

2022 Regular Session

HOUSE BILL NO. 976

BY REPRESENTATIVE LARVADAIN

INSURANCE/PROPERTY: Provides for bad faith claims against insurers

1 AN ACT

2 To amend and reenact R.S. 22:1973 and to repeal R.S. 22:1892, relative to bad faith
3 insurance claims; to provide for the duties owed by insurers to insureds and third
4 parties; to provide procedures for the adjustment and settlement of claims; to provide
5 for remedies in bad faith suits; to provide relative to insurance claims arising from
6 potential arson; to provide for remedies where an insurance claimant is deprived of
7 use of his personal vehicle; to provide for the formulation of actual cash value; to
8 provide for the method and manner of payment of claims; to provide relative to
9 repairs; to provide for an exemption of liability for the Insurance Guaranty
10 Association Fund; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 22:1973 is hereby amended and reenacted to read as follows:

13 §1973. Good faith duty; claims settlement practices; cause of action; penalties

14 A.(1) An insurer, ~~including but not limited to a foreign line and surplus line~~
15 ~~insurer,~~ owes to his insured a duty of good faith and fair dealing; ~~The insurer has~~
16 ~~an affirmative duty to adjust claims fairly and promptly and~~ including the duty to
17 make a reasonable effort to adjust and settle claims with the insured or the claimant,
18 ~~or both~~ fairly and promptly. ~~Any insurer who breaches these duties shall be liable~~
19 ~~for any damages sustained as a result of the breach.~~

1 (2) In addition to the duties of good faith and fair dealing that an insurer
2 owes to its insured, an insurer owes to the insured and third-party claimant the duty
3 to adjust and settle claims in accordance with Subsection B of this Section.

4 B.(1) An insurer issuing any type of contract, other than those specified in
5 R.S. 22:1811 and 1821 and Chapter 10 of Title 23 of the Louisiana Revised Statutes
6 of 1950, shall pay the amount reasonably due any insured within thirty days after
7 receipt of satisfactory proof of loss from the insured or any party in interest. The
8 insurer shall notify the insurance producer of record of all such payments for
9 property damage claims made in accordance with this Paragraph.

10 (2) Except for claims arising as a result of a declared state of emergency
11 pursuant to R.S. 29:721 et seq., the insurer shall initiate loss adjustment of a property
12 damage or medical expense claim within fourteen days after notification of loss by
13 the claimant. In the case of a declared state of emergency, the commissioner may
14 promulgate a rule extending this time period by no longer than thirty additional days.
15 Thereafter, only one additional extension of the period of time for initiating a loss
16 adjustment may be allowed and shall be approved by the Senate Committee on
17 Insurance and the House Committee on Insurance, voting separately.

18 (3) All insurers shall make a written offer to settle any third-party property
19 damage claim within thirty days after the receipt of satisfactory proof of loss for that
20 claim.

21 (4) Any one of the following acts, if knowingly committed or performed by
22 an insurer; constitutes a breach of the insurer's duties to an insured or third-party
23 claimant imposed in Subsection A of this Section:

24 ~~(1)~~ (a) Misrepresenting pertinent facts or insurance policy provisions relating
25 to any coverages at issue.

26 ~~(2)~~ (b) Failing to pay a settlement within thirty days after an agreement to
27 do so is reduced to writing.

1 ~~(3)~~ (c) Denying coverage or attempting to settle a claim on the basis of an
2 application which the insurer knows was altered without notice to, or knowledge or
3 consent of, the insured.

4 ~~(4)~~ (d) Misleading a claimant as to the applicable prescriptive period.

5 ~~(e)~~ Failing to issue a copy of the insurer's field adjuster report, relative to an
6 insured's property damage claim, to an insured within fifteen days of receiving a
7 request for such from the insured.

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

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

13 C.(1) ~~In addition to any general or special damages to which a claimant is~~
14 ~~entitled for breach of the imposed duty, the claimant may be awarded penalties~~
15 ~~assessed against the insurer in an amount not to exceed two times the damages~~
16 ~~sustained or five thousand dollars, whichever is greater. Such penalties, if awarded,~~
17 ~~shall not be used by the insurer in computing either past or prospective loss~~
18 ~~experience for the purpose of setting rates or making rate filings. Except as provided~~
19 in Subsection D of this Section, in addition to the insured loss, an insurer who
20 violates Subsection A or B of this Section where the trier of fact finds that the
21 insurer's conduct is arbitrary, capricious, or without reasonable cause shall be liable
22 for each of the following:

23 (a) Any general and special damages caused by the violation.

24 (b) Reasonable attorney fees and costs, as determined by the court.

25 (2) An insurer who violates Subsection A or B of this Section where the trier
26 of fact finds that the insurer's conduct is arbitrary, capricious, or without reasonable
27 cause may also be liable for a penalty not to exceed fifty percent of the insured loss
28 or five thousand dollars, whichever is greater.

1 (3) If an insurer makes a partial payment or tender on a property damage
2 claim and the trier of fact finds that the insurer's failure to make payment in full is
3 arbitrary, capricious, or without probable cause, the insurer may be liable for a
4 penalty not to exceed the difference between the amount paid or tendered and the
5 amount found to be due, in addition to the amount found to be due and reasonable
6 attorney fees and costs.

7 (4) The penalties provided in this Subsection, if awarded, may not be used
8 by an insurer in computing either past or prospective loss experience for the purpose
9 of setting rates or making rate filings.

10 D.(1) The provisions of this Section shall not be applicable to claims made
11 under health and accident insurance policies. For claims arising as a result of a
12 declared disaster or emergency, in addition to the insured loss, an insurer who
13 violates Subsection A or B of this Section where the trier of fact finds that the
14 insurer's conduct is arbitrary, capricious, or without reasonable cause shall be liable
15 for each of the following:

- 16 (a) Any general and special damages caused by the violation.
- 17 (b) Reasonable attorney fees and costs, as determined by the courts.

18 (2) An insurer who violates Subsection A or B of this Section, relative to a
19 claim arising as a result of a declared disaster or emergency, where the trier of fact
20 finds that the insurer's conduct is arbitrary, capricious, or without probable cause
21 shall be liable for a penalty not to exceed the amount of the insured loss or ten
22 thousand dollars, whichever is greater.

23 (3) The penalties provided in this Subsection, if awarded, may not be used
24 by an insurer in computing either past or prospective loss experience for the purpose
25 of setting rates or making rate filings.

26 E.(1) If an insurer violates Paragraph (B) (1) or (3) of this Section where the
27 trier of fact finds that the insurer's conduct is arbitrary, capricious, or without
28 probable cause and the insurer does not comply with the provisions of Paragraph (B)
29 (1) or (3) of this Section within one hundred eighty days of receiving satisfactory

1 proof of loss, the insurer shall be subject to a penalty not to exceed one hundred fifty
2 percent of the insured loss or one thousand five hundred dollars, whichever is
3 greater.

4 (2) If an insurer violates Paragraph (B)(1) or (3) of this Section where the
5 trier of fact finds that the insurer's conduct is arbitrary, capricious, or without
6 probable cause and the insurer does not comply with the provisions of Paragraph (B)
7 (1) or (3) of this Section within three hundred sixty days of receiving satisfactory
8 proof of loss, the insurer shall be subject to a penalty not to exceed two hundred
9 percent of the insured loss or twenty thousand dollars, whichever is greater.

10 (3) The penalties provided in this Subsection, if awarded, may not be used
11 by an insurer in computing either past or prospective loss experience for the purpose
12 of setting rates or making rate filings.

13 F.(1) The period set forth in Subsection B of this Section for payment of
14 losses resulting from fire and the penalty provisions for nonpayment within the
15 period shall not apply where the loss from fire was arson-related and the state fire
16 marshal or other state or local investigative bodies have the loss under active arson
17 investigation. The provisions relative to time of payment and penalties shall
18 commence to run upon certification of the investigating authority that there is no
19 evidence of arson or that there is insufficient evidence to warrant further
20 proceedings.

21 (2) The provisions relative to suspension of payment due to arson shall not
22 apply to a bona fide lender which holds a valid recorded mortgage on or a properly
23 perfected security interest in the property in question.

24 (3) Whenever a property damage claim is on a personal vehicle owned by
25 the third-party claimant and, as a direct consequence of the inactions of the insurer
26 and the third-party claimant's loss, the third-party claimant is deprived of use of the
27 personal vehicle for more than five calendar days, excluding Saturdays, Sundays, and
28 holidays, the insurer responsible for payment of the claim shall pay, to the extent
29 legally responsible, for reasonable expenses incurred by the third-party claimant in

1 obtaining alternative transportation for the entire period of time during which the
2 third-party claimant is without the use of his personal vehicle. Failure to make such
3 payment within thirty days after receipt of satisfactory written proof and demand
4 therefor when such failure is found to be arbitrary, capricious, or without reasonable
5 cause shall subject the insurer to, in addition to the amount of such reasonable
6 expenses incurred, a reasonable penalty not to exceed ten percent of such reasonable
7 expenses or one thousand dollars, whichever is greater, together with reasonable
8 attorney fees for the collection of such expenses.

9 (4)(a) If an insurance policy provides for the adjustment and settlement of
10 first-party motor vehicle total losses on the basis of actual cash value or replacement
11 with another motor vehicle of like, kind, and quality, and the insurer elects a cash
12 settlement based on the actual cost to purchase a comparable motor vehicle, such
13 cost shall be derived by using one of the following:

14 (i) A fair market value survey conducted using qualified retail automobile
15 dealers in the local market area as resources. If there are no dealers in the local
16 market area, the nearest reasonable market can be used.

17 (ii) The retail cost as determined from a generally recognized used motor
18 vehicle industry source, such as a guidebook that is available to the general public
19 or an electronic database, if the valuation documents generated by the database are
20 provided to the first-party claimant. If the insured demonstrates by presenting two
21 independent appraisals based on measurable and discernable factors, including the
22 vehicle's pre-loss condition, that the vehicle would have a higher cash value in the
23 local market area than the value reflected in the source's database or the guidebook,
24 the local market value shall be used in determining the actual cash value.

25 (iii) A qualified expert appraiser selected and agreed upon by the insured and
26 insurer. The appraiser shall produce a written nonbinding appraisal establishing the
27 actual cash value of the vehicle's pre-loss condition.

1 (b) For the purposes of this Paragraph, "local market area" means a
2 reasonable distance surrounding the area where a motor vehicle is principally
3 garaged, or the usual location of the vehicle covered by the policy.

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

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

9 (ii) "Depreciation" means a decrease or loss in value, because of age, wear,
10 market conditions, or damage including but not limited to the cost of goods,
11 materials, labor, and services necessary to replace, repair, or rebuild damaged
12 property.

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

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

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

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

22 G.(1) All claims brought by insureds, workers' compensation claimants, or
23 third parties against an insurer shall be paid by check or draft of the insurer or, if
24 offered by the insurer and requested by the claimant, electronic transfer of funds to
25 the order of the claimant to whom payment of the claim is due pursuant to the policy
26 provisions, or his attorney, or upon direction of the claimant to a specified recipient.
27 Nevertheless, when the employer has advanced the claims payment to the claimant,
28 the check or draft shall be paid jointly to the claimant and the employer until the
29 amount of the advanced claims payment has been recovered by the employer.

1 (2) No insurer shall intentionally or unreasonably delay, for more than three
2 calendar days, exclusive of Saturdays, Sundays, and legal holidays, after presentation
3 for collection, the processing of any properly executed and endorsed check or draft
4 issued in settlement or payment of an insurance claim.

5 (3) Any insurer violating this Subsection shall pay the insured or claimant
6 a penalty of two hundred dollars or fifteen percent of the face amount of the check
7 or draft, whichever is greater.

8 H.(1) When making a payment incident to a claim, no insurer shall require
9 repairs be made to a motor vehicle, including window glass repairs or replacement,
10 in a particular place or shop or by a particular entity.

11 (2) An insurer shall not recommend the use of a particular motor vehicle
12 service or network of repair services without informing the insured or claimant that
13 the insured or claimant is under no obligation to use the recommended repair service
14 or network of repair services.

15 (3) An insurer shall not engage in any act or practice of intimidation,
16 coercion, or threat to induce an insured or claimant to use a specified place of
17 business for repair and replacement services.

18 (4) The commissioner may levy the following fines against any insurer that
19 violates this Subsection:

20 (a) For a first offense, one thousand dollars.

21 (b) For a second offense within a twelve-month period, two thousand five
22 hundred dollars.

23 (c) For a third or subsequent offense within a twelve-month period, five
24 thousand dollars.

25 (5) A violation of this Subsection shall constitute an additional ground,
26 pursuant to R.S. 22:1554, for the commissioner to refuse to issue a license or to
27 suspend or revoke a license issued to any producer to sell insurance in this state.

28 I.(1) An insurer shall not require that repairs, replacement, restoration, or
29 remediation be made to an insured's property by a particular preferred vendor or

1 recommended contractor when making a payment on a residential or commercial
2 property damage claim.

3 (2) An insurer shall not recommend the use of a particular preferred vendor
4 or recommended contractor without informing the insured or claimant that the
5 insured or claimant is under no obligation to use the preferred vendor or
6 recommended contractor to complete repairs, replacement, restoration, or
7 remediation of the insured's property.

8 J.(1) In the adjustment or settlement of first-party losses under fire and
9 extended coverage policies, an insurer is required to include general contractor's
10 overhead and profit in payments for losses when the services of a general contractor
11 are reasonably foreseeable. This requirement applies to policies that provide for the
12 adjustment and settlement of losses on a replacement cost basis and to policies that
13 provide for the adjustment and settlement of losses on an actual cash value basis.

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

18 K. The Insurance Guaranty Association Fund, as provided in R.S. 22:2051
19 et seq., shall not be liable for any special damages awarded ~~under~~ pursuant to the
20 provisions of this Section.

21 Section 2. R.S. 22:1892 is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 976 Original

2022 Regular Session

Larvadain

Abstract: Provides for bad faith claims against insurers.

Present law provides for the duties owed by insurers to insureds and third parties in adjusting and settling insurance claims.

Proposed law retains present law.

Present law sets forth the duties owed by insurers to insureds and third party claimants.

Proposed law retains present law and makes technical changes.

Present law provides for the payment and notification of claims.

Proposed law retains present law.

Present law provides for the initiation of loss adjustment and includes an exception in cases of catastrophic loss.

Proposed law clarifies the circumstances in which the exception applies and provides that the commissioner may promulgate a rule extending the time period within which insurers shall initiate loss adjustment by no longer than 30 days.

Present law requires insurers to make written offers to settle property damage claims within 30 days after receipt of satisfactory proof of loss.

Proposed law retains present law.

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

Proposed law clarifies the applicable standard and makes technical changes.

Proposed law reformulates the standard necessary for the award of penalties.

Present law provides for the award of general and specific damages caused by breach of the insurer's duty.

Proposed law retains present law.

Present law provides for the award of reasonable attorney fees and costs.

Proposed law retains present law and makes such remedy available in a wider range of circumstances.

Present law sets forth the penalty that may be imposed against an insurer who violates the provisions of present law.

Proposed law clarifies the damages for violating present law and increases the penalties that the court may impose upon insurers found to have violated present law.

Present law provides for losses from fire related to arson and property damage claims concerning personal motor vehicles.

Proposed law retains present law and makes technical changes.

Present law provides for insurance coverage for damaged property

Proposed law retains present law and makes technical changes.

Present law provides for the manner in which claims shall be paid.

Proposed law retains present law.

Present law provides for repairs made to motor vehicles and provides penalties for insurers who violate the provisions of present law.

Proposed law retains present law.

Present law provides that an insurer shall not require that repairs, replacement, restoration, or remediation be made to an insured's property by a particular preferred vendor or recommended contractor when making a payment on a residential or commercial property damage claim.

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

Proposed law retains present law.

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

Proposed law retains present law.

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

Proposed law retains present law.

Present law provides that beginning Jan. 1, 2022, residential property insurance policies shall contain a provision that outlines a process whereby the amount of a loss may be set through appraisal, if an insurer and insured do not agree on the amount of the loss and the insurer or insured makes a demand for such.

Proposed law repeals present law.

Present law provides an exemption from liability for the Insurance Guaranty Association Fund.

Proposed law retains present law.

Present law provides for time frames for insurers to adjust claims, make payments on claims, and offers to settle claims. Present law further provides penalties to insurers who violate the provisions established in present law.

Proposed law repeals present law but codifies some of the provisions in present law.

(Amends R.S. 22:1973; Repeals R.S. 22:1892)