

Regular Session, 2010

SENATE BILL NO. 268

BY SENATOR LAFLEUR

INSURERS. Provides for the creation of the Louisiana Insurance Guaranty Association Law. (gov sig)

AN ACT

To amend and reenact R.S. 22:2051, 2052, 2053(A), 2054, 2055, 2056, 2057(A) and (C), 2058(A), (B)(7), (C) and (D), 2059(A) and (C)(1) through (4), 2060(A)(1) and (B), 2061(A), 2062(A) and (B), 2063, 2067, 2068(A) and (B), 2069(A) and (B), and R.S. 44:4.1(B)(10) and to enact R.S. 22:2057(D) and (E), 2059(C)(10) through (14), 2060.1, 2061(D), and 2061.1, and to repeal R.S. 22:2060(A)(3), relative to the Louisiana Insurance Guaranty Association Law; to provide for coverage limitations of the association; to provide for definitions; to provide for the creation of the association; to provide for membership of the board of directors; to provide for the powers and duties of the association; to provide for benefit limitations of the association; to provide for assessments of member insurers; to provide for venue; to provide for the plan of operation of the association; to provide for the powers and duties of the commissioner of insurance; to provide for the coordination among other Guaranty Associations; to provide for the effect of paid claims; to provide for the exclusion of claims of "high net worth insureds"; to provide for the exhaustion of other coverage prior to making a claim against the association; to provide for the prevention of insolvencies; to provide for immunity; to provide for a stay of

1 proceedings against insolvent insurers; to provide for prohibited advertising; to
 2 provide for effective date; and to provide for related matters.

3 Be it enacted by the Legislature of Louisiana:

4 Section 1. R.S. 22:2051, 2052, 2053(A), 2054, 2055, 2056, 2057(A) and (C),
 5 2058(A), (B)(7), (C) and (D), 2059(A) and (C)(1) through (4), 2060(A)(1) and (B), 2061(A),
 6 2062(A) and (B), 2063, 2067, 2068(A) and (B), and 2069(A) and (B) are hereby amended
 7 and reenacted and R.S. 22:2057(D) and (E), 2059(C)(10) through (14), 2060.1, 2061(D), and
 8 2061.1 are hereby enacted to read as follows:

9 §2051. Title

10 This Part shall be known and may be cited as the Louisiana Insurance
 11 Guaranty Association Law.

12 §2052. Purpose

13 The purpose of this Part is to provide ~~a mechanism~~ for the payment of
 14 covered claims under certain insurance policies ~~to avoid excessive~~ with a minimum
 15 delay ~~in payment~~ and ~~to avoid~~ a minimum financial loss to claimants or
 16 policyholders due to ~~because of~~ the insolvency of an insurer, ~~to assist in the~~
 17 ~~detection and prevention of insurer insolvencies and to allow the association to~~
 18 provide financial assistance to member insurers under rehabilitation or liquidation,
 19 and to provide an association to assess the cost of such operations among insurers.

20 §2053. Scope; policy coverage determination

21 A. This Part shall apply to all kinds of direct insurance, except:

22 (1) life ~~Life~~, annuity, health and accident, ~~title~~, or disability; insurance.

23 (2) mortgage ~~Mortgage~~ guaranty, financial guaranty, or other forms of
 24 insurances offering protection against investment risks;

25 (3) Fidelity or surety bonds, bail bond contracts, or any other bonding
 26 obligations.

27 (4) credit ~~Credit~~ insurance, ~~and any transaction or combination of~~
 28 ~~transactions which involve the transfer of investment or credit risks unaccompanied~~
 29 ~~by the transfer of the insurance risk~~, vendor's single interest insurance, or collateral

1 protection insurance; or any similar insurance which protects the interests of a
2 creditor arising out of a creditor-debtor transaction;.

3 **(5) Insurance of warranties or service contracts including** vehicle
4 mechanical breakdown insurance; **or other insurance that provides for the repair,**
5 **replacement or service for the operational or structural failure of the goods or**
6 **property due to a defect in materials, workmanship or normal wear and tear,**
7 **or provides for the liability incurred by the issuer of agreements or service**
8 **contracts that provide such benefits.** and

9 **(6) Title insurance.**

10 **(7) ~~ocean~~ Ocean** marine insurance;.

11 **(8) Any transaction or combination of transactions between a person,**
12 **including affiliates of such person, and an insurer, including affiliates of such**
13 **insurer, which involves the transfer of investment or credit risk unaccompanied**
14 **by transfer of insurance risk.**

15 **(9) Any insurance provided by or guaranteed by government.** It shall
16 likewise not apply to fidelity insurance or surety insurance.

17 * * *

18 §2054. Construction

19 This Part shall be ~~liberally~~ construed to effect ~~the~~ **its** purpose under ~~section~~
20 R.S. 22:2052, which shall constitute an aid and guide to interpretation.

21 §2055. Definitions

22 As used in this Part:

23 **(1) "Affiliate" means a person who directly or indirectly, through one or**
24 **more intermediaries, controls, is controlled by, or is under common control with**
25 **another person.**

26 ~~(1)~~ **(2)** "Association" means the **Louisiana** Insurance Guaranty Association
27 created under R.S. 22:2056.

28 **(3) "Association similar to the association" means any guaranty**
29 **association, security fund or other insolvency mechanism that affords protection**

1 similar to that of the association. The term shall also include any property and
 2 casualty insolvency mechanism that obtains assessments or other contributions
 3 from insurers on a pre-insolvency basis.

4 ~~(2)~~ (4) "Commissioner" means the commissioner of insurance of this state.

5 (5) "Control" means the possession, direct or indirect, of the power to
 6 direct or cause the direction of the management and policies of a person,
 7 whether through the ownership of voting securities, by contract other than a
 8 commercial contract for goods or non-management services, or otherwise,
 9 unless the power is the result of an official position with or corporate office held
 10 by the person. Control shall be presumed to exist if a person, directly or
 11 indirectly owns, controls, holds with the power to vote, or holds proxies
 12 representing, ten percent or more of the voting securities of any other person.
 13 This presumption may be rebutted by a showing that control does not exist in
 14 fact.

15 ~~(3)(a)~~ (6) "Covered claim" means the following:

16 (a) an An unpaid claim, including one for unearned premiums ~~by or against~~
 17 ~~the insured or agent, which that~~ arises out of and is within the coverage and not in
 18 excess of the applicable limits of an insurance policy to which this Part applies
 19 issued by an insurer, if such insurer becomes an insolvent insurer after September
 20 1, 1970, and the policy was issued by such insurer and any of the following:

21 (i) The claimant or insured is a resident of this state at the time of the insured
 22 event, provided that, for entities, the residence of a claimant or insured is the
 23 state in which its principal place of business is located at the time of the insured
 24 event.; or

25 (ii) The claimant is a self-insurer, including an arrangement or trust
 26 formed under Subpart J of Part 1 of Chapter 10 of Title 23 of the Louisiana
 27 Revised Statutes of 1950, and is principally domiciled in this state at the time of
 28 the insured event.

29 ~~(ii)~~ (iii) The property from which the claim is a first party claim for

1 **damage to property with a permanent location** arises is permanently located in
2 this state.

3 (b) "Covered claim" shall not include:

4 **(i) Any amount awarded as penalties, punitive or exemplary damages.**

5 **(ii) Any amount sought as a return of premium under any retrospective**
6 **rating plan.**

7 **(iii) any Any** amount due any reinsurer, insurer, **insurance pool or**
8 **underwriting association,** health maintenance organization or plan, preferred
9 provider organization or plan, **hospital plan corporation, professional health**
10 **service corporation,** employee retirement fund including but not limited to plans
11 subject to the Employee Retirement Income Security Act of 1974, ~~Medicare,~~
12 ~~Medicaid, any insurance pool, or any underwriting association, or within the~~
13 ~~coverage represented, replaced, or both by a certificate of self-insurance~~ **or the self-**
14 **insured portion due any self-insurer** as subrogation recoveries, **reinsurance**
15 **recoveries, contribution, indemnification** or otherwise. In addition, the insured of
16 an insolvent insurer shall likewise not be liable for any subrogation claim asserted
17 by any reinsurer, insurer, **insurance pool, underwriting association,** health
18 maintenance organization or plan, **hospital plan corporation, professional health**
19 **service corporation,** preferred provider organization or plan, employee retirement
20 fund including but not limited to plans subject to the Employee Retirement Income
21 Security Act of 1974, ~~Medicare, Medicaid, any insurance pool, or any underwriting~~
22 ~~association or within the coverage represented, replaced, or both by a certificate of~~
23 ~~self-insurance to the extent of the applicable liability limits previously provided to~~
24 ~~such insured by the insolvent insurer.~~ **or self-insurer may be asserted against a**
25 **person insured under a policy issued by an insolvent insurer other than to the**
26 **extent the claim exceeds the association's obligation limitations.**

27 **(iv) Any claims excluded due to the high net worth of an insured as**
28 **defined in this Part.**

29 **(v) Any first party claims by an insured that is an affiliate of the**

1 **insolvent insurer.**

2 (vi) **Any fee or other amount relating to goods or services sought by or**
3 **on behalf of any attorney or other provider of goods or services retained by the**
4 **insolvent insurer or an insured prior to the date it was determined to be**
5 **insolvent.**

6 (vii) **Any fee or other amount sought by or on behalf of any attorney or**
7 **other provider of goods or services retained by any insured or claimant in**
8 **connection with the assertion or prosecution of any claim, covered or otherwise,**
9 **against the association.**

10 (viii) **Any claim for interest.**

11 (ix) **Any claim filed with the association or a liquidator for protection**
12 **afforded under the insured's policy for incurred-but-not-reported losses.**

13 (x) **Any claim the payment of which exceeds the powers and duties of the**
14 **association in R.S. 22:2058(A)(1) or is outside the scope of coverage in R.S.**
15 **22:2053(A).**

16 (c) "~~Covered claim~~" shall not include any amount due under or arising from
17 ~~a bail bond contract.~~

18 (d) "~~Covered claim~~" shall not include any claim based on or arising from a
19 ~~pre-insolvency obligation of an insolvent insurer, including but not limited to~~
20 ~~contractual attorneys' fees and expenses, statutory penalties and attorneys' fees, court~~
21 ~~costs, interest and bond premiums, or any other expenses incurred prior to the~~
22 ~~determination of insolvency.~~

23 (e) ~~Notwithstanding any other provision of this Part, a "covered claim" shall~~
24 ~~not include a claim filed with the association after the earlier of five years after the~~
25 ~~date of the order of liquidation of the insolvent insurer or the final date set by the~~
26 ~~domiciliary court for the filing of claims against the liquidator or receiver of an~~
27 ~~insolvent insurer. A "covered claim" shall also not include any claim filed with the~~
28 ~~association or a liquidator for incurred-but-not-reported losses or unspecified~~
29 ~~potential losses.~~

1 ~~(f) "Covered claim" shall not include any claim asserted for coverage under~~
2 ~~a policy when the net worth of the insured for whom coverage would allegedly be~~
3 ~~owed exceeds twenty-five million dollars on December thirty-first of the year~~
4 ~~immediately preceding the date of the determination of the insolvency of the insurer.~~
5 ~~However, an insured's net worth on such date shall be deemed to include the~~
6 ~~aggregate net worth of the insured and all of its subsidiaries and affiliates as~~
7 ~~calculated on a consolidated basis. An "affiliate" of the insured includes any person~~
8 ~~or entity who directly, or indirectly through one or more intermediaries, controls or~~
9 ~~is controlled by or is under common control with the insured. "Control" means the~~
10 ~~possession, direct or indirect, of the power to direct or cause the direction of the~~
11 ~~management and policies of the controlled person or entity, whether through the~~
12 ~~ownership of voting securities, by contract, or otherwise. The consolidated net worth~~
13 ~~of the insured and all of its subsidiaries and affiliates shall be calculated on the basis~~
14 ~~of their fair market values. The failure or refusal of a person or entity to return a net~~
15 ~~worth affidavit to the association after two requests therefor shall create a rebuttable~~
16 ~~presumption that the noncompliant person or entity had a net worth in excess of~~
17 ~~twenty-five million dollars on December thirty-first of the year immediately~~
18 ~~preceding the date of the determination of the insolvency of the insurer. An insured~~
19 ~~for the purposes of this provision shall not include any state or local governmental~~
20 ~~agency or subdivision thereof.~~

21 ~~(4)(a)~~ (7) "Insolvent insurer" means:

22 ~~(i)~~ (a) An insurer **that is licensed and** authorized to transact insurance in this
23 state, either at the time the policy was issued or when the insured event occurred, and

24 ~~(ii)~~ (b) Against whom an order of liquidation with a finding of insolvency
25 has been entered by a final judgment of a court of competent jurisdiction in the
26 insurer's state of domicile or of this state, and which order of liquidation has not been
27 stayed or been the subject of a perfected suspensive appeal or other comparable
28 order.

29 ~~(b) Any person, and any attorney who represents a person, who files a~~

1 ~~petition against the association alleging as a basis for the claim the insolvency of an~~
 2 ~~insurer, where said insurer is not an insolvent insurer within the meaning of R.S.~~
 3 ~~22:2055(4)(a), shall pay the reasonable expenses incurred because of the filing of the~~
 4 ~~petition, including a reasonable attorney's fee, subject to the following conditions:~~

5 ~~(i) The association shall furnish to either the person or his attorney, by~~
 6 ~~ordinary service of process, hand delivery, or certified mail, return receipt requested,~~
 7 ~~written notification that the insurer is not an insolvent insurer within the meaning of~~
 8 ~~R.S. 22:2055(4)(a); and~~

9 ~~(ii) If, within sixty days of the receipt of such notification, the person or his~~
 10 ~~attorney has not dismissed the petition, with prejudice and at plaintiff's cost.~~

11 **(8) (a) "Insurance" shall have the meaning specified in R.S. 22:46.**

12 **(b) "Insurer" shall have the meaning specified in R.S. 22:46.**

13 **(c) "Insured" means any named insured, any additional insured, any**
 14 **vendor, lessor, or any other party identified as an insured under the policy.**

15 ~~(5)~~ **(9)(a)** "Member insurer" means any person who:

16 ~~(a)~~ **(i)** Is licensed and authorized to transact insurance in this state, and

17 ~~(b)~~ **(ii)** Since September 1, 1970, has written at least one policy of insurance
 18 to which this Part applies.

19 **(b) An insurer shall cease to be a member insurer effective on the day**
 20 **following the termination or expiration of its license to transact the kinds of**
 21 **insurance to which this Part applies, however, the insurer shall remain liable as**
 22 **a member insurer for any and all obligations, including obligations for**
 23 **assessments levied prior to the termination or expiration of the insurer's license.**

24 ~~(6)~~ **(10)** "Net direct written premiums" means direct gross premiums written
 25 in this state on insurance policies to which this Part applies, **including policy and**
 26 **membership fees**, less return premiums thereon, **premiums on policies not taken**,
 27 and dividends paid or credited to policyholders on such direct business. "Net direct
 28 written premiums" does not include premiums on contracts between insurers or
 29 reinsurers. Notwithstanding any law to the contrary, no assuming reinsurer shall be

1 required to pay or otherwise contribute to any fund or assessment of the association
2 except for any insurance ~~which~~ that the reinsurer directly writes in the state.

3 ~~(7)~~ **(11)** "Person" means any **natural or juridical person** ~~individual,~~
4 company, insurer, association, organization, reciprocal or inter-insurance exchange,
5 partnership, business, trust, ~~or corporation,~~ **or other entity, including governmental**
6 **entities.**

7 ~~(8)~~ **(12)** "Insurance policy" means an insurance contract as defined in R.S.
8 22:864, and shall not include an agreement whereby an insurer agrees to assume and
9 carry out directly with the policyholder any of the policy obligations of another
10 insurer, such as cut-through endorsements, reinsurance endorsements, facultative
11 reinsurance agreements, treaty reinsurance agreements, and other such agreements,
12 when either insurer is **an** affiliated **of** with the other. ~~"Affiliated" as used in this~~
13 ~~Section means that either insurer owns or controls, directly or indirectly, a majority~~
14 ~~of the voting shares of the other or the controlling interest therein, or that both~~
15 ~~insurers are so owned or controlled by another.~~

16 ~~(9)~~ **(13)** "Ocean marine insurance" includes marine insurance as defined in
17 R.S. 22:47(13), except for inland marine, as well as any other form of insurance,
18 regardless of the name, label, or marketing designation of the insurance policy,
19 which insures against maritime perils or risks and other related perils or risks, which
20 are usually insured against by traditional marine insurances such as hull and
21 machinery, marine builders' risks, and marine protection and indemnity. Such perils
22 and risks insured against include without limitation loss, damage or expense or legal
23 liability of the insured for loss, damage, or expense arising out of or incident to
24 ownership, operation, chartering, maintenance, use, repair or construction of any
25 vessel, craft or instrumentality in use in ocean or inland waterways, including
26 liability of the insured for personal injury, illness or death or for loss of or damage
27 to the property of the insured or another person, except this definition shall not
28 include insurance on vessels under five tons gross weight.

29 **(14) "Receiver" means liquidator, rehabilitator, conservator or ancillary**

1 receiver, as the context requires.

2 (15) "Self-insurer" means a person that covers its liabilities through a
 3 qualified individual or group self-insurance program created for the specific
 4 purpose of covering liabilities typically covered by insurance.

5 §2056. Creation of the association

6 A. There is created a private nonprofit unincorporated legal entity to be
 7 known as the "Louisiana Insurance Guaranty Association", ~~whose domicile for~~
 8 ~~purpose of suit shall be East Baton Rouge Parish, Louisiana.~~ All insurers defined as
 9 member insurers **defined** in R.S. 22:2055 shall be and remain members of the
 10 association as a condition of their authority to transact insurance in this state. The
 11 association shall perform its functions under a plan of operation established and
 12 approved under R.S. 22:2059 and shall exercise its powers through a board of
 13 directors established under R.S. 22:2057.

14 B. The association is not and may not be deemed a department, unit, agency,
 15 or instrumentality of the state for any purpose, **and shall not be subject to laws**
 16 **governing such departments, units, agencies, instrumentalities, commissions or**
 17 **boards of the state.** All debts, claims, obligations, and liabilities of the association,
 18 whenever incurred, shall be the debts, claims, obligations, and liabilities of the
 19 association only and not of the state, its agencies, instrumentalities, officers, or
 20 employees. Association monies may not be considered part of the general fund of the
 21 state. The state may not budget for or provide general fund appropriations to the
 22 association, and the debts, claims, obligations, and liabilities of the association may
 23 not be considered to be a debt of the state or a pledge of its credit.

24 C.(1) Notwithstanding the provisions of Subsections ~~(A) and (B)~~ **A and B** of
 25 this Section, and except as provided by Paragraph (2) of this Subsection, the
 26 association shall be subject to R.S. 42:4.1 through 13 and to R.S. 44:1 through 41,
 27 and may be considered as if it were a public body for the purpose of those
 28 provisions.

29 (2) The association may hold an executive session pursuant to R.S. 42:6 for

1 discussion of one or more of the following, and R.S. 44:1 through 41 shall not apply
 2 to any documents as enumerated in R.S. 44:1(A)(2) which relate to one or more of
 3 the following:

4 ~~(a) A request by the association for an examination of a member insurer~~
 5 ~~pursuant to R.S. 22:2063(2), provided that such request shall be made known to the~~
 6 ~~attorney general contemporaneous with the action being taken.~~

7 ~~(b) (a) Reports and recommendations made by the association to the~~
 8 ~~commissioner pursuant to R.S. 22:2063(4) **Information** on any matter relevant to~~
 9 ~~the solvency, liquidation, rehabilitation, or conservation of any member insurer, until~~
 10 ~~such insolvency has been declared or the member insurer has been placed in~~
 11 ~~liquidation, rehabilitation, or conservation.~~

12 ~~(c) (b) Matters protected by attorney-client privilege.~~

13 ~~(d) (c) Matters with respect to claims or claim files, except documents~~
 14 ~~contained in those files which are otherwise deemed public records.~~

15 ~~(e) (d) Prospective litigation against the association after formal written~~
 16 ~~demand, prospective litigation by the association after referral to counsel for review,~~
 17 ~~or pending litigation by or against the association.~~

18 ~~(f) (e) Any other matters now provided for or as may be provided for by the~~
 19 ~~legislature.~~

20 ~~(g) (f) Discussion by or documents in the custody or control of any~~
 21 ~~committee or subcommittee of the association, or any member or agent thereof, or~~
 22 ~~the board of directors or any member or agent thereof, provided such discussion or~~
 23 ~~documents would otherwise be protected from disclosure by any of the exceptions~~
 24 ~~provided in this Paragraph.~~

25 §2057. Board of directors

26 A.~~(1)~~ The board of directors of the association shall consist of nine persons
 27 serving terms as established in the plan of operation. The board shall be composed
 28 of two consumer representatives appointed by the commissioner, one person
 29 appointed by the president of the Senate, one person appointed by the speaker of the

1 House of Representatives, all of whom shall be residents of the state of Louisiana,
2 and five additional persons selected by member insurers, one of which shall be a
3 representative selected by the membership of the Louisiana Association of Fire and
4 Casualty Companies (LAFAC), subject to the approval of the commissioner.
5 Vacancies in the positions for which persons are selected by member insurers shall
6 be filled until the next regularly scheduled election for a member of the board by a
7 majority vote of the remaining members, subject to the approval of the
8 commissioner. At the next regularly scheduled election for a member of the board,
9 the member insurers shall select a member to serve the remainder of the unexpired
10 term of any member appointed by the board, subject to the approval of the
11 commissioner. No person shall serve as a member after his replacement has been
12 either appointed or selected by member insurers and approved by the commissioner.
13 The commissioner shall transmit to the board his approval or disapproval of new
14 board members within thirty days after he has been notified of their selection, and
15 he shall accompany any disapproval of a board member with his written reasons for
16 such disapproval. **One of the two consumer representatives may not be an**
17 **officer, director or employee of an insurance company or any person engaged**
18 **in the business of insurance.**

19 ~~(2) The board of directors of the association is hereby abolished and~~
20 ~~reestablished. The terms of the members of the board of directors serving on the~~
21 ~~effective date of this Subsection shall terminate on the effective date of this~~
22 ~~Subsection. The members of the new board of directors shall be selected as provided~~
23 ~~in this Subsection.~~

24 * * *

25 C. Members of the board may be reimbursed from the assets of the
26 association for **reasonable** expenses incurred by them as members of the board of
27 directors.

28 **D. Any member of the board whose relationship to an insurer in**
29 **receivership presents a conflict of interest shall be terminated as a board**

1 member by the commissioner and the seat declared vacant as of the date of the
 2 entry of the order of receivership.

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

12 §2058. Powers and duties of the association

13 A. The association shall:

14 (1)(a) Be obliged ~~to the extent of the covered claims~~ to pay covered claims
 15 pursuant to an order as provided in R.S. 22:2008(C), existing prior to the
 16 determination of the insurer's insolvency, ~~or upon order of the court as provided in~~
 17 ~~R.S. 22:2008~~; or arising after such determination but prior to the first to occur of the
 18 following events:

19 (i) Expiration of thirty days after the date of such determination of
 20 insolvency,

21 (ii) Expiration of the policy, or

22 (iii) Replacement or cancellation of the policy at the instance of the insured
 23 if ~~he~~ the insured does so within thirty days of ~~the~~ such determination, ~~but such~~
 24 ~~obligation shall include only that amount of each covered claim, except return~~
 25 ~~premiums, which is in excess of one hundred dollars and is less than three hundred~~
 26 ~~thousand dollars, combined single limits, nor shall a claim for the portion of~~
 27 ~~unearned premiums in excess of ten thousand dollars be allowed.~~

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

1 (i) The full amount of a covered claim for benefits under a workers'
2 compensation insurance coverage;

3 (ii) An amount not exceeding ten thousand dollars per policy for a
4 covered claim for the return of unearned premium;

5 (iii) An amount which is in excess of one hundred dollars and is less than
6 five hundred thousand dollars, per claim, subject to a maximum limit of five
7 hundred thousand dollars per accident or occurrence for all other covered
8 claims.

9 (c)(i) In no event be obligated to pay a claimant an amount in excess of
10 the obligation of the insolvent insurer under the policy or coverage from which
11 the claim arises. Notwithstanding any other provision of this Part, a "covered
12 claim" shall not include a claim filed with the association after the earlier of five
13 years after the date of the order of liquidation of the insolvent insurer or the
14 final date set by the domiciliary court for the filing of claims against the
15 liquidator or receiver of an insolvent insurer.

16 (ii) For the purpose of filing a claim under this Subsection, notice of
17 claims to the liquidator of the insolvent insurer shall be deemed notice to the
18 association or its agent and a list of claims shall be periodically submitted to the
19 association or association similar to the association in another state by the
20 liquidator.

21 (d) Have no obligation to defend an insured upon the association's
22 payment or tender of an amount equal to the lesser of the association's covered
23 claim obligation limit or the applicable policy limit, or written notice of
24 extinguishment of the obligation due to application of a credit.

25 ~~(b)~~ (e) The (i) Have an applicable limit per claim and per accident or
26 occurrence which shall be exhaustive of the entire liability of the association under
27 this Part, however arising, without regard to the nature of or basis for that liability,
28 except court costs incurred subsequent to the date of insolvency.

29 ~~(c) Excepting claims for unearned premiums, which shall be subject to the~~

1 ~~ten thousand dollar limitation provided herein, the association shall pay the full~~
2 ~~amount of any covered claim arising out of a worker's compensation policy.~~

3 ~~(d) In no event shall the association be obligated to a policyholder or claimant~~
4 ~~in an amount in excess of the obligation of the insolvent insurer under the policy~~
5 ~~from which the claim arises.~~

6 ~~(e)~~ **(ii)** "Accident or occurrence" in this Section means one proximate,
7 uninterrupted, or continuing cause which results in all of the injuries or damages
8 even though several discrete items of damage result, and even though multiple
9 claims and claimants may arise as a result of one such accident or occurrence. A
10 series of claims arising from the same accident or occurrence shall be treated as due
11 to that one accident or occurrence and thus shall be subject to the aggregate liability
12 limit established herein.

13 ~~(2) Be deemed the insurer to~~ **To** the extent of its obligation on the covered
14 claims ~~and to such extent shall,~~ have all rights, duties, and obligations of the
15 insolvent insurer as if the insurer had not become insolvent, **including but not**
16 **limited to, the right to pursue and retain salvage and subrogation recoverable**
17 **on covered claim obligations to the extent paid by the association. The**
18 **association shall not be deemed the insolvent insurer for the purpose of**
19 **conferring jurisdiction.**; ~~however, when the liability of the association under this~~
20 ~~Part has been exhausted by payment, the obligation of the association to provide a~~
21 ~~defense to the insured of an insolvent insurer shall cease.~~

22 (3)(a)(i) Assess insurers amounts necessary to pay the obligations of the
23 association under Paragraph A(1) **(1) of this Subsection** subsequent to an
24 insolvency, the expenses of handling covered claims subsequent to an insolvency,
25 and the cost of examinations **of the association** ~~under R.S. 22:2064~~, to fund loans
26 or provide guarantees to member insurers under rehabilitation or liquidation and
27 other expenses authorized by this Part. The assessments of each member insurer shall
28 be in the proportion that the net direct written premiums of the member insurer for
29 the preceding calendar year, whether or not a company withdraws subsequent to the

1 preceding calendar year, bears to the net direct written premiums of all member
2 insurers for the preceding calendar year. Each member insurer shall be notified of
3 the assessment not later than thirty days before it is due.

4 ~~(ii)(aa) Beginning January 1, 1990, and ending December 31, 2002, no~~
5 ~~member insurer may be assessed in any year an amount greater than two percent of~~
6 ~~that member insurer's net direct written premiums for the preceding calendar year.~~
7 ~~Beginning January 1, 2003, and thereafter, no~~ **No** member insurer may be assessed
8 in any year an amount greater than one percent of that member insurer's net direct
9 written premiums for the preceding calendar year. If the maximum assessment,
10 together with the other assets of the association, does not provide in any one year an
11 amount sufficient to make all necessary payments, the funds available shall be
12 prorated and the unpaid portion shall be paid as soon thereafter as funds become
13 available. ~~However, as to any assessment or portion thereof payable after May 1,~~
14 ~~1992, payors doing business in Louisiana under a valid certificate of authority as of~~
15 ~~January 1, 1992, and who as of August 21, 1992 have at least one-half of their total~~
16 ~~admitted assets invested in qualifying Louisiana investments as defined in R.S.~~
17 ~~22:832(C), shall receive an earned credit for the amount of such assessment payable~~
18 ~~as follows: the association shall establish on its books an assessment credit fund and~~
19 ~~shall set aside and escrow in such fund ninety-five percent of the amount actually~~
20 ~~received by the association from each payor qualifying for such earned credit; not~~
21 ~~later than sixty days after receipt of such payments, the association shall certify to~~
22 ~~each payor the amount in such fund attributable to each qualifying payor; amounts~~
23 ~~credited to the assessment credit fund shall be expended by the association, only to~~
24 ~~the extent funds are not otherwise available, to meet its obligations under any~~
25 ~~cooperative endeavor agreement dated as of October 1, 1990, (together with all~~
26 ~~amendments and supplements thereto entered into by the association) and upon~~
27 ~~satisfaction of all of the association's obligations under such cooperative endeavor~~
28 ~~agreement and the termination thereof in accordance with its terms, the balances in~~
29 ~~the assessment credit fund shall be promptly paid over by the association to each~~

1 payor qualifying for the earned credit in the amounts certified by the association; to
2 the extent amounts then on deposit in the fund are insufficient to make such
3 payments to such payors, such amounts shall be paid over by the association pro rata.
4 However, the payors shall continue to have a claim of first priority against funds
5 thereafter received by the association until the earned credits are paid in full by the
6 association. Notwithstanding the foregoing, no amounts shall be paid by the
7 association to any payor that has received an earned credit until the association has
8 satisfied all of its obligations under any cooperative endeavor agreement, dated as
9 of October 1, 1990, (together with all amendments and supplements thereto entered
10 into by the association) and such agreement has been terminated in accordance with
11 its terms. In the event any indebtedness secured or permitted to be secured under the
12 cooperative endeavor agreement dated as of October 1, 1990, (together with all
13 amendments and supplements thereto) is refunded or otherwise refinanced by the
14 extension of such existing cooperative endeavor agreement and the incurrence by the
15 association thereunder of indebtedness not contemplated by such agreement as of
16 August 21, 1992, upon the payment and satisfaction by the association of all of its
17 obligations and commitments thereunder, such agreement shall be deemed to be
18 terminated for purposes of this Item.

19 (bb) As to any assessment made on or after the termination of any such
20 cooperative endeavor agreement in accordance with its terms or deemed terminated
21 under the provisions of this Item, payors doing business in Louisiana under a valid
22 certificate of authority as of January 1, 1992, and who, on August 21, 1992, have at
23 least one-half of their admitted assets invested in qualifying Louisiana investments
24 as defined in R.S. 22:832(C), shall have such assessment reduced by eighty percent
25 of the amount otherwise assessed.

26 (iii) The association may exempt or defer, in whole or in part, the assessment
27 of any member insurer if the assessment would cause the member insurer's financial
28 statement to reflect amounts of capital or surplus less than the minimum amounts
29 required for a certificate of authority by any jurisdiction in which the member insurer

1 is authorized to transact insurance. ~~Each member insurer may set off against any~~
2 ~~assessment, authorized payments made on covered claims and expenses incurred in~~
3 ~~the payment of such claims by the member insurer.~~

4 (iv) Beginning January 1, 1990, the amount of the assessment shall be offset
5 in the same manner that an offset is provided against the premium tax liability in
6 Subparagraph (3)(c) of this Subsection, against the assessment levied by R.S.
7 22:1476, provided that such offset shall not be applied against any portion of the
8 assessments to be deposited to the credit of the Municipal Police Employees'
9 Retirement System, the Sheriffs' Pension and Relief Fund, and the Firefighters'
10 Retirement System. To qualify for this offset, the payer shall file a sworn statement
11 with the annual report required by Parts I, III, and IV of Chapter 3 of this Title
12 showing as of December thirty-first of the reporting period that at least the following
13 amounts of the total admitted assets of the payer, less assets in an amount equal to
14 the reserves on its policies issued in foreign countries in which it is authorized to do
15 business and which countries require an investment therein as a condition of doing
16 business, are invested and maintained in qualifying Louisiana investments as defined
17 in R.S. 22:832(C). If one-sixth of the total admitted assets of the payer are in
18 qualifying Louisiana investments, then the offset shall be sixty-six and two-thirds
19 percent of the amount otherwise assessed; if at least one-fifth of the total admitted
20 assets of the payer are in qualifying Louisiana investments, then the offset shall be
21 seventy-five percent of the amount otherwise assessed; if at least one-fourth of the
22 total admitted assets of the payer are in qualifying Louisiana investments, the offset
23 shall be eighty-five percent of the amount otherwise assessed; and if at least one-
24 third of the total admitted assets of the payer are in qualifying Louisiana investments,
25 then the offset shall be ninety-five percent of the amount otherwise assessed. If the
26 total of the net premium tax liability and the assessment for the expenses of the
27 Department of Insurance paid for the previous year was less than the offset allowed
28 under Subparagraph (3)(c) of this Subsection for the previous year, the member
29 company may reduce its assessment payment to the Louisiana Insurance Guaranty

1 Association for the current year by that difference.

2 (v) An insurer may transfer up to twenty percent annually of any offset as
3 described in this Section with the prior approval of the commissioner to an affiliated
4 insurer. For the purposes of this Section:

5 (aa) "Affiliated insurer" means an insurance company licensed or holding a
6 certificate of authority to do business in this state which controls, is controlled by,
7 or is under common control with, another insurer.

8 (bb) "Control" means holding, directly or indirectly, the ownership of or
9 power to vote, at least eighty percent of the voting stock of another member insurer.

10 (b) ~~The association shall issue~~ **(i) Issue** to each insurer paying an assessment
11 under this ~~Act~~ **Part** a certificate of contribution, in a form prescribed by the
12 commissioner, for the amount so paid. All outstanding certificates shall be of equal
13 dignity and priority without reference to amounts or dates of issue.

14 ~~(c)~~ **(ii)** A certificate of contribution issued to a member company ~~shall~~ **may**
15 be offset against its premium tax liability in an amount not to exceed ten percent of
16 the assessment for the year **in which the assessment was paid in full** ~~of assessment~~
17 and not to exceed ten percent of the assessment per year for each **of the nine**
18 **calendar years following the year in which such assessment was paid in full**
19 ~~succeeding year~~, not to exceed a total offset of one hundred percent for each
20 assessment. During the calendar year of issuance of a certificate of contribution, and
21 yearly thereafter, a member shall at its option have the right to show a certificate of
22 contribution as an asset in the form approved by the commissioner at percentages of
23 the original face amount approved by the commissioner, equal to the unused offset
24 as of each such calendar year.

25 ~~(c)~~ **(iii)** To the extent amounts have been written off under ~~R.S.~~
26 ~~22:2058(A)(3)(c)~~ above **Subparagraph (c) of this Paragraph**, the provisions of
27 R.S. 22:2066 shall not apply.

28 ~~(f)~~ **(c)** Not subject the premium dollars paid to an insurer by any ~~insured~~
29 ~~whose net worth exceeds twenty-five million dollars on December thirty-first~~ **"high**

1 **net worth insured" as defined in this Part** to the assessment provided for in this
 2 Section for the next calendar year. ~~An insured's net worth shall include the aggregate~~
 3 ~~net worth of the insured and all of its subsidiaries and affiliates calculated on a~~
 4 ~~consolidated basis. An "affiliate" of the insured includes any person or entity who~~
 5 ~~directly, or indirectly through one or more intermediaries, controls or is controlled~~
 6 ~~by or is under common control with the insured. "Control" means the possession,~~
 7 ~~direct or indirect, of the power to direct or cause the direction of the management and~~
 8 ~~policies of the controlled person or entity, whether through the ownership of voting~~
 9 ~~securities, by contract, or otherwise. The consolidated net worth of the insured and~~
 10 ~~all of its subsidiaries and affiliates shall be calculated on the basis of their fair market~~
 11 ~~values. Any insurer deducting the premium dollars from its assessment shall provide~~
 12 a net worth affidavit to the association from each insured whose premium dollars are
 13 being deducted together with a statement of the amount of premium dollars paid by
 14 such insured in accordance with procedures established by the association.

15 (4) Investigate claims brought against the association and adjust,
 16 compromise, settle, and pay covered claims to the extent of the association's
 17 obligation and deny all other claims. **The association may pay claims in any order**
 18 **that it may deem reasonable, including the payment of claims as they are**
 19 **received from the claimants or in groups or categories of claims. The**
 20 **association shall have the right to appoint and to direct legal counsel retained**
 21 **under liability insurance policies for the defense of covered claims.** ~~On~~
 22 ~~contradictory motion of the association, a court of proper jurisdiction and venue over~~
 23 ~~the claim shall enter a formal order annulling any unsatisfied preinsolvency~~
 24 ~~settlement, release, or consent judgment entered into by the insolvent insurer in its~~
 25 ~~name or the name of the insured, upon a showing of fraud, ill practice, or where the~~
 26 ~~settlement is clearly excessive, considering all relevant factors, including but not~~
 27 ~~limited to coverage, liability, and quantum issues.~~

28 (5) Notify ~~such persons as the commissioner directs under R.S.~~
 29 ~~22:2060(B)(1)~~ **claimants, insureds and other interested parties of the**

1 determination of insolvency and of their rights under this Part as deemed
2 necessary by the commissioner and upon the commissioner's request, to the
3 extent records are available to the association. The association may discharge
4 this duty by notice mailed to the last known address or notice by publication in
5 a newspaper of general circulation when a mailing address is unavailable or
6 insufficient.

7 (6)(a) Have the right to review and contest as set forth in this Subsection
8 settlements, releases, compromises, waivers and judgments to which the
9 insolvent insurer or its insureds were parties prior to the entry of the order of
10 liquidation. In an action to annul, vacate, or enforce settlements, releases and
11 judgments to which the insolvent insurer or its insureds were parties prior to
12 the entry of the order of liquidation, the association shall have the right to assert
13 the following defenses, in addition to the defenses available to the insurer:

14 (i) The association is not bound by a settlement, release, compromise or
15 waiver executed by an insured or the insurer, or any judgment entered against
16 an insured or the insurer by consent or through a failure to exhaust all appeals,
17 if the settlement, release, compromise, waiver or judgment was executed or
18 entered within one hundred twenty days prior to the entry of an order of
19 liquidation, and the insured or the insurer did not use reasonable care in
20 entering into the settlement, release, compromise, waiver or judgment, or did
21 not pursue all reasonable appeals of an adverse judgment; or executed by or
22 taken against an insured or the insurer based on default, fraud, ill practice,
23 collusion, the insurer's failure to defend, or the clearly excessive amount of any
24 settlement, release, compromise, waiver or judgment considering all relevant
25 issues including but not limited to coverage, liability, and quantum.

26 (ii) If a court of competent jurisdiction finds that the association is not
27 bound by a settlement, release, compromise, waiver or judgment for the reasons
28 described in Item (i) of this Subparagraph, the settlement, release, compromise,
29 waiver or judgment shall be set aside, and the association shall be permitted to

1 defend any covered claim on the merits. The settlement, release, compromise,
 2 waiver or judgment may not be considered as evidence of liability or damages
 3 in connection with any claim brought against the association or any other party
 4 under this Part.

5 (iii) The association shall have the right to assert any statutory defenses
 6 or rights of offset against any settlement, release, compromise or waiver
 7 executed by an insured or the insurer, or any judgment taken against the
 8 insured or the insurer.

9 (b) As to any covered claims arising from a judgment under any decision,
 10 verdict or finding based on the default of the insolvent insurer or its failure to
 11 defend, either on its own behalf or on behalf of an insured, have the right to
 12 apply to have the judgment, order, decision, verdict or finding set aside by the
 13 same court or administrator that entered the judgment, order, decision, verdict
 14 or finding and be permitted to defend the claim on the merits.

15 ~~(6)~~ (7) Handle claims through its employees or through one or more insurers
 16 or other persons designated as servicing facilities, which may include the receiver
 17 for the insolvent insurer. Designation of a servicing facility is subject to the
 18 approval of the commissioner, but such designation may be declined by a member
 19 insurer.

20 ~~(7)~~ (8) Reimburse each servicing facility for obligations of the association
 21 paid by the facility and for expenses incurred by the facility while handling claims
 22 on behalf of the association and shall pay the other expenses of the association
 23 authorized by this Part.

24 ~~(8)~~ Annually submit the plan of operation to the commissioner of insurance
 25 in accordance with the provisions of R.S. 22:2059 and of this Part. Approval by the
 26 commissioner shall not be unreasonably withheld. If the plan of operation is
 27 disapproved in whole or in part, the commissioner shall provide written reasons as
 28 to each disapproved part, and the association shall resubmit the part of the plan
 29 which has been disapproved by the commissioner within thirty days thereafter. The

1 preceding plan of operation shall remain in effect until such time as the revised plan
 2 is effective. Amendments to the plan of operation shall be submitted to the
 3 commissioner for approval within ten days of adoption by the association, and
 4 approval of amendments shall be in accordance with R.S. 22:2059 and with this Part
 5 except as otherwise provided in this Section.

6 (9) Annually promulgate policies and procedures which shall be incorporated
 7 into the plan of operation, which policies and procedures are designed to increase
 8 participation for minorities and women in contractual legal services entered into by
 9 such association.

10 (10) Annually promulgate policies and procedures relative to the appointment
 11 of all legal counsel which shall be incorporated into the plan of operation.

12 (11) (9) Annually promulgate policies and procedures relative to a system of
 13 alternative dispute resolution of lawsuits and claims which shall be incorporated into
 14 the plan of operation, and implement such **Implement** a system of alternative dispute
 15 resolution **of lawsuits and claims**.

16 (12) (10) Coordinate and work in conjunction with a special deputy
 17 commissioner designated and appointed by the commissioner of insurance, said
 18 deputy commissioner being **or his designee** charged with oversight and
 19 implementation of the provisions of this Part.

20 B. The association may:

21 * * *

22 (7) As to any member insurer under rehabilitation or liquidation, and pursuant
 23 to **Submit with the commissioner to the court having jurisdiction over an**
 24 **impaired or insolvent insurer** a **joint** written plan of full or partial rehabilitation
 25 or liquidation jointly submitted by the commissioner through his counsel of record,
 26 which counsel is approved by the attorney general pursuant to the provisions of this
 27 Code, and the Louisiana Insurance Guaranty Association through its counsel of
 28 record, and subject to approval of the court in which such rehabilitation or
 29 liquidation proceeding is pending, which court must be satisfied that **satisfies the**

1 court that such plan is the most cost-effective method of ~~dealing with the conditions~~
 2 ~~creating~~ **addressing** the member insurer's impairment or insolvency, ~~and improving~~
 3 ~~the condition~~ and is in the best interest of the member insurer's policyholders **and**
 4 **claimants**; and is in the best interests of the association, then the association may,
 5 **upon approval of the court:**

6 (a) Guarantee, ~~or~~ assume, or cause to be guaranteed or assumed, **including**
 7 **the financial undertakings necessary and proper to effect such guarantees or**
 8 **assumptions**, any or all of the policies, contracts, or other obligations of such
 9 member insurer.

10 (b) ~~Provide such monies, pledges, notes, guarantees, or other means as are~~
 11 ~~proper to effectuate R.S. 22:2058(B)(7)(a), and to assume payment of the obligations~~
 12 ~~of such member insurer pending action under R.S. 22:2058(B)(7)(a):~~

13 (c) ~~(b)~~ **Lend** money to such member insurer.

14 **C. Suits involving the association:**

15 **(1) Except for actions by the receiver, all actions relating to or arising out**
 16 **of this Part against the association shall be brought in the courts in this state.**

17 **The courts shall have exclusive jurisdiction over all actions relating to or arising**
 18 **out of this Part against the association.**

19 **(2) The domicile of the association for purposes of venue is East Baton**
 20 **Rouge Parish. The association may, at its option, waive exceptions to venue for**
 21 **specific actions.**

22 **(3) Any person, and any attorney who represents a person, who files a**
 23 **petition against the association alleging as a basis for the claim the insolvency**
 24 **of an insurer, where said insurer is not an insolvent insurer within the meaning**
 25 **of this Part, shall pay the reasonable expenses incurred because of the filing of**
 26 **the petition, including a reasonable attorney fee, subject to the following**
 27 **conditions:**

28 **(a) The association shall furnish to either the person or his attorney, by**
 29 **ordinary service of process, hand delivery, or certified mail, return receipt**

1 **requested, written notification that the insurer is not an insolvent insurer within**
 2 **the meaning of this Part.**

3 **(b) If, within sixty days of the receipt of such notification, the person or**
 4 **his attorney has not dismissed the petition, with prejudice and at plaintiff's cost.**

5 ~~€. D.~~ (1) Notwithstanding any other provision to the contrary and unless such
 6 other law is specifically excepted from this Section, the provisions of this Section
 7 shall supersede and prevail over any other law to the contrary.

8 (2) This Section shall not apply to R.S. 24:38(C) and 654.

9 ~~D. In the event that the association pays a claim on behalf of an insured~~
 10 ~~whose net worth exceeds twenty-five million dollars on December thirty-first of the~~
 11 ~~year immediately preceding the date of the determination of the insolvency of the~~
 12 ~~insurer, the association shall have the right to recover from the insured all costs~~
 13 ~~incurred in the defense of said claim, including attorney fees, administrative costs,~~
 14 ~~court costs, indemnity, settlement, or other defense costs. An insured's net worth on~~
 15 ~~such date shall be deemed to include the aggregate net worth of the insured and all~~
 16 ~~of its subsidiaries and affiliates as calculated on a consolidated basis, as provided in~~
 17 ~~R.S. 22:2055(3)(f). An insured for the purposes of this provision shall not include~~
 18 ~~any state or local governmental agency or subdivision thereof.~~

19 §2059. Plan of operation

20 A.(1) The association shall submit to the commissioner and the Senate
 21 Committee on Insurance and the House Committee on Insurance a plan of operation
 22 and any amendments thereto necessary or suitable to assure the fair, reasonable, and
 23 equitable administration of the association. The plan of operation and any
 24 amendments thereto shall become effective upon approval in writing by the
 25 commissioner; however, ~~beginning on August 15, 1993,~~ prior to the implementation
 26 of any new plan or any amendment to such new plan or an existing plan of operation,
 27 the Senate Committee on Insurance and the House Committee on Insurance may
 28 hold a hearing on such new plan or any amendments to a new or existing plan of
 29 operation. After a hearing, if any, the respective legislative committees shall either

1 approve or reject the plan or amendment as presented. No plan or amendment shall
 2 be implemented if it was rejected by a legislative committee. If a hearing is not held
 3 within thirty days after receipt of the plan or amendment by such committees, then
 4 the plan or amendment may be implemented as approved by the commissioner.

5 **Approval by the commissioner shall not be unreasonably withheld. If the plan**
 6 **of operation is disapproved in whole or in part, the commissioner shall provide**
 7 **written reasons as to each disapproved part, and the association shall resubmit**
 8 **the part of the plan which has been disapproved by the commissioner within**
 9 **thirty days thereafter. The preceding plan of operation shall remain in effect**
 10 **until such time as the revised plan is effective.**

11 (2) If the association fails to ~~submit a suitable plan of operation within ninety~~
 12 ~~days following September 1, 1970, or if at any time thereafter the association fails~~
 13 ~~to submit suitable amendments to the plan, the commissioner shall, after notice and~~
 14 ~~hearing, adopt and promulgate such reasonable rules as are necessary or advisable~~
 15 ~~to effectuate the provisions of this Part. Such rules shall continue in force until~~
 16 ~~modified by the commissioner or superseded by a plan submitted by the association~~
 17 ~~and approved by the commissioner. All rules and regulations promulgated by the~~
 18 ~~commissioner under the provisions of this Paragraph shall have no effect until they~~
 19 ~~are reviewed and approved by the Senate Committee on Insurance and the House~~
 20 ~~Committee on Insurance. **If a hearing is not held by such committees within**~~
 21 **thirty days after receipt of the rules and regulations promulgated by the**
 22 **commissioner under the provisions of this Paragraph, then the rules and**
 23 **regulations may be implemented as promulgated by the commissioner.**

24 * * *

25 C. The plan of operation shall:

26 (1) Establish ~~the~~ procedures ~~whereby all~~ **for performing** the powers and
 27 duties of the association ~~under R.S. 22:2058 will be performed.~~

28 (2) Establish procedures for handling assets of the association.

29 (3) Establish ~~the amount and method of~~ **procedures for** reimbursing the

1 members of the board of directors **for reasonable expenses** under R.S. 22:2057.

2 (4) Establish procedures by which claims may be filed with the association
3 and establish acceptable forms of proof of covered claims. ~~Notice of claims to the~~
4 ~~receiver or liquidator of the insolvent insurer shall be deemed notice to the~~
5 ~~association or its agent and a list of such claims shall be periodically submitted to the~~
6 ~~association or similar organization in another state by the receiver or liquidator.~~

7 * * *

8 **(10) Establish procedures for the disposition of liquidating dividends or**
9 **other monies received from the estate of the insolvent insurer.**

10 **(11) Establish policies and procedures designed to increase participation**
11 **for minorities and women in contractual legal services entered into by the**
12 **association.**

13 **(12) Establish policies and procedures relative to the appointment of**
14 **legal counsel.**

15 **(13) Establish policies and procedures relative to a system of alternative**
16 **dispute resolution of lawsuits and claims.**

17 **(14) Establish procedures whereby a director may be removed for cause.**

18 * * *

19 §2060. Duties and powers of the commissioner

20 A. The commissioner shall:

21 (1) Notify the association of the existence of an insolvent insurer not later
22 than three days after he receives notice of the determination of the insolvency. **The**
23 **association shall be entitled to a copy of a petition seeking an order of**
24 **liquidation with a finding of insolvency against a member company at the same**
25 **time that the petition is filed.**

26 * * *

27 B. The commissioner may:

28 ~~(1) Require that the association notify the insureds of the insolvent insurer~~
29 ~~and any other interested parties of the determination of insolvency and of their rights~~

1 under this Part. Such notification shall be by mail at their last known address, where
2 available, but if sufficient information for notification by mail is not available, notice
3 by publication in a newspaper of general circulation shall be sufficient.

4 (2) (1) Suspend or revoke, after compliance with R.S. 49:961, the certificate
5 of authority to transact insurance in this state of any member insurer ~~which~~ **that** fails
6 to pay an assessment when due or fails to comply with the plan of operation. As an
7 alternative, the commissioner may levy a fine on any member insurer ~~which~~ **that**
8 fails to pay an assessment when due. Such fine shall not exceed five percent of the
9 unpaid assessment per month, except that no fine shall be less than one hundred
10 dollars per month.

11 (3) (2) Revoke the designation of any servicing facility if he finds claims are
12 being handled unsatisfactorily.

13 **(3) Examine, audit, or otherwise regulate the association.**

14 * * *

15 **§2060.1. Coordination among guaranty associations**

16 **A. The association may join one or more organizations of other state**
17 **associations of similar purposes, to further the purposes and administer the**
18 **powers and duties of the association. The association may designate one or more**
19 **of these organizations to act as a liaison for the association and, to the extent the**
20 **association authorizes, to bind the association in agreements or settlements with**
21 **receivers of insolvent insurance companies or their designated representatives.**

22 **B. The association, in cooperation with other obligated or potentially**
23 **obligated guaranty associations, or their designated representatives, shall make**
24 **all reasonable efforts to coordinate and cooperate with receivers, or their**
25 **designated representatives, in the most efficient and uniform manner, including**
26 **the use of Uniform Data Standards as promulgated or approved by the National**
27 **Association of Insurance Commissioners.**

28 §2061. Effect of paid claims

29 A. Any person recovering under this Part shall be deemed to have assigned

1 his rights under the policy to the association to the extent of his recovery from the
2 association. Every insured or claimant seeking the protection of this Part shall
3 cooperate with the association to the same extent as such person would have been
4 required to cooperate with the insolvent insurer. The association shall have no cause
5 of action against the insured of the insolvent insurer for any sums it has paid out
6 except such causes of action as the insolvent insurer would have had if such sums
7 had been paid by the insolvent insurer, **except with respect to the recovery of sums**
8 **paid on a claim excluded due to the high net worth of an insured as defined in**
9 **this Part**. In the case of an insolvent insurer operating on a plan with assessment
10 liability, payments of claims of the association shall not operate to reduce the
11 liability of insureds to the receiver, liquidator or statutory successor for unpaid
12 assessments.

13 * * *

14 **D. The association and any association similar to the association in**
15 **another state shall be entitled to file a claim in the liquidation of an insolvent**
16 **insurer for any amounts paid by them on covered claim obligations as**
17 **determined under this Part or similar laws in other states and shall receive**
18 **dividends and other distributions at the priority set forth in R.S. 22:2025.**

19 **§2061.1. Net worth exclusion**

20 **A. For purposes of this Part "high net worth insured" shall mean any**
21 **policyholder or named insured, other than any state or local governmental**
22 **agency or subdivision thereof, whose net worth exceeds twenty-five million**
23 **dollars on December thirty-first of the year prior to the year in which the**
24 **insurer becomes an insolvent insurer; provided that an insured's net worth on**
25 **that date shall be deemed to include the aggregate net worth of the insured and**
26 **all of its subsidiaries and affiliates as calculated on a consolidated basis. The**
27 **consolidated net worth of the insured and all of its affiliates shall be calculated**
28 **on the basis of their fair market values. The member employers of an**
29 **arrangement or trust formed under Subpart J of Part 1 of Chapter 10 of Title**

1 23 of the Louisiana Revised Statutes of 1950, shall not be deemed to be affiliates
2 of the arrangement or trust, and shall not be included in the determination of
3 the net worth of the arrangement or trust.

4 B.(1) The association shall not be obligated to pay any claims or provide
5 a defense to any claims asserted for coverage under a policy when the insured
6 is a high net worth insured.

7 (2) The association shall have the right to recover from a high net worth
8 insured all costs incurred and all amounts paid by the association to or on
9 behalf of such insured, whether for indemnity, defense or otherwise, including
10 attorney fees, administrative costs, court costs, settlement, or other defense
11 costs.

12 C. The association shall not be obligated to pay any claim that would
13 otherwise be a covered claim that is an obligation to or on behalf of a person
14 who has a net worth greater than that allowed by the insurance guaranty
15 association law of the state of residence of the claimant at the time specified by
16 that state's applicable law, and which association has denied coverage to that
17 claimant on that basis.

18 D. The association shall establish reasonable procedures subject to the
19 approval of the commissioner for requesting financial information from
20 insureds on a confidential basis for purposes of applying this Section, provided
21 that the financial information may be shared with any other association similar
22 to the association and the liquidator for the insolvent insurer on the same
23 confidential basis. Any request to an insured seeking financial information must
24 advise the insured of the consequences of failing to provide the financial
25 information. If an insured refuses to provide the requested financial
26 information where it is requested and available, the association may, until such
27 time as the information is provided, provisionally deem the insured to be a high
28 net worth insured for the purpose of denying a claim under Subsection B of this
29 Section.

1 **E. In any lawsuit contesting the applicability of this Section where the**
 2 **insured has refused to provide financial information under the procedure**
 3 **established pursuant to Subsection D of this Section, the insured shall bear the**
 4 **burden of proof concerning its net worth at the relevant time. If the insured**
 5 **fails to prove that its net worth at the relevant time was less than the applicable**
 6 **amount, the court shall award the association its full costs, expenses and**
 7 **reasonable attorney fees in contesting the claim.**

8 §2062. Nonduplication of recovery **Exhaustion of other coverage**

9 A. ~~(1)~~ Any person having a claim against an insurer under any provision in
 10 an insurance policy, other than a policy of an insolvent insurer which is also a
 11 covered claim, shall be required first to exhaust his rights under such **all coverage**
 12 **provided by any other policy, including the right to a defense under the other**
 13 **policy, if the claim under the other policy arises from the same facts, injury or**
 14 **loss that gave rise to the covered claim against the association. The requirement**
 15 **to exhaust shall apply without regard to whether or not the other insurance**
 16 **policy is a policy written by a member insurer. However, no person shall be**
 17 **required to exhaust any right under the policy of an insolvent insurer or any**
 18 **right under a life insurance policy or annuity.** Such other policies of insurance
 19 shall include but shall not be limited to liability coverage, uninsured or underinsured
 20 motorist liability coverage, or both, hospitalization, coverage under self-insurance
 21 certificates, coverage under a health maintenance organization or plan, preferred
 22 provider organization or plan, or similar plan, and any and all other medical expense
 23 coverage. All entities that are prohibited from recovering against the association, as
 24 specified in R.S. 22:2055(3)(b), shall also be considered insurers for purposes of this
 25 Subsection. As to the association, any amount payable by such other insurance shall
 26 act as a credit against the damages of the claimant, and the association shall not be
 27 liable for such portion of the damages of the claimant.

28 **(2) Any amount payable on a covered claim under this Part shall be**
 29 **reduced by the full applicable limits stated in the other insurance policy, or by**

1 the amount of the recovery under the other insurance policy as provided herein.

2 The association and the insured shall receive a full credit for the stated limits,
3 unless the claimant demonstrates that the claimant used reasonable efforts to
4 exhaust all coverage and limits applicable under the other insurance policy. If
5 the claimant demonstrates that the claimant used reasonable efforts to exhaust
6 all coverage and limits applicable under the other insurance policy, or if there
7 are no applicable stated limits under the policy, the association and the insured
8 shall receive a full credit for the total recovery.

9 (a) The credit shall be deducted from the lesser of:

10 (i) The association's covered claim limit;

11 (ii) The amount of the judgment or settlement of the claim; or

12 (iii) The policy limits of the policy of the insolvent insurer.

13 (b) In no case, however, shall the obligation of the association exceed the
14 covered claim limit of this Part.

15 (3) If the insured or claimant has a contractual right to claim defense
16 under an insurance policy issued by another insurer, including a self-insurer,
17 the insured or claimant shall first exhaust all rights to indemnity and defense
18 under such policy before claiming indemnity or defense from the association,
19 or the insured of the insolvent insurer. The association's duty to defend under
20 the policy issued by the insolvent insurer is subject to any other limitation on
21 the duty to defend in this Part. This duty is secondary to the obligation of any
22 other insurer or self-insurer to provide a defense, whose duty to the claimant is
23 primary.

24 (4) A claim under a policy providing liability coverage to a person who
25 may be solidarily liable as a tortfeasor with the person covered under the policy
26 of the insolvent insurer that gives rise to the covered claim shall be considered
27 to be a claim arising from the same facts, injury or loss that gave rise to the
28 covered claim against the association.

29 (5) For purposes of this Section, a claim under an insurance policy other

1 **than a life insurance policy or annuity shall include, but is not limited to:**

2 **(a) A claim against a health maintenance organization, a hospital plan**
3 **corporation, a professional health service corporation or disability insurance**
4 **policy, liability coverage, uninsured or underinsured motorist liability coverage,**
5 **hospitalization, coverage under self-insurance certificates, preferred provider**
6 **organization, or similar plan, and any and all other medical expense coverage;**
7 **and**

8 **(b) Any amount payable by or on behalf of a self-insurer.**

9 **(c) Any claim against persons prohibited from recovering against the**
10 **association as specified in this Part.**

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

23 B. Any person having a claim which may be recovered under more than one
24 insurance guaranty association or its equivalent shall seek recovery first from the
25 association of the place of residence of the insured except that if it is a first party
26 claim for damage to property with a permanent location, he shall seek recovery first
27 from the association of the location of the property, and if it is a workers'
28 compensation claim, he shall seek recovery first from the association of the residence
29 of the claimant. **For purposes of this Section, the "residence of the insured" shall**

1 **be the residence, on the date of insolvency of the insurer or self-insurer, of the**
2 **first named or primary insured or the state to which the insolvent insurer or**
3 **self-insurer was or would have been liable for the payment of a surcharge or**
4 **assessment on the subject insurance policy to an insurance guaranty association**
5 **or its equivalent.** A claimant alleging personal injury or death caused by exposure
6 to asbestos fibers or other claim resulting from exposure to, release of, or
7 contamination from any environmental pollutant or contaminant, asserted against the
8 association must either be a domiciliary of the state of Louisiana at the time of the
9 exposure or allege that his exposure to asbestos or other environmental hazard,
10 which is a substantial contributing factor to the physical impairment upon which the
11 claim is based, occurred in Louisiana. Where more than one claimant is joined, each
12 claimant must independently establish that Louisiana is either his domicile or place
13 in which the alleged exposure occurred.

14 * * *

15 §2063. Prevention of insolvencies

16 To aid in the detection and prevention of insurer insolvencies:

17 ~~(1) It shall be the duty of the board of directors, upon majority vote, to notify~~
18 ~~the commissioner of any information indicating any member insurer may be~~
19 ~~insolvent or in a financial condition hazardous to the policyholders or the public.~~

20 ~~(2) The board of directors may, upon majority vote, request that the~~
21 ~~commissioner order an examination of any member insurer which the board in good~~
22 ~~faith believes may be in a financial condition hazardous to the policyholders or the~~
23 ~~public. Within thirty days of the receipt of such request, the commissioner shall~~
24 ~~begin such examination. The examination may be conducted as a National~~
25 ~~Association of Insurance Commissioners examination or may be conducted by such~~
26 ~~persons as the commissioner designates. The cost of such examination shall be paid~~
27 ~~by the association and the examination report shall be treated as are other~~
28 ~~examination reports. In no event shall such examination report be released to the~~
29 ~~board of directors prior to its release to the public, but this shall not preclude the~~

1 commissioner from complying with Subsection (3). The commissioner shall notify
 2 the board of directors when the examination is completed. The request for an
 3 examination shall be kept on file by the commissioner but it shall not be open to
 4 public inspection prior to the release of the examination report to the public.

5 (3) It shall be the duty of the commissioner to report to the board of directors
 6 when he has reasonable cause to believe that any member insurer examined or being
 7 examined at the request of the board of directors may be insolvent or in a financial
 8 condition hazardous to the policyholders or the public.

9 (4) The board of directors may, upon majority vote, make reports and
 10 recommendations to the commissioner upon any matter germane to the solvency,
 11 liquidation, rehabilitation or conservation of any member insurer. Such reports and
 12 recommendations shall not be considered public documents.

13 (5) The board of directors may, upon majority vote, make recommendations
 14 to the commissioner for the detection and prevention of insurer insolvencies.

15 **(1) The board of directors may, upon majority vote, make**
 16 **recommendations to the commissioner on matters generally related to**
 17 **improving or enhancing regulation for solvency.**

18 (6) **(2)** The board of directors shall, at **At** the conclusion of any **domestic**
 19 insurer insolvency in which the association was obligated to pay covered claims, **the**
 20 **board of directors may, upon a majority vote,** prepare a report on the history and
 21 causes of such insolvency, based on the information available to the association, and
 22 submit such report to the commissioner.

23 **(3) Reports and recommendations provided under this Section shall not**
 24 **be considered public documents.**

25 * * *

26 §2067. Immunity

27 There shall be no liability on the part of and no cause of action of any nature
 28 shall arise against any member insurer, the association or its agents or employees,
 29 the board of directors, or the commissioner or his representatives for any action

1 taken by them in the performance of their powers and duties under this Part. **This**
 2 **immunity shall extend to the participation in any organization of one or more**
 3 **other state associations of similar purposes and to any such organization and its**
 4 **agents or employees.**

5 §2068. Stay of proceedings; reopening of default judgments; execution of
 6 judgments; proration

7 A. All proceedings in which the insolvent insurer is a party or is obligated to
 8 defend a party in any court in this state shall be stayed for ~~ninety days~~ **six months**
 9 **and such additional time as may be determined by the court** from the date the
 10 insolvency is determined to permit proper defense by the association of all pending
 11 causes of action. ~~In addition, on ex parte motion or application by the association and~~
 12 ~~for good cause shown, the court having jurisdiction over the proceedings incident to~~
 13 ~~the liquidation of the insolvent insurer may extend that stay order for an additional~~
 14 ~~ninety days.~~

15 ~~B. As to any covered claims arising from a judgment under any decision,~~
 16 ~~verdict, or finding based on the default of the insolvent insurer or its failure to defend~~
 17 ~~an insured, the association either on its own behalf or on behalf of such insured may~~
 18 ~~apply to have such judgment, order, decision, verdict, or finding set aside by the~~
 19 ~~same court or administrator that made such judgment, order, decision, verdict, or~~
 20 ~~finding and shall be permitted to defend against such claim on the merits.~~

21 **B. The liquidator, receiver or statutory successor of an insolvent insurer**
 22 **covered by this Part shall permit access by the association to such of the**
 23 **insolvent insurer's records that are necessary to carry out its functions under**
 24 **this Part and shall provide the association with copies of those records upon**
 25 **request by and at the expense of the association.**

26 * * *

27 §2069. Advertisements

28 A. Advertisements which include a reference to the coverage or protection
 29 by the **Louisiana** Insurance Guaranty Association are specifically prohibited.

1 B. As used in this Section, "advertisements" means any communication by
2 print, television, radio, **Internet**, or other means for mass distribution of information.

3 * * *

4 Section 2. R.S. 44:4.1(B)(10) is hereby amended and reenacted to read as follows:

5 §4.1. Exceptions

6 * * *

7 B. The legislature further recognizes that there exist exceptions, exemptions,
8 and limitations to the laws pertaining to public records throughout the revised
9 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
10 limitations are hereby continued in effect by incorporation into this Chapter by
11 citation:

12 * * *

13 (10) R.S. 22:2, 14, 42.1, 88, 244, 461, 572, 574, 618, 706, 732, 752, 1203,
14 1460, 1466, 1546, 1644, 1656, 1723, 1929, 1983, 2036, **2063**, 2303

15 * * *

16 Section 3. The Louisiana State Law Institute is hereby directed to change the title
17 of Part I of Chapter 10 of Title 22 of the Louisiana Revised Statutes of 1950 from "Part I.
18 Insurance Guaranty Association Fund" to "Part I. **Louisiana** Insurance Guaranty
19 Association ~~Fund~~ **Law**".

20 Section 4. R.S. 22:2060(A)(3) is hereby repealed in its entirety.

21 Section 5. This Act shall become effective upon signature by the governor or, if not
22 signed by the governor, upon expiration of the time for bills to become law without signature
23 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
24 vetoed by the governor and subsequently approved by the legislature, this Act shall become
25 effective the day following such approval.

The original instrument was prepared by Cheryl Horne. The following digest, which does not constitute a part of the legislative instrument, was prepared by Ann S. Brown.

DIGEST

LaFleur (SB 268)

Present law provides for the Insurance Guaranty Association Law.

Present law provides the purpose of the law is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies and to allow the association to provide financial assistance to member insurers under rehabilitation or liquidation, and to provide an association to assess the cost of such operations among insurers.

Proposed law removes as a purpose for the law to assist in the detection and prevention of insurer insolvencies but otherwise retains present law.

Present law provides that this Part shall apply to all kinds of direct insurance, except life, annuity, health and accident, title, disability, mortgage guaranty, financial guaranty, or other insurances offering protection against investment risks, credit insurance, and any transaction or combination of transactions which involve the transfer of investment or credit risks unaccompanied by the transfer of the insurance risk, vendor's single interest insurance, collateral protection insurance, or any similar insurance which protects the interests of a creditor arising out of a creditor-debtor transaction, vehicle mechanical breakdown insurance, and ocean marine insurance. It shall likewise not apply to fidelity insurance or surety insurance.

Proposed law retains present law but adds to the exceptions to the kinds of direct insurance to which it applies to include any bonding obligation, any warranty or service contracts, any transaction involving the transfer of investment or credit risk, unaccompanied by transfer of insurance risk and any insurance provided by or guaranteed by government.

Present law provides for the defined terms "Association", "Commissioner", "Covered claim", "Insolvent insurer", "Member insurer", "Net direct written premiums", "Person", "Insurance policy" and "Ocean marine insurance".

Present law provides that the claimant or insured involved in a "covered claim" must be a resident of this state at the time of the insured event. Proposed law clarifies that as to "entities" the residence of the claimant or insured is the state in which it has its principal place of business at the time of the insured event.

Proposed law provides that a "covered claim" also includes the claimant who is a self-insurer, including any arrangement or trust formed a group self-insurance fund for workers' compensation and is principally domiciled in this state at the time of the insured event.

Proposed law clarifies that a "covered claim" does not include the self-insured portion due any self-insurer as subrogation recoveries, reinsurance recoveries, contributions, or indemnification.

Proposed law adds the following definitions of terms the defined terms of "Affiliate", "Association similar to the association", "Control", "Insurance", "Insurer", "Insured", "Receiver" and "Self-insurer".

Present law provides for the creation of the Insurance Guaranty Association and provides that it is not and may not be deemed a department, unit, agency, or instrumentality of the

state for any purpose. Provides that all debts, claims, obligations, and liabilities of the association shall be the debts, claims, obligations, and liabilities of the association only and not of the state, its agencies, instrumentalities, officers, or employees. Provides that association monies may not be considered part of the general fund of the state and the state may not budget for or provide general fund appropriations to the association. Provides that the association shall be subject to R.S. 42:4.1 through 13 (Open Meeting Law) and to R.S. 44:1 through 41 (Public Records Law), and may be considered as if it were a public body for the purpose of those provisions. Provides that the association may hold an executive session for discussion of the following and documents related to the following shall not be subject to public disclosure a request by the association for an examination of a member insurer, reports and recommendations made by the association to the commissioner on any matter relevant to the solvency, liquidation, rehabilitation, or conservation of any member insurer, matters protected by attorney-client privilege, matters with respect to claims or claim files, prospective litigation by or against the association, and any other matters now provided for or as may be provided for by the legislature.

Proposed law retains present law but deletes a request by the association for an examination of a member insurer as being exempt from the Public Records Law and the Open Meetings Law.

Present law provides for a nine member board of directors composed of:

- (1) Two consumer representatives appointed by the commissioner;
- (2) One person appointed by the president of the Senate; and
- (3) One person appointed by the speaker of the House of Representatives.
- (4) Five additional persons selected by member insurers, one of which shall be a representative selected by the membership of the Louisiana Association of Fire and Casualty Companies (LAFAC), subject to the approval of the commissioner.

Proposed law retains present law but provides that one of the two consumer representatives appointed by the commissioner may not be an officer, director or employee of an insurance company or any person engaged in the business of insurance.

Present law provides for the procedure for the appointment of directors in the event of a vacancy and that members of the board may be reimbursed for expenses incurred.

Proposed law retains present law but clarifies that expenses must be reasonable.

Proposed law provides that any member of the board whose relationship to an insurer in receivership presents a conflict of interest shall be terminated and the seat declared vacant as of the date of the entry of the order of receivership.

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

Present law provides for the association to pay covered claims in excess of \$100, up to \$300,000, combined single limits, except for return premiums which are covered up to \$10,000 and workers' compensation which is covered for the full amount of workers' compensation benefits.

Proposed law retains present law but increases the covered claim cap from \$300,000 to

\$500,000 combined single limits.

Proposed law provides that, in no event, is the association obligated to pay an amount in excess of the obligation of the insolvent insurer under the policy or a claim filed more than five years after the order of liquidation or the final date set by the court for the filing of claims, whichever is earlier.

Proposed law provides that the association has no obligation to defend an insured upon payment or tender of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit, or written notice of extinguishment of the obligation due to application of a credit.

Present law provides that "Accident or occurrence" means one proximate, uninterrupted, or continuing cause which results in all of the injuries or damages even though several discrete items of damage result, and even though multiple claims and claimants may arise as a result of one such accident or occurrence. A series of claims arising from the same accident or occurrence shall be treated as due to that one accident or occurrence shall be subject to the aggregate liability limit.

Present law provides that the association shall be deemed the insurer and have all rights and obligations of the insolvent insurer, until the association pays the covered claim, at which time the duty to provide a defense shall end.

Proposed law retains present law and clarifies that the association has the right to pursue and retain salvage and the right to subrogation, and that the association shall not be deemed the insolvent insurer for the purpose of conferring jurisdiction.

Present law provides the association with the authority to assess member insurers to pay for the obligations of the association in the proportion that the insurers net direct written premiums bear to the net direct written premiums of all member insurers in an amount not to exceed one percent of the member insurers net direct written premium for the preceding year.

Proposed law repeals provisions of present law related to assessments to meet obligations pursuant to a cooperative endeavor agreement dated as of October 1, 1990, which have been satisfied.

Present law provides that the association may exempt or defer assessments of members, if the assessment would cause the member to reflect capital or surplus less than minimum amounts required for a certificate of authority. The association shall issue certificates of contribution for the amount of the assessment paid by member insurers, which member insurers may use to offset premium tax liability.

Present law provides for the association's authority to investigate, adjust, settle, and pay covered claims to the extent of the association's obligation and to deny all other claims and the association may seek to annul any settlement, release or consent judgment entered by the insolvent insurer upon a showing of fraud, ill practice or where the settlement is clearly excessive.

Proposed law retains present law and further provides that the association may pay claims in any order it deems reasonable and that the association has the right to appoint and direct legal counsel.

Present law provides that the association may handle claims through its employees or through other persons designated as servicing facilities, subject to the approval of the commissioner and may reimburse the servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association.

Proposed law provides that the association has the right to apply to have a judgment, order, decision, verdict or finding set aside and be permitted to defend the claim on the merits.

Proposed law retains present law and provides that the receiver for an insolvent insurer may also handle claims on behalf of the association.

Present law provides that the association shall annually submit a plan of operation to the commissioner, annually promulgate policies and procedures designed to increase participation for minorities and women in contractual legal services entered into by such association, annually promulgate policies and procedures relative to the appointment of all legal counsel and annually promulgate policies and procedures relative to a system of alternative dispute resolution of lawsuits and claims.

Proposed law repeals present law and provides that the association shall implement a system of alternative dispute resolution of lawsuits and claims.

Present law provides that the association shall coordinate and work in conjunction with a special deputy commissioner designated and appointed by the commissioner of insurance.

Proposed law provides that the association shall coordinate and work in conjunction with the commissioner of insurance or his designee.

Proposed law provides that the association may submit jointly with the commissioner a plan of rehabilitation or liquidation for court approval and with the approval of the court guarantee or assume policies or other obligations of the member insurer or lend to the member insurer.

Proposed law provides that suits involving the association, except for actions by the receiver, shall be brought in the courts of this state and that the domicile of the association for purposes of venue is East Baton Rouge Parish and that the association may waive venue in its discretion.

Proposed law provides that any person, and any attorney who represents a person, who files a petition against the association alleging the insolvency of an insurer, where the insurer is not an insolvent insurer shall pay the reasonable expenses incurred because of the filing of the petition, including reasonable attorney fees, if the association furnishes written notification that the insurer is not an insolvent insurer and within sixty days of the receipt of the notification, the person or his attorney has not dismissed the petition, with prejudice and at plaintiff's cost.

Present law provides that the association shall submit a plan of operation and any amendments to the plan to the commissioner and the Senate and House committees on insurance for approval and provides for required provisions of the plan of operation.

Proposed law retains present law and adds the following required provisions of the plan of operation:

- (1) Establish procedures for the disposition of liquidating dividends or other monies received from the estate of the insolvent insurer.
- (2) Establish policies and procedures designed to increase participation for minorities and women in contractual legal services entered into by the association.
- (3) Establish policies and procedures relative to the appointment of legal counsel.
- (4) Establish policies and procedures relative to a system of alternative dispute resolution of lawsuits and claims.

(5) Establish procedures whereby a director may be removed for cause.

Present law provides that the commissioner shall notify the association of the existence of an insolvent insurer not later than three days after he receives notice of the determination of the insolvency.

Proposed law retains present law and adds that the association shall be entitled to a copy of a petition seeking an order of liquidation with a finding of insolvency against a member company at the same time that the petition is filed.

Present law provides that the commissioner may require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights.

Present law provides that the commissioner may suspend or revoke the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or fails to comply with the plan of operation or levy a fine on any member insurer that fails to pay an assessment when due. Additionally, the commissioner may revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

Proposed law retains present law and adds that the commissioner may examine, audit, or otherwise regulate the association.

Proposed law provides that the association may join one or more organizations of other state associations of similar purposes, to further the purposes and administer the powers and duties of the association. The association may designate one or more of these organizations to act as a liaison for the association and to bind the association in agreements or settlements with receivers of insolvent insurance companies.

Present law provides that any person recovering from the association shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery and shall cooperate with the association to the same extent he would have been required to cooperate with the insolvent insurer and that the association shall have no cause of action against the person for any sums it has paid out except such causes of action as the insolvent insurer would have had if the insolvent insurer had paid.

Proposed law retains present law but adds that sums paid on a claim excluded due to the high net worth of an insured may be recovered by the association.

Proposed law provides that the association and any association similar to the association in another state shall be entitled to file a claim in the liquidation of an insolvent insurer for amounts paid by them and shall receive dividends and other distributions.

Proposed law provides that a "high net worth insured" means any policyholder or named insured, other than any state or local governmental agency, whose net worth exceeds \$25,000,000 on December 31 of the year prior to the year in which the insurer becomes an insolvent insurer and that an insured's net worth shall include the aggregate net worth of the insured and all of its subsidiaries and affiliates calculated on the basis of their fair market values and that the association is not responsible for claims of high net worth insureds.

Proposed law provides that member employers of an arrangement or trust formed as a group self-insurance fund for workers' compensation are not deemed affiliates of the arrangement or trust and are not to be included in the determination of the net worth of the arrangement or trust.

Proposed law provides that the member employers of an arrangement or trust formed under Title 23 shall not be deemed to be affiliates of the arrangement or trust, and shall not be

included in the determination of the net worth of the arrangement or trust.

Proposed law clarifies that the association is not obligated to provide a defense for high net worth insureds and that the association may recover from high net worth insureds any costs incurred or amounts paid on their behalf.

Proposed law provides that the association shall not be obligated to pay any claim on behalf of a person who has a net worth greater than that allowed by the insurance guaranty association law of the state of residence of the claimant.

Proposed law provides that the association shall establish reasonable procedures for requesting financial information from insureds on a confidential basis and if an insured refuses to provide the requested financial information the association may deem the insured to be a high net worth insured and deny the claim.

Present law provides that where an insured refuses to provide financial information requested there is created a rebuttable presumption that the insured is a high net worth insured.

Proposed law retains present law but adds that in the event of a lawsuit, if the insured fails to prove that its net worth was less than \$25,000,000, then the court shall award the association its full costs in contesting the claim, including attorney fees.

Present law provides that any person having a claim against the association shall be required to first exhaust all coverage provided by any other policy of insurance.

Proposed law retains present law but clarifies that the requirement to exhaust other coverage includes the right to defense, but does not require a person to exhaust any right under a life insurance policy or annuity.

Present law provides that any amount payable by other insurance shall act as a credit against the damages of the claimant and the association shall not be liable for such portion.

Present law provides that in the case of a claimant alleging 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 other insurance available to the insured must first be exhausted before recovering from the association.

Proposed law retains present law and adds that only after exhaustion of all solvent insurer's, including a self-insured's total policy aggregate limits for any alleged exposure periods will the association be obligated to provide a defense and indemnification.

Present law provides that any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workers' compensation claim, he shall seek recovery first from the association of the residence of the claimant.

Proposed law retains present law and defines the "residence of the insured" to mean the residence, on the date of insolvency of the insurer, of the first named or primary insured or the state to which the insolvent insurer was or would have been liable for the payment of a surcharge or assessment on the subject insurance policy.

Present law provides that a claimant alleging personal injury or death caused by exposure to asbestos fibers or resulting from exposure to, release of, or contamination from any environmental pollutant or contaminant, asserted against the association must either be a domiciliary of the state of Louisiana at the time of the exposure or allege that his exposure

occurred in Louisiana and that where more than one claimant is joined, each claimant must independently establish that Louisiana is either his domicile or place in which the alleged exposure occurred.

Present law provides that the board of directors shall notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public and may request that the commissioner order an examination and within 30 days the commissioner shall begin such examination. Further it shall be the duty of the commissioner to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

Present law provides that the board of directors shall at the conclusion of any insurance company insolvency prepare a report on the history and causes of the insolvency and submit the report to the commissioner.

Proposed law retains present law changes from shall make a report to may make a report and that the board of directors may make recommendations to the commissioner on matters generally related to improving regulation for solvency and any such reports or recommendations shall not be public records.

Present law provides that there shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties.

Proposed law retains present law and provides the same immunity to the participation in any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees.

Present law provides that all proceedings in which an insolvent insurer is a party shall be stayed for 90 days and upon motion of the association the court may extend the stay for an additional 90 days.

Proposed law provides that all proceedings in which an insolvent insurer is a party shall be stayed for six months and deletes the provision allowing for the court to extend the stay for an additional 90 days.

Present law provides that as to any covered claims arising from a default judgment or based on the insolvent insurer's failure to defend an insured, the association may apply to have such judgment set aside by the court and shall be permitted to defend against such claim on the merits.

Proposed law provides that the liquidator or receiver of an insolvent insurer shall permit access by the association to the insolvent insurer's records that are necessary to carry out its functions and shall provide the association with copies of those records upon request by and at the expense of the association.

Present law prohibits advertisements which include a reference to the coverage or protection by the Insurance Guaranty Association and defines "advertisements" to mean any communication by print, television, radio, or other means for mass distribution of information.

Proposed law retains present law and adds "Internet" to the list of means of communication.

Effective August 15, 2010.

(Amends R.S. 22:2051, 2052, 2053(A), 2054, 2055, 2056, 2057(A) and (C), 2058(A), (B)(7), (C) and (D), 2059(A) and (C)(1) through (4), 2060(A)(1) and (B), 2061(A), 2062(A) and (B), 2063, 2067, 2068(A) and (B), 2069(A) and (B), and R.S. 44:4.1(B)(10); adds R.S. 22:2057(D) and (E), 2059(C)(10) through (14), 2060.1, 2061(D), and 2061.1; repeals R.S. 22:2060(A)(3))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Insurance to the original bill.

1. Clarifies the definition of "covered claim" to include the claimant who is a self-insurer, arrangement or trust formed under Title 23 and is principally domiciled in this state at the time of the insured event.
2. Makes technical changes.
3. Provides the definition for "insurance" and "insurer" shall have the same meaning specified in R.S. 22:46.
4. Decreases the limit on the assessment from 2% to 1% as stated in present law.
5. Provides that the member employers of an arrangement or trust formed under Title 23 shall not be deemed to be affiliates of the arrangement or trust, and shall not be included in the determination of the net worth of the arrangement or trust.
6. Adds that only after exhaustion of all solvent insurer's including a self-insurer's total policy aggregate limits for any alleged exposure periods will the association be obligated to provide a defense and indemnification.

Senate Floor Amendments to engrossed bill.

1. Technical amendments.
2. Changes reference from the association may to the association has the right to apply to have a judgment, order, decision, verdict or finding set aside and be permitted to defend the claim on the merits.