

§ 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. Other 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. 638, §1; Acts 1990, No. 262, §1, eff. July 4, 1990; Acts 1990, No. 955, §1; Acts 1992, No. 879, §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 R.S. 22:658 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009; Acts 2009, No. 488, §1; Acts 2010, No. 1032, §1; Acts 2012, No. 271, §1.)