

1 expenses within ~~fourteen~~ fifteen days after notification of loss by the claimant. In
 2 the case of catastrophic loss, the insurer shall initiate loss adjustment of a property
 3 damage claim within thirty days after notification of loss by the claimant except that
 4 the commissioner may promulgate a rule for extending the time period for initiating
 5 a loss adjustment for damages arising from a presidentially declared emergency or
 6 disaster or a gubernatorially declared emergency or disaster up to an additional thirty
 7 days. Thereafter, only one additional extension of the period of time for initiating
 8 a loss adjustment may be allowed and must be approved by the Senate Committee
 9 on Insurance and the House Committee on Insurance, voting separately. Failure to
 10 comply with the provisions of this Paragraph shall subject the insurer to the penalties
 11 provided in R.S. 22:1973.

12 (4) All insurers shall make a written offer to settle any property damage
 13 claim, including a third-party claim, within thirty days after receipt of satisfactory
 14 proofs of loss ~~of that claim~~.

15 * * *

16 B.(1)

17 * * *

18 (c) Claims for penalties and attorney fees pursuant to this Paragraph are
 19 subject to a liberative prescriptive period of two years.

20 * * *

21 §1892.2 Payment and adjustment of insurance policies that cover immovable
 22 property; extension of time to respond to claims during emergency or
 23 disaster; penalties; arson-related claims suspension

24 A.(1) All insurers adjusting an insurance policy that covers immovable
 25 property shall transmit payment of the undisputed amount of any claim due any
 26 insured within thirty days after receipt of satisfactory proof of loss from the insured
 27 or any party in interest. The insurer shall notify the insurance producer of record of
 28 all such payments for property damage claims made in accordance with this
 29 Paragraph.

1 (2) For purposes of this section and for purposes of a claim for breach of
2 R.S. 22:1973(B)(5) relating to payment and adjustment of a first-party claim arising
3 under an insurance policy for immovable property, "satisfactory proof of loss" means
4 the insurer has received written proof that is sufficient to establish the extent of
5 covered damages and the amount due on an insurance claim including but not limited
6 to estimates, statements, repair receipts, invoices, and forms necessary to assess and
7 quantify the extent and amount of covered damages sustained by the insured. In
8 connection with this definition, an insurer may require completion of a sworn
9 statement in proof of loss as a condition of receipt of a satisfactory proof of loss in
10 support of a claim for immovable property coverage. Within this context, an insurer
11 cannot be deemed to have received satisfactory proof of loss until it has initiated loss
12 adjustment in accordance with R.S. 22:1892.2(A)(3).

13 (3)(a) Except in the case of catastrophic loss, the insurer shall acknowledge
14 receipt of a claim, initiate loss adjustment of a property damage claim expenses, and
15 request from the insured any items, statements, and forms that the insurer reasonably
16 believes, at that time, will be required from the insured within fifteen days after
17 notification of loss by the insured. The acknowledgment of the receipt shall be sent
18 either by United States mail, private commercial carrier, electronic delivery, or hand
19 delivery.

20 (b) Except in the case of catastrophic loss, failure to initiate loss adjustment
21 of a property damage claim within fifteen days after notification of loss by the
22 insured in accordance with 22:1892.2(A)(3)(a) shall subject the insurer to the
23 penalties provided in R.S. 22:1973.

24 (c) Notwithstanding the provisions of R.S. 22:1312, in the case of
25 catastrophic loss, the insurer shall acknowledge receipt of a claim, initiate loss
26 adjustment of the property damage claim, and request from the insured any items,
27 statements, and forms that the insurer reasonably believes, at that time, will be
28 required from the insured within thirty days after notification of loss by the insured
29 except that the commissioner may promulgate a rule for extending the time period

1 for initiating a loss adjustment for damages arising from a presidentially declared
2 emergency or disaster or a gubernatorially declared emergency or disaster up to an
3 additional thirty days. Thereafter, only one additional extension of the period of time
4 for initiating a loss adjustment may be allowed and must be approved by the Senate
5 Committee on Insurance and the House Committee on Insurance, voting separately.
6 Failure to comply with the provisions of this Paragraph shall subject the insurer to
7 the penalties provided in R.S. 22:1973. In such cases that an insurer requires a sworn
8 statement in proof of loss as a condition of satisfactory proof of loss, the insurer is
9 required to provide the insured with the required form for the sworn statement in
10 proof of loss within the time frame established by this Paragraph. The
11 acknowledgment of the receipt shall be sent either by United States mail, private
12 commercial carrier, electronic delivery, or hand delivery.

13 (d) An insurer may make additional requests for information or inspection
14 if during the investigation of the claim the additional requests are necessary. A
15 request for information already furnished in its entirety by the insured shall have no
16 effect on the deadlines set forth in this Paragraph.

17 (e) For matters remaining in dispute once an insurer has received all items,
18 statements, and forms requested by the insurer, or has completed requested
19 inspections or reinspections, an insurer shall accept or reject a claim within fifteen
20 days of receiving all items, statements, forms, inspection or reinspection requested
21 by the insurer to determine satisfactory proof of loss. The acceptance or denial of
22 a claim may be in whole or in part.

23 (f) For matters remaining in dispute once an insurer has received all items,
24 statements, and forms requested by the insurer, or completed requested inspections
25 or reinspections, if an insurer is unable to accept or reject a claim within fifteen days
26 after receiving the items, statements, and forms requested by an insurer, or
27 completing a requested inspection or reinspection, the insurer, within that same time
28 period, shall notify the insured of the reasons that the insurer needs additional time
29 to assess the claim. The insurer shall thereafter accept or reject the claim in whole

1 or in part no later than thirty days from the date on which the insurer notified the
2 insured of the reasons that the insurer needed additional time to assess the claim.

3 (g) In the case of catastrophic loss, the claims handling deadlines imposed
4 in (e) and (f) shall be extended for an additional fifteen days.

5 (h) Nothing in this Paragraph shall be construed to relieve an insurer of its
6 obligation to transmit payment of the undisputed amount of any claim due any
7 insured within thirty days after receipt of satisfactory proof of loss as set forth in
8 Paragraph (A)(1).

9 (i) Nothing in this Paragraph shall be construed to prohibit an insured from
10 making a supplemental claim, nor to relieve an insurer from the obligation to
11 conduct a supplemental investigation or make a supplemental payment, if warranted
12 by the facts of a supplemental claim. A supplemental claim adds new found damage
13 or additional cost to the original claim. The fact that an insurer makes a
14 supplemental payment shall not be construed as evidence of a violation of this statute
15 or 22:1973.

16 (4) An insurer shall issue a copy of the insurer's field adjuster report, relative
17 to the insured's property damage claim, to the insured within fifteen days of
18 receiving a request for such from the insured.

19 (5) If an insurer issues a check, draft, or other negotiable instrument that is
20 jointly payable to an insured and a mortgagee or mortgage servicer as payment of
21 insurance settlement proceeds for multiple types of coverage, the insurer shall
22 provide with the check, draft, or other negotiable instrument a statement indicating
23 the dollar amount of insurance settlement proceeds paid under each type of coverage
24 including but not limited to dwelling, personal property, and additional living
25 expenses. In lieu of issuing a statement pursuant to this Paragraph, an insurer may
26 issue separate checks, drafts, or other negotiable instruments for payment of each
27 type of coverage.

28 B.(1)(a) Except as provided in Subparagraph(A)(3)(b) and (c) of this
29 Section, and Subparagraph (b) of this Paragraph, failure to comply with Paragraphs

1 (A)(1) and through (3) of this Section, when such failure is found to be arbitrary,
2 capricious, or without reasonable cause, shall subject the insurer to a penalty, in
3 addition to the amount of the loss, of fifty percent damages on the amount found to
4 be due from the insurer to the insured, or one thousand dollars, whichever is greater,
5 payable to the insured, or in the event a partial payment or tender has been made,
6 fifty percent of the difference between the amount paid or tendered and the amount
7 found to be due as well as reasonable attorney fees and costs. Such penalties, if
8 awarded, shall not be used by the insurer in computing either past or prospective loss
9 experience for the purpose of setting rates or making rate filings.

10 (b) Except as provided in Subparagraph (A)(3)(c) of this Section, in the case
11 of catastrophic loss, failure to comply with Paragraphs (A)(1) through (3) of this
12 Section, when such failure is found to be arbitrary, capricious, or without reasonable
13 cause, shall subject the insurer to a penalty, in addition to the amount of the loss, of
14 fifty percent damages on the amount found to be due from the insurer to the insured,
15 or two thousand five hundred dollars, whichever is greater, payable to the insured,
16 or in the event a partial payment or tender has been made, fifty percent of the
17 difference between the amount paid or tendered and the amount found to be due as
18 well as reasonable attorney fees and costs or two thousand five hundred dollars,
19 whichever is greater. The penalties, if awarded, shall not be used by the insurer in
20 computing either past or prospective loss experience for the purpose of setting rates
21 or making rate filings.

22 (c) Claims for penalties and attorneys fees pursuant to this Paragraph are
23 subject to a liberative prescription of two years.

24 (2) The period set herein for payment of losses resulting from fire and the
25 penalty provisions for nonpayment within the period shall not apply where the loss
26 from fire was arson related and the state fire marshal or other state or local
27 investigative bodies have the loss under active arson investigation. The provisions
28 relative to time of payment and penalties shall commence to run upon certification

1 of the investigating authority that there is no evidence of arson or that there is
2 insufficient evidence to warrant further proceedings.

3 (3) The provisions relative to suspension of payment due to arson shall not
4 apply to a bona fide lender which holds a valid recorded mortgage on the property
5 in question.

6 (4)(a) For the purposes of this Paragraph, the following terms have the
7 meanings ascribed to them:

8 (i) "Damaged property" means a dwelling, structure, personal property, or
9 any other property, except a vehicle, that requires repairs, replacement, restoration,
10 or remediation to reestablish its former condition.

11 (ii) "Depreciation" means depreciation including but not limited to the cost
12 of goods, materials, labor, and services necessary to replace, repair, or rebuild
13 damaged property.

14 (b) An insurance policy covering damaged property may allow for
15 depreciation.

16 (c) An insurance policy covering damaged property shall provide notice that
17 depreciation may be deducted or withheld, in a form approved by the commissioner.

18 (d) If depreciation is applied to a loss for damaged property, the insurer shall
19 provide a written explanation as to how the depreciation was calculated.

20 (e) Depreciation shall be reasonable and based on a combination of objective
21 criteria and subjective assessment, including the actual condition of the property
22 prior to loss.

23 C.(1) All claims brought by insureds against an insurer shall be paid by
24 check or draft of the insurer or, if offered by the insurer and the insured requests,
25 electronic transfer of funds to the order of the insured to whom payment of the claim
26 is due pursuant to the policy provisions, or his attorney, or upon direction of the
27 insured to one specified.

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 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 D.(1) An insurer shall not require that repairs, replacement, restoration, or
7 remediation be made to an insured's property by a particular preferred vendor or
8 recommended contractor.

9 (2) An insurer shall not recommend the use of a particular preferred vendor
10 or recommended contractor without informing the insured or claimant that the
11 insured or claimant is under no obligation to use the preferred vendor or
12 recommended contractor to complete repairs, replacement, restoration, or
13 remediation of the insured's property.

14 E.(1) An insurer is required to include general contractor's overhead and
15 profit in payments for losses when the services of a general contractor are reasonably
16 foreseeable. This requirement applies to policies that provide for the adjustment and
17 settlement of losses on a replacement cost basis and to policies that provide for the
18 adjustment and settlement of losses on an actual cash value basis.

19 (2) The deduction of prospective contractor overhead, prospective contractor
20 profit, and sales tax in determining the actual cash value of an adjustment or
21 settlement is not allowed on replacement cost policies or on actual cash value
22 policies.

23 F.(1) Residential property insurance policies shall contain the following
24 provision, with permission to substitute the words "this company" with a more
25 accurate descriptive term for the insurer:

26 "Appraisal. If you and this Company fail to agree as to the amount of loss,
27 either party may demand that the amount of the loss be set by appraisal. If either
28 party makes a written demand for appraisal, each party shall select a competent,
29 impartial and disinterested appraiser and notify the other party of their appraiser's

1 identity within twenty days of receipt of the written demand for appraisal. The
2 appraisers shall select a competent, impartial and disinterested umpire. If, after
3 fifteen days, the appraisers have not agreed upon who will serve as umpire, the
4 umpire shall be appointed by a judge of the court of record in which the property is
5 located. The appraisers shall appraise the loss. If the appraisers submit written
6 notice of an agreement as to the amount of the loss to this Company, the amount
7 agreed upon shall set the amount of the loss. If the appraisers fail to agree within
8 thirty days, the appraisers shall submit their differences along with any supporting
9 documentation to the umpire, who shall appraise the loss. The appraisers may
10 extend the time to sixty days for which they shall agree upon the amount of loss or
11 submit their differences and supporting documents to the umpire, if the extension is
12 agreed to by the appraisers from both parties. A written agreement signed by the
13 umpire and either party's appraiser shall set the amount of the loss, pursuant to the
14 appraisal process, but shall not preclude either party from exercising its rights under
15 the policy or the law. Each appraiser shall be paid by the party selecting that
16 appraiser. Other expenses of the appraisal and the expenses of the umpire shall be
17 divided and paid in equal shares by you and this Company. If there is an appraisal
18 award, all applicable policy terms, limits, deductibles, and conditions shall apply.
19 If you file a lawsuit relative to this policy against this Company prior to a demand
20 for appraisal, the lawsuit will be held in abatement during the period between a
21 timely demand for appraisal and the deadline for execution of an appraisal award,
22 pursuant to this clause. The court of record in which the property is located may
23 enforce the deadlines of this clause, set a reasonable deadline for timely demanding
24 appraisal after all parties have filed pleadings in a lawsuit, and require compliance
25 with discovery and disclosure obligations relative to aspects of the lawsuit unrelated
26 to the appraisal."

27 (2) Appraisal shall be limited to the scope of and cost to repair or replace
28 covered damage as determined by the insurer. Appraisal shall not address any
29 coverage disputes.

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

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

6 * * *

7 Section 2. R.S. 22:1892(A)(5) and (6), (B)(6), and (E) through (G) are hereby
8 repealed in their 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 601 Original

2023 Regular Session

Huval

Abstract: Provides for bad faith claims against insurers.

Present law provides for general definitions.

Proposed law retains present law and further defines "arbitrary, capricious, or without reasonable cause", "catastrophic loss", "disinterested", and "undisputed amount".

Present law provides for the payment and adjustment of claims that derive from policies other than life, health, and accident coverage.

Proposed law retains present law and adds "immovable property".

Present law stipulates that all insurers issuing any type of contract, other than those specified in R.S. 22:1811, 1821, and present law, shall pay the amount due to an insured within 30 days after receipt of satisfactory proofs of loss from the insured.

Proposed law retains present law and makes technical changes.

Present law stipulates that all insurers issuing any type of contract, other than those specified in R.S. 22:1811, 1821, and present law, shall pay the amount of any third party property damage claim and of any reasonable medical expenses claim due to any bona fide third party claimant within 30 days after written agreement of settlement of the claim from any third party claimant.

Proposed law retains present law and makes technical changes.

Present law provides that an insurer shall initiate loss adjustment of a property damage claim and of a claim for reasonable medical expenses within 14 days after notification of loss by the claimant.

Proposed law retains present law but changes the time period from 14 days to 15 days.

Present law provides that all insurers shall make a written offer to settle any property damage claim, including a third-party claim, within 30 days after receipt of satisfactory proofs of loss.

Proposed law retains present law and makes technical changes.

Present law provides that in the case of a catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim within 30 days after notification of loss by the claimant.

Present law provides that insurers must make written offers to settle any property damage claims, including a third-party claim, within 30 days after receipt of satisfactory proof of loss.

Proposed law retains present law and makes technical changes.

Proposed law provides that claims for penalties and attorney fee's are subject to a liberative prescriptive period of 2 years.

Proposed law provides that all insurers adjusting an insurance policy that covers immovable property shall transmit payment of the undisputed amount of the claim due to an insured within 30 days after receipt of satisfactory proof of loss from the insured.

Proposed law provides a definition for and clarifies the term "satisfactory proofs of loss."

Proposed law provides that an insurer shall acknowledge receipt of a claim, initiate loss adjustment, and request any necessary items, statements, and forms within 15 days after notification of loss by the insured. Proposed law further provides that the acknowledgment of receipt shall be transmitted via United States Postal Services, a private commercial carrier, electronic delivery, or hand delivery.

Proposed law provides that an insurer's failure to initiate the loss adjustment of a property claim within 15 days after notification of the loss by the insured shall subject the insurer to penalties. Proposed law further provides for exceptions for catastrophic losses.

Proposed law provides that in the case of a catastrophic loss, the insurer shall acknowledge receipt of a claim, initiate loss adjustment of the property damage claim, and request from the insured any items, statements, and forms that the insurer reasonably believes will be required from the insured within 30 days after notification of loss by the insured.

Proposed law authorizes an insurer to make additional requests for information or conduct additional inspections. Proposed law further provides that to initiate this process, the additional request or inspection must be deemed necessary.

Proposed law provides that an insurer has 15 days to accept or reject a claim after receiving all items, statements, or inspecting the property. Proposed law further sets forth the exceptions to the 15 day period.

Proposed law provides that an insurer shall issue a copy of the insurer's field adjuster report, relative to the insured's property damage claim, to the insured within 15 days of receiving a request for such from the insured.

Present law provides that the insurer shall provide the insured with a statement indicating the dollar amount of insurance settlement proceeds paid under each type of coverage or issue separate checks for payment of each type of coverage.

Proposed law provides that if an insurer issues a check, draft, or other negotiable instrument that is jointly payable to an insured and a mortgagee or a mortgage servicer as payment of

insurance settlement proceeds for multiple types of coverage, the insurer shall provide with the check, draft, or other negotiable instrument a statement indicating the dollar amount of insurance settlement proceeds paid under each type of coverage.

Proposed law provides for penalties for an insured who violates this provision of law.

Proposed law defines "damaged property" and "depreciation."

Proposed law provides that no insurer shall intentionally or unreasonably delay, for more than three calendar days, exclusive of Saturdays, Sundays, and legal holidays, the issuance of a settlement of an insurance claim.

Proposed law provides that an insurer shall not recommend the use of a particular preferred vendor or recommended contractor without informing the insured or claimant that the insured or claimant is under no obligation to use the preferred vendor or recommended contractor to complete repairs, replacement, restoration, or remediation of the insureds property.

Proposed law provides that in the adjustment or settlement of first-party losses under fire and extended coverage policies, an insurer is required to include general contractors and profit in payments for losses when the services of a general contractor are reasonably foreseeable.

Proposed law provides that the deduction of prospective contractor overhead, prospective contractor profit, and sales tax in determining the actual cash value of an adjustment or settlement is not allowed on replacement cost policies or on actual cash value policies.

Proposed law provides that residential property insurance policies shall contain a provision that outlines a process whereby the amount of a loss may be set through appraisal, if an insurer and insured do not agree on the amount of the loss and the insurer or insured makes a demand for such.

Proposed law provides for the implementation, initiation, and guidelines of the appraisal process.

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

Proposed law retains present law and reformulates the standard necessary to constitute a breach.

Proposed law clarifies the applicable standard and makes technical changes.

Present law provides for the penalties and damages imposed upon an insurer that does not pay an insured within a specified time period.

Proposed law repeals present law but codifies certain provisions in proposed law.

(Amends R.S. 22: 1892(A)(1)-(4); Adds R.S. 22:46(29)-(32), 1892(B)(1)(c), and 1892.2; Repeals R.S. 22:1892(A)(5) and (6), (B)(6), and (E)-(G))