

2024 Regular Session

HOUSE BILL NO. 678

BY REPRESENTATIVE FIRMENT

INSURANCE: Provides relative to fair claims settlement practices

1 AN ACT

2 To enact Part IV of Chapter 6 of Title 22 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 22:1899.1 through 1899.12, relative to claims settlement practices
4 of immovable property claims; to provide for applicability; to provide for notice of
5 a claim; to provide for acceptance or rejection of claims; to provide for payment of
6 claims; to provide for delays in payment; to provide for penalties; to provide for
7 presuit notices; to provide for inspections of property; to provide for prematurely
8 filed actions; to provide for agent liability; to provide for attorney fee awards; and
9 to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Part IV of Chapter 6 of Title 22 of the Louisiana Revised Statutes of 1950,
12 comprised of R.S. 22:1899.1 through 1899.12, is hereby enacted to read as follows:

13 PART IV. IMMOVABLE PROPERTY INSURANCE CLAIMS PAYMENTS

14 §1899.1. Applicability; exclusive remedy; immovable property

15 A. The provisions of this Part provide for the exclusive remedy applicable
16 to claims arising out of an insurance policy that covers immovable property,
17 including but not limited to manufactured and modular homes as defined in R.S.
18 51:911.22.

19 B. The provisions of R.S. 22:1892 and R.S. 22:1973 and penalties contained
20 therein do not apply to actions brought pursuant to this Part.

1 §1899.2. Receipt of notice of claim

2 A. Within fifteen days of receipt of notice of a claim, or thirty business days
3 for eligible surplus lines insurers, the insurer shall do all of the following:

4 (1) Acknowledge receipt of the claim.

5 (2) Commence investigation of the claim.

6 (3) Request from the claimant all items, statements, and forms that the
7 insurer reasonably believes, at that time, will be required from the claimant.

8 (4) Provide necessary claim forms, instructions, and reasonable assistance
9 to first-party claimants, including forms for filing proof of loss.

10 B. An insurer may make additional requests for information if during the
11 investigation of the claim the additional requests are necessary.

12 C. If acknowledgment of receipt of a claim is not made in writing, the
13 insurer shall make a record of the date, manner, and content of the acknowledgment.

14 D. The deadlines provided in this Section shall be extended by forty-five
15 days in the event of a declaration by the commissioner of a catastrophe and may
16 further be extended by the commissioner with the consent of the chairman of the
17 House Committee on Insurance and the chairman of the Senate Committee on
18 Insurance, if circumstances warrant further extension.

19 §1899.3. Notice of acceptance or rejection of claim

20 A. Except as provided in Subsections B and D of this Section, an insurer
21 shall notify a claimant in writing of the acceptance or rejection of a claim within
22 fifteen business days of the insurer receiving all items, statements, and forms
23 required by the insurer to secure final proof of loss. In the event of a catastrophe
24 declared by the commissioner, the deadline provided in this Subsection shall be
25 extended to forty-five days of the insurer receiving all items, statements, and forms
26 required by the insurer to secure final proof of loss.

27 B. If an insurer has a reasonable basis to believe that a loss resulted from
28 arson, the insurer shall notify the claimant in writing of the acceptance or rejection

1 of the claim within thirty days of the insurer receiving all items, statements, and
2 forms required by the insurer.

3 C. If an insurer rejects a claim, the insurer shall state the reasons for the
4 objection in the notice required pursuant to this Section.

5 D. If an insurer is unable to accept or reject a claim within the period
6 applicable pursuant to this Section, the insurer, within that same period, shall notify
7 the claimant of the reasons that the insurer needs additional time. The insurer shall
8 accept or reject the claim within forty-five days of the insurer sending the claimant
9 notice of the reasons the insurer needed additional time.

10 E. The time periods provided in this Section shall be tolled if the
11 policyholder fails to provide material claims information requested within ten days
12 following the request, if the request is made at least fifteen days before the insurer
13 is required to pay or deny the claim. The time periods provided in this Section shall
14 also be tolled during any statutory mediation proceeding or any alternative dispute
15 resolution proceeding provided for in the policy.

16 §1899.4. Payment of claim

17 A. Except as otherwise provided in this Section, if an insurer sends notice
18 pursuant to R.S. 22:1899.3 that the insurer will pay a claim in whole or in part, the
19 insurer shall pay the claim within fifteen business days of notice being sent.

20 B. If payment of a claim in whole or in part is conditioned on the
21 performance of an act by the claimant, the insurer shall pay the claim within fifteen
22 business days of the date the act is performed.

23 C. If the insurer is a surplus lines insurer, the insurer shall pay the claim
24 within twenty-five business days of the notice being sent or the date the conditioned
25 act is performed, as applicable.

26 §1899.5. Delay in payment of claim

27 A. Except as otherwise provided in this Part, if an insurer, after receiving all
28 items, statements, and forms reasonably required and requested, delays payment of

1 the claim for more than sixty days, the insurer shall pay damages and other items as
2 provided in R.S. 22:1899.6.

3 B. This Section does not apply in cases for which it is found, as a result of
4 arbitration or litigation, that the claim received by the insurer is invalid and should
5 not be paid by the insurer.

6 §1899.6. Penalties

7 A. Except as provided in Subsection C of this Section, if an insurer that is
8 liable for a claim under an insurance policy is not in compliance with this Part, the
9 insurer is liable to pay the policyholder or the beneficiary making the claim under
10 the policy, in addition to the amount of the claim, interest on the amount of the claim
11 at the rate of eighteen percent per year as damages, together with reasonable and
12 necessary attorney fees. Nothing in this Subsection shall be construed to prevent the
13 award of prejudgment interest on the amount of the claim, as provided by law.

14 B. If a suit is filed, the attorney fees shall be taxed as part of the costs in the
15 case.

16 C. In an action for which R.S. 22:1899.7 applies, if an insurer that is liable
17 for a claim under an insurance policy is not in compliance with this Part, the insurer
18 shall pay the policyholder, in addition to the amount of the claim, simple interest on
19 the amount of the claim as damages each year at the rate determined on the date of
20 judgment by adding five percent to the judicial interest rate, together with reasonable
21 and necessary attorney fees. Nothing in this Subsection shall be construed to prevent
22 the award of prejudgment interest on the amount of the claim, as provided by law.
23 Interest awarded pursuant to this Subsection as damages accrues beginning on the
24 date the claim was required to be paid.

25 §1899.7. Presuit notice

26 A. In addition to any other notice required by law or the applicable insurance
27 policy, at least sixty days before a claimant files an action to which this Part applies
28 in which the claimant seeks damages from any person, the claimant shall give written

1 notice to the person in accordance with the provisions of this Section as a
2 prerequisite to filing the action.

3 B. The claimant shall provide in the notice all of the following:

4 (1) A statement of the acts or omissions giving rise to the claim.

5 (2) The specific amount alleged to be owed by the insurer on the claim for
6 damage to or loss of covered property.

7 (3) The amount of reasonable and necessary attorney fees incurred by the
8 claimant, calculated by multiplying the number of hours actually worked by the
9 claimant's attorney, as of the date the notice is given and as reflected in
10 contemporaneously kept time records, by an hourly rate that is customary for similar
11 legal services.

12 C. If an attorney or other representative gives the notice required pursuant
13 to this Section on behalf of a claimant, the attorney or representative shall provide
14 a copy of the notice to the claimant and include in the notice a statement that a copy
15 of the notice was provided to the claimant.

16 D. The presuit notice provided for in Subsection A of this Section is not
17 required if giving notice is impracticable because the claimant has a reasonable basis
18 for believing there is insufficient time to give the presuit notice before the claim
19 prescribes or the action is asserted as a counterclaim.

20 E. To ensure a claimant is not prejudiced by having given the presuit notice
21 required by this Section, the court shall dismiss without prejudice an action relating
22 to the claim for which notice is given by the claimant and commenced within sixty
23 days of the date the claimant provides presuit notice.

24 F. A claimant who gives notice in accordance with this Section is not
25 relieved of the obligation to give notice pursuant to any other applicable law. Notice
26 given pursuant to this Section may be combined with notice required pursuant to any
27 other law.

1 G. Notice given pursuant to this Section is admissible as evidence in a civil
2 action or alternative dispute resolution proceeding relating to the claim for which the
3 notice is given.

4 H. The giving of a notice pursuant to this Section does not provide a basis
5 for limiting the evidence of attorney fees, damage, or loss a claimant may offer at
6 trial.

7 §1899.8. Inspection

8 Within thirty days following receipt of a presuit notice as required by R.S.
9 22:1899.7, a person to whom notice is given may send a written request to the
10 claimant to inspect, photograph, or evaluate, in a reasonable manner and at a
11 reasonable time, the property that is the subject of the claim. If reasonably possible,
12 the inspection, photography, and evaluation shall be completed within sixty days
13 following the person receiving the presuit notice.

14 §1899.9. Premature claims

15 A. In addition to taking any other act allowed by contract or by any other
16 law, a person against whom an action to which this Part applies is pending may file
17 an exception to have this case dismissed as premature no later than thirty days after
18 the date the person files an original answer in the court in which the action is
19 pending, if the person did not receive a presuit notice complying with R.S. 22:1899.7
20 or the person requested an inspection pursuant to R.S. 22:1899.8 and was not
21 provided a reasonable opportunity to inspect, photograph, or evaluate the property
22 that is the subject of the claim.

23 B. The court shall dismiss the action as being premature if the court finds
24 that the person filing the exception did not, for any reason, receive a presuit notice
25 complying with R.S. 22:1899.7 or the person requested an inspection pursuant to
26 R.S. 22:1899.8 and was not provided a reasonable opportunity to inspect,
27 photograph, or evaluate the property that is the subject of the claim.

28 C. An action is automatically dismissed as premature on the eleventh day
29 after the date the exception of prematurity is filed if either of the following occurs:

1 (1) The exception is verified and alleges that the person against whom the
2 action is pending did not receive a presuit notice complying with the provision of
3 R.S. 22:1899.7.

4 (2) The insurer requested an inspection pursuant to R.S. 22:1899.8 and was
5 not provided a reasonable opportunity to inspect, photograph, or evaluate the
6 property that is the subject of the claim, and this fact is not controverted by an
7 affidavit filed by the claimant within eleven days after the date the exception of
8 prematurity is filed.

9 D. An affidavit described by Paragraph (C)(2) of this Section controverting
10 whether the person against whom the action is pending received a presuit notice
11 complying with R.S. 22:1899.7 shall state the date on which the notice was given
12 and include as an attachment a copy of the document the claimant sent to give notice
13 of the claimant's action.

14 E. An action dismissed as being premature pursuant to this Section is
15 premature until the later of either sixty days after the date a notice complying with
16 R.S. 22:1899.7 is given or fifteen days after the date of the requested inspection,
17 photographing, or evaluating of the property is completed.

18 F. If an action is dismissed as being premature pursuant to this Section, the
19 court shall not compel participation in an alternative dispute resolution proceeding
20 until the action ceases being premature as provided in Subsection E of this Section.
21 §1899.10. Election for agent responsibility

22 A. Except as provided in Subsection H of this Section, in an action to which
23 this Part applies, an insurer that is a party to the action may elect to accept whatever
24 liability an agent might have to the claimant for the agent's acts or omissions related
25 to the claim by providing written notice to the claimant.

26 B. If an insurer makes an election as provided for in this Section before a
27 claimant files an action to which this Part applies, no cause of action exists against
28 the agent related to the claimant's claim, and, if the claimant files an action against
29 the agent, the court shall dismiss that action with prejudice.

1 C. If a claimant files an action to which this Part applies against an agent and
2 the insurer thereafter makes an election as provided for in this Section with respect
3 to the agent, the court shall dismiss the action against the agent with prejudice.

4 D. If an insurer makes an election as provided in this Section but, after
5 having been served with a notice of intent to take a deposition of the agent who is the
6 subject of the election, fails to make that agent available at a reasonable time and
7 place to give deposition testimony, R.S. 1899.11(A) through (C) do not apply to the
8 action with respect to which the insurer made the election unless the court finds that
9 any of the following apply:

10 (1) It is impracticable for the insurer to make the agent available due to a
11 change in circumstances arising after the insurer made the election provided for in
12 Subsection A of this Section.

13 (2) The agent whose liability was assumed would not have been a proper
14 party to the action.

15 (3) Obtaining the agent's deposition testimony is not warranted under the
16 law.

17 E. An insurer's election pursuant to this Section is ineffective to obtain the
18 dismissal of an action against an agent if the insurer's election is conditioned in a
19 way that will result in the insurer avoiding liability for any claim related damage
20 caused to the claimant by the agent's acts or omissions.

21 F. An insurer shall not revoke, and a court shall not nullify, an insurer's
22 election made pursuant to this Section.

23 G. Notwithstanding any provision of law to the contrary, if an insurer makes
24 an election as provided for this Section and the agent is not a party to the action,
25 evidence of the agent's acts or omissions may be offered at trial and, if supported by
26 sufficient evidence, the trier of fact may be asked to resolve fact issues as if the agent
27 were a defendant, and a judgment against the insurer shall include any liability that
28 would have been assessed against the agent.

1 H. If an insurer is in receivership at the time the claimant commences an
2 action against the insurer, the insurer shall not make an election as provided for in
3 this Section, and the court shall disregard any prior election made by the insurer
4 relating to the claimant's claim.

5 I. In an action tried by a jury, an insurer's election pursuant to this Section
6 shall not be made known to the jury.

7 §1899.11. Attorney fees

8 A. Except as otherwise provided in this Section, the amount of attorney fees
9 that may be awarded to a claimant in an action to which this Part applies is the lesser
10 of the following:

11 (1) The amount of reasonable and necessary attorney fees supported at trial
12 by sufficient evidence and determined by the trier of fact to have been incurred by
13 the claimant in bringing the action.

14 (2) The amount of attorney fees that may be awarded to the claimant
15 pursuant to other applicable provisions of law.

16 (3) The amount calculated by both of the following:

17 (a) Dividing the amount to be awarded in the judgment to the claimant for
18 the claimant's claim under the insurance policy for damage to or loss of covered
19 property by the amount alleged to be owed on the claim for that damage or loss in
20 a notice given pursuant to R.S. 22:1899.7.

21 (b) Multiplying the amount calculated pursuant to Subparagraph (a) of this
22 Paragraph by the total amount of reasonable and necessary attorney fees supported
23 at trial by sufficient evidence and determined by the trier of fact to have been
24 incurred by the claimant in bringing the action.

25 B. Except as provided by Subsection D of this Section, the court shall award
26 to the claimant the full amount of reasonable and necessary attorney fees supported
27 at trial by sufficient evidence and determined by the trier of fact to have been
28 incurred by the claimant in bringing the action if the amount calculated as provided
29 in Subparagraph (A)(3)(a) meets all of the following:

- 1 (1) The amount is greater than or equal to 0.8.
- 2 (2) The amount is not limited by this Section or another law.
- 3 (3) The amount is otherwise recoverable by law.
- 4 C. The court shall not award attorney fees to the claimant if the amount
- 5 calculated pursuant to Subparagraph (A)(3)(a) of this Section is less than 0.2.
- 6 D. If a defendant in an action to which this Part applies pleads and proves
- 7 that the defendant was entitled to but was not given a presuit notice stating the
- 8 specific amount alleged to be owed by the insurer, pursuant to R.S. 22:1899.7, at
- 9 least sixty days before the date the action was filed by the claimant, the court shall
- 10 not award to the claimant any attorney fees incurred after the date the defendant files
- 11 the pleading with the court. A pleading as provided in this Subsection shall be filed
- 12 within thirty days after the date the defendant files an original answer in the court in
- 13 which the action is pending.
- 14 §1899.12. Expedited process; catastrophe
- 15 The commissioner may promulgate and adopt rules in accordance with the
- 16 Administrative Procedure Act for providing a claims process alternative to the
- 17 provisions of this Part in the event of a catastrophe.

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 678 Original

2024 Regular Session

Firmen

Abstract: Provides exclusive claim settlement practices for immovable property.

Proposed law provides exclusive remedy for claims arising out of insurance policies covering immovable property, including but not limited to manufactured and modular homes defined in present law (R.S. 51:911.22).

Proposed law provides that certain present law penalties (R.S. 22:1892 and R.S. 22:1973) do not apply to proposed law.

Proposed law requires an insurer to acknowledge receipt of a claim and begin investigation of the claim within 15 days of receipt of notice of a claim, or within 30 business days for eligible surplus lines insurers. Requires an insurer to request from the claimant all items the insurer reasonably believes will be required from the claimant and to provide necessary claim forms, instructions, and reasonable assistance to first-party claimants, including forms for filing proof of loss.

Proposed law authorizes an insurer to make additional requests for information if during the investigation the additional requests are necessary.

Proposed law requires the insurer to make a record of an acknowledgment if the acknowledgment of receipt of a claim is not made in writing.

Proposed law requires the 15-day and 30-day timelines in proposed law to be extended by 45 days if the commissioner of insurance (commissioner) declares a catastrophe. Authorizes the commissioner to further extend the timelines with the consent of the respective chairmen of the House and Senate committees on insurance.

Proposed law requires an insurer to notify a claimant in writing of the acceptance or rejection of a claim within 15 business days of the insurer receiving all items required to secure final proof of loss. In the event of a catastrophe declared by the commissioner, the notification period extends to 45 days of the insurer receiving all items, statements, and forms required by the insurer to secure final proof of loss.

Proposed law requires an insurer to notify the claimant in writing of the acceptance or rejection of the claim within 30 days of the insurer receiving all required items for the claim when the insurer has a reasonable belief that a loss resulted from arson.

Proposed law requires an insurer to state the reasons for the objection in the notice required if an insurer rejects a claim.

Proposed law requires an insurer to notify the claimant of the reasons the insurer may need additional time when an insurer is unable to accept or reject a claim within the proposed law timeframes. Requires an insurer to accept or reject the claim within 45 days of the insurer sending the claimant notice of the reasons the insurer needed additional time.

Proposed law requires timeframes to be tolled if the policyholder fails to provide the insurer with material claims information within 10 days following the request, if the request is made at least 15 days before the insurer is required to pay or deny the claim. Further requires time to be tolled during any statutory mediation or alternative dispute resolution proceeding.

Proposed law provides that if an insurer sends notice that it will pay a claim in whole or in part, the insurer is required to pay the claim within 15 business days of sending the notice. Provides that if payment of a claim in whole or in part is conditioned on the performance of an act by the claimant, the insurer is required to pay the claim within 15 business days of the date the act is performed.

Proposed law requires an insurer to pay the claim within 25 business days of the notice being sent or the date the conditioned act is performed if the insurer is a surplus lines insurer.

Proposed law requires the insurer to pay damages and other items if the insurer delays payment of the claim for more than 60 days after receiving all items related to the claim.

Proposed law does not apply in cases for which it is found, as a result of arbitration or litigation, that a claim received by the insurer is invalid and should not be paid by the insurer.

Proposed law provides that an insurer not in compliance with proposed law is liable to pay the policyholder or the beneficiary making the claim under the policy, in addition to the amount of the claim, and interest on the amount of the claim at the rate of 18% per year as damages, together with reasonable and necessary attorney fees.

Proposed law does not prevent the award of prejudgment interest on the amount of the claim. Further requires attorney fees to be taxed as part of the costs if a suit is filed.

Proposed law requires an insurer to pay the policyholder, in addition to the amount of the claim, simple interest on the amount of the claim as damages each year at the rate determined on the date of judgment by adding 5% to the judicial interest rate, together with reasonable and necessary attorney fees, if an insurer is liable for a claim under an insurance policy and the insurer is not in compliance with proposed law.

Proposed law does not prevent the award of prejudgment interest on the amount of the claim. Further provides that interest awarded as damages accrues beginning on the date the claim was required to be paid.

Proposed law requires the claimant to give written notice to the person of whom the claimant seeks damages, as such notice is a prerequisite to filing an action (presuit notice). Requires the claimant to give written notice to the person at least 60 days before the claimant files an action.

Proposed law requires the claimant to provide in the notice all of the following:

- (1) A statement of the acts or omissions giving rise to the claim.
- (2) The specific amount alleged to be owed by the insurer on the claim for damage to or loss of covered property.
- (3) The amount of reasonable and necessary attorney fees incurred by the claimant, calculated by multiplying the number of hours actually worked by the claimant's attorney, as of the date the notice is given and as reflected in contemporaneously kept time records, by an hourly rate that is customary for similar legal services.

Proposed law requires the attorney or representative to provide a copy of the notice to the claimant and include in the notice a statement that a copy of the notice was provided to the claimant.

Proposed law provides that the presuit notice is not required if giving notice is impracticable.

Proposed law requires the court to dismiss without prejudice an action relating to the claim for which presuit notice is given by the claimant and commenced within 60 days of the date the claimant provides presuit notice to ensure a claimant is not prejudiced by having given the presuit notice required in proposed law.

Proposed law provides that a claimant who gives presuit notice is not relieved of the obligation to give notice pursuant to any other applicable law. Provides that presuit notice given may be combined with notice required pursuant to any other law.

Proposed law provides that presuit notice given is admissible as evidence in a civil action or alternative dispute resolution proceeding relating to the claim for which the notice is given. Further provides that giving of a notice does not provide a basis for limiting the evidence of attorney fees, damage, or loss a claimant may offer at trial.

Proposed law authorizes a person to whom a presuit notice is given, within 30 days following receipt of the notice, to send a written request to the claimant to inspect, photograph, or evaluate the property that is the subject of the claim. If reasonably possible, requires the inspection, photography, and evaluation to be completed within 60 days following the person's receipt of the presuit notice.

Proposed law provides that if the person did not receive a presuit notice or requested an inspection and was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim, the person may move to have the case dismissed as premature no later than 30 days after the date the person files an original answer in the court in which the action is pending.

Proposed law requires the court to dismiss the action as being premature if the court finds that the person filing the exception did not, for any reason, receive a presuit notice or requested an inspection and was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim.

Proposed law provides that an action is automatically dismissed as premature on the 11th day after the date the exception of prematurity is filed, if either of the following occurs:

- (1) The exception is verified and alleges that the person against whom the action is pending did not receive a presuit notice.
- (2) The insurer requested an inspection and was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim, and this fact is not controverted by an affidavit filed by the claimant within 11 days after the date the exception of prematurity is filed.

Proposed law provides that an affidavit controverting whether the person against whom the action is pending should state the date on which the presuit notice was given and include as an attachment a copy of the document the claimant sent to give notice of the claimant's action.

Proposed law provides that an action dismissed as being premature is premature until the later of either 60 days after the date a notice is given or 15 days after the date of the requested inspection, photographing, or evaluating of the property is completed.

Proposed law provides that if an action is dismissed as being premature, the court is prohibited from compelling participation in an alternative dispute resolution proceeding until the action ceases being premature.

Proposed law authorizes an insurer that is a party to the action to elect to accept whatever liability an agent might have to the claimant for the agent's acts or omissions related to the claim by providing written notice to the claimant.

Proposed law requires the court to dismiss an action with prejudice if an insurer makes an election before a claimant files an action. Provides that if the claimant files an action against the agent, a cause of action does not exist against the agent related to the claimant's claim.

Proposed law requires the court to dismiss the action against the agent with prejudice if a claimant files an action against an agent and the insurer thereafter makes an election with respect to the agent.

Proposed law provides that if an insurer makes an election but, after having been served with a notice of intent to take a deposition of the agent who is the subject of the election, fails to make that agent available at a reasonable time and place to give deposition testimony, proposed law does not apply with respect to an election to which the insurer made the election unless the court finds that any of the following apply:

- (1) It is impracticable for the insurer to make the agent available due to a change in circumstances arising after the insurer made the election.
- (2) The agent whose liability was assumed would not have been a proper party to the action.
- (3) Obtaining the agent's deposition testimony is not warranted under the law.

Proposed law provides that an insurer's election is ineffective to obtain the dismissal of an action against an agent if the insurer's election is conditioned in a way that will result in the

insurer avoiding liability for any claim-related damage caused to the claimant by the agent's acts or omissions.

Proposed law prohibits an insurer from revoking an insurer's election.

Proposed law provides that if an insurer makes an election and the agent is not a party to the action, evidence of the agent's acts or omissions may be offered at trial and, if supported by sufficient evidence, the trier of fact may be asked to resolve fact issues as if the agent were a defendant. Requires a judgment against the insurer to include any liability that would have been assessed against the agent.

Proposed law prohibits the insurer from making an election and requires the court to disregard any prior election made by the insurer relating to the claimant's claim if an insurer is in receivership at the time the claimant begins an action against the insurer,

Proposed law provides for an insurer's election to not be made known to the jury in an action tried by a jury.

Proposed law requires the amount of attorney fees that may be awarded to a claimant in an action to be the lesser of the following:

- (1) The amount of reasonable and necessary attorney fees supported at trial by sufficient evidence and determined by the trier of fact to have been incurred by the claimant in bringing the action.
- (2) The amount of attorney fees that may be awarded to the claimant pursuant to other applicable provisions of law.
- (3) The amount calculated by both of the following:
 - (a) Dividing the amount to be awarded in the judgment to the claimant for the claimant's claim under the insurance policy for damage to or loss of covered property by the amount alleged to be owed on the claim for that damage or loss in a notice given.
 - (b) Multiplying the amount calculated by the total amount of reasonable and necessary attorney fees supported at trial by sufficient evidence and determined by the trier of fact to have been incurred by the claimant in bringing the action.

Proposed law requires the court to award to the claimant the full amount of reasonable and necessary attorney fees supported at trial by sufficient evidence and determined by the trier of fact to have been incurred by the claimant in bringing the action if the amount calculated meets all of the following:

- (1) The amount is greater than or equal to 0.8.
- (2) The amount is not limited by law.
- (3) The amount is otherwise recoverable by law.

Proposed law prohibits the court from awarding attorney fees to the claimant if the amount calculated is less than 0.2.

Proposed law provides that if a defendant in an action pleads and proves that the defendant was entitled to but was not given a presuit notice stating the specific amount alleged to be owed by the insurer, at least 60 days before the date the action was filed by the claimant, the court is prohibited from awarding the claimant any attorney fees incurred after the date the

defendant files the pleading with the court. Further requires a pleading to be filed within 30 days after the date the defendant files an original answer in the court in which the action is pending.

Proposed law authorizes the commissioner to promulgate and adopt rules in accordance with the APA for providing a claims process alternative to proposed law in the event of a catastrophe.

(Adds R.S. 22:1899.1-1899.12)