

Louisiana Property Insurance Claims Statutory Handbook 2022

Select Provisions of the Louisiana Insurance Code

Sample

About the Book

Compiled with policyholders, first party property insurance claim adjusters and insurance attorneys in mind, this Louisiana Property Insurance Claims Statutory Handbook contains select provisions of Title 22 of the Revised Statutes, known as the Louisiana Insurance Code. It focuses on laws affecting immovable (real) property insurance claims. For example, statutes covering the Policyholder Bill of Rights, Standard Fire Policy, Payment of Claims, and the duty of Good Faith and Fair Dealing are included. See the Table of Contents below for a complete listing.

Current through the 2021 Legislative Sessions.

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TITLE 22. INSURANCE CODE

CHAPTER 1. GENERAL PROVISIONS

PART I. TITLE, DEFINITIONS, CLASSIFICATIONS, AND OTHER REGULATORY MATTERS

SUBPART D. INSURANCE IN GENERAL

§41. Policyholder bill of rights

The following items exist in Louisiana statutes and shall serve as standards for a policyholder bill of rights and do not create additional causes of actions or further penalties not otherwise provided under Louisiana statutes:

(1) Policyholders shall have the right to competitive pricing practices and marketing methods that enable them to determine the best value among comparable coverage in accordance with R.S. 22:1964.

(2) Policyholders shall have the right to insurance advertising that is not false and other selling approaches that provide accurate and balanced information on the benefits and limitations of a policy in accordance with R.S. 22:1965.

(3) Policyholders shall have the right to an insurance company that is financially stable.

(4) Policyholders shall have the right to be treated fairly and be free from unfair or deceptive acts or practices in accordance with R.S. 22:1961 et seq.

(5) Policyholders shall have the right to receive service from competent, honest insurance producers that will answer their questions promptly.

(6) Policyholders shall have the right to receive the appropriate disclosure form as an insert in the front of the policy that complies with R.S. 22:1319 and 1332.

(7) Policyholders shall have the right to balanced and positive regulation by the Department of Insurance.

(8) Policyholders shall have the right to check the license status of an insurance company, producer, or adjuster.

(9) Policyholders shall have the right to receive written notice of cancellation or nonrenewal at least thirty days prior to the effective date of the cancellation or nonrenewal, unless

the cancellation or nonrenewal is for non-payment of premium and shall have the right to protection from improper cancellation or nonrenewal in accordance with R.S. 22:1265 and 1333.

(10) Policyholders shall have the right to receive in writing the reason for any cancellation or nonrenewal of coverage. The written statement must provide an explanation for the cancellation or nonrenewal of coverage.

(11) Policyholders shall have the right to cancel their policy and receive a refund of any unearned premium. If a policy was funded by a premium finance company, the unearned premium will be returned to the premium finance company to pay toward the policyholder's financing loan.

(12) Policyholders shall have the right to a written notification detailing any change in policy provisions at renewal.

(13) Policyholders shall have the right to receive payment of the amount of any property damage claim, or a portion of the claim, due or a written offer to settle any property damage claim within thirty days after receipt of satisfactory proof of loss in accordance with the provisions of R.S. 22:1892 and 1973. If a claim is denied, policyholders shall have the right to receive a written explanation as to the reason for denial, in whole or in part, of any claim made under their policy of insurance.

(14) Relative to first party property damage claims, policyholders shall have the right to request and receive from the insurance company any estimates, bids, plans, measurements, drawings, engineer reports, contractor reports, statements or documents that are not legally privileged that the insurance company prepared, had prepared, or used during its adjustment of the policyholder's claim. A company may keep confidential adjuster notes, logs, and any documents prepared in conjunction with a fraud investigation.

(15) Policyholders shall have the right to file a complaint against any insurance company, producer, or adjuster with the Department of Insurance, and have that complaint investigated by the department.

(16) Policyholders shall have the right to a readable policy, to receive a complete property insurance policy, and to request a duplicate or replacement policy as needed.

(17) Policyholders shall have the right to the remedies provided for in R.S. 22:1892 if an insurer violates that Section in the handling of the claim.

Acts 2007, No. 222, §1, eff. July 2, 2007; Redesignated from R.S. 22:1455 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009; Acts 2009, No. 503, §1; Acts 2018, No. 27, §1.

CHAPTER 4. INSURANCE AND INSURANCE CONTRACT REQUIREMENTS BY TYPE OF INSURANCE

PART I. INSURANCE AND POLICY REQUIREMENTS IN GENERAL

§853. Insurable interest required; property insurances

A. No contract of insurance on property or of any interest therein or arising therefrom shall be enforceable except for the benefit of persons having an insurable interest in the things insured.

B. "Insurable interest" as used in this Chapter means any lawful and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage.

Acts 1958, No. 125; Redesignated from R.S. 22:614 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009; Acts 2010, No. 375, §1, eff. Jan. 1, 2011.

§854. Interest of the insured

A. When the name of a person intended to be insured is specified in the policy, such insurance can be applied only to his own proper interest. This Section shall not apply to life, annuity, or health and accident insurance.

B. With regard to loss by fire, the wrongful or malicious actions of a named insured that are determined to be the cause of the loss to the insured property shall not be imputed to any other insured such that the innocent insured would be deprived of coverage provided by the policy. In case of a fire that is set intentionally, the policy proceeds may only be reduced by the proper interest attributable to the insured that set the fire or otherwise participated in the cause of the loss. In the case of multiple named insureds, an innocent insured shall receive his proportionate share of the policy proceeds.

Acts 1958, No. 125; Acts 2007, No. 156, §1, eff. June 25, 2007; Redesignated from R.S. 22:615 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009; Acts 2010, No. 375, §1, eff. Jan. 1, 2011.

§1264. Presumption of coverage

A. For losses that arose due to a catastrophic event for which a state of disaster or emergency was declared pursuant to law by civil officials, for those areas within the declaration, no damages to covered property shall be automatically denied by the inability of the policyholder to provide sufficient proof of loss within the time limits and requirements of the policy. The time limit for the submission of proof of loss shall be not less than one hundred eighty days. The time limit shall not commence as long as a declaration of emergency is in existence and civil authorities are denying the insured access to the property.

B. For losses that arose due to a catastrophic event for which a state of disaster or emergency was declared pursuant to law by civil officials, for those areas within the declaration, any policyholder with replacement cost provisions shall be entitled to complete repairs to the property within one year from the date of the loss or the issuance of applicable insurance proceeds, whichever is later. Adherence to this provision shall entitle the policyholder with a replacement cost provision to receive full value of the covered damage that has been repaired, without reduction due to depreciation.

C. The provisions of this Section shall be applicable to all new policies and renewal policies delivered in the state of Louisiana after April 18, 2006.

Acts 2006, 1st Ex. Sess., No. 23, §1; Redesignated from R.S. 22:682 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

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SUBPART D. HOMEOWNERS' INSURANCE

§1331. Personal property coverage; option to exclude

A. (1) Upon a disaster being declared by the governor or the president of the United States or any officer acting under presidential authority, any insurance company that issues a homeowner's insurance policy, as defined in R.S.22:47, that includes personal property coverage in the affected area, shall make available during the term of the policy, upon written request of a policyholder, one of the following options:

(a) A residential property policy that provides dwelling coverage without personal property coverage.

(b) An exclusion of personal property coverage.

(2) Upon the exercise of either option by the policyholder, the insurer shall calculate an appropriate reduction in premium that shall be returned to the policyholder.

(3) The option provided in Paragraph (1) of this Subsection shall not be available to the policyholder after the passage of twenty-four months from the date the disaster declaration is made.

B. Notwithstanding any provision of law to the contrary, the substitute policy or exclusion of personal property coverage that occurs during the term of the policy shall not be considered a new policy. This Section shall apply only to homeowners' insurance policies written on structures rendered uninhabitable as determined by the local governing authority or insurer because they sustained extensive damage to more than fifty percent of the dwelling area. In addition, the insurer may withdraw the exclusion or substitute policy when one of the following has occurred:

(1) The structure has been repaired to the point that it is again habitable.

(2) The homeowner's policy has been terminated.

(3) The expiration of twenty-four months from the date of the disaster declaration.

Acts 2007, No. 449, §1, Para. (A)(1) eff. July 20, 2007, Para. (A)(2) eff. July 11, 2007; Acts 2008, No. 125, §1; Redesignated from R.S. 22:667.1 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009; Acts 2017, No. 219, §1, eff. Jan. 1, 2018.

§1332. Delivery of homeowners' insurance; disclosures

A. In addition to any other requirement contained in law, the provisions of this Section shall govern the issuance of homeowners' insurance policies issued or delivered in this state which provide coverage for damage to property in this state.

B. No homeowners' insurance policy which provides coverage for damage to property shall be delivered or issued for delivery in this state with respect to any residential property unless the

insurer advises the insured in writing, prominently displayed on a form developed and promulgated by the commissioner of insurance and in bold typed print of not less than a fourteen-point font as an insert in the front of the policy, of the following disclosures:

- (1) Which coverages are included in the policy for which the insured has paid premiums.
- (2) Whether or not the insured has coverage for flood or mold. The disclosure shall also state that flood insurance is available through the National Flood Insurance Program and that excess flood insurance may be available by a separate policy.
- (3) A distinction between replacement cost for losses and actual cash value, the use of depreciation in determining payment for losses, and that the policy may contain time limitations for repairs to be completed in order to receive full replacement cost for the losses.
- (4) That the policy determines the process for providing the insurer with a notification of a loss, and the time line provided by law, including R.S. 22:1892 and 1893, of when a claim must be adjusted, settled, and paid, including an explanation of the possible penalties imposed on an insurer for failing to conform to the time requirements.
- (5) That the insured may have the option to increase the deductible and thus lower the potential cost paid.
- (6) Whether a separate deductible is required for hurricane, wind, or named-storm damage, and, if so, one standardized example of how such separate deductible will be applied under the policy. Such example need not be customized for each policyholder.
- (7) That making a claim that does not exceed the policy deductible and that does not result in a payment either to the insured or on behalf of the insured may be used by the insurer to increase the cost of the policy's premium in the future or as part of the basis for cancellation of the policy. Insurers that do not use such claims to increase the cost of the policy's premium or as part of the basis for cancellation of the policy shall be exempt from the disclosure requirements of this Paragraph.
- (8) That improvements or modifications to the property such as adding storm shutters, modifying the roof design, and improving the roof covering may reduce the cost of the policy's premium and advising the homeowner to contact the insurance producer or insurer for details on qualifying improvements or modifications.

C. Any disclosure provided pursuant to this Section shall be for informational purposes only and shall not amend, extend, or alter the coverages provided in the policy. In addition, any such notice shall not be admissible in any action brought concerning the policy of insurance except for the sole purpose of showing that the notice was or was not provided pursuant to this Section.

Acts 2006, 1st Ex. Sess., No. 42, §1; Acts 2006, No. 438, §1; Redesignated from R.S. 22:1477 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009; Acts 2009, No. 36, §1, eff. Jan. 1, 2010; Acts 2016, No. 274, §1, special eff. date; Acts 2019, No. 194, §1, special effective date.

§1333. Homeowner's insurance; insurer's nonrenewal without cause; inclusion in insured's file prohibited; certain prohibitions

A. Whenever a policy of homeowner's insurance is not renewed by the insurer and such nonrenewal is without cause, the fact of such nonrenewal shall not be retained in the insured's file with that insurer. Such nonrenewal shall not be considered a cancellation or nonrenewal for cause. The insurer shall not utilize such nonrenewal as a reason for an increase in the insured's rate or premium for equivalent coverage to that which was not renewed.

B. In this Section, nonrenewal "without cause" shall not include nonrenewal by the insurer for any of the following reasons:

- (1) Nonrenewal at the request of the insured.
- (2) Failure of the insured to pay the agreed premium.
- (3) Fraud on the part of the insured.
- (4) Material misrepresentation of a material fact in application for a new policy or for renewal of an existing policy.

C. No insurer providing property, casualty, or liability insurance shall cancel or fail to renew a homeowner's policy of insurance or to increase the policy deductible that has been in effect and renewed for more than three years unless based on nonpayment of premium, fraud of the insured, a material change in the risk being insured, two or more claims within a continuous three-year period of time within the five years preceding the current policy renewal date, or if continuation of such policy endangers the solvency of the insurer. This Subsection shall not apply to an insurer that withdraws from the homeowners' insurance market in this state or to policy deductibles increased for all homeowners' insurance policies in this state. For the purposes of this Subsection, an incident shall be deemed a claim only when there is a demand for payment by the insured or the insured's representative under the terms of the policy. A report of a loss or a question relating to coverage shall not independently establish a claim. As used in this Subsection, the phrase "two or more claims within a continuous three-year period of time within the five years preceding the current policy renewal date" shall not include any loss incurred or arising from an "Act of God" incident which is due directly to forces of nature and exclusively without human intervention.

D. Notwithstanding the provisions of Subsection C of this Section, an insurer may make a filing with the commissioner pursuant to R.S. 22:1464 for authorization to deviate from the provisions of Subsection C of this Section for the sole purpose of changing the policy deductible to a total deductible of not more than four percent of the value of the property being insured for named storms or hurricanes on a homeowner's policy of insurance that has been in effect for more than three years. Any insurer filing with the commissioner pursuant to this Subsection shall file with the commissioner a business plan setting forth the insurer's plan to write new business in the particular region or area of the state in which the new deductible is to apply. The commissioner's approval is to be based on the insurer's commitment to the writing of new business in the respective region or area of the state in which the new deductible is to apply. The commissioner may also

approve a filing that he determines to be in the best interest of the policyholders. The commissioner may subsequently rescind his approval of any filing made pursuant to this Subsection in the event the insurer fails to write new business in accordance with the business plan. Any business plan filed shall be considered proprietary or trade secret pursuant to information under the provisions of R.S. 44:3.2 and the Uniform Trade Secrets Act. The commissioner shall provide an annual report to the legislative committees on insurance on the application and effectiveness of the provisions of this Section. The commissioner shall promulgate regulations pursuant to the Administrative Procedure Act setting forth the criteria for the filing, including any financial or other requirements that he deems necessary to act on the request by an insurer. Any regulation promulgated by the commissioner pursuant to this Subsection shall require the insurer to itemize to the insured the premium savings based on the increase in the insured's deductible.

E. No homeowner's policy of insurance shall contain any provision that would apply more than one deductible to a loss resulting from any single incident covered by the policy. Any such provision shall be null and void and unenforceable as contrary to public policy.

F. Any company which makes a filing pursuant to Subsection D of this Section shall reduce the rates paid by the individual homeowner by the amount determined to be actuarially justified by the commissioner.

G. Any authorized property and casualty insurer that avails itself of the provisions of Subsection C of this Section relative to withdrawing from the homeowners' insurance market may not issue any homeowners' insurance coverage in this state during the five-year period beginning on the date of the discontinuation of the last homeowner's insurance coverage not so renewed. The commissioner may, for good cause shown pursuant to a written request by the insurer, permit the insurer to reenter the homeowners' insurance market prior to the expiration of the five-year period.

H. Any approved unauthorized property and casualty insurer that avails itself of the provisions of Subsection C of this Section relative to withdrawing from the homeowners' insurance market may not issue any homeowners' insurance coverage in this state during the five-year period beginning on the date of the discontinuation of the last homeowners' insurance coverage not so renewed. The commissioner may, for good cause shown pursuant to a written request by the insurer, permit the insurer to reenter the homeowners' insurance market prior to the expiration of the five-year period.

Acts 1988, No. 460, §1; Acts 1992, No. 594, §1; Acts 1996, 1st Ex. Sess., No. 71, §1, eff. May 10, 1996; Acts 2003, No. 456, §3; Acts 2007, No. 381, §1, eff. July 10, 2007; Redesignated from R.S. 22:635.3 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009; Acts 2008, No. 854, §1, eff. July 9, 2008; Acts 2010, No. 703, §1, eff. Jan. 1, 2011; Acts 2014, No. 353, §1.

[§1334. Homeowners insurance policies; conversion of policy forms](#)

A. With the approval of the commissioner of insurance an insurer may convert an entire class of homeowner policies to another homeowner policy form, which has been submitted to and approved by the commissioner, as those homeowners policies are renewed. The terms and conditions of such policies, subject to the conversion, shall be continued in full force and effect

for the term of the policy. The conversion provided for in this Section shall not constitute the cancellation or nonrenewal of any policy and shall not be grounds for the cancellation or nonrenewal of any policy by the insurer.

B. A conversion by an insurer shall be deemed approved by the commissioner unless disapproved within forty-five days of the filing of the proposed conversion with the commissioner.

C. All homeowner insurance policies, which have been properly filed and converted pursuant to this Section and the conversion of which will result in a rate change, shall be subject to the laws governing rate changes under Subpart O of Part IV of Chapter 4 of this Title, R.S. 22:1451 et seq.

Acts 2004, No. 358, §1; Acts 2005, No. 258, §1; Redesignated from R.S. 22:635.4 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

§1335. Homeowner's insurance; cancellation, nonrenewal

A. An insurer that has issued a policy of homeowner's insurance shall not fail to renew the policy unless it has mailed or delivered to the named insured, at the address shown in the policy, written notice of its intention not to renew. The notice of nonrenewal shall be mailed or delivered at least thirty days before the expiration date of the policy. If the notice is mailed less than thirty days before expiration, coverage shall remain in effect under the terms and conditions until thirty days after the notice is mailed or delivered. Any earned premium for the period of coverage extended beyond the expiration date shall be considered pro rata based upon the rate of the previous year.

B. The notice of nonrenewal shall not be required if the insurer or a company within the same insurance group has offered to issue a renewal policy, or if the named insured has provided written notification to the insurer of the intention of the insured not to renew.

Acts 1991, No. 774, §1; Redesignated from R.S. 22:636.6 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

§1336. Homeowner's insurance; acts of God

No insurer shall cancel, fail to renew, or increase the amount of the premium, except upon an area-wide rating basis at the beginning of a new policy period, on a homeowner's policy of insurance based solely upon a loss caused by an "Act of God". An "Act of God" shall mean, in this Section, an incident due directly to natural causes and exclusively without human intervention.

Acts 1992, No. 70, §1; Redesignated from R.S. 22:1471 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

§1337. Homeowners' insurance deductibles applied to named-storms, hurricanes, and wind and hail deductibles

A. For purposes of this Section, the following definitions shall apply:

(1) "Hurricane" means a storm system that has been declared a hurricane by the National Hurricane Center of the National Weather Service.

(2) "Named storm" means a storm system that has been declared a named storm by the National Hurricane Center of the National Weather Service.

(3) "Separate deductible" means a deductible that applies to damage incurred during a specified weather event and may be expressed as a percentage of the insured value of the property or as a specific dollar amount and includes hurricane, named-storm, and wind and hail deductibles.

B. For all homeowners' insurance policies or other policies insuring a one- or two-family owner occupied premises for fire and allied lines, issued or renewed by authorized insurers on or after January 1, 2010, any separate deductible that applies in place of any other deductible to loss or damage resulting from a named storm or hurricane shall be applied on an annual basis to all named-storm or hurricane losses that are subject to the separate deductible during the calendar year.

C. If an insured incurs named-storm or hurricane losses from more than one named storm or hurricane during a calendar year that are subject to the separate deductible referred to in Subsection B of this Section, the insurer may apply a deductible to the succeeding named storms or hurricanes that is equal to the remaining amount of the separate deductible, or the amount of the deductible that applies to all perils other than a named storm or hurricane, whichever is greater. Insurers may require policyholders to maintain receipts or other records of such losses in order to apply such losses to subsequent named storm or hurricane claims.

Acts 2009, No. 134, §1, effective June 2, 2009.

SUBPART D.-1 Residential Flood Insurance (Effective January 1, 2022)

§ 22:1341. Definitions

For purposes of this Subpart, the following definitions apply:

(1) "Flood" means a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties, at least one of which is the policyholder's property, from any of the following:

(a) Overflow of inland or tidal waters.

(b) Unusual and rapid accumulation or runoff of surface waters from any source.

(c) Mud flow.

(d) Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined in this Paragraph.

(2) "Hurricane" means a storm system that has been declared a hurricane by the National Hurricane Center of the National Weather Service.

(3) "Named storm" means a storm system that has been declared a named storm by the National Hurricane Center of the National Weather Service.

(4) "Residential flood coverage" means insurance for the peril of flood for homeowner's, condominium owner's, renter's, and tenant's dwelling, mobile home, and manufactured housing, and similar policies.

(5) "Separate named storm or hurricane deductible" means a deductible that applies to flood damage incurred during a named storm or hurricane and may be expressed as a percentage of the insured value of the property or as a specific dollar amount. All of the following shall apply to a separate deductible:

(a) The insurer shall not apply the separate named storm or hurricane deductible in addition to another deductible.

(b) There shall be one separate named storm or hurricane deductible in a calendar year, which shall apply to all named storm or hurricane losses during the calendar year.

(c) The insurer may apply to each flood loss event the greater of the remaining amount of the separate named storm or hurricane deductible or the amount of any other standard flood deductible.

(d) The insurer may require policyholders to maintain receipts or other records of such losses in order to apply such losses to a subsequent flood loss incurred during a named storm or hurricane claims.

(6) "Standard flood deductible" means a deductible that applies to flood damage incurred during any event and may be expressed as a percentage of the insured value of the property or as a specific dollar amount.

(Added by Acts 2021, No. 77,s. 1, eff. 1/1/2022.)

§1342. Applicability

A. Notwithstanding any provision of law to the contrary, this Subpart shall govern the regulation of any insurance policy, contract, or endorsement providing residential flood coverage on any structure or the contents of personal property contained therein.

B. This Subpart does not apply to either of the following:

- (1) Commercial lines insurance.
- (2) Surplus lines insurance.

C. Louisiana Citizens Property Insurance Corporation shall not provide residential flood coverage.

(Added by Acts 2021, No. 77, s. 1, eff. 1/1/2022.)

§1343. Residential flood coverage; notices; plan of operation

In addition to other requirements, an insurer providing residential flood coverage shall do all of the following:

- (1) Notify the commissioner at least thirty days before writing residential flood policies in this state.
- (2) File a plan of operation, financial projections, and any revisions to either, as applicable, with the commissioner.
- (3) Note prominently on the policy declarations page the residential flood coverage premiums, deductibles, and policy limits.
- (4) Notify the commissioner, writing at least sixty days prior to the market end date of residential flood coverage and advise regarding all of the following:
 - (a) If an approved policy form will no longer be marketed in this state.
 - (b) If an approved policy form will be permanently withdrawn from this state.
 - (c) Whether residential flood coverage issued in this state under a discontinued or withdrawn policy form will remain in force.
 - (d) Whether existing residential flood coverage issued in this state under a discontinued or withdrawn policy form will continue to be renewed.
 - (e) The policy form numbers being discontinued or withdrawn and the dates of original approval.

(Added by Acts 2021, No. 77, s. 1, eff. 1/1/2022.)

§1344 Residential flood coverage; policy types

A. In addition to excess flood insurance, insurers may issue any of the following types of residential flood coverage:

(1) Standard flood insurance, which covers only losses from the peril of flood in a manner equivalent to that provided under the National Flood Insurance Program, including standard flood deductibles and adjustment of losses.

(2) Preferred flood insurance, which includes all of the following:

(a) The same coverage as standard flood insurance.

(b) Coverage for losses from water intrusion originating from outside the structure that are not otherwise covered by a flood policy.

(c) Coverage for additional living expenses.

(d) A requirement that any loss under personal property or contents coverage be adjusted only on the basis of replacement costs up to the policy limits.

(3) Customized flood insurance, which includes coverage that is broader than the coverage provided under standard flood insurance.

(4) Flexible flood insurance, which covers losses from the peril of flood and may also include coverage for losses from water intrusion originating from outside the structure, that is not otherwise covered. Flexible flood insurance shall include one or more of the following provisions:

(a) An agreement between the insurer and the insured that the flood coverage is in a specified amount, such as coverage that is limited to the total amount of each outstanding mortgage applicable to the covered property.

(b) A requirement for a separate named storm or hurricane deductible.

(c) A requirement that flood loss to a dwelling be adjusted in accordance with R.S. 22:1264 or adjusted only on the basis of the actual cash value of the property.

(d) A restriction limiting residential flood coverage to the principal building defined in the policy.

(e) A provision including or excluding coverage for additional living expenses.

(f) A provision excluding coverage for personal property and contents as to the peril of flood.

(5) Supplemental flood insurance, which may provide coverage designed to supplement a flood policy obtained from the National Flood Insurance Program or from an insurer issuing standard or preferred flood insurance pursuant to this Section. Supplemental flood insurance may provide coverage for any of the following:

(a) Jewelry.

(b) Art.

§1345 Residential flood coverage; rates

For an insurer writing residential flood coverage, either of the following shall apply:

(1) An insurer may establish and use residential flood coverage rates in accordance with the provisions of R.S. 22:1451 and 1454.

(2) For residential flood coverage rates filed with the commissioner before January 1, 2027, all of the following shall apply:

(a) An insurer shall establish and use rates in accordance with the rates, rating schedules, or rating manuals filed by the insurer with the commissioner, which allow the insurer a reasonable rate of return on residential flood coverage written in this state.

(b) Rates established pursuant to this Paragraph are not subject to R.S. 22:1451.

(c) Within thirty days after the effective date of the change, the insurer shall notify the commissioner of any change to previously established rates and of the average statewide percentage change in rates.

(d) Actuarial data with regard to rates for residential flood coverage shall be maintained by the insurer for two years after the effective date of the rate change and is subject to examination by the commissioner. The commissioner may require the insurer to incur the costs associated with an examination. Upon examination, the commissioner, in accordance with generally accepted and reasonable actuarial techniques, shall consider the rate factors and standards in R.S. 22:1454, to determine if the rate is excessive, inadequate, or unfairly discriminatory.

(e) If the commissioner determines that a rate is excessive or unfairly discriminatory, the commissioner shall require the insurer to provide appropriate credit to any affected policyholders and an appropriate refund to any affected former policyholders.

(Added by Acts 2021, No. 77, s. 1, eff. 1/1/2022.)

§1346. Notices regarding flood coverage

A. (1) A producer shall provide written notice to be signed by the applicant before a producer places residential flood coverage with an authorized or surplus lines insurer for a property receiving flood coverage from the National Flood Insurance Program. The notice required by this Subsection shall inform the applicant of all of the following:

(a) Coverage under the National Flood Insurance Program is provided at a subsidized rate.

(b) If the applicant discontinues coverage under the National Flood Insurance Program, the full risk rate may apply to the property if the applicant later seeks coverage under the National Flood Insurance Program.

(2) If an applicant does not have flood coverage, a producer shall inform the applicant of the existence of the National Flood Insurance Program.

B. (1) An insurer writing standard flood insurance policies, preferred flood insurance policies, customized flood insurance policies, flexible flood insurance policies, residential flood insurance policies using a different definition of "flood" than that used in R.S. 22:1341, or residential flood insurance policies with terms and conditions other than those described in R.S. 22:1344, shall make one of the following certifications:

(a) "This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a (b)(7) and the corresponding regulation." A certification made under this Subparagraph shall also contain a separate statement providing: "This policy provides at least the coverage of the standard flood insurance policy under the National Flood Insurance Program."

(b) "This policy does not meet the definition of private flood insurance contained in 42 U.S.C. 4012a (b)(7) and the corresponding regulation." A certification made under this Subparagraph shall also contain a separate statement providing: "This policy provides less coverage than the standard flood insurance policy under the National Flood Insurance Program."

(2) The certifications required pursuant to this Subsection shall be in writing on the declarations page of the policy in bold typed print of not less than a fourteen point font.

(Added by Acts 2021, No. 77, s. 1, eff. 1/1/2022.)

PART IV. CLAIMS ADJUSTERS

§1661. Definitions

As used in this Part, unless the context requires otherwise, the following definitions shall be applicable:

(1) "Adjuster" means an individual who investigates or adjusts losses on behalf of an insurer as an independent contractor or as an employee of:

- (a) An adjustment bureau;
- (b) An association;
- (c) A property and casualty producer;
- (d) An independent contractor;
- (e) An insurer; or
- (f) A managing general agent.

(2) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

(3) "Fingerprints" means an impression of the lines on the finger taken for purpose of identification. The impression may be electronic or in ink converted to electronic format.

(4) "Home state" means the District of Columbia and any state or territory of the United States in which the adjuster's principal place of residence or principal place of business is located. If neither the state in which the adjuster maintains the principal place of residence nor the state in which the adjuster maintains the principal place of business has a substantially similar law governing adjusters, the adjuster may declare another state in which he becomes licensed and acts as an adjuster to be the "home state".

(5) "Individual" means a natural person.

(6) "Insurer" means any type of insurer, whether authorized or unauthorized, conducting business in this state.

(7) "Person" means an individual or a business entity.

(8) "Uniform individual application" means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Individual Application for resident and nonresident individuals.

(9) "Uniform business entity application" means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Business Entity Application for resident and nonresident business entities.

Acts 2006, No. 783, §1, eff. Jan. 1, 2007; Redesignated from R.S. 22:1210.71 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009; Acts 2015, No. 193, §1.

NOTE: Former R.S. 22:1661 redesignated as R.S. 22:839 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

§1662. General exemptions

This Part does not apply to:

(1) An attorney at law admitted to practice in this state, when acting in his professional capacity as an attorney.

(2)(a) An employee of an insurer who is not regularly engaged in the adjustment or investigation of insurance claims.

(b) An individual employed by an insurer who adjusts a loss not to exceed five hundred dollars or authorizes a payment on a claim for a loss for which there is a specified coverage limit of five hundred dollars or less, arising from a first party claim under a property and casualty insurance policy.

(3) A person employed only to furnish technical assistance to a licensed adjuster, including but not limited to an investigator, an attorney, an engineer, an estimator, a handwriting expert, a photographer, and a private detective.

(4) A producer of an authorized insurer or a licensed employee of a producer who processes an undisputed or uncontested loss for the insurer under a policy issued by the producer.

(5) A person who performs clerical duties and does not negotiate with parties on disputed or contested claims.

(6)(a) An individual who collects claim information from, or furnishes claim information to, insureds or claimants, who conducts data entry including entering data into an automated claims adjudication system if such individual is an employee of a business entity licensed pursuant to this Chapter, or an employee of an affiliate of a business entity licensed pursuant to the Chapter, if there are no more than twenty-five individuals under the supervision of one licensed individual adjuster or licensed individual insurance producer. As used in this Part, "automated claims adjudication system" means a preprogrammed computer system designed for the collection, data entry, calculation and system generated final resolution of consumer electronic products insurance claims which:

(i) May be utilized only by a licensed adjuster or licensed producer, or supervised individuals operating pursuant to this Paragraph;

(ii) Must comply with all claims payment requirements of the Louisiana Insurance Code; and

(iii) Must be certified as compliant with this Section by a licensed adjuster that is an officer of a licensed business entity under this Chapter.

(b) Individuals who are licensed as producers pursuant to R.S. 22:1543 are not required to be licensed as an adjuster for purposes of this Section.

(7) A person who handles claims arising under life, accident, and health insurance policies.

(8) A person who is employed principally as a right-of-way agent or a right-of-way and claims agent whose primary responsibility is the acquisition of servitudes, leases, permits, or other real property rights and who handles only claims arising out of operations under those servitudes, leases, permits, or other contracts or contractual obligations.

(9) An individual who is employed to investigate suspected fraudulent insurance claims but who does not adjust losses or determine claims payments.

(10) A full-time salaried employee of a property owner or a property management company retained by a property owner who either does not hold the employee out as an insurance adjuster or who has not been hired to handle a specific claim resulting from a fire or casualty loss and who acts at the sole discretion of the property owner or management company regarding a claim related to the owner's property.

(11) A person who handles claims arising under vehicle mechanical breakdown insurance policies as defined in R.S. 22:371.

(12) A person who handles claims arising under property residual value insurance policies as defined in R.S. 22:381.

(13) Repealed by Acts 2016, No. 174, §2, eff. Aug. 1, 2017.

(14) A person handling commercial claims for excess coverages as classified by R.S. 22:47.

(15) A person who settles only reinsurance or subrogation claims.

Acts 2006, No. 783, §1, eff. Jan. 1, 2007; Redesignated from R.S. 22:1210.72 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009; Acts 2010, No. 1007, §1; Acts 2011, No. 94, §1, eff. Jan. 1, 2012; Acts 2016, No. 174, §2, eff. Aug. 1, 2017; Acts 2017, No. 29, §1.

§1663. License required

A. A person shall not act or hold himself out as a claims adjuster in this state unless the person is licensed as a claims adjuster in accordance with this Part.

B. A business entity acting as a claims adjuster is required to obtain a claims adjuster license. Application shall be made using the uniform business entity application. Before approving the application, the commissioner of insurance shall find that:

(1) The business entity has paid the fees set forth in R.S. 22:821.

(2) The business entity has designated a licensed adjuster responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state.

Acts 2006, No. 783, §1, eff. Jan. 1, 2007; Redesignated from R.S. 22:1210.73 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

§1664. Application for claims adjuster license

A. Any person who is either employed or contracts to perform services in Louisiana as an adjuster shall obtain a license to do so from the Department of Insurance. A person applying for a claims adjuster license shall make application to the commissioner of insurance on the appropriate uniform application or other application required by the commissioner of insurance.

B. The applicant shall declare under penalty of perjury and under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the applicant's knowledge and belief.

C.(1) In order to make a determination of eligibility, the commissioner of insurance is authorized to require fingerprints of applicants and submit the fingerprints and the fee required to perform the criminal history record checks to the Louisiana Bureau of Criminal Identification and Information and the Federal Bureau of Investigation (FBI) for state and national criminal history record checks. The commissioner of insurance shall require a criminal history record check on each applicant in accordance with this Part. The commissioner of insurance shall require each applicant to submit a full set of fingerprints in order for the commissioner of insurance to obtain and receive National Criminal History Records from the FBI Criminal Justice Information Services Division.

(2) All business entities applying to do business as independent adjusting companies shall provide a listing of all executive officers and directors of the applicant and of all executive officers and directors of entities controlling and any individuals controlling, directly or indirectly, ten percent or more of the outstanding voting securities of the applicant. In order to make a determination of eligibility, the commissioner may require any person listed pursuant to this Paragraph to submit addresses, social security numbers, criminal and administrative history, fingerprints, background checks, and biographical statements. For purposes of this Section, "control" has the meaning provided in R.S. 22:691.2.

PART V. PUBLIC ADJUSTERS

§1691. Purpose

This Part governs the qualifications and procedures for the licensing of public adjusters. It specifies the duties of and restrictions on public adjusters, which include limiting their licensure to assisting insureds in first-party claims in a manner which avoids the unauthorized practice of law as defined in R.S. 37:212 and 213.

Acts 2006, No. 806, §1; Redesignated from R.S. 22:1210.91 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

§1692. Definitions

As used in this Part, unless the context requires otherwise, the following definitions shall be applicable:

- (1) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.
- (2) "Fingerprints" means an impression of the ridges on the finger taken for purpose of identification. The impression may be electronic or in ink converted to electronic format.
- (3) "First-party claim" means a claim made by an insured or a policyholder under an insurance policy or contract that arises out of the occurrence of the contingency or loss covered by the policy or contract.
- (4) "Home state" means the District of Columbia or any state or territory of the United States in which the public adjuster's principal place of residence or principal place of business is located. If neither the state in which the public adjuster maintains the principal place of residence nor the state in which the public adjuster maintains the principal place of business has a substantially similar law governing public adjusters, the public adjuster may declare another state in which he becomes licensed and acts as a public adjuster to be the "home state".
- (5) "Individual" means a natural person.
- (6) "Person" means an individual or a business entity.
- (7) "Public adjuster" means any person who, for any compensation, direct or indirect, engages in public adjusting.
- (8) "Public adjusting" means either of the following:
 - (a) Investigating, appraising, or evaluating and reporting to an insured in relation to a first-party claim for which coverage is provided by an insurance contract that insures the property of the insured. Public adjusting does not include acting in any manner in relation to claims for damages

CHAPTER 6. PAYMENT OF CLAIMS

PART III. PROPERTY AND CASUALTY INSURANCE CLAIMS PAYMENTS

§ 22:1892. Payment and adjustment of claims, policies other than life and health and accident; vehicle damage claims; extension of time to respond to claims during emergency or disaster; penalties; arson-related claims suspension

A. (1) 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 Louisiana Revised Statutes of 1950, shall pay the amount of any claim due any insured within thirty days after receipt of satisfactory proofs of loss from the insured or any party in interest. The insurer shall notify the insurance producer of record of all such payments for property damage claims made in accordance with this Paragraph.

(2) All insurers issuing any type of contract, other than those specified in R.S. 22:1811, R.S. 22:1821, and Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950, shall 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 thirty days after written agreement of settlement of the claim from any third party claimant.

(3) 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 fourteen days after notification of loss by the claimant. In the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim within thirty 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 for damages arising from a presidentially declared emergency or disaster or a gubernatorially declared emergency or disaster up to an additional thirty days. Thereafter, only one additional extension of the period of time for initiating a loss adjustment may be allowed and must be approved by the Senate Committee on Insurance and the House Committee on Insurance, voting separately. Failure to comply with the provisions of this Paragraph shall subject the insurer to the penalties provided in R.S. 22:1973.

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

(5) 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 fifteen days of receiving a request for such from the insured.

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

in addition to the amount of the loss, of fifty percent damages on the amount found to be due from the insurer to the insured, or one thousand dollars, whichever is greater, payable to the insured, or in the event a partial payment or tender has been made, fifty percent of the difference between the amount paid or tendered and the amount found to be due as well as reasonable attorney fees and costs. Such penalties, if awarded, shall not be used by the insurer in computing either past or prospective loss experience for the purpose of setting rates or making rate filings.

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

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

(3) The provisions relative to suspension of payment due to arson shall not apply to a bona fide lender which holds a valid recorded mortgage on the property in question.

(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, 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.

(5) When an insurance policy provides for the adjustment and settlement of first-party motor vehicle total losses on the basis of actual cash value or replacement with another of like kind and

quality, and the insurer elects a cash settlement based on the actual cost to purchase a comparable motor vehicle, such costs shall be derived by using one of the following:

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

(b) The retail cost as determined from a generally recognized used motor vehicle industry source; such as, an electronic database, if the valuation documents generated by the database are provided to the first-party claimant, or a guidebook that is available to the general public. If the insured demonstrates, by presenting two independent appraisals, based on measurable and discernable factors, including the vehicle's preloss condition, that the vehicle would have a higher cash value in the local market area than the value reflected in the source's database or the guidebook, the local market value shall be used in determining the actual cash value.

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

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

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

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

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

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

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

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

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

C. (1) All claims brought by insureds, workers' compensation claimants, or third parties against an insurer shall be paid by check or draft of the insurer or, if offered by the insurer and the claimant requests, electronic transfer of funds to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or his attorney, or upon direction of the claimant to one specified; however, the check or draft shall be made jointly to the claimant and the employer when the employer has advanced the claims payment to the claimant. The check or draft shall be paid jointly until the amount of the advanced claims payment has been recovered by the employer.

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

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

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

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

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

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

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

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

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

(5) A violation of this Subsection shall constitute an additional ground, under R.S. 22:1554, for the commissioner to refuse to issue a license or to suspend or revoke a license issued to any producer to sell insurance in this state.

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

(2) An insurer shall not recommend the use of a particular preferred vendor or recommended contractor without informing the insured or claimant that the insured or claimant is under no obligation to use the preferred vendor or recommended contractor to complete repairs, replacement, restoration, or remediation of the insured's property.

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

(2) The deduction of prospective contractor overhead, prospective contractor profit, and sales tax in determining the actual cash value of an adjustment or settlement is not allowed on replacement cost policies or on actual cash value policies.

G. On or after January 1, 2022, residential property insurance policies shall contain the following provision (with permission to substitute the word "company" with a more accurate descriptive term for the insurer):

"Appraisal. If you and this Company fail to agree as to the amount of loss, either party may demand that the amount of the loss be set by appraisal. If either party makes a written demand for appraisal, each party shall select a competent appraiser and notify the other party of their appraiser's identity within twenty days of receipt of the written demand for appraisal. The appraisers shall select a competent and impartial umpire; but, if after fifteen days the appraisers have not agreed upon who will serve as umpire, the umpire shall be appointed by a judge of the court of record in which the property is located. The appraisers shall then appraise the loss. If the appraisers submit written notice of an agreement as to the amount of the loss to this Company, the amount agreed upon shall set the amount of the loss. If the appraisers fail to agree within thirty days, the appraisers shall submit their differences along with any supporting documentation to the umpire, who shall appraise the loss. The appraisers may extend the time to sixty days for which they must agree upon the amount of loss or submit their differences and supporting documents to the umpire, if the extension is agreed to by the appraisers from both parties. A written agreement signed by the umpire and either party's appraiser shall set the amount of the loss, pursuant to the appraisal process, but shall not preclude either party from exercising its rights under the policy or the law. Each appraiser shall be paid by the party selecting that appraiser. The expenses of the appraisal and the expenses of the umpire shall be divided and paid in equal shares by you and this Company. If there is an appraisal award, all applicable policy terms, limits, deductibles, and conditions will still apply. If you file a lawsuit relative to this policy against this Company prior to a demand for appraisal, the lawsuit will be held in abatement until the execution of an appraisal award."

(Amended by Acts 2021, No. 345, s. 1, eff. 8/1/2021; Amended by Acts 2021, No. 344, s. 1, eff. 8/1/2021. Amended by Acts 2019, No. 317, s. 1, eff. 8/1/2019. Amended by Acts 2018, No. 27, s. 1, eff. 8/1/2018. Acts 1958, No. 125; Acts 1985, No. 778, §1; Acts 1986, No. 132, §1, eff. June 26, 1986; Acts 1988, No. 398, §1; Acts 1989, No. 630, §1; Acts 1990, No. 262, §1, eff. July 4, 1990; Acts 1990, No. 955, §1; Acts 1992, No. 872, §1; Acts 1993, No. 163, §1; Acts 1993, No. 585, §1, H.C.R. No. 4, 2002 1st Ex. Sess.; Acts 2003, No. 790, §1; Acts 2006, No. 404, §1; Acts 2006, No. 813, §1; Redesignated from S. 22, 658 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009; Acts 2009, No. 488, §1; Acts 2011, No. 1022, §1; Acts 2012, No. 271, §1.)

§1893. Claims involving immovable property

A.(1) No insurer shall use the floodwater mark on a covered structure without considering other evidence, when determining whether a loss is covered or not covered under a homeowner's insurance policy.

(2) No insurer shall use the fact that a home is removed or displaced from its foundation without considering other evidence, when determining whether a loss is covered or not covered under a homeowner's insurance policy.

B. If damage to immovable property is covered, in whole or in part, under the terms of the policy of insurance, the burden is on the insurer to establish an exclusion under the terms of the policy.

C. Any clause, condition, term, or other provision contained in any policy of insurance which alters or attempts to alter the burden on an insurer as provided in Subsection B of this Section shall be null and void and of no effect.

CHAPTER 7. FRAUD AND UNFAIR TRADE PRACTICES

PART II. INSURANCE FRAUD

§1921. Purpose and powers

A. The purpose of this Part is to create within the Department of Insurance a division of insurance fraud. This division shall be charged with the responsibility, when directed by the commissioner of insurance, to conduct investigations and background criminal checks on each applicant for a license or certificate of authority to transact a business of insurance. The division of insurance fraud shall be governed by the provisions of this Part including the powers and duties relating to the investigation and prevention of administrative or civil violations of the insurance laws of this state.

B. In the event the applicant is a corporation, partnership, or other legal entity, the investigations and criminal background checks shall be limited to those individuals who are directors, officers, employees, or individuals who exercise control, as defined in R.S. 22:691.2(3), of the entity. After the receipt of a license or certificate of authority, an individual who intends to succeed to a position subject to this Subsection or to control, as defined in R.S. 22:691.2(3), the entity shall undergo an investigation and criminal background check.

C. If the division has reason to believe, whether acting on its own initiative or as a result of complaints, that a person has engaged in, or is engaging in, an act or practice that violates this Part or any other provision of this Code, it may examine and investigate the affairs of such person and may administer oaths and affirmations, serve subpoenas ordering the attendance of witnesses, and collect evidence.

D. If during the course of investigation, the division of insurance fraud determines that there may be a violation of criminal law, the division shall turn the matter over to the Department of Justice; the Department of Labor, Safety and Corrections, public safety services, office of state police; and any other appropriate law enforcement or prosecutorial agency, for further investigation, enforcement, or prosecution.

Acts 1992, No. 707, §2; Acts 1994, 3rd Ex. Sess., No. 50, §2; Acts 1999, No. 1312, §2, eff. Jan. 1, 2000; Acts 2004, No. 826, §1; Redesignated from R.S. 22:1241 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009; Acts 2012, No. 192, §1; Acts 2012, No. 271, §1; Acts 2013, No. 217, §1; Acts 2015, No. 162, §1, eff. June 23, 2015.

NOTE: Former R.S. 22:1921 redesignated as R.S. 22:31 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

§1922. Additional powers and duties

A. The division of insurance fraud shall have access to computer systems, information maintained for the use of law enforcement personnel, any information contained in the criminal history record and identification file of the Louisiana Bureau of Criminal Identification and

Information, and direct and timely access to information compiled by the Federal Bureau of Investigation, as contained in the National Crime Information Center, for the purposes of carrying out its responsibilities under this Part.

B. The commissioner may require each applicant for a license or certificate of authority to submit fingerprints to verify the identity of the applicant. An applicant's fingerprints shall be made electronically or by ink and converted to electronic format. The commissioner may promulgate rules and regulations defining the manner in which such evidence is to be received by the Department of Insurance.

C. In order to make a determination of eligibility, the commissioner is authorized to require fingerprints and fees of applicants and to submit the fingerprints and the fee required to perform the criminal history record checks to the Louisiana Bureau of Criminal Identification and Information and the Federal Bureau of Investigation ("FBI") for state and national criminal history record checks. The commissioner shall require a criminal history record check on each applicant in accordance with this Section. The commissioner shall require each applicant to submit a full set of fingerprints in order for the commissioner to obtain and receive National Criminal History Records from the FBI Criminal Justice Information Services Division.

(1) The commissioner may contract for the collection, transmission, and resubmission of fingerprints required under this Section. If the commissioner elects to enter into a contract, the fee for collecting, transmitting, and retaining fingerprints shall be payable directly to the contractor by the applicant.

(2) The commissioner may receive criminal history record information from sources other than the Louisiana Bureau of Criminal Identification and Information.

D. The commissioner may deny a license or certificate of authority when the applicant, or if the applicant is a corporation, partnership, limited liability company or partnership, or other legal entity, any officer, director, managing person, employee, or principal stockholder has been convicted of a felony.

E. The commissioner may issue a commission authorizing the deputy commissioner of insurance fraud or any compliance investigator who is certified by the Council on Peace Officer Standards and Training (P.O.S.T.), or who may be qualified by the P.O.S.T. Council, to carry and use firearms in performance of their duties in investigating suspected administrative or civil insurance fraud. These powers and privileges shall not include arrest powers. The commissioner shall also provide appropriate credentials and badges of authority.

Acts 1994, 3rd Ex. Sess., No. 50, §2; Acts 2004, No. 826, §1; Redesignated from R.S. 22:1241.1 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009; Acts 2013, No. 217, §1; Acts 2015, No. 162, §1, eff. June 23, 2015.

§1923. Definitions

As used in this Part, the following terms shall have the meanings indicated in this Section:

(1) "Claim" shall mean any request or demand for payment or benefit, whether paid or not, made by a person either in writing or filed electronically.

(2) "Fraudulent insurance act" shall include but not be limited to acts or omissions committed by any person who, knowingly and with intent to defraud:

(a) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, reinsurer, purported insurer or reinsurer, producer, or any agent thereof, any oral or written statement which he knows to contain materially false information as part of, or in support of, or denial of, or concerning any fact material to or conceals any information concerning any fact material to the following:

(i) An application for the issuance of any insurance policy.

(ii) The rating of any insurance policy.

(iii) A claim for payment or benefit pursuant to any insurance policy.

(iv) Premiums paid on any insurance policy.

(v) Payments made in accordance with the terms of any insurance policy.

(vi) An application for certificate of authority or the application for a certificate of authority by a health insurer that has ceased writing health and accident insurance in the state within the prior five years.

(vii) The financial condition of any insurer, reinsurer, purported insurer or reinsurer.

(viii) The acquisition of any insurer or reinsurer.

(b) Solicits or accepts new or renewal insurance risks by or for an insolvent insurer, reinsurer, or other entity regulated under the insurance laws of this state.

(c) Removes or attempts to remove the assets or record of assets, transactions, and affairs of such material part thereof, from the home office or other place of business of the insurer, reinsurer, or other entity regulated under the insurance laws of this state, or from the place of safekeeping of the insurer, reinsurer, or other entity regulated under the laws of this state, or who conceals or attempts to conceal the same from the department.

(d) Diverts, attempts to divert, or conspires to divert funds of an insurer, reinsurer, or other entity regulated under the laws of this state, or other persons in connection with:

(i) The transaction of insurance or reinsurance.

(ii) The conduct of business activities by an insurer, reinsurer, or other entity regulated by the insurance laws of this state.

(iii) The formation, acquisition, or dissolution of an insurer, reinsurer, or other entity regulated under the insurance laws of this state.

(e) Supplies false or fraudulent material information pertaining to any document or statement required by the Department of Insurance.

(f) Commits any fraudulent viatical settlement act, as defined by R.S. 22:1791.

(g) Solicits or accepts new or renewal insurance risks by or for an unauthorized insurer, except as provided by Subpart O of Part I of Chapter 2 of this Title, R.S. 22:431 et seq., and Part III of this Chapter, R.S. 22:1941 et seq.

(h) Manufactures, sells, distributes, presents, or causes to be presented a fraudulent proof of insurance card or document.

(i) Alters a legitimate proof of insurance card or document.

(j) Presents, causes to be presented, or prepares with the knowledge or belief that it will be presented to a self-insured governmental entity any oral or written statement which he knows to contain materially false information as part of, in support of, denial of, or concerning any fact material to or conceals any information concerning any fact material to any claim for payment under such self-insured governmental entity's loss fund or risk pool. For the purposes of this Subparagraph, "self-insured governmental entity" shall mean any agency of the state, political subdivision of the state, or agency thereof, or consortium of governmental entities that maintains a self-insured loss fund or risk pool.

(k) Impersonates an insurance company, or a representative of an insurance company, without the authorization or consent of the insurance company for the purpose of executing a scheme or artifice to defraud a person.

(l) Impersonates another person or entity, whether real or fictitious, and purports himself to have the authority to direct health care treatment for the purpose of executing a scheme or artifice to defraud a person.

(m) Receives money or any other thing of value from any person, firm, or entity as a means of compensation for the acts of solicitation or criminal conspiracy done for the purpose of executing a scheme or artifice to defraud a person.

(n) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented to the Property Insurance Association of Louisiana, any written statement which he knows to contain materially false information in connection with the grading by the Property Insurance Association of Louisiana of a municipality or fire district.

(o) Acts in violation of any of the following provisions of law related to public adjusters and public adjusting:

Acts 1992, No. 707, §2; Acts 2001, No. 1158, §2; Redesignated from R.S. 22:1247 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009; Acts 2012, No. 271, §1; Acts 2013, No. 217, §1.

§1929. Confidentiality of criminal background checks; civil penalties

A. Notwithstanding any other provision of law to the contrary, criminal background information in the possession of the division of insurance fraud of the Department of Insurance shall be confidential and shall not be disclosed to others outside of the division of insurance fraud except as necessary for action on the application of the applicant.

B. Disclosure of information in violation of Subsection A of this Section shall result in a fine of five hundred dollars for the first disclosure and one thousand dollars for each subsequent disclosure by the same individual.

Acts 1994, 3rd Ex. Sess., No. 50, §2; Redesignated from R.S. 22:1247.1 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009; Acts 2013, No. 217, §1.

NOTE: Pursuant to R.S. 22:1931.13, this Section terminates on July 1, 2024.

PART II-A. SLEDGE JEANSONNE LOUISIANA INSURANCE FRAUD PREVENTION ACT

§1931. Legislative findings; short title

A. The legislature finds that to protect the health, safety, and welfare of the citizens of this state, the attorney general of Louisiana and his assistants shall be agents of this state with the ability, authority, and resources to pursue civil monetary penalties, liquidated damages, or other remedies to protect the integrity of the insurance industry from persons who engage in fraud, misrepresentation, abuse, or other illegal practices, as further provided in this Part, in order to obtain payments to which these insurance providers or persons are not entitled.

B. On June 7, 2012, Kim Sledge and Rhett Jeansonne were murdered while performing their duties as insurance fraud investigators for the Louisiana Department of Insurance. The tragedy of their loss is profound to their families, coworkers, and the citizens of this state they honorably served.

C. This Part shall be known and may be cited as the "Sledge Jeansonne Louisiana Insurance Fraud Prevention Act".

Acts 2012, No. 862, §1.

§1931.1. Definitions

As used in this Part the following terms shall have the following meanings unless a different meaning is clearly required by context:

(1) "Agent" means a person who is employed by or has a contractual relationship with another person or who acts on behalf of that person.

(2) "Attorney general" means the attorney general for the state of Louisiana.

(3) "Department" means the Department of Insurance.

(4) "Insurer" means any person or other entity authorized to transact and transacting insurance business in this state. Notwithstanding any contrary provisions of R.S. 22:242(7) or any other law, regulation, or definition contained in this Code, a health maintenance organization shall be deemed an insurer for purposes of this Part.

(5) "Knowing" or "knowingly" means that the person has actual knowledge of the falsity of the information or that the person acts in deliberate ignorance or reckless disregard of the truth or falsity of the information.

(6) "Order" means a final order imposed pursuant to a civil or criminal adjudication.

(7) "Person" means any natural or juridical entity or agent thereof as defined in federal or state law furnishing or claiming to furnish a good, service, or supply who is compensated with insurance proceeds.

(8) "P.O.S.T.-certified" means peace officer standards and training certified as established by the Louisiana Peace Officer Standards and Training Council.

(9) "Property" means any and all property, movable and immovable, corporeal and incorporeal.

(10) "Recovery" means the recovery of attempted benefits pursued, overpayments, damages, fines, penalties, costs, expenses, restitution, attorney fees, interest, or settlement amounts.

Acts 2012, No. 862, §1.

§1931.2. Prescription

A. No action brought pursuant to this Part shall be instituted later than ten years after the date upon which the alleged violation occurred. For violations involving a scheme or course of conduct, no action pursuant to this Part shall be instituted more than ten years after the latest component of the scheme or course of conduct occurred.

B. To the extent that the conduct giving rise to the cause of action involves the provision of services, supplies, merchandise, or benefits of a medical assistance program administered by the Louisiana Department of Health, including any medical assistance programs administered by the state pursuant to 42 U.S.C. 1396 et seq., the provisions of this Part shall not apply.

C. An action by a prevailing defendant to recover costs, expenses, fees, and attorney fees pursuant to R.S. 22:1931.3 may be brought no later than sixty days after the rendering of a final nonappealable judgment. In the instance of a state criminal action, the action for recovery of the civil monetary penalty shall be brought within one year of the date of the criminal conviction, final plea, or pre-trial diversion agreement.

D.(1) In the case of a civil judgment rendered in federal court, the action for recovery of the civil monetary penalty pursuant to R.S. 22:1931.6 may be brought after the judgment becomes enforceable and no later than one year after written notification to the attorney general of the enforceable judgment.

(2) In the case of a criminal conviction, final plea, or pre-trial diversion agreement in federal court, the action for recovery pursuant to this Part may be brought after the conviction or plea is final and no later than one year after written notification to the attorney general of the rendering of the conviction or final plea.

(3) Any action for recovery brought pursuant to the provisions of this Part shall be filed in the Nineteenth Judicial District Court for the parish of East Baton Rouge.

Acts 2012, No. 862, §1.

§1931.3. Civil actions authorized

A. No person shall knowingly commit any fraudulent insurance act as defined in R.S. 22:1923 or violate any provision of R.S. 22:1924.

B. The attorney general may institute a civil action in the Nineteenth Judicial District Court for the parish of East Baton Rouge to seek recovery from any person or persons who violate any provision of R.S. 22:1924. Each violation may be treated as a separate violation or may be combined into one violation at the discretion of the attorney general.

C. An action by a prevailing defendant to recover costs, expenses, fees, and attorney fees shall be ancillary to and shall be brought and heard in the same court as the civil action brought pursuant to the provisions of Subsection B of this Section.

D. A prevailing defendant may seek recovery only for costs, expenses, fees, and attorney fees if the court finds, following a contradictory hearing, that either of the following applies:

(1) The action was instituted by the attorney general pursuant to Subsection A of this Section after it should have been determined by the attorney general to be frivolous, vexatious, or brought primarily for the purpose of harassment.

(2) The attorney general proceeded with an action properly instituted pursuant to Subsection A of this Section after it should have been determined by the attorney general that proceeding would be frivolous, vexatious, or for the purpose of harassment.

PART IV. UNFAIR TRADE PRACTICES

§1961. Purpose

The purpose of this Part is to regulate the trade practices in the business of insurance, in accordance with the intent of congress as expressed in Public Law 15-79th Congress*, by defining or providing for the determination of all acts, methods, and practices which constitute unfair methods of competition and unfair or deceptive acts and practices in this state, and to prohibit the same.

Acts 1958, No. 125; Acts 1993, No. 953, §1; Redesignated from R.S. 22:1211 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

*15 U.S.C.A. §§1011 to 1015.

§1962. Definitions

When used in this Part:

- A. "Commissioner" means the commissioner of insurance of this state.
- B. "Insured" means the party named on a policy or certificate as the individual with legal rights to the benefits provided by such policy.
- C. "Insurer" means any person, reciprocal exchange, reinsurer, Lloyds insurer, fraternal benefit society, industrial and burial insurer, or any insurer that markets under the Home Service Marketing distribution method and issues a majority of its policies on a weekly or monthly basis, or any other legal entity engaged in the business of insurance, including insurance producers. Insurer shall also mean medical service plans, hospital service plans, health maintenance organizations, and prepaid limited health care service plans. For the purposes of this Part, these foregoing entities shall be deemed to be engaged in the business of insurance.
- D. "Person" means any natural or artificial entity, including but not limited to individuals, partnerships, associations, trusts, or corporations.
- E. "Policy" or "certificate" means any contract of insurance, indemnity, medical, health or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any insurer.
- F. "Producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, and includes all persons or business entities otherwise referred to in this Code as "insurance agent", "agent", "insurance broker", "broker", "insurance solicitor", "solicitor", or "surplus lines broker".

Acts 1958, No. 125; Acts 1993, No. 953, §1; Acts 1997, No. 949, §1; Acts 2001, No. 158, §1, eff. Jan. 1, 2002; Redesignated from R.S. 22:1212 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009; Acts 2012, No. 271, §1.