

1 of catastrophic loss, the insurer shall initiate loss adjustment of a property damage
 2 claim within thirty days after notification of loss by the claimant except that the
 3 commissioner may promulgate a rule for extending the time period for initiating a
 4 loss adjustment for damages arising from a presidentially declared emergency or
 5 disaster or gubernatorially declared emergency or disaster up to an additional thirty
 6 days. Thereafter, only one additional extension of the period of time for initiating
 7 a loss adjustment may be allowed and must be approved by the Senate Committee
 8 on Insurance and the House Committee on Insurance, voting separately. Failure to
 9 comply with the provisions of this Paragraph **when the failure has been arbitrary,**
 10 **capricious, or without probable cause** shall ~~may~~ subject the insurer to the penalties
 11 provided in R.S. 22:1973. **For the purposes of this Paragraph, initiation of loss**
 12 **adjustment includes but is not limited to any of the following conduct:**

13 **(a) A reasonable attempt by the insurer to contact the claimant to set an**
 14 **appointment to discuss the claim or to conduct an inspection of the property.**

15 **(b) An oral, written, or electronic communication sent by the insurer to**
 16 **the claimant outlining the claims process.**

17 **(c) An advance of funds by the insurer to the claimant that is**
 18 **accompanied by an oral, written, or electronic communication that includes an**
 19 **explanation of the claims process.**

20 **(d) A reasonable attempt to begin the investigation of the claim,**
 21 **including but not limited to a reasonable attempt to contact witnesses, to inspect**
 22 **any property or accident scenes related to the claim, or to determine the value**
 23 **of the claim.**

24 * * *

25 §1973. Good faith duty; claims settlement practices; cause of action; penalties

26 * * *

27 B. Any one of the following acts, if knowingly committed or performed by
 28 an insurer, constitutes a breach of the insurer's duties imposed in Subsection A **of**
 29 **this Section:**

* * *

(6) Failing to **initiate loss adjustment of a claim pursuant to R.S. 22:1892**
or to pay claims pursuant to R.S. 22:1893 when such failure is arbitrary, capricious,
or without probable cause. **Factors to be considered in determining the amount**
of a penalty to be awarded, if any, pursuant to Subsection C of this Section
include but are not limited to whether the insured sustained any actual
damages, the reasonableness of the insurer's conduct in light of all the
circumstances related to the claim, and whether there were extenuating
circumstances that affected the insurer's ability to pay the claim or initiate the
loss adjustment.

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The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Cheryl Horne.

DIGEST

Present law requires payment of any claim due any insured within 30 days after receipt of satisfactory proofs of loss from the insured or any party in interest. Further requires all insurers to pay the amount of any third party property damage claim and of any reasonable medical expenses claim due any bona fide third party claimant within 30 days after written agreement of settlement of the claim from any third party claimant.

Present law provides that except in the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim and of a claim for reasonable medical expenses within 14 days after notification of loss by the claimant. Further provides that in the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim within 30 days after notification of loss by the claimant except that the commissioner may promulgate a rule for extending the time period for initiating a loss adjustment. Failure to comply with present law shall subject the insurer to penalties provided in present law.

Proposed law retains present law and adds that failure to comply with present law when the failure has been arbitrary, capricious, or without probable cause may subject the insurer to the penalties provided in present law. Further provides that initiation of loss adjustment includes but is not limited to any of the following:

- (1) A reasonable attempt by the insurer to contact the claimant to set an appointment to discuss the claim or to conduct an inspection of the property.
- (2) An oral, written, or electronic communication sent by the insurer to the claimant outlining the claims process.
- (3) An advance of funds by the insurer to the claimant that is accompanied by an oral, written, or electronic communication that includes an explanation of the claims process.
- (4) A reasonable attempt to begin the investigation of the claim, including but not

limited to a reasonable attempt to contact witnesses, to inspect any property or accident scenes related to the claim, or to determine the value of the claim.

Present law provides that an insurer owes to his insured a duty of good faith and fair dealing which includes an affirmative duty to adjust claims fairly and promptly and to make a reasonable effort to settle claims. Further specifies certain acts that constitute a breach of the insurer's duties to the insured.

Proposed law retains present law and adds factors to be considered in determining the amount of a penalty to be awarded, if any, pursuant to present law including whether the insured sustained any actual damages, the reasonableness of the insurer's conduct in light of all the circumstances related to the claim, and whether there were extenuating circumstances that affected the insurer's ability to pay the claim or initiate loss adjustment.

Effective August 1, 2012.

(Amends R.S. 22:1892(A)(3) and 1973(B)(6))