

2024 Regular Session

SENATE BILL NO. 323

BY SENATORS TALBOT AND BASS

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

1 AN ACT

2 To amend and reenact R.S. 22:1892(A)(3) and (4), (B)(1), and (H), to enact R.S.

3 22:1892(A)(7), (B)(7), (I), (J), and (K), and 1892.2, and to repeal R.S. 22:1973,

4 relative to claims settlement practices; to provide definitions; to provide for loss

5 adjustment; to provide for the payment of claims; to provide for practices following

6 a catastrophe; to provide for good faith duty; to provide for breach of good faith

7 duty; to provide for certain notices; to provide for penalties; to provide for causes of

8 action; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 22:1892(A)(3) and (4), (B)(1), and (H) are hereby amended and

11 reenacted and R.S. 22:1892(A)(7), (B)(7), (I), (J), and (K), and 1892.2 are hereby enacted

12 to read as follows:

13 §1892. Payment and adjustment of claims; policies other than life and health and

14 accident; good faith duty; breach of good faith duty; vehicle

15 damage claims; extension of time to respond to claims during

16 emergency or disaster; penalties; arson-related claims suspension

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

1 both. Any insurer that breaches the duties of this Subsection shall be liable for  
2 any proven economic damages sustained as a result of the breach. For claims  
3 not involving loss to an insured's immovable property, the insured may be  
4 awarded penalties in an amount not to exceed fifty percent of the damages  
5 sustained or five thousand dollars, whichever is greater, together with attorney  
6 fees and costs actually incurred due to the breach. Any penalty for breach of a  
7 duty imposed by this Subsection based solely upon a failure to pay the amount  
8 of any claim due any person insured by the contract within the period provided  
9 by law following receipt of satisfactory proof of loss shall be awarded only if the  
10 breach is found to be arbitrary, capricious, or without probable cause.

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

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

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

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

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

24 (d) A misrepresentation to a claimant as to the applicable prescriptive  
25 period.

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

28 (3) The provisions of this Subsection shall not create a separate cause of  
29 action against a representative of the insurer distinct and apart from the cause

1 of action against the insurer.

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

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

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

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

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

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

20 (4) In any action against an insurer pursuant to this Section or R.S.  
21 22:1892.2, if the trier of fact determines that the insured, claimant, or  
22 representative of the insured or claimant violated the provisions of this  
23 Subsection, the trier of fact shall consider that conduct in determining whether  
24 or not the insured is to be awarded penalties or attorney fees otherwise provided  
25 for in accordance with R.S. 22:1892 and 1892.2.

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

29 K. The provisions of this Section shall not be applicable to claims made

1 under life and health and accident insurance policies.

2 \* \* \*

3 §1892.2. Catastrophic loss claims settlement practices; penalties and attorney  
4 fees

5 A.(1) An insurer shall not violate any provision of this Section or R.S.  
6 22:1892(A)(4) or (I).

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

11 (3) For catastrophic losses arising under an insurance policy for  
12 immovable property, other than residential property, an insurer shall transmit  
13 payment of the amount of any claim due to any insured within ninety days after  
14 receipt of satisfactory written proof of loss. The timeline provided for in this  
15 Paragraph may be extended up to thirty additional days by the commissioner  
16 for commercial policies insuring multiple locations.

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

29 (2) Claims for penalties and attorney fees pursuant to this Section are

1 subject to a liberative prescription of two years.

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

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

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

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

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

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

28 (7) If any suit is filed prior to transmitting the cure period notice  
29 required by this Subsection, it shall be automatically stayed until sixty days



1 after the cure period notice is received. The delay for answering any suit shall  
2 automatically be extended until thirty days after the end of the cure period. If  
3 the insurer timely pays the full amount demanded as provided for in Paragraph  
4 (3) of this Subsection, any cause of action prematurely filed shall be subject to  
5 dismissal at the insured's cost.

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

10 (2) Nothing in this Subsection shall be construed to relieve an insurer of  
11 its obligation to transmit payment of the amount of any claim due to any  
12 insured within the deadline following receipt of satisfactory proof of loss  
13 concerning the amount as set forth in Paragraphs (A)(2) and (A)(3) of this  
14 Section, nor to extend any deadline for payment when the requested  
15 information or inspection is found by the trier of fact to be unnecessary  
16 considering all other proof of the loss then available to the insurer.

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

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

27 E. The provisions of this Section shall not be applicable to claims made  
28 under any type of policy or contract of insurance specified in R.S. 22:1811 or  
29 1821 or Chapter 10 of Title 22 of the Louisiana Revised Statutes of 1950.

1                    **F. The Louisiana Insurance Guaranty Association, as provided in R.S.**  
 2                    **22:2051 et seq., and the Louisiana Citizens Property Insurance Corporation, as**  
 3                    **provided in R.S. 22:2291 et seq., shall not be subject to the provisions of Code**  
 4                    **of Civil Procedure Article 591 et seq., or any other provision allowing a class**  
 5                    **action, for any damages, that includes any penalties awarded pursuant to the**  
 6                    **provisions of this Section. The Louisiana Insurance Guaranty Association, as**  
 7                    **provided in R.S. 22:2051 et seq., shall also not be liable for any special damages**  
 8                    **or penalties provided for in this Section.**

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

10                  Section 3. The Louisiana State Law Institute is hereby authorized and directed to  
 11                  revise the Code of Evidence and Title 22 of the Louisiana Revised Statutes of 1950, to  
 12                  change all references to "R.S. 22:1973" to "R.S. 22:1892" or "R.S. 22:1892.2", including but  
 13                  not limited to Code of Evidence Article 411(B)(3) and R.S. 22:41(13), 1296(B)(3)(d),  
 14                  1332(B)(4), and 1893(D).

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

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

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DIGEST

SB 323 Reengrossed

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.

Proposed law provides any penalty for breach of a duty that is based solely on failure to pay the amount of the claim due within the time required by proposed law following receipt of satisfactory proof of loss will only be awarded a penalty if the breach is found to be arbitrary, capricious, or without cause.

Proposed law requires an insurer transmit payment due for a catastrophic loss of a residential property within 60 days after receipt of satisfactory proof of loss.

Proposed law requires an insurer transmit payment due for a catastrophic loss of an immovable property within 90 days after receipt of satisfactory proof of loss.

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 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 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.

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Makes technical changes.
2. Clarifies what constitutes a breach of the good faith duty for an insurer.
3. Clarifies the time period a payment is due for a catastrophic loss of an immovable property.
4. Clarifies the time period a payment is due for a catastrophic loss of a residential property.