

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)(introductory paragraph) and (2), and 2099, to enact R.S. 22:2083(B)(3) and

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

13 (G), relative to the Louisiana Life and Health Insurance Guaranty Association; to

14 provide for purpose, scope, and applicability; to define key terms; to add health

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

16 member insurers relative to long-term care policies and contracts; to provide for the

17 reissuance of policies or contracts by the association; and to provide for related

18 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)(introductory paragraph) and (2), and 2099 are  
 11 hereby amended and reenacted and R.S. 22:2083(B)(3) and (F), 2084(8)(i), and  
 12 2085(C)(3)(h) are hereby enacted to read 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 insurance policies or certificates, of a person covered under Paragraph (2) of this  
2 Subsection.

3 (2) To any person who is the owner of or certificate holder or enrollee under  
4 such a policy or contract, other than a structured settlement annuity, and who is  
5 either:

6 \* \* \*

7 (b) ~~Is not~~ Not a resident, but only if all of the following conditions are  
8 satisfied:

9 (i) The member insurer which issued such policy or contract is domiciled in  
10 this state.

11 (ii) The member insurer has never held a license or certificate of authority  
12 in the state in which such person resides.

13 (iii) ~~Such~~ The state has an association similar to the association created by  
14 this Part.

15 (iv) The person is not eligible for coverage by such association.

16 \* \* \*

17 (5) This Part is intended to provide coverage to a person who is a resident  
18 of this state and, in special circumstances, to a nonresident. In order to avoid  
19 duplicate coverage, if a person who would otherwise receive coverage under this Part  
20 is provided coverage under the laws of any other state, the person shall not be  
21 provided coverage under this Part. In determining the application of the provisions  
22 of this Paragraph in situations where a person could be covered by the association  
23 of more than one state, whether as an owner, payee, enrollee, beneficiary or assignee,  
24 this Part shall be construed in conjunction with other state laws to result in coverage  
25 by only one association.

26 B.(1) This Part shall provide coverage to the persons specified in Subsection  
27 A of this Section for policies or contracts of direct, non-group life insurance, health  
28 insurance including, for purposes of this Part, health maintenance organization  
29 subscriber contracts and certificates, or ~~annuity policies or contracts~~ annuities, for

1 certificates under direct group policies and contracts for supplemental contracts to  
2 any of these, and for unallocated annuity contracts, in each case issued by member  
3 insurers, except as limited by this Part.

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

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

8 \* \* \*

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

12 \* \* \*

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

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

17 \* \* \*

18 (i) A policy or contract providing any hospital, medical, prescription drug,  
19 or other ~~health care~~ healthcare benefits pursuant to Part A, Part B, Part C<sub>2</sub> or Part D  
20 of Subchapter XVIII, Chapter 7 of Title 42 of the United States Code, commonly  
21 referred to as "Medicare Part A coverage", "Medicare Part B coverage", "Medicare  
22 Part C coverage", and "Medicare Part D coverage", or Subchapter XIX of Chapter  
23 7 of Title 42 of the United States Code, commonly referred to as "Medicaid", and  
24 any regulations issued pursuant to those parts or subchapters.

25 \* \* \*

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

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

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

5 \* \* \*

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

9 \* \* \*

10 §2084. Definitions

11 As used in this Part:

12 \* \* \*

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

15 \* \* \*

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

23 \* \* \*

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

26 \* \* \*

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

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

11 \* \* \*

12 §2085. Creation of the association

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

22 \* \* \*

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

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

29 \* \* \*

1 C.

2 \* \* \*

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

7 \* \* \*

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

10 §2086. Board of directors

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

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

21 \* \* \*

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

25 \* \* \*

26 §2087. Powers and duties of the association

27 A. If a member insurer is an impaired insurer, the association may, in its  
28 discretion, subject to any conditions imposed by the association, take ~~such~~ any of the

1        following actions ~~as that~~ do not impair the contractual obligations of the impaired  
2        insurer and that are approved by the commissioner:

3                (1) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed,  
4        assumed, reissued, or reinsured, any or all of the policies or contracts of the impaired  
5        insurer.

6                                \*        \*        \*

7                B. If a member insurer is an insolvent insurer, the association shall, in its  
8        discretion, ~~perform~~ do any of the following:

9                (1) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed,  
10        assumed, reissued, or reinsured, the policies or contracts of the insolvent insurer.

11                                \*        \*        \*

12                C. With respect to ~~life and health insurance policies and annuities~~ policies  
13        and contracts, the association shall do all of the following:

14                (1) Assure payment of benefits ~~for premiums identical to the premiums and~~  
15        ~~benefits, except for terms of conversion and renewability~~, that would have been  
16        payable under the policies or contracts of the insolvent insurer, for claims incurred.

17                (a) With respect to group policies and contracts, not later than the earlier of  
18        the next renewal date under ~~such~~ the policies or contracts or forty-five days, but in  
19        no event less than thirty days, after the date on which the association becomes  
20        obligated with respect to ~~such~~ the policies and contracts.

21                (b) With respect to non-group policies, contracts, and annuities, not later  
22        than the earlier of the next renewal date, if any, under ~~such~~ the policies or one year,  
23        but in no event less than thirty days, from the date on which the association becomes  
24        obligated with respect to ~~such~~ the policies or contracts.

25                (2) Make reasonable and diligent efforts to provide all known insureds,  
26        enrollees, or annuitants for non-group policies and contracts, or group ~~policyholders~~  
27        policy or contract owners with respect to group policies and contracts, thirty days  
28        prior notice of the termination of the benefits provided.



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

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

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

21           (c) The association may reinsure any alternative or reissued policy or  
22          contract.

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

27           (b) Alternative policies or contracts shall contain at least the minimum  
28          statutory provisions required in this state and provide benefits that shall not be  
29          unreasonable in relation to the premium charged. The association shall set the

1 premium in accordance with a table of rates that it shall adopt. The premium shall  
2 reflect the amount of insurance to be provided and the age and class of risk of each  
3 insured, but shall not reflect any changes in the health of the insured after the  
4 original policy or contract was last underwritten.

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

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

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

18 (8) When proceeding ~~under~~ pursuant to this Subsection with respect to a  
19 policy or contract carrying guaranteed minimum interest rates, the association shall  
20 assure the payment or crediting of a rate of interest consistent with R.S.  
21 22:2083(B)(2)(c).

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

28 \* \* \*

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.



1 (5) If the association has provided benefits with respect to a covered  
2 obligation and a person recovers amounts as to which the association has rights as  
3 described in Paragraph (4) of this Subsection, the person shall pay to the association  
4 the portion of the recovery attributable to the policies or contracts, or the portion  
5 thereof, covered by the association.

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

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

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

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

15 (4) Employ or retain ~~such~~ any persons ~~as are~~ necessary to handle the  
16 financial and legal transactions of the association, and to perform ~~such~~ other  
17 functions ~~as become~~ necessary or proper under in accordance with this Part.

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

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

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

27 \* \* \*

28 Q. In carrying out its duties in connection with guaranteeing, assuming,  
29 reissuing, or reinsuring policies or contracts under this Section, the association may;

1 ~~subject to approval of the receivership court,~~ issue substitute coverage for a policy  
2 or contract that provides an interest rate, crediting rate, or similar factor determined  
3 by use of an index or other external reference stated in the policy or contract  
4 employed in calculating returns or changes in value by issuing an alternative policy  
5 or contract that meets the following requirements:

6 \* \* \*

7 §2088. Assessments

8 \* \* \*

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

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

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





1 member insurer who fails to pay an assessment when due or fails to comply with the  
2 plan of operation. As an alternative, the commissioner may also levy a fine on any  
3 member insurer who fails to pay an assessment when due. The fine shall not exceed  
4 five percent of the unpaid assessment per month, but no fine shall be less than one  
5 hundred dollars per month.

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

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

16 §2091. Prevention of insolvencies

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

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

22 \* \* \*

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



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

4 \* \* \*

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

8 \* \* \*

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

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

20 \* \* \*

21 §2093. Miscellaneous provisions

22 \* \* \*

23 C.(1) For the purpose of carrying out its obligations under this Part, the  
24 association shall be deemed to be a creditor of the impaired or insolvent insurer to  
25 the extent of assets attributable to covered policies reduced by any amounts to which  
26 the association is entitled as subrogee pursuant to R.S. 22:2087(M). The assets of  
27 the impaired or insolvent insurer attributable to covered policies shall be used to  
28 continue all covered policies and pay all contractual obligations of the impaired or  
29 insolvent insurer as required by this Part. The assets attributable to covered policies,

1 are that proportion of the assets which the reserves that should have been established  
2 for the policies or contracts bear to the reserves that should have been established for  
3 all policies of insurance written by the impaired or insolvent insurer.

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

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

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

28 E.(1) If an order for liquidation or rehabilitation of ~~an~~ a member insurer  
29 domiciled in this state has been entered, the receiver appointed under such order shall

1 have a right to recover on behalf of the member insurer, from any affiliate that  
 2 controlled it, the amount of distributions, other than stock dividends paid by the  
 3 member insurer on its capital stock, made at any time during the five years preceding  
 4 the petition for liquidation or rehabilitation subject to the limitations of Paragraphs  
 5 (2) and (4) of this Subsection.

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

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

18 \* \* \*

19 §2098. Prohibited advertisement of Louisiana Life and Health Insurance Guaranty  
 20 Association ~~Act~~ Law in insurance sales; notice to policyholders

21 A. No person, including ~~an~~ a member insurer, agent, or affiliate of ~~an~~ a  
 22 member insurer shall make, publish, disseminate, circulate, or place before the  
 23 public, or cause directly or indirectly, to be made, published, disseminated,  
 24 circulated, or placed before the public, in any newspaper, magazine, or other  
 25 publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over  
 26 any radio station or television station, or in any other way, any advertisement,  
 27 announcement, or statement, written or oral, which uses the existence of the Life and  
 28 Health Insurance Guaranty Association of this state for the purpose of sales  
 29 solicitation, or inducement to purchase any form of insurance or other coverage

1 covered by the Louisiana Life and Health Insurance Guaranty Association Law. This  
2 Section shall not apply to the Louisiana Life and Health Insurance Guaranty  
3 Association or any other entity which does not sell or solicit insurance or coverage  
4 by a health maintenance organization.

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

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

26 \* \* \*

27 (2) Prominently warn the policy ~~or~~ owner, contract owner, certificate holder,  
28 or enrollee that the association may not cover the policy or, if coverage is available,

1 it will be subject to substantial ~~limitation~~, limitations and exclusions, and conditioned  
 2 on continued residence in the state.

3 \* \* \*

4 §2099. Prospective application

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

9 B. This Part shall not apply to any health maintenance organization that is  
 10 insolvent or impaired or unable to fulfill its contractual obligations before August 1,  
 11 2018.

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

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#### 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 Reengrossed

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) - (3), 2098(A), (B), and (C)(intro. para.) and (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.