



**LOUISIANA STATE LAW INSTITUTE**

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January 31, 2020

Representative Clay Schexnayder  
Speaker of the House of Representatives  
P.O. Box 94062  
Baton Rouge, Louisiana 70804

**RE: HOUSE RESOLUTION NO. 220 OF THE 2019 REGULAR SESSION**

Dear Mr. Speaker:

The Louisiana State Law Institute respectfully submits its interim report to the legislature relative to penalties and attorney fees under the Louisiana Insurance Code.

Sincerely,

A handwritten signature in black ink, appearing to read "Guy Holdridge".

Guy Holdridge  
Director

cc: Representative Raymond E. Garofalo

email cc: David R. Poynter Legislative Research Library  
[drplibrary@legis.la.gov](mailto:drplibrary@legis.la.gov)  
Secretary of State, Mr. R. Kyle Ardoin  
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**LOUISIANA STATE LAW INSTITUTE  
TORTS AND INSURANCE COMMITTEE**

**INTERIM REPORT TO THE LEGISLATURE  
IN RESPONSE TO HR NO. 220 OF THE 2019 REGULAR SESSION**

**Relative to awards of penalties and attorney fees under the Insurance Code**

Prepared for the  
Louisiana Legislature on

**January 31, 2020**

Baton Rouge, Louisiana

# LOUISIANA STATE LAW INSTITUTE TORTS AND INSURANCE COMMITTEE

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\* \* \* \* \*

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Donald W. Price, Chair  
William R. Corbett, Reporter  
Thomas C. Galligan, Jr., Reporter

Nick Kunkel, Staff Attorney

2019 Regular Session

HOUSE RESOLUTION NO. 220

BY REPRESENTATIVE GAROFALO

A RESOLUTION

To authorize and request the Louisiana State Law Institute to study and make recommendations regarding the provisions of the Louisiana Insurance Code, comprising Title 22 of the Louisiana Revised Statutes of 1950, concerning payment of claims, penalties, and attorney fees under the Louisiana Insurance Code.

WHEREAS, the subject and availability of insurance is of great interest and importance to the people and businesses of this state; and

WHEREAS, each year the legislature attempts to address insurance legislation concerning a myriad of proposals dealing with insurance, insurers, claims, regulations, and interrelated matters; and

WHEREAS, the purpose of Title 22 of the Louisiana Revised Statutes of 1950, known and cited as the Louisiana Insurance Code, is to regulate the insurance industry in all of its phases; and

WHEREAS, the purpose of the Louisiana State Law Institute is to promote and encourage the clarification and simplification of the law of Louisiana and its better adaptation to present social needs; to secure the better administration of justice; and to carry on scholarly legal research and scientific legal work; and

WHEREAS, the Louisiana Insurance Code contains several provisions that provide for causes of action and recovery of penalties or attorney fees, or both, from insurance companies; and

WHEREAS, these provisions of the Louisiana Insurance Code differ depending upon the nature or type of the underlying insurance policy at issue; and

WHEREAS, as amended, these provisions of the Louisiana Insurance Code appear to be inconsistent and require study and possible revision; and

WHEREAS, there is an overriding public need to carefully study and deliberate prior to recommending changes to the Louisiana Insurance Code to maintain the confidence of the public in the insurance industry, its products, and the regulatory agencies and departments of the state and their operation, independence, and reliability; and

WHEREAS, the study of the relevant provisions of the Louisiana Insurance Code and proposals for revisions or amendments would bring clarity and certainty to this important area of Louisiana's insurance laws.

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby authorize and request the Louisiana State Law Institute to study the laws concerning the award of penalties and attorney fees under the provisions of the Louisiana Insurance Code and make recommendations to the legislature of proposed legislation.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit a report detailing the results of its study and any proposed legislation to the Legislature of Louisiana no later than February 1, 2020.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the president of the Louisiana State Law Institute.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

January 31, 2020

To: Representative Clay Schexnayder  
Speaker of the House of Representatives  
P.O. Box 94062  
Baton Rouge, Louisiana 70804

**INTERIM REPORT TO THE LEGISLATURE  
IN RESPONSE TO HR NO. 220 OF THE 2019 REGULAR SESSION**

House Resolution No. 220 of the 2019 Regular Session authorizes and requests the Louisiana State Law Institute to study and make recommendations regarding the provisions of the Louisiana Insurance Code concerning payment of claims, penalties, and attorney fees. In particular, the resolution notes that “these provisions ... differ depending on the nature or type of the underlying insurance policy[.]” and, in some instances, “appear to be inconsistent and require study and possible revision[.]” To this end, the Louisiana State Law Institute created the Torts and Insurance Committee, which is chaired by Mr. Skip Philips, a practicing attorney in Baton Rouge and adjunct professor at the LSU Paul M. Hebert Law Center, and Mr. Donald Price, also a practicing attorney in Baton Rouge. In addition to the Co-Chairs, Mr. Thomas Galligan, Dean of the LSU Law Center and current LSU Interim President, and Professor Bill Corbett of the LSU Law Center serve as Reporters for the Committee. The Committee further comprises members representing an array of diverse backgrounds, including defense attorneys, plaintiffs’ attorneys, professors, and judges.

The Committee has met on numerous occasions to discuss issues related to the directive contained in the resolution, focusing its attention primarily on two provisions of the Insurance Code in particular, R.S. 22:1892 and 1973. Specifically, the Committee has worked to produce a revised version of R.S. 22:1973 that is essentially a marriage of the two statutes. The goal of this work, which is ongoing, is to reconcile the existing tension and alleviate the related confusion with respect to the various remedies available for bad faith insurance claims under these provisions. The Committee has presented its work to the Law Institute Council once already, and will do so again on February 8, 2020. Upon receiving full approval of its project from the Council, the Committee will submit recommendations to the Legislature in the form of proposed legislation. The Committee anticipates the possibility of submitting its final report and proposed legislation to the Legislature for the 2020 Regular Session.