

SENATE BILL NO. 268

BY SENATOR LAFLEUR

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

1 §2051. Title

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

4 §2052. Purpose

5 The purpose of this Part is to provide ~~a mechanism~~ for the payment of
6 covered claims under certain insurance policies ~~to avoid excessive~~ **with a minimum**
7 ~~delay in payment~~ and ~~to avoid~~ **a minimum** financial loss to claimants or
8 policyholders **due to** ~~because of~~ the insolvency of an insurer, ~~to assist in the~~
9 ~~detection and prevention of insurer insolvencies and to allow the association to~~
10 provide financial assistance to member insurers under rehabilitation or liquidation,
11 and to provide an association to assess the cost of such operations among insurers.

12 §2053. Scope; policy coverage determination

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

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

15 **(2) mortgage Mortgage guaranty, financial guaranty, or other forms of**
16 **insurances offering protection against investment risks.**

17 **(3) Fidelity or surety bonds, bail bond contracts, or any other bonding**
18 **obligations.**

19 **(4) credit Credit insurance, and ~~any transaction or combination of~~**
20 **transactions which involve the transfer of investment or credit risks unaccompanied**
21 **by the transfer of the insurance risk, vendor's single interest insurance, or collateral**
22 **protection insurance; or any similar insurance which protects the interests of a**
23 **creditor arising out of a creditor-debtor transaction.**

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

30 **(6) Title insurance.**

1 by the person. Control shall be presumed to exist if a person, directly or
 2 indirectly owns, controls, holds with the power to vote, or holds proxies
 3 representing, ten percent or more of the voting securities of any other person.
 4 This presumption may be rebutted by a showing that control does not exist in
 5 fact.

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

7 **(a) an An** unpaid claim, including one for unearned premiums ~~by or against~~
 8 ~~the insured or agent, which **that** arises out of and is within the coverage and not in~~
 9 excess of the applicable limits of an insurance policy to which this Part applies
 10 issued by an insurer, if such insurer becomes an insolvent insurer after September
 11 1, 1970, **and the policy was issued by such insurer** and **any of the following:**

12 (i) The claimant or insured is a resident of this state at the time of the insured
 13 event, **provided that, for entities, the residence of a claimant or insured is the**
 14 **state in which its principal place of business is located at the time of the insured**
 15 **event,** or

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

20 ~~(ii)~~ **(iii)** The ~~property from which the claim~~ **is a first party claim for**
 21 **damage to property with a permanent location** ~~arises is permanently located in~~
 22 this state.

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

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

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

27 **(iii) any Any** amount due any reinsurer, insurer, **insurance pool or**
 28 **underwriting association,** health maintenance organization or plan, preferred
 29 provider organization or plan, **hospital plan corporation, professional health**
 30 **service corporation,** employee retirement fund including but not limited to plans

1 subject to the Employee Retirement Income Security Act of 1974, Medicare,
 2 Medicaid, ~~any insurance pool, or any underwriting association, or within the~~
 3 ~~coverage represented, replaced, or both by a certificate of self-insurance~~ **or the self-**
 4 **insured portion due any self-insurer** as subrogation recoveries, **reinsurance**
 5 **recoveries, contribution, indemnification** or otherwise. In addition, the insured of
 6 an insolvent insurer **any person insured under a policy issued by an insolvent**
 7 **insurer** shall likewise not be liable for any subrogation claim **or any contractual**
 8 **indemnity claim** asserted by any reinsurer, insurer, **insurance pool, underwriting**
 9 **association,** health maintenance organization or plan, **hospital plan corporation,**
 10 **professional health service corporation,** preferred provider organization or plan,
 11 employee retirement fund including but not limited to plans subject to the Employee
 12 Retirement Income Security Act of 1974, Medicare, Medicaid, ~~any insurance pool,~~
 13 ~~or any underwriting association or within the coverage represented, replaced, or both~~
 14 ~~by a certificate of self-insurance to the extent of the applicable liability limits~~
 15 ~~previously provided to such insured by the insolvent insurer.~~ **self-insurer, or any**
 16 **other person with an interest in the claim, other than to the extent the claim**
 17 **exceeds the association's obligation limitations.**

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

20 **(v) Any first party claims by an insured that is an affiliate of the**
 21 **insolvent insurer.**

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

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

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

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

3 (x) Any claim the payment of which exceeds the powers and duties of the
 4 association in R.S. 22:2058(A)(1) or is outside the scope of coverage in R.S.
 5 22:2053(A).

6 (xi) Any claim by a group self-insurance fund for the amount within the
 7 self-insured retention, deductible, co-pay, or any other obligation or liability of
 8 the group self-insurance fund, stated in the policy of the insolvent insurer, or for
 9 the first three hundred thousand dollars of each claim, whichever is greater.

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

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

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

24 ~~(f) "Covered claim" shall not include any claim asserted for coverage under~~
 25 ~~a policy when the net worth of the insured for whom coverage would allegedly be~~
 26 ~~owed exceeds twenty-five million dollars on December thirty-first of the year~~
 27 ~~immediately preceding the date of the determination of the insolvency of the insurer.~~
 28 ~~However, an insured's net worth on such date shall be deemed to include the~~
 29 ~~aggregate net worth of the insured and all of its subsidiaries and affiliates as~~
 30 ~~calculated on a consolidated basis. An "affiliate" of the insured includes any person~~

1 or entity who directly, or indirectly through one or more intermediaries, controls or
 2 is controlled by or is under common control with the insured. "Control" means the
 3 possession, direct or indirect, of the power to direct or cause the direction of the
 4 management and policies of the controlled person or entity, whether through the
 5 ownership of voting securities, by contract, or otherwise. The consolidated net worth
 6 of the insured and all of its subsidiaries and affiliates shall be calculated on the basis
 7 of their fair market values. The failure or refusal of a person or entity to return a net
 8 worth affidavit to the association after two requests therefor shall create a rebuttable
 9 presumption that the noncompliant person or entity had a net worth in excess of
 10 twenty-five million dollars on December thirty-first of the year immediately
 11 preceding the date of the determination of the insolvency of the insurer. An insured
 12 for the purposes of this provision shall not include any state or local governmental
 13 agency or subdivision thereof.

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

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

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

22 ~~(b) Any person, and any attorney who represents a person, who files a~~
 23 ~~petition against the association alleging as a basis for the claim the insolvency of an~~
 24 ~~insurer, where said insurer is not an insolvent insurer within the meaning of R.S.~~
 25 ~~22:2055(4)(a), shall pay the reasonable expenses incurred because of the filing of the~~
 26 ~~petition, including a reasonable attorney's fee, subject to the following conditions:~~

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

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

3 **(8) "Insured" means any named insured, any additional insured, any**
4 **vendor, lessor, or any other party identified as an insured under the policy.**

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

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

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

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

14 ~~(6)~~ **(10)** "Net direct written premiums" means direct gross premiums written
15 in this state on insurance policies to which this Part applies, **including policy and**
16 **membership fees**, less return premiums thereon, **premiums on policies not taken,**
17 and dividends paid or credited to policyholders on such direct business. "Net direct
18 written premiums" does not include premiums on contracts between insurers or
19 reinsurers. Notwithstanding any law to the contrary, no assuming reinsurer shall be
20 required to pay or otherwise contribute to any fund or assessment of the association
21 except for any insurance ~~which~~ **that** the reinsurer directly writes in the state.

22 ~~(7)~~ **(11)** "Person" means any **natural or juridical person** individual,
23 company, insurer, association, organization, reciprocal or inter-insurance exchange,
24 partnership, business, trust, ~~or~~ corporation, **or other entity, including governmental**
25 **entities.**

26 ~~(8)~~ **(12)** "Insurance policy" means an insurance contract as defined in R.S.
27 22:864, and shall not include an agreement whereby an insurer agrees to assume and
28 carry out directly with the policyholder any of the policy obligations of another
29 insurer, such as cut-through endorsements, reinsurance endorsements, facultative
30 reinsurance agreements, treaty reinsurance agreements, and other such agreements,

1 when either insurer is an affiliated of with the other. "~~Affiliated~~" as used in this
 2 ~~Section means that either insurer owns or controls, directly or indirectly, a majority~~
 3 ~~of the voting shares of the other or the controlling interest therein, or that both~~
 4 ~~insurers are so owned or controlled by another.~~

5 ~~(9)~~ **(13)** "Ocean marine insurance" includes marine insurance as defined in
 6 R.S. 22:47(13), except for inland marine, as well as any other form of insurance,
 7 regardless of the name, label, or marketing designation of the insurance policy,
 8 which insures against maritime perils or risks and other related perils or risks, which
 9 are usually insured against by traditional marine insurances such as hull and
 10 machinery, marine builders' risks, and marine protection and indemnity. Such perils
 11 and risks insured against include without limitation loss, damage or expense or legal
 12 liability of the insured for loss, damage, or expense arising out of or incident to
 13 ownership, operation, chartering, maintenance, use, repair or construction of any
 14 vessel, craft or instrumentality in use in ocean or inland waterways, including
 15 liability of the insured for personal injury, illness or death or for loss of or damage
 16 to the property of the insured or another person, except this definition shall not
 17 include insurance on vessels under five tons gross weight.

18 **(14) "Receiver" means liquidator, rehabilitator, conservator or ancillary**
 19 **receiver, as the context requires.**

20 **(15) "Self-insurer" means a person that covers its liabilities through a**
 21 **qualified individual or group self-insurance program created for the specific**
 22 **purpose of covering liabilities typically covered by insurance. A group self-**
 23 **insurance fund formed under Subpart J of Part 1 of Chapter 10 of Title 23 of**
 24 **the Revised Statutes of 1950 shall not be deemed to be an insurer with respect**
 25 **to this Chapter.**

26 §2056. Creation of the association

27 A. There is created a private nonprofit unincorporated legal entity to be
 28 known as the "**Louisiana** Insurance Guaranty Association", ~~whose domicile for~~
 29 ~~purpose of suit shall be East Baton Rouge Parish, Louisiana.~~ All insurers defined as
 30 member insurers **defined** in R.S. 22:2055 shall be and remain members of the

1 association as a condition of their authority to transact insurance in this state. The
 2 association shall perform its functions under a plan of operation established and
 3 approved under R.S. 22:2059 and shall exercise its powers through a board of
 4 directors established under R.S. 22:2057.

5 B. The association is not and may not be deemed a department, unit, agency,
 6 or instrumentality of the state for any purpose, **and shall not be subject to laws**
 7 **governing such departments, units, agencies, instrumentalities, commissions or**
 8 **boards of the state.** All debts, claims, obligations, and liabilities of the association,
 9 whenever incurred, shall be the debts, claims, obligations, and liabilities of the
 10 association only and not of the state, its agencies, instrumentalities, officers, or
 11 employees. Association monies may not be considered part of the general fund of the
 12 state. The state may not budget for or provide general fund appropriations to the
 13 association, and the debts, claims, obligations, and liabilities of the association may
 14 not be considered to be a debt of the state or a pledge of its credit.

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

20 (2) The association may hold an executive session pursuant to R.S. 42:6 for
 21 discussion of one or more of the following, and R.S. 44:1 through 41 shall not apply
 22 to any documents as enumerated in R.S. 44:1(A)(2) which relate to one or more of
 23 the following:

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

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

1 liquidation, rehabilitation, or conservation.

2 ~~(e)~~ **(b)** Matters protected by attorney-client privilege.

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

5 ~~(e)~~ **(d)** Prospective litigation against the association after formal written
6 demand, prospective litigation by the association after referral to counsel for review,
7 or pending litigation by or against the association.

8 ~~(f)~~ **(e)** Any other matters now provided for or as may be provided for by the
9 legislature.

10 ~~(g)~~ **(f)** Discussion by or documents in the custody or control of any
11 committee or subcommittee of the association, or any member or agent thereof, or
12 the board of directors or any member or agent thereof, provided such discussion or
13 documents would otherwise be protected from disclosure by any of the exceptions
14 provided in this Paragraph.

15 §2057. Board of directors

16 A.~~(1)~~ The board of directors of the association shall consist of nine persons
17 serving terms as established in the plan of operation. The board shall be composed
18 of two consumer representatives appointed by the commissioner, one person
19 appointed by the president of the Senate, one person appointed by the speaker of the
20 House of Representatives, all of whom shall be residents of the state of Louisiana,
21 and five additional persons selected by member insurers, one of which shall be a
22 representative selected by the membership of the Louisiana Association of Fire and
23 Casualty Companies (LAFAC), subject to the approval of the commissioner.
24 Vacancies in the positions for which persons are selected by member insurers shall
25 be filled until the next regularly scheduled election for a member of the board by a
26 majority vote of the remaining members, subject to the approval of the
27 commissioner. At the next regularly scheduled election for a member of the board,
28 the member insurers shall select a member to serve the remainder of the unexpired
29 term of any member appointed by the board, subject to the approval of the
30 commissioner. No person shall serve as a member after his replacement has been

1 either appointed or selected by member insurers and approved by the commissioner.
 2 The commissioner shall transmit to the board his approval or disapproval of new
 3 board members within thirty days after he has been notified of their selection, and
 4 he shall accompany any disapproval of a board member with his written reasons for
 5 such disapproval. **One of the two consumer representatives may not be an**
 6 **officer, director or employee of an insurance company or any person engaged**
 7 **in the business of insurance.**

8 ~~(2) The board of directors of the association is hereby abolished and~~
 9 ~~reestablished. The terms of the members of the board of directors serving on the~~
 10 ~~effective date of this Subsection shall terminate on the effective date of this~~
 11 ~~Subsection. The members of the new board of directors shall be selected as provided~~
 12 ~~in this Subsection.~~

13 * * *

14 C. Members of the board may be reimbursed from the assets of the
 15 association for **reasonable** expenses incurred by them as members of the board of
 16 directors.

17 **D. Any member of the board whose relationship to an insurer in**
 18 **receivership presents a conflict of interest shall be terminated as a board**
 19 **member by the commissioner and the seat declared vacant as of the date of the**
 20 **entry of the order of receivership.**

21 **E. If the commissioner has reasonable cause to believe that a board**
 22 **member failed to disclose a known conflict of interest with his duties on the**
 23 **board, failed to take appropriate action based on a known conflict of interest**
 24 **with his duties on the board, or has been indicted or charged with a felony, or**
 25 **misdemeanor involving moral turpitude, the commissioner may suspend that**
 26 **board member pending the outcome of an investigation or hearing by the**
 27 **commissioner or the conclusion of any criminal proceedings. In the event that**
 28 **the allegations are substantiated at the conclusion of an investigation, hearing**
 29 **or criminal proceeding, the seat shall be declared vacant.**

30 §2058. Powers and duties of the association

1 A. The association shall:

2 (1)(a) Be obliged ~~to the extent of the covered claims~~ **to pay covered claims**
 3 **pursuant to an order as provided in R.S. 22:2008(C)**, existing prior to the
 4 determination of the insurer's insolvency, ~~or upon order of the court as provided in~~
 5 ~~R.S. 22:2008~~, or arising after such determination but prior to the first to occur of the
 6 following events:

7 (i) Expiration of thirty days after the date of such determination of
 8 insolvency,

9 (ii) Expiration of the policy, or

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

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

18 **(i) The full amount of a covered claim for benefits payable directly to or**
 19 **on behalf of the injured employee or his health care providers, vocational**
 20 **rehabilitation counselors, and similar providers under a workers' compensation**
 21 **insurance coverage;**

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

24 **(iii) An amount which is in excess of one hundred dollars and is less than**
 25 **five hundred thousand dollars, per claim, subject to a maximum limit of five**
 26 **hundred thousand dollars per accident or occurrence for all other covered**
 27 **claims.**

28 **(c)(i) In no event be obligated to pay a claimant an amount in excess of**
 29 **the obligation of the insolvent insurer under the policy or coverage from which**
 30 **the claim arises. Notwithstanding any other provision of this Part, a "covered**

1 claim" shall not include a claim filed with the association after the earlier of five
 2 years after the date of the order of liquidation of the insolvent insurer or the
 3 final date set by the domiciliary court for the filing of claims against the
 4 liquidator or receiver of an insolvent insurer.

5 (ii) For the purpose of filing a claim under this Subsection, notice of
 6 claims to the liquidator of the insolvent insurer shall be deemed notice to the
 7 association or its agent and a list of claims shall be periodically submitted to the
 8 association or association similar to the association in another state by the
 9 liquidator.

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

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

18 ~~(c)~~ ~~Excepting claims for unearned premiums, which shall be subject to the~~
 19 ~~ten thousand dollar limitation provided herein, the association shall pay the full~~
 20 ~~amount of any covered claim arising out of a worker's compensation policy.~~

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

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

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

10 (3)(a)(i) Assess insurers amounts necessary to pay the obligations of the
 11 association under Paragraph ~~A(1)~~ **(1) of this Subsection** subsequent to an
 12 insolvency, the expenses of handling covered claims subsequent to an insolvency,
 13 and the cost of examinations **of the association** ~~under R.S. 22:2064~~, to fund loans
 14 or provide guarantees to member insurers under rehabilitation or liquidation and
 15 other expenses authorized by this Part. The assessments of each member insurer shall
 16 be in the proportion that the net direct written premiums of the member insurer for
 17 the preceding calendar year, whether or not a company withdraws subsequent to the
 18 preceding calendar year, bears to the net direct written premiums of all member
 19 insurers for the preceding calendar year. Each member insurer shall be notified of
 20 the assessment not later than thirty days before it is due.

21 (ii)(aa) ~~Beginning January 1, 1990, and ending December 31, 2002, no~~
 22 ~~member insurer may be assessed in any year an amount greater than two percent of~~
 23 ~~that member insurer's net direct written premiums for the preceding calendar year.~~
 24 ~~Beginning January 1, 2003, and thereafter, no~~ No member insurer may be assessed
 25 in any year an amount greater than one percent of that member insurer's net direct
 26 written premiums for the preceding calendar year. If the maximum assessment,
 27 together with the other assets of the association, does not provide in any one year an
 28 amount sufficient to make all necessary payments, the funds available shall be
 29 prorated and the unpaid portion shall be paid as soon thereafter as funds become
 30 available. ~~However, as to any assessment or portion thereof payable after May 1,~~

1 ~~1992, payors doing business in Louisiana under a valid certificate of authority as of~~
2 ~~January 1, 1992, and who as of August 21, 1992 have at least one-half of their total~~
3 ~~admitted assets invested in qualifying Louisiana investments as defined in R.S.~~
4 ~~22:832(C), shall receive an earned credit for the amount of such assessment payable~~
5 ~~as follows: the association shall establish on its books an assessment credit fund and~~
6 ~~shall set aside and escrow in such fund ninety-five percent of the amount actually~~
7 ~~received by the association from each payor qualifying for such earned credit; not~~
8 ~~later than sixty days after receipt of such payments, the association shall certify to~~
9 ~~each payor the amount in such fund attributable to each qualifying payor; amounts~~
10 ~~credited to the assessment credit fund shall be expended by the association, only to~~
11 ~~the extent funds are not otherwise available, to meet its obligations under any~~
12 ~~cooperative endeavor agreement dated as of October 1, 1990, (together with all~~
13 ~~amendments and supplements thereto entered into by the association) and upon~~
14 ~~satisfaction of all of the association's obligations under such cooperative endeavor~~
15 ~~agreement and the termination thereof in accordance with its terms, the balances in~~
16 ~~the assessment credit fund shall be promptly paid over by the association to each~~
17 ~~payor qualifying for the earned credit in the amounts certified by the association; to~~
18 ~~the extent amounts then on deposit in the fund are insufficient to make such~~
19 ~~payments to such payors, such amounts shall be paid over by the association pro rata.~~
20 ~~However, the payors shall continue to have a claim of first priority against funds~~
21 ~~thereafter received by the association until the earned credits are paid in full by the~~
22 ~~association. Notwithstanding the foregoing, no amounts shall be paid by the~~
23 ~~association to any payor that has received an earned credit until the association has~~
24 ~~satisfied all of its obligations under any cooperative endeavor agreement, dated as~~
25 ~~of October 1, 1990, (together with all amendments and supplements thereto entered~~
26 ~~into by the association) and such agreement has been terminated in accordance with~~
27 ~~its terms. In the event any indebtedness secured or permitted to be secured under the~~
28 ~~cooperative endeavor agreement dated as of October 1, 1990, (together with all~~
29 ~~amendments and supplements thereto) is refunded or otherwise refinanced by the~~
30 ~~extension of such existing cooperative endeavor agreement and the incurrence by the~~

1 ~~association thereunder of indebtedness not contemplated by such agreement as of~~
 2 ~~August 21, 1992, upon the payment and satisfaction by the association of all of its~~
 3 ~~obligations and commitments thereunder, such agreement shall be deemed to be~~
 4 ~~terminated for purposes of this Item.~~

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

12 ~~(iii) The association may exempt or defer, in whole or in part, the assessment~~
 13 ~~of any member insurer if the assessment would cause the member insurer's financial~~
 14 ~~statement to reflect amounts of capital or surplus less than the minimum amounts~~
 15 ~~required for a certificate of authority by any jurisdiction in which the member insurer~~
 16 ~~is authorized to transact insurance. Each member insurer may set off against any~~
 17 ~~assessment, authorized payments made on covered claims and expenses incurred in~~
 18 ~~the payment of such claims by the member insurer.~~

19 ~~(iv) Beginning January 1, 1990, the amount of the assessment shall be offset~~
 20 ~~in the same manner that an offset is provided against the premium tax liability in~~
 21 ~~Subparagraph(3)(c) **Item (3)(b)(ii)** of this Subsection, against the assessment levied~~
 22 ~~by R.S. 22:1476, provided that such offset shall not be applied against any portion~~
 23 ~~of the assessments to be deposited to the credit of the Municipal Police Employees'~~
 24 ~~Retirement System, the Sheriffs' Pension and Relief Fund, and the Firefighters'~~
 25 ~~Retirement System. To qualify for this offset, the payer shall file a sworn statement~~
 26 ~~with the annual report required by Parts I, III, and IV of Chapter 3 of this Title~~
 27 ~~showing as of December thirty-first of the reporting period that at least the following~~
 28 ~~amounts of the total admitted assets of the payer, less assets in an amount equal to~~
 29 ~~the reserves on its policies issued in foreign countries in which it is authorized to do~~
 30 ~~business and which countries require an investment therein as a condition of doing~~

1 business, are invested and maintained in qualifying Louisiana investments as defined
 2 in R.S. 22:832(C). If one-sixth of the total admitted assets of the payer are in
 3 qualifying Louisiana investments, then the offset shall be sixty-six and two-thirds
 4 percent of the amount otherwise assessed; if at least one-fifth of the total admitted
 5 assets of the payer are in qualifying Louisiana investments, then the offset shall be
 6 seventy-five percent of the amount otherwise assessed; if at least one-fourth of the
 7 total admitted assets of the payer are in qualifying Louisiana investments, the offset
 8 shall be eighty-five percent of the amount otherwise assessed; and if at least one-
 9 third of the total admitted assets of the payer are in qualifying Louisiana investments,
 10 then the offset shall be ninety-five percent of the amount otherwise assessed. If the
 11 total of the net premium tax liability and the assessment for the expenses of the
 12 Department of Insurance paid for the previous year was less than the offset allowed
 13 under ~~Subparagraph (3)(c)~~ **Item (3)(b)(ii)** of this Subsection for the previous year,
 14 the member company may reduce its assessment payment to the Louisiana Insurance
 15 Guaranty Association for the current year by that difference.

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

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

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

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

28 ~~(c)~~ **(ii)** A certificate of contribution issued to a member company ~~shall~~ **may**
 29 be offset against its premium tax liability in an amount not to exceed ten percent of
 30 the assessment for the year **in which the assessment was paid in full** of assessment

1 and not to exceed ten percent of the assessment per year for each of the nine
 2 calendar years following the year in which such assessment was paid in full
 3 ~~succeeding year~~, not to exceed a total offset of one hundred percent for each
 4 assessment. During the calendar year of issuance of a certificate of contribution, and
 5 yearly thereafter, a member shall at its option have the right to show a certificate of
 6 contribution as an asset in the form approved by the commissioner at percentages of
 7 the original face amount approved by the commissioner, equal to the unused offset
 8 as of each such calendar year.

9 ~~(e)(iii)~~ To the extent amounts have been written off under R.S.
 10 ~~22:2058(A)(3)(e)~~ above Item (ii) of this Subparagraph, the provisions of R.S.
 11 22:2066 shall not apply.

12 ~~(f) (c)~~ Not subject the premium dollars paid to an insurer by any ~~insured~~
 13 ~~whose net worth exceeds twenty-five million dollars on December thirty-first~~ "high
 14 net worth insured" as defined in this Part to the assessment provided for in this
 15 Section for the next calendar year. ~~An insured's net worth shall include the aggregate~~
 16 ~~net worth of the insured and all of its subsidiaries and affiliates calculated on a~~
 17 ~~consolidated basis. An "affiliate" of the insured includes any person or entity who~~
 18 ~~directly, or indirectly through one or more intermediaries, controls or is controlled~~
 19 ~~by or is under common control with the insured. "Control" means the possession,~~
 20 ~~direct or indirect, of the power to direct or cause the direction of the management and~~
 21 ~~policies of the controlled person or entity, whether through the ownership of voting~~
 22 ~~securities, by contract, or otherwise. The consolidated net worth of the insured and~~
 23 ~~all of its subsidiaries and affiliates shall be calculated on the basis of their fair market~~
 24 ~~values.~~ Any insurer deducting the premium dollars from its assessment shall provide
 25 a net worth affidavit to the association from each insured whose premium dollars are
 26 being deducted together with a statement of the amount of premium dollars paid by
 27 such insured in accordance with procedures established by the association.

28 (4) Investigate claims brought against the association and adjust,
 29 compromise, settle, and pay covered claims to the extent of the association's
 30 obligation and deny all other claims. The association may pay claims in any order

1 that it may deem reasonable, including the payment of claims as they are
 2 received from the claimants or in groups or categories of claims. The
 3 association shall have the right to appoint and to direct legal counsel retained
 4 under liability insurance policies for the defense of covered claims. ~~On~~
 5 ~~contradictory motion of the association, a court of proper jurisdiction and venue over~~
 6 ~~the claim shall enter a formal order annulling any unsatisfied preinsolvency~~
 7 ~~settlement, release, or consent judgment entered into by the insolvent insurer in its~~
 8 ~~name or the name of the insured, upon a showing of fraud, ill practice, or where the~~
 9 ~~settlement is clearly excessive, considering all relevant factors, including but not~~
 10 ~~limited to coverage, liability, and quantum issues.~~

11 (5) ~~Notify such persons as the commissioner directs under R.S.~~
 12 ~~22:2060(B)(1)~~ claimants, insureds and other interested parties of the
 13 determination of insolvency and of their rights under this Part as deemed
 14 necessary by the commissioner and upon the commissioner's request, to the
 15 extent records are available to the association. The association may discharge
 16 this duty by notice mailed to the last known address or notice by publication in
 17 a newspaper of general circulation when a mailing address is unavailable or
 18 insufficient.

19 (6)(a) Have the right to review and contest as set forth in this Subsection
 20 settlements, releases, compromises, waivers and judgments to which the
 21 insolvent insurer or its insureds were parties prior to the entry of the order of
 22 liquidation. In an action to annul, vacate, or enforce settlements, releases and
 23 judgments to which the insolvent insurer or its insureds were parties prior to
 24 the entry of the order of liquidation, the association shall have the right to assert
 25 the following defenses, in addition to the defenses available to the insurer:

26 (i) The association is not bound by an unsatisfied settlement, release,
 27 compromise or waiver executed by an insured or the insurer, or any unsatisfied
 28 judgment entered against an insured or the insurer by consent or through a
 29 failure to exhaust all appeals, if the settlement, release, compromise, waiver or
 30 judgment was executed or entered within one hundred twenty days prior to the

1 entry of an order of liquidation, and the insured or the insurer did not use
 2 reasonable care in entering into the settlement, release, compromise, waiver or
 3 judgment, or did not pursue all reasonable appeals of an adverse judgment; or
 4 executed by or taken against an insured or the insurer based on default, fraud,
 5 ill practice, collusion, the insurer's failure to defend, or the clearly excessive
 6 amount of any settlement, release, compromise, waiver or judgment considering
 7 all relevant issues including but not limited to coverage, liability, and quantum.

8 (ii) If a court of competent jurisdiction finds that the association is not
 9 bound by a settlement, release, compromise, waiver or judgment for the reasons
 10 described in Item (i) of this Subparagraph, the settlement, release, compromise,
 11 waiver or judgment shall be set aside, and the association shall be permitted to
 12 defend any covered claim on the merits. The settlement, release, compromise,
 13 waiver or judgment may not be considered as evidence of liability or damages
 14 in connection with any claim brought against the association or any other party
 15 under this Part.

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

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

26 ~~(6)~~ (7) Handle claims through its employees or through one or more insurers
 27 or other persons designated as servicing facilities. Designation of a servicing facility
 28 is subject to the approval of the commissioner, but such designation may be declined
 29 by a member insurer.

30 ~~(7)~~ (8) Reimburse each servicing facility for obligations of the association

1 paid by the facility and for expenses incurred by the facility while handling claims
2 on behalf of the association and shall pay the other expenses of the association
3 authorized by this Part.

4 ~~(8) Annually submit the plan of operation to the commissioner of insurance~~
5 ~~in accordance with the provisions of R.S. 22:2059 and of this Part. Approval by the~~
6 ~~commissioner shall not be unreasonably withheld. If the plan of operation is~~
7 ~~disapproved in whole or in part, the commissioner shall provide written reasons as~~
8 ~~to each disapproved part, and the association shall resubmit the part of the plan~~
9 ~~which has been disapproved by the commissioner within thirty days thereafter. The~~
10 ~~preceding plan of operation shall remain in effect until such time as the revised plan~~
11 ~~is effective. Amendments to the plan of operation shall be submitted to the~~
12 ~~commissioner for approval within ten days of adoption by the association, and~~
13 ~~approval of amendments shall be in accordance with R.S. 22:2059 and with this Part~~
14 ~~except as otherwise provided in this Section.~~

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

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

21 ~~(11) (9) Annually promulgate policies and procedures relative to a system of~~
22 ~~alternative dispute resolution of lawsuits and claims which shall be incorporated into~~
23 ~~the plan of operation, and implement such **Implement** a system of alternative dispute~~
24 ~~resolution **of lawsuits and claims.**~~

25 ~~(12) (10) Coordinate and work in conjunction with a special deputy~~
26 ~~commissioner designated and appointed by the commissioner of insurance, said~~
27 ~~deputy commissioner being **or his designee** charged with oversight and~~
28 ~~implementation of the provisions of this Part.~~

29 B. The association may:

30 * * *

1 (7) ~~As to any member insurer under rehabilitation or liquidation, and pursuant~~
 2 ~~to~~ **Submit with the commissioner to the court having jurisdiction over an**
 3 **impaired or insolvent insurer a joint** written plan of full or partial rehabilitation
 4 or liquidation ~~jointly submitted by the commissioner through his counsel of record,~~
 5 ~~which counsel is approved by the attorney general pursuant to the provisions of this~~
 6 ~~Code, and the Louisiana Insurance Guaranty Association through its counsel of~~
 7 ~~record, and subject to approval of the court in which such rehabilitation or~~
 8 ~~liquidation proceeding is pending, which court must be satisfied that~~ **satisfies the**
 9 **court that** such plan is the most cost-effective method of ~~dealing with the conditions~~
 10 ~~creating~~ **addressing** the member insurer's impairment or insolvency, ~~and improving~~
 11 ~~the condition and is in the best interest of the member insurer's policyholders~~ **and**
 12 **claimants**; and is in the best interests of the association, ~~then the association~~ **and**
 13 may, **upon approval of the court**:

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

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

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

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

23 **(1) Except for actions by the receiver, all actions relating to or arising out**
 24 **of this Part against the association shall be brought in the courts in this state.**
 25 **The courts shall have exclusive jurisdiction over all actions relating to or arising**
 26 **out of this Part against the association.**

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

30 **(3) Any person, and any attorney who represents a person, who files a**

1 petition against the association alleging as a basis for the claim the insolvency
 2 of an insurer, where said insurer is not an insolvent insurer within the meaning
 3 of this Part, shall pay the reasonable expenses incurred because of the filing of
 4 the petition, including a reasonable attorney fee, subject to the following
 5 conditions:

6 (a) The association shall furnish to either the person or his attorney, by
 7 ordinary service of process, hand delivery, or certified mail, return receipt
 8 requested, written notification that the insurer is not an insolvent insurer within
 9 the meaning of this Part.

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

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

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

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

26 §2059. Plan of operation

27 A.(1) The association shall submit to the commissioner and the Senate
 28 Committee on Insurance and the House Committee on Insurance a plan of operation
 29 and any amendments thereto necessary or suitable to assure the fair, reasonable, and
 30 equitable administration of the association. The plan of operation and any

1 amendments thereto shall become effective upon approval in writing by the
 2 commissioner; however, ~~beginning on August 15, 1993~~, prior to the implementation
 3 of any new plan or any amendment to such new plan or an existing plan of operation,
 4 the Senate Committee on Insurance and the House Committee on Insurance may
 5 hold a hearing on such new plan or any amendments to a new or existing plan of
 6 operation. After a hearing, if any, the respective legislative committees shall either
 7 approve or reject the plan or amendment as presented. No plan or amendment shall
 8 be implemented if it was rejected by a legislative committee. If a hearing is not held
 9 within thirty days after receipt of the plan or amendment by such committees, then
 10 the plan or amendment may be implemented as approved by the commissioner.

11 **Approval by the commissioner shall not be unreasonably withheld. If the plan**
 12 **of operation is disapproved in whole or in part, the commissioner shall provide**
 13 **written reasons as to each disapproved part, and the association shall resubmit**
 14 **the part of the plan which has been disapproved by the commissioner within**
 15 **thirty days thereafter. The preceding plan of operation shall remain in effect**
 16 **until such time as the revised plan is effective.**

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

30 * * *

1 C. The plan of operation shall:

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

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

5 (3) Establish ~~the amount and method of~~ **procedures for** reimbursing the
6 members of the board of directors **for reasonable expenses** ~~under R.S. 22:2057.~~

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

12 * * *

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

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

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

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

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

23 * * *

24 §2060. Duties and powers of the commissioner

25 A. The commissioner shall:

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

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B. The commissioner may:

~~(1) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this Part. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.~~

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

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

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

* * *

§2060.1. Coordination among guaranty associations

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

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

Association of Insurance Commissioners.

§2061. Effect of paid claims

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

* * *

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

§2061.1. Net worth exclusion

A. For purposes of this Part "high net worth insured" shall mean any policyholder or named insured, other than any state or local governmental agency or subdivision thereof, whose net worth exceeds twenty-five million dollars on December thirty-first of the year prior to the year in which the insurer becomes an insolvent insurer; provided that an insured's net worth on that date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis. The consolidated net worth of the insured and all of its affiliates shall be calculated

1 on the basis of their fair market values. The members of a group self-insurance
2 fund formed under Subpart J of Part 1 of Chapter 10 of Title 23 of the Revised
3 Statutes of 1950 shall not be deemed to be affiliates of the fund, and shall not be
4 included in the determination of the net worth of the fund. For the purposes of
5 this section, a group self-insurance fund, and each individual member of the
6 fund upon whose behalf a claim is submitted, shall be deemed to be
7 policyholders or named insureds of any policy of insurance issued to the fund.

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

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

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

22 D. The association shall establish reasonable procedures subject to the
23 approval of the commissioner for requesting financial information from
24 insureds on a confidential basis for purposes of applying this Section, provided
25 that the financial information may be shared with any other association similar
26 to the association and the liquidator for the insolvent insurer on the same
27 confidential basis. Any request to an insured seeking financial information must
28 advise the insured of the consequences of failing to provide the financial
29 information. If an insured refuses to provide the requested financial
30 information where it is requested and available, the association may, until such

1 time as the information is provided, provisionally deem the insured to be a high
 2 net worth insured for the purpose of denying a claim under Subsection B of this
 3 Section.

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

11 §2062. Nonduplication of recovery Exhaustion of other coverage

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

1 (2) Any amount payable on a covered claim under this Part shall be
2 reduced by the full applicable limits stated in the other insurance policy, or by
3 the amount of the recovery under the other insurance policy as provided herein.
4 The association and the insured shall receive a full credit for the stated limits,
5 unless the claimant demonstrates that the claimant used reasonable efforts to
6 exhaust all coverage and limits applicable under the other insurance policy. If
7 the claimant demonstrates that the claimant used reasonable efforts to exhaust
8 all coverage and limits applicable under the other insurance policy, or if there
9 are no applicable stated limits under the policy, the association and the insured
10 shall receive a full credit for the total recovery.

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

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

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

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

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

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

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

1 (5) For purposes of this Section, a claim under an insurance policy other
 2 than a life insurance policy or annuity shall include, but is not limited to:

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

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

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

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

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

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

14 * * *

15 §2063. Prevention of insolvencies

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

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

20 ~~(2) The board of directors may, upon majority vote, request that the~~
 21 ~~commissioner order an examination of any member insurer which the board in good~~
 22 ~~faith believes may be in a financial condition hazardous to the policyholders or the~~
 23 ~~public. Within thirty days of the receipt of such request, the commissioner shall~~
 24 ~~begin such examination. The examination may be conducted as a National~~
 25 ~~Association of Insurance Commissioners examination or may be conducted by such~~
 26 ~~persons as the commissioner designates. The cost of such examination shall be paid~~
 27 ~~by the association and the examination report shall be treated as are other~~
 28 ~~examination reports. In no event shall such examination report be released to the~~
 29 ~~board of directors prior to its release to the public, but this shall not preclude the~~
 30 ~~commissioner from complying with Subsection (3). The commissioner shall notify~~

1 §2068. Stay of proceedings; reopening of default judgments; execution of
2 judgments; proration

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

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

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

22 * * *

23 §2069. Advertisements

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

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

28 * * *

29 Section 2. The Louisiana State Law Institute is hereby directed to change the title
30 of Part I of Chapter 10 of Title 22 of the Louisiana Revised Statutes of 1950 from "Part I

1 Insurance Guaranty Association Fund" to "Part I. Louisiana Insurance Guaranty
2 Association Fund Law".

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

4 Section 4. This Act, in its entirety, is intended to have prospective application only.
5 However, the provisions of R.S. 22:2055(15) in this Act with regard to group self-insurance
6 funds formed under Subpart J of Part 1 of Chapter 10 of Title 23 of the Revised Statutes of
7 1950 are interpretive and intended to restate the original legislative intent with regard to such
8 funds. Such affirmation is not intended to confer any retroactive effect whatsoever to the
9 provisions of this Act.

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____