nevertheless, when the employer has advanced the claims payment to the claimant,
26 the check or draft shall be paid jointly to the claimant and the employer until the
27 amount of the advanced claims payment has been recovered by the employer.

28 (2) No insurer shall intentionally or unreasonably delay, for more than three
29 calendar days, exclusive of Saturdays, Sundays, and legal holidays, after presentation

1 for collection, the processing of any properly executed and endorsed check or draft
2 issued in settlement or payment of an insurance claim.

3 (3) Any insurer violating this Subsection shall pay the insured or claimant
4 a penalty of two hundred dollars or fifteen percent of the face amount of the check
5 or draft, whichever is greater.

6 F.(1) When making a payment incident to a claim, no insurer shall require
7 repairs be made to a motor vehicle, including window glass repairs or replacement,
8 in a particular place or shop or by a particular entity.

9 (2) An insurer shall not recommend the use of a particular motor vehicle
10 service or network of repair services without informing the insured or claimant that
11 the insured or claimant is under no obligation to use the recommended repair service
12 or network of repair services.

13 (3) An insurer shall not engage in any act or practice of intimidation,
14 coercion, or threat to induce an insured or claimant to use a specified place of
15 business for repair and replacement services.

16 (4) The commissioner may levy the following fines against any insurer that
17 violates this Subsection:

18 (a) For a first offense, one thousand dollars.

19 (b) For a second offense within a twelve-month period, two thousand five
20 hundred dollars.

21 (c) For a third or subsequent offense within a twelve-month period, five
22 thousand dollars.

23 (5) A violation of this Subsection shall constitute an additional ground, under
24 R.S. 22:1554, for the commissioner to refuse to issue a license or to suspend or
25 revoke a license issued to any producer to sell insurance in this state.

26 G. The Insurance Guaranty Association Fund, as provided in R.S. 22:2051
27 et seq., shall not be liable for any special damages awarded under the provisions of
28 this Section.

1 Comments 2021

2 (a) The purpose of this revision is to combine and harmonize the statutory
3 rules contained in former R.S. 22:1892 and 1973 governing extracontractual liability
4 for violations of the insurer's duties to both insureds and third-party claimants.

5 (b) Paragraph (A)(1) sets forth the duties of good faith and fair dealing owed
6 by insurers to their insureds. See Civil Code Article 1983. These duties include the
7 duty of liability insurers to act reasonably in attempting to settle claims within policy
8 limits, the violation of which can give rise to a claim for damages for any excess
9 judgment that may be rendered. See, e.g., *Smith v. Audubon*, 679 So. 2d 372 (La.
10 1996). This revision is not intended to affect that cause of action.

11 (c) Paragraph (A)(2) reflects the narrower duty owed to both insureds and
12 third-party claimants in adjusting and settling claims, as set forth in Subsection B.
13

14 (d) Subsection B compiles the specific statutory rules set forth in former R.S.
15 22:1892 and 1973. Pursuant to the Supreme Court's decision in *Theriot v. Midland*
16 *Risk*, 694 So. 2d 184 (La. 1997), the duties to third-party claimants set forth in
17 Subsection B are exclusive. This revision is not intended to affect that rule.

18 (e) Subsection C establishes the standard of conduct that will create
19 extracontractual liability for violations of Subsections A and B, and it sets forth the
20 sole and exclusive remedies available when an insurer violates those provisions. The
21 courts have applied an overall standard of reasonableness, which this revision adopts.
22 The "arbitrary, capricious, or without reasonable cause" language maintains the
23 interpretation that courts have applied. Former R.S. 22:1973 set out an "arbitrary,
24 capricious, or without probable cause" standard. This revision substitutes
25 "reasonable cause" for "probable cause" in order to avoid undue confusion with the
26 criminal law standard "probable cause" but is not intended to change the substantive
27 standard at issue.

28 (f) When an insurer's conduct in violation of Subsections A and B is
29 arbitrary, capricious, or without reasonable cause, Subsection C provides the
30 exclusive remedies available to insureds and third-party claimants. This Subsection
31 harmonizes the remedies provisions of the former statutes by reducing the maximum
32 penalty but providing for recovery of reasonable attorney fees and costs by both
33 insureds and third-party claimants. The award of the penalty and the amount thereof
34 is committed to the discretion of the court.

35 (g) Subsections D through G retain existing law with only semantic changes
36 to make these Subsections consistent with the language used in Subsections A, B,
37 and C.

38 Section 2. R.S. 22:1892 is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 523 Original

2021 Regular Session

Tarver

Abstract: Provides relative to the duties owed by insurers to insureds and third parties in adjusting and settling claims.

Present law provides for the duties owed by insurers to insureds and third parties in adjusting and settling insurance claims.

Proposed law retains present law.

Present law sets forth the duties owed by insurers to insureds and third party claimants.

Proposed law retains present law and makes technical changes.

Present law provides for the payment and notification of claims.

Proposed law retains present law and provides for the payment of claims where the amount of the claim is under dispute.

Present law provides for the initiation of loss adjustment and includes an exception in cases of catastrophic loss.

Proposed law clarifies the circumstances in which the exception applies.

Present law requires insurers to make written offers to settle property damage claims within 30 days after receipt of satisfactory proof of loss.

Proposed law retains present law.

Present law sets forth the acts that constitute a breach of the insurer's duties.

Proposed law clarifies the applicable standard and makes technical changes.

Proposed law reformulates the standard necessary for the award of penalties.

Present law provides for the award of general and specific damages caused by breach of the insurer's duty.

Proposed law retains present law.

Present law provides for the award of reasonable attorney fees and costs.

Proposed law retains present law and makes such remedy available in a wider range of circumstances.

Present law sets forth the penalty that may be imposed against an insurer who violates the provisions of present law.

Proposed law reduces the penalty in present law but makes it applicable to a wider range of circumstances.

Proposed law provides that the remedies contained in proposed law are exclusive.

Present law provides for losses from fire related to arson and property damage claims concerning personal motor vehicles.

Proposed law retains present law and makes technical changes.

Present law provides for the manner in which claims must be paid.

Proposed law retains present law.

Present law provides for repairs made to motor vehicles.

Proposed law retains present law.

Present law provides an exemption from liability for the Insurance Guaranty Association Fund.

Proposed law retains present law.

Present law provides for time frames for insurers to adjust claims, make payments on claims, and offers to settle claims. Present law further provides penalties to insurers who violate the provisions established in present law.

Proposed law repeals present law but codifies some of the provisions in present law.

(Amends R.S. 22:1973; Repeals R.S. 22:1892)