

HOUSE COMMITTEE AMENDMENTS

2023 Regular Session

Substitute for Original House Bill No. 604 by Representative Garofalo as proposed by the House Committee on Insurance

This document reflects the content of a substitute bill but is not in a bill form; page numbers in this document DO NOT correspond to page numbers in the substitute bill itself.

To amend and reenact R.S. 22:821(B)(34)(introductory paragraph), 1311(F)(2), 1892(G) and Part XI of Chapter 5 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:1807.1 through 1807.26, relative to the insurance claim appraisal process; to authorize the commissioner of insurance to collect fees for appraisers and umpires; to authorize the commissioner of insurance to select umpires during the appraisal process of a fire insurance claim under certain circumstances; to modify relative to appraisal clauses within residential property and fire insurance policies; to provide for registration policies and procedures for appraisers and umpires; to provide for penalties; to give the commissioner of insurance the authority to impose a penalty upon or sanction violators; to provide for definitions; to provide for an appraisal process; to provide for a selection process for appraisers or umpires; to provide for qualifications for appraisers and umpires; to prohibit conflicts of interest; to provide for job descriptions, responsibilities, and obligations; to prohibit certain communication; to provide for costs; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:821(B)(34)(introductory paragraph), 1311(F)(2), 1892(G) and Part XI of Chapter 5 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:1807.1 through 1807.26 are hereby amended and reenacted to read as follows:

§821. Fees

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B. The commissioner shall collect the following fees in advance:

* * *

(34) For appraisers and umpires (one fee for either or both):

First time applicant. \$55.00
Renewal fee (every twelve months)... \$50.00

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§1311. Fire insurance contract; standard provisions; variations

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F. The form of the standard fire insurance policy of the state of Louisiana (with permission to substitute for the word "company" a more accurate descriptive term for the type of insurer) shall be as follows:

* * *

(2) SECOND PAGE OF STANDARD FIRE POLICY

Concealment, fraud-This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Uninsurable and excepted property-This policy shall not cover accounts, bills, currency, deeds, evidence of debt, money, or securities; nor, unless specifically named hereon in writing, bullion, or manuscripts.

Perils not included-This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by:

- (a) enemy attack by armed forces, including action taken by military, naval, or air forces in resisting an actual or an immediately impending enemy attack;
- (b) invasion;
- (c) insurrection;
- (d) rebellion;
- (e) revolution;
- (f) civil war;
- (g) usurped power;
- (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy;
- (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises;
- (j) nor shall this Company be liable for loss by theft.

Other insurance-Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

Conditions suspending or restricting insurance-Unless otherwise provided in writing added hereto, this Company shall not be liable for loss occurring:

(a) While the hazard is increased by any means within the control or knowledge of the insured; or

(b) While a described building, whether intended for occupancy by owner or tenant, is vacant, or unoccupied beyond a period of sixty consecutive days; or

(c) As a result of explosion or riot, unless fire ensues, and in that event for loss by fire only.

Other perils or subjects-Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

Added provisions-The extent of the application of insurance under this policy and of the contribution to be made by this Company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provisions may be waived except such as by the terms of this policy is subject to change.

Waiver provisions-No permission affecting this insurance shall exist, or waiver of any provision be valid unless granted herein or expressed in writing added hereto. No provision, stipulation, or forfeiture shall be held to be waived by any requirement or proceeding on the part of this Company relating to appraisal or to any examination provided for herein.

Cancellation of policy-This policy shall be canceled at any time at the request of the insured, in which case this Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be canceled at any time by this Company by giving to the insured a thirty-day written notice of cancellation, or ten-day written notice when cancellation is for nonpayment of premium, with or without tender of the excess paid premium above the pro rata premium for the expired time which excess,

if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium, if not tendered, will be refunded on demand. Upon the written request of the named insured, the insurer shall provide to the insured in writing the reasons for cancellation of the policy. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer or its agents, employees, or representatives for any action taken by them to provide the reasons for cancellation as required by this Paragraph.

Mortgagee interest and obligations-If loss hereunder is made payable in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be canceled by delivering or mailing to such mortgagee a thirty-day written notice of cancellation, or a ten-day written notice of cancellation if cancellation is for nonpayment of premium.

If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in form herein specified within sixty (60) days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this Company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's rights to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

Pro rata liability-This Company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

Requirements in case loss occurs-The insured shall give immediate written notice to this Company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged, and undamaged property, showing in detail quantities, costs, actual cash value, and amount of loss claimed; and within sixty days after loss, unless such time is extended

in writing by this Company, the insured shall render to this Company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged. The insured, as often as may be reasonably required shall exhibit to any person designated by this Company all that remains of any property herein described, and submit to examinations under oath by any person named by this Company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this Company or its representatives, and shall permit extracts and copies thereof to be made.

Appraisal-In case the insured and this Company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then on request of the insured or this Company such umpire shall be selected by the commissioner of insurance or, if a lawsuit is filed, a judge of a court of record in the state in which the property covered is located, in the manner provided by law. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item, and failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with

this Company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Company's options-It shall be optional with this Company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild, or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention to do so within thirty days after the receipt of the proof of loss herein required.

Abandonment-There can be no abandonment to this Company of any property.

When loss payable-The amount of loss for which this Company may be liable shall be payable thirty days after proof of loss, as herein provided, is received by this Company and ascertainment of the loss is made either by agreement between the insured and this Company expressed in writing or by filing with this Company of an award as herein provided.

Suit-No suit or action on this policy for the recovery of any first-party claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twenty-four months next after the inception of the loss.

Subrogation-This Company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this Company.

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PART XI. ~~REGISTRATION OF~~ APPRAISERS FOR FIRE
AND EXTENDED COVERAGE
SUBPART A. REGISTRATION

§1807.1. Registration required

A. ~~No person shall~~ A person shall not act as, or hold himself out to be, an appraiser in accordance with the provisions of ~~R.S. 22:1311(F)(2)~~ R.S. 22:1311,

1892, or any policy of property insurance covering immovables unless such person is registered with the commissioner ~~of insurance~~ as an appraiser, an umpire, or both.

B. Each person shall register with the commissioner on a form ~~to be~~ prescribed by the commissioner and shall pay the fee required by R.S. 22:821(B)(34).

C. Each registration submitted pursuant to this ~~Part shall expire~~ Subpart expires each year on the anniversary date and may be renewed by filing a request for renewal on a form ~~to be~~ prescribed by the commissioner and by paying the renewal fee required by R.S. 22:821(B)(34).

§1807.2. Rules and regulations

The commissioner ~~of insurance is hereby authorized to~~ may adopt such regulations, in accordance with the Administrative Procedure Act, ~~as are necessary~~ to effectuate the requirements of this Part ~~to regulate registration of appraisers for fire and extended coverage.~~

§1807.3. Enforcement

The commissioner ~~is hereby authorized to~~ may take ~~whichever~~ any actions ~~are~~ necessary or appropriate to enforce the provisions of this Part and the commissioner's regulations. The commissioner may order a person to cease and desist from committing violations of this Part or the commissioner's regulations or may issue an order prohibiting a person from acting as an appraiser or an umpire and ~~may~~ rescind the registration of any person, ~~if the person has violated~~ who violates this Part or the commissioner's regulations or orders.

SUBPART B. APPRAISAL PROCESS

§1807.11. Definitions

The following definitions apply to this Subpart:

(1) "Appraiser" means a person who is qualified to be an appraiser pursuant to the provisions of R.S. 22:1807.14 and selected by an insurer or a claimant to participate in the appraisal process.

(2) "Claimant" means a person who makes a first party-claim under a policy of property insurance.

(3) "Good cause" means any of the following:

(a) Any conflict of interest provided for in R.S. 22:1807.14 or 1807.17.

(b) An umpire who lacks independence or is unable to discharge the duties of an umpire competently or promptly.

(c) Any other reasons that would reasonably be expected to impair an appraisal.

(4) "Immediate family" as the term relates to an appraiser or umpire means his children, the spouses of his children, his siblings and their spouses, his parents, his spouse, and the parents of his spouse.

(5) "Party" means an insurer or a claimant. "Party" includes employees, contractors, and other representatives of a party.

(6) "Umpire" means a person who is qualified to be an appraisal umpire pursuant to the provisions of R.S. 22:1807.16 and selected by the appraisers, the commissioner, or a judge to participate in the appraisal process.

(7) "Umpire selection panel" means a list of potential umpires prepared by the commissioner for selection of an umpire pursuant to R.S. 22:1807.19.

§1807.12. Applicability

The provisions of this Subpart provide for the appraisal process if all of the following apply:

(1) An insurer has accepted coverage for a claim, in full or in part.

(2) The claimant and insurer have a dispute as to the amount of loss the insurer will pay for the accepted portion of the claim under the policy.

(3) The policy is issued, issued for delivery, or renewed in this state.

(4) The property that is the subject of the claim is located in this state or the dispute is subject to jurisdiction in this state.

(5) The claimant or insurer demands an appraisal pursuant to the policy.

§1807.13. Appraisal process

A. Upon a demand for appraisal, the insurer and the claimant shall each select an appraiser who is independent and qualified pursuant to R.S. 22:1807.14.

B. (1) If the appraisers are unable to agree on the amount of loss, they shall select an umpire who is independent and qualified pursuant to R.S. 22:1807.17.

(2) If the appraisers are unable to agree on an umpire, either appraiser may submit a request to the commissioner or the judge, if a lawsuit has been filed, to select an umpire, which shall include all of the following:

(a) The type of policy.

(b) A description of the claim and, if known, the claimed value of the loss.

(c) The insurer's itemized estimate and a statement of payments made to date.

(d) Any other information that the commissioner or judge requests.

C. The selected umpire shall participate in the resolution of the dispute if the appraisers fail to reach agreement and instruct the umpire in writing to begin work.

D. An itemized decision agreed to by both appraisers or by one appraiser and the umpire shall set the amount of loss the insurer will pay for the claim subject to applicable policy terms, limits, deductibles, and conditions. The umpire may enter into an itemized decision with either or both appraisers on a compromise basis. The umpire may issue an itemized decision if there is agreement on the amount of the loss, even if there is disagreement as to some of the individual items.

§1807.14. Appraiser qualifications; conflicts of interest

A. To qualify as an appraiser, a person shall meet all of the following criteria:

(1) Have at least three years of experience in the profession in which he is licensed.

(2) Have experience or training in estimating property damage.

(3) Be any one of the following with an active license:

(a) A professional engineer licensed pursuant to R.S. 37:681 et seq. or the laws of another state.

(b) An architect licensed pursuant to R.S. 37:141 et seq.

(c) An adjuster licensed pursuant to R.S. 22:1661 et seq.

(d) A public adjuster licensed pursuant to R.S. 22:1691 et seq.

(e) A general contractor licensed pursuant to R.S. 37:2150 et seq.

B. A potential conflict of interest exists if any of the following apply to an appraiser:

(1) The appraiser is a party to a lawsuit against the insurer.

(2) The appraiser has any other direct or indirect interest, financial or otherwise, of any nature that substantially conflicts with the appraiser's duties.

§1807.15. Appraiser registration; revocation

A. An appraiser shall meet the qualifications in R.S. 22:1807.14 and register by filing with the commissioner all of the following information:

(1) Contact information.

(2) Training and experience in the profession in which he is licensed.

(3) Training and experience related to estimating property damage claims.

(4) Whether the professional experience and training are in residential or commercial property.

(5) Any relevant licenses or certifications.

(6) A general description of the approximate number, types of policies, and value and complexity of property damage claims on which the applicant worked over the previous three years.

(7) The parishes in which the appraiser is willing to work.

(8) The types of policies and value and complexity of claims on which the appraiser is willing to work.

(9) Any professional disciplinary actions or criminal convictions he has had.

(10) A current biography, resume, or curriculum vitae.

B. The commissioner shall publish a list of appraisers on the department's website. Published information shall include an appraiser's name, contact information, preferred types of claims, and preferred geographic areas.

C. The commissioner may, in his sole discretion, revoke the registration of an appraiser for any of the following reasons:

(1) Dishonest, incompetent, fraudulent, or unethical behavior.

(2) A disciplinary action by any other agency or disciplinary authority against the appraiser, regardless of whether the agency or disciplinary authority's regulation relates to the appraisal.

(3) Conviction of, or accepting deferred adjudication for, a crime pursuant to state or federal law.

(4) Failure to comply with any requirement of this Subpart.

(5) Other factors relevant to the appraiser's qualifications, conflicts of interest, or performance.

§1807.16. Appraiser obligations

A. An appraiser shall disclose to the parties any potential conflicts of interest, provided for in R.S. 22:1807.14, no later than five days after hiring by a party and before beginning work on an appraisal.

B. After accepting responsibility for an appraisal, the appraiser shall not withdraw or abandon the appraisal unless compelled to do so by unforeseen circumstances that would render it impossible or impracticable to continue.

C. An appraiser shall postpone an appraisal for a reasonable amount of time if a party shows reasonable cause for a postponement.

D. An appraiser has a duty to do all of the following:

(1) Consider all information provided by the parties and any other reasonably available evidence material to the claim.

(2) Carefully decide all issues submitted for determination regarding the amount of loss.

(3) Give the parties and the other appraiser an itemized written appraisal.

(4) Conduct the appraisal process to advance the fair and efficient resolution of the matters submitted for decision.

E. An appraiser shall not do any of the following:

(1) Permit outside pressure to affect an appraisal.

(2) Delegate the duty to decide to any other person.

(3) Communicate with an umpire without including the other party or the other party's appraiser, except as permitted pursuant to R.S. 22:1807.22.

(4) Charge the parties on a contingent fee basis, percentage of the decision, barter arrangement, gift, favor, or in-kind exchange.

(5) Charge a fee for services if the appraiser withdraws or abandons the appraisal.

§1807.17. Umpire qualifications; conflicts of interest

A. To qualify as an umpire, a person shall meet all of the following requirements:

(1) Be either of the following:

(a) An appraiser qualified pursuant to R.S. 22:1807.14.

(b) An attorney licensed in this state with experience in first-party property damage litigation.

(2) Have no disqualifying conflicts of interest listed in Subsection B of this Section, unless, after full disclosure, the parties agree in writing to waive an otherwise disqualifying conflict of interest.

B. A disqualifying conflict of interest for an umpire exists if any of the following apply:

(1) The umpire or a member of his immediate family is any of the following:

(a) A party to the claim.

(b) A current employee or contractor of a party.

(c) A current employee of the adjuster or public adjuster, including business entity licensees, who adjusted the loss.

(2) The umpire currently has an open claim or acts as a representative or public adjuster on an open claim with the insurer that is a party to the appraisal.

(3) The umpire is a party or a member or employee of a law firm that represents a party to a current lawsuit with the insurer that is a party to the appraisal.

(4) The umpire has any other direct or indirect interest, financial or otherwise, of any nature that substantially conflicts with the umpire's duties.

§1807.18. Umpire registration; revocation

A. An umpire shall meet the qualifications in R.S. 22:1807.16 and register by filing with the commissioner all of the following information:

- (1) Contact information.
 - (2) Training and experience in the profession in which he is licensed.
 - (3) Training and experience related to estimating property damage claims.
 - (4) Whether the professional experience and training are in residential or commercial property.
 - (5) Any relevant licenses or certifications.
 - (6) A general description of the approximate number, type of policies and value and complexity of property damage claims on which the applicant worked over the previous three years.
 - (7) The parishes in which the umpire is willing to work.
 - (8) The types of policies and value and complexity of claims on which the umpire is willing to work.
 - (9) Any professional disciplinary actions or criminal convictions he has had.
 - (10) A current biography, resume, or curriculum vitae.
- B. The commissioner shall publish a list of umpires on the department's website. Published information shall include an umpire's name, contact information, preferred types of claims, and preferred geographic areas.
- C. The commissioner may, in his sole discretion, revoke the registration of an umpire for any of the following reasons:
- (1) Dishonest, incompetent, fraudulent, or unethical behavior.
 - (2) A disciplinary action by any other agency or disciplinary authority against the umpire, regardless of whether the agency or disciplinary authority's regulation relates to the appraisal.
 - (3) Conviction of, or accepting deferred adjudication for, a crime pursuant to state or federal law.
 - (4) Failure to comply with any requirement of this Subpart.
 - (5) Other factors relevant to the umpire's qualifications, conflicts of interest, or performance.
- §1807.19. Umpire selection by commissioner or judge

A. The provisions of this Section apply if the appraisers are unable to agree on an umpire and a party requests the commissioner or a judge to select an umpire.

B. A judge selecting an umpire shall do either of the following:

(a) Request the commissioner to submit an umpire selection panel pursuant to this Section.

(b) Select from the list of umpires maintained by the commissioner.

C. In creating an umpire selection panel, the commissioner may consider the following:

(1) The umpire's preferred geographic locations and preferred types of claims.

(2) The proximity of the claimant's property and the umpire.

(3) The umpire's areas of training and expertise.

(4) The extent of the umpire's experience with appraisal and property damage claims.

(5) The subject of the dispute.

(6) The type of policy.

(7) The value and complexity of the claim.

(8) Any conflicts of interest.

(9) Other factors relevant to the dispute.

D. (1) Using a random selection method, the commissioner shall notify at least five umpires of possible inclusion on an umpire selection panel.

(2) Each umpire notified shall respond to the commissioner no later than five days after receiving the notice, stating whether the umpire will accept or reject selection as umpire for an appraisal.

(3) Each umpire accepting selection shall respond by providing all of the following information:

(a) An current resume, curriculum vitae, or brief biographical sketch of the umpire.

(b) A statement as to whether the umpire is insured by the insurer.

(c) Any prior knowledge the umpire has regarding the dispute.

(d) Any disqualifying conflict of interest provided for in R.S. 22:1807.16.

E. The commissioner shall do both of the following:

(1) Create the umpire selection panel.

(2) Send the information provided pursuant to this Section and the umpire selection panel list to the parties and appraisers.

F. If the appraisers select an umpire from the umpire selection panel, the appraisers shall inform the commissioner no later than three days after the agreement.

G. If the appraisers do not agree to an umpire from the umpire selection panel, each appraiser or party may object to umpires on the umpire selection panel pursuant to R.S. 22:1807.26, and the commissioner shall select an umpire from the umpire selection panel to which neither appraiser objected, using a random selection method.

H. The commissioner shall notify the umpire selected pursuant to Subsection G of this Section and give the umpire the claim information provided for in R.S. 22:1807.13.

§1807.20. Umpire obligations

A. (1) The umpire shall disclose any disqualifying conflicts of interest provided for in R.S. 22:1807.16 to both parties within five days after hiring by a party and before the beginning any work.

(2) The umpire shall recuse himself from an appraisal for which there exists a disqualifying conflict of interest unless the parties agree in writing to waive any conflict of interest.

B. The umpire shall not do either of the following:

(1) Begin work until the appraisers direct the umpire in writing to begin, upon their failure to reach an agreement.

(2) Visit the claimant's property without consent from both appraisers.

C. The umpire shall do all of the following:

(1) Address only items about which the appraisers disagree.

(2) Review the differences and seek agreement with either or both of the appraisers regarding the disputed items.

(3) Allow each appraiser a fair opportunity to present evidence and arguments.

(4) Review all information submitted by the appraisers and parties, which is related to the dispute, including the itemized appraisals or estimates, supporting documents, photographs, and diagrams.

(5) Prepare an itemized written decision and promptly provide it to the parties and the appraisers.

D. The umpire may do any of the following:

(1) Ask questions and request documents or other evidence, including expert reports.

(2) Consider any conflicts of interest or objections to appraisers upon request of a party.

(3) Accept either appraiser's scope, quantity, value, or cost regarding an item in dispute or develop an independent decision on an item in dispute.

E. Upon accepting an appointment to be the umpire for an appraisal, the umpire shall adhere to the following duties:

(1) The umpire shall decide all matters fairly, exercising independent judgment and integrity.

(2) The umpire shall not do any of the following:

(a) Withdraw or abandon the appraisal, unless compelled by unforeseen circumstances that would render it impossible or impracticable to continue.

(b) Be present for or participate in settlement discussions, unless requested by both parties.

(c) Permit outside influence to affect the appraisal.

(d) Delegate the umpire's decision to any other person.

F. (1) The umpire shall disclose all fees. The umpire may specify different charges for types or values of claims. The provisions of this Paragraph do not apply to umpires selected pursuant to R.S. 22:1807.19.

(2) The umpire shall not charge the parties on a contingent fee basis, percentage of the decision, barter arrangement, gift, favor, or in-kind exchange.

§1807.21. Additional obligations for commissioner-selected umpires

All of the following obligations apply to an umpire selected by the commissioner:

(1) No later than seven days after receiving notice of selection for an appraisal, the umpire shall send a written notice to the parties and the appraisers, containing the following:

(a) The identity of the umpire.

(b) Whether the umpire is insured by the insurer.

(c) A statement informing each party of his respective right to object to the umpire and the method through which the parties may object pursuant to R.S. 22:1807.26.

(2) Before the umpire begins work, the parties and the umpire shall sign an appraisal contract which shall require the parties and the umpire to comply with the provisions of this Subpart and provide that each party shall pay the appraisal costs provided for in R.S. 22:1807.23.

(3) The umpire shall notify the commissioner upon completion of the appraisal process and upon reaching an appraisal decision.

(4) The umpire shall charge an hourly rate to be set by the commissioner and may charge a minimum two-hour fee.

(5) The umpire may charge for reasonably incurred travel costs, including mileage, meals, and lodging. If the umpire charges for reasonably incurred travel costs, he shall provide an estimate of the travel costs as an addendum to the contract provided for in Paragraph (2) of this Section.

§1807.22. Prohibited communications

A. All of the following provisions apply after an umpire's selection and before the appraisal process ends:

(1) The umpire shall not communicate separately with either party or either party's appraiser regarding the pending appraisal unless the umpire notifies the other party and gives the other party the opportunity to participate.

(2) The parties and respective appraisers shall not communicate with the umpire regarding the appraisal without including the other party or appraiser, except that:

(a) An appraiser may identify the parties' counsel or experts.

(b) An appraiser may discuss logistical matters, such as setting the time and place of meetings or making other arrangements for the conduct of the proceedings. The appraiser initiating this contact with the umpire shall promptly inform the other appraiser.

(c) If an appraiser fails to attend a meeting or conference call after receiving notice, or if both parties agree in writing, the opposing appraiser may discuss the claim with the umpire who is present.

B. After receiving notice of a possible inclusion on a umpire selection panel, the umpire shall not time communicate information about the appraisal with any individual besides the parties, the insurer, the appraisers, and the commissioner. However, the umpire may communicate information about the appraisal with the written consent of both parties.

§1807.23. Costs

A. Each party is responsible for and shall pay the following:

(1) His own appraiser fees and expenses.

(2) Half of the reasonable and necessary costs incurred for an umpire's fee and expenses.

(3) Half of any reasonable and necessary costs incurred to conduct the appraisal.

B. If the parties settle before the umpire begins work, the umpire shall not charge a fee.

C. The parties shall not pay an appraiser or umpire on a contingent fee basis, percentage of the decision, barter arrangement, gift, favor, or in-kind exchange.

D. The commissioner is not responsible for any appraisal fees, expenses, or costs.

§1807.24. Extensions of deadlines

A. The commissioner may extend any deadline provided in this Subpart for reasonable cause, except the deadline for the umpire to notify the parties that the umpire is insured by the insurer.

B. To request the commissioner to extend a deadline, a party, appraiser, or umpire shall send the request in writing to the commissioner pursuant to the provisions of R.S. 22:1807.25. The request shall explain the reasonable cause for the extension. Reasonable cause includes military deployment of the claimant.

C. Deadline extensions shall not exceed an aggregate of one hundred twenty days. This limit does not apply to extensions of the deadline to file an objection because of an umpire being insured by the insurer.

§1807.25. Requests and submissions to the commissioner

A. Notices, requests, and other items submitted to the commissioner pursuant to this Subpart shall be hand-delivered, mailed, or sent in a manner that is otherwise acceptable to the commissioner.

B. For the purposes of the deadlines imposed by this Subpart, the date applicable to an item is the date the commissioner receives the item.

C. If a party submits a request to the commissioner pursuant to this Section, the party shall provide a copy of the request to the other party on the same day and in the same manner.

§1807.26. Objections

A.(1) A party or appraiser may object to an umpire for good cause no later than ten days after the party or appraiser receives the selection panel.

(2) A party or appraiser may object to an umpire for good cause no later than thirty days after the appraisal is complete based on information not provided with the selection panel and discovered after the selection of the umpire.

(3) A party or appraiser may object to an umpire because the umpire is insured by the insurer no later than the earlier of either of the following:

(a) Seven days after receiving the umpire selection panel and the information provided therewith.

(b) Seven days before the umpire begins work.

B. Parties and appraisers shall send all objections to the commissioner pursuant to the provisions of R.S. 22:1807.25, or to the judge if a lawsuit has been filed, which shall include all of the following information:

(1) The names of the parties involved in the dispute.

(2) The name of the person submitting the objection.

(3) The insurer's claim number.

(4) The name of the umpire that the party or appraiser objects to.

(5) An explanation of the good cause for objecting to the umpire.

(6) An explanation of any direct financial or personal interest that the umpire has in the outcome of the dispute.

C.(1) If the commissioner determines that good cause exists to replace an umpire who was selected for a dispute, the commissioner shall select an umpire from the umpire selection panel to which neither appraiser objected, using a random selection method.

(2) If the judge determines that good cause exists to replace an umpire who was selected for a dispute, the judge shall select a replacement umpire.

* * *

§1892. Payment and adjustment of claims, policies other than life and health and accident; vehicle damage claims; extension of time to respond to claims during emergency or disaster; penalties; arson-related claims suspension

* * *

G. Residential property insurance policies shall contain the following provision, with permission to substitute the words "this company" with a more accurate descriptive term for the insurer:

"Appraisal. If you and this Company fail to agree as to the amount of loss, either party may demand that the amount of the loss be set by appraisal. If either party makes a written demand for appraisal, each party shall select a competent

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

Section 2. The provisions of this Act shall apply to the policies of property insurance issued, issued for delivery, or renewed on or after January 1, 2024.

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 Draft

2023 Regular Session

Abstract: Provides for the employment of umpires in the appraisal process

Present law authorizes the commissioner to collect fees from appraisers.

Proposed law authorizes the commissioner to collect fees from appraisers and umpires.

Present law employs the requisite form for standard fire insurance policies within the state of Louisiana.

Proposed law retains present law but adds that the commissioner shall select an umpire to assist in the appraisal process of a fire insurance claim in certain circumstances.

Present law provides that no person shall hold himself out to be an appraiser.

Proposed law provides that no person shall hold himself out to be an appraiser or an umpire.

Present law provides that an appraiser or an umpire must register with the commissioner of insurance on a form prescribed by the commissioner and shall pay all required fees.

Proposed law retains present law and makes technical changes.

Present law provides that an appraiser or an umpire must renew their registration on an annual basis.

Proposed law retains present law and makes technical changes.

Present law authorizes the commissioner to enforce penalties upon individuals who falsely represent themselves as appraisers.

Proposed law retains present law and provides that the commissioner shall enforce penalties upon each person who intentionally and falsely holds himself out to be an appraiser or umpire, or who violates any section of this provision of law.

Proposed law defines the following terms:

- (1) Appraiser.
- (2) Claimant.
- (3) Good cause.
- (4) Immediate family.
- (5) Party.
- (6) Umpire.
- (7) Umpire selection panel.

Proposed law provides that an appraisal process shall ensue when:

- (1) An insurer has accepted coverage for a claim, in full or in part.
- (2) The claimant and insurer have a dispute as to the amount of loss the insurer will pay for the accepted portion of the claim under the policy.
- (3) The policy is issued, issued for delivery, or renewed in this state.
- (4) The property that is the subject of the claim is located in this state or the dispute is subject to jurisdiction in this state.
- (5) The claimant or insurer demand an appraisal process.

Proposed law provides that upon a demand for appraisal, the insurer and the claimant shall each select an appraiser.

Proposed law provides that if the appraisers are unable to agree on the amount of loss, they shall select an umpire.

Proposed law provides that if the appraisers are unable to agree on an umpire, the commissioner or a judge may select an umpire.

Proposed law provides that in order to qualify as an appraiser, a person shall meet all of the following criteria:

- (1) Have at least 3 years of experience in the profession in which he is licensed.
- (2) Have experience or training in estimating property damage.
- (3) Be a licensed and professional engineer.
- (4) Be a licensed architect.
- (5) Be a licensed adjuster.
- (6) Be a licensed public adjuster.
- (7) Be a licensed general contractor.

Proposed law provides for conflicts of interest. Proposed law further provides that an appraiser has an obligation to notify the parties of any potential conflicts of interests.

Proposed law employs the registration process for individuals interested in becoming appraisers. Proposed law further lists the information that an applicant must provide to the commissioner of insurance.

Proposed law provides that the commissioner shall publish a list of appraisers on the department's website. Proposed law further provides that this list must be illustrative of the names, contact information, preferred types of claims, and preferred geographic areas of each appraiser.

Proposed law provides that an appraiser has an obligation to do all of the following:

- (1) Consider all information provided by the parties and any other reasonably available evidence material to the claim.
- (2) Carefully decide all issues submitted for determination regarding the amount of loss.

- (3) Give the parties and other appraiser an itemized written appraisal.
- (4) Conduct the appraisal process to advance the fair and efficient resolution of the matter.

Proposed law provides that an appraiser shall not:

- (1) Permit outside pressure to affect the appraisal.
- (2) Delegate the duty to decide to any other person.
- (3) Communicate with an umpire without including the other party or the other party's appraiser.
- (4) Charge the parties on a contingent fee basis, percentage of the decision, barter arrangement, gift, favor, or in-kind exchange.
- (5) Charge a fee for services if the appraiser withdraws or abandons the appraisal.

Proposed law provides that to qualify as an umpire, a person must be either:

- (1) A qualified appraiser.
- (2) An attorney licensed in this state with experience in first-party property damage litigation.

Proposed law provides for conflicts of interest. Proposed law further provides that an umpire must disclose any potential conflicts of interest.

Proposed law provides for the registration process for interested applicants. Proposed law further illustrates the information that an applicant must provide to the commissioner in his registration packet.

Proposed law provides that the commissioner of insurance shall publish the list of umpire's on the department's website. Proposed law further provides that the list include the names, contact information, preferred type of claims, and preferred geographic area of each umpire.

Proposed law authorizes the commissioner to revoke the registration of an umpire under certain circumstances.

Proposed law authorizes the commissioner or a judge to select an umpire when the appraisers cannot come to an agreeance. Proposed law further provides for an umpire selection panel.

Proposed law employs the job responsibilities of an umpire, lists prohibited activities, and specifies all prohibited communications.

Proposed law provides that each party is responsible for and shall pay the following:

- (1) His own appraiser fees and expenses.
- (2) Half of the reasonable and necessary costs incurred for the umpire's fee and expenses.
- (3) Half of any reasonable and necessary costs incurred to conduct the appraisal.

Proposed law provides that the parties shall not pay an appraiser or umpire on a contingent fee basis, percentage of the decision, barter arrangement, gift, favor, or in-kind exchange.

Proposed law provides for an extension of deadlines in certain circumstances.

Proposed law provides that notices, requests, and other items submitted to the commissioner of insurance shall be hand delivered, mailed, or sent in a manner that is otherwise acceptable to the commissioner.

Proposed law authorizes an appraiser or party to object to an umpire for good cause shown within 10 days after the party or appraiser receive the selection panel.

Present law provides that residential property insurance policies shall contain an appraisal clause. Present law further illustrates the specific language that must be in each appraisal clause.

Proposed law retains present law but amends the appraisal clause to illustrate that the commissioner shall select an umpire to assist in the appraisal process of a residential property insurance claim in certain circumstances.

Proposed law applies to policies of property insurance issued, issued for delivery, or renewed on or after January 1, 2024.

(Amends and reenacts Part XI of Chapter 5 of Title 22 of the Louisiana Revised Statutes of 1950)