

2023 Regular Session

HOUSE BILL NO. 607

BY REPRESENTATIVE CORMIER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE: Provides relative to bad faith

1

AN ACT

2 To amend and reenact R.S. 22:1892, relative to bad faith insurance claims; to provide for
3 bad faith claims; to provide for remedies for policyholders against bad faith insurers;
4 to define terms; to provide for the payment and adjustment of insurance claims; to
5 provide for the initiation of loss adjustment; to provide for written notice; to provide
6 for appraisal procedures; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 22:1892 is hereby amended and reenacted to read as follows:
9 §1892. Payment and adjustment of claims, policies other than life and health and
10 accident; vehicle damage claims; extension of time to respond to claims
11 during emergency or disaster; penalties; arson-related claims suspension

12 A. The following exclusive list of acts, if knowingly committed or performed
13 by an insurer, with such frequency to indicate a general business practice, constitutes
14 a breach of duty of good faith by the insurer:

15 (1) Failing to pay a settlement within thirty days after receipt by the insurer
16 of a written agreement executed by the claimant.

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

20 (3) Misleading a claimant as to the applicable prescriptive period.

1 (4) Failing to pay the undisputed amount of any claim due to any person or
2 entity insured by the contract within sixty days after receipt of satisfactory proof of
3 loss from any person or entity insured by the contract when such failure is arbitrary
4 and capricious. In cases of mass catastrophic loss, failing to pay the amount of any
5 claim due to any person insured by the contract within ninety days after receipt of
6 satisfactory proof of loss from any person or entity insured by the contract when such
7 failure is arbitrary and capricious. The period does not begin to run until written
8 receipt of satisfactory proof of loss.

9 (5) Failing to pay claims pursuant to R.S. 22:1893 when such failure is
10 arbitrary and capricious.

11 B. An insurer's reliance on a reasonable coverage defense or defenses for not
12 paying, only paying in part, or delaying in paying a claim shall not constitute bad
13 faith. Failing to meet the deadlines in Subsection A of this Section alone shall not
14 constitute bad faith absent arbitrary and capricious behavior from the insurer.

15 C.(1) "Satisfactory proof of loss" means receipt by an insurer of an itemized
16 statement by a licensed adjuster that fully apprises the insurer of the amount of
17 damages claimed.

18 (2) "Arbitrary and capricious" means a willful and unreasonable refusal of
19 a claim, not based on a good faith defense and without consideration and regarding
20 for the facts and circumstances provided.

21 (3) "Mass catastrophic loss" means any disaster or emergency declaration
22 by executive order or proclamation of the governor pursuant to the Louisiana
23 Homeland Security and Emergency Assistance and Disaster Act or by emergency
24 rules or regulations issued by the Commissioner of Insurance as permitted pursuant
25 to R.S. 22:11.

26 D. The Insurance Guaranty Association Fund, as provided in R.S. 22:2051
27 et seq., shall not be liable for any special damages awarded pursuant to the
28 provisions of this Section.

1 E.(1) As a condition precedent to bringing an action pursuant to this Section,
2 the Louisiana Department of Insurance and the insurer shall have been provided sixty
3 days' written notice of the violation by the claimant. Notice to the insurer shall then
4 be provided by the Louisiana Department of Insurance to the e-mail address
5 designated by the insurer.

6 (2) The notice shall be on a form provided by the Louisiana Department of
7 Insurance and shall state with specificity the following information and such other
8 information as the Louisiana Department of Insurance may require:

9 (a) The statutory provision, including the specific language of the statute,
10 which the authorized insurer violated.

11 (b) The facts and circumstances giving rise to the violation.

12 (c) The name of any insurer or individual involved in the violation.

13 (d) Reference to specific policy language that is relevant to the violation, if
14 any. If the person bringing the civil action is a third-party claimant, this person shall
15 not be required to refer to the specific policy language if the authorized insurer has
16 not provided a copy of the policy to the third-party claimant pursuant to written
17 request.

18 (e) A statement that the notice is given in order to perfect the right to pursue
19 the civil remedy authorized by this Section.

20 (3) No action shall lie if, within sixty days after the insurer receives notice
21 from the department in accordance with this subsection, the damages are paid or the
22 circumstances giving rise to the violation are corrected.

23 (4) The insurer who is the recipient of a notice filed pursuant to this Section
24 shall report to the department on the disposition of the alleged violation.

25 (5) A claimant may not bring an action against the insurer at any time prior
26 to the running of sixty days after giving notice to the insurer of the violation. If a
27 claim is not resolved during the presuit notice process and if the time limits provided
28 in this Subsection expire in the thirty days following the conclusion of the presuit
29 notice process, such time limits are tolled for thirty days.

1 F. (1) All insurers issuing any type of contract, other than those specified in
2 R.S. 22:1811, 1821, and Chapter 10 of Title 23 of the Louisiana Revised Statutes of
3 1950, shall pay the amount of any claim due any insured within thirty days after
4 receipt of satisfactory proofs of loss from the insured or any party in interest. The
5 insurer shall notify the insurance producer of record of all such payments for
6 property damage claims made in accordance with this Paragraph.

7 (2) All insurers issuing any type of contract, other than those specified in
8 R.S. 22:1811, R.S. 22:1821, and Chapter 10 of Title 23 of the Louisiana Revised
9 Statutes of 1950, shall pay the amount of any third party property damage claim and
10 of any reasonable medical expenses claim due any bona fide third party claimant
11 within thirty days after written agreement of settlement of the claim from any third
12 party claimant.

13 (3) Except in the case of catastrophic loss, the insurer shall initiate loss
14 adjustment of a property damage claim and of a claim for reasonable medical
15 expenses within fourteen days after notification of loss by the claimant. In the case
16 of catastrophic loss, the insurer shall initiate loss adjustment of a property damage
17 claim within thirty days after notification of loss by the claimant except that the
18 commissioner may promulgate a rule for extending the time period for initiating a
19 loss adjustment for damages arising from a presidentially declared emergency or
20 disaster or a gubernatorially declared emergency or disaster up to an additional thirty
21 days. Thereafter, only one additional extension of the period of time for initiating
22 a loss adjustment may be allowed and must be approved by the Senate Committee
23 on Insurance and the House Committee on Insurance, voting separately. Failure to
24 comply with the provisions of this Paragraph shall subject the insurer to the penalties
25 provided in R.S. 22:1973.

26 (4) All insurers shall make a written offer to settle any property damage
27 claim, including a third-party claim, within thirty days after receipt of satisfactory
28 proofs of loss of that claim.

1 (5) An insurer shall issue a copy of the insurer's field adjuster report,
2 relative to the insured's property damage claim, to the insured within fifteen days of
3 receiving a written request for such from the insured. A penalty of five hundred
4 dollars shall be assessed for failure to provide field adjuster reports within fifteen
5 days.

6 (6) G. If an insurer issues a check, draft, or other negotiable instrument that
7 is jointly payable to an insured and a mortgagee or mortgage servicer as payment of
8 insurance settlement proceeds for multiple types of coverage, the insurer shall
9 provide with the check, draft, or other negotiable instrument a statement indicating
10 the dollar amount of insurance settlement proceeds paid under each type of coverage
11 including but not limited to dwelling, personal property, and additional living
12 expenses. In lieu of issuing a statement pursuant to this Paragraph, an insurer may
13 issue separate checks, drafts, or other negotiable instruments for payment of each
14 type of coverage.

15 B. (H.)(1)(a) Except as provided in Subparagraph (b) of this Paragraph,
16 failure to make such payment within thirty sixty days after receipt of such
17 satisfactory written proofs and demand therefor or failure to make a written offer to
18 settle any property damage claim, including a third-party claim, within thirty sixty
19 days after receipt of satisfactory proofs of loss, as defined by Subsection C of this
20 Section, of that claim, as provided in Paragraphs (A)(1) and (4) of this Section,
21 respectively, or failure to make such payment within thirty days after written
22 agreement or settlement as provided in Paragraph (A)(2) of this Section only when
23 such failure is found to be arbitrary; and capricious, ~~or without probable cause;~~ shall
24 subject the insurer to a penalty, in addition to the amount of the loss, of fifty twenty-
25 five percent damages on the amount found to be due from the insurer to the insured,
26 or one thousand dollars, whichever is greater, payable to the insured, or in the event
27 a partial payment or tender has been made, fifty twenty-five percent of the difference
28 between the amount paid or tendered and the amount found to be due ~~as well as~~
29 ~~reasonable attorney fees and costs.~~ Such penalties, if awarded, shall not be used by

1 the insurer in computing either past or prospective loss experience for the purpose
2 of setting rates or making rate filings.

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

21 (2) The period set herein for payment of losses resulting from fire and the
22 penalty provisions for nonpayment within the period shall not apply where the loss
23 from fire was arson related and the state fire marshal or other state or local
24 investigative bodies have the loss under active arson investigation. The provisions
25 relative to time of payment and penalties shall commence to run upon certification
26 of the investigating authority that there is no evidence of arson or that there is
27 insufficient evidence to warrant further proceedings.

(4) Whenever a property damage claim is on a personal vehicle owned by the third party claimant and as a direct consequence of the inactions of the insurer and the third party claimant's loss the third party claimant is deprived of use of the personal vehicle for more than five working days, excluding Saturdays, Sundays, and holidays, the insurer responsible for payment of the claim shall pay, to the extent legally responsible, for reasonable expenses incurred by the third party claimant in obtaining alternative transportation for the entire period of time during which the third party claimant is without the use of his personal vehicle. Failure to make such payment within thirty days after receipt of adequate written proof and demand therefor, when such failure is found to be arbitrary; and capricious; or ~~without probable cause~~ shall subject the insurer to, in addition to the amount of such reasonable expenses incurred, a reasonable penalty not to exceed ten percent of such reasonable expenses or one thousand dollars whichever is greater ~~together with reasonable attorneys fees for the collection of such expenses.~~

23 (a) A fair market value survey conducted using qualified retail automobile
24 dealers in the local market area as resources. If there are no dealers in the local
25 market area, the nearest reasonable market can be used.

1 independent appraisals, based on measurable and discernable factors, including the
2 vehicle's preloss condition, that the vehicle would have a higher cash value in the
3 local market area than the value reflected in the source's database or the guidebook,
4 the local market value shall be used in determining the actual cash value.

5 (c) A qualified expert appraiser selected and agreed upon by the insured and
6 insurer. The appraiser shall produce a written nonbinding appraisal establishing the
7 actual cash value of the vehicle's preloss condition.

8 (d) For the purposes of this Paragraph, local market area shall mean a
9 reasonable distance surrounding the area where a motor vehicle is principally
10 garaged, or the usual location of the vehicle covered by the policy.

11 (6)(a) For the purposes of this Paragraph the following terms have the
12 meanings ascribed to them:

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

16 (ii) "Depreciation" means depreciation including but not limited to the cost
17 of goods, materials, labor, and services necessary to replace, repair, or rebuild
18 damaged property.

19 (b) An insurance policy covering damaged property may allow for
20 depreciation.

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

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

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

28 ~~E. L.~~(1) All claims brought by insureds, workers' compensation claimants,
29 or third parties against an insurer shall be paid by check or draft of the insurer or, if

1 offered by the insurer and the claimant requests, electronic transfer of funds to the
2 order of the claimant to whom payment of the claim is due pursuant to the policy
3 provisions, or his attorney, or upon direction of the claimant to one specified;
4 however, the check or draft shall be made jointly to the claimant and the employer
5 when the employer has advanced the claims payment to the claimant. The check or
6 draft shall be paid jointly until the amount of the advanced claims payment has been
7 recovered by the employer.

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

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

15 **D.J.** (1) When making a payment incident to a claim, no insurer shall require
16 repairs be made to a motor vehicle, including window glass repairs or replacement,
17 in a particular place or shop or by a particular entity.

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

22 (3) An insurer shall not engage in any act or practice of intimidation,
23 coercion, or threat to use a specified place of business for repair and replacement
24 services.

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

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

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

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

6 E. K.(1) An insurer shall not require that repairs, replacement, restoration,
7 or remediation be made to an insured's property by a particular preferred vendor or
8 recommended contractor when making a payment on a residential or commercial
9 property damage claim.

15 F-L(1) In the adjustment or settlement of first-party losses under fire and
16 extended coverage policies, an insurer is required to include general contractor's
17 overhead and profit in payments for losses when the services of a general contractor
18 are reasonably foreseeable. This requirement applies to policies that provide for the
19 adjustment and settlement of losses on a replacement cost basis and to policies that
20 provide for the adjustment and settlement of losses on an actual cash value basis.

25 **E. M.** Residential property insurance policies shall contain the following
26 provision, with permission to substitute the words "this company" with a more
27 accurate descriptive term for the insurer:

28 "Appraisal. If you and this Company fail to agree as to the amount of loss,
29 either party may demand that the amount of the loss be set by appraisal. If either

1 party makes a written demand for appraisal, each party shall select a competent and
2 disinterested appraiser and notify the other party of their appraiser's identity within
3 twenty days of receipt of the written demand for appraisal. The appraisers shall
4 select a competent and impartial umpire who has specialized knowledge in the field.
5 If after fifteen days the appraisers have not agreed upon who will serve as umpire,
6 the umpire shall be appointed by a judge of the court of record in which the property
7 is located. The appraisers shall appraise the loss. If the appraisers submit written
8 notice of an agreement as to the amount of the loss to this Company, the amount
9 agreed upon shall set the amount of the loss. If the appraisers fail to agree within
10 thirty days, the appraisers shall submit their differences along with any supporting
11 documentation to the umpire, who shall appraise the loss. The appraisers may
12 extend the time to sixty days for which they shall agree upon the amount of loss or
13 submit their differences and supporting documents to the umpire, if the extension is
14 agreed to by the appraisers from both parties. A written agreement signed by the
15 umpire and either party's appraiser shall set the amount of the loss, pursuant to the
16 appraisal process, but shall not preclude either party from exercising its rights under
17 the policy or the law. Each appraiser shall be paid by the party selecting that
18 appraiser. Other expenses of the appraisal and the expenses of the umpire shall be
19 divided and paid in equal shares by you and this Company. If there is an appraisal
20 award, all applicable policy terms, limits, deductibles, and conditions shall apply.
21 If you file a lawsuit relative to this policy against this Company prior to a demand
22 for appraisal, the lawsuit will be held in abatement during the period between a
23 timely demand for appraisal and the deadline for execution of an appraisal award,
24 pursuant to this clause. The court of record in which the property is located may
25 enforce the deadlines of this clause, set a reasonable deadline for timely demanding
26 appraisal after all parties have filed pleadings in a lawsuit, and require compliance
27 with discovery and disclosure obligations relative to aspects of the lawsuit unrelated
28 to the appraisal." Timely payment of an appraisal award shall not be considered a

1 late payment. No penalties shall be awarded based on payment of an appraisal
2 award.

3 N. This Section shall not be construed to authorize a class action suit against
4 any insurer solely for recovery of penalties in accordance with this Section.

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 607 Original

2023 Regular Session

Cormier

Abstract: Provides for the defining of "bad faith", the adjustment of the appraisal process for disputes between claimants and insurers, and penalties for bad faith insurers.

Present law provides that all insurers issuing any type of contract, other than those specified in R.S. 22:1811, 1821, and Chapter 10 of Title 23 of the La. Revised Statute of 1950, shall pay the amount of any claim due to any insured within 30 days after receipt of satisfactory loss from the insured.

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

Present law provides that the insurer must notify the insurance producer of record of all such disbursements for property damage claims made in accordance with present law.

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

Present law provides that all insurers issuing any type of contract, other than those specified in R.S. 22:1811, 1821, and Chapter 10 of Title 23 of the La. Revised Statute of 1950, shall pay the amount of any third party property damage claim and of any reasonable medical expenses claim due to any bona fide third party claimant within 30 days after written agreement of settlement of the claim from any third party claimant.

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

Present law provides that the insurer shall initiate loss adjustment of a property damage claim and of a claim for reasonable medical expenses within 14 days after notification of loss by the claimant.

Present law provides that in the case of a catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim within 30 days after notification of loss by the claimant. Present law further provides an exception in cases of catastrophic loss.

Proposed law retains present law but changes the time period from 30 days to 90 days.

Present law mandates that an insurer shall make a written offer to settle any property damage claim, including a third party claim, within 30 days after receipt of satisfactory proofs of loss of that claim.

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

Present law mandates that an insurer shall issue a copy of the insurer's field adjuster report, relative to the insured's property damage claim, to the insured within 15 days of receiving a request for such from the insured.

Proposed law retains present law and makes technical changes.

Present law provides that if an insurer issues a check, draft, or other negotiable instrument that is jointly payable to an insured and a mortgage or mortgage servicer as payment of insurance settlement proceeds for multiple types of coverage, the insurer shall provide with the check, draft, or other negotiable instrument a statement indicating the dollar amount of insurance settlement proceeds paid under each type of coverage. Present law further provides that an insurer may issue separate checks, drafts, or other negotiable instruments for payment of each type of coverage in lieu of issuing a statement.

Proposed law retains present law and makes technical changes.

Proposed law provides that the following exclusive list of acts, if knowingly committed or performed by an insurer, with such frequency to indicate a general business practice constitutes a breach of contract:

- (1) Failing to pay a settlement within 30 days after receipt by the insurer of a written agreement executed by the claimant.
- (2) Denying 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, the insured.
- (3) Misleading a claimant as to the applicable prescriptive period.
- (4) Failing to pay the undisputed amount of any claim due to any person or entity insured by the contract within 60 to 90 days after receipt of satisfactory proof of loss from any person or entity insured by the contract when such failure is arbitrary and capricious.
- (5) Failing to pay claims when such failure is arbitrary and capricious.

Proposed law defines "bad faith" and clarifies the circumstances in which an insurer shall be deemed in "bad faith."

Proposed law defines "satisfactory proof of loss", "arbitrary and capricious", and "mass catastrophic loss".

Proposed law mandates that the Insurance Guaranty Association Fund shall not be liable for any special damages awarded.

Proposed law sets forth the steps that a claimant must take when an insurer is in violation of this provision of law.

Present law provides that when an insurer fails to make a payment to the claimant within 30 days after receipt of such satisfactory written proofs and demand therefor or failure to make a written offer to settle any property damage claim.

Proposed law retains present law but changes the time delay from 30 days to 60 days.

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

Present law provides that the La. Dept. of Insurance shall subject the insurer to a penalty, in addition to the amount of the loss, of 50% in damages when he violates any provision of this law.

Proposed law retains present law but decreases the penalty from 50% to 25%.

Proposed law provides for technical changes.

Present law mandates and requires that a residential property insurance policy contain a clause that generates, expounds upon, and provides for an appraisal process.

Proposed law retains present law and makes technical changes.

Proposed law provides that timely payment of an appraisal award shall not be considered a late payment.

Proposed law provides that this provision of law shall not be construed to authorize a class action suit against any insurer solely for recovery of penalties.

(Amends R.S. 22:1892)