ENROLLED

2018 Regular Session

ACT No. 97

HOUSE BILL NO. 551

BY REPRESENTATIVE HUVAL

AN ACT

To amend and reenact R.S. 22:2082, 2083(A)(1), (2)(introductory paragraph) and (b), and (5), (B)(1) and (2)(introductory paragraph), (a), (h)(introductory paragraph), (ii), and (iii), and (i), and (C)(1), 2084(5), (6), (7), (8)(introductory paragraph), (11.1), and (12), 2085(A)(introductory paragraph) and (4) and (B), 2086(A)(introductory paragraph), (1), and (7), 2087(A)(introductory paragraph) and (1), (B)(introductory paragraph) and (1), (C), (F), (L), (M)(1), (4), and (5), (N), and (Q)(introductory paragraph), 2088(C), (E)(1)(a) and (b), (F) through (H), and (I)(5), 2090(A)(introductory paragraph) and (2), (B), (C), and (D), 2091(A)(introductory paragraph), (1)(a)(iii) and (b), and (3), (B), and (C), 2093(C), (D), and (E)(1) through (3), 2098(A), (B), and (C)(introductory paragraph) and (2), and 2099, to enact R.S. 22:254(H), 2083(B)(3) and (F), and 2085(C)(3)(h), and to repeal R.S. 22:2084(8)(a) and 2091(E) and (G), relative to the Louisiana Life and Health Insurance Guaranty Association; to provide for purpose, scope, and applicability; to define key terms; to add health maintenance organizations as member insurers; to provide for the assessment of member insurers relative to long-term care policies and contracts; to provide for the reissuance of policies or contracts by the association; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:2082, 2083(A)(1), (2)(introductory paragraph) and (b), and (5), (B)(1) and (2)(introductory paragraph), (a), (h)(introductory paragraph), (ii), and (iii), and (i), and (C)(1), 2084(5), (6), (7), (8)(introductory paragraph), (11.1), and (12), 2085(A)(introductory paragraph) and (4) and (B), 2086(A)(introductory paragraph), (1), and (7), 2087(A)(introductory paragraph) and (1), (B)(introductory paragraph) and (1), (C), (F),

(L), (M)(1), (4), and (5), (N), and (Q)(introductory paragraph), 2088(C), (E)(1)(a) and (b), (F) through (H), and (I)(5), 2090(A)(introductory paragraph) and (2), (B), (C), and (D), 2091(A)(introductory paragraph), (1)(a)(iii) and (b), and (3), (B), and (C), 2093(C), (D), and (E)(1) through (3), 2098(A), (B), and (C)(introductory paragraph) and (2), and 2099 are hereby amended and reenacted and R.S. 22:254(H), 2083(B)(3) and (F), and 2085(C)(3)(h) are hereby enacted to read as follows:

§254. Protection against insolvency

* * *

H. Effective August 1, 2018, the liquidation or windup of affairs of a health maintenance organization shall be governed by the provisions of Chapter 9 of this Title, R.S. 22:2001 et seq.

* * *

§2082. Purpose

A. The purpose of this Part is to protect, subject to certain limitations, the persons listed in R.S. 22:2083(A) against failure in the performance of contractual obligations, under life, ~~and~~ health, ~~insurance policies~~ and annuity policies, plans, or contracts specified in R.S. 22:2083(B), because of the impairment or insolvency of the member insurer that issued the policies, plans, or contracts.

B. To provide this protection, an association of member insurers is hereby created to pay benefits and to continue coverages as limited herein. Members of the association are subject to assessment to provide funds to carry out the purpose of this Part.

§2083. Coverages and limitations

A. This Part shall provide coverage for the policies and contracts specified in Subsection B of this Section:

(1) To any person who, regardless of residence, except for a nonresident certificate holder under a group policy or contract, is the beneficiary, assignee, or payee, including healthcare providers rendering services covered under health insurance policies or certificates, of a person covered under Paragraph (2) of this Subsection.

(2) To any person who is the owner of or certificate holder or enrollee under such a policy or contract, other than a structured settlement annuity, and who is either:

* * *

(b) ~~Is not~~ Not a resident, but only if all of the following conditions are satisfied:

(i) The member insurer which issued such policy or contract is domiciled in this state.

(ii) The member insurer has never held a license or certificate of authority in the state in which such person resides.

(iii) ~~Such~~ The state has an association similar to the association created by this Part.

(iv) The person is not eligible for coverage by such association.

* * *

(5) This Part is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this Part is provided coverage under the laws of any other state, the person shall not be provided coverage under this Part. In determining the application of the provisions of this Paragraph in situations where a person could be covered by the association of more than one state, whether as an owner, payee, enrollee, beneficiary or assignee, this Part shall be construed in conjunction with other state laws to result in coverage by only one association.

B.(1) This Part shall provide coverage to the persons specified in Subsection A of this Section for policies or contracts of direct, non-group life insurance, health insurance including, for purposes of this Part, health maintenance organization subscriber contracts and certificates, or ~~annuity policies or contracts~~ annuities, for certificates under direct group policies and contracts for supplemental contracts to any of these, and for unallocated annuity contracts, in each case issued by member insurers, except as limited by this Part.

(2) ~~This~~ Except as otherwise provided in Paragraph (3) of this Subsection, this Part shall not provide coverage for any of the following:

(a) Any portion of a policy or contract not guaranteed by the member insurer, or under which the risk is borne by the policy or contract holder.

* * *

(h) An obligation that does not arise under the express written terms of the policy or contract issued by the member insurer to the enrollee, certificate holder, contract owner, or policy owner, including, without limitations, any of the following:

* * *

(ii) Claims based on side letters, riders, or other documents that were issued by the member insurer without meeting applicable policy or contract form filing or approval requirements.

(iii) Misrepresentations of or regarding policy or contract benefits.

* * *

(i) A policy or contract providing any hospital, medical, prescription drug, or other ~~health care~~ healthcare benefits pursuant to Part A, Part B, Part C, or Part D of Subchapter XVIII, Chapter 7 of Title 42 of the United States Code, commonly referred to as "Medicare Part A coverage", "Medicare Part B coverage", "Medicare Part C coverage", and "Medicare Part D coverage", or Subchapter XIX of Chapter 7 of Title 42 of the United States Code, commonly referred to as "Medicaid", and any regulations issued pursuant to those parts or subchapters.

* * *

(3) The exclusion from coverage provided for in Subparagraph (2)(c) of this Subsection shall not apply to any portion of a policy or contract, including a rider, that provides long-term care or any other health insurance benefits.

C. The benefits for which the association shall become liable shall in no event exceed the lesser of the following:

(1) The contractual obligations for which the member insurer is liable or would have been liable if it were not an impaired or insolvent insurer.

* * *

F. For purposes of this Part, benefits provided by a long-term care rider to a life insurance policy or annuity contract shall be considered the same type of benefits as the base life insurance policy or annuity contract to which it relates.

§2084. Definitions

As used in this Part:

* * *

(5) "Covered contract" or "covered policy" means any policy or contract within the scope of this Part as set forth ~~by~~ in R.S. 22:2083.

(6) "Impaired insurer" means a member insurer which, after ~~September 30, 1991~~ August 1, 2018, is not an insolvent insurer, and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(7) "Insolvent insurer" means a member insurer which, after ~~September 30, 1991~~ August 1, 2018, is placed under an order by a court of competent jurisdiction with a finding of insolvency.

(8) "Member insurer" means any insurer or health maintenance organization licensed or which holds a certificate of authority to transact in this state any kind of insurance or health maintenance organization business for which coverage is provided by R.S. 22:2083, and includes any insurer or health maintenance organization whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but shall not include any of the following:

* * *

(11.1) "Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the member insurer.

(12) "Resident" means a person who resides in this state on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of

business. Citizens of the United States that are either ~~(a)~~ residents of foreign countries, or ~~(b)~~ residents of United States possessions, territories, or protectorates that do not have an association similar to the association created by this Part, shall be deemed residents of the state of domicile of the member insurer that issued the policies or contracts.

* * *

§2085. Creation of the association

A. There is hereby created a nonprofit entity to be known as the Louisiana Life and Health Insurance Guaranty Association whose legal domicile shall be in the parish of East Baton Rouge. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance or a health maintenance organization business in this state. The association shall perform its function under the plan of operation established and approved pursuant to R.S. 22:2089 and shall exercise its powers through a board of directors established ~~by~~ pursuant to R.S. 22:2086. For purposes of administration and assessment, the association shall maintain ~~four~~ all of the following accounts:

* * *

(4) The health ~~insurance~~ account.

B. The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state. The ~~commissioner~~ association shall ~~be provided~~ provide any records ~~of the association~~ concerning the operations, budget, and management of the association upon request of the commissioner.

* * *

C.

* * *

(3) The association may hold an executive session pursuant to R.S. 42:16 for discussion of one or more of the following, and R.S. 44:1 et seq. shall not apply to

any documents as enumerated in R.S. 44:1(A)(2) which relate to one or more of the following:

* * *

(h) Matters with respect to the abatement or deferral or the request for an abatement or deferral of an assessment pursuant to R.S. 22:2088(D).

§2086. Board of directors

A. The board of directors of the association shall consist of one consumer representative appointed by the commissioner subject to Senate confirmation, who shall be a resident of the state of Louisiana, and ten member insurers serving terms as established in the plan of operation. The consumer representative ~~may~~ shall not be an officer, director, or employee of an insurance company or engaged in the business of insurance or a health maintenance organization. The insurer members of the board shall be selected by member insurers subject to the approval of the commissioner from the following groups or their successors:

(1) One representative of a member insurer which is a domestic commercial insurance company and a member of the Louisiana Insurers' Conference.

* * *

(7) One representative ~~to be approved by the commissioner,~~ who represents a member insurer which is a domestic nonprofit mutual insurer engaged exclusively in the business of furnishing hospital service, medical, or surgical benefits.

* * *

§2087. Powers and duties of the association

A. If a member insurer is an impaired insurer, the association may, in its discretion, subject to any conditions imposed by the association, take ~~such~~ any of the following actions ~~as~~ that do not impair the contractual obligations of the impaired insurer and that are approved by the commissioner:

(1) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, any or all of the policies or contracts of the impaired insurer.

* * *

B. If a member insurer is an insolvent insurer, the association shall, in its discretion, ~~perform~~ do any of the following:

(1) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, the policies or contracts of the insolvent insurer.

* * *

C. With respect to ~~life and health insurance policies and annuities~~ policies and contracts, the association shall do all of the following:

(1) Assure payment of benefits ~~for premiums identical to the premiums and benefits, except for terms of conversion and renewability~~, that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred.

(a) With respect to group policies and contracts, not later than the earlier of the next renewal date under ~~such~~ the policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to ~~such~~ the policies and contracts.

(b) With respect to non-group policies, contracts, and annuities, not later than the earlier of the next renewal date, if any, under ~~such~~ the policies or one year, but in no event less than thirty days, from the date on which the association becomes obligated with respect to ~~such~~ the policies or contracts.

(2) Make reasonable and diligent efforts to provide all known insureds, enrollees, or annuitants for non-group policies and contracts, or group ~~policyholders~~ policy or contract owners with respect to group policies and contracts, thirty days prior notice of the termination of the benefits provided.

(3) With respect to non-group ~~life and health insurance~~ policies and ~~annuities~~ contracts covered by the association, make available to each known ~~insureds~~ insured, enrollee, or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly an ~~insureds~~ insured, enrollee, or ~~formerly an~~ annuitant under a group policy or contract who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of Paragraph (4) of this Subsection, if the insureds, enrollees, or annuitants had a right under law or the terminated policy, contract, or annuity to

convert coverage to individual coverage or to continue an individual policy, contract, or annuity in force until a specified age or for a specified time, during which the insurer or health maintenace organization had no right to unilaterally alter any provision of the policy, contract, or annuity or had a right to undertake alterations only in premium by class.

(4)(a) In providing the substitute coverage required ~~under~~ pursuant to Paragraph (3) of this Subsection, the association may offer either to reissue the terminated coverage or to issue an alternative policy or contract at actuarially justified rates, subject to the prior approval of the commissioner.

(b) Alternative or reissued policies or contracts shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy or contract.

(c) The association may reinsure any alternative or reissued policy or contract.

(5)(a) Alternative policies adopted by the association shall be subject to the approval of the ~~domiciliary insurance~~ commissioner ~~and the receivership court~~. The association may adopt alternative policies or contracts of various types for future issuance without regard to any particular impairment or insolvency.

(b) Alternative policies or contracts shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy or contract was last underwritten.

(c) Any alternative policy or contract issued by the association shall provide coverage of a type similar to that of the policy or contract issued by the impaired or insolvent insurer, as determined by the association.

(6) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy or contract, the premium

shall be actuarially justified and set by the association in accordance with the amount of insurance or coverage provided and the age and class of risk, subject to the prior approval of the ~~domiciliary insurance~~ commissioner ~~and the receivership court~~.

(7) The association's obligations with respect to coverage under any policy or contract of the impaired or insolvent insurer or under any reissued or alternative policy or contract shall cease on the date the coverage or policy is replaced by another similar policy or contract by the policy or contract owner, the insured, the enrollee, or the association.

(8) When proceeding ~~under~~ pursuant to this Subsection with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with R.S. 22:2083(B)(2)(c).

F. Nonpayment of premiums within thirty-one days after the date required by the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate the association's obligations under such policy, contract, or coverage under this Part with respect to such policy, contract, or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this Part.

* * *

L. The association shall have standing to appear or intervene before any court in this state or state agency with jurisdiction over an impaired or insolvent insurer and concerning which the association shall become obligated under this Part or with jurisdiction over any other person or property against which the association may have benefit through subrogation or otherwise. The standing shall extend to all matters germane to the powers and duties of the association, including but not limited to proposals for reinsuring, reissuing, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over any person or property for which the association shall become obligated or with

jurisdiction over a third party against whom the association may have rights through subrogation or otherwise.

M.(1) Any person receiving benefits under this Part shall be deemed to have assigned the rights under, and any causes of action relating to, the covered policy or contract to the association to the extent of the benefits received because of this Part, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative policies, contracts, or coverages. The association may require an assignment of such rights and cause of action by any enrollee, payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this Part upon such person.

* * *

(4) If the provisions of this Subsection are determined to be invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related, covered obligations shall be reduced by the amount realized by any other person or claim that is attributable to the policies or contracts, or portion thereof, covered by the association.

(5) If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in Paragraph (4) of this Subsection, the person shall pay to the association the portion of the recovery attributable to the policies or contracts, or the portion thereof, covered by the association.

N. The association may do any of the following:

(1) Enter into ~~such~~ any contracts ~~as are~~ necessary or proper to implement the provisions and purposes of this Part.

(2) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments pursuant to R.S. 22:2088 and to settle claims or potential claims against it.

(3) Borrow money to effect the purposes of this Part. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic member insurers and may be carried as admitted assets.

(4) Employ or retain ~~such~~ any persons ~~as are~~ necessary to handle the financial and legal transactions of the association, and to perform ~~such~~ other functions ~~as become~~ necessary or proper ~~under~~ in accordance with this Part.

(5) Take ~~such~~ any legal action ~~as may be~~ necessary to avoid payment or recover payment of improper claims.

(6) Exercise, for the purposes of this Part and to the extent approved by the commissioner, the powers of a domestic life ~~or~~ insurer, health insurer, or health maintenance organization, but in no case may the association issue ~~insurance~~ policies or ~~annuity~~ contracts other than those issued to perform its obligations under this Part.

(7) Unless prohibited by law, in accordance with the terms and conditions of the policy or contract, file for actuarially justified rate or premium increases for any policy or contract for which it provides coverage pursuant to this Part.

* * *

Q. In carrying out its duties in connection with guaranteeing, assuming, reissuing, or reinsuring policies or contracts under this Section, the association may~~,~~ ~~subject to approval of the receivership court,~~ issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract that meets the following requirements:

* * *

§2088. Assessments

* * *

C.(1) The amount of any Class A assessment shall be determined by the board ~~and shall not exceed three hundred dollars per member insurer in any one calendar year~~. The amount of any Class B assessment, except for assessments related to long-term care insurance, shall be allocated for assessment purposes

among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances and established in the plan of operation.

(2) The amount of the Class B assessment for long-term care insurance written by the impaired or insolvent insurer shall be allocated according to a methodology included in the plan of operation and approved by the commissioner. The methodology shall provide for fifty percent of the assessment to be allocated to accident and health member insurers and fifty percent to be allocated to life and annuity member insurers.

(3) Class B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the member insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.

~~(3)~~ (4) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be commenced by the board of directors until necessary to implement the purposes of this Part. Classification of assessments pursuant to Subsection B of this Section and computation of assessments pursuant to this Subsection shall be made with a reasonable degree of accuracy.

* * *

E.(1)(a) The total of all assessments upon an insurer for each account shall not in any one calendar year exceed two percent of such average premiums received of the insurers in this state on the policies and contracts covered by the account during the three calendar years preceding the year in which the member insurer became an impaired or insolvent insurer.

(b) With respect to member insurers that become impaired or insolvent in different calendar years, if two or more assessments are authorized in one calendar year, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in Subparagraph (a) of this Paragraph shall be equal and limited to the higher of the three-year average annual premiums for the applicable account as calculated pursuant to this Section.

* * *

F. The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each member insurer to that account, the amount by which the assets of that account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains, and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses.

G. It shall be proper for any member insurer, in determining its premium rates and policy owner dividends as to any kind of insurance or health maintenace organization business within the scope of this Part, to consider the amount reasonably necessary to meet its assessment obligations under this Part.

H. The association shall issue to each member insurer paying an assessment under this Part, other than Class A assessments, a certificate of contribution for Class B assessments, in a form prescribed by the commissioner for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

I.

* * *

(5) If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member ~~company~~ insurer. Interest on a

refund due a protesting member insurer shall be paid at the rate actually earned by the association.

* * *

§2090. Powers and duties of the commissioner

A. In addition to the duties and powers enumerated elsewhere in this Part, and in other provisions of law, the commissioner shall do all of the following:

* * *

(2) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. The notice to the impaired insurer shall constitute notice to its shareholders, if applicable. The failure of the impaired insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this Part.

* * *

B. The commissioner may suspend or revoke, after compliance with R.S. 49:961, the certificate of authority to transact ~~insurance~~ business in this state of any member insurer who fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may also levy a fine on any member insurer who fails to pay an assessment when due. The fine shall not exceed five percent of the unpaid assessment per month, but no fine shall be less than one hundred dollars per month.

C. Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within sixty days of the final action being appealed. If a member ~~company~~ insurer is appealing an assessment, the amount assessed shall be paid to the association and credited to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount if paid in error or excess, shall be returned to the member ~~company~~ insurer without interest. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

D. The liquidator, rehabilitator, or conservator of any impaired or insolvent insurer shall notify all interested persons of the effect of this Part.

§2091. Prevention of insolvencies

A. To aid in the detection and prevention of member insurer insolvencies or impairments, it shall be the duty of the commissioner:

(1)(a) To notify the commissioner of insurance, or other appropriate official, of all the other states, territories of the United States, and the District of Columbia when he takes any of the following actions against a member insurer:

* * *

(iii) Makes any formal order that ~~such company~~ the member insurer restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders, contract owners, certificate holders, or creditors.

(b) ~~Such~~ The notice shall be mailed to all such commissioners or other appropriate officials within thirty days following the action taken or the date on which such action occurs.

* * *

(3) To report to the board of directors when he has reasonable cause to believe from any examination, whether completed or in process, of a member insurer that ~~such~~ the member insurer may be an impaired or insolvent insurer.

* * *

B. The commissioner may seek the advice and recommendation of the board of directors concerning any matter affecting his duties and responsibilities regarding the financial condition of member insurers and ~~companies~~ insurers or health maintenance organizations seeking admission to transact ~~insurance~~ business in this state.

C. The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the

solvency of any ~~company~~ insurer or health maintenance organization seeking to transact ~~insurance~~ business in this state. ~~Such~~ The reports and recommendations shall not be considered public ~~documents~~ records.

* * *

§2093. Miscellaneous provisions

* * *

C.(1) For the purpose of carrying out its obligations under this Part, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to R.S. 22:2087(M). The assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this Part. The assets attributable to covered policies, are that proportion of the assets which the reserves that should have been established for the policies or contracts bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(2) As a creditor of the impaired or insolvent insurer as established in Paragraph (1) of this Subsection and consistent with R.S. 22:2034, the association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this Part. If the liquidator has not, within one hundred and twenty days of a final determination of insolvency of ~~an~~ a member insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guarantee associations having obligations because of the insolvency, then the association shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

D.(1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, shareholders, ~~of the insolvent~~

~~insurer,~~ contract owners, certificate holders, enrollees, and policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In such a determination, consideration shall be given to the welfare of the ~~policyholders~~ policy owners, contract owners, certificate holders, and enrollees of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties with respect to ~~such~~ the member insurer have been fully recovered by the association.

E.(1) If an order for liquidation or rehabilitation of ~~an~~ a member insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the member insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the member insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of Paragraphs (2) and (4) of this Subsection.

(2) No such distribution shall be recoverable if the member insurer shows that when paid the distribution was lawful and reasonable, and that the member insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the member insurer to fulfill its contractual obligations.

(3) Any person who was an affiliate that controlled the member insurer at the time the distributions were paid shall be liable up to the amount of distributions received. Any person who was an affiliate that controlled, as defined in R.S. 22:2092(C)(2), the member insurer at the time the distributions were declared, shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be solidarily liable.

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§2098. Prohibited advertisement of Louisiana Life and Health Insurance Guaranty Association ~~Act~~ Law in insurance sales; notice to policyholders

A. No person, including ~~an~~ a member insurer, agent, or affiliate of ~~an~~ a member insurer shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, which uses the existence of the Life and Health Insurance Guaranty Association of this state for the purpose of sales solicitation, or inducement to purchase any form of insurance or other coverage covered by the Louisiana Life and Health Insurance Guaranty Association Law. This Section shall not apply to the Louisiana Life and Health Insurance Guaranty Association or any other entity which does not sell or solicit insurance or coverage by a health maintenance organization.

B. Within one hundred eighty days of September 30, 1991, the association shall prepare a summary document describing the general purposes and current limitations of the Part and complying with R.S. 22:2092(C). This document shall be submitted to the commissioner for approval. Sixty days after receiving ~~such~~ approval, no member insurer ~~may~~ shall deliver a policy or contract described in R.S. 22:2083(B)(1) to a policy ~~or~~ owner, contract owner, certificate holder, or enrollee unless the document is delivered to the policy ~~or~~ owner, contract owner, certificate holder, or enrollee prior to or at the time of delivery of the policy or contract except if Subsection D of this Section applies. The document shall also be available upon request by a policyholder. The distribution, delivery, or contents or interpretation of this document shall not mean that either the policy or the contract or the policy owner, contract owner, certificate holder, or enrollee ~~thereof~~ would be covered in the event of the impairment or insolvency of a member insurer. The description document shall be revised by the association as amendments to this Part may require. Failure to receive this document shall not give the ~~policyholder,~~ policy owner,

contract ~~holder,~~ owner, certificate holder, enrollee, or insured any greater rights than those stated in this Part.

C. The document prepared pursuant to Subsection B of this Section shall contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer shall do all of the following:

* * *

(2) Prominently warn the policy ~~or~~ owner, contract owner, certificate holder, or enrollee that the association may not cover the policy or, if coverage is available, it will be subject to substantial ~~limitation,~~ limitations and exclusions, and conditioned on continued residence in the state.

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§2099. Prospective application

~~This Part shall not apply to any insurer or its subsidiaries, insurance holding company system or related, either directly or indirectly, agents, affiliates, or other entities which are insolvent or impaired or unable to fulfill its contractual obligations before September 30, 1991.~~

This Part shall not apply to any member insurer that is insolvent or impaired or unable to fulfill its contractual obligations before August 1, 2018.

Section 2. R.S. 22:2084(8)(a) and 2091(E) and (G) are hereby repealed in their entirety.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____