

2018 Regular Session

HOUSE BILL NO. 551

BY REPRESENTATIVE HUVAL

INSURANCE: Provides relative to the Louisiana Life and Health Insurance Guaranty Association

1 AN ACT

2 To amend and reenact R.S. 22:2082, 2083(A)(1), (2)(introductory paragraph) and (b), and

3 (5), (B)(1) and (2)(introductory paragraph), (a), (h)(introductory paragraph), (ii), and

4 (iii), and (i), and (C)(1), 2084(5), (8)(introductory paragraph), (11.1), and (12),

5 2085(A)(introductory paragraph) and (4) and (B), 2086(A)(introductory paragraph),

6 (1) and (7), 2087(A)(introductory paragraph) and (1), (B)(introductory paragraph)

7 and (1), (C), (F), (L), (M)(1), (4), and (5), (N), and (Q)(introductory paragraph),

8 2088(C), (E)(1)(a) and (b), (F) through (H), and (I)(5), 2090(A)(introductory

9 paragraph) and (2), (B), (C), and (D), 2091(A)(introductory paragraph), (1)(a)(iii)

10 and (b), and (3), (B), and (C), 2093(C), (D), and (E)(1) through (3), 2098(A), (B),

11 and (C)(2), and 2099, to enact R.S. 22:2083(B)(3) and (F), 2084(8)(i), and

12 2085(C)(3)(h), and to repeal R.S. 22:2084(8)(a) and 2091(E) and (G), relative to the

13 Louisiana Life and Health Insurance Guaranty Association; to provide for purpose,

14 scope, and applicability; to define key terms; to add health maintenance

15 organizations as member insurers; to provide for the assessment of member insurers

16 relative to long-term care policies and contracts; to provide for the reissuance of

17 policies or contracts by the association; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 22:2082, 2083(A)(1), (2)(introductory paragraph) and (b), and (5),
3 (B)(1) and (2)(introductory paragraph), (a), (h)(introductory paragraph), (ii), and (iii), and
4 (i), and (C)(1), 2084(5), (8)(introductory paragraph), (11.1), and (12), 2085(A)(introductory
5 paragraph) and (4) and (B), 2086(A)(introductory paragraph), (1) and (7),
6 2087(A)(introductory paragraph) and (1), (B)(introductory paragraph) and (1), (C), (F), (L),
7 (M)(1), (4), and (5), (N), and (Q)(introductory paragraph), 2088(C), (E)(1)(a) and (b), (F)
8 through (H), and (I)(5), 2090(A)(introductory paragraph) and (2), (B), (C), and (D),
9 2091(A)(introductory paragraph), (1)(a)(iii) and (b), and (3), (B), and (C), 2093(C), (D), and
10 (E)(1) through (3), 2098(A), (B), and (C)(2), and 2099 are hereby amended and reenacted
11 and R.S. 22:2083(B)(3) and (F), 2084(8)(i), and 2085(C)(3)(h) are hereby enacted to read
12 as follows:

13 §2082. Purpose

14 A. The purpose of this Part is to protect, subject to certain limitations, the
15 persons listed in R.S. 22:2083(A) against failure in the performance of contractual
16 obligations, under life, ~~and health, insurance policies~~ and annuity policies, plans, or
17 contracts specified in R.S. 22:2083(B), because of the impairment or insolvency of
18 the member insurer that issued the policies, plans, or contracts.

19 B. To provide this protection, an association of member insurers is hereby
20 created to pay benefits and to continue coverages as limited herein. Members of the
21 association are subject to assessment to provide funds to carry out the purpose of this
22 Part.

23 §2083. Coverages and limitations

24 A. This Part shall provide coverage for the policies and contracts specified
25 in Subsection B of this Section:

26 (1) To any person who, regardless of residence, except for a nonresident
27 certificate holder under a group policy or contract, is the beneficiary, assignee, or
28 payee, including healthcare providers rendering services covered under health

1 any of these, and for unallocated annuity contracts, in each case issued by member
2 insurers, except as limited by this Part.

3 (2) This Except as otherwise provided in Paragraph (3) of this Subsection,
4 this Part shall not provide coverage for any of the following:

5 (a) Any portion of a policy or contract not guaranteed by the member
6 insurer, or under which the risk is borne by the policy or contract holder.

7 * * *

8 (h) An obligation that does not arise under the express written terms of the
9 policy or contract issued by the member insurer to the enrollee, certificate holder,
10 contract owner, or policy owner, including without limitations, any of the following:

11 * * *

12 (ii) Claims based on side letters, riders, or other documents that were issued
13 by the member insurer without meeting applicable policy or contract form filing or
14 approval requirements.

15 (iii) Misrepresentations of or regarding policy or contract benefits.

16 * * *

17 (i) A policy or contract providing any hospital, medical, prescription drug,
18 or other ~~health care~~ healthcare benefits pursuant to Part A, Part B, Part C, or Part D
19 of Subchapter XVIII, Chapter 7 of Title 42 of the United States Code, commonly
20 referred to as "Medicare Part A coverage", "Medicare Part B coverage", "Medicare
21 Part C coverage", and "Medicare Part D coverage", or Subchapter XIX of Chapter
22 7 of Title 42 of the United States Code, commonly referred to as "Medicaid", and
23 any regulations issued pursuant to those parts or subchapters.

24 * * *

25 (3) The exclusion from coverage provided for in Subparagraph (2)(c) of this
26 Subsection shall not apply to any portion of a policy or contract, including a rider,
27 that provides long-term care or any other health insurance benefits.

28 C. The benefits for which the association shall become liable shall in no
29 event exceed the lesser of the following:

1 (1) The contractual obligations for which the member insurer is liable or
2 would have been liable if it were not an impaired or insolvent insurer.

3 * * *

4 F. For purposes of this Part, benefits provided by a long-term care rider to
5 a life insurance policy or annuity contract shall be considered the same type of
6 benefits as the base life insurance policy or annuity contract to which it relates.

7 * * *

8 §2084. Definitions

9 As used in this Part:

10 * * *

11 (5) "Covered contract " or "covered policy" means any policy or contract
12 within the scope of this Part as set forth by in R.S. 22:2083.

13 * * *

14 (8) "Member insurer" means any insurer or health maintenance organization
15 licensed or which holds a certificate of authority to transact in this state any kind of
16 insurance or health maintenance organization business for which coverage is
17 provided by R.S. 22:2083, and includes any insurer or health maintenance
18 organization whose license or certificate of authority in this state may have been
19 suspended, revoked, not renewed, or voluntarily withdrawn, but shall not include any
20 of the following:

21 * * *

22 (i) A managed care organization that has contracted with the Louisiana
23 Department of Health to provide healthcare services to Medicaid enrollees.

24 * * *

25 (11.1) "Receivership court" means the court in the insolvent or impaired
26 insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation
27 of the member insurer.

28 (12) "Resident" means a person who resides in this state on the date of entry
29 of a court order that determines a member insurer to be an impaired insurer or a court

1 order that determines a member insurer to be an insolvent insurer and to whom a
2 contractual obligation is owed. A person may be a resident of only one state, which
3 in the case of a person other than a natural person shall be its principal place of
4 business. Citizens of the United States that are either (a) residents of foreign
5 countries, or (b) residents of United States possessions, territories, or protectorates
6 that do not have an association similar to the association created by this Part, shall
7 be deemed residents of the state of domicile of the member insurer that issued the
8 policies or contracts.

9 * * *

10 §2085. Creation of the association

11 A. There is hereby created a nonprofit entity to be known as the Louisiana
12 Life and Health Insurance Guaranty Association whose legal domicile shall be in the
13 parish of East Baton Rouge. All member insurers shall be and remain members of
14 the association as a condition of their authority to transact insurance or a health
15 maintenance organization business in this state. The association shall perform its
16 function under the plan of operation established and approved pursuant to R.S.
17 22:2089 and shall exercise its powers through a board of directors established ~~by~~
18 pursuant to R.S. 22:2086. For purposes of administration and assessment, the
19 association shall maintain four accounts:

20 * * *

21 (4) The health ~~insurance~~ account.

22 B. The association shall come under the immediate supervision of the
23 commissioner and shall be subject to the applicable provisions of the insurance laws
24 of this state. The ~~commissioner~~ association shall ~~be provided~~ provide any records
25 ~~of the association~~ concerning the operations, budget, and management of the
26 association upon request of the commissioner.

27 * * *

28 C.

29 * * *

1 (3) The association may hold an executive session pursuant to R.S. 42:16 for
2 discussion of one or more of the following, and R.S. 44:1 et seq. shall not apply to
3 any documents as enumerated in R.S. 44:1(A)(2) which relate to one or more of the
4 following:

5 * * *

6 (h) Matters with respect to the abatement or deferral or the request for an
7 abatement or deferral of an assessment pursuant to R.S. 22:2088(D).

8 §2086. Board of directors

9 A. The board of directors of the association shall consist of one consumer
10 representative appointed by the commissioner subject to Senate confirmation, who
11 shall be a resident of the state of Louisiana, and ten member insurers serving terms
12 as established in the plan of operation. The consumer representative ~~may~~ shall not
13 be an officer, director, or employee of an insurance company or engaged in the
14 business of insurance or a health maintenance organization. The insurer members
15 of the board shall be selected by member insurers subject to the approval of the
16 commissioner from the following groups or their successors:

17 (1) One representative of a member insurer which is a domestic commercial
18 insurance company and a member of the Louisiana Insurers' Conference.

19 * * *

20 (7) One representative ~~to be approved by the commissioner~~, who represents
21 a member insurer which is a domestic nonprofit mutual insurer engaged exclusively
22 in the business of furnishing hospital service, medical, or surgical benefits.

23 * * *

24 §2087. Powers and duties of the association

25 A. If a member insurer is an impaired insurer, the association may, in its
26 discretion, subject to any conditions imposed by the association, take ~~such~~ any
27 actions as that do not impair the contractual obligations of the impaired insurer and
28 that are approved by the commissioner:

1 respect to an individual formerly ~~an insureds~~ insured, enrollee, or ~~formerly an~~
2 annuitant under a group policy or contract who is not eligible for replacement group
3 coverage, make available substitute coverage on an individual basis in accordance
4 with the provisions of Paragraph (4) of this Subsection, if the insureds, enrollees, or
5 annuitants had a right under law or the terminated policy, contract, or annuity to
6 convert coverage to individual coverage or to continue an individual policy, contract,
7 or annuity in force until a specified age or for a specified time, during which the
8 insurer or health maintenance organization had no right to unilaterally alter any
9 provision of the policy, contract, or annuity or had a right to undertake alterations
10 only in premium by class.

11 (4)(a) In providing the substitute coverage required under Paragraph (3) of
12 this Subsection, the association may offer either to reissue the terminated coverage
13 or to issue an alternative policy or contract at actuarially justified rates, subject to the
14 prior approval of the commissioner.

15 (b) Alternative or reissued policies or contracts shall be offered without
16 requiring evidence of insurability, and shall not provide for any waiting period or
17 exclusion that would not have applied under the terminated policy or contract.

18 (c) The association may reinsure any alternative or reissued policy or
19 contract.

20 (5)(a) Alternative policies adopted by the association shall be subject to the
21 approval of the ~~domiciliary insurance commissioner and the receivership court.~~ The
22 association may adopt alternative policies or contracts of various types for future
23 issuance without regard to any particular impairment or insolvency.

24 (b) Alternative policies or contracts shall contain at least the minimum
25 statutory provisions required in this state and provide benefits that shall not be
26 unreasonable in relation to the premium charged. The association shall set the
27 premium in accordance with a table of rates that it shall adopt. The premium shall
28 reflect the amount of insurance to be provided and the age and class of risk of each

1 insured, but shall not reflect any changes in the health of the insured after the
2 original policy or contract was last underwritten.

3 (c) Any alternative policy or contract issued by the association shall provide
4 coverage of a type similar to that of the policy or contract issued by the impaired or
5 insolvent insurer, as determined by the association.

6 (6) If the association elects to reissue terminated coverage at a premium rate
7 different from that charged under the terminated policy or contract, the premium
8 shall be actuarially justified and set by the association in accordance with the amount
9 of insurance or coverage provided and the age and class of risk, subject to the prior
10 approval of the ~~domiciliary insurance commissioner and the receivership court~~.

11 (7) The association's obligations with respect to coverage under any policy
12 or contract of the impaired or insolvent insurer or under any reissued or alternative
13 policy or contract shall cease on the date the coverage or policy is replaced by
14 another similar policy or contract by the policy or contract owner, the insured, the
15 enrollee, or the association.

16 (8) When proceeding ~~under~~ pursuant to this Subsection with respect to a
17 policy or contract carrying guaranteed minimum interest rates, the association shall
18 assure the payment or crediting of a rate of interest consistent with R.S.
19 22:2083(B)(2)(c).

20 * * *

21 F. Nonpayment of premiums within thirty-one days after the date required
22 by the terms of any guaranteed, assumed, alternative, or reissued policy or contract
23 or substitute coverage shall terminate the association's obligations under such policy,
24 contract, or coverage under this Part with respect to such policy, contract, or
25 coverage, except with respect to any claims incurred or any net cash surrender value
26 which may be due in accordance with the provisions of this Part.

27 * * *

28 L. The association shall have standing to appear or intervene before any
29 court in this state or state agency with jurisdiction over an impaired or insolvent

1 insurer and concerning which the association shall become obligated under this Part
 2 or with jurisdiction over any other person or property against which the association
 3 may have benefit through subrogation or otherwise. The standing shall extend to all
 4 matters germane to the powers and duties of the association, including but not
 5 limited to proposals for reinsuring, reissuing, modifying, or guaranteeing the policies
 6 or contracts of the impaired or insolvent insurer and the determination of the policies
 7 or contracts and contractual obligations. The association shall also have the right to
 8 appear or intervene before a court or agency in another state with jurisdiction over
 9 any person or property for which the association shall become obligated or with
 10 jurisdiction over a third party against whom the association may have rights through
 11 subrogation or otherwise.

12 M.(1) Any person receiving benefits under this Part shall be deemed to have
 13 assigned the rights under, and any causes of action relating to, the covered policy or
 14 contract to the association to the extent of the benefits received because of this Part,
 15 whether the benefits are payments of or on account of contractual obligations,
 16 continuation of coverage, or provision of substitute or alternative policies, contracts,
 17 or coverages. The association may require an assignment of such rights and cause
 18 of action by any enrollee, payee, policy or contract owner, beneficiary, insured, or
 19 annuitant as a condition precedent to the receipt of any right or benefits conferred by
 20 this Part upon such person.

21 * * *

22 (4) If the provisions of this Subsection are determined to be invalid or
 23 ineffective with respect to any person or claim for any reason, the amount payable
 24 by the association with respect to the related, covered obligations shall be reduced
 25 by the amount realized by any other person or claim that is attributable to the policies
 26 or contracts, or portion thereof, covered by the association.

27 (5) If the association has provided benefits with respect to a covered
 28 obligation and a person recovers amounts as to which the association has rights as
 29 described in Paragraph (4) of this Subsection, the person shall pay to the association

1 the portion of the recovery attributable to the policies or contracts, or the portion
2 thereof, covered by the association.

3 N. The association may do any of the following:

4 (1) Enter into ~~such~~ any contracts ~~as are~~ necessary or proper to implement the
5 provisions and purposes of this Part.

6 (2) Sue or be sued, including taking any legal actions necessary or proper to
7 recover any unpaid assessments pursuant to R.S. 22:2088 and to settle claims or
8 potential claims against it.

9 (3) Borrow money to effect the purposes of this Part. Any notes or other
10 evidence of indebtedness of the association not in default shall be legal investments
11 for domestic member insurers and may be carried as admitted assets.

12 (4) Employ or retain ~~such~~ any persons ~~as are~~ necessary to handle the
13 financial and legal transactions of the association, and to perform ~~such~~ other
14 functions ~~as become~~ necessary or proper under this Part.

15 (5) Take ~~such~~ any legal action ~~as may be~~ necessary to avoid payment or
16 recover payment of improper claims.

17 (6) Exercise, for the purposes of this Part and to the extent approved by the
18 commissioner, the powers of a domestic life ~~or insurer~~, health insurer, or health
19 maintenance organization, but in no case may the association issue ~~insurance~~ policies
20 or ~~annuity~~ contracts other than those issued to perform its obligations under this Part.

21 (7) Unless prohibited by law, in accordance with the terms and conditions
22 of the policy or contract, file for actuarially justified rate or premium increases for
23 any policy or contract for which it provides coverage pursuant to this Part.

24 * * *

25 Q. In carrying out its duties in connection with guaranteeing, assuming,
26 reissuing, or reinsuring policies or contracts under this Section, the association may;
27 ~~subject to approval of the receivership court~~, issue substitute coverage for a policy
28 or contract that provides an interest rate, crediting rate, or similar factor determined
29 by use of an index or other external reference stated in the policy or contract

1 employed in calculating returns or changes in value by issuing an alternative policy
2 or contract that meets the following requirements:

3 * * *

4 §2088. Assessments

5 * * *

6 C.(1) The amount of any Class A assessment shall be determined by the
7 board ~~and shall not exceed three hundred dollars per member insurer in any one~~
8 ~~calendar year.~~ The amount of any Class B assessment, except for assessments
9 related to long-term care insurance, shall be allocated for assessment purposes
10 among the accounts pursuant to an allocation formula which may be based on the
11 premiums or reserves of the impaired or insolvent insurer or any other standard
12 deemed by the board in its sole discretion as being fair and reasonable under the
13 circumstances and established in the plan of operation.

14 (2) The amount of the Class B assessment for long-term care insurance
15 written by the impaired or insolvent insurer shall be allocated according to a
16 methodology included in the plan of operation and approved by the commissioner.
17 The methodology shall provide for fifty percent of the assessment to be allocated to
18 accident and health member insurers and fifty percent to be allocated to life and
19 annuity member insurers.

20 (3) Class B assessments against member insurers for each account shall be
21 in the proportion that the premiums received on business in this state by each
22 assessed member insurer on policies or contracts covered by each account for the
23 three most recent calendar years for which information is available preceding the
24 year in which the member insurer became impaired or insolvent, as the case may be,
25 bears to such premiums received on business in this state for such calendar years by
26 all assessed member insurers.

27 ~~(3)~~ (4) Assessments for funds to meet the requirements of the association
28 with respect to an impaired or insolvent insurer shall not be commenced by the board
29 of directors until necessary to implement the purposes of this Part. Classification of

1 assessments pursuant to Subsection B of this Section and computation of
2 assessments pursuant to this Subsection shall be made with a reasonable degree of
3 accuracy.

4 * * *

5 E.(1)(a) The total of all assessments upon an insurer for each account shall
6 not in any one calendar year exceed two percent of such average premiums received
7 of the insurers in this state on the policies and contracts covered by the account
8 during the three calendar years preceding the year in which the member insurer
9 became an impaired or insolvent insurer.

10 (b) With respect to member insurers that become impaired or insolvent in
11 different calendar years, if two or more assessments are authorized in one calendar
12 year, the average annual premiums for purposes of the aggregate assessment
13 percentage limitation referenced in Subparagraph (a) of this Paragraph shall be equal
14 and limited to the higher of the three-year average annual premiums for the
15 applicable account as calculated pursuant to this Section.

16 * * *

17 F. The board may, by an equitable method as established in the plan of
18 operation, refund to member insurers, in proportion to the contribution of each
19 member insurer to that account, the amount by which the assets of that account
20 exceed the amount the board finds is necessary to carry out during the coming year
21 the obligations of the association with regard to that account, including assets
22 accruing from assignment, subrogation, net realized gains, and income from
23 investments. A reasonable amount may be retained in any account to provide funds
24 for the continuing expenses of the association and for future losses.

25 G. It shall be proper for any member insurer, in determining its premium
26 rates and policy owner dividends as to any kind of insurance or health maintenance
27 organization business within the scope of this Part, to consider the amount
28 reasonably necessary to meet its assessment obligations under this Part.

1 member insurer who fails to pay an assessment when due. The fine shall not exceed
2 five percent of the unpaid assessment per month, but no fine shall be less than one
3 hundred dollars per month.

4 C. Any action of the board of directors or the association may be appealed
5 to the commissioner by any member insurer if such appeal is taken within sixty days
6 of the final action being appealed. If a member ~~company~~ insurer is appealing an
7 assessment, the amount assessed shall be paid to the association and credited to meet
8 association obligations during the pendency of an appeal. If the appeal on the
9 assessment is upheld, the amount if paid in error or excess, shall be returned to the
10 member ~~company~~ insurer without interest. Any final action or order of the
11 commissioner shall be subject to judicial review in a court of competent jurisdiction.

12 D. The liquidator, rehabilitator, or conservator of any impaired or insolvent
13 insurer shall notify all interested persons of the effect of this Part.

14 §2091. Prevention of insolvencies

15 A. To aid in the detection and prevention of member insurer insolvencies or
16 impairments, it shall be the duty of the commissioner:

17 (1)(a) To notify the commissioner of insurance, or other appropriate official,
18 of all the other states, territories of the United States, and the District of Columbia
19 when he takes any of the following actions against a member insurer:

20 * * *

21 (iii) Makes any formal order that ~~such company~~ the member insurer restrict
22 its premium writing, obtain additional contributions to surplus, withdraw from the
23 state, reinsure all or any part of its business, or increase capital, surplus, or any other
24 account for the security of policyholders, contract owners, certificate holders, or
25 creditors.

26 (b) ~~Such~~ The notice shall be mailed to all such commissioners or other
27 appropriate officials within thirty days following the action taken or the date on
28 which such action occurs.

29 * * *

1 (3) To report to the board of directors when he has reasonable cause to
2 believe from any examination, whether completed or in process, of a member insurer
3 that ~~such~~ the member insurer may be an impaired or insolvent insurer.

4 * * *

5 B. The commissioner may seek the advice and recommendation of the board
6 of directors concerning any matter affecting his duties and responsibilities regarding
7 the financial condition of member insurers and ~~companies~~ and insurers or health
8 maintenance organizations seeking admission to transact ~~insurance~~ business in this
9 state.

10 C. The board of directors may, upon majority vote, make reports and
11 recommendations to the commissioner upon any matter germane to the solvency,
12 liquidation, rehabilitation, or conservation of any member insurer or germane to the
13 solvency of any ~~company~~ insurer or health maintenance organization seeking to
14 transact ~~insurance~~ business in this state. ~~Such~~ The reports and recommendations
15 shall not be considered public ~~documents~~ records.

16 * * *

17 §2093. Miscellaneous provisions

18 * * *

19 C.(1) For the purpose of carrying out its obligations under this Part, the
20 association shall be deemed to be a creditor of the impaired or insolvent insurer to
21 the extent of assets attributable to covered policies reduced by any amounts to which
22 the association is entitled as subrogee pursuant to R.S. 22:2087(M). The assets of
23 the impaired or insolvent insurer attributable to covered policies shall be used to
24 continue all covered policies and pay all contractual obligations of the impaired or
25 insolvent insurer as required by this Part. The assets attributable to covered policies,
26 are that proportion of the assets which the reserves that should have been established
27 for the policies or contracts bear to the reserves that should have been established for
28 all policies of insurance written by the impaired or insolvent insurer.

1 (2) As a creditor of the impaired or insolvent insurer as established in
2 Paragraph (1) of this Subsection and consistent with R.S. 22:2034, the association
3 and other similar associations shall be entitled to receive a disbursement of assets out
4 of the marshaled assets, from time to time as the assets become available to
5 reimburse it, as a credit against contractual obligations under this Part. If the
6 liquidator has not, within one hundred and twenty days of a final determination of
7 insolvency of ~~an~~ a member insurer by the receivership court, made an application to
8 the court for the approval of a proposal to disburse assets out of marshaled assets to
9 guarantee associations having obligations because of the insolvency, then the
10 association shall be entitled to make application to the receivership court for
11 approval of its own proposal to disburse these assets.

12 D.(1) Prior to the termination of any liquidation, rehabilitation, or
13 conservation proceeding, the court may take into consideration the contributions of
14 the respective parties, including the association, shareholders, ~~of the insolvent~~
15 ~~insurer,~~ contract owners, certificate holders, enrollees, and policy owners of the
16 insolvent insurer, and any other party with a bona fide interest, in making an
17 equitable distribution of the ownership rights of such insolvent insurer. In such a
18 determination, consideration shall be given to the welfare of the ~~policyholders~~ policy
19 owners, contract owners, certificate holders, and enrollees of the continuing or
20 successor insurer.

21 (2) No distribution to stockholders, if any, of an impaired or insolvent
22 insurer shall be made until the total amount of valid claims of the association with
23 interest thereon for funds expended in carrying out its powers and duties with respect
24 to ~~such~~ the member insurer have been fully recovered by the association.

25 E.(1) If an order for liquidation or rehabilitation of ~~an~~ member insurer
26 domiciled in this state has been entered, the receiver appointed under such order shall
27 have a right to recover on behalf of the member insurer, from any affiliate that
28 controlled it, the amount of distributions, other than stock dividends paid by the
29 member insurer on its capital stock, made at any time during the five years preceding

1 the petition for liquidation or rehabilitation subject to the limitations of Paragraphs
2 (2) and (4) of this Subsection.

3 (2) No such distribution shall be recoverable if the member insurer shows
4 that when paid the distribution was lawful and reasonable, and that the member
5 insurer did not know and could not reasonably have known that the distribution
6 might adversely affect the ability of the member insurer to fulfill its contractual
7 obligations.

8 (3) Any person who was an affiliate that controlled the member insurer at the
9 time the distributions were paid shall be liable up to the amount of distributions
10 received. Any person who was an affiliate that controlled, as defined in R.S.
11 22:2092(C)(2), the member insurer at the time the distributions were declared, shall
12 be liable up to the amount of distributions he would have received if they had been
13 paid immediately. If two or more persons are liable with respect to the same
14 distributions, they shall be solidarily liable.

15 * * *

16 §2098. Prohibited advertisement of Louisiana Life and Health Insurance Guaranty
17 Association ~~Act~~ Law in insurance sales; notice to policyholders

18 A. No person, including ~~an~~ a member insurer, agent, or affiliate of ~~an~~ a
19 member insurer shall make, publish, disseminate, circulate, or place before the
20 public, or cause directly or indirectly, to be made, published, disseminated,
21 circulated, or placed before the public, in any newspaper, magazine, or other
22 publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over
23 any radio station or television station, or in any other way, any advertisement,
24 announcement, or statement, written or oral, which uses the existence of the Life and
25 Health Insurance Guaranty Association of this state for the purpose of sales
26 solicitation, or inducement to purchase any form of insurance or other coverage
27 covered by the Louisiana Life and Health Insurance Guaranty Association Law. This
28 Section shall not apply to the Louisiana Life and Health Insurance Guaranty

1 Association or any other entity which does not sell or solicit insurance or coverage
2 by a health maintenance organization.

3 B. Within one hundred eighty days of September 30, 1991, the association
4 shall prepare a summary document describing the general purposes and current
5 limitations of the Part and complying with R.S. 22:2092(C). This document shall be
6 submitted to the commissioner for approval. Sixty days after receiving ~~such~~
7 approval, no member insurer ~~may shall~~ deliver a policy or contract described in R.S.
8 22:2083(B)(1) to a policy ~~or~~ owner, contract owner, certificate holder, or enrollee
9 unless the document is delivered to the policy ~~or~~ owner, contract owner, certificate
10 holder, or enrollee prior to or at the time of delivery of the policy or contract except
11 if Subsection D of this Section applies. The document shall also be available upon
12 request by a policyholder. The distribution, delivery, or contents or interpretation
13 of this document shall not mean that either the policy or the contract or the policy
14 owner, contract owner, certificate holder, or enrollee ~~thereof~~ would be covered in the
15 event of the impairment or insolvency of a member insurer. The description
16 document shall be revised by the association as amendments to this Part may require.
17 Failure to receive this document shall not give the ~~policyholder~~, policy owner,
18 ~~contract holder~~, owner, certificate holder, enrollee, or insured any greater rights than
19 those stated in this Part.

20 C. The document prepared pursuant to Subsection B of this Section shall
21 contain a clear and conspicuous disclaimer on its face. The commissioner shall
22 promulgate a rule establishing the form and content of the disclaimer. The
23 disclaimer shall do all of the following:

24 * * *

25 (2) Prominently warn the policy ~~or~~ owner, contract owner, certificate holder,
26 or enrollee that the association may not cover the policy or, if coverage is available,
27 it will be subject to substantial ~~limitation~~, limitations and exclusions, and conditioned
28 on continued residence in the state.

29 * * *

1 §2099. Prospective application

2 A. This Part shall not apply to any insurer or its subsidiaries, insurance
3 holding company system or related, either directly or indirectly, agents, affiliates, or
4 other entities which are insolvent or impaired or unable to fulfill ~~its~~ their contractual
5 obligations before September 30, 1991.

6 B. This Part shall not apply to any health maintenance organization that is
7 insolvent or impaired or unable to fulfill its contractual obligations before August 1,
8 2018.

9 Section 2. R.S. 22:2084(8)(a) and 2091(E) and (G) are hereby repealed in their
10 entirety.

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 551 Engrossed

2018 Regular Session

Huval

Abstract: Adds health maintenance organizations to the membership of the La. Life and Health Insurance Guaranty Association.

Present law establishes the La. Life and Health Insurance Guaranty Association.

Proposed law adds health maintenance organizations as member insurers of the association and updates terminology accordingly.

Present law provides for assessments on member insurers of the association.

Proposed law adds an assessment relative to long-term care policies and contracts.

Present law provides for the powers and duties of the association.

Proposed law adds an authorization for the reissuance of policies or contracts by the association.

Present law establishes the powers and duties of the commissioner of insurance.

Proposed law retains present law.

Present law authorizes the board of directors, upon majority vote, to request that the commissioner of insurance order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer.

Proposed law repeals present law.

Present law requires the board of directors, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, to prepare a report to the

commissioner containing information it may have in its possession relative to the history and causes of the insolvency.

Proposed law repeals present law.

(Amends R.S. 22:2082, 2083(A)(1), (2)(intro. para.) and (b), and (5), (B)(1) and (2)(intro. para.), (a), (h)(intro. para.), (ii), and (iii), and (i), and (C)(1), 2084(5), (8)(intro. para.), (11.1), and (12), 2085(A)(intro. para.) and (4) and (B), 2086(A)(intro. para.), (1) and (7), 2087(A)(intro. para.) and (1), (B)(intro. para.) and (1), (C), (F), (L), (M)(1), (4), and (5), (N), and (Q)(intro. para.), 2088(C), (E)(1)(a) and (b), (F) through (H), and (I)(5), 2090(A)(intro. para.) and (2), (B), (C), and (D), 2091(A)(intro. para.), (1)(a)(iii) and (b), and (3), (B), and (C), 2093(C), (D), and (E)(1) through (3), 2098(A), (B), and (C)(2), and 2099; Adds R.S. 22:2083(B)(3) and (F), 2084(8)(i), and 2085(C)(3)(h); Repeals R.S. 22:2084(8)(a) and 2091(E) and (G))

Summary of Amendments Adopted by House

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

1. Exclude a policy or contract providing healthcare benefits pursuant to Medicare Parts A and B.
2. Exclude Medicaid managed care organizations.
3. Delete the definition for health benefit plan.
4. Authorize the association to hold an executive session for matters regarding abatement or deferral of an assessment.
5. Delete proposed law relative to offsets for paid assessments.
6. Exclude any health maintenance organization that is insolvent or impaired or unable to fulfill its contractual obligations before Aug. 1, 2018.
7. Repeal present law authorizing the board of directors to request an examination of any member insurer which may be an impaired or insolvent insurer and requiring the board to prepare a report containing information in its possession relative to the history and causes of the insolvency.
8. Make technical changes to ensure conformity.