HLS 22RS-801

2022 Regular Session

HOUSE BILL NO. 664

BY REPRESENTATIVE FRIEMAN

INSURANCE DEPARTMENT: Provides for hearings arising out of matters involving the
Louisiana Insurance Code

AN ACT

To amend and reenact R.S. 22:33(A)(introductory paragraph), 88(F)(7) and (I)(1), 255, 258,
462(G), 550.12(A)(introductory paragraph), 651(K), 691.5(E)(1)(b), 691.8(B)(2),
691.13(B) and (C), 1472(B), 1550.1(D), 1571(H), 1627(A)(introductory paragraph)
and (B), 1781.5, 1835(A), 2057(E), 2059(A)(2), 2089(A)(2), and 2331 and to enact
R.S. 22:691.13(G), relative to hearings arising out of the Louisiana Insurance Code;
to provide for an opportunity for a public hearing for certain acquisitions; to remove
the requirement for a hearing by the commissioner prior to taking certain actions;
and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:22:33(A)(introductory paragraph), 88(F)(7) and (I)(1), 255, 258,
462(G), 550.12(A)(introductory paragraph), 651(K), 691.5(E)(1)(b), 691.8(B)(2), 691.13(B)
and (C), 1472(B), 1550.1(D), 1571(H), 1627(A)(introductory paragraph) and (B), 1781.5,
1835(A), 2057(E), 2059(A)(2), 2089(A)(2), and 2331 are hereby amended and reenacted and
R.S. 22:691.13(G) is hereby enacted to read as follows:

§33. Sanctions

A. Whenever the commissioner of insurance receives notification of an
apparent violation from the division of diversity and opportunity; and he determines;
after notice and opportunity for a hearing in accordance with the Administrative
Procedure Act, that an insurer has engaged in a pattern or practice of employment

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are additions.
discrimination prohibited by Part IV of Chapter 3-A of Title 23, R.S. 23:331 et seq.,
he may issue an order requiring the insurer to cease and desist engaging in such
unlawful act or practice. If the insurer does not comply with the cease and desist
order, the commissioner may then:

* * *

§88. Sales of stock

* * *

F.

* * *

(7) Before an order is made final, the insurance company or other issuer
applying for registration shall on application be entitled to a hearing, and after such
hearing the commissioner shall notify it of the final ruling on the matter. If an order
of revocation is entered, the aggrieved party may demand a prompt hearing in
accordance with Chapter 12 of this Title, R.S. 22:2191 et seq. If a hearing is not
timely requested, the commissioner shall enter a final order revoking the registration
of the security, with his findings with respect thereto. However, if upon a hearing,
the division of administrative law finds that the revocation of the security was not
according to law, the commissioner shall enter an order revoking the order of
revocation and such security shall be restored to its status as a security registered
under this Section as of the date of the order of suspension.

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I.

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(1) Registration under pursuant to Subsection H of this Section may be
refused or any registration granted may be revoked by the commissioner if after a
reasonable notice and a hearing the commissioner determines that such applicant or
registrant so registered has committed any of the following acts:

* * *
§255. Regulation of producers

The commissioner may, after notice and public hearing, in accordance with the Administrative Procedure Act, promulgate such reasonable rules and regulations as are necessary to provide for the licensing of producers. A producer means a person licensed as a life and health insurance producer in the state of Louisiana who is appointed or employed by a health maintenance organization to engage in solicitation of membership in such organization. It shall not include a person enrolling members on behalf of an employer, union, or other organization to whom a master group contract has been issued.

* * *

§258. Regulations

The commissioner may, after notice and hearing, promulgate such rules and regulations, as may be necessary or proper to carry out the provisions of this Subpart. Such rules and regulations shall be subject to rulemaking and review in accordance with the Administrative Procedure Act.

* * *

§462. Examination by commissioner

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G. The commissioner shall make a certified report of his findings and a copy shall be furnished to the self-insurer at least thirty days prior to the filing of the report in the office of the commissioner for public inspection. During this thirty-day period, the self-insurer may request in writing that a hearing be held to consider objections to the report. The report shall not be made public until after the hearing is held and any modifications that the commissioner deems necessary are made pursuant to the provisions in R.S. 22:1983.

* * *
§550.12. Suspension or revocation of certificate of authority; hearings

A. The commissioner may refuse, suspend or revoke the certificate of authority of a captive insurer if, after an examination and hearing, the commissioner determines that the captive insurer satisfies any one of the following items:

* * *

§651. Reinsurance credits

* * *

K.(1) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation or certification.

(‡) (2) The commissioner shall give the reinsurer notice of the suspension or revocation and opportunity for a hearing in accordance with Chapter 12 of this Title, R.S. 22:2191 et seq. The suspension or revocation may not take effect until after the commissioner's order upon and a hearing unless one of the following circumstances are present:

(a) The reinsurer waives its right to a hearing.

(b) The commissioner's order is based upon regulatory action by the reinsurer's domiciliary jurisdiction or upon the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under Paragraph (E)(6) of this Section.

(c) The commissioner finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action.

(‡) (3) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with R.S. 22:652. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation, except to the extent that the reinsurer's obligations...
under the contract are secured in accordance with the provisions of Paragraph (E)(5) of this Section or in accordance with R.S. 22:652.

§691.5. Acquisitions involving insurers not otherwise covered

E.

§691.8. Examination

B.

(2) To determine compliance with this Subpart, the commissioner may order any insurer registered under R.S. 22:691.6 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or other method. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. If at the
discretion of the commissioner, it appears that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of one hundred dollars for each day's delay, or may suspend or revoke the insurer's authority. An aggrieved party affected by the commissioner's decision, act, or order may seek judicial review of the decision pursuant to R.S. 22:691.17.

§691.13. Sanctions

B. Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to or which violate this Subpart shall pay, in their individual capacity, a civil forfeiture of not more than one thousand dollars per violation, after notice and opportunity for a hearing. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the seriousness of the violation, the history of previous violations, and such other matters as justice may require.

C. Whenever it appears to the commissioner that any insurer subject to this Subpart or any director, officer, employee, or agent thereof has engaged in any transaction or entered into a contract which is subject to the provisions of R.S. 22:691.7 and which would not have been approved had the approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and opportunity for hearing, the commissioner may also order the insurer to void any contracts and restore the status quo if the action is in the best interest of the policyholders, creditors, or the public.
G. An aggrieved party affected by the commissioner's decision, act, or order may seek judicial review of the decision pursuant to R.S. 22:691.17.

§1472. Joint underwriting or joint reinsurance

B. If, after a hearing, the commissioner of insurance finds that any activity or practice of any such group, association, or other organization is unfair, unreasonable, or otherwise inconsistent with the provisions of this Subpart, the commissioner shall issue a written order specifying in what respects such activity or practice is unfair, unreasonable, or otherwise inconsistent with the provisions of this Subpart, and shall require the discontinuance of such activity or practice.

§1550.1. Speciality limited lines self-service storage property insurance producer licenses

D. (1) In the event that any provision of this Section is violated by a limited licensee, the commissioner of insurance may do any of the following:

(a) Revoke or suspend a limited license issued pursuant to this Section in accordance with the provisions of R.S. 22:1554.

(b) After notice and hearing, impose such other penalties, including suspending the transaction of insurance at specific rental locations where violations of this Section have occurred, as the commissioner deems to be necessary or convenient to carry out the purposes of this Section.

(2) An aggrieved party affected by the commissioner's decision, act, or order may demand a hearing in accordance with Chapter 12 of this Title, R.S. 22:2191 et seq.
§1571. Registered insurance producer and bail bond producer prelicensing program

H. In accordance and compliance with R.S. 49:961, the commissioner may cancel or suspend the certification of any registered insurance or bail bond producer prelicensing program which does not meet the requirements of this Subpart or of any of the rules or regulations promulgated pursuant to this Subpart. Such cancellation or suspension shall be made after notice and an opportunity for hearing. An aggrieved party affected by the commissioner's decision, act, or order may demand a hearing in accordance with Chapter 12 of this Title, R.S. 22:2191 et seq.

§1627. Penalties; suspension, revocation, fines, and liabilities

A. If the commissioner finds after a hearing conducted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., that any person has violated any provision of this Part, the commissioner may order:

* * *

B. The decision, determination, or order of the commissioner pursuant to Subsection A of this Section shall be subject to judicial review pursuant to Chapter 12 of this Title, R.S. 22:2191 et seq.

* * *

§1781.5. Suspension or revocation of license

A. If a vendor of portable electronics or its employee or authorized representative violates any provision of this Part or any other applicable provision of this Title, the commissioner may, after notice and opportunity for a hearing, take any one or more of the following actions:

(1) Impose fines not to exceed five hundred dollars per violation or five thousand dollars in the aggregate for such conduct.

(2) Suspend or revoke the limited lines license of the vendor.

(3) Suspend the privilege of transacting portable electronics insurance at specific business locations where violations have occurred.

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(4) Suspend or revoke the ability of individual employees or authorized representatives to act under the license of the vendor.

B. An aggrieved party affected by the commissioner's decision, act, or order may demand a hearing in accordance with Chapter 12 of this Title, R.S. 22:2191 et seq.

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§1835. Regulations; applicability

A. The commissioner may, after notice and hearing, promulgate such rules and regulations as may be necessary or proper to carry out the provisions of this Subpart. Such rules and regulations shall be promulgated and adopted in accordance with the Administrative Procedure Act.

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§2057. Board of directors

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E. If the commissioner has reasonable cause to believe that a board member failed to disclose a known conflict of interest with his duties on the board, failed to take appropriate action based on a known conflict of interest with his duties on the board, or has been indicted or charged with a felony, or misdemeanor involving moral turpitude, the commissioner may suspend that board member pending the outcome of an investigation or hearing by the commissioner or the conclusion of any criminal proceedings. In the event that the allegations are substantiated at the conclusion of an investigation, hearing or criminal proceeding, the seat shall be declared vacant.

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§2059. Plan of operation

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(2) If the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing in accordance with the Administrative
Procedure Act, adopt and promulgate such reasonable rules as are necessary or
advisable to effectuate the provisions of this Part. Such rules shall continue in force
until modified by the commissioner or superseded by a plan submitted by the
association and approved by the commissioner. All rules and regulations
promulgated by the commissioner under the provisions of this Paragraph shall have
no effect until they are reviewed and approved by the Senate Committee on
Insurance and the House Committee on Insurance. If a hearing is not held by such
committees within thirty days after receipt of the rules and regulations promulgated
by the commissioner under the provisions of this Paragraph, then the rules and
regulations may be implemented as promulgated by the commissioner.

§2089. Plan of operation

A.

(2) If at any time the association fails to submit suitable amendments to the
plan, the commissioner shall, after notice and hearing in accordance with the
Administrative Procedure Act, adopt and promulgate such reasonable rules as are
necessary or advisable to effectuate the provisions of this Part. The rules shall
continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

§2331. Appeal to the commissioner; appeal to the court from the commissioner

Any person insured pursuant to R.S. 22:2322 through 2334 or his
representative, or any affected insurer, who may be aggrieved by an act, ruling, or
decision of the governing committee of the plan may, within thirty days after such
ruling, appeal to the commissioner of insurance. Any hearings held by the
commissioner of insurance pursuant to such an appeal shall be in accordance with
the procedure set forth in the insurance laws of Louisiana. All persons or insureds
aggrieved by any order or decision of the commissioner of insurance may appeal as
is provided by the provisions of the insurance laws of the state of Louisiana may demand a hearing in accordance with Chapter 12 of this Title, R.S. 22:2191 et seq.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 664 Engrossed 2022 Regular Session Frieman

Abstract: Provides for hearings arising out of matters involving the Louisiana Insurance Code.

Present law provides that whenever the commissioner receives notification of an apparent violation from the division of diversity and opportunity and determines after notice and opportunity for a hearing in accordance with the Administrative Procedure Act, that an insurer has engaged in a pattern or practice of employment discrimination, he may issue an order requiring the insurer to cease and desist engaging in such unlawful act or practice.

Proposed law repeals the provision in present law requiring the commissioner to send notice and give an opportunity for a hearing and provides that an aggrieved party affected by the commissioner's decision, act, or order may demand a hearing in accordance with present law (Chapter 12 of Title 22, R.S. 22:2191 et seq.).

Present law provides that before an order for revocation of registration of securities is made final, the insurance company or other insurer applying for registration shall on application be entitled to a hearing, and after such hearing the commissioner shall notify it of the final ruling on the matter.

Proposed law repeals present law and provides that if an order of revocation is entered, the aggrieved party may demand a prompt hearing in accordance with present law (Chapter 12 of Title 22, R.S. 22:2191 et seq.).

Proposed law provides that if a hearing is not timely requested, the commissioner shall enter a final order revoking the registration of the security, with his findings with respect thereto. However, if upon a hearing, the division of administrative law finds that the revocation of the security was not according to law, the commissioner shall enter an order revoking the order of revocation and such security shall be restored to its status as a registered security as of the date of the order of suspension.

Present law provides that a dealers' or salesmen's registration may be refused or revoked by the commissioner if after a reasonable notice and a hearing the commissioner determines that such applicant or registrant so registered has committed one or more of the prohibited acts enumerated in present law.

Present law provides that an aggrieved party whose registration is refused or revoked may demand a hearing in accordance with present law (Chapter 12 of Title 22, R.S. 22:2191 et seq.).

Proposed law repeals the provision in present law requiring the commissioner to give reasonable notice and a hearing before refusing or revoking a dealers' or salesmen's registration and retains the provisions in present law providing that an aggrieved party whose registration is refused or revoked may demand a hearing in accordance with present law (Chapter 12 of Title 22, R.S. 22:2191 et seq.).
Present law provides that the commissioner may, after notice and public hearing, promulgate such reasonable rules and regulations as are necessary to provide for the licensing of producers.

Proposed law replaces the notice and public hearing requirement in present law with a requirement that the commissioner promulgate rules and regulations in accordance with the Administrative Procedure Act.

Present law provides that the commissioner may, after notice and hearing, promulgate rules and regulations, as may be necessary or proper to carry out the provisions of the Health Maintenance Organizations law, subject to the rulemaking and review provisions of the Administrative Procedure Act.

Proposed law repeals the notice and hearing requirements in present law and retains the Administrative Procedure Act provision.

Present law provides that commissioner shall make a certified report of the findings from his examination of self-insurers and a copy shall be furnished to the self-insurers at least 30 days prior to the filing of the report in the office of the commissioner for public inspection.

Present law provides that during the 30 days prior to the filing, a self-insurer may request a hearing to consider objections to the report.

Proposed law repeals present law and provides that the commissioner shall make a certified report of his findings and a copy shall be furnished to the self-insurer pursuant to the provisions of present law (R.S. 22:1983).

Present law provides that the commissioner may refuse, suspend or revoke a certificate of authority of a captive insurer if, after an examination and hearing, the commissioner determines that the captive insurer satisfies any of the provisions enumerated in present law.

Present law provides that an aggrieved party affected by the commissioner's decision, act, or order may demand a hearing in accordance with present law (Chapter 12 of Title 22, R.S. 22:2191 et seq.).

Proposed law repeals the requirement that the commissioner conduct a hearing prior to refusing, suspending, or revoking a certificate of authority from a captive insurer.

Present law provides that the commissioner shall give the reinsurer notice and opportunity for a hearing. The suspension or revocation may not take effect until after the commissioner's order upon a hearing unless certain enumerated circumstances are present.

Proposed law specifies that the commissioner shall give the reinsurer notice of the suspension or revocation and opportunity for a hearing in accordance with present law (Chapter 12 of Title 22, R.S. 22:2191 et seq.).

Present law provides that if an acquisition violates the standards of present law, the commissioner may enter an order that requires an involved insurer to cease and desist from doing business in this state and denies the application of an acquired or acquiring insurer for a license to do business in this state.

Present law provides that such an order shall not be entered unless interested parties have opportunity for a hearing, notice of the hearing is issued prior to the end of the waiting period, and the hearing is concluded and the order is issued no later than 60 days after the date of the filing of the pre-acquisition notification.

Proposed law retains present law and specifies that the hearings held pursuant to present law shall be public hearings.
Present law provides that if at the discretion of the commissioner, it appears that the detailed explanation provided for in present law is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of $100 for each day's delay, or may suspend or revoke the insurer's authority.

Proposed law repeals the notice and hearing requirement in present law and provides that an aggrieved party affected by the commissioner's decision, act, or order may demand a hearing in accordance with present law (R.S. 22:691.17).

Present law provides that every director or officer of an insurance holding company system who knowingly violates any provisions of present law shall pay, in their individual capacity, a civil forfeiture of not more than $1,000 per violation, after notice and opportunity for a hearing.

Present law provides that after notice and opportunity for a hearing, the commissioner may order an insurer, subject to present law, to void any contracts and restore the status quo if the action is in the best interest of the policyholder, creditors, or the public.

Proposed law repeals the notice and hearing requirement in present law and provides that an aggrieved party affected by the commissioner's decision, act, or order may demand a hearing in accordance with present law (R.S. 22:691.17).

Present law provides that if, after a hearing, the commissioner finds that any activity or practice of a joint underwriting association is unfair, unreasonable, or otherwise inconsistent with the provisions of present law, the commissioner shall issue a written order specifying in what respects such activity or practice is unfair, unreasonable, or otherwise inconsistent and shall require the discontinuance of such activity or practice.

Proposed law repeals the notice and hearing requirement in present law and retains the provision entitling an aggrieved party affected by the commissioner's decision, act, or order may demand a hearing in accordance with present law (Chapter 12 of Title 22, R.S. 22:2191 et seq.).

Present law provides that if a limited licensee violates the provisions of present law, the commissioner may revoke or suspend his limited license, and, after notice and hearing, impose other penalties, including suspending the transaction of insurance at specific rental locations where violations have occurred, as the commissioner deems to be necessary.

Proposed law repeals the notice and hearing requirement in present law and provides that an aggrieved party affected by the commissioner's decision, act, or order may demand a hearing in accordance with present law (Chapter 12 of Title 22, R.S. 22:2191 et seq.).

Present law provides that the commissioner may cancel or suspend the certificate of any registered insurance or bail bond producer prelicensing program which does not meet the requirements of present law or rules promulgated by the commissioner.

Present law repeals the notice and hearing requirement in present law and retains the provision entitling an aggrieved party affected by the commissioner's decision, act, or order may demand a hearing in accordance with present law (Chapter 12 of Title 22, R.S. 22:2191 et seq.).

Present law provides that if the commissioner finds, after a hearing conducted in accordance with the Administrative Procedure Act, that any person has violated the provisions of present law, the commissioner may take certain disciplinary action.

Present law provides that the decision of the commissioner shall be subject to judicial review pursuant to present law (Chapter 12 of Title 22, R.S. 22:2191 et seq.).
Proposed law repeals the hearing requirement in present law and retains the provision providing that the decision of the commissioner is subject to review pursuant to present law (Chapter 12 of Title 22, R.S. 22:2191 et seq.).

Present law provides that any person aggrieved by the decision, determination, or order of the commissioner may appeal to the Nineteenth Judicial District Court.

Proposed law repeals the hearing requirement in present law and retains the provision providing that any person aggrieved by the decision, determination, or order of the commissioner may appeal to the Nineteenth Judicial District Court.

Present law provides that if a vendor of portable electronics violates any provision of present law, the commissioner may, after notice and opportunity for a hearing, take certain disciplinary action.

Proposed law repeals the notice and hearing requirement in present law and provides that an aggrieved party affected by the commissioner's decision, act, or order may demand a hearing in accordance with present law (Chapter 12 of Title 22, R.S. 22:2191 et seq.).

Present law provides that the commissioner may, after notice and hearing, promulgate such rules and regulations as may be necessary or proper to carry out the provisions of the medical claims laws. Such rules and regulations shall be promulgated and adopted in accordance with the Administrative Procedure Act.

Proposed law repeals the notice and hearing requirement in present law and retains the provision requiring that such rules and regulations be promulgated and adopted in accordance with the Administrative Procedure Act.

Present law provides that if the commissioner has reasonable cause to believe that a board member failed to disclose a known conflict of interest with his duties on the board, failed to take appropriate action based on a known conflict of interest with his duties on the board, or has been indicted or charged with a felony, or misdemeanor involving moral turpitude, the commissioner may suspend that board member pending the outcome of an investigation or hearing by the commissioner or the conclusion of any criminal proceedings. In the event that the allegations are substantiated at the conclusion of an investigation, hearing or criminal proceeding, the seat shall be declared vacant.

Proposed law repeals the hearing option in present law.

Present law provides that if the association fails to submit suitable amendments to its plan of operations, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of the La. Insurance Guaranty Association Law.

Proposed law repeals the notice and hearing requirement in present law and provides that the adoption and promulgation of rules by the commissioner shall be done in accordance with the Administrative Procedure Act.

Present law provides that any person insured pursuant to present law, R.S. 22:2322 through 2334, or his representative, or any affected insurer, who may be aggrieved by an act, ruling, or decision of the governing committee of the plan may, within 30 days after such ruling, appeal to the commissioner.

Proposed law repeals the hearing requirement in present law and provides that any hearings held by the commissioner of insurance pursuant to such an appeal shall be in accordance with the procedure set forth in the insurance laws of Louisiana. All persons or insureds aggrieved by any order or decision of the commissioner of insurance may appeal as is provided by the provisions of the insurance laws of the state of Louisiana.
Proposed law repeals the provisions of present law that provide that any hearings held by the commissioner relative to an appeal shall be in accordance with the procedure set forth in the insurance laws of Louisiana and provides that such hearings may be demanded by a person aggrieved by any order or decision of the commissioner in accordance with present law (Chapter 12 of Title 22, R.S. 22:2191 et seq.).

Proposed law makes technical changes.

(Amends R.S. 22:33(A)(intro. para.), 88(F)(7) and (I)(1), 255, 258, 462(G), 550.12(A)(intro. para.), 651(K), 691.5(E)(1)(b), 691.8(B)(2), 691.13(B) and (C), 1472(B), 1550.1(D), 1571(H), 1627(A)(intro. para.) and (B), 1781.5, 1835(A), 2057(E), 2059(A)(2), 2089(A)(2), and 2331; Adds R.S. 22:691.13(G))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Insurance to the original bill:

1. Change the process whereby certain persons aggrieved by the commissioner's decisions can seek appeal from the process pursuant to R.S. 22:2191 et seq. to the process in 22:691.17.

2. Restore R.S. 22:1731(A)(introductory paragraph) to its posture in present law.

3. Make technical changes.