

**Study of Insurers' Failure to Timely Pay
Property Damage Claims After a
Declared Disaster or Emergency
(SR 140)**

Report to the Legislature



Louisiana Department of Insurance

James J. Donelon, Commissioner

Senate Resolution 140

A study of the issue of insurers' failure to timely pay property damage claims after a presidentially or gubernatorially declared disaster or emergency.

Background

After Hurricanes Laura, Delta, Zeta and Ida, almost seven thousand complaints were filed with the Louisiana Department of Insurance.

Senate Resolution (SR) 140, authored by Senator Jeremy P. Stine, was passed during the 2022 Regular Session of the Louisiana Legislature. The resolution urged and requested the Commissioner of Insurance to study the issue of insurers failing to timely pay property damage claims after a presidentially or gubernatorially declared disaster or emergency as measured by such delays leading to statutorily assessed penalties.

The Policyholders Bill of Rights (Louisiana Revised Statute (La. R.S.) 22:41(13)) provides that policyholders have the right to receive payment for any property damage claim within 30 days after receiving satisfactory proof of loss. If the insurer fails to pay the damage claim within 30 days, then the insurer is in violation of La. R.S. 22:1892 and 22:1973.

La. R.S. 22:1892(A)(1) provides that property damage claims must be paid within 30 days after receipt of satisfactory proof of loss. La. R.S. 22:1892(B)(1)(a) further provides that when the payment is not made within 30 days of satisfactory proof of loss and the failure is found to be arbitrary, capricious or without probable cause, the insurer shall be subject to a penalty of fifty percent of the amount due from the insurer or \$1,000.00, whichever is greater. Where a partial payment has been made, the penalty shall be fifty percent of the difference between the amount paid and the amount due as well as reasonable attorney fees and cost. La. R.S. 22:1892(B)(1)(b) sets the minimum penalty for failure to timely pay at \$2,500.00 when the damage claim originates from a presidentially declared or gubernatorial declared disaster.

Additionally, La. R.S. 22:1973 provides that a claimant may be awarded penalties in excess of two times the damages sustained or \$5,000.00, whichever is greater, for failing to pay claims within 30 days once an agreement is reduced to writing, or for failing to pay a claim due any person insured by contract within 60 days after satisfactory proof of loss from the claimant when the failure is arbitrary, capricious or without probable cause.

The Louisiana Senate requested the Commissioner of Insurance to study the issue of insurers failing to timely pay property damage claims after a hurricane and to report its findings to the Senate and House Committee on Insurance by February 1, 2023.

Data Call and Report of Findings

SR 140 directed the Department of Insurance to answer the following questions for homeowners and commercial insurers:

1. What is the number of fifty percent damages penalties and the total dollar amount paid pursuant to R.S. 22:1892(B)(1)(a) and (b) that have been awarded to policyholders from each of the top twenty-five market share homeowners' insurers in this state since 2020 on claims resulting from hurricanes Laura, Delta, Zeta, and Ida?
2. What is the number of fifty percent damages penalties and the total dollar amount paid pursuant to R.S. 22:1892(B)(1)(a) and (b) that have been awarded to policyholders from each of the top twenty-five market share commercial property insurers in Louisiana since 2020 on claims resulting from hurricanes Laura, Delta, Zeta, and Ida?
3. What is the number of two times damages penalties and the total dollar amount paid pursuant to R.S. 22:1973(C) that have been awarded to policyholders from each of the top twenty-five market share homeowners' insurers in Louisiana since 2020 on homeowner's claims resulting from hurricanes Laura, Delta, Zeta, and Ida?
4. What is the total dollar amount of two times damages penalties and the total dollar amount paid pursuant to R.S. 22:1973(C) that have been awarded to policyholders from each of the top twenty-five market share commercial insurers in this state since 2020 on homeowners' claims resulting from hurricanes Laura, Delta, Zeta, and Ida?

The Department of Insurance asked the above questions to the top twenty-five (25) market share homeowners and commercial insurers in the state since 2020 on claims from Laura, Delta, Zeta and Ida.

Regarding commercial insurers, all 25 insurers responded to the data call sent on November 7, 2022, and the data indicated that none of the companies had made any payments pursuant to La. R.S. 22:1892 or 22:1973 from claims from Laura, Delta, Zeta and Ida during the surveyed time period.

Regarding residential insurers, all 25 insurers responded to the data call sent on November 7, 2022, and the data indicated that one (1) insurer made payments pursuant to La. R.S. 22:1892 and 22:1973 from claims from Laura, Delta, Zeta and Ida.

There were 11 instances of the fifty percent penalty with the total dollar amount being \$580,693.94 in awards to policy holders pursuant to La. R.S. 22:1892.

There were 5 instances when two times damages penalties were paid with the total dollar amount being \$789,160.88 in awards to policy holders pursuant to La. R.S. 22:1973C.

Thank you for the opportunity to provide the above referenced data in response to SR 140.

SENATE RESOLUTION NO. 140

BY SENATOR STINE

A RESOLUTION

To urge and request the Commissioner of Insurance to study the issue of insurers failing to timely pay property damage claims after a presidentially or gubernatorially declared disaster or emergency.

WHEREAS, R.S. 22:41(13) requires an insurer pay property damage claims within thirty days after satisfactory proof of loss is provided, and if an insurer fails to pay within thirty days, the insurer can be deemed in violation of R.S. 22:1892 and 1973; and

WHEREAS, an insurer is required to pay a property damage claim within thirty days, and if an insurer fails to pay within thirty days, an insurer owes his policyholder the amount of loss found due, along with paying his policyholder fifty percent on the amount due or one thousand dollars, whichever is greater, or if a partial payment is made, fifty percent of the difference between the amount paid and the amount of loss, as well as reasonable attorney fees and costs when such failure is found to be arbitrary, capricious, or without probable cause according to R.S. 22:1892(B)(1)(a); and

WHEREAS, effective August 1, 2021, if a presidentially or gubernatorially disaster or emergency is declared, an insurer is required to pay a property damage claim within thirty days, and if an insurer fails to pay within thirty days, the insurer owes his policyholder the amount of loss found due, along with paying his policyholder fifty percent on the amount due or two thousand five hundred dollars or whichever is greater, or if a partial payment is made, fifty percent of the difference between the amount paid and the amount of loss, along with paying reasonable attorney fees and costs, or two thousand five hundred dollars, whichever is greater pursuant to R.S. 22:1973 and 1892(B)(1)(b); and

WHEREAS, policyholders in this state have struggled with insurance companies to

rebuild and recover from the devastation caused by hurricanes Laura, Delta, Zeta, and Ida as a result of insurers failing to pay property damage claims within thirty days as required by R.S. 22:41(13), 1892, and 1973; and

WHEREAS, policyholders have resorted to hiring attorneys, public adjusters, and filing nearly six thousand seven hundred complaints with the Commissioner of Insurance in hopes that their insurer will pay the property damage claims owed in order for them to once again live in their own homes; and

WHEREAS, an insurer owes his policyholder a duty of good faith and fair dealing, which includes paying a settlement within thirty days after an agreement is reduced to writing, and if an insurer breaches this duty, the insurer may owe, in addition to any general or special damages to which a policyholder is entitled for breach of the imposed duty, penalties assessed against the insurer in an amount not to exceed two times the damages sustained or five thousand dollars, whichever is greater pursuant to R.S. 22:1973; and

WHEREAS, ensuring there are effective legal remedies to provide punitive damages that discourage insurers from acting in bad faith following a presidentially or gubernatorially declared disaster or emergency is a critical public policy priority of this state; and

WHEREAS, it is the intent of the Legislature of Louisiana that our citizens have access to a healthy, competitive insurance market with insurers that treat policyholders fairly and with good faith and pay property damage claims in a timely manner.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request the Commissioner of Insurance to study the issue of insurers failing to timely pay property damage claims after a presidentially or gubernatorially declared disaster or emergency and to report his findings and recommendations to the Senate and House Committees on insurance not later than February 1, 2023.

BE IT FURTHER RESOLVED that in conducting the study, the Commissioner of Insurance shall answer the following questions:

(1) What is the number of fifty percent damages penalties and the total dollar amount paid pursuant to R.S. 22:1892(B)(1)(a) and (b) that have been awarded to policyholders from each of the top twenty-five market share homeowners' insurers in this state since 2020 on claims resulting from hurricanes Laura, Delta, Zeta, and Ida?

(2) What is the number of fifty percent damages penalties and the total dollar amount paid pursuant to R.S. 22:1892(B)(1)(a) and (b) that have been awarded to policyholders from each of the top twenty-five market share commercial property insurers in Louisiana since 2020 on claims resulting from hurricanes Laura, Delta, Zeta, and Ida?

(3) What is the number of two times damages penalties and the total dollar amount paid pursuant to R.S. 22:1973(C) that have been awarded to policyholders from each of the top twenty-five market share homeowners' insurers in Louisiana since 2020 on homeowner's claims resulting from hurricanes Laura, Delta, Zeta, and Ida?

(4) What is the total dollar amount of two times damages penalties and the total dollar amount paid pursuant to R.S. 22:1973(C) that have been awarded to policyholders from each of the top twenty-five market share commercial insurers in this state since 2020 on homeowners' claims resulting from hurricanes Laura, Delta, Zeta, and Ida?

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Commissioner of Insurance.

PRESIDENT OF THE SENATE