**ENROLLED**

Regular Session, 2012

HOUSE BILL NO. 595

BY REPRESENTATIVE CROMER

AN ACT

To amend and reenact R.S. 22:23(D)(3)(b), 242(10), 653(A)(introductory paragraph), 851(A), 912(C), (D), and (E), 931(A)(10)(a), 1203(D), 1821(A), (C), (D)(1), (2)(e) and (g)(i)(aa), and (3)(c)(introductory paragraph) and (i), (d)(introductory paragraph) and (i) through (iv), and (e), and (F)(1), 1825(B)(introductory paragraph) and (C)(introductory paragraph) and (4), 1859(F), 1875, 1879(A), (B)(1)(introductory paragraph), and (C), 1880(B)(1)(introductory paragraph), (C)(introductory paragraph), and (D)(introductory paragraph), 1892(B)(1), (C)(1), and (D)(2), 1901(4), 1902(A)(2) and (9), 1903(C)(2)(introductory paragraph), 1904, 1905(C)(introductory paragraph) and (1), 1907, 1909(B) and (C), 1921(B) and (C), 1923(1)(a)(introductory paragraph) and (g), 1926(A), 1927(B), 1928(B), 1941, 1942, 1944, 1945, 1946, 1962(C) and (F), 1964(1)(g), (7)(a), (b), and (h), (9), (10)(c), (11), (13), (15)(c)(i), (iii), and (vii), (19)(b)(i)(introductory paragraph) and (c)(i), (20), (24), and (25), 1967, 1968, 1971(C), 1973(B)(introductory paragraph), 1981(A)(2) and (3) and (C)(introductory paragraph), 1983(D) through (H) and (I)(1) and (2), 1984(A) and (G), 1988, 1989, 1992, 1994(A), 2001, 2002(2) and (4), 2003(1)(e) and (f), 2005, 2006, 2008(A), 2009(E)(2) and (4), 2010(D), 2012(A)(introductory paragraph) and (3) and (B), 2013(B), 2018(A) and (B), 2019, 2020(C), 2021(A), 2023(C)(2), 2025(4), 2026, 2027(B), 2028(B), (C), and (D)(6), 2029, 2032, 2033(B), 2034(G) and (H), 2035(A) and (D), 2036(C), 2038(3), 2044, 2055(6)(a)(ii), (7)(introductory paragraph) and (a), (9)(a)(introductory paragraph) and (i) and (b), (12), and (15), 2056(C)(2)(f), 2058(A)(1)(a)(i) and (ii), (b)(i) and (ii), and (3)(a)(iv), 2059(A)(1), (C)(6), and (D), 2060(A)(1), 2061.1(A), 2062(A)(2)(a)(introductory paragraph) and (i) and (ii), (5)(a), and (6),

2083(A)(2)(introductory paragraph) and (a) and (C)(introductory paragraph) and (1), 2084(6), 2085(C)(1) and (3)(g), 2086(B) and (D), 2087(A)(2), (B)(1)(introductory paragraph) and (a) and (2)(introductory paragraph), (C)(2), (D)(introductory paragraph) and (3) and (4)(a), (E), (I)(introductory paragraph), (J), and (M)(3), 2088(D), 2089(A)(2) and (C)(8), 2091(A)(2) and (E)(1), 2092(D), 2093(E)(1), 2098(B) and (C)(introductory paragraph), 2112, 2113, 2114, 2118, 2119, 2132(C) and (D), 2133(2), 2135(A), 2147(A)(2), 2161(A)(introductory paragraph) and (6), 2171(A), (B), (C)(7), (13), and (21), (E)(6) and (14), (F)(5) and (12), and (G)(5), (11), and (12), 2181(B), 2191(A)(introductory paragraph) and (1), 2205, 2206, 2208, 2221(introductory paragraph), 2222(D)(introductory paragraph), 2223(F), 2243(2), 2244(A)(2), 2261(B), 2291, 2292(introductory paragraph), 2293(D)(2)(a) and (f) and (3), 2294(A)(5), 2296(B)(1), 2297(D)(8), 2302(E), 2307(G), 2308, 2313, 2314(F), 2315(A), 2316, 2326(A), 2363(B), 2364(A) and (F), and 2369(E)(1) and to repeal R.S. 22:1824(C), 2028(D)(3), 2161(A)(7), (12), (34), and (37), 2171(C)(20), (E)(17), and (G)(13), and 2303(D)(1), all relative to technical recodification of certain provisions of the Louisiana Insurance Code, including correction of citations, updates of terms and language, reorganization of provisions, elimination of obsolete or ineffective provisions, and harmonizing of inconsistent provisions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:23(D)(3)(b), 242(10), 653(A)(introductory paragraph), 851(A), 912(C), (D), and (E), 931(A)(10)(a), 1203(D), 1821(A), (C), (D)(1), (2)(e) and (g)(i)(aa), and (3)(c)(introductory paragraph) and (i), (d)(introductory paragraph) and (i) through (iv), and (e), and (F)(1), 1825(B)(introductory paragraph) and (C)(introductory paragraph) and (4), 1859(F), 1875, 1879(A), (B)(1)(introductory paragraph), and (C), 1880(B)(1)(introductory paragraph), (C)(introductory paragraph), and (D)(introductory paragraph), 1892(B)(1), (C)(1), and (D)(2), 1901(4), 1902(A)(2) and (9), 1903(C)(2)(introductory paragraph), 1904, 1905(C)(introductory paragraph) and (1), 1907, 1909(B) and (C), 1921(B) and (C), 1923(1)(a)(introductory paragraph) and (g), 1926(A), 1927(B), 1928(B), 1941, 1942, 1944, 1945, 1946, 1962(C) and (F), 1964(1)(g), (7)(a), (b), and (h), (9), (10)(c), (11), (13),

(15)(c)(i), (iii), and (vii), (19)(b)(i)(introductory paragraph) and (c)(i), (20), (24), and (25), 1967, 1968, 1971(C), 1973(B)(introductory paragraph), 1981(A)(2) and (3) and (C)(introductory paragraph), 1983(D) through (H) and (I)(1) and (2), 1984(A) and (G), 1988, 1989, 1992, 1994(A), 2001, 2002(2) and (4), 2003(1)(e) and (f), 2005, 2006, 2008(A), 2009(E)(2) and (4), 2010(D), 2012(A)(introductory paragraph) and (3) and (B), 2013(B), 2018(A) and (B), 2019, 2020(C), 2021(A), 2023(C)(2), 2025(4), 2026, 2027(B), 2028(B), (C), and (D)(6), 2029, 2032, 2033(B), 2034(G) and (H), 2035(A) and (D), 2036(C), 2038(3), 2044, 2055(6)(a)(ii), (7)(introductory paragraph) and (a), (9)(a)(introductory paragraph) and (i) and (b), (12), and (15), 2056(C)(2)(f), 2058(A)(1)(a)(i) and (ii), (b)(i) and (ii), and (3)(a)(iv), 2059(A)(1), (C)(6), and (D), 2060(A)(1), 2061.1(A), 2062(A)(2)(a)(introductory paragraph) and (i) and (ii), (5)(a), and (6), 2083(A)(2)(introductory paragraph) and (a) and (C)(introductory paragraph) and (1), 2084(6), 2085(C)(1) and (3)(g), 2086(B) and (D), 2087(A)(2), (B)(1)(introductory paragraph) and (a) and (2)(introductory paragraph), (C)(2), (D)(introductory paragraph) and (3) and (4)(a), (E), (I)(introductory paragraph), (J), and (M)(3), 2088(D), 2089(A)(2) and (C)(8), 2091(A)(2) and (E)(1), 2092(D), 2093(E)(1), 2098(B) and (C)(introductory paragraph), 2112, 2113, 2114, 2118, 2119, 2132(C) and (D), 2133(2), 2135(A), 2147(A)(2), 2161(A)(introductory paragraph) and (6), 2171(A), (B), (C)(7), (13), and (21), (E)(6) and (14), (F)(5) and (12), and (G)(5), (11), and (12), 2181(B), 2191(A)(introductory paragraph) and (1), 2205, 2206, 2208, 2221(introductory paragraph), 2222(D)(introductory paragraph), 2223(F), 2243(2), 2244(A)(2), 2261(B), 2291, 2292(introductory paragraph), 2293(D)(2)(a) and (f) and (3), 2294(A)(5), 2296(B)(1), 2297(D)(8), 2302(E), 2307(G), 2308, 2313, 2314(F), 2315(A), 2316, 2326(A), 2363(B), 2364(A) and (F), and 2369(E)(1) are hereby amended and reenacted to read as follows:

§23. Exclusive use of expirations

* * *

D.

* * *

(3)

* * *

(b) This Paragraph shall not apply to any policy issued under the home service marketing distribution system ~~pursuant to R.S. 22:1553(C)(2).~~ referenced in R.S. 22:1962(C).

* * *

§242. Definitions

As used in this Subpart:

* * *

(10) "Point of service policy" means any policy of coverage that meets the definition of a health and accident insurance policy pursuant to R.S. 22:34, 35, 851-870, 872-883, 885-889, 901, 902, 944, 945, 972-983, 985-990, 992-1015, 1021-1048, 1091-1097, 1111, 1156, 1261-1270, 1281-1283, 1285-1288, 1290-1293, 1295-1297, 1331, 1333-1335, 1441, ~~1442,~~ 1555, 1811, 1821-1823, and 1891-1894.

* * *

§653. Qualified United States financial institutions

A. Only for purposes of R.S. 22:652(3), a "qualified United States financial institution" means an institution ~~which:~~ that:

* * *

§851. Scope of ~~Part~~ Chapter

A. The applicable provisions of this ~~Part~~ Chapter shall apply to insurance other than ocean marine and foreign trade insurances. This ~~Part~~ Chapter shall not apply to life insurance policies or annuities not issued for delivery in this state nor delivered in this state. This ~~Part~~ Chapter also shall not apply to any health and accident insurance policy not issued for delivery in this state nor delivered in this state, except for any group policy covering residents of Louisiana, regardless of where it was issued or delivered.

* * *

§912. Exemption of proceeds; life, endowment, annuity

* * *

C. The lawful beneficiary designated in an ~~Education Assistance Account~~ education savings account depositor's agreement to receive account funds in the

event of the account owner's death, including the account owner's estate, of the funds contained in an ~~Education Assistance Account~~ education savings account established pursuant to R.S. 17:3095 shall be entitled to the proceeds and avails of the ~~Education Assistance Account~~ education savings account against the creditors and representatives of the account owner or the person effecting the account, or the estate of either, and against the heirs and legatees of either person, ~~saving~~ except the rights of forced heirs, and the proceeds and avails shall also be exempt from all liability for any debt of the beneficiary or estate existing at the time the proceeds and avails are made available for his own use.

D.(1) The provisions of Subsections A, B, and C of this Section shall apply:

(a) Whether or not the right to change the beneficiary is reserved or permitted in the policy, contract, or ~~Education Assistance Account~~ education savings account depositor's agreement.

(b) Whether or not the policy, contract, or ~~Education Assistance Account~~ education savings account depositor's agreement is made payable to the person whose life is insured, to his estate, or to the estate of an annuitant or to the estate of an ~~Education Assistance Account~~ education savings account owner if the beneficiary, assignee, or payee shall predecease the person.

(2) This Subsection shall not be construed so as to defeat any policy or contract provision which provides for disposition of proceeds in the event the beneficiary, assignee, or payee shall predecease the insured, annuitant, or ~~Education Assistance Account~~ education savings account owner.

E. No person shall be compelled to exercise any rights, powers, options, or privileges under any policy, contract, or ~~Education Assistance Account~~ education savings account depositor's agreement.

* * *

SUBPART B. INDIVIDUAL LIFE

§931. Life insurance policies; standard provisions

A. No policy of life insurance, except as stated in Subsection C of this Section, shall be delivered or issued for delivery in this state unless it contains in

substance the following provision or provisions which, in the opinion of the commissioner of insurance, are more favorable to the policyholder:

* * *

(10)(a) Free look period. ~~(a)~~ A provision, prominently printed on the life insurance policy or attached thereto, notifying the insured that ten days are allowed~~,~~ from the date of his receipt of the policy, to examine its provisions. If the policy is not as explained by the company, its representative, or as understood by the insured, the policy may be surrendered within the ten-day period, and any premium advanced by the insured, upon the surrender, shall be immediately returned to him. The insurer shall have the option of printing, attaching, or endorsing the notice required in this Subparagraph or a notice of equal prominence which, in the opinion of the commissioner of insurance, is not less favorable to the policyholder. This Subparagraph shall not apply to travel insurance policies which by their terms are not renewable.

* * *

§1203. Creation of the plan

* * *

D. There shall be no liability on the part of and no cause of action of any nature shall arise or exist against the plan, its agents or employees, its board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under ~~this~~ Subpart J of Part III of this Chapter.

* * *

§1821. Payment of claims; health and accident policies; prospective review; penalties; self-insurers; telemedicine reimbursement by insurers

A. All claims arising under the terms of health and accident contracts issued in this state, except as provided in Subsection B~~,~~ of this Section, shall be paid not more than thirty days from the date upon which written notice and proof of claim, in the form required by the terms of the policy, are furnished to the insurer unless just and reasonable grounds, such as would put a reasonable and prudent

businessman on his guard, exist. The insurer shall make payment at least every thirty days to the assured during that part of the period of his disability covered by the policy or contract of insurance during which the insured is entitled to such payments. Failure to comply with the provisions of this Section shall subject the insurer to a penalty payable to the insured of double the amount of the health and accident benefits due under the terms of the policy or contract during the period of delay, together with ~~attorney's~~ attorney fees to be determined by the court. Any court of competent jurisdiction in the parish where the insured lives or has his domicile, excepting a justice of the peace court, shall have jurisdiction to try such cases.

* * *

C. Any person, partnership, corporation or other organization, or the State of Louisiana which provides or contracts to provide health and accident benefit coverage as a self-insurer for his or its employees, stockholders, or any other persons, shall be subject to the provisions of this Section, including the provisions relating to penalties and attorney fees, without regard to whether the person or organization is a commercial insurer; ~~provided,~~ however, this Section shall not apply to collectively bargained union welfare plans other than health and accident plans.

D.(1) In any event where the contract between an insurer or self-insurer and the insured is issued or delivered in this state and contains a provision ~~whereby~~ that in non-emergency cases the insured is required to be prospectively evaluated through a pre-hospital admission certification, pre-inpatient service eligibility program, or any similar pre-utilization review or screening procedure prior to the delivery of contemplated hospitalization, inpatient or outpatient health care, or medical services which are prescribed or ordered by a duly licensed health care provider who possesses admitting and clinical staff privileges at an acute care health care facility or ambulatory surgical care facility, the insurer, self-insurer, ~~third party~~ third-party administrator, or independent contractor shall be held liable in damages to the insured only for damages incurred or resulting from unreasonable delay, reduction, or denial of the proposed medically necessary services or care according to the information received from the health care provider at the time of the request for a

prospective evaluation or review by the duly licensed health care provider, as provided in the contract; ~~which~~ such damages shall be limited solely to the physical injuries which are the direct and proximate cause of the unreasonable delay, reduction, or denial as further defined in this Subsection together with reasonable attorney fees and court costs.

(2)

* * *

(e) Failure to comply with the provisions of Subparagraphs (a), (b), and (c) of this Paragraph shall subject the insurer, health maintenance organization, preferred provider organization, or other managed care organization to penalties as provided for in Subsection A of this Section and to penalties for violations as provided in R.S. 22:1969.

* * *

(g) As used in this Paragraph, the following definitions shall apply:

(i) "Emergency medical condition" is a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson, acting reasonably and possessing an average knowledge of health and medicine, to believe that the absence of immediate medical attention could reasonably be expected to result in:

(aa) Placing the health of the individual, or, with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

* * *

(3)

* * *

(c) For the purposes of this Subsection, the term "unreasonable reduction" shall mean the decreasing or limiting of~~:~~ either of the following:

(i) Previously certified or approved health care or medical services as contracted for between the insurer and insured~~; or.~~

* * *

(d) For the purposes of this Subsection, an "unreasonable denial" shall mean the failure to~~:~~ do any of the following:

(i) Review a request from a duly licensed health care provider by the insurer's or self-insurer's review or screening procedure~~; or~~.

(ii) Review a request from the insured within the time period as provided for in the contract between the insurer or self-insurer and the insured, which time period shall not exceed two work days as provided for in Subparagraph ~~3~~(a)~~;~~ of this Paragraph.

(iii) Deliver the contracted for health care or medical services previously certified or approved by the insurer's or self-insurer's review or screening procedure for medically necessary treatment or care as mandated by and provided for in the contract between the insurer or self-insurer and the insured~~; or~~.

(iv) Review a request from a duly licensed health care provider by the insurer's or self-insurer's review or screening procedure for an extension of the original certified or approved duration of health care or medical services~~; or~~.

* * *

(e) For the purposes of this Subsection, "medically necessary treatment or care"~~;~~ shall mean contemplated hospitalization, inpatient or outpatient health care, or medical services recommended for appropriate treatment or care in accordance with nationally accepted current medical criteria.

* * *

F.(1) Notwithstanding any provision of any policy or contract of insurance or health benefits issued, ~~after June 16, 1995,~~ whenever such policy provides for payment, benefit, or reimbursement for any health care service, including but not limited to diagnostic testing, treatment, referral, or consultation, and such health care service is performed via transmitted electronic imaging or telemedicine, such a payment, benefit, or reimbursement under such policy or contract shall not be denied to a licensed physician conducting or participating in the transmission at the originating health care facility or terminus who is physically present with the individual who is the subject of such electronic imaging transmission and is

contemporaneously communicating and interacting with a licensed physician at the receiving terminus of the transmission. The payment, benefit, or reimbursement to such a licensed physician at the originating facility or terminus shall not be less than seventy-five percent of the reasonable and customary amount of payment, benefit, or reimbursement which that licensed physician receives for an intermediate office visit.

* * *

§1825. Billing audit guidelines, rules, and regulations

* * *

B. The rules, regulations, or orders required by Subsection A of this Section shall determine:

* * *

C. The rules, regulations, and orders required by Subsection A of this Section shall include but not be limited to the following parameters:

* * *

(4) ~~Guidelines/qualifications~~ Guidelines and qualifications of both internal and external auditors.

* * *

§1859. Recoupment of health insurance claims payments

* * *

F. For purposes of this Section, a health insurance issuer shall include, in addition to the health insurance issuer, its agent, or any other party that makes payment directly to a pharmacy or pharmacist for prescription drugs, other products and supplies, and pharmacist services identified on a claim.

* * *

§1875. Billing by noncontracted facility-based physicians providing services in a base health care facility

If a facility-based physician who is a noncontracted health care provider provides health care services in a base health care facility to an enrollee or insured and files a claim with a health insurance issuer for such facility-based services, the

health insurance issuer shall provide the facility-based physician with an explanation of benefits as to any payment determination thereof. Nothing contained ~~herein~~ in this Subpart shall ~~supersede~~ supercede the provisions of R.S. 22:263(D).

* * *

§1879. Louisiana consumer health care provider network disclosure

A.(1) ~~No later than March 31, 2010, or within~~ Within thirty days of the effective date of a new contract, each hospital or ambulatory surgical center, hereinafter referred to as "facility" or "contracted facility" for purposes of this Section, shall provide to each health insurance issuer with which it contracts, the National Provider Identifier (NPI) as set forth in 45 CFR §162.402 et seq., name, business address, and business telephone number of each individual or group of anesthesiologists, pathologists, radiologists, emergency medicine physicians, and neonatologists who provide services at that facility. Thereafter, the facility shall notify each health insurance issuer of any changes to the information as soon as possible but not later than thirty days following any change.

(2) ~~No later than March 31, 2010, or within~~ Within thirty days of the effective date of a new contract, each individual or group of anesthesiologists, pathologists, radiologists, emergency medicine physicians, and neonatologists who provide services at a contracted facility shall provide the health insurance issuer with which it is contracted, the NPI, name, business address, and business telephone number of each group or individual so contracted. Thereafter, the group or individual so contracted shall notify each health insurance issuer of any changes to the information as soon as possible but not later than thirty days following any change.

B.(1) Based on information received pursuant to Paragraphs (A)(1) and (2) of this Section, a health insurance issuer shall report on its website~~, no later than June 30, 2010,~~ in a format that is clear and easy for its enrollees to understand, the following information arranged by contracted facility:

* * *

C. ~~No later than June 30, 2010, a~~ A health insurance issuer shall provide a link to its website containing the information described in Subsection B of this Section to the Department of Insurance. ~~No later than July 31, 2010, the~~ The Department of Insurance shall make ~~available on its website,~~ the links received from health insurance issuers~~.~~ available on its website.

* * *

§1880. Balance billing disclosure

* * *

B.(1) Health insurance issuer disclosure requirements. ~~No later than July 1, 2011, each~~ Each health insurance issuer shall provide the following balance billing disclosure notice:

* * *

C. Facility disclosure requirements. ~~No later than July 1, 2011, each~~ Each health care facility shall:

* * *

D. Facility-based physician disclosure requirements. ~~No later than July 1, 2011, whenever~~ Whenever a facility-based physician bills a patient who has health insurance coverage issued by a health insurance issuer that does not have a contract with the facility-based physician, the facility-based physician shall send a bill that includes all of the following items:

* * *

§1892. Payment and adjustment of claims, policies other than life and health and accident; personal vehicle damage claims; extension of time to respond to claims during emergency or disaster; penalties; arson-related claims suspension

* * *

B.(1) Failure to make such payment within thirty days after receipt of such satisfactory written proofs and demand therefor or failure to make a written offer to settle any property damage claim, including a third-party claim, within thirty days after receipt of satisfactory proofs of loss of that claim, as provided in Paragraphs

(A)(1) and (4)~~,~~ of this Section, respectively, or failure to make such payment within thirty days after written agreement or settlement as provided in Paragraph (A)(2)~~,~~ of this Section when such failure is found to be arbitrary, capricious, or without probable cause, shall subject the insurer to a penalty, in addition to the amount of the loss, of fifty percent damages on the amount found to be due from the insurer to the insured, or one thousand dollars, whichever is greater, payable to the insured, or to any of said employees, or in the event a partial payment or tender has been made, fifty percent of the difference between the amount paid or tendered and the amount found to be due as well as reasonable attorney fees and costs. Such penalties, if awarded, shall not be used by the insurer in computing either past or prospective loss experience for the purpose of setting rates or making rate filings.

* * *

C.(1) All claims brought by insureds, worker's compensation claimants, or third parties against an insurer shall be paid by check or draft of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or his attorney, or upon direction of such claimant to one specified; ~~provided,~~ however, ~~that~~ the check or draft shall be made jointly to the claimant and the employer when the employer has advanced the claims payment to the claimant. Such check or draft shall be paid jointly until the amount of the advanced claims payment has been recovered by the employer.

* * *

D.

* * *

(2) A violation of this Subsection shall constitute an additional ground, under R.S. 22:1554, for the commissioner to refuse to issue a license or to suspend or revoke a license issued to any ~~agent, broker, or solicitor~~ producer to sell insurance in this state.

* * *

§1901. Purpose; necessity for regulation

This Part shall be liberally construed and applied to promote its underlying purposes which include:

* * *

(4) Providing a system through which persons may purchase insurance, other than surplus lines insurance, from unauthorized insurers pursuant to this Part.

* * *

§1902. Transacting a business of insurance by unauthorized insurer defined

A. Any of the following acts in this state, effected by mail or otherwise, by an unauthorized insurer or by any person acting with actual or apparent authority of the insurer, on behalf of the insurer, is deemed to constitute the transaction of an insurance business in or from this state:

* * *

(2) The solicitation, taking, or receiving of any application for insurance contract.

* * *

(9) The dissemination of information as to coverage or rates, or forwarding ~~application(s),~~ applications, or delivery of policies or contracts, or inspection of risks, the fixing of rates, or investigation or adjustment of claims or losses, or the transaction of matters subsequent to effectuation of the contract and arising out of it, or any other manner of representing or assisting a person or insurer in the transaction of risks with respect to properties, risks, or exposures located or to be performed in this state.

* * *

§1903. Placement of insurance business; prohibitions and exclusions

* * *

C. This Section shall not apply to a person acting in this state in the placement of the following types of insurance:

* * *

(2) ~~Reinsurance provided that~~ Reinsurance, if such reinsurer meets the following requirements, unless waived by the commissioner:

* * *

§1904. Insurance commissioner may institute legal proceedings against unauthorized insurer

Whenever the commissioner of insurance believes, from evidence satisfactory to him, that any person or insurer is violating or about to violate any provision of this Part or any order or requirement of the commissioner issued or promulgated pursuant to authority granted the commissioner by any provision of this Code or by law, he may bring an action in the name of the people of the State of Louisiana in the District Court for the Nineteenth Judicial District, Baton Rouge, Louisiana, against such person or insurer to enjoin such person or insurer from continuing such violation or engaging therein or doing any act in furtherance thereof. In such action, an order or judgment may be entered awarding such preliminary or final injunction as is proper.

§1905. Domestic insurer prohibited from issuing policies in state where unauthorized; commissioner's approval required

* * *

C. The following constitute the exceptions to the ~~foregoing~~ provisions of Subsections A and B of this Section:

(1) Contracts entered into where the prospective ~~insurant~~ insured is personally present in a state in which the insurer is authorized to do business when he signs the application.

* * *

§1907. Transacting business; constitutes appointment of agent for service of process; workers' compensation claims agent

A. The transacting of business in this state by a foreign or alien insurer without a certificate of authority is equivalent to an appointment by such insurer of the ~~Secretary~~ secretary of ~~State~~ state and his successor or successors in office to be its true and lawful attorney, upon whom may be served all lawful process in any

action, suit, or proceeding maintained by the commissioner of insurance or arising out of such policy or contract of insurance, and the ~~said~~ transacting of business by such insurer is a signification of its agreement that any such service of process is of the same legal force and validity as personal service of process in this state upon it.

B. Such service of process shall be made by delivering and leaving with the secretary of state or with some person in apparent charge of his office two copies thereof and the payment to him of such fees as may be prescribed by law. The secretary of state shall ~~forthwith~~ mail by registered mail or by commercial courier, as defined in R.S. 13:3204(D), when the person to be served is located outside of this state one of the copies of such process to the defendant at its last known principal place of business, and shall keep a record of all process so served upon him. Such service of process is sufficient~~, provided~~ if notice of such service and a copy of the process are sent within ten days thereafter by registered mail or by commercial courier, as defined in R.S. 13:3204(D), when the person to be served is located outside of this state by plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing ~~a~~ compliance ~~herewith~~ with this Section are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow. However, no plaintiff or complainant shall be entitled to a judgment by default, or a judgment with leave to prove damages, or a judgment pro confesso under this Section until the expiration of thirty days from date of the filing of the affidavit of compliance.

C.(1) Service of process in any such action, suit, or proceeding shall, in addition to the manner provided in Subsection B of this Section, be valid if served as provided in Paragraph (2) of this Subsection upon any person within this state who, in this state on behalf of such insurer, is~~:~~ doing any of the following:

~~(1)~~ (a) Soliciting insurance~~, or~~.

~~(2)~~ (b) Making any contract of insurance or issuing or delivering any policies or written contracts of insurance~~, or~~.

~~(3)~~ (c) Collecting or receiving any premium for insurance~~; and a~~.

(d) Acting as an agent for the sole purpose of operating a workers' compensation claims office established pursuant to R.S. 23:1161.1.

(2) A copy of such process ~~is~~ shall be sent within ten days thereafter by registered mail by the plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing ~~a~~ compliance ~~herewith are~~ with this Section shall be filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

~~(4) Acting as an agent for the sole purpose of operating a worker's compensation claims office established pursuant to R.S. 23:1161.1.~~

D. Nothing in this Section ~~contained~~ shall limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner ~~now or hereafter~~ permitted by law.

* * *

§1909. Requirements to be met before using courts

* * *

B. The court in any action, suit, or proceeding in which service is made in the manner provided in ~~Sub-sections B or C of~~ R.S. 22:1907(B) or (C) may order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of ~~Sub-section~~ Subsection A of this Section and to defend such action.

C. Nothing in ~~Sub-section~~ Subsection A of this Section is to be construed to prevent an unauthorized insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in ~~Sub-sections B or C of~~ R.S. 22:1907

(B) or (C) on the ground: ~~either~~ (1) that no policy or contract of insurance has been issued or delivered to a citizen or resident of this state or to a corporation authorized to do business therein;; ~~or~~ (2) that such insurer has not been transacting business in this state;; or (3) that the person on whom service was made pursuant to ~~Sub-section C of~~ R.S. 22:1907(C) was not doing any of the acts therein enumerated.

* * *

§1921. Purpose and powers

* * *

B. In the event the applicant is a corporation, partnership, or other legal entity, the criminal searches shall be limited to those individuals who are directors, officers, employees, or individuals who own or control at least ten percent of the entity. If the section has reason to believe, whether acting on its own initiative or as a result of complaints, that a person has engaged in, or is engaging in, an act or practice that violates this Part or any other provision of ~~the Insurance~~ this Code, it may examine and investigate into the affairs of such person and may administer oaths and affirmations, serve subpoenas ordering the attendance of witnesses, and collect evidence.

C. If during the course of investigation, the Department of Insurance determines that there may be a violation of any criminal law, the investigation shall then be turned over to the Louisiana Department of Justice, the Department of Public Safety and Corrections, public safety services, office of state police, and other appropriate law enforcement ~~and/or~~ or prosecutorial agency, for further investigation, enforcement, or prosecution.

* * *

§1923. Definitions

As used in this Part, the following terms shall have the meanings indicated in this Section:

(1) "Fraudulent insurance act" shall include but not be limited to acts or omissions committed by any person who, knowingly and with intent to defraud:

(a) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, reinsurer, purported insurer or reinsurer, ~~broker,~~ producer, or any agent thereof, any oral or written statement which he knows to contain materially false information as part of, or in support of, or denial of, or concerning any fact material to or conceals any information concerning any fact material to the following:

* * *

(g) Solicits or accepts new or renewal insurance risks by or for an unauthorized insurer, except as provided by Subpart O of Part I of Chapter 2 of this Title, R.S. 22:431 et seq., and Part III of this Chapter, ~~7 both of this Title.~~ R.S. 22:1941 et seq.

* * *

§1926. Duties of companies and others

A. Any person, company, or other legal entity, including but not limited to those engaged in the business of insurance, including ~~agents, brokers,~~ producers and adjusters, which believes that a fraudulent claim is being made, shall within sixty days of the receipt of such notice, send to the section of insurance fraud, on a form prescribed by the section, the information requested and such additional information relative to the claim and the parties claiming loss or damages because of an occurrence or accident as the section may require. The section of insurance fraud shall review such reports and select such claims as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such claim to be made to determine the extent, if any, to which fraud, deceit, or intentional misrepresentation of any kind exists in the submission of the claim.

* * *

§1927. Materials and evidence

* * *

B. The section's papers, documents, reports, or evidence relative to the subject of an investigation under this Part shall not be subject to public inspection

for so long as the section deems reasonably necessary to complete the investigation, to protect the person investigated from unwarranted injury, or to be in the public~~:~~ domain. Further, such papers, documents, reports, or evidence relative to the subject of investigation under this Section shall not be subject to subpoena until opened for public inspection by the section, unless the section consents, or until after notice to the section and a hearing, a court of competent jurisdiction determines the section would not be necessarily hindered by such subpoena. Section investigators shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to a pending insurance fraud investigation by the section.

§1928. Civil immunity

* * *

B. This Section does not abrogate or modify in any way any statutory or other privilege or immunity ~~heretofore~~ enjoyed by such person or entity.

* * *

§1941. Purpose of Part

The purpose of this Part is to subject certain insurers to the jurisdiction of the commissioner of this state and to the jurisdiction of the courts of this state in connection with fraudulent or false advertising of insurers not authorized to transact business in this state who circulate false or fraudulent advertising therein. In furtherance of such state interest, the legislature ~~herein~~ provides in this Part a method of substituted service of process upon such insurers and declares that in so doing, it exercises its power to protect its residents and to define, for the purpose of this statute, what constitutes doing business in this state, and also exercises powers and privileges available to the state by virtue of Public Law 15, 79th Congress of the United States, Chapter 20, 1st Session, S. 340, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states, the authority provided ~~herein~~ in this Part to be in addition to any existing powers of this state.

§1942. Definitions

When used in this Part:

(a) "Commissioner" shall mean the commissioner of insurance of this state.

(b) "Unfair Trade Practice Law" shall mean the ~~Law~~ law relating to unfair methods of competition and unfair and deceptive acts and practices in the business of insurance, as set out in Part IV of this Chapter, ~~7 of this Title.~~ R.S. 22:1961.

(c) "Residents" shall mean and include ~~person, partnership or corporation~~ persons, partnerships, or corporations, domestic, alien, or foreign.

* * *

§1944. Action by commissioner

If, after thirty days following the giving of the notice mentioned in R.S. 22:1943, such insurer has failed to cease making, issuing, or circulating such ~~false~~ misrepresentations or causing the same to be made, issued, or circulated in this state, and if the commissioner has reason to believe that a proceeding by him in respect to such matters would be to the interest of the public, and that such insurer is issuing or delivering contracts of insurance to residents of this state or collecting premiums on such contracts or doing any of the acts enumerated in R.S. 22:1945, he shall take action against such insurer under the Unfair Trade Practice Law.

§1945. Service upon unauthorized insurer

A.(1) Any of the following acts in this state, effected by mail or otherwise, by any such unauthorized foreign or alien insurer is equivalent to and shall constitute an appointment by such insurer of the secretary of state and his successor or successors in office, to be its true and lawful attorney:

~~(1) the~~ (a) The issuance or delivery of contracts or insurance to residents of this state~~;~~.

~~(2) the~~ (b) The solicitation of applications for such contracts~~;~~.

~~(3) the~~ (c) The collection of premiums, membership fees, assessments, or other considerations for such contracts~~, or~~.

~~(4) any~~ (d) Any other transaction of insurance business~~;~~. ~~is equivalent to and shall constitute an appointment by such insurer of the secretary of state and his successor or successors in office, to be its true and lawful attorney, upon whom~~

(2) The secretary of state may be served with all statements of charges, notices, and lawful process in any proceeding instituted in respect to the misrepresentations set forth in R.S. 22:1943 under the provisions of the Unfair Trade Practice Law, or in any action, suit, or proceeding for the recovery of any penalty therein provided, and any such act shall be signification of its agreement that such service of statement of charges, notices, or process is of the same legal force and validity as personal service of such statement of charges, notices, or process in this state, upon such insurer.

B. Service of a statement of charges and notices under ~~said~~ the Unfair Trade Practice Law shall be made by any deputy or employee of the commissioner of insurance delivering to and leaving with the secretary of state or some person in apparent charge of his office, two copies thereof. Service of process issued by any court in any action, suit, or proceeding to collect any penalty under ~~said Law~~ such law provided, shall be made by delivering and leaving with the secretary of state or some person in apparent charge of his office, two copies thereof. The secretary of state shall ~~forthwith~~ cause to be mailed by registered mail one of the copies of such statement of charges, notices, or process to the defendant at its last known principal place of business, and shall keep a record of all statements of charges, notices, and process so served. Such service of statement of charges, notices, or process shall be sufficient ~~provided~~ if they shall have been so mailed and the defendant's receipt or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing such letter showing ~~a~~ compliance ~~herewith~~ with this Section are filed with the commissioner of insurance in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as may be allowed.

C.(1) Service of statement of charges, notices, and process in any such proceeding, action, or suit shall in addition to the manner provided in Subsection B of this Section be valid if served as provided in Paragraph (2) of this Subsection upon any person within this state who on behalf of such insurer is doing any of the following:

~~(1)~~ (a) Soliciting insurance~~, or~~.

~~(2)~~ (b) Making, issuing, or delivering any contract of insurance~~, or~~.

~~(3)~~ (c) Collecting or receiving in this state any premium for insurance~~; and~~

~~a~~ .

(2) A copy of such statement of charges, notices, or process ~~is~~ shall be sent within ten days thereafter by registered mail by or on behalf of the commissioner to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter, the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing the same showing ~~a~~ compliance ~~herewith, are~~ with this Section shall be filed with the commissioner in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as the court may allow.

D. No cease or desist order or judgment by default or a judgment pro confesso under this Section shall be entered until the expiration of thirty days from the date of the filing of the affidavit of compliance.

E. Service of process and notice under the provisions of this Part shall be in addition to all other methods of service provided by law, and nothing in this Part shall limit or prohibit the right to serve any statement of charges, notices, or process upon any insurer in any other manner ~~now or hereafter~~ permitted by law.

§1946. Advertisement by insurers

A. No person shall publish or print in any newspaper, magazine, periodical, circular letter, pamphlet, or in any other manner or publish by radio broadcasting in

this state, any advertisement or other notice either directly or indirectly setting forth the advantages of or soliciting business for any insurer which has not been authorized to do business in Louisiana.

B. No person shall accept for publication or printing in any newspaper, magazine, or other periodical, or circular letter or pamphlet, or in any other manner, or for radio broadcasting in this state, any advertisement or other notice either directly or indirectly setting forth the advantages of or soliciting business for any insurer unless the advertisement or notice is accompanied by a certificate from the office of the commissioner of insurance to the effect that the insurer is authorized to do business in Louisiana.

C. Whoever violates this Section shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both.

* * *

§1962. Definitions

When used in this Part:

* * *

C. "Insurer" means any person, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, industrial and burial insurer, or any insurer that markets under the Home Service Marketing distribution method and issues a majority of its policies on a weekly or monthly basis, or any other legal entity engaged in the business of insurance, including insurance ~~agents, insurance brokers, surplus lines brokers, and insurance solicitors.~~ producers. Insurer shall also mean medical service plans, hospital service plans, health maintenance organizations, and prepaid limited health care service plans. For the purposes of this Part, these foregoing entities shall be deemed to be engaged in the business of insurance.

* * *

F. "Producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, and includes all persons or business entities otherwise referred to in ~~the Louisiana Insurance code~~ this Code as "insurance

agent", "agent", "insurance broker", "broker", "insurance solicitor", "solicitor", or "surplus lines broker".

* * *

§1964. Methods, acts, and practices which are defined ~~herein~~ as unfair or deceptive

The following are declared to be unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(1) Misrepresentations and false advertising of insurance policies. Making, issuing, circulating, or causing to be made, issued, or circulated any estimate, illustration, circular or statement, sales presentation, omission, or comparison that does any of the following:

* * *

(g) ~~Is~~ Makes a misrepresentation for the purpose of effecting a pledge or assignment or effecting a loan against any policy.

* * *

(7) Unfair discrimination. (a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract, ~~provided that,~~ if, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(b) Making or permitting any unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, or rates charged for any policy or contract of health or accident insurance or in the benefits payable ~~thereunder,~~ thereon, or in any of the terms or conditions of such contract, or in any other manner whatever, ~~provided that,~~ if, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business or any other relevant factor.

* * *

(h) Refusing to insure solely because another insurer has refused to write a policy or has cancelled or has refused to renew an existing policy in which that person was the named insured. Nothing ~~herein contained~~ in this Paragraph shall prevent the termination of an excess insurance policy on account of the failure of the insured to maintain any required underlying insurance.

* * *

(9) Requiring as a condition precedent to lending money upon the security of a mortgage on movable or immovable property that the borrower negotiate any policy of insurance covering such property through a particular insurance ~~agent or agents,~~ producer or producers, company or companies, or type of company or types of companies~~,~~. ~~broker or brokers. Provided, however, that~~ However, this ~~provision~~ Paragraph shall not prevent the exercise by any mortgagee of his right to approve the insurer selected by the borrower on a reasonable non-discriminatory basis related to the solvency of the company and its ability to service the policy. The mortgagee may require that the amount of insurance be at least in an amount to protect the amount of the loan on a type of policy furnishing reasonable protection to the mortgagee in a form selected by the borrower which may include additional coverages not inuring to the benefit of the mortgagee and reasonably associated or connected with the property which is the subject of the loan or mortgage. ~~Notwithstanding the provisions of R.S. 22:1962, any~~ Any lender either directly or indirectly requiring a borrower to furnish insurance upon such property shall be subject to the conditions and prohibitions of this ~~paragraph.~~ Paragraph.

(10) Tying, which shall mean the following:

* * *

(c) Tying does not include the joint sale of group life and group health coverages or the joint sale of group life, ~~and/or~~ group health, and any other employee benefit plan.

(11) No person, as defined in R.S. 22:46~~(6),~~(12), shall directly or indirectly participate in any plan to offer or effect any kind or kinds of life or health insurance and annuities as an inducement to or in connection with the purchase by the public

of any goods, securities, commodities, services, or subscriptions to periodicals. This ~~paragraph~~ Paragraph shall not apply to such insurance, written in connection with an indebtedness, one of the purposes of which is to pay the indebtedness in case of the death or disability of the debtor. Nor shall this ~~paragraph~~ Paragraph apply to the sale by life insurance ~~agents,~~ producers, or by life insurance companies of equity products, including equities, mutual funds, shares of investment companies, variable annuities, and including face amount certificates of regulated investment companies under offerings registered with the Federal Securities and Exchange Commission.

* * *

(13) Fraudulent insurance act. A fraudulent insurance act is one committed by a person who knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, ~~broker,~~ producer, or any agent thereof, any written statement as part of, or in support of, or in opposition to an application for the issuance of, or the rating of an insurance policy for commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which he knows to contain materially false information concerning any fact material thereto; or conceal for the purpose of misleading information concerning any fact material thereto.

* * *

(15)

* * *

(c) As used in this Paragraph, the following terms shall be given these meanings:

(i) "Drug" and "prescription" have the meanings assigned by R.S. 37:~~1171~~ 1164 and regulations of the Louisiana Board of Pharmacy.

* * *

(iii) "Interferes" or "interferes with" means and includes but is not limited to the charging to or imposing on an insured or other beneficiary who does not utilize a specified or designated pharmacy or pharmacist, a copayment fee or other

condition not equally charged to or imposed on all insureds or other beneficiaries in or under the same program or policy or plan. However, "interferes" or "interferes with" does not mean or include the advertisement, or periodic dissemination, to all insureds or other beneficiaries of current lists of all pharmacies or pharmacists who have agreed to participate as a contract provider pursuant to the requirements of ~~R.S. 22:1964(15)~~ Item (a)(ii)~~.~~ of this Paragraph.

* * *

(vii) "Pharmacy" has the meaning assigned by R.S. 37:~~1171~~ 1164 and regulations of the Louisiana Board of Pharmacy.

* * *

(19) Unfair financial planning practices. An insurance producer:

* * *

(b)(i) Engaging in the business of financial planning without disclosing to the client prior to the execution of the agreement provided for in Subparagraph (c) of this Paragraph or solicitation of the sale of a product or service that:

* * *

(c)(i) Charging fees other than commissions for financial planning by insurance producer, unless such fees are based upon a written agreement, signed by the party to be charged in advance of the performance of the services under the agreement. A copy of the agreement shall be provided to the party to be charged at the time the agreement is signed by the party~~.~~ and shall specifically state:

(aa) The services for which the fee is to be charged. ~~shall be specifically stated in the agreement.~~

(bb) The amount of the fee to be charged or how it will be determined or calculated. ~~shall be specifically stated in the agreement.~~

(cc) ~~The agreement shall state that~~ That the client is under no obligation to purchase any insurance product through the insurance ~~agent, broker,~~ producer or consultant.

* * *

(20) Failure to provide claims history.

(a) Loss information - property and casualty. Failure of a company issuing property and casualty insurance to provide the following loss information for the three previous policy years to the first named insured within thirty days of receipt of the first named insured's written request:

(i) On all claims, date, and description of occurrence, and total amount of payments.

(ii) For any occurrence not included in Item (i) of this ~~Paragraph,~~ Subparagraph, the date and description of occurrence.

(b) Should the first named insured be requested by a prospective insurer to provide detailed loss information in addition to that required under Subparagraph (a)~~,~~ of this Paragraph, the first named insured may mail or deliver a written request to the insurer for the additional information. No prospective insurer shall request more detailed loss information than reasonably required to underwrite the same line or class of insurance. The insurer shall provide information under this Subparagraph to the first named insured as soon as possible, but in no event later than twenty days of receipt of the written request. Notwithstanding any other provision of this Section, no insurer shall be required to provide loss reserve information, and no prospective insurer may refuse to insure an applicant solely because the prospective insurer is unable to obtain loss reserve information.

(c) The commissioner may promulgate regulations to exclude the providing of the loss information as outlined in Subparagraph (a) of this Paragraph for any line or class of insurance where it can be shown that the information is not needed for that line or class of insurance or where the provision of loss information otherwise is required by law.

(d) Information provided under Subparagraph (b) of this Paragraph shall not be subject to discovery by any party other than the insured, the insurer, and the prospective insurer.

* * *

(24) Requiring ~~an agent or broker~~ a producer or offering any incentive for ~~agents or brokers~~ producers who represent more than one company to limit information provided to consumers on limited benefit plans. Failure to comply with the provisions of this Paragraph shall subject the insurer to a penalty, of not less than two thousand five hundred dollars nor more than five thousand dollars, payable to the ~~agent or broker~~ producer and shall not be subject to the penalties provided for in R.S. 22:1969.

(25) Requiring ~~an agent or broker~~ a producer or offering any incentive for ~~agents or brokers,~~ producers, who represent more than one insurance company, to limit the number of other insurance companies they may represent. This prohibition shall not apply to captive insurance ~~agents or brokers.~~ producers. Failure to comply with the provisions of this Paragraph shall subject the insurer to a penalty up to ten thousand dollars and shall not be subject to the penalties provided for in R.S. 22:1969.

* * *

§1967. Power of commissioner of insurance

The commissioner of insurance shall have power to examine and investigate ~~into~~ the affairs of every person engaged in the business of insurance, including violations of R.S. 22:1902 et seq., in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this Part.

§1968. Notice of hearing

Whenever the commissioner shall have reason to believe that any person has been engaged or is engaging in this state in any unfair trade practice as defined in ~~Title 22 of the Louisiana Revised Statutes,~~ this Code, whether or not defined in this Part, the commissioner shall issue a notice of wrongful conduct to said person in accordance and compliance with R.S. 49:961 describing the unfair trade practice and citing the law which is deemed by the commissioner to be violated.

* * *

§1971. Grant of civil immunity

* * *

C. Nothing ~~herein~~ in this Section is intended to abrogate or modify in any way or form any statutory privilege or immunity ~~heretofore~~ enjoyed by any person.

* * *

§1973. Good faith duty; claims settlement practices; cause of action; penalties

* * *

B. Any one of the following acts, if knowingly committed or performed by an insurer, constitutes a breach of the insurer's duties imposed in Subsection A~~:~~ of this Section:

* * *

§1981. Commissioner of insurance to examine insurers~~, agents, and brokers~~ and producers

A.

* * *

(2) The commissioner may make an examination of any ~~agent or broker~~ producer doing business in this state whenever he has received at least three complaints within a thirty-day period that the ~~agent or broker~~ producer is not acting in conformance with this Code.

(3) For purposes of completing an examination of any company under this Chapter, and in addition to any other power granted to the commissioner by ~~the Louisiana Insurance~~ this Code, the commissioner may examine or investigate any person, as defined in R.S. 22:692(7), or the business of any person, in so far as such examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

* * *

C. In lieu of an examination under this Section of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of

domicile or port-of-entry state~~, until January 1, 1994. Thereafter, such~~. Such reports may ~~only be accepted~~ be accepted only if:

* * *

§1983. Examination reports

* * *

D. Within thirty days of rejection by the commissioner of an examination report in accordance with ~~Subsection C~~ Paragraph (C)(2) of this Section, unless the commissioner extends such time for reasonable cause, the examiner in charge shall refile with the Department of Insurance a verified written report of examination, as may be modified or corrected, under oath. Upon receipt of the refiled verified report, the Department of Insurance shall transmit the refiled report to the company examined, together with a notice similar to the notice provided for in Subsection B of this Section, except that the notice shall indicate that the report is a refiled report.

E. Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, as provided for in Subsections B and D of this Section, the commissioner shall fully consider and review the refiled report, together with any written submissions or rebuttals and any relevant portions of the workpapers of the examiner and enter an order~~:~~ either:

(1) Adopting the examination report as refiled or with modification or corrections. If the refiled examination report reveals that the company is operating in violation of any law, rule, regulation, or prior order or directive of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such violations~~; or~~.

(2) Rejecting the examination report and ordering a hearing pursuant to the provisions of Chapter l2 of this Title, ~~22 of the Louisiana Revised Statutes of 1950,~~ for purposes of obtaining additional documentation, data, information, and testimony.

F. All orders entered pursuant to ~~Subsection C~~ Paragraph (C)(1) or ~~E~~(E)(1) of this Section shall be accompanied by findings and conclusions resulting from consideration by the commissioner and review of the examination report, relevant

examiner workpapers, and any written submissions or rebuttals. Any order shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating, under oath, that ~~they have~~ he has received a copy of the adopted report and related orders.

G. Within thirty days of receipt of notification of the order of the commissioner to the company made pursuant to Subsection F of this Section, the company may make written demand for a hearing pursuant to the provisions of Chapter 12 of this Title. ~~22 of the Louisiana Revised Statutes of 1950.~~

H. The hearing provided for under ~~Subsection E~~ Paragraph (E)(2) or Subsection G of this Section shall be a confidential proceeding. At the conclusion of the hearing, ~~and in accordance with R.S. 22:2199,~~ the commissioner shall enter an order adopting the examination report as filed or refiled, or with modification or corrections, and may order the company to take any action the commissioner considers necessary and appropriate to cure any violation of any law, regulation, or prior order of the commissioner.

I.(1) Upon the adoption of the examination report under either ~~Subsection C~~ Paragraph (C)(1)~~, E~~ or (E)(1), or Subsection H of this Section, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period not to exceed thirty consecutive days, except to the extent provided in R.S. 22:1981(E) and Subsection B of this Section. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(2) Nothing contained in ~~the Louisiana Insurance~~ this Code shall prevent, or be construed as prohibiting, the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as such agency or office receiving the report or matters relating

thereto agrees, in writing, to hold it confidential and in a manner consistent with this Chapter.

* * *

§1984. Commissioner of insurance to conduct financial and market analysis of insurers and regulated entities

A. In addition to those examinations performed by the commissioner of insurance pursuant to R.S. 22:1981, the commissioner of insurance shall conduct financial and market analysis review of all insurers authorized to do business in this state and may conduct regulatory reviews of entities regulated by this Title ~~22 of the Louisiana Revised Statutes of 1950,~~ or the Department of Insurance except for trusts established and operated under R.S. 22:46(9)(b), (c), or (d). Such reviews may include the annual statement and the market conduct annual statement of the insurer or regulated entity reviewed, company financial reports rendered pursuant to good and acceptable accounting practices, results of insurance solvency standards testing as performed by the National Association of Insurance Commissioners, results of prior examinations and office reviews, management changes, consumer complaints, and such other relevant information as from time to time may be required by the commissioner.

* * *

G. Any insurer or regulated entity against whom a fine has been levied shall be given thirty days notice of such action. Upon receipt of this notice, the aggrieved insurer or regulated entity may apply for and shall be entitled to a hearing pursuant to R.S. 22:2191~~,~~ et seq.

* * *

§1988. Failure to pay expenses; penalty

Should any insurer fail or refuse to pay the expenses of examination as billed by the commissioner of insurance after fifteen days upon receipt of such billing or after final judgment where a rule has been taken as provided ~~herein,~~ in R.S. 22:1987, then the commissioner of insurance may revoke the certificate of authority of such insurer to do business in this state until the full amount of the bill is paid.

§1989. Scope of examination

In conducting such an examination, the commissioner of insurance shall examine the affairs, transactions, accounts, records, documents, and assets of each authorized insurer. Except in the case of a life insurer issuing only registered policies under R.S. 22:809 for the purpose of ascertaining its condition or compliance with this Code, the commissioner of insurance may as often as he deems advisable, examine the accounts, records, documents, and transactions of the following:

(1) ~~any~~Any insurance ~~agent, solicitor or broker,~~ producer, but only insofar as such accounts, records, documents, and transactions relate to insurance~~;~~.

(2) ~~any~~ Any person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control a stock or mutual insurer~~;~~.

(3) ~~any~~ Any person holding the shares of capital stock or policyholders' proxies of a domestic insurer for the purpose of control of its management either as voting trustee or otherwise~~;~~.

(4) ~~any~~ Any person engaged in or proposing to be engaged in or assisting in the proposed formation of a domestic insurer or an insurance holding corporation or a stock corporation to finance a domestic mutual insurer for the production of its business or the attorney-in-fact of a domestic reciprocal insurer.

* * *

§1992. Rating organizations, examining license bureau, advisory organization, joint underwriters and joint reinsurance groups; examination of

As often as in the opinion of the commissioner of insurance it is believed necessary and at least once in every five years, the commissioner of insurance shall fully examine each rating organization and examining bureau licensed in this state. As often as he deems it advisable, he may examine each advisory organization and joint underwriting or joint reinsurance group, association, or organization. The commissioner of insurance shall have the same power and authority in these

examinations, and the examination shall be made in the same method as that provided ~~herein~~ in this Chapter for the examination of insurers.

* * *

§1994. Disclosure

A. It shall be unlawful for any person who is an officer, employee, agent, or representative of an insurer; or any person, partnership, corporation, banking corporation, or any other legal entity which performs any service for an insurer, or prepares any report, audit, financial statement, or report for, or makes any representation on behalf of, for, or with regard to an insurer, in connection with any hearing, investigation, or examination authorized by this Code, to act with the specific intent to:

(1) Represent falsely, directly or indirectly, to the Department of Insurance or any ~~employee or administrator thereof~~ of its employees or administrators that an asset of such insurer is unencumbered, or to misrepresent any other material fact pertaining to the status of any asset or liability of an insurer.

(2) Materially misrepresent to the Department of Insurance, or any ~~employee or administrator thereof,~~ of its employees or administrators the value of any asset or the amount of any liability of such insurer, or any associated affiliate, subsidiary, or holding company; ~~associated therewith; provided that~~ however, with regard to a material misrepresentation of the value of any asset or liability, any deviation from the actual value of such asset or liability which results from utilization of and compliance with generally accepted insurance accounting and reporting procedures shall not be deemed a violation of this Section.

(3) Fail to disclose to the Department of Insurance the existence of any liability of an associated insurer, or affiliate, subsidiary, or holding company ~~associated therewith~~ when such disclosure is properly requested or required in writing by an examiner or administrator of the Department of Insurance~~, or~~.

(4) Materially misrepresent, withhold, deny access to, or otherwise preclude the obtainment of any information properly requested in writing and in accordance with provisions of the Louisiana Revised Statutes affecting dissemination or

disclosure of information by specific institutions by an examiner or administrator of the Department of Insurance, which is material and relevant to an examination properly conducted by the Department of Insurance and its examiners and administrators. ~~thereof.~~

* * *

§2001. Scope of Chapter

This Chapter shall apply to all insurers or persons purporting to be doing an insurance business in this state or in the process of ~~organization~~ organizing for the purpose of doing or attempting to do such business, including but not limited to insurers who issue policies of life, health, and accident insurance in the state.

§2002. Persons covered

The proceedings authorized by this Chapter shall be applied to:

* * *

(2) All title insurance companies, prepaid health care delivery plans, nonprofit service plans, and all fraternal benefit societies and beneficial societies subject to ~~the Louisiana Insurance~~ this Code.

* * *

(4) ~~Agents, brokers, or~~ Producers, insurers, or any person or persons acting as ~~an agent, broker,~~ an agent or a managing general agent of an insurer, any reinsurer, any holding company owning an insurer or any captive premium finance company, or any related entity, whether or not such persons are licensed to do an insurance business in this state.

§2003. Definitions

For the purposes of this Chapter:

(1) "Doing business" shall include any of the following, whether effected by mail or otherwise:

* * *

(e) Operating as an insurer under a license or certificate of authority~~, as an insurer,~~ issued by the Department of Insurance.

(f) Acting as ~~an agent, broker,~~ a producer or managing agent of an insurer, acting as a reinsurer, or the ownership of an insurer by a holding company, or the operation of a captive premium finance company, or related entity.

* * *

§2005. Grounds for rehabilitation

~~A. Whenever~~ The commissioner of insurance may apply by petition to the district court of the parish in which an insurer has its principal office, or to the district court of the parish of East Baton Rouge, or to any one of the judges thereof should the court be in vacation, at the commissioner of insurance's sole option, for a rule to show cause why an order to rehabilitate, conserve, liquidate, or dissolve such insurer as provided in this Chapter should not be entered, and for such other relief as the nature of the case and the interest of the insurer's policyholders, members, stockholders, creditors, or the public may require, whenever any domestic insurer~~:~~ is in one of the following positions:

(1) Has obligations or claims exceeding its assets, cannot pay its contracts in full, or is otherwise found by the commissioner of insurance to be insolvent~~; or~~.

(2) Has refused to submit its books, papers, accounts, records, or affairs to the reasonable inspection or examination of the commissioner of insurance, or his actuaries, supervisors, deputies, or examiners~~; or~~.

(3) Has neglected or refused to observe an order of the commissioner of insurance to make good within the time prescribed by law any deficiency, whenever its capital, if a stock insurer, or its required surplus, if an insurer other than stock, shall have become impaired~~; or~~.

(4) Has, by articles of consolidation, contract or reinsurance, or otherwise, transferred or attempted to transfer its entire property or business not in conformity with this Code, or entered into any transaction the effect of which is to merge substantially its entire property or business in any other insurer without having first obtained the written approval of the commissioner of insurance pursuant to the provisions of this Code~~; or~~.

(5) Is found to be in such condition that its further transaction of business would be hazardous to its policyholders, ~~or to~~ its creditors, or ~~to~~ the public~~; or~~.

(6) Has an officer who has refused upon reasonable demand to be examined under oath touching its affairs~~; or~~.

(7) Is found to be in such condition that it could not meet the requirements for organization and authorization as required by law, except as to the amount of the surplus required of a stock insurer in R.S. 22:81, and except as to the amount of the surplus required by this Code to be maintained~~; or~~.

(8) Has ceased for the period of one year to transact insurance business~~; or~~.

(9) Has commenced, or has attempted to commence, any voluntary liquidation or dissolution proceedings, or any proceeding to procure the appointment of a receiver, liquidator, rehabilitator, sequestrator, or similar officer for itself~~; or~~.

(10) If a party, either plaintiff or defendant in any proceeding in which an application is made for the appointment of a receiver, custodian, liquidator, rehabilitator, sequestrator, or similar officer, for such insurer or its property, or a receiver, custodian, liquidator, rehabilitator, sequestrator, or similar officer, for such insurer or its property is appointed by any court, or such appointment is imminent ~~; or~~.

(11) Consents to such an order by a majority of its directors, stockholders, or members~~; or~~.

(12) Has not organized and obtained a certificate authorizing it to commence the transaction of its business within the period of time prescribed by the sections of this Code under which it is or proposes to be organized~~; or~~.

(13) Gives reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that if established would endanger assets in an amount threatening the solvency of the insurer~~; or~~.

(14) Within the previous four years, the insurer has willfully violated its charter or articles of incorporation, its bylaws, any insurance law of this state, or any

valid order of the commissioner, or failed to maintain adequate records in accordance with statutory accounting practices and generally accepted accounting principles~~; or~~.

(15) Has failed to file its annual report or other financial report required by R.S. 22:571 within the time allowed by law and, within ten days of receipt of written demand by the commissioner, has failed to provide the report~~; or~~.

(16) Has failed to pay a final judgment rendered against it in any state upon any insurance contract issued or assumed by it, within sixty days after the judgment became final or within sixty days after time for taking an appeal has expired, or within sixty days after dismissal of an appeal before final determination whichever date is the later~~; then~~.

~~B. The commissioner of insurance may apply by petition to the district court of the parish in which said insurer has its principal office, or to the district court of the parish of East Baton Rouge, or to any one of the judges thereof should the court be in vacation, at the commissioner of insurance's sole option, for a rule to show cause why an order to rehabilitate, conserve, liquidate, or dissolve such insurer as provided in this Chapter should not be entered, and for such other relief as the nature of the case and the interest of the insurer's policyholders, members, stockholders, creditors, or the public may require.~~

§2006. Injunction

The court shall have jurisdiction over matters brought by or against the Department of Insurance or the commissioner of insurance, at any time after the filing of the petition, to issue an injunction restraining such insurer and its officers, agents, directors, employees, and all other persons from transacting any insurance business or disposing of its property until the further order of the court. The court may issue such other injunctions or enter such other orders as may be deemed necessary to prevent interference with the proceedings, or with the commissioner of insurance's possession and control or title, rights, or interests as ~~herein~~ provided in this Chapter or to prevent interference with the conduct of the business by the commissioner of insurance, and may issue such other injunctions or enter such other orders as may be deemed necessary to prevent waste of assets or the obtaining of

preferences, judgments, attachments, or other like liens or the making of any levy against such insurer or its property and assets while in the possession and control of the commissioner of insurance.

* * *

§2008. Order of rehabilitation or liquidation

A. ~~On the return of such order to show cause and after~~ After a full hearing, which shall be held by the court without delay, the court shall enter an order either dismissing the petition or finding that sufficient cause exists for rehabilitation or liquidation and directing the commissioner of insurance to take possession of the property, business, and affairs of such insurer and to rehabilitate or liquidate the same as the case may be. The commissioner of insurance shall be responsible on his official bond for all assets coming into his possession. The commissioner of insurance and his successor and successors in office shall be vested by operation of law with the title to all property, contracts, and rights of action of the insurer as of the date of the order directing rehabilitation or liquidation.

* * *

§2009. Duties of commissioner of insurance as rehabilitator; termination

* * *

E. The rehabilitator, in addition to other powers, shall have the following powers:

* * *

(2) To audit the books and records of all agents, including producers, of the insurer insofar as those records relate to the business activities of the insurer.

* * *

(4) To enter into such agreements or contracts as ~~are~~ necessary to carry out the full or partial plan for rehabilitation or the order to liquidate and to affirm or disavow any contracts to which the insurer is a party.

* * *

§2010. Duties of commissioner of insurance as liquidator; sales; notice to creditors; reinsurance

* * *

D. In order to preserve so far as possible the right and interest of the policyholders of the insurer whose contracts were cancelled by the liquidation order and of such other creditors as may be possible, the commissioner of insurance may solicit a contract or contracts whereby a solvent insurer or insurers will agree to assume in whole, or in part, or upon a modified basis, the liabilities owing to ~~said~~ such former policyholders or creditors. If, after a full hearing upon a petition filed by the commissioner of insurance, the court shall find that the commissioner of insurance endeavored to obtain the best contract for the benefit of ~~said~~ such parties in interest, and if the ~~said~~ commissioner of insurance shall report to the court that he is ready and willing to enter into a contract and submit a copy thereof to the court, the court shall examine the procedure and acts of the commissioner of insurance, and if the court shall find that the best possible contract in the interests of ~~said~~ such parties has been obtained and that it is best for the interests of parties that ~~said~~ such contract be entered into, the court shall by written order approve the acts of the commissioner of insurance and authorize him to execute ~~said~~ such contract.

* * *

§2012. Unearned premium; limitation of claims by insolvent insurers

A. Any claim of an insolvent insurer against an insured or against the ~~agent~~ producer through whom a policy was written concerning any policy of insurance issued or delivered in this state shall be subject to the following limitations:

* * *

(3) The ~~agent,~~ producer, through whom the policy was written, shall not be liable to the insolvent insurer for any premiums which had not been earned on a pro rata basis on the date the insurer was declared insolvent. The ~~agent~~ producer is entitled to retain the commission due on earned premiums. The insured is entitled to any unearned premium which the ~~agent~~ producer has collected but has not remitted to the insurer.

B. In this Section, the term "insolvent insurer" includes any insurer who has been declared to be insolvent under the laws of any state. ~~and its liquidator, rehabilitator, receiver, statutory successor, or other legal representative.~~

§2013. Rights and liabilities of creditors fixed upon liquidation

* * *

B. All executory contracts of an insurer, other than contracts under which such insurer has an established benefit without any additional expenditure, shall be cancelled as of the date of the entry of an order of liquidation unless the court provides otherwise in the liquidation order, ~~provided that~~ however, the commissioner may petition the court within sixty days of the entry of such order to reaffirm any such contract. Any contract that is reaffirmed shall remain in force in accordance with the court's order and any obligation of the insurer under such contract shall become an administrative expense of the liquidation unless otherwise ordered by the court.

* * *

§2018. Appointment of assistants

A. For the purpose of this Chapter, and in connection with proceedings involving only domestic insurers, the commissioner of insurance shall have the power to appoint one or more special deputies as his agent or agents and to employ such clerks~~,~~ or assistants ~~as may by him be deemed~~ he deems necessary, and to give each of such persons such powers to assist him as he may consider wise. The compensation of every such special deputy, agent, clerk, or assistant shall be fixed, and all expenses of taking possession of the property of the insurer and the administration thereof shall be approved, by the commissioner of insurance, all subject to the approval of the court, and shall be paid out of the funds or assets of the insurer.

B. The attorney general shall provide representation for the commissioner of insurance in all matters covered ~~under~~ pursuant to this Chapter. The attorney general may, ~~in cases in which~~ if he deems it appropriate, appoint special counsel to provide this representation. The attorney general shall submit his certification of

expenses and legal fees, both for staff and outside counsel, to the court for approval. Upon approval by the court, these amounts shall be paid out of the funds or assets of the insurer.

* * *

§2019. Exemption from filing fees

The commissioner of insurance shall not be required to pay any fee to any public officer for filing, recording, or in any manner authenticating any paper or instrument relating to any proceeding ~~under~~ pursuant to this Chapter, nor for services rendered by any public officer for serving any process; ~~but~~ however, such fees and costs may be taxed as costs against the defendant in the suit by order of the court and paid to such public officer.

§2020. Prohibited and voidable transfer and liens

* * *

C. Every director, officer, employee, stockholder, member, or any other person, acting on behalf of such insurer, who, within two years prior to the filing of a petition for an order to show cause against such insurer ~~under~~ pursuant to this Chapter, shall knowingly participate in the making of any transfer or the creation of any lien prohibited by ~~Sub-section~~ Subsection A of this Section and every person receiving any property of, or cash surrender from, such insurer or the benefit thereof, as a result of a transaction voidable under ~~Sub-section~~ Subsection ~~B,~~ of this Section, shall be jointly and severally liable therefor and shall be bound to account to the commissioner of insurance as rehabilitator, liquidator, or conservator as the case may be.

* * *

§2021. Fraudulent transfers prior to petition

A. Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation ~~under~~ pursuant to this Chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an

obligation incurred by an insurer ordered to be rehabilitated or liquidated ~~under~~ pursuant to this Chapter, which is fraudulent ~~under~~ pursuant to this Section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value, and except that any purchaser, lienor, or obligee, who in good faith has given ~~consideration~~ less than fair consideration for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

* * *

§2023. Voidable preferences and liens

* * *

C.

* * *

(2) A lien obtainable by legal proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of Subsection B of this Section, if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of Subsection B of this Section through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.

* * *

§2025. Priority of claims

The priorities of distribution of general assets from the insurer's estate shall be as follows:

* * *

(4) Compensation actually owing to employees other than officers of an insurer, for services rendered within three months prior to the commencement of a proceeding against the insurer ~~under~~ pursuant to this Chapter, but not exceeding two thousand five hundred dollars for such employee, shall be paid prior to the payment of any other debt or claim and in the discretion of the commissioner of insurance may be paid as soon as practicable after the proceeding has commenced; except, that ~~at all times~~ the commissioner of insurance shall reserve such funds as will in his opinion be sufficient for the payment of all claims in Paragraphs (1), (2), and (3)~~.~~ of this Section. This priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of such employees.

* * *

§2026. Set-offs

A. In all cases of mutual debts or mutual credits between the insurer and another person, such credits and debts shall be set-off and ~~the balance only~~ only the balance shall be allowed or paid~~, provided,~~; however, ~~that~~ no set-off shall be allowed in favor of any person ~~where:~~ when either of the following apply:

(1) The obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as a set-off~~, or~~.

(2) The obligation of such person is to pay an assessment levied against the members or subscribers of any insurer which issued assessable policies, or to pay a balance upon a subscription to the shares of a stock insurer.

B. ~~Where an agent, agency~~ When a producer or other person purchases a policy of insurance for the unexpired term of the policy and takes an assignment of the unearned premium claim from the insured, this action shall not be considered as a purchase of an obligation with a view of its being used as a set-off.

§2027. Time to file claims

* * *

B. Proofs of claim may be filed subsequent to the date specified, but, no such claim shall share in the distribution of the assets until all allowed claims, proofs of which have been filed before ~~said~~ such date, have been paid in full with interest.

§2028. Proof and allowance of claims

* * *

B. Upon the liquidation of any domestic insurer which has issued policies insuring the lives of persons, the commissioner of insurance shall, within a reasonable time, after the last day set for the filing of claims, make a list of the persons who have not filed proofs of claim with him and whose rights have not been reinsured, to whom it appears from the books of the insurer, there are owing amounts on such policies and he shall set opposite the name of each person such amount so owing to such person. The commissioner of insurance shall incur no personal liability by reason of any mistake in such list. Each person whose name shall appear upon ~~said~~ such list shall be deemed to have duly filed prior to the last day set for filing of claims a proof of claim for the amount set opposite his name on ~~said~~ such list.

C. No contingent claim other than claims of the character described in ~~Sub-section~~ Subsection D of this Section shall share in a distribution of the assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to R.S. 22:2027 except that a contingent claim, if properly presented, may be allowed, and entitled to share where such claim becomes absolute against the insurer on or before the last day fixed for the filing of proofs of claim against the assets of such insurer, or there is a surplus to be distributed as if no order pursuant to R.S. 22:2027 had been made.

D.

* * *

(6) When the receiver allows or disallows a claim in a lesser amount than claimed, he shall notify the person making the claim by petition in the receivership

proceedings, allowing ten days after receipt of ~~said~~ such notice in which to file objections to the action of the receiver. The objections shall be heard in the receivership by summary proceedings.

* * *

§2029. Report for assessment

Within three years from the date an order of rehabilitation or liquidation of a domestic mutual insurer or a domestic reciprocal insurer was filed in the office of the clerk of the court by which such order was made, the commissioner of insurance may make a report to the court setting forth~~:~~ each of the following:

(1) The reasonable value of the assets of the insurer~~;~~.

(2) The insurer's probable liabilities~~; and~~.

(3) The probable necessary assessments, if any, to pay all claims and expenses in full, including expenses of administration.

* * *

§2032. Publication and transmittal of assessment order

The commissioner of insurance shall cause a notice of such assessment order setting forth a brief summary of the contents of such order to be both:

(1) Published in such manner as shall be directed by the court~~; and~~.

(2) Enclosed in a sealed envelope, addressed and mailed postage prepaid to each member or subscriber liable thereunder at his last known address as it appears on the records of the insurer, at least twenty days before the return day of the order to show cause provided for in R.S. 22:2031.

§2033. Judgment upon the assessment

* * *

B. If on such return day the member or subscriber shall appear and serve verified objections upon the commissioner of insurance, there shall be a full hearing before the court or a referee to hear and determine, who, after such hearing, shall make an order either ~~negativing~~ negating the liability of the member or subscriber to pay the assessment or affirming his liability to pay the whole or some part thereof together with twenty-five dollars costs and the necessary disbursements incurred at

such hearing, and directing that the commissioner of insurance in the latter case may have judgment therefor.

* * *

§2034. Distribution of assets; priorities; unpaid dividends

* * *

G. If subsequent to an adjudication of insolvency, pursuant to R.S. 22:2027, a surplus is found to exist after the payment in full of all allowed claims which have been duly filed prior to the last date fixed for the filing thereof and the setting aside of a reserve for all costs and expenses of the proceeding, the court shall set a new date for the filing of claims. After the expiration of ~~said~~ such new date, the solvency of such insurer shall be reexamined and if such insurer is then found to be solvent on the basis of all claims then filed and allowed, any surplus existing shall be distributed in accordance with the direction of the court.

H. Dividends remaining unclaimed or unpaid in the hands of the commissioner of insurance for six months after the final order of distribution may be by him deposited in one or more state or national banks, trust companies, or savings banks to the credit of the commissioner of insurance, ~~whomsoever he may be,~~ in trust for the person entitled thereto, but no such person shall be entitled to any interest upon such deposit. All such deposits shall be entitled to priority of payment in case of the insolvency or voluntary or involuntary liquidation of the depository on an equality with any other priority given by the banking law. Any such funds together with interest, if any, paid or credited thereon, remaining and unclaimed in the hands of the commissioner of insurance in trust after five years shall be by him paid to the state treasurer to be credited to the funds received from insurance revenues.

§2035. Grounds for conservation of assets of an authorized foreign or alien insurer or an unauthorized insurer writing business on a surplus line basis

A. Whenever the property of a foreign or alien insurer authorized to do business in Louisiana or an unauthorized insurer writing business in this state on a surplus line basis has been sequestrated in its domiciliary sovereignty or elsewhere,

or whenever any of the grounds specified in R.S. 22:2005(A), except Paragraphs (8) and (16) of that Subsection, arise or exist with reference to any foreign or alien insurer authorized to transact business in this state or an unauthorized insurer writing business in this state on a surplus line basis and having assets in this state, the commissioner of insurance may proceed for the filing of a petition as provided in this Chapter against domestic insurers, for an order directing such authorized foreign or alien insurer or such unauthorized insurer to show cause why the commissioner of insurance should not take possession of its assets in this state and conserve such assets for the benefit of its creditors and for such other relief as the nature of the cause and the interests of its policyholders, creditors, members, stockholders, or the public may require.

* * *

D. The rights, powers, and duties of the commissioner of insurance as such conservator, with reference to the assets of a foreign or alien insurer shall be ancillary to the rights, powers, and duties imposed upon any receiver or other person, if any, in charge of the property, business and affairs of such insurer in its domiciliary sovereignty. When such domiciliary sovereignty is also a "reciprocal state" as defined in R.S. 22:2038, the commissioner of insurance, as ancillary receiver in this state, shall be subject to the provisions of the Uniform Insurers Liquidation Law ~~(~~, R.S. 22:2038 through 2044~~)~~. ~~herein.~~

§2036. Provisions for conservation of assets of domestic company

* * *

C. Entry of a seizure order under this ~~section~~ Section shall not constitute an anticipatory breach of any contract of the company.

* * *

§2038. Uniform Insurers Liquidation Law

This Section, and R.S. 22:2039 through 2044, comprise and may be cited as the "Uniform Insurers Liquidation Law". For the purposes of the law:

* * *

(3) "State" means any state of the United States, and also the District of Columbia, ~~Alaska, Hawaii~~ and Puerto Rico.

* * *

§2044. Uniformity of interpretation

This Uniform Insurers Liquidation Law~~,~~ ~~(~~R.S. 22:2038 through 2044~~),~~ shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it.

* * *

§2055. Definitions

As used in this Part:

* * *

(6) "Covered claim" means the following:

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

* * *

(ii) The claimant is a self-insurer, including an arrangement or trust formed under ~~Subpart J of Part 1 of Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950,~~ R.S. 23:1191 et seq., and is principally domiciled in this state at the time of the insured event.

* * *

(7) "Insolvent insurer" means~~:~~ an insurer who meets both of the following criteria:

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

* * *

(9)(a) "Member insurer" means any person who~~:~~ meets both of the following criteria:

(i) Is licensed and authorized to transact insurance in this state~~, and~~.

* * *

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

* * *

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

* * *

(15) "Self-insurer" means a person that covers its liabilities through a qualified individual or group self-insurance program created for the specific purpose of covering liabilities typically covered by insurance. A group self-insurance fund formed under ~~Subpart J of Part 1 of Chapter 10 of Title 23 of the Revised Statutes of 1950~~ R.S. 23:1191 et seq. shall not be deemed to be an insurer with respect to this Chapter.

§2056. Creation of the association

* * *

C.

* * *

(2) 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 through 41 shall not apply

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

* * *

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

* * *

§2058. Powers and duties of the association

A. The association shall:

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

(i) Expiration of thirty days after the date of such determination of insolvency~~;~~.

(ii) Expiration of the policy~~, or~~.

* * *

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

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

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

* * *

(3)(a)

* * *

(iv) ~~Beginning January 1, 1990, the~~ The amount of the assessment shall be offset in the same manner that an offset is provided against the premium tax liability

in Item (3)(b)(ii) of this Subsection, against the assessment levied by R.S. 22:1476, ~~provided that~~ if such offset shall not be applied against any portion of the assessments to be deposited to the credit of the Municipal Police Employees' Retirement System, the Sheriffs' Pension and Relief Fund, and the Firefighters' Retirement System. To qualify for this offset, the payer shall file a sworn statement with the annual report required by ~~Parts I, III, and IV of Chapter 3 of this Title~~ R.S. 22:791 et seq., 821 et seq., and 831 et seq., showing as of December thirty-first of the reporting period that at least the following amounts of the total admitted assets of the payer, less assets in an amount equal to the reserves on its policies issued in foreign countries in which it is authorized to do business and which countries require an investment therein as a condition of doing business, are invested and maintained in qualifying Louisiana investments as defined in R.S. 22:832(C). If one-sixth of the total admitted assets of the payer are in qualifying Louisiana investments, then the offset shall be sixty-six and two-thirds percent of the amount otherwise assessed; if at least one-fifth of the total admitted assets of the payer are in qualifying Louisiana investments, then the offset shall be seventy-five percent of the amount otherwise assessed; if at least one-fourth of the total admitted assets of the payer are in qualifying Louisiana investments, the offset shall be eighty-five percent of the amount otherwise assessed; and if at least one-third of the total admitted assets of the payer are in qualifying Louisiana investments, then the offset shall be ninety-five percent of the amount otherwise assessed. If the total of the net premium tax liability and the assessment for the expenses of the Department of Insurance paid for the previous year was less than the offset allowed under Item (3)(b)(ii) of this Subsection for the previous year, the member company may reduce its assessment payment to the Louisiana Insurance Guaranty Association for the current year by that difference.

* * *

§2059. Plan of operation

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

equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner; however, prior to the implementation of any new plan or any amendment to such new plan or an existing plan of operation, the Senate Committee on Insurance and the House Committee on Insurance may hold a hearing on such new plan or any amendments to a new or existing plan of operation. After a hearing, if any, the respective legislative committees shall either approve or reject the plan or amendment as presented. No plan or amendment shall be implemented if it was rejected by a legislative committee. If a hearing is not held within thirty days after receipt of the plan or amendment by such committees, then the plan or amendment may be implemented as approved by the commissioner. Approval by the commissioner shall not be unreasonably withheld. If the plan of operation is disapproved in whole or in part, the commissioner shall provide written reasons as to each disapproved part, and the association shall resubmit the part of the plan which has been disapproved by the commissioner within thirty days thereafter. The preceding plan of operation shall remain in effect until such time as the revised plan is effective.

* * *

C. The plan of operation shall:

* * *

(6) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors. All such records shall be subject to review by <u>either or both</u> the Senate Committee on Insurance ~~and/or~~ <u>and</u> the House Committee on Insurance upon written request of the respective legislative chairman.

* * *

D. The plan of operation may provide that any or all powers and duties of the association, except those under R.S. 22:2058(A)(3) and ~~R.S. 22:2058~~(B)(2) are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or

more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this ~~subsection~~ Subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorably and effective than that provided by this Part.

§2060. Duties and powers of the commissioner

A. The commissioner shall:

(1) Notify the association of the existence of an insolvent insurer ~~not~~ no later than three days after he receives notice of the determination of the insolvency. The association shall be entitled to a copy of a petition seeking an order of liquidation with a finding of insolvency against a member company at the same time that the petition is filed.

* * *

§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~~ if 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 on the basis of their fair market values. The members of a group self-insurance fund formed ~~under Subpart J of Part 1 of Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950~~ pursuant to R.S. 23:1191 et seq. shall not be deemed to be affiliates of the fund, and shall not be included in the determination of the net worth of the fund. For the purposes of this Section, a group self-insurance fund, and each individual member of the fund upon

whose behalf a claim is submitted, shall be deemed to be policyholders or named insureds of any policy of insurance issued to the fund.

* * *

§2062. Exhaustion of other coverage

A.

* * *

(2)

* * *

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

(i) The association's covered claim limit~~;~~.

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

* * *

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

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

* * *

(6) In the case of a claimant alleging personal injury or death caused by exposure to asbestos fibers or other claim resulting from exposure to, release of, or contamination from any environmental pollutant or contaminant, any and all other insurance available to the insured for ~~said~~ the claim for all policy periods for which insurance is available must first be exhausted before recovering from the association, even if an insolvent insurer provided the only coverage for one or more policy periods of the alleged exposure. Only after exhaustion of all solvent insurer's total policy aggregate limits for any alleged exposure periods will the association be obligated to provide a defense and indemnification within the obligations of this Part,

subject to a credit for the total amount thereof, whether or not the total amount has actually been paid or recovered.

* * *

§2083. Coverages and limitations

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

* * *

(2) To any person who is the owner of or certificate holder under such a policy or contract, and who~~:~~ is either:

(a) ~~Is a~~ A resident~~; or~~.

* * *

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

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

* * *

§2084. Definitions

As used in this Part:

* * *

(6) "Impaired insurer" means a member insurer which, after September 30, 1991, is not an insolvent insurer, and meets at least one of the following criteria:

(a) Is deemed by the commissioner to be potentially unable to fulfill its contractual obligations~~:~~.

(b) Is placed under an order of rehabilitation or conservation by a court of competent jurisdiction~~; or~~.

(c) In the case of a stock insurer, whose paid-in capital, minimum surplus and operating surplus, or in the case of a mutual insurer, whose minimum surplus and operating surplus does not satisfy the minimum level required by ~~the Louisiana Insurance~~ this Code.

* * *

§2085. Creation of the association

* * *

C.(1) Notwithstanding any other provision of law to the contrary, the association is not and may not be deemed a department, unit, agency, instrumentality, commission, or board of the state for any purpose unless specifically set forth herein and shall not be subject to laws governing such departments, units, agencies, instrumentalities, commissions, or boards of the state. All debts, claims, obligations, and liabilities of the association, whenever incurred, shall be the debts, claims, obligations, and liabilities of the association only and not of the state, its agencies, instrumentalities, officers, or employees. The state may not budget for or provide general fund appropriations to the association, and the debts, claims, obligations, and liabilities of the association may not be considered to be a debt of the state or a pledge of its credit. The association shall be subject to the provisions of ~~Title 24 of the Louisiana Revised Statutes of 1950~~ R.S. 24:513 et seq. regarding audits by the legislative auditor. The form established by the commissioner pursuant to R.S. 22:2064 for the financial report shall determine the association's accounting method and basis of financial reporting for all purposes notwithstanding any other provision to the contrary.

* * *

(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:

* * *

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

§2086. Board of directors

* * *

B. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner. ~~To select the initial board of directors and initially organize the association, the commissioner shall give notice to all insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting, each insurer shall be entitled to one vote in person or by proxy. If the board of directors is not selected within sixty days after notice of the organizational meeting, the commissioner may appoint the initial members.~~

* * *

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

§2087. Powers and duties of the association

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

* * *

(2) Provide such monies, pledges, notes, guarantees, or other means as are proper to effectuate ~~R.S. 22:2087(A)(1)~~ Paragraph (1) of this Subsection and assure payment of the contractual obligations of the impaired insurer pending action under ~~R.S. 22:2087(A)(1).~~ Paragraph (1) of this Subsection.

* * *

B.(1) If an insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims timely, then subject to the preconditions specified in ~~R.S. 22:2087(A)(2),~~ Paragraph (A)(2) of this Section, the association shall, in its discretion, either:

(a) Take any of the actions specified in ~~R.S. 22:2087(A),~~ Subsection A of this Section, subject to the conditions ~~therein.~~ in that Section.

* * *

(2) The association shall be subject to the requirements of ~~R.S. 22:2087(B)(1)~~ Paragraph (1) of this Subsection only if:

* * *

C. If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

* * *

(2) With respect only to life and health insurance policies, provide benefits and coverages in accordance with ~~R.S. 22:2087(D).~~ Subsection D of this Section.

D. When proceeding under ~~R.S. 22:2087(B)(1)(b)~~ Subparagraph (B)(1)(b) of this Section or ~~(C)(2),~~ Paragraph (C)(2) of this Section, the association shall, with respect to only life and health insurance policies:

* * *

(3) With respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of ~~R.S. 22:2087(D)(4),~~ Paragraph (4) of this Subsection, if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer shall have no right to unilaterally alter any provision of the policy or undertake alterations only in premium by class.

(4)(a) In providing the substitute coverage required under ~~R.S. 22:1395.7(D)(3),~~ Paragraph (3) of this Subsection, the association may offer either to reissue the terminated coverage or to issue an alternative policy.

* * *

E. When proceeding under ~~R.S. 22:2087(B)(1)~~ Paragraph (B)(1) of this Section with respect to any policy or contract carrying guaranteed minimum interest

rates, the association shall assure the payment or credit of a rate of interest consistent herein.

* * *

I. In carrying out its duties under ~~R.S. 22:2087~~ Subsections (B) and (C)~~,~~ of this Section, the association may, subject to approval by the court:

* * *

J. If the association fails to act within a reasonable period as provided in ~~R.S. 22:2087~~ Subsections B and C~~,~~ of this Section, the commissioner shall have the powers and duties of the association under this Part with respect to impaired or insolvent insurers.

* * *

M.

* * *

(3) In addition to ~~R.S. 22:2087(M)~~ Paragraphs (1) and (2)~~,~~ of this Subsection, the association shall have all rights of subrogation and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to such policy or contracts.

* * *

§2088. Assessments

* * *

D. The association may abate or defer, in whole or in part, the assessment of an insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the insurer to fulfill its contractual obligations. In the event an assessment against an insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other insurers in a manner consistent with the basis for assessments set forth in ~~R.S. 22:2088.~~ this Section. Once the conditions that caused a deferral have been removed

or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

* * *

§2089. Plan of operation

A.

* * *

(2) If ~~the association fails to submit a suitable plan of operation within one hundred twenty days following September 30, 1991 or if~~ at any time ~~thereafter~~ the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this Part. The rules shall continue in force until modified by the commissioner or ~~superseded~~ superceded by a plan submitted by the association and approved by the commissioner.

* * *

C. The plan of operation shall, in addition to requirements enumerated elsewhere in this Part:

* * *

(8) Establish procedures ~~whereby~~ by which a director may be removed for cause, including~~,~~ but not limited to~~,~~ the case where the director of a member insurer becomes impaired or insolvent.

* * *

§2091. Prevention of insolvencies

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

* * *

(2) To report to the board of directors when he has taken any of the actions set forth in ~~R.S. 22:2091(A)(1)~~ Paragraph (1) of this Subsection or has received a report from any other commissioner indicating that any such action has been taken in another state. Such report to the board of directors shall contain all significant

details of the action taken or the report received from another commissioner or other appropriate official.

* * *

E.(1) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within thirty days of the receipt of such a request, the commissioner shall begin such an examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association, and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with ~~R.S. 22:2091(A).~~ Subsection A of this Section.

* * *

§2092. Offsets for assessments paid

* * *

D. Any sums which are acquired by refund, from the association by insurers, and which have theretofore been offset against premium, franchise, and income taxes as provided in ~~R.S. 22:2092(A),~~ Subsection A of this Section shall be paid by the insurers to this state in such manner as the tax authorities may require. The association shall notify the commissioner that such refunds have been made.

* * *

§2093. Miscellaneous provisions

* * *

E.(1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the 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 ~~R.S. 22:2093(E)~~ Paragraphs (2) and (4)~~.~~ of this Subsection.

* * *

§2098. Prohibited advertisement of Insurance Guaranty Association Act in insurance sales; notice to policyholders

* * *

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 insurer may deliver a policy or contract described in R.S. 22:2083(B)(1) to a policy or contract holder unless the document is delivered to the policy or contract holder prior to or at the time of delivery of the policy or contract except if ~~R.S. 22:2098(D)~~ 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 holder 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, contract holder, certificate holder, or insured any greater rights than those stated in this Part.

C. The document prepared pursuant to ~~R.S. 22:2098(B)~~ 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:

* * *

§2112. Formation of fire insurance patrol associations

A. Two-thirds of the fire insurance companies regularly licensed and authorized to do business in this state, may voluntarily organize, in any city of fifty thousand or more population, an association for the purpose of protecting life and

property from fire in such cities. The association shall be known as the fire insurance patrol of the city in which it is organized.

B. Every fire insurance company regularly licensed and authorized to do business in the city in which the association has its domicile shall be a member of the association and shall have one vote.

§2113. Officers; management

A. The officers of each association are its president, ~~vice-president~~ vice president, secretary, and the members of its board of directors or executive committee. These officers shall be citizens of the state and residents of the city in which the association is organized.

B. The management of the associations organized under the provisions of this Part is vested in the board of directors or executive committee.

§2114. Certificate of approval

Immediately after organization of an association pursuant to this Part, the president, the secretary, and the board of directors or executive committee thereof shall file with the commissioner of insurance a certified copy of the constitution and ~~by-laws~~ bylaws and a certified list of the fire insurance companies subscribing thereto. If the organization is found to conform to the provisions of this ~~Sub-part,~~ Part, the commissioner of insurance shall furnish the association with a certificate of approval.

* * *

§2118. Annual statements by fire ~~insurers,~~ insurers; assessments for expenses of associations

A. An association may require a statement to be furnished it annually by all fire insurance companies, associations, or underwriters writing fire insurance, regularly licensed and authorized to do business in the state, showing the gross amount of premiums received for insuring movable and immovable property against loss by fire in the city in which the association has its domicile, for the twelve months next preceding December thirty-first of each year. Only return premiums paid during the twelve months shall be deducted from the gross premiums. This

statement shall be made on forms furnished by the association and shall be sworn to by the president, secretary, general agent, or manager of the fire insurance company, association, or underwriter. It shall be filed with the secretary of the fire insurance patrol association within sixty days after the close of the year which it covers.

B. To pay its expense, any association, through its board of directors or executive committee, may levy an assessment on all fire insurance companies, associations, or underwriters regularly licensed and authorized to do business in this state, in proportion to the several amounts of gross premiums received by each, less return premiums paid. This assessment shall be based on the estimated expenses for the current year, together with liabilities due, and shall never exceed two ~~per cent~~ percent of the gross amount of premiums received, less return premiums paid. The assessment shall be paid at the time of the filing of the statement provided for in this Section.

§2119. Delinquent members of associations; demand for statements and collection of assessments by commissioner of insurance

The secretaries of the various associations shall report to the commissioner of insurance all fire insurance companies, associations, or underwriters failing to make statements of the amount of premiums received as provided in R.S. 22:2118 or failing to pay the assessments levied pursuant to that Section, with a statement of the amount due by each. The commissioner of insurance shall make demand on the delinquent companies for the statements, and shall collect the amounts due by such delinquent companies. He shall pay over the sums so collected to the association. For this service, the commissioner of insurance shall deduct a fee of five ~~per cent~~ percent of the amount collected and paid over.

* * *

§2132. Authority; creation, powers

* * *

C. The board of directors shall consist of the commissioner of insurance or his designee, the state treasurer or his designee, a representative of the Louisiana State Police Insurance ~~Fraud~~ Fraud and Auto Theft unit, the chairman of the Senate

Committee on Insurance or his designee, the chairman of the House Committee on Insurance or his designee, and six members to be appointed as follows: four members shall be appointed by the commissioner, including two members representing purchasers of motor vehicle insurance in this state and two members representing motor vehicle insurers doing business in this state. Two members shall be appointed by the attorney general, both of whom shall represent law enforcement officials in this state. The commissioner shall serve as chairperson of the authority.

D. The members of the board of directors, except the commissioner of insurance or his designee, the state treasurer or his designee, the representative of the Louisiana State Police Insurance ~~Fraud~~ Fraud and Auto Theft unit, and the legislative members serving on the board, shall not be considered public employees by virtue of their service on the board of directors.

* * *

§2133. Authority; further powers and duties

The authority shall have the powers necessary and convenient to implement and effectuate the purposes and provisions of this Part and the purposes of the authority and the powers delegated by other laws, including but not limited to the power to:

* * *

(2) Solicit and accept gifts, grants, donations, loans, and other assistance from any person or entity, private or public, or the federal, state, or local governments or any agency thereof, ~~said~~ such gifts, grants, donations, loans, and other assistance to be immediately deposited upon receipt into the fund ~~described~~ provided for in R.S. 22:2134(A).

* * *

§2135. Plan of operation

A. The authority shall develop and implement a plan of operation upon the recommendations of the director. ~~no later than the first of January 2005.~~

* * *

§2147. Plan of operation

A.

* * *

(2) ~~If the consortium fails to submit a suitable plan of operation within one hundred twenty days following September 30, 1995, or if~~ If at any time ~~thereafter~~ the consortium fails to submit suitable amendments to the plan, the commissioner may, after notice and public hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this Part. The rules shall continue in force until modified by the commissioner or ~~superseded~~ superceded by a plan submitted by the consortium and approved by the commissioner.

* * *

§2161. Louisiana Health Care Commission; creation

A. There is hereby created the Louisiana Health Care Commission within the Department of Insurance. The commission shall be domiciled in Baton Rouge, and its members shall serve for terms of two years. ~~beginning July 1, 1999.~~ The functions, duties, and responsibilities of the commission shall be to review and study the availability, affordability, and delivery of quality health care in the state. The commission shall specifically examine the rising costs of health care in the state, including but not limited to the cost of administrative duplication, the costs associated with excess capacity and duplication of medical services, and the costs of medical malpractice and liability and shall examine the adequacy of consumer protections, as well as the formation and implementation of insurance pools that better assure citizens the ability to obtain health insurance at affordable costs and encourage employers to obtain health care benefits for their employees by increased bargaining power and economies of scale for better coverage and benefit options at reduced costs. Further, the commission shall examine the implementation issues related to national health care reform initiatives. Of the members of the commission, three members shall be appointed from a list of nominees submitted by the governing boards of state colleges and universities and by a dean from the business schools represented by the Louisiana Association of Independent Colleges and Universities.

One member of the Senate Committee on Insurance shall be appointed by the president of the Senate and one member of the House Committee on Insurance shall be appointed by the speaker of the House of Representatives to the commission to act as ex officio, nonvoting members. One member of the commission shall be appointed by the secretary of the Department of Health and Hospitals. The commissioner of insurance shall appoint five at-large members to the commission. The remainder of the members shall be appointed by the commissioner of insurance from a list of nominees, one nominee to be submitted by each of the following:

* * *

(6) Louisiana ~~Trial Lawyers'~~ Association~~.~~ for Justice.

* * *

§2171. Louisiana Property and Casualty Insurance Commission

A. The legislature hereby creates the Louisiana Property and Casualty Insurance Commission within the Louisiana Department of Insurance. The functions, duties, and responsibilities of the commission shall be to review and examine the availability and affordability of property and casualty insurance in the state of Louisiana. Further, the commission shall undertake a comprehensive study and provide oversight and enforcement recommendations of the effectiveness of law enforcement and implementation of programs aimed at enforcement throughout the state of those laws and programs which affect automobile insurance rates.

B. The commission shall be domiciled in the city of Baton Rouge and its members shall serve for terms of two years. ~~beginning July 1, 2001.~~

C. The commission shall consist of the following members:

* * *

(7) A representative of the ~~National Association of Independent Insurers,~~ Property Casualty Insurers Association of America, selected by its governing body, or his designee.

* * *

(13) A representative of the Independent Insurance Agents & Brokers of Louisiana.

* * *

(21) A representative of law enforcement or his designee, selected jointly by the superintendent of state police, the secretary of the Department of Public Safety and Corrections, the president of the Louisiana Association of Chiefs of Police, and the president of the Louisiana ~~Sheriff's~~ Sheriffs' Association.

* * *

E. The automobile insurance ad hoc committee shall consist of the following members:

* * *

(6) The representative of the ~~National Association of Independent Insurers~~ Property Casualty Insurers Association of America ~~and/or~~ or his designee.

* * *

(14) A representative of the Independent Insurance Agents & Brokers of Louisiana.

* * *

F. The homeowners ad hoc committee shall consist of the following members:

* * *

(5) A representative of the Independent Insurance Agents and Brokers of Louisiana.

* * *

(12) The representative of the ~~National Association of Independent Insurers~~ Property Casualty Insurers Association of America or his designee.

G. The workers' compensation insurance ad hoc committee shall consist of the following members:

* * *

(5) A representative of the Independent Insurance Agents and Brokers of Louisiana.

* * *

(11) A representative of the ~~Department of Labor,~~ Louisiana Workforce Commission, office of workers' compensation or his designee, appointed by the executive director.

(12) The representative of the ~~National Association of Independent Insurers~~ Property Casualty Insurers Association of America or his designee.

* * *

§2181. Establishment of the Louisiana State University Health Sciences Center Health Maintenance Organization

* * *

B. Subject to the approval of the commissioner of insurance, the chancellor of the Louisiana State University Health Sciences Center may promulgate rules and regulations, in accordance with the procedures provided in R.S. 17:1519.2(D), to create the Louisiana State University Health Sciences Center Health Maintenance Organization and to institute some collection of payment from the enrollees of the Louisiana State University Health Sciences Center Health Maintenance Organization. Such rules and regulations shall provide for a board of the organization which represents both patients and health care professionals. Such rules and regulations shall specify the organizational features of the organization which shall, except for minimum financial requirements and the requirements for incorporation, comply with the provisions of Subpart I of Part I of Chapter 2 of this Title~~.~~, R.S. 22:241 et seq. The minimum financial requirements and the requirements for incorporation provided in ~~said~~ such Subpart I for health maintenance organizations, are hereby waived for the organization created as provided in this Section.

* * *

§2191. Hearings

A. The division of administrative law shall hold a hearing in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall hold a hearing~~:~~ under either of the following circumstances:

(1) If required by any provision of this Code~~; or~~.

* * *

§2205. Appeal

All appeals from a decision of the ~~Division of Administrative Law~~ division of administrative law shall be in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

§2206. Use of injunctive process

Notwithstanding any law to the contrary, the commissioner is empowered to seek the enforcement of any lawful written order or to secure the prevention or discontinuance of any violation of a prohibitory or mandatory licensing provision of this Code by legal action for injunction which may be filed in the district court in either the parish of East Baton Rouge or the parish in which the offender is domiciled, and he shall be represented in such actions by the attorney general or the attorney for his department~~. if such there is~~.

* * *

§2208. Administrative hearings

As provided in Chapter 13-B of Title 49 of the Louisiana Revised Statutes of 1950, R.S. 49:991 et seq., the division of administrative law shall conduct any hearings required by any provision of this Chapter.

* * *

§2221. Pilot programs; Department of Insurance; establishment

The Louisiana Workforce Commission and the Department of Insurance, conjunctively, after consultation with the office of workers' compensation administration in the Louisiana Workforce Commission, are hereby authorized to establish no more than five pilot health insurance programs, which may consist of groups or associations of employers for twenty-four-hour insurance coverage. ~~that~~

~~shall terminate five years after the first date of operation of the program, unless extended by an act of the legislature.~~ The pilot program shall monitor the medical, hospital, and remedial care of employees and the provision of prompt, effective care and earlier restoration of earning capacity without diminution of the quality of that care of the injured or disabled employee. In order to implement the pilot health insurance program for employees, the Louisiana Workforce Commission and the Department of Insurance, conjunctively, shall:

* * *

§2222. Pilot program; certain provisions

* * *

D. The Louisiana Workforce Commission and the Department of Insurance, conjunctively, shall issue an interim report ~~on or before December 1, 1994,~~ and a final report ~~on or before the termination date of August 15, 1995,~~ to the speaker of the House of Representatives, the president of the Senate, the members of the respective committees on insurance in the House of Representatives and Senate, and the governor, on its activities, findings, and recommendations about the pilot program ~~herein.~~ in this Part. The Louisiana Workforce Commission and the Department of Insurance, conjunctively, shall monitor, evaluate, and report the following information regarding physicians, hospitals, facilities, and other medical care providers:

* * *

§2223. Pilot program; requirements, contents

* * *

F. Any insurance policy issued under a pilot program shall insure the employer's obligation to a named insured throughout the entire period of any illness or disability, specifically, but not limited to the duration of benefits as provided under the Louisiana Workers' Compensation law or ~~the Louisiana Insurance law~~ this Code for an employee and his dependents.

* * *

§2243. Small employer and individual insurance program criteria

Any small employer or individual insurance program developed shall include but not be limited to the following features:

* * *

(2) Eligibility criteria that limit participation to health insurance issuers who have not been found to be financially impaired by the department in the preceding two years. For purposes of this Section, the term "health insurance issuer" shall mean an insurance company, including a health maintenance organization as defined and licensed pursuant to Subpart I of Part I of Chapter 2 of this Title~~.~~, R.S. 22:241 et seq.

* * *

§2244. Blanket insurance program; criteria by Department of Health and Hospitals; exemptions

A. Any blanket insurance program developed by the Department of Health and Hospitals shall include but not be limited to the following components:

* * *

(2) The eligibility criteria for health insurance issuers that limit participation to health insurance issuers who have not been found to be financially impaired by the Department of Insurance in the preceding two years and have been selected by the Department of Health and Hospitals. For purposes of this Section, the term "health insurance issuer" shall mean an insurance company, including a health maintenance organization as defined and licensed pursuant to Subpart I of Part I of Chapter 2 of this Title~~.~~, R.S. 22:241 et seq.

* * *

§2261. Central database for contact information on life insurance policies

* * *

B. ~~On and after January 1, 2004, any~~ Any member of the immediate family of a decedent searching for life insurance policies covering the decedent may file a written request with the department for a search pursuant to this Section, ~~provided~~ if the decedent was a resident or former resident of this state. Any such request shall

include a copy of the subject decedent's death certificate. The right to file a written request for a search pursuant to this Section may not be assigned.

* * *

§2291. Louisiana Citizens Property Insurance Corporation; declaration and purpose; construction

It is hereby declared by the Legislature of Louisiana that an adequate market for fire with extended coverage and vandalism and malicious mischief insurance and homeowners coverage is necessary to the economic welfare of the state, including the coastal areas of the state, and that without such insurance the orderly growth and development of the state would be severely impeded; and that adequate insurance upon property is necessary to enable owners of homes and commercial owners to obtain financing for the purchase and improvement of their property. It is further declared that the state has an obligation to provide an equitable method whereby every licensed insurer writing fire, extended coverage, and vandalism and malicious mischief and, if necessary, homeowners coverage on a direct basis in Louisiana is required to meet its public responsibility instead of shifting the burden to a few willing and public-spirited insurers. While deserving praise, the financing mechanisms of the former plans were insufficient to meet the needs of this area. It is the purpose of this Chapter to accept this obligation and to provide a mandatory program to assure an adequate market for fire, extended coverage, and vandalism and malicious mischief and, if necessary, homeowners insurance in the coastal and other areas of Louisiana. The legislature intends by this Chapter that property insurance be provided and that it continues, as long as necessary, through an entity organized to achieve efficiencies and economies, all toward the achievement of the foregoing public purposes. Therefore, the Louisiana Citizens Property Insurance Corporation, a nonprofit corporation, is hereinafter created, and ~~said~~ such corporation shall operate insurance plans which shall function exclusively as residual market mechanisms to provide essential property insurance for residential and commercial property, solely for applicants who are in good faith entitled, but are unable, to procure insurance through the voluntary market. The legislature further intends that

the corporation work toward the ultimate depopulation of these residual market insurance plans. Because it is essential for the corporation to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the legislature that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

§2292. Definitions

As used in this ~~Subpart,~~ Part, unless the context otherwise requires:

* * *

§2293. Creation of the Louisiana Citizens Property Insurance Corporation

* * *

D.

* * *

(2) The corporation 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 through 41 shall not apply to any documents as enumerated in R.S. 44:1(A)(2) which relate to one or more of the following:

(a) Underwriting files, except that a policyholder or an applicant shall have access to his ~~or her~~ own underwriting files.

* * *

(f) All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his ~~or her~~ duties, except as otherwise provided in this Paragraph. Information which is exempt shall include but is not limited to information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

* * *

(3) When an authorized insurer is considering underwriting a specific risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer ~~provided~~ if the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. When a file is transferred

to an insurer that file is no longer a public record because it is not held by an agency subject to the provisions of the ~~public records law~~ Public Records Law. Notwithstanding the provisions of this Subsection, the corporation shall not provide either a partial or complete list of the plans' insureds, applicants, or claimants to any voluntary insurer.

§2294. Board of directors of corporation

A. The governing body of the corporation shall be a board of directors which shall consist of the following members, who shall be representative of the state's population as near as practicable:

* * *

(5) Six representatives appointed by the governor~~;~~: one from a list of two nominees from the Louisiana Bankers Association; one from a list of two nominees from the Louisiana Home Builders Association; one from a list of two nominees from the Society of Louisiana Certified Public Accountants; one from a list of two nominees from the Louisiana District Attorneys Association; and the remaining two representatives shall be appointed at large.

* * *

§2296. Immunity from liability

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B. Such immunity from liability does not apply to:

(1) Any of the persons or entities listed in Subsection A ~~hereof~~ of this Section for any willful tort or criminal act.

* * *

§2297. Powers and duties of Louisiana Citizens Property Insurance Corporation

* * *

D. The corporation shall:

* * *

(8) Perform such other acts as are necessary or proper to effectuate the purpose of this ~~Subpart.~~ Chapter.

* * *

§2302. Eligibility; application

* * *

E. The corporation shall include a disclosure statement with each application and policy which notifies the policyholder that ~~they~~ he may obtain a list of insurance producers and insurance companies that may be able to write their insurance coverage in the private insurance market. This disclosure shall be on a separate page from the policy and shall be distinctly labeled in fourteen point or larger type size. The disclosure shall include a description of the specific method of accessing the Louisiana Department of Insurance website including the website address. The disclosure shall also include a list, from the website of the Department of Insurance, of the insurance companies referenced ~~above.~~ in this Section.

* * *

§2307. Plan deficits; financing

* * *

G. The corporation may pledge, assign, and grant a security interest in the assessments, insurance and reinsurance recoverables, surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds or other indebtedness, including without limitation lines of credit or other financing mechanisms issued or created under this Subsection pursuant to the procedures of Chapter 13 of Title 39 of the Louisiana Revised Statutes of 1950, R.S. 39:1421~~,~~ et seq.~~,~~ ~~as amended,~~ or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the governing board determines will efficiently recover such deficits and use such funds to pay any current or other obligations on the bonds or other indebtedness even if no event of default has occurred under the bonds or other indebtedness. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this Subsection, the term "assessments" includes regular assessments under Subsection B or C of this Section, and emergency assessments under Subsection E of this Section. Emergency assessments collected under Subsection E of this Section

are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions. However, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments under Subsection E of this Section shall continue to be levied and collected and shall be used to make any payments due with respect to any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remains outstanding, even if no event of default has occurred under the bonds or other indebtedness, unless adequate protection and provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or other indebtedness.

* * *

§2308. Louisiana Citizens Property Insurance Corporation not taxable

The corporation shall be considered a political instrumentality of the state, and shall be exempt from any corporate income tax. However, the corporation is not and shall not be deemed a department, unit, or agency of the state. All debts, claims, obligations, and liabilities of the corporation, whenever and however incurred, shall be the debts, claims, obligations, and liabilities of the corporation only, and not of the state, its agencies, officers, or employees. Corporation funds shall not be considered part of the general fund of the state, and the state shall not appropriate corporation funds. The state's contribution to the corporation is limited to those funds collected by the corporation pursuant to the authority granted under R.S. 22:2303(B)<u>,</u> ~~of this Chapter,~~ and the state shall not budget for or provide general fund appropriations to the corporation. The premiums, assessments, investment income, and other revenue of the corporation are funds received for providing property insurance coverage as required by this Section, paying claims for Louisiana citizens insured by the corporation's plans, securing and repaying debt obligations issued by the corporation, and conducting all other activities of the corporation, and shall not be considered taxes, fees, licenses, or charges for services imposed by the legislature on individuals, businesses, or agencies outside state government. It is the intent of the legislature that the tax exemptions provided in this Section will augment

the financial resources of the corporation to better enable fulfillment of the public purpose. Any bonds issued by or on behalf of the corporation and the plans, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state and any political subdivision or local unit or other instrumentality thereof.

* * *

§2313. ~~Agents;~~ Producers; authority to bind coverage

A. Every ~~agent~~ producer licensed to sell property and casualty insurance may sell insurance policies which are issued by the Louisiana Citizens Property Insurance Corporation through its FAIR and Coastal ~~plans~~ Plans.

B. The governing board shall formulate criteria and an application process to certify qualified licensed property and casualty insurance ~~agents~~ producers to bind insurance coverage for the FAIR and Coastal Plans. In order to be qualified for binding authority, the ~~agent~~ producer shall have adequate errors and omission insurance and complete a training course offered by the Louisiana Citizens Property Insurance Corporation. Pursuant to the Administrative Procedure Act, R.S. 49:950 et seq., the governing board shall promulgate rules which set forth standards by which ~~an agent~~ a producer is deemed qualified for binding authority.

C. The governing board may withdraw binding authority granted to any ~~agent~~ producer certified pursuant to Subsection B of this Section if that ~~agent~~ producer fails to follow written guidelines for underwriting as required by the corporation.

§2314. Policy take-out program

* * *

F. The provisions of this Section shall not be construed to impair the right of any Louisiana Citizens Property Insurance Corporation policyholder, upon receipt of an approved take-out offer, to retain his current ~~agent,~~ producer, so long as that ~~agent~~ producer is a licensed insurance producer authorized to bind insurance coverage for the FAIR and Coastal Plans, or to retain Louisiana Citizens Property Insurance Corporation as their insurer. This right shall not be canceled, suspended,

impeded, abridged, or otherwise compromised by any rule, plan of operation, or depopulation plan.

§2315. Adjusters

A. With respect to contracting with adjusters to adjust claims, the corporation shall give preference to adjusters and businesses engaged in the business of adjusting claims, who have been domiciled in Louisiana for a period of not less than two years, ~~provided~~ if the adjusting of ~~said~~ such claims is subject to a fee schedule or other fixed fee arrangement. For purposes of reciprocal preference, the provisions of this Section shall ~~only apply~~ apply only to the Louisiana Citizens Property Insurance Corporation.

* * *

§2316. Underwriting

With respect to contracting with service providers to underwrite insurance policies, the corporation shall give preference to service providers and businesses engaged in the business of underwriting insurance policies, who have underwriters domiciled in Louisiana for a period of not less than two years, ~~provided~~ if the underwriting of ~~said~~ such policies is subject to a fee schedule or other fixed fee arrangement. For purposes of reciprocal preference, the provisions of this Section shall ~~only apply~~ apply only to the Louisiana Citizens Property Insurance Corporation.

* * *

§2326. Functions of the plan

A. All participants in the plan shall participate in its writings, expenses, profits, and losses in the proportion that the net direct premium of such participant written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all participants in the plan during the preceding calendar year as certified to the governing committee of the plan by the commissioner of insurance after review of annual statements, other reports and other statistics the commissioner shall deem necessary to provide the information ~~herein~~

required in this Section and which the commissioner is hereby authorized and empowered to obtain from any participant in the plan.

* * *

§2363. Cooperative endeavors; grants; regulations

* * *

B. The commissioner of insurance may grant matching capital funds to qualified property insurers in accordance with the requirements of this Chapter from the fund. The commissioner shall adopt and promulgate rules and regulations in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., governing the application process and award of grants, use of grant funds, reporting requirements and other regulations to assure compliance with and to carry out the purposes of the program.

§2364. Implementation; grant limitations

A. The commissioner of insurance shall adopt and promulgate rules and regulations to implement this program as soon as possible and in accordance with the Administrative Procedure Act~~.~~, R.S. 49:950 et seq.

* * *

F. Prior to the award of any grant pursuant to the provisions of this Chapter, such grant shall be subject to the review and approval of the Joint Legislative Committee on the Budget. The use of grant funds and unexpended and unencumbered monies pursuant to the provisions of ~~R.S. 22:2372 and~~ Subsection D of this Section shall not be subject to review and approval of the Joint Legislative Committee on the Budget.

* * *

§2369. Net written premium requirements

* * *

E.(1) The commissioner shall promulgate rules pursuant to the Administrative Procedure Act, R.S. 49:950 et seq., to establish procedures to monitor the net written premium of insurers receiving any grant under this Chapter to ensure that the insurer is in compliance with the provisions of this Section. These rules

shall include provisions for the return of grant money to the state, on a pro rata basis, for failure to meet the requirements of this Section. Notwithstanding the provisions of R.S. 22:2370 to the contrary, the commissioner shall seek the return of unearned grant money from any insurer who has not been in compliance with this Section for five consecutive years commencing on January 1, 2009, and ending on December 31, 2013.

* * *

Section 2. R.S. 22:1824(C), 2028(D)(3), 2161(A)(7), (12), (34), and (37), 2171(C)(20), (E)(17), and (G)(13), and 2303(D)(1) are hereby repealed in their entirety.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____