

Regular Session, 2012

SENATE BILL NO. 311

BY SENATOR LAFLEUR

INSURANCE CLAIMS. To provide relative to the payment and adjustment of insurance claims and the good faith duty and claims settlement practices. (8/1/12)

1 AN ACT

2 To amend and reenact R.S. 22:1892(A)(3) and 1973(B)(6), relative to the payment and
3 adjustment of insurance claims; to provide with respect to the good faith duty and
4 claims settlement practices; to provide a definition for initiation of loss adjustment;
5 to provide factors to be considered in determining the penalty to be awarded in the
6 event of a certain violation; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 22:1892(A)(3) and 1973(B)(6) are hereby amended and reenacted
9 to read as follows:

10 §1892. Payment and adjustment of claims, policies other than life and health and
11 accident; personal vehicle damage claims; extension of time to
12 respond to claims during emergency or disaster; penalties; arson-
13 related claims suspension

14 A.(1) * * *

15 (3) Except in the case of catastrophic loss, the insurer shall initiate loss
16 adjustment of a property damage claim and of a claim for reasonable medical
17 expenses within fourteen days after notification of loss by the claimant. In the case

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 **not to exceed sixty days.** ~~for damages arising from a presidentially~~
 5 ~~declared emergency or disaster or gubernatorially declared emergency or disaster up~~
 6 ~~to an additional thirty days. Thereafter, only one additional extension of the period~~
 7 ~~of time for initiating a loss adjustment may be allowed and must be approved by the~~
 8 ~~Senate Committee on Insurance and the House Committee on Insurance, voting~~
 9 ~~separately.~~ Failure to comply with the provisions of this Paragraph shall subject the
 10 insurer to the penalties provided in R.S. 22:1973. **For the purposes of this**
 11 **Paragraph, initiation of loss adjustment shall be satisfied if the insurer**
 12 **establishes one of the following:**

- 13 **(a) The insurer has unconditionally tendered all undisputed amounts**
- 14 **owed.**
- 15 **(b) The insurer has met with the insured.**
- 16 **(c) The insurer has proof that an inspection of the property has taken**
- 17 **place within the time periods established in this Paragraph.**

18 **The provisions of this Paragraph shall become effective August 1, 2012.**

19 * * *

20 §1973. Good faith duty; claims settlement practices; cause of action; penalties

21 * * *

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

25 * * *

26 (6) Failing to **initiate loss adjustment of a claim pursuant to R.S. 22:1892**
 27 **or to** pay claims pursuant to R.S. 22:1893 when such failure is arbitrary, capricious,
 28 or without probable cause. **Factors to be considered in determining the amount**
 29 **of a penalty to be awarded, if any, pursuant to Subsection C of this Section**

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))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Insurance to the original bill.

1. Permits the commissioner to promulgate a rule for extending the time period for initiating a loss adjustment not to exceed 60 days.
2. Removes the ability of the commissioner to promulgate a rule for extending the time period for initiating a loss adjustment for damages arising from a presidentially declared emergency or disaster or gubernatorially declared emergency or disaster up to an additional 30 days. Further removes the provision for only one additional extension of the period of time for initiating a loss adjustment that must be approved by the Senate Committee on Insurance and the House Committee on Insurance, voting separately.
3. Removes the reference to the failure to comply with the time extensions when the failure has been arbitrary, capricious, or without probable cause.
4. Provides that initiation of loss adjustment shall be satisfied if the insurer establishes one of the following:
 - (a) The insurer has unconditionally tendered all undisputed amounts owed.
 - (b) The insurer has met with the insured.
 - (c) The insurer has proof that an inspection of the property has taken place within the established time periods.
5. Requires the provisions of proposed law to be effective August 1, 2012.