

2021 Regular Session

HOUSE BILL NO. 457

BY REPRESENTATIVE FIRMENT

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

INSURANCE CLAIMS-ADJUSTR: Provides for claims adjusters

1 AN ACT

2 To amend and reenact R.S. 22:1662(3), to enact R.S. 22:1674.1, and to repeal R.S. 22:1674,
3 relative to insurance claims adjusters; to provide for the standards of conduct for
4 claims adjusters; to require newly licensed claims adjusters and claims adjusters
5 renewing their license to read and acknowledge the claims adjuster standards of
6 conduct; to provide for penalties for violation of the standards of conduct; to provide
7 an exemption from licensure for certain persons; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 22:1662(3) is hereby amended and reenacted and 1674.1 is hereby
10 enacted to read as follows:

11 §1662. General exemptions

12 This Part does not apply to:

13 * * *

14 (3)(a) A person employed only to furnish technical assistance to a licensed
15 adjuster, including but not limited to an investigator, an attorney, an engineer, an
16 estimator, a handwriting expert, a photographer, ~~and~~ or a private detective.

17 (b) This Paragraph shall not apply to engineers, estimators, or building
18 consultants engaged in the investigation of a residential or commercial claim
19 involving reported damage to a covered structure caused by perils of hurricane,
20 flood, windstorm, hail, or tornado.

21 * * *

1 §1674.1. Standards of conduct; acknowledgment required

2 A. The following standards of conduct shall be binding on all claims
3 adjusters:

4 (1) An adjuster shall not have a direct or indirect financial interest in any
5 aspect of the claim, other than the salary, fee, or other consideration established with
6 the insurer.

7 (2) An adjuster shall not acquire any interest in salvage of property subject
8 to the contract with the insurer.

9 (3) An adjuster shall not solicit employment for, recommend, or otherwise
10 solicit engagement, directly or indirectly, for any attorney at law, contractor, or
11 subcontractor, in connection with any loss or damage for which the adjuster is
12 employed or concerned.

13 (4) An adjuster shall not solicit or accept any compensation, directly or
14 indirectly, from, by, or on behalf of any contractor or subcontractor engaged by or
15 on behalf of any insured by which such adjuster has been, is, or will be employed or
16 compensated, directly or indirectly.

17 (5) An adjuster shall treat all claimants fairly.

18 (6) An adjuster shall not provide favored treatment to any claimant.

19 (7) An adjuster shall adjust all claims strictly in accordance with the
20 insurance contract.

21 (8) An adjuster shall not approach investigations, adjustments, and
22 settlements in a manner prejudicial to the insured.

23 (9) An adjuster shall make truthful and unbiased reports of the facts after
24 completing a thorough investigation.

25 (10) An adjuster shall handle every adjustment and settlement with honesty
26 and integrity, without any remuneration to himself except that to which he is legally
27 entitled.

28 (11) An adjuster, upon undertaking the handling of a claim, shall act with
29 dispatch and due diligence in achieving a proper disposition of the claim.

1 (12) An adjuster shall promptly report to the department any conduct by any
2 licensed insurance representative of this state which violates any provision of this
3 Title or department rule.

4 (13) An adjuster shall exercise extraordinary care when dealing with elderly
5 claimants.

6 (14) An adjuster shall not negotiate or effect settlement directly or indirectly
7 with any third-party claimant represented by an attorney, if the adjuster has
8 knowledge of such representation, except with the consent of the attorney. For
9 purposes of this Paragraph, the term "third-party claimant" does not include the
10 insured or the insured's resident relatives.

11 (15) An adjuster may interview any witness, or prospective witness, without
12 the consent of opposing counsel or party. In doing so, however, the adjuster shall
13 scrupulously avoid any suggestion calculated to induce a witness to suppress or
14 deviate from the truth, or in any degree affect the witness's appearance or testimony
15 during deposition or at the trial. If any witness making or giving a signed or
16 recorded statement so requests, the witness shall be given a copy of the statement.

17 (16) An adjuster shall not advise a claimant to refrain from seeking legal
18 advice, nor advise against the retention of counsel to protect the claimant's interest.

19 (17) An adjuster shall not knowingly make any oral or written
20 misrepresentation or statement in regards to applicable policy provisions, contract
21 conditions, or pertinent state laws.

22 (18) An adjuster shall not undertake the adjustment of any claim for which
23 the adjuster is not currently competent and knowledgeable as to the terms and
24 conditions of the insurance coverage, or which otherwise exceeds the adjuster's
25 current expertise.

26 (19) An adjuster shall not permit an unlicensed employee or representative
27 of the adjuster to conduct business for which a license is required pursuant to the
28 provisions of this Part.

1 (20) No adjuster, while so licensed by the department, may represent or act
2 as a public adjuster.

3 (21) No adjuster shall materially misrepresent to an insured or other
4 interested party the terms and coverage of an insurance contract with intent and for
5 the purpose of effecting settlement of a claim for loss or damage or benefit under
6 such contract on less favorable terms than those provided in and contemplated by the
7 insurance contract.

8 B. Upon license issuance and license renewal claims adjusters shall read and
9 acknowledge the claims adjuster standards of conduct provided in this Section, in a
10 manner prescribed by the commissioner.

11 C. Violation of any provision of Subsection A of this Section shall be
12 grounds for administrative action against the licensee. In addition to administrative
13 action, a claims adjuster who violates the provisions in Subsection A of this Section
14 shall be deemed to have committed an unfair trade practice pursuant to R.S. 22:1964,
15 and the penalties contained in R.S. 22:1969 may be enforced by the commissioner.

16 Section 2. R.S. 22:1674 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 457 Reengrossed 2021 Regular Session Firment

Abstract: Provides for claims adjusters.

Present law provides for certain standards of conduct for claims adjusters including:

- (1) An adjuster shall not permit an unlicensed employee or his representative to conduct business for which a license is required.
- (2) An adjuster shall not have a financial interest in any aspect of the claim, other than the salary, fee, or other consideration established with the insurer.
- (3) An adjuster shall not acquire any interest in salvage of property subject to the contract with the insurer.
- (4) An insurer shall not solicit employment for any attorney, contractor, or subcontractor in connection with any loss the adjuster is concerned or employed.

- (5) An adjuster shall not solicit or accept compensation from any contractor or subcontractor on behalf of any insured for which the adjuster is employed.
- (6) An adjuster shall not undertake the adjustment of any claim if the adjuster is not competent or knowledgeable.
- (7) An adjuster shall not knowingly make a material misrepresentation intended to injure any person engaged in the business of insurance.
- (8) An adjuster shall not represent or act as a public adjuster.
- (9) An adjuster shall not materially misrepresent the terms and coverage of an insurance contract to an insured for the purpose of effecting settlement of a claim on less favorable terms than those provided in the insurance contract.

Proposed law repeals present law and codifies some of the provisions of present law (R.S. 22:1674).

Proposed law defines the terms "client", "department", and "person".

Proposed law provides standards of conduct for claims adjusters including:

- (1) An adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, or other consideration established with the insurer.
- (2) An adjuster shall not acquire any interest in salvage of property subject to the contract with the insurer.
- (3) An adjuster shall not solicit employment for, recommend, or otherwise solicit engagement for any attorney, contractor, or subcontractor, in connection with any loss or damage for which the adjuster is employed or concerned.
- (4) An adjuster shall not solicit or accept any compensation from, by, or on behalf of any contractor or subcontractor engaged by or on behalf of any insured by which such adjuster has been, is, or will be employed or compensated.
- (5) An adjuster shall treat all claimants fairly.
- (6) An adjuster shall not approach investigations, adjustments, and settlements in a manner prejudicial to the insured.
- (7) An adjuster shall make truthful and unbiased reports of the facts after completing a thorough investigation.
- (8) An adjuster shall handle every adjustment and settlement with honesty and integrity.
- (9) An adjuster shall act with due diligence in achieving a proper disposition of the claim.
- (10) An adjuster shall promptly report violations of any provision of the Insurance Code.
- (11) An adjuster shall exercise extraordinary care when dealing with elderly claimants.
- (12) An adjuster shall not negotiate or effect settlement with any third-party claimant represented by an attorney, except with the consent of the attorney.
- (13) An adjuster shall avoid any suggestion calculated to induce a witness to suppress or deviate from the truth.

- (14) An adjuster shall not advise a claimant to refrain from seeking legal advice, nor advise against the retention of counsel to protect the claimant's interest.
- (15) An adjuster shall not knowingly make any oral or written misrepresentation or statement in regards to applicable policy provisions, contract conditions, or pertinent state laws.
- (16) An adjuster shall not undertake the adjustment of any claim that exceeds the adjuster's current expertise.
- (17) An adjuster shall not permit an unlicensed employee or representative of the adjuster to conduct business for which a license is required under this Part.
- (18) An adjuster shall not act as a public adjuster.
- (19) An adjuster shall not materially misrepresent to an insured or other interested party the terms and coverage of an insurance contract.

Proposed law requires claims adjusters to read and acknowledge the claims adjuster standards of conduct upon license issuance and upon license renewal.

Proposed law provides that violation of the claims adjuster standards and conduct shall constitute grounds for administrative action against the licensee and committed an unfair trade practice.

Present law provides that a person employed only to furnish technical assistance to a licensed adjuster, including but not limited to an investigator, an attorney, an engineer, an estimator, a handwriting expert, a photographer, and a private detective, is exempt from the present law provisions of Part IV of Chapter 5 of Title 22 of the Louisiana Revised Statutes of 1950 regarding claims adjusters.

Proposed law retains present law and provides that the exception provided in present law does not apply to engineers, estimators, or building consultants engaged in the investigation of a residential or commercial claim involving reported damage to a covered structure caused by perils of hurricane, flood, windstorm, hail, or tornado.

Proposed law makes technical changes.

(Amends R.S. 22:1662(3); Adds R.S. 22:1674.1; Repeals R.S. 22:1674)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Insurance to the original bill:

1. Revise proposed law standards of conduct for claims adjusters.
2. Provide that engineers, estimators, and building consultants investigating certain perils are not included in the exemption in present law.
3. Change that a claims adjuster who violates the claims adjuster standards of conduct is considered to have violated unfair claim settlement practices law to a claims adjuster who violates the standards of conduct is considered to have committed an unfair trade practice.
4. Make technical changes.

The House Floor Amendments to the engrossed bill:

1. Clarify that engineers, estimators, and building consultants investigating certain perils are not included in the exemption in present law.
2. Make technical changes.