

2023 Regular Session

HOUSE BILL NO. 511

BY REPRESENTATIVE ILLG

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE: Provides relative to the Louisiana Insurance Guaranty Association

1 AN ACT

2 To amend and reenact R.S. 22:2055(6)(b)(introductory paragraph) and (i),

3 2056(C)(2)(introductory paragraph), (c), and (d), 2058(A)(introductory paragraph),

4 (1)(b)(iii) and (d), (3)(c), and (B)(introductory paragraph) and (6)(a), 2061.1(A),

5 (B)(1), and (D), 2062(A)(1),(2), and (6), to enact R.S. 22:2056(C)(2)(g) and 2062(E),

6 and to repeal R.S. 22:2062(A)(2)(c), relative to the Louisiana Insurance Guaranty

7 Association; to provide to for the coverage, confidentiality, and payment of claims

8 by the Louisiana Insurance Guaranty Association; to provide for clarification of

9 definitions; to broaden the subject matter for discussion during an executive session;

10 to provide for confidentiality; to provide for a minimum and maximum amount that

11 Louisiana Insurance Guaranty Association may pay on a claim; to clarify the

12 calculation of premiums; to create policies and procedures for insolvent insurers; to

13 provide for an effective date; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 22:2055(6)(b)(introductory paragraph) and (i),

16 2056(C)(2)(introductory paragraph), (c), and (d), 2058(A)(introductory paragraph),

17 (1)(b)(iii) and (d), (3)(c), and (B)(introductory paragraph) and (6)(a), 2061.1(A), (B)(1), and

18 (D), and 2062(A)(1),(2), and (6) are hereby amended and reenacted and R.S.

19 22:2056(C)(2)(g) and 2062(E) are hereby enacted to read as follows:

1 §2055. Definitions

2 As used in this Part:

3 \* \* \*

4 (6) "Covered claim" means the following:

5 \* \* \*

6 (b) "Covered claim" ~~shall~~ does not include the following:

7 (i) Any amount awarded as penalties, punitive, or exemplary damages,  
8 including but not limited to those in the provisions of R.S. 22:1892 and R.S.  
9 22:1973.

10 \* \* \*

11 §2056. Creation of the association

12 \* \* \*

13 C.

14 \* \* \*

15 (2) The association may hold an executive session pursuant to R.S. 42:16 for  
16 discussion of one or more of the following, and R.S. 44:1 through 41 ~~shall~~ do not  
17 apply to any documents as enumerated in R.S. 44:1(A)(2) which relate to one or  
18 more of the following:

19 \* \* \*

20 (c) Matters with respect to claims, groups of similar claims, or claim files,  
21 except documents contained in those files which are otherwise deemed public  
22 records.

23 (d) Prospective litigation against the association after formal written demand,  
24 prospective litigation by the association after referral to counsel for review, ~~or~~  
25 pending litigation by or against the association, or discussion of litigation strategy  
26 or settlement issues.

27 \* \* \*

28 (g) A document or information protected from disclosure by any of the  
29 exceptions provided for in this Section is not subject to discovery, subpoena, or other

1 disclosure, unless the association is compelled by a valid and final court order issued  
2 in a proceeding to which the association was provided with notice and an opportunity  
3 to object to the disclosure of the document or information.

4 \* \* \*

5 §2058. Powers and duties of the association

6 A. The association shall do all of the following:

7 (1)

8 \* \* \*

9 (b) Satisfy such obligation by paying to the claimant an amount as follows:

10 \* \* \*

11 (iii) An amount which ~~is in excess of one hundred dollars and~~ is less than  
12 five hundred thousand dollars, per claim, subject to a minimum limit of one hundred  
13 and one dollars and a maximum limit of five hundred thousand dollars per accident  
14 or occurrence for all other covered claims.

15 \* \* \*

16 (d) Have no obligation to defend an insured upon the association's payment  
17 or tender of an amount equal to the lesser of the association's covered claim  
18 obligation limit or the applicable policy limit, or written notice of extinguishment of  
19 the obligation due to application of a credit. The association is entitled to conduct  
20 confidential discovery to determine whether credits exist to extinguish its defense  
21 obligation during the pendency of litigation, subject to maintaining the  
22 confidentiality of any information.

23 \* \* \*

24 (3)

25 \* \* \*

26 (c) ~~Not subject the premium dollars paid to an insurer by any "high net worth~~  
27 ~~insured" as defined in this Part to the assessment provided for in this Section for the~~  
28 ~~next calendar year~~ Any insurer ~~deducting~~ may deduct the premium dollars from its  
29 assessment ~~shall provide~~ by providing a net worth affidavit to the association from

1 each insured whose premium dollars are being deducted together with a statement  
2 of the amount of premium dollars paid by such insured in accordance with  
3 procedures established by the association.

4 \* \* \*

5 B. The association may do any of the following:

6 \* \* \*

7 (6)(a) Refund to the member insurers in proportion to the contribution of  
8 each member insurer to the association that amount by which the assets of the  
9 association exceed the liabilities, if, at the end of any calendar year, the board of  
10 directors finds that the assets of the association exceed the liabilities of the  
11 association as estimated by the board of directors ~~for the coming year~~.

12 \* \* \*

13 §2061.1. Net worth exclusion

14 A. For purposes of this Part, "high net worth insured" ~~shall mean~~ means any  
15 policyholder or named insured, other than any state or local governmental agency or  
16 subdivision thereof, whose net worth exceeds twenty-five million dollars on  
17 December thirty-first of the year prior to the year in which the insurer becomes an  
18 insolvent insurer if an insurer. An insured's net worth on that date shall be deemed  
19 to include the aggregate net worth of the insured and all of its subsidiaries and  
20 affiliates as calculated on a consolidated basis. The consolidated net worth of the  
21 insured and all of its affiliates shall be calculated on the basis of their fair market  
22 values. The members of a group self-insurance fund formed pursuant to R.S.  
23 23:1191 et seq. shall not be deemed to be affiliates of the fund, and shall not be  
24 included in the determination of the net worth of the fund. For the purposes of this  
25 Section, a group self-insurance fund, and each individual member of the fund upon  
26 whose behalf a claim is submitted, shall be deemed to be policyholders or named  
27 insureds of any policy of insurance issued to the fund.

28 B.(1) The association ~~shall not be~~ is not obligated to pay any claims or  
29 provide a defense to any claims asserted for coverage under a policy when ~~the~~

1 ~~insured~~ any named insured or policyholder is a high net worth insured, regardless of  
2 whether the claim is asserted against the high net worth insured.

3 \* \* \*

4 D. The association shall ~~establish~~ maintain reasonable procedures subject to  
5 the approval of the commissioner for requesting financial information from insureds  
6 on a confidential basis for purposes of applying this ~~Section, provided that the~~  
7 Section. The financial information may be shared with any other association similar  
8 to the association and the liquidator for the insolvent insurer on the same confidential  
9 basis, but shall otherwise be kept strictly confidential. The financial information  
10 provided by the insured subject to these procedures is not subject to discovery,  
11 subpoena, or other disclosure, unless the association and the high net worth insured  
12 are compelled to disclose this information by a valid and final court order in a  
13 proceeding to which the association was provided with notice and an opportunity to  
14 object to the disclosure of the information. Any request to an insured seeking  
15 financial information ~~must~~ shall advise the insured of the consequences of failing to  
16 provide the financial information. If an insured refuses to provide the requested  
17 financial information where it is requested and available, the association may, until  
18 such time as the information is provided, provisionally deem the insured to be a high  
19 net worth insured for the purpose of denying a claim ~~under~~ pursuant to Subsection  
20 B of this Section.

21 \* \* \*

22 §2062. Exhaustion of other coverage

23 A.(1) Any person having a claim against an insolvent insurer ~~shall be~~  
24 ~~required first~~ is first required to exhaust all coverage provided by any and all other  
25 ~~policy~~ policies, including the right to a defense under the other policy or policies, if  
26 the claim under the other policy or policies arises from the same facts, injury, or loss  
27 that gave rise to the covered claim against the association. The requirement to  
28 exhaust ~~shall apply~~ applies without regard to whether or not the other insurance  
29 policy ~~is a policy~~ or policies were written by a member insurer. However, ~~no person~~

1 ~~shall be a person is not~~ required to exhaust any right under the policy of an insolvent  
2 insurer or any right under a life insurance policy or annuity.

3 (2) Any amount payable on a covered claim ~~under~~ pursuant to this Part shall  
4 be reduced by the full applicable limits stated in the other insurance policy or  
5 policies, or by the amount of the recovery under the other insurance policy or  
6 policies as provided ~~herein~~ pursuant to this Section. The association and the insured  
7 shall receive a full credit for the stated limits, unless the claimant demonstrates that  
8 the claimant used reasonable efforts to exhaust all coverage and limits applicable  
9 under the other insurance policy or policies. If the claimant demonstrates that the  
10 claimant used reasonable efforts to exhaust all coverage and limits applicable under  
11 the other insurance policy or policies, or if there are no applicable stated limits under  
12 the policy or policies, the association and the insured shall receive a full credit for  
13 the total recovery.

14 \* \* \*

15 (6) In addition to the other credits provided for in this Section, in the case of  
16 a claimant alleging personal injury or death caused by exposure to asbestos fibers or  
17 other claim resulting from exposure to, release of, or contamination from any  
18 environmental pollutant or contaminant, any and all other insurance available to the  
19 insured for the claim for all policy periods for which insurance is available ~~must~~  
20 shall first be exhausted before recovering from the association, even if an insolvent  
21 insurer provided the only coverage for one or more policy periods of the alleged  
22 exposure. Only after exhaustion of all solvent insurer's total policy aggregate limits  
23 for any alleged exposure periods will the association be obligated to provide a  
24 defense and indemnification within the obligations of this Part, subject to a credit for  
25 the total amount thereof, whether or not the total amount has actually been paid or  
26 recovered.

27 \* \* \*

28 E. The association is entitled to conduct confidential discovery to determine  
29 whether other available insurance as provided by this Section exists, the applicable



Proposed law makes technical changes. Proposed law otherwise retains present law.

Present law provides the powers and duties that are required of LIGA.

Proposed law makes technical changes. Proposed law otherwise retains present law.

Proposed law provides that LIGA shall pay to the claimant an amount which is in excess of \$100 and is less than \$500,000, per claim, subject to a maximum limit of \$500,000 per accident or occurrence for all other covered claims.

Proposed law provides for a minimum amount of \$101 per accident or occurrence for all other covered claims. Proposed law otherwise retains present law.

Present law allows LIGA to refund member insurers in proportion to the contribution of each member insurer an amount by which the assets of LIGA exceed the liabilities, if, at the end of any calendar year, the board finds that the assets exceed the liabilities as estimated by the board for the coming year.

Proposed law allows LIGA to refund member insurers in proportion to the contribution of each member insurer an amount by which the assets of LIGA exceed the liabilities, if, at the end of any calendar year, the board finds that the assets exceed the liabilities as estimated by the board.

Present law provides that the consolidated net worth of the insured and all of its affiliates shall be calculated on the basis of their fair market values. Present law further provides that the members of a group self-insurance fund shall not be deemed to be affiliates of the fund, and shall not be included in the determination of the net worth of the fund.

Proposed law retains present law.

Present law requires LIGA to establish reasonable procedures, subject to the approval of the commissioner, for requesting financial information from insureds.

Proposed law makes technical changes. Proposed law otherwise retains present law.

Present law provides that the financial information may be shared with any other association similar to LIGA and the liquidator for the insolvent insurer on the same confidential basis.

Proposed law retains present law and further provides that the financial information provided by the insured is not subject to discovery, subpoena, or other disclosure, unless LIGA and the high net worth insured are compelled to disclose such information by a valid and final court order.

Present law requires any person filing a claim against an insurer to exhaust all coverage provided by other policies.

Present law provides that the aforementioned requirement to exhaust all other policies shall apply without regard to whether or not the other insurance policy was written by a member insurer. Present law further provides that no person shall be required to exhaust any right under the policy of an insolvent insurer or any right under a life insurance policy or annuity.

Proposed law makes technical changes. Proposed law otherwise retains present law.

Present law provides that when a claimant alleges personal injury or death caused by exposure to asbestos fibers or other claim resulting from exposure to, release of, or contamination from any environmental pollutant or contaminant, any and all available insurance must be exhausted first before recovering from LIGA.

Proposed law makes technical changes. Proposed law otherwise retains present law.

Proposed law allows LIGA to conduct confidential discovery in order to determine whether other available insurance exists, any limits thereof, the amount of a claimant's recover, the efforts to exhaust any applicable limits, and whether its obligations to the claimant have been extinguished.

Present law provided that the provisions of present law (R.S. 22:2062(A)(2)) shall not apply to uninsured or underinsured motorist policies.

Proposed law repeals present law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S.22:2055(6)(b)(intro. para.) and (i), 2056(C)(2)(intro. para.), (c), and (d), 2058(A)(intro. para.), (1)(b)(iii) and (d), (3)(c), and (B)(intro. para.) and (6)(a), 2061.1(A), (B)(1), and (D), and 2062(A)(1),(2), and (6); Adds R.S. 22:2056(C)(2)(g) and 2062(E); Repeals R.S. 22:2062(A)(2)(c))