

2024 Regular Session

SENATE BILL NO. 323

BY SENATORS TALBOT AND BASS

INSURANCE CLAIMS. Provides for fair claims processing. (7/1/24)

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AN ACT

To amend and reenact R.S. 22:1892(A)(3) and (4), (B)(1), and (H), to enact R.S. 22:1892(A)(7), (B)(7), (I), (J), and (K), and 1892.2, and to repeal R.S. 22:1973, relative to claims settlement practices; to provide definitions; to provide for loss adjustment; to provide for the payment of claims; to provide for practices following a catastrophe; to provide for good faith duty; to provide for breach of good faith duty; to provide for certain notices; to provide for penalties; to provide for causes of action; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1892(A)(3) and (4), (B)(1), and (H) are hereby amended and reenacted and R.S. 22:1892(A)(7), (B)(7), (I), (J), and (K), and 1892.2 are hereby enacted to read as follows:

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

A.(1) * * *

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

16 (4) All insurers shall make a written offer to settle any property damage
 17 claim, including a third-party claim, within ~~thirty~~ **the applicable number of** days
 18 after receipt of satisfactory proofs of loss of that claim: **that is provided pursuant**
 19 **to this Section or R.S. 22:1892.2, provided that this period shall be extended by**
 20 **the number of days, if any, the insurer initiates loss adjustment earlier than the**
 21 **deadline provided in Paragraph (3) of this Subsection.**

22 * * *

23 **(7) The provisions of this Subsection do not apply to surety bonds.**

24 B.(1)(a) Except as provided in Subparagraph (b) of this Paragraph, failure to
 25 make ~~such~~ payment within thirty days after receipt of ~~such~~ satisfactory written
 26 proofs and demand therefor or failure to make a written offer to settle any property
 27 damage claim, including a third-party claim, within thirty days after receipt of
 28 satisfactory proofs of loss of that claim, as provided in Paragraphs (A)(1) and (4) of
 29 this Section, respectively, or failure to make ~~such~~ **the** payment within thirty days

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

13 (b) In the case of a ~~presidentially or gubernatorially~~ declared disaster, failure
14 to make such payment within thirty days after receipt of such satisfactory written
15 proofs and demand therefor or failure to make a written offer to settle any property
16 damage claim, including a third-party claim, within thirty days after receipt of
17 satisfactory proofs of loss of that claim, as provided in Paragraphs (A)(1) and (4) of
18 this Section, respectively, or failure to make such payment within thirty days after
19 written agreement or settlement as provided in Paragraph (A)(2) of this Section when
20 such failure is found to be arbitrary, capricious, or without probable cause, shall
21 subject the insurer to a penalty, in addition to the amount of the loss, of fifty percent
22 damages on the amount found to be due from the insurer to the insured, or two
23 thousand five hundred dollars, whichever is greater, payable to the insured, or in the
24 event a partial payment or tender has been made, fifty percent of the difference
25 between the amount paid or tendered and the amount found to be due as well as
26 reasonable attorney fees and costs or two thousand five hundred dollars, whichever
27 is greater. The penalties, if awarded, shall not be used by the insurer in computing
28 either past or prospective loss experience for the purpose of setting rates or making
29 rate filings **catastrophic loss, any penalty for payment and adjustment of a first-**

1 party claim arising under an insurance policy for immovable property shall be
 2 subject to penalty pursuant to the provisions of R.S. 22:1892.2, and the
 3 provisions of this Paragraph shall not be applicable.

4 (c) For the purposes of this Section and R.S. 22:1892.2, the following
 5 definitions apply:

6 (i) "Catastrophic loss" means a loss that arose from a natural disaster,
 7 windstorm, or significant weather-related event that was a presidentially
 8 declared emergency or disaster or a gubernatorially declared emergency or
 9 disaster.

10 (ii) "Immovable property" means a tract of land with its component
 11 part, including a factory-built or modular home as defined in R.S. 51:911.22.

12 (iii) "Residential property" means property defined as improvements for
 13 residential purposes pursuant to R.S. 47:2322.

14 * * *

15 (7) Claims for penalties and attorney fees pursuant to this Subsection are
 16 subject to a liberative prescriptive period of two years.

17 * * *

18 H. The Louisiana Insurance Guaranty Association, as provided in R.S.
 19 22:2051 et seq., and the Louisiana Citizens Property Insurance Corporation, as
 20 provided in R.S. 22:2291 et seq., shall not be subject to the provisions of Code of
 21 Civil Procedure Article 591 et seq., or any other provision allowing a class action,
 22 for any damages including any penalties awarded pursuant to the provisions of this
 23 Section. The Louisiana Insurance Guaranty Association, as provided in R.S.
 24 22:2051 et seq., shall also not be liable for any special damages or penalties
 25 provided for in this Section.

26 I.(1) An insurer, including but not limited to a foreign line or surplus line
 27 insurer, owes to its insured a duty of good faith and fair dealing. The insurer
 28 has an affirmative duty to adjust claims fairly and promptly and to make a
 29 reasonable effort to settle claims with the insured or the claimant, or both. Any

1 insurer that breaches the duties of this Subsection shall be liable for any proven
2 economic damages sustained as a result of the breach. For claims not involving
3 loss to an insured's immovable property, the insured may be awarded penalties
4 in an amount not to exceed fifty percent of the damages sustained or five
5 thousand dollars, whichever is greater, together with attorney fees and costs
6 actually incurred due to the breach, provided that, when applicable, the insurer
7 shall instead be subject to the provisions of Subsection B of this Section or R.S.
8 22:1892.2, as appropriate.

9 (2) Any one of the following acts, if knowingly committed or performed
10 by an insurer or representative of the insurer, constitutes a breach of the
11 insurer's duties imposed in Paragraph (1) of this Subsection:

12 (a) A misrepresentation of pertinent facts or insurance policy provisions
13 relating to any coverages at issue.

14 (b) A failure to pay a settlement within thirty days after an agreement
15 is reduced to writing.

16 (c) A denial of coverage or attempting to settle a claim on the basis of an
17 application which the insurer knows was altered without notice to, or
18 knowledge or consent of, the insured.

19 (d) A misrepresentation to a claimant as to the applicable prescriptive
20 period.

21 (e) A failure to pay claims pursuant to R.S. 22:1893 when the failure is
22 arbitrary, capricious, or without probable cause.

23 (3) The provisions of this Subsection shall not create a separate cause of
24 action against a representative of the insurer distinct and apart from the cause
25 of action against the insurer.

26 J.(1) The insured, claimant, or a representative of the insured or
27 claimant has a duty of good faith and fair dealing when asserting a claim for
28 insurance coverage.

29 (2) Any one of the following acts, if knowingly committed or performed

1 by an insured, claimant, or representative of the insured or claimant, constitutes
2 a breach of the insured’s duties imposed in Paragraph (1) of this Subsection:

3 (a) A failure to comply with affirmative contractual duties or obligations
4 established in the insurance policy, including the duty to act in good faith in
5 providing information regarding the claim, in making demands of the insurer,
6 in setting deadlines, and in attempting to settle the claim.

7 (b) A misrepresentation of pertinent facts or insurance policy provisions
8 relating to any coverages at issue.

9 (c) A submission of an estimate or claim for damages that lacks a basis
10 for coverage under the terms of the policy or lacks a good faith evidentiary
11 basis.

12 (3) The duty imposed by this Subsection does not create a separate cause
13 of action but shall be considered in accordance with Paragraph (4) of this
14 Subsection.

15 (4) In any action against an insurer pursuant to this Section or R.S.
16 22:1892.2, if the trier of fact determines that the insured, claimant, or
17 representative of the insured or claimant violated the provisions of this
18 Subsection, the trier of fact shall consider that conduct in determining whether
19 or not the insured is to be awarded penalties or attorney fees otherwise provided
20 for in accordance with R.S. 22:1892 and 1892.2.

21 (5) This Subsection shall not impact any right or remedy available to the
22 insurer, including but not limited to the right to void the policy or contract or
23 deny coverage.

24 K. The provisions of this Section shall not be applicable to claims made
25 under life and health and accident insurance policies.

26 * * *

27 §1892.2. Catastrophic loss claims settlement practices; penalties and attorney
28 fees

29 A.(1) An insurer shall not violate any provision of this Section or R.S.

1 22:1892(A)(4) or (I).

2 (2) For catastrophic losses to residential property, an insurer shall
3 transmit payment of the amount of any claim due to any insured within sixty
4 days after receipt of satisfactory written proof of loss.

5 (3) For catastrophic losses to other immovable property owned by an
6 insured, an insurer shall transmit payment of the amount of any claim due to
7 any insured within ninety days after receipt of satisfactory written proof of loss.
8 The timeline provided for in this Paragraph may be extended up to thirty
9 additional days by the commissioner for commercial policies insuring multiple
10 locations.

11 B.(1) Failure to comply with Subsection A of this Section, when the
12 failure is found to be arbitrary, capricious, or without probable cause, shall
13 subject the insurer to a penalty payable to the insured, in addition to the
14 amount of the loss, of only the greater of fifty percent of the amount found to
15 be due from the insurer to the insured, or in the event a partial payment or
16 tender has been made, fifty percent of the difference between the amount timely
17 paid or tendered and the amount found to be due, plus proven economic
18 damages sustained as a result of the breach, or two thousand five hundred
19 dollars, whichever is greater, together with, in either instance, reasonable
20 attorney fees and costs actually incurred. The penalties, if awarded, shall not be
21 used by the insurer in computing either past or prospective loss experience for
22 the purpose of setting rates or making rate filings.

23 (2) Claims for penalties and attorney fees pursuant to this Section are
24 subject to a liberative prescription of two years.

25 C.(1) As a condition precedent to bringing an action pursuant to this
26 Section, the insurer shall be given sixty days' written notice of the violation by
27 the insured or his representative, hereinafter referred to in this Section as the
28 cure period notice.

29 (2) The cure period notice may be through either a form provided by the

1 department or by formal written demand providing sufficient notice of the facts
2 and circumstances of the dispute.

3 (3) If the insurer pays within sixty days after the insurer receives cure
4 period notice the full amount alleged to be due in the notice, together with any
5 actual expenses incurred by the insured and claimed in the notice, including any
6 attorney fees, not to exceed twenty percent of the amount alleged to be due
7 under the policy, there shall be no further cause of action pursuant to this
8 Section regarding that noticed demand.

9 (4) If the insurer does not pay the full amount demanded by the cure
10 period notice as provided for in Paragraph (3) of this Subsection but does make
11 a partial payment within sixty days of the insurer's receipt of the cure period
12 notice, the penalty otherwise due, if any, on the amount actually paid by the
13 insurer within sixty days of the insurer's receipt of the cure period shall be
14 reduced by half.

15 (5) The insurer that is the recipient of a cure period notice shall respond
16 to the insured or his representative within sixty days.

17 (6) If a cure period notice is transmitted within the last ninety days prior
18 to the running of prescription, the applicable prescriptive period for an action
19 filed pursuant to the provisions of this Section, or for an action concerning the
20 underlying policy dispute, shall be suspended for a period until thirty days after
21 the insurer transmits its written response to the cure period notice.

22 (7) If any suit is filed prior to transmitting the cure period notice
23 required by this Subsection, it shall be automatically stayed until sixty days
24 after the cure period notice is received. The delay for answering any suit shall
25 automatically be extended until thirty days after the end of the cure period. If
26 the insurer timely pays the full amount demanded as provided for in Paragraph
27 (3) of this Subsection, any cause of action prematurely filed shall be subject to
28 dismissal at the insured's cost.

29 D.(1) An insurer may make additional requests for information or

1 inspection if during its investigation of the claim the additional requests are
2 considered necessary. A request for information that is in the possession of the
3 insurer or its representatives shall not extend any of the insurer's deadlines.

4 (2) For matters remaining in dispute once an insurer has received all
5 necessary information in response to requests made pursuant to this Subsection,
6 or completed necessary reinspections, if an insurer is unable to accept or reject
7 a claim within fifteen days after receiving the information requested by an
8 insurer, or after completing a requested reinspection, the insurer, within that
9 same time period, shall provide written notification to the insured of the reasons
10 that the insurer needs additional time to assess the claim. The insurer shall
11 thereafter accept or reject the claim in whole or in part no later than thirty days
12 from the date on which the insurer notified the insured of the reasons that the
13 insurer needed additional time to assess the claim.

14 (3) Nothing in this Subsection shall be construed to relieve an insurer of
15 its obligation to transmit payment of the amount of any claim due to any
16 insured within the deadline following receipt of satisfactory proof of loss
17 concerning the amount as set forth in Paragraphs (A)(2) and (A)(3) of this
18 Section, nor to extend any deadline for payment when the requested
19 information or inspection is found by the trier of fact to be unnecessary
20 considering all other proof of the loss then available to the insurer or if the
21 insurer's request was not made in a reasonable period.

22 (4) Nothing in this Subsection shall be construed to prohibit an insured
23 from making a supplemental claim, nor to relieve an insurer from the obligation
24 to conduct a supplemental investigation, or to make a supplemental payment,
25 if warranted by the facts of a supplemental claim. A supplemental claim adds
26 newly found damage or additional costs to the original claim. The fact that an
27 insurer makes a supplemental payment shall not itself be construed as evidence
28 of a violation of this Section or R.S. 22:1892.

29 (5) An insurer's tender of undisputed additional amounts due to the

1 **insured within thirty days of the insurer's receipt of a valid appraisal award**
 2 **does not itself constitute evidence of bad faith on the part of the insurer.**

3 **E. The provisions of this Section shall not be applicable to claims made**
 4 **under any type of policy or contract of insurance specified in R.S. 22:1811 or**
 5 **1821 or Chapter 10 of Title 22 of the Louisiana Revised Statutes of 1950.**

6 **F. The Louisiana Insurance Guaranty Association, as provided in R.S.**
 7 **22:2051 et seq., and the Louisiana Citizens Property Insurance Corporation, as**
 8 **provided in R.S. 22:2291 et seq., shall not be subject to the provisions of Code**
 9 **of Civil Procedure Article 591 et seq., or any other provision allowing a class**
 10 **action, for any damages, that includes any penalties awarded pursuant to the**
 11 **provisions of this Section. The Louisiana Insurance Guaranty Association, as**
 12 **provided in R.S. 22:2051 et seq., shall also not be liable for any special damages**
 13 **or penalties provided for in this Section.**

14 Section 2. R.S. 22:1973 is hereby repealed in its entirety.

15 Section 3. The Louisiana State Law Institute is hereby authorized and directed to
 16 revise the Code of Evidence and Title 22 of the Louisiana Revised Statutes of 1950, to
 17 change all references to "R.S. 22:1973" to "R.S. 22:1892" or "R.S. 22:1892.2", including but
 18 not limited to Code of Evidence Article 411(B)(3) and R.S. 22:41(13), 1296(B)(3)(d),
 19 1332(B)(4), and 1893(D).

20 Section 4. This Act shall become effective on July 1, 2024. If vetoed by the governor
 21 and subsequently approved by this legislature, this Act shall become effective on the day
 22 following such approval or July 1, 2024, whichever is later.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Beth O'Quin.

DIGEST

SB 323 Engrossed

2024 Regular Session

Talbot

Present law provides for payment and adjustment procedures for property damage insurance claims.

Present law provides bad faith penalties for an insurer that fails to comply with present law.

Proposed law retains present law but removes bad faith penalties for an insurer not in compliance with present law, and adds an insurer that is not in compliance with present law

is subject to a penalty not greater than \$5,000 or for bad faith penalties, whichever is greater.

Present law provides certain procedural requirements if the president or governor declares a state of disaster.

Proposed law defines "catastrophic loss", "immovable property", and "residential property".

Proposed law provides property damage insurance claims are subject to a two year liberative prescription period.

Present law provides an exemption from class actions and penalties awarded pursuant to present law for the La. Insurance Guaranty Association and La. Citizens Property Insurance Corporation.

Proposed law retains present law and adds an exemption for the La. Insurance Guaranty Association from any liability for any special damages provided for in proposed law.

Proposed law provides an insurer owes to his insured a duty of good faith and fair dealing. Proposed law provides an insurer in bad faith is subject to penalties not to exceed 50% or the damages or \$5,000, whichever is greater.

Proposed law provides an insurer breaches its duty of good faith and fair dealing by any of the following acts:

- (1) Misrepresents pertinent facts or insurance policy provisions relating to any coverages at issue.
- (2) Fails to pay a settlement within thirty days after an agreement is reduced to writing.
- (3) Denies coverage or attempting to settle a claim on the basis of an application which the insurer knows was altered without notice to, or knowledge or consent of, the insured.
- (4) Misleads a claimant as to the applicable prescriptive period.
- (5) Fails to pay claims when the failure is arbitrary, capricious, or without probable cause.

Proposed law provides the insured, claimant, and representatives of the insured or claimant have a duty of good faith and fair dealing. Proposed law provides bad faith actions committed by the insured, claimant, or his representative are any of the following:

- (1) Fails to comply with contractual duties established by his insurance policy, that includes providing requested information regarding the claim, making demands on the insurer, setting deadlines, and attempting to settle the claim.
- (2) Misrepresents facts or insurance policy provisions that relate to any coverage at issue.
- (3) Submits an estimate for damages that lacks a basis for coverage under the policy terms or lacks a good faith evidentiary basis.

Proposed law does not impact any right or remedy available to the insurer, including but not limited to voiding the policy or contract or deny coverage.

Proposed law provides that if a trier of fact determines the insured, claimant, or representatives of the insured or claimant breach their duty of good faith and fair dealing, the insured or claimant is not entitled to recover any penalties or attorney fees.

Proposed law does not apply to surety bonds or life or health and accident policies.

Proposed law provides for an insurer acting in good faith and fair dealing and provides the insurer is subject to penalties for violating proposed law.

Proposed law provides the commissioner may extend the transmittal of payment for an additional 30 days for commercial properties with insurance at multiple locations.

Proposed law provides procedures for catastrophic losses to residential property.

Proposed law provides procedures for catastrophic losses to immovable property.

Proposed law provides penalties for an insurer that fails to comply with proposed law.

Proposed law requests the La. State Law Institute to revise citations listed in present law to conform with proposed law.

Effective July 1, 2024.

(Amends R.S. 22:1892(A)(3) and (4), (B)(1), and (H); adds R.S. 22:1892(A)(7), (B)(7), (I), (J), and (K) and 1892.2; repeals R.S. 22:1973)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Insurance to the original bill

1. Makes technical changes.
2. Clarifies the penalty amounts for a denied claim.
3. Provides an insured, a claimant, or his representative has a duty of good faith.
4. Clarifies what constitutes a breach of the good faith duty for an insured, a claimant, or his representative.
5. Requests the La. State Law Institute to update present law to conform with proposed law.
6. Changes the effective date to July 1, 2024.