

1 adjustment of a property damage claim and of a claim for reasonable medical
 2 expenses within fourteen days after notification of loss by the claimant. In the case
 3 of catastrophic loss, the insurer shall initiate loss adjustment of a property damage
 4 claim within thirty days after notification of loss by the claimant except that the
 5 commissioner may promulgate a rule for extending the time period for initiating a
 6 loss adjustment for damages arising from a presidentially declared emergency or
 7 disaster or a gubernatorially declared emergency or disaster up to an additional thirty
 8 days. Thereafter, only one additional extension of the period of time for initiating a
 9 loss adjustment may be allowed and ~~must~~ **shall** be approved by the Senate
 10 Committee on Insurance and the House Committee on Insurance, voting separately.
 11 Failure to comply with the provisions of this Paragraph shall subject the insurer to
 12 ~~the penalties provided in R.S. 22:1973~~ **a penalty not to exceed five thousand**
 13 **dollars.**

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

20 * * *

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

22 B.(1)(a) Except as provided in Subparagraph (b) of this Paragraph, failure to
 23 make ~~such~~ payment within thirty days after receipt of ~~such~~ satisfactory written
 24 proofs and demand therefor or failure to make a written offer to settle any property
 25 damage claim, including a third-party claim, within thirty days after receipt of
 26 satisfactory proofs of loss of that claim, as provided in Paragraphs (A)(1) and (4) of
 27 this Section, respectively, or failure to make ~~such~~ **the** payment within thirty days
 28 after written agreement or settlement ~~as provided in Paragraph (A)(2) of this Section~~
 29 when ~~such~~ **the** failure is found to be arbitrary, capricious, or without probable cause,

1 shall subject the insurer to a penalty, in addition to the amount of the loss, of fifty
2 percent damages on the amount found to be due from the insurer to the insured, **plus**
3 **any proven economic damages sustained as a result of the breach**, or one
4 thousand dollars, whichever is greater, payable to the insured, or in the event a
5 partial payment or tender has been made, fifty percent of the difference between the
6 amount paid or tendered and the amount found to be due **plus any proven economic**
7 **damages sustained as a result of the breach** as well as **in either instance**
8 reasonable attorney fees and costs. ~~Such~~ **The** penalties, if awarded, shall not be used
9 by the insurer in computing either past or prospective loss experience for the purpose
10 of setting rates or making rate filings.

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

1 provisions of this Paragraph shall not be applicable.

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

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

8 (ii) "Immovable property" means a tract of land with its component
9 part, including a manufactured or modular home as defined in R.S. 51:911.22.

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

12 * * *

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

15 * * *

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

24 I.(1) An insurer, including but not limited to a foreign line or surplus line
25 insurer, owes to his insured a duty of good faith and fair dealing. The insurer
26 has an affirmative duty to adjust claims fairly and promptly and to make a
27 reasonable effort to settle claims with the insured or the claimant, or both. This
28 duty does not create a separate cause of action, but the provisions of Subsection
29 B of this Section and R.S. 22:1892.2, as appropriate, shall be applicable to any

1 breach of these duties.

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

5 (a) Misrepresenting pertinent facts or insurance policy provisions
6 relating to any coverages at issue.

7 (b) Failing to pay a settlement within thirty days after an agreement is
8 reduced to writing.

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

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

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

15 J.(1) The insured, claimant, and representatives of the insured or
16 claimant also have a duty of good faith and fair dealing when asserting a claim
17 for insurance coverage. An insured, claimant, or representative of the insured
18 or claimant shall not knowingly submit an estimate or claim for damages which
19 he knows does not have a good faith evidentiary basis. This duty does not create
20 a separate cause of action but may only be considered in accordance with
21 Paragraph (2) of this Subsection.

22 (2) In any action against an insurer pursuant to this Section or R.S.
23 22:1892.2, if the trier of fact determines that the insured, claimant, or
24 representative of the insured or claimant violated the provisions of this
25 Subsection, the insured or claimant is not eligible to recover penalties or
26 attorney fees otherwise provided for in accordance with R.S. 22:1892 and R.S.
27 22:1892.2.

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

1 the insured or their representative, hereinafter referred to in this Section as the
2 cure period notice.

3 (2) The cure period notice may be through either a form provided by the
4 department or by formal written demand giving sufficient notice of the facts
5 and circumstances of the dispute.

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

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

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

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

25 (7) If any suit is filed prior to transmitting the cure period notice
26 required by this Subsection, it shall be automatically stayed until sixty days
27 after the cure period notice is received. The delay for answering any suit shall
28 automatically be extended until thirty days after the end of the cure period. If
29 the insurer timely pays the full amount demanded as provided for in Paragraph

1 (3) of this Subsection, any cause of action prematurely filed shall be subject to
2 dismissal at the insured's cost.

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

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

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

25 (4) Nothing in this Subsection shall be construed to prohibit an insured
26 from making a supplemental claim, nor to relieve an insurer from the obligation
27 to conduct a supplemental investigation, or to make a supplemental payment,
28 if warranted by the facts of a supplemental claim. A supplemental claim adds
29 newly found damage or additional costs to the original claim. The fact that an

1 insurer makes a supplemental payment shall not itself be construed as evidence
2 of a violation of this Section or R.S. 22:1892.

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

6 E. The provisions of this Section shall not be applicable to claims made
7 under health and accident insurance policies.

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

16 G. The commissioner may promulgate rules and regulations providing
17 for an expedited claims process in the event of a catastrophe.

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

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

DIGEST

SB 323 Original

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 to exceed \$5,000.

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 Louisiana Insurance Guaranty Association and Louisiana Citizens Property Insurance Corporation.

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

Proposed law provides an insurer owes to his insured a duty of good faith and fair dealing.

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

- (1) Misrepresenting pertinent facts or insurance policy provisions relating to any coverages at issue.
- (2) Failing to pay a settlement within thirty days after an agreement is reduced to writing.
- (3) 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 of, the insured.
- (4) Misleading a claimant as to the applicable prescriptive period.
- (5) Failing 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 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 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 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 provides the commissioner may promulgate rules and regulations for expedited claims process in the event of a catastrophe.

Effective August 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)