

ACT No. 444

2023 Regular Session

HOUSE BILL NO. 511

BY REPRESENTATIVE ILLG

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AN ACT

To amend and reenact R.S. 22:2055(6)(b)(introductory paragraph) and (i), 2056(C)(2)(introductory paragraph), (c), and (d), 2058(A)(introductory paragraph), (1)(b)(iii) and (d), (3)(a)(ii) and (iv) and (b) and (c), and (B)(introductory paragraph) and (6)(a), and 2061.1(A) and (D), to enact R.S. 22:2056(C)(2)(g) and 2062(E), and to repeal R.S. 22:2062(A)(2)(c), relative to the Louisiana Insurance Guaranty Association; to provide for the coverage, confidentiality, and payment of claims by the Louisiana Insurance Guaranty Association; to provide for clarification of definitions; to broaden the subject matter for discussion during an executive session; to provide for a maximum assessment percentage; to provide for a minimum and maximum amount that the Louisiana Insurance Guaranty Association may pay on a claim; to clarify the calculation of premiums; to create policies and procedures for insolvent insurers; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:2055(6)(b)(introductory paragraph) and (i), 2056(C)(2)(introductory paragraph), (c), and (d), 2058(A)(introductory paragraph), (1)(b)(iii) and (d), (3)(a)(ii) and (iv) and (b) and (c), and (B)(introductory paragraph) and (6)(a), and 2061.1(A) and (D) are hereby amended and reenacted and R.S. 22:2056(C)(2)(g) and 2062(E) are hereby enacted to read as follows:

§2055. Definitions

As used in this Part:

* * *

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

2 * * *

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

4 (i) Any amount awarded as penalties; or punitive or exemplary damages,
5 including but not limited to those in the provisions of R.S. 22:1892 and R.S.
6 22:1973.

7 * * *

8 §2056. Creation of the association

9 * * *

10 C.

11 * * *

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

16 * * *

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

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

24 * * *

25 (g) A document or information protected from disclosure by any of the
26 exceptions provided for in this Section is not subject to discovery, subpoena, or other
27 disclosure, unless the association is compelled by a valid and final court order issued
28 in a proceeding to which the association was provided with notice and an opportunity
29 to object to the disclosure of the document or information.

30 * * *

1 §2058. Powers and duties of the association

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

3 (1)

4 * * *

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

6 * * *

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

11 * * *

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

19 * * *

20 (3)(a)

21 * * *

22 (ii) No member insurer may be assessed in any year an amount greater than
23 ~~one~~ two percent of that member insurer's net direct written premiums for the
24 preceding calendar year. If the maximum assessment, together with the other assets
25 of the association, does not provide in any one year an amount sufficient to make all
26 necessary payments, the funds available shall be prorated and the unpaid portion
27 shall be paid as soon thereafter as funds become available.

28 * * *

1 (b)(i) Issue to each insurer paying an assessment under this Part a certificate
 2 of contribution, in a form prescribed by the commissioner, for the amount so paid up
 3 to but not exceeding one-half of the maximum assessment. All outstanding
 4 certificates shall be of equal dignity and priority without reference to amounts or
 5 dates of issue.

6 (ii) A certificate of contribution issued to a member company may be offset
 7 against its premium tax liability in an amount not to exceed ten percent of the
 8 assessment for the year in which the assessment was paid in full and not to exceed
 9 ten percent of the assessment per year for each of the nine calendar years following
 10 the year in which ~~such~~ the assessment was paid in full, not to exceed a total offset of
 11 one hundred percent for each assessment. During the calendar year of issuance of a
 12 certificate of contribution, and yearly thereafter, a member shall at its option have
 13 the right to show a certificate of contribution as an asset in the form approved by the
 14 commissioner at percentages of the original face amount approved by the
 15 commissioner, equal to the unused offset as of each such calendar year.

16 (iii) To the extent amounts have not been ~~written off~~ offset under Item (ii)
 17 of this Subparagraph, the provisions of R.S. 22:2066 shall ~~not~~ apply. The
 18 commissioner may promulgate a separate form in accordance with the
 19 Administrative Procedure Act, to facilitate submission of a filing to recover the
 20 amounts not offset pursuant to Item (ii) of this Subparagraph, subject to oversight by
 21 the House Committee on Ways and Means and the Senate Committee on Revenue
 22 and Fiscal Affairs.

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

30 * * *

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

2 * * *

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

8 * * *

9 §2061.1. Net worth exclusion

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

24 * * *

25 D. The association shall ~~establish~~ maintain reasonable procedures subject to
26 the approval of the commissioner for requesting financial information from insureds
27 on a confidential basis for purposes of applying this ~~Section, provided that the~~
28 Section. The financial information may be shared with any other association similar
29 to the association and the liquidator for the insolvent insurer on the same confidential
30 basis, but shall otherwise be kept strictly confidential. The financial information

1 provided by the insured subject to these procedures is not subject to discovery,
 2 subpoena, or other disclosure, unless the association and the high net worth insured
 3 are compelled to disclose this information by a valid and final court order in a
 4 proceeding to which the association was provided with notice and an opportunity to
 5 object to the disclosure of the information. Any request to an insured seeking
 6 financial information ~~must~~ shall advise the insured of the consequences of failing to
 7 provide the financial information. If an insured refuses to provide the requested
 8 financial information where it is requested and available, the association may, until
 9 such time as the information is provided, provisionally deem the insured to be a high
 10 net worth insured for the purpose of denying a claim ~~under~~ pursuant to Subsection
 11 B of this Section.

* * *

§2062. Exhaustion of other coverage

* * *

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

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

23 Section 3. R.S. 22:2058(A)(3)(a)(ii) as amended by this Act that provides a two
 24 percent maximum assessment by the La. Insurance Guaranty Association shall be applied
 25 prospectively and shall become effective on January 1, 2024.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____