

New Duties for Insurers and Insureds Under LA Overhaul of Bad Faith Statutes

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Louisiana’s legislature restructured and amended bad faith statutes on May 7, with Governor Jeff Landry’s signing of Senate Bill No. 323 into law as Act No. 3. The changes take effect July 1, 2024.

La. R.S. §22:1973—Repealed

Currently, §22:1973 allows recovery of general or special damages sustained by an insured or claimant as a result of an insurer’s breach of the duties enumerated in the statute, plus a penalty “not to exceed two times the damages sustained or \$5,000, whichever is greater.” Effective July 1, 2024, §22:1973 will be repealed in its entirety. The enumerated duties set forth in that statute will be moved to the newly enacted §1892(I), discussed below.

La. R.S. §22:1892—Restructured and Amended (Including Reverse Bad Faith)

Currently, §22:1892 allows recovery of a penalty—in addition to the amount of the loss—of 50% or \$1,000 (whichever is greater) plus “reasonable attorney fees and costs.” Penalties are therefore available for:

- Any third-party settlement that is not paid within 30 days of it being reduced to writing
- The amount ultimately found to be covered under the policy if the failure to pay within 30 days is deemed “arbitrary, capricious, or without probable cause”
- The difference between the amount tendered and the amount ultimately found to be due if the failure to pay within 30 days is deemed “arbitrary, capricious, or without probable cause”

Effective July 1, 2024, the current version of §22:1892 will remain in effect, but insureds and their representatives will now also have a duty of good faith and fair dealing when submitting a claim for insurance coverage. Subsection (J), which is new, provides a list of acts which constitute a breach of the insured’s duties imposed by the statute. Such acts include:

- Failing to comply with affirmative contractual duties and obligations
- Misrepresenting pertinent facts or policy provisions
- Submitting estimates or claims for damages that lack a basis for coverage or evidentiary support

If the trier of fact determines that the insured or a representative of the insured breached their duty of good faith as provided by the statute, the trier of fact must consider that conduct in determining whether an insured should be awarded penalties and attorney fees under §22:1892 or §22:1892.2, discussed below.

La. R.S. §22:1892(I)—New

Effective July 1, 2024, §22:1892(I) will incorporate the enumerated duties set forth in (the soon-to-be-repealed) §22:1973. Insurers will therefore still have an affirmative duty to “adjust claims fairly and promptly and to make a reasonable effort to settle claims with the insured or the claimant, or both.” Any one of the following acts, “if knowingly committed or performed by an insurer,” still will constitute a breach of the insurer’s duties imposed:

1. Misrepresenting pertinent facts or insurance policy provisions relating to any coverages at issue
2. Failing to pay a settlement within 30 days after an agreement is reduced to writing
3. Denying coverage or attempting to settle a claim on the basis of an application which the insurer knows was altered without notice to, or knowledge or consent of, the insured
4. Misleading a claimant as to the applicable prescriptive period
5. Failing to pay the amount of any claim due any person insured by the contract within 60 days after receipt of “satisfactory written proof of loss” from the claimant when such failure is “arbitrary, capricious, or without probable cause”
6. Failing to pay claims pursuant to La. R.S. §22:1893 (regarding immovable property) when such failure is “arbitrary, capricious, or without probable cause”

The penalties imposed by this subsection will be “proven economic damages sustained as a result of the breach.” For claims not involving immovable property, a claimant may be awarded penalties up to 50% of the damages sustained.

La. R.S. §22:1892.2—New (60-Day “Cure Period Notice” Limited to Catastrophic Losses to Immovable Property)

Effective July 1, 2024, claimants will no longer be able to file a bad faith suit for penalties and attorney fees for claims arising from a catastrophic loss to immovable property without first complying with the “cure period notice” set forth in §1892.2. This is new and changes the law. The steps are as follows:

- **Written Notice** that provides “sufficient notice of the facts and circumstances of the dispute.”
 - Notice may be provided on a Louisiana Department of Insurance form or by formal written demand.
 - The notice may include “actual expenses incurred including attorney fees not to exceed 20% of the amount alleged to be due under the policy.”
- **60-Day Cure Period**
 - If an insurer pays the full amount sought in the notice within 60 days, there will be no further cause of action under Section 1892.2.
 - If a partial payment is made within 60 days of the notice, the “penalty otherwise due, if any,” on the partial payment will be reduced by half.
 - An insurer in receipt of a cure period notice must provide a response within 60 days. If a cure period notice is transmitted within the last 90 days prior to the limitation deadline to file suit, the limitation of suit period will be suspended until 30 days from the insurer’s response.
 - If suit is filed before a cure period notice is transmitted, suit is “automatically stayed” until 60 days after “the cure period notice is received.” The delay to file an answer is automatically extended until 30 days after the cure period.
 - If an insurer pays the full amount demanded within 60 days, the prematurely filed cause of action shall be dismissed at the insured’s cost.

If the alleged violation is not “cured” within the 60-day notice period and suit is filed, §22:1892.2 adopts the penalties available and standards (*e.g.*, satisfactory proof of loss) set forth in the current §22:1892 but extends the time delays to:

- **60 days** from receipt of “satisfactory written proof of loss” for:

- Catastrophic loss (*i.e.*, presidentially or gubernatorially declared emergency or disaster) to
- Residential Property (*i.e.*, “single family dwellings, duplex, triplex, fourplex, apartment buildings, condominiums, and mobile homes used as a residence, whether on land owned, rented, or leased”)
- **90 days** from receipt of “satisfactory proof of loss” for:
 - Catastrophic loss (*i.e.*, presidentially or gubernatorially declared emergency or disaster) to
 - Immovable property “other than residential property”

The insurance commissioner may provide an additional 30-day extension for commercial policies insuring multiple locations.

The current time delays in §22:1892 (summarized above) apply to losses that are not catastrophic in nature or otherwise do not involve immovable property.

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