

2020 Regular Session

SENATE BILL NO. 148

BY SENATOR TALBOT

INSURERS. Provides relative to the Louisiana Health Reinsurance Association. (gov sig)

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AN ACT

To enact Part II of Chapter 20 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:2472 through 2483, and to repeal R.S. 22:1641(1)(j); relative to the Louisiana Health Reinsurance Association; to provide for creation; to provide for membership; to provide for assessments; to provide for capacity to sue; to provide for domicile; to provide for definitions; to provide for examination by the commissioner of insurance; to provide for immunity for members and employees; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part II of Chapter 20 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:2472 through 2483 is hereby enacted to read as follows:

**§2472. Purpose of Part**

**A. The individual health insurance market meets a vital need for the state's residents who do not have access to employer-sponsored health insurance or other forms of healthcare coverage. Health insurance in the individual market is often the last line of defense against the risk of bankruptcy for sick individuals. Premium rates in the individual market have continued to rise**

1 significantly, forcing some Louisiana consumers to exit the federal health  
2 insurance market and risk having no health insurance coverage. Additionally,  
3 the number of health insurers doing business in the individual market has  
4 declined dramatically.

5 B. The purpose of this Part is to create a means of stabilizing the  
6 individual health insurance market through state-based reinsurance in order  
7 to lower premiums, increase enrollment of consumers in the individual market,  
8 increase the number of health insurers doing business in the individual market,  
9 and slow the continued health insurance premium rate increase.

10 §2473. Definitions

11 As used in this Part:

12 (1) "Association member" means any of the following:

13 (a) A health insurance issuer that has a certificate of authority to  
14 transact the business of health and accident insurance in this state.

15 (b) A health maintenance organization as defined in R.S. 22:242.

16 (c) A third-party administrator as defined in R.S. 22:1641.

17 (d) A group self-insurer as defined in R.S. 22:452.

18 (2) "Group market" means the large group market as defined in R.S.  
19 22:1091 and the small group market which offers small group coverage as  
20 defined in R.S. 22:1091, when the applicable coverage constitutes major medical  
21 insurance.

22 (3) "Individual market" means the term defined in R.S. 22:1091, when  
23 the applicable coverage constitutes major medical insurance.

24 (4) "Major medical insurance" means any of the following:

25 (a) Insurance coverage consisting of medical care paid for directly  
26 through insurance or reimbursement, or otherwise, and including items and  
27 services paid for as medical care under a hospital or medical service policy or  
28 certificate, hospital, or medical service plan contract, preferred provider  
29 organization, health maintenance organization contract, or any contract or

1 policy issued by a health insurance issuer. Although not exclusive, if any  
2 particular form of health plan coverage is subject to the requirements of Title  
3 XXVII of the federal Public Health Service Act relating to guaranteed  
4 availability and guaranteed renewability, or if a particular form of health plan  
5 coverage is subject to the requirements of federal law, or is considered  
6 minimum essential coverage as defined in Section 5000A of the Internal  
7 Revenue Code, then the health plan constitutes "major medical insurance".

8 (b) The same or similar coverage defined in Subparagraph (a) of this  
9 Paragraph when the services are administered by a third-party administrator  
10 on behalf of a plan that is not fully insured by a health insurance issuer, health  
11 maintenance organization, or group self-insurer. For purposes of third-party  
12 administrators, "major medical insurance" shall not include the provision of  
13 pharmacy benefits by a third-party administrator or by a health insurance  
14 issuer or health maintenance organization when the pharmacy benefits  
15 provisions do not include comprehensive coverage.

16 (c) Any coverage, although not exclusively dispositive as to whether it  
17 constitutes "major medical insurance," for which the association member paid  
18 reinsurance contributions under the Transitional Reinsurance Program  
19 established pursuant to Section 1341 of Public Law 111-148.

20 (d) "Major medical insurance" shall not mean any of the following:

21 (i) Coverage provided under a contract of Medicare Advantage,  
22 Medicare Supplement, or Medicare Part D.

23 (ii) The Louisiana Medicaid Program.

24 (iii) Coverage offered by the Office of Group Benefits for retirees.

25 (5) "Marketplace" means the health insurance marketplace or  
26 insurance exchange established pursuant to 42 U.S.C. 18031.

27 §2474. Louisiana Health Reinsurance Association

28 A. There is hereby created a nonprofit entity to be known as the  
29 Louisiana Health Reinsurance Association whose legal domicile shall be in the

1 parish of East Baton Rouge. All members of the association shall be and remain  
2 members of the association as a condition of their authority to transact business  
3 in this state. The association shall perform its functions as authorized by this  
4 Part and through its bylaws and plan of operations.

5 B. The association shall be under the supervision of the commissioner  
6 as authorized in R.S. 22:2478. The association shall provide any records  
7 concerning its operations, budget, and management upon request of the  
8 commissioner.

9 C.(1)(a) Notwithstanding any other provision of law to the contrary, the  
10 association shall not be deemed a department, unit, agency, instrumentality,  
11 commission, or board of the state for any purpose unless specifically set forth  
12 in this Part and except as otherwise provided in this Part shall not be subject to  
13 laws governing departments, units, agencies, instrumentalities, commissions, or  
14 boards of the state.

15 (b) All debts, claims, obligations, and liabilities of the association,  
16 whenever incurred, shall be the debts, claims, obligations, and liabilities of the  
17 association only and not of the state or its agencies, instrumentalities, officers,  
18 or employees.

19 (c) The association shall be subject to the provisions of R.S. 24:513 et  
20 seq. regarding audits by the legislative auditor.

21 (d) The form established by the commissioner pursuant to R.S. 22:2064  
22 for the financial report of the Louisiana Insurance Guaranty Association shall  
23 determine the association's accounting method and basis of financial reporting  
24 for all purposes, notwithstanding any other provision of law to the contrary.

25 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection,  
26 the association shall be subject to the provisions of the Public Records Law, R.S.  
27 44:1 et seq., and the Open Meetings Law, R.S. 42:11 et seq.

28 §2475. Board of directors

29 A. The board of directors of the association shall consist of seven

1 members. One director shall be a resident of this state appointed by the  
2 commissioner. The other six directors shall serve terms as established in the  
3 bylaws. These six directors shall be elected as follows:

4 (1) One person chosen by association members who provided major  
5 medical insurance coverage in the individual market for at least the two  
6 preceding years, starting in the year 2018 in this state, or who have been  
7 certified by the marketplace to offer individual coverage in this state through  
8 the marketplace and have undertaken overt acts to do so in the upcoming plan  
9 year at the time of election.

10 (2) One person chosen by association members who provided major  
11 medical insurance in the group market for at least the two preceding years  
12 starting in 2018 in this state.

13 (3) One person chosen by association members who are third-party  
14 administrators and group self-insurers in this state, but who do not possess  
15 certificates of authority as health insurance issuers or health maintenance  
16 organizations.

17 (4) One person chosen by association members who are health  
18 maintenance organizations in this state, and who provide major medical  
19 insurance in both the individual and group markets in this state.

20 (5) One person chosen by association members who are domestic  
21 nonprofit mutual insurers exclusively engaged in the business of providing  
22 health, hospital service, medical, or surgical benefits in this state.

23 (6) One licensed insurance producer, with an accident and health line  
24 of authority, primarily and actively engaged in the sale, solicitation, and  
25 negotiation of major medical insurance in this state, chosen by the Independent  
26 Insurance Agents and Brokers of Louisiana, the Louisiana Association of Health  
27 Underwriters, the Louisiana chapter of the National Association of Insurance  
28 and Financial Advisors, Health Agents for America, Inc., and Professional  
29 Insurance Agents of Louisiana.

1           B. A vacancy on the board shall be filled for the remainder of an  
2           unexpired term in the same manner as the board seat was filled pursuant to this  
3           Section. In the event two or more board seats are vacant, the commissioner may  
4           appoint interim board members for terms not to exceed sixty calendar days.

5           C. Elections for board members shall be held every four years, which  
6           period shall commence to run following the election of a majority of board  
7           members in the calendar year 2021, except that the association bylaws may  
8           stagger the terms of the first slate of board members elected after the enactment  
9           of this Part in order to prevent all board seats from being vacant at the same  
10          time.

11          D. Members of the board may be reimbursed from the assets of the  
12          association for reasonable expenses incurred by them as members of the board  
13          of directors. The members of the board shall not otherwise be compensated by  
14          the association for their services.

15          E. The board of directors shall have the authority to adopt bylaws and  
16          a plan of operation and to decide all matters on behalf of the association.

17          §2476. Powers and duties of the association

18          A. The association may require association members to furnish any data  
19          or information necessary for the levying of a fee assessed by the commissioner  
20          upon the recommendation of the association, and, if necessary and with the  
21          approval of the commissioner, the association may examine any association  
22          member for that purpose. The association may, with the approval of the  
23          commissioner, examine any association member's books and records, if that  
24          association member makes any claim for reinsurance payments from the  
25          association.

26          B. The association, through the board of directors, shall formally advise  
27          the commissioner, at least annually, as to the need and the amount of any fee  
28          assessments to be levied pursuant to R.S. 22:2477, and to file suit against any  
29          association member that fails to pay the fee assessment.

1            C. The association may negotiate, apply for, receive, and expend any  
2            pass-through or other funding under a state innovation waiver pursuant to  
3            Section 1332 of Public Law 111-148, and any other grant or funding made  
4            available by the state or federal government for the purposes of stabilizing the  
5            individual health insurance market and health insurance rates, reinsurance, or  
6            similar efforts to improve access and reduce pricing for health insurance.

7            D. The association may do any of the following:

8            (1) Enter into any contracts as are necessary or proper to implement this  
9            Part.

10           (2) Sue or be sued, including taking any legal actions necessary to  
11           recover unpaid fee assessments and to settle claims or potential claims against  
12           it.

13           (3)(a) Borrow money to effect the purposes of this Part.

14           (b) Any notes or other evidence of indebtedness of the association not in  
15           default shall be legal investments for domestic insurers and may be carried as  
16           admitted assets.

17           (4) Employ or retain any persons necessary to handle the financial and  
18           legal transactions of the association and to perform any other functions  
19           necessary and proper pursuant to this Part.

20           (5) Take any legal action necessary to avoid payment or recover  
21           payment of improper claims.

22           (6) Join other associations or organizations of similar purposes to  
23           further the purposes of the association.

24           (7) Adopt bylaws and a plan of operations to carry out the functions,  
25           organization, and administration of the association and to collect any  
26           assessment levied by the association.

27           (8) Refer any association member to the commissioner for sanctions if  
28           the association member has refused to pay any fee assessment or has refused to  
29           furnish data or information as required by this Section.

1           E. Venue in a suit against the association shall be in the Nineteenth  
2           Judicial District Court, and the association shall not be required to furnish any  
3           appeal bond in cases or controversies that relate to a cause of action arising  
4           under this Part.

5           §2477. Fee assessments

6           A.(1) For the purposes of providing the funds necessary to carry out the  
7           powers and duties of the association pursuant to this Part, the board of  
8           directors shall formally advise the commissioner of the frequency and amount  
9           of any fee assessment. Upon determination that the advice of the board is  
10           reasonable and necessary to carry out the purpose of this Part, the  
11           commissioner shall promulgate the fee assessment as a constitutional officer  
12           pursuant to Article VII, Section 2.1(B) of the Constitution of Louisiana.

13           (2) No fee assessment shall be in excess of two dollars and fifty cents per  
14           member per month for each person covered by major medical insurance as  
15           provided for in this Section.

16           (3) Fee assessments shall be due no sooner than ninety days after  
17           promulgation by the commissioner in the Louisiana Register provided the  
18           promulgation has no due date stated and shall accrue interest at ten percent per  
19           annum on and after the due date.

20           (4) The fee assessments shall be paid to the association to carry out the  
21           purpose of this Part.

22           B. The board of directors may defer, in whole or in part, the fee  
23           assessment of any association member if, in the opinion of the board, payment  
24           of the assessment would endanger the ability of the association member to fulfill  
25           contractual obligations. In the event a fee assessment is deferred, the amount by  
26           which the fee assessment is deferred may be assessed against the other  
27           association members in a manner consistent with the basis for fee assessments  
28           as provided for in this Section and as consistent with the association's bylaws.  
29           Fee assessments that are deferred shall be paid according to a plan approved by



1 the board, without interest, once the condition that was the cause of the  
2 deferment is rectified.

3 C. Association members may incorporate costs imposed by the fee  
4 assessment into their rating assumptions and rate setting mechanisms.

5 D.(1) An association member that wishes to protest all or part of a fee  
6 assessment shall pay when due the amount of the fee assessment as set forth in  
7 the notice promulgated by the commissioner. The payment shall be available to  
8 meet association obligations during the pendency of the protest or any  
9 subsequent appeal. Payment shall be accompanied by a statement in writing  
10 that the payment is made under protest and setting forth a brief statement of  
11 the grounds for the protest.

12 (2) Within sixty days following the payment of a fee assessment under  
13 protest by an association member, the association shall notify the association  
14 member in writing of the association's determination with respect to the protest  
15 unless the association notifies the association member that additional time is  
16 required to resolve the issues raised by the protest.

17 (3) Within thirty days after the final decision has been made, the  
18 association shall notify the protesting association member in writing of the final  
19 decision. Within sixty days of receipt of notice of the final decision, the  
20 protesting association member may appeal that final action to the  
21 commissioner.

22 (4) If the protest or appeal on the fee assessment is upheld by the  
23 commissioner, the amount paid in error or excess shall be returned to the  
24 association member. Interest on a refund due a protesting member shall be paid  
25 at the rate actually earned by the association.

26 E.(1) The commissioner may set the fee assessment, upon the formal  
27 advice of the board, on a per-member per-month basis, which may be calculated  
28 based upon the association member's prior calendar or plan year's population  
29 or reasonable estimates of the association member's current or impending

1 calendar or plan year population. The per-member per-month population of an  
2 association member should reflect the total number of human beings for whom  
3 the association member provided major medical insurance or similar coverage,  
4 as defined in this Part.

5 (2) The association may determine whether health plan coverage offered  
6 by an association member constitutes major medical insurance as defined in this  
7 Part.

8 F. In the event that the association has unexpended funds from a fee  
9 assessment, the association shall maintain the funds to reduce future fee  
10 assessments or to finance the operations of the association.

11 G. The commissioner may revoke a fee assessment previously  
12 promulgated pursuant to his authority in the event that a portion of the fee  
13 assessment or all of it would be unnecessary due to the availability of an  
14 alternate source of funding for the objectives of this Part.

15 §2478. Powers of the commissioner

16 In addition to the duties and powers enumerated elsewhere in this Part  
17 and in other provisions of law, the commissioner may do any of the following:

18 (1) Sanction any association member that fails to fulfill lawfully imposed  
19 obligations pursuant to this Part, which failure shall constitute an unfair trade  
20 practice, in the manner authorized in R.S. 22:1969.

21 (2) Suspend or revoke, after compliance with R.S. 49:961, the authority  
22 of any association member to transact business in this state if the association  
23 member fails to pay a fee assessment or fails to comply with the bylaws or plan  
24 of operations. The commissioner may also levy a fee or fine on any association  
25 member not to exceed ten percent of the unpaid assessment.

26 (3) Authorize the association to apply for a state innovation waiver  
27 pursuant to Section 1332 of Public Law 111-148.

28 §2479. Interim powers of the commissioner

29 A. Immediately following the establishment of the association and prior

1 to the election of the board of directors, the commissioner shall manage the  
2 operations of the association.

3 B. The commissioner shall house and staff the association in the office  
4 of health, life, and annuity within the Department of Insurance until an initial  
5 fee assessment is levied to finance the association's administrative costs and the  
6 association is capable of carrying out its functions and duties.

7 C. The commissioner may levy the initial fee assessment without the  
8 formal advice of the board if the board fails to do so by June 1, 2021.

9 D. The commissioner may adopt interim bylaws and an interim plan of  
10 operations until the board adopts permanent bylaws and a permanent plan of  
11 operations.

12 §2480. Examination of the association

13 The association shall be subject to financial examination by the  
14 commissioner. The board of directors shall submit to the commissioner, not  
15 more than one hundred twenty days after the end of the fiscal year of the  
16 association, an annual financial report in a form approved by the commissioner  
17 and a report of its activities during the same year.

18 §2481. Immunity

19 There shall be no liability on the part of, and no cause of action of any  
20 kind whatsoever shall arise against, any association member or its agents or  
21 employees, any member of the board of directors, or the commissioner or his  
22 representatives, for any action or omission in the performance of the  
23 responsibilities and duties pursuant to this Part. Immunity shall extend to the  
24 participation in any organization of one or more other state associations of  
25 similar purposes and to any such organization and its agents or employees.

26 §2482. Effect of fee assessment on rates

27 Any association member required to pay a fee assessment pursuant to  
28 this Part may, if the association member has not accounted for the fee  
29 assessment in the association member's rate assumptions or contracted terms

1           for any calendar or plan year, increase premiums, or administrative fees in the  
2           case of a third-party administrator, during the plan or policy year in direct  
3           proportion of the cost of the fee assessment to the association member.

4           §2483. Application

5           Notwithstanding any other provision of law to the contrary, the  
6           provisions of this Part shall not apply to the Office of Group Benefits.

7           Section 2. R.S. 22:1641(1)(j) is hereby repealed.

8           Section 3. This Act shall become effective upon signature by the governor or, if not  
9           signed by the governor, upon expiration of the time for bills to become law without signature  
10          by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
11          vetoed by the governor and subsequently approved by the legislature, this Act shall become  
12          effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Cheryl B. Cooper.

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DIGEST

SB 148 Original

2020 Regular Session

Talbot

Proposed law creates the Louisiana Health Reinsurance Association as an association of health insurance issuers, health maintenance organizations, group self-insurers, and third-party administrators who are subject to a fee assessment promulgated by the commissioner to provide for a state-based reinsurance fund the individual health insurance market.

Proposed law provides for the association's functions and regulations subject to the commissioner and present law. Provides that the association shall not be deemed a department, unit, agency, instrumentality, commission, or board of the state for any purpose unless specifically set forth in proposed law.

Proposed law provides for the establishment of a seven-member board of directors. Provides that one member shall be a resident of this state appointed by the commissioner, and six members shall serve terms as established by the bylaws.

Proposed law provides for the powers and duties of the association including the ability to advise the commissioner of the fee assessments necessary to carry out the purpose of the association.

Proposed law establishes the powers of the commissioner with regard to the function of the association. Provides for the commissioner to direct the operations of the association immediately following the establishment of the association and prior to the election of the board of directors.

Proposed law provides immunity from liability for any association member or its agents or employees, members of the board of directors, or the commissioner or his representatives, for any action or omission by them in the performance of their responsibilities and duties.

Proposed law excludes the Office of Group Benefits from proposed law.

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

(Adds R.S. 22:2472-2483; repeals R.S. 22:1641(1)(j))