

SENATE BILL NO. 323

BY SENATORS TALBOT AND BASS

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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 for 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; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1892(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; **definitions**

A.(1) * * *

(3) Except in the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim and of a claim for reasonable medical expenses within fourteen days after notification of loss by the claimant. In the case of catastrophic loss, **as defined in this Section,** the insurer shall initiate loss adjustment of a property damage claim within thirty days after notification of loss by the claimant except that the commissioner may promulgate a rule for extending the time period for initiating a loss adjustment for damages arising from a

1 presidentially declared emergency or disaster or a gubernatorially declared
 2 emergency or disaster up to an additional thirty days. Thereafter, only one additional
 3 extension of the period of time for initiating a loss adjustment may be allowed and
 4 ~~must~~ **shall** be approved by the Senate Committee on Insurance and the House
 5 Committee on Insurance, voting separately. Failure to comply with the provisions
 6 of this Paragraph shall subject the insurer to ~~the penalties provided in R.S. 22:1973~~
 7 **a penalty of the greater of five thousand dollars or the amount provided for in**
 8 **Subsection I of this Section.**

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

15 * * *

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

17 B.(1)(a) Except as provided in Subparagraph (b) of this Paragraph, failure to
 18 make ~~such~~ payment within thirty days after receipt of ~~such~~ satisfactory written
 19 proofs and demand therefor or failure to make a written offer to settle any property
 20 damage claim, including a third-party claim, within thirty days after receipt of
 21 satisfactory proofs of loss of that claim, as provided in Paragraphs (A)(1) and (4) of
 22 this Section, respectively, or failure to make ~~such~~ **the** payment within thirty days
 23 after written agreement or settlement ~~as provided in Paragraph (A)(2) of this Section~~
 24 when ~~such~~ **the** failure is found to be arbitrary, capricious, or without probable cause,
 25 shall subject the insurer to a penalty, in addition to the amount of the loss, of fifty
 26 percent damages on the amount found to be due from the insurer to the insured, **plus**
 27 **any proven economic damages sustained as a result of the breach,** or one
 28 thousand dollars, whichever is greater, payable to the insured, or in the event a
 29 partial payment or tender has been made, fifty percent of the difference between the
 30 amount paid or tendered and the amount found to be due, **plus any proven economic**

1 damages sustained as a result of the breach, as well as, in either instance,
 2 reasonable attorney fees and costs. ~~Such~~ The penalties, if awarded, shall not be used
 3 by the insurer in computing either past or prospective loss experience for the purpose
 4 of setting rates or making rate filings.

5 (b) In the case of a ~~presidentially or gubernatorially declared disaster~~, failure
 6 to make such payment within thirty days after receipt of such satisfactory written
 7 proofs and demand therefor or failure to make a written offer to settle any property
 8 damage claim, including a third-party claim, within thirty days after receipt of
 9 satisfactory proofs of loss of that claim, as provided in Paragraphs (A)(1) and (4) of
 10 this Section, respectively, or failure to make such payment within thirty days after
 11 written agreement or settlement as provided in Paragraph (A)(2) of this Section when
 12 such failure is found to be arbitrary, capricious, or without probable cause, shall
 13 subject the insurer to a penalty, in addition to the amount of the loss, of fifty percent
 14 damages on the amount found to be due from the insurer to the insured, or two
 15 thousand five hundred dollars, whichever is greater, payable to the insured, or in the
 16 event a partial payment or tender has been made, fifty percent of the difference
 17 between the amount paid or tendered and the amount found to be due as well as
 18 reasonable attorney fees and costs or two thousand five hundred dollars, whichever
 19 is greater. The penalties, if awarded, shall not be used by the insurer in computing
 20 either past or prospective loss experience for the purpose of setting rates or making
 21 rate filings catastrophic loss, any penalty for payment and adjustment of a first-
 22 party claim arising under an insurance policy for immovable property shall be
 23 subject to penalty pursuant to the provisions of R.S. 22:1892.2, and the
 24 provisions of this Paragraph shall not apply.

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

27 (i) "Catastrophic loss" means a loss that arose from a natural disaster,
 28 windstorm, or significant weather-related event that was a presidentially
 29 declared emergency or disaster or a gubernatorially declared emergency or
 30 disaster.

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

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

5 * * *

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

8 * * *

9 H. The Louisiana Insurance Guaranty Association, as provided in R.S.
 10 22:2051 et seq., and the Louisiana Citizens Property Insurance Corporation, as
 11 provided in R.S. 22:2291 et seq., shall not be subject to the provisions of Code of
 12 Civil Procedure Article 591 et seq., or any other provision allowing a class action,
 13 for any damages including any penalties awarded pursuant to the provisions of this
 14 Section. The Louisiana Insurance Guaranty Association, as provided in R.S.
 15 22:2051 et seq., shall also not be liable for any special damages or penalties
 16 provided for in this Section.

17 I.(1)(a) An insurer, including but not limited to a foreign line or surplus
 18 line insurer, owes to its insured a duty of good faith and fair dealing. The
 19 insurer has an affirmative duty to adjust claims fairly and promptly and to
 20 make a reasonable effort to settle claims with the insured or the claimant, or
 21 both. Any insurer that breaches the duties of this Subsection shall be liable for
 22 any proven economic damages sustained as a result of the breach. For claims
 23 not involving loss to an insured's immovable property, the insured may be
 24 awarded penalties in an amount not to exceed fifty percent of the damages
 25 sustained or five thousand dollars, whichever is greater, together with attorney
 26 fees and costs actually incurred due to the breach. Any penalty for breach of a
 27 duty imposed by this Subsection based solely upon a failure to pay the amount
 28 of any claim due to any person insured by the contract within the period
 29 provided by law following receipt of satisfactory proof of loss shall be awarded
 30 only if the breach is found to be arbitrary, capricious, or without probable

1 cause.

2 (b) For claims arising under an insurance policy covering loss to
3 immovable property, the insurer shall instead be subject to the provisions of
4 Subsection B of this Section or R.S. 22:1892.2, as appropriate.

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

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

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

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

15 (d) A misrepresentation to a claimant as to the applicable prescriptive
16 period.

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

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

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

25 (2) Any one of the following acts, if knowingly committed or performed
26 by an insured, claimant, or representative of the insured or claimant, constitutes
27 a breach of the insured's duties imposed in Paragraph (1) of this Subsection:

28 (a) A failure to comply with affirmative contractual duties or obligations
29 established in the insurance policy, including the duty to act in good faith in
30 providing information regarding the claim, in making demands of the insurer,

1 in setting deadlines, and in attempting to settle the claim.

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

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

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

10 (4) In any action against an insurer pursuant to this Section or R.S.
11 22:1892.2, if the trier of fact determines that the insured, claimant, or
12 representative of the insured or claimant violated the provisions of this
13 Subsection, the trier of fact shall consider that conduct in determining whether
14 or not the insured is to be awarded penalties or attorney fees otherwise provided
15 for in accordance with R.S. 22:1892 and 1892.2.

16 (5) This Subsection does not impact any right or remedy available to the
17 insurer, including but not limited to the right to void the policy or contract or
18 deny coverage.

19 K. The provisions of this Section do not apply to claims made under life
20 and health and accident insurance policies.

21 * * *

22 §1892.2. Catastrophic loss claims settlement practices; penalties and attorney
23 fees

24 A.(1) An insurer shall not violate any provision of this Section or R.S.
25 22:1892(A)(4) or (I).

26 (2) For catastrophic losses arising under an insurance policy for
27 residential property, an insurer shall transmit payment of the amount of any
28 claim due to any insured within sixty days after receipt of satisfactory written
29 proof of loss.

30 (3) For catastrophic losses arising under an insurance policy for

1 immovable property, other than residential property, an insurer shall transmit
2 payment of the amount of any claim due to any insured within ninety days after
3 receipt of satisfactory written proof of loss. The timeline provided for in this
4 Paragraph may be extended up to thirty additional days by the commissioner
5 for commercial policies insuring multiple locations.

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

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

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

24 (2) The cure period notice may be provided through either a form
25 transmitted by the department or by formal written demand providing
26 sufficient notice of the facts and circumstances of the dispute.

27 (3) If the insurer pays within sixty days after the insurer receives a cure
28 period notice the full amount alleged to be due in the notice, together with any
29 actual expenses incurred by the insured and claimed in the notice, including any
30 attorney fees, not to exceed twenty percent of the amount alleged to be due

1 under the policy, there shall be no further cause of action pursuant to this
2 Section regarding that noticed demand.

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

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

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

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

23 D.(1) An insurer may make additional requests for information or
24 inspection if during its investigation of the claim the additional requests are
25 considered necessary. A request for information that is in the possession of the
26 insurer or its representatives shall not extend any of the insurer's deadlines.

27 (2) Nothing in this Subsection shall be construed to relieve an insurer of
28 its obligation to transmit payment of the amount of any claim due to any
29 insured within the deadline following receipt of satisfactory proof of loss
30 concerning the amount as set forth in Paragraphs (A)(2) and (A)(3) of this

1 Section, nor to extend any deadline for payment when the requested
2 information or inspection is found by the trier of fact to be unnecessary
3 considering all other proof of the loss then available to the insurer.

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

11 (4) An insurer's tender of undisputed additional amounts due to the
12 insured within thirty days of the insurer's receipt of a valid appraisal award
13 does not itself constitute evidence of bad faith on the part of the insurer.

14 E. The provisions of this Section do not apply to claims made under any
15 type of policy or contract of insurance specified in R.S. 22:1811 or 1821 or
16 Chapter 10 of this Title.

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

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

26 Section 3. The Louisiana State Law Institute is hereby authorized and directed to
27 revise the Code of Evidence and Title 22 of the Louisiana Revised Statutes of 1950, to
28 change all references from "R.S. 22:1973" to "R.S. 22:1892" or "R.S. 22:1892.2", including
29 but not limited to Code of Evidence Article 411(B)(3) and R.S. 22:41(13), 1296(B)(3)(d),
30 1332(B)(4), and 1893(D).

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____