

2023 Regular Session

HOUSE BILL NO. 511

BY REPRESENTATIVE ILLG

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

INSURANCE: Provides relative to the Louisiana Insurance Guaranty Association

1 AN ACT

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

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

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

5 2061.1(A), (B)(1), and (D), 2062(A)(1),(2), and (6), to enact R.S. 22:2056(C)(2)(g)

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

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

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

9 clarification of definitions; to broaden the subject matter for discussion during an

10 executive session; to provide for confidentiality; to provide for a minimum and

11 maximum amount that the Louisiana Insurance Guaranty Association may pay on

12 a claim; to clarify the calculation of premiums; to create policies and procedures for

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

14 Be it enacted by the Legislature of Louisiana:

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

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

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

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

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

1 §2055. Definitions

2 As used in this Part:

3 \* \* \*

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

5 \* \* \*

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

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

10 \* \* \*

11 §2056. Creation of the association

12 \* \* \*

13 C.

14 \* \* \*

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

19 \* \* \*

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

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

27 \* \* \*

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

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

4 \* \* \*

5 §2058. Powers and duties of the association

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

7 (1)

8 \* \* \*

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

10 \* \* \*

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

15 \* \* \*

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

23 \* \* \*

24 (3)(a)

25 \* \* \*

26 (ii) No member insurer may be assessed in any year an amount greater than  
27 ~~one~~ two percent of that member insurer's net direct written premiums for the  
28 preceding calendar year. If the maximum assessment, together with the other assets  
29 of the association, does not provide in any one year an amount sufficient to make all

1 necessary payments, the funds available shall be prorated and the unpaid portion  
2 shall be paid as soon thereafter as funds become available.

3 \* \* \*

4 (c) ~~Not subject the premium dollars paid to an insurer by any "high net worth~~  
5 ~~insured" as defined in this Part to the assessment provided for in this Section for the~~  
6 ~~next calendar year~~ Any insurer ~~deducting~~ may deduct the premium dollars from its  
7 assessment ~~shall provide~~ by providing a net worth affidavit to the association from  
8 each insured whose premium dollars are being deducted together with a statement  
9 of the amount of premium dollars paid by such insured in accordance with  
10 procedures established by the association.

11 \* \* \*

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

13 \* \* \*

14 (6)(a) Refund to the member insurers in proportion to the contribution of  
15 each member insurer to the association that amount by which the assets of the  
16 association exceed the liabilities, if, at the end of any calendar year, the board of  
17 directors finds that the assets of the association exceed the liabilities of the  
18 association as estimated by the board of directors ~~for the coming year~~.

19 \* \* \*

20 §2061.1. Net worth exclusion

21 A. For purposes of this Part, "high net worth insured" ~~shall mean~~ means any  
22 policyholder or named insured, other than any state or local governmental agency or  
23 subdivision thereof, whose net worth exceeds twenty-five million dollars on  
24 December thirty-first of the year prior to the year in which the insurer becomes an  
25 insolvent ~~insurer if an~~ insurer. An insured's net worth on that date shall be deemed  
26 to include the aggregate net worth of the insured and all of its subsidiaries and  
27 affiliates as calculated on a consolidated basis. The consolidated net worth of the  
28 insured and all of its affiliates shall be calculated on the basis of their fair market  
29 values. The members of a group self-insurance fund formed pursuant to R.S.

1 23:1191 et seq. shall not be deemed to be affiliates of the fund, and shall not be  
2 included in the determination of the net worth of the fund. For the purposes of this  
3 Section, a group self-insurance fund, and each individual member of the fund upon  
4 whose behalf a claim is submitted, shall be deemed to be policyholders or named  
5 insureds of any policy of insurance issued to the fund.

6 B.(1) The association ~~shall not be~~ is not obligated to pay any claims or  
7 provide a defense to any claims asserted for coverage under a policy when ~~the~~  
8 ~~insured~~ any named insured or policyholder is a high net worth insured, regardless of  
9 whether the claim is asserted against the high net worth insured.

10 \* \* \*

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

28 \* \* \*

1 §2062. Exhaustion of other coverage

2 A.(1) Any person having a claim against an insolvent insurer ~~shall be~~  
3 ~~required first~~ is first required to exhaust all coverage provided by any and all other  
4 ~~policy policies~~, including the right to a defense under the other policy or policies, if  
5 the claim under the other policy or policies arises from the same facts, injury, or loss  
6 that gave rise to the covered claim against the association. The requirement to  
7 exhaust ~~shall apply~~ applies without regard to whether or not the other insurance  
8 policy ~~is a policy or policies were~~ written by a member insurer. However, ~~no person~~  
9 ~~shall be a person~~ is not required to exhaust any right under the policy of an insolvent  
10 insurer or any right under a life insurance policy or annuity.

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

22 \* \* \*

23 (6) In addition to the other credits provided for in this Section, in the case of  
24 a claimant alleging personal injury or death caused by exposure to asbestos fibers or  
25 other claim resulting from exposure to, release of, or contamination from any  
26 environmental pollutant or contaminant, any and all other insurance available to the  
27 insured for the claim for all policy periods for which insurance is available ~~must~~  
28 shall first be exhausted before recovering from the association, even if an insolvent  
29 insurer provided the only coverage for one or more policy periods of the alleged

1 exposure. Only after exhaustion of all solvent insurer's total policy aggregate limits  
2 for any alleged exposure periods will the association be obligated to provide a  
3 defense and indemnification within the obligations of this Part, subject to a credit for  
4 the total amount thereof, whether or not the total amount has actually been paid or  
5 recovered.

6 \* \* \*

7 E. The association is entitled to conduct confidential discovery to determine  
8 whether other available insurance as provided by this Section exists, the applicable  
9 limits thereof, the amount of a claimant's recovery, the efforts to exhaust any  
10 applicable limits, and to determine whether its obligations to the claimant have been  
11 extinguished by the application of any applicable credits during the pendency of  
12 litigation, subject to maintaining adequate procedures to protect the confidentiality  
13 of any information obtained through the discovery.

14 Section 2. R.S. 22:2062(A)(2)(c) is hereby repealed in its entirety.

15 Section 3. This Act is intended to interpret the law, to codify jurisprudence  
16 interpreting certain provisions, to clarify certain provisions that have caused confusion and  
17 misinterpretation of original legislative intent, and to eliminate unnecessary or outdated  
18 provisions. Therefore, this Act is intended to apply retroactively and prospectively.

19 Section 4. This Act shall become effective upon signature by the governor or, if not  
20 signed by the governor, upon expiration of the time for bills to become law without signature  
21 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
22 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
23 effective on the day following such approval.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 511 Engrossed 2023 Regular Session Illg

**Abstract:** Provides for the clarification of existing policies, procedures, and regulations applicable to the La. Insurance Guaranty Association (LIGA).

Present law provides that LIGA serves a function to ensure the payment of covered claims to claimants or policyholders under certain insurance policies and ensures minimum delay and a minimum financial loss due to the insolvency of an insurer. Further provides for policies and regulations for insolvent insurers.

Proposed law retains present law.

Present law defines "covered claim" and excludes penalties and punitive and exemplary damages from the definition of "covered claim".

Proposed law retains present law but further excludes certain present law penalties from the definition.

Present law authorizes LIGA to host executive sessions and limits the subject matter that may be discussed, debated, considered, or scrutinized during executive sessions, including but not limited to matters with respect to claims, claim files, and prospective litigation.

Proposed law retains present law but broadens the subject matter for discussion to include matters with respect to groups of similar claims and matters with respect to the discussion of litigation strategy or settlement issues.

Present law sets forth specific documents that are not subject to discovery, subpoena, or any other alternative form of disclosure in accordance with the Public Records Law (R.S. 44:1 et seq.).

Proposed law retains present law.

Proposed law provides that a document or information protected from disclosure in present law, and protected information of a high net worth insured, are not subject to discovery, subpoena, or other disclosure, unless both parties are compelled by a valid and final court order issued in a proceeding to which both parties had notice and opportunity to object to the disclosure of the document or information.

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

Proposed law retains present law.

Present law authorizes LIGA to satisfy an obligation to a claimant by paying an amount exceeding \$100 but less than \$500,000 per claim, subject to a maximum limit of \$500,000 per accident or occurrence for all other covered claims.

Proposed law retains present law but clarifies the minimum amount as \$101 and the maximum amount as \$500,000 per accident or occurrence for all other covered claims.

Present law authorizes LIGA to assess 1% of a member insurer's net direct written premiums for the preceding calendar year. Proposed law increases the assessment authority from 1% to 2%. Otherwise retains present law.

Present law prohibits LIGA from including in certain assessments the premium dollars paid to an insurer by any "high net worth insured". Proposed law deletes present law.

Proposed law requires any insurer authorized to deduct premium dollars from its assessment to submit to LIGA a net worth affidavit from each insured whose premium dollars are being deducted along with a statement of the amount of premium dollars paid by such insured.

Present law requires any amount payable by an insolvent insurer on a covered claim to be reduced by the full applicable limits stated in another insurance policy or by the amount of



recovery under the other policy. Generally requires LIGA and the claimant to receive a full credit for the stated limits, unless the claimant demonstrates that he used reasonable efforts to exhaust all coverage and limits applicable to the other policy. Further provides that present law does not apply to uninsured or underinsured motorists.

Proposed law retains present law but repeals the portion that excludes uninsured or underinsured motorists from the application of present law.

Proposed law authorizes LIGA to conduct confidential discovery to determine whether credits exist to extinguish its defense obligation during the pendency of litigation. Further authorizes LIGA to conduct confidential discovery to determine whether other available insurance exists, the applicable limits thereof, the amount of a claimant's recovery, the efforts to exhaust any applicable limits, and whether LIGA's obligations to the claimant have been extinguished by any applicable credits during the pendency of litigation.

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

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

#### Summary of Amendments Adopted by House

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

1. Increase the percentage for which LIGA may annually assess a member insurer's net direct written premiums from 1% to 2%.
2. Make technical changes.