

Regular Session, 2012

ACT No. 271

HOUSE BILL NO. 595

BY REPRESENTATIVE CROMER

1 AN ACT

2 To amend and reenact R.S. 22:23(D)(3)(b), 242(10), 653(A)(introductory paragraph),
3 851(A), 912(C), (D), and (E), 931(A)(10)(a), 1203(D), 1821(A), (C), (D)(1), (2)(e)
4 and (g)(i)(aa), and (3)(c)(introductory paragraph) and (i), (d)(introductory paragraph)
5 and (i) through (iv), and (e), and (F)(1), 1825(B)(introductory paragraph) and
6 (C)(introductory paragraph) and (4), 1859(F), 1875, 1879(A), (B)(1)(introductory
7 paragraph), and (C), 1880(B)(1)(introductory paragraph), (C)(introductory
8 paragraph), and (D)(introductory paragraph), 1892(B)(1), (C)(1), and (D)(2),
9 1901(4), 1902(A)(2) and (9), 1903(C)(2)(introductory paragraph), 1904,
10 1905(C)(introductory paragraph) and (1), 1907, 1909(B) and (C), 1921(B) and (C),
11 1923(1)(a)(introductory paragraph) and (g), 1926(A), 1927(B), 1928(B), 1941, 1942,
12 1944, 1945, 1946, 1962(C) and (F), 1964(1)(g), (7)(a), (b), and (h), (9), (10)(c),
13 (11), (13), (15)(c)(i), (iii), and (vii), (19)(b)(i)(introductory paragraph) and (c)(i),
14 (20), (24), and (25), 1967, 1968, 1971(C), 1973(B)(introductory paragraph),
15 1981(A)(2) and (3) and (C)(introductory paragraph), 1983(D) through (H) and (I)(1)
16 and (2), 1984(A) and (G), 1988, 1989, 1992, 1994(A), 2001, 2002(2) and (4),
17 2003(1)(e) and (f), 2005, 2006, 2008(A), 2009(E)(2) and (4), 2010(D),
18 2012(A)(introductory paragraph) and (3) and (B), 2013(B), 2018(A) and (B), 2019,
19 2020(C), 2021(A), 2023(C)(2), 2025(4), 2026, 2027(B), 2028(B), (C), and (D)(6),
20 2029, 2032, 2033(B), 2034(G) and (H), 2035(A) and (D), 2036(C), 2038(3), 2044,
21 2055(6)(a)(ii), (7)(introductory paragraph) and (a), (9)(a)(introductory paragraph)
22 and (i) and (b), (12), and (15), 2056(C)(2)(f), 2058(A)(1)(a)(i) and (ii), (b)(i) and (ii),
23 and (3)(a)(iv), 2059(A)(1), (C)(6), and (D), 2060(A)(1), 2061.1(A),
24 2062(A)(2)(a)(introductory paragraph) and (i) and (ii), (5)(a), and (6),

1 2083(A)(2)(introductory paragraph) and (a) and (C)(introductory paragraph) and (1),
 2 2084(6), 2085(C)(1) and (3)(g), 2086(B) and (D), 2087(A)(2), (B)(1)(introductory
 3 paragraph) and (a) and (2)(introductory paragraph), (C)(2), (D)(introductory
 4 paragraph) and (3) and (4)(a), (E), (I)(introductory paragraph), (J), and (M)(3),
 5 2088(D), 2089(A)(2) and (C)(8), 2091(A)(2) and (E)(1), 2092(D), 2093(E)(1),
 6 2098(B) and (C)(introductory paragraph), 2112, 2113, 2114, 2118, 2119, 2132(C)
 7 and (D), 2133(2), 2135(A), 2147(A)(2), 2161(A)(introductory paragraph) and (6),
 8 2171(A), (B), (C)(7), (13), and (21), (E)(6) and (14), (F)(5) and (12), and (G)(5),
 9 (11), and (12), 2181(B), 2191(A)(introductory paragraph) and (1), 2205, 2206, 2208,
 10 2221(introductory paragraph), 2222(D)(introductory paragraph), 2223(F), 2243(2),
 11 2244(A)(2), 2261(B), 2291, 2292(introductory paragraph), 2293(D)(2)(a) and (f) and
 12 (3), 2294(A)(5), 2296(B)(1), 2297(D)(8), 2302(E), 2307(G), 2308, 2313, 2314(F),
 13 2315(A), 2316, 2326(A), 2363(B), 2364(A) and (F), and 2369(E)(1) and to repeal
 14 R.S. 22:1824(C), 2028(D)(3), 2161(A)(7), (12), (34), and (37), 2171(C)(20), (E)(17),
 15 and (G)(13), and 2303(D)(1), all relative to technical recodification of certain
 16 provisions of the Louisiana Insurance Code, including correction of citations,
 17 updates of terms and language, reorganization of provisions, elimination of obsolete
 18 or ineffective provisions, and harmonizing of inconsistent provisions; and to provide
 19 for related matters.

20 Be it enacted by the Legislature of Louisiana:

21 Section 1. R.S. 22:23(D)(3)(b), 242(10), 653(A)(introductory paragraph), 851(A),
 22 912(C), (D), and (E), 931(A)(10)(a), 1203(D), 1821(A), (C), (D)(1), (2)(e) and (g)(i)(aa), and
 23 (3)(c)(introductory paragraph) and (i), (d)(introductory paragraph) and (i) through (iv), and
 24 (e), and (F)(1), 1825(B)(introductory paragraph) and (C)(introductory paragraph) and (4),
 25 1859(F), 1875, 1879(A), (B)(1)(introductory paragraph), and (C), 1880(B)(1)(introductory
 26 paragraph), (C)(introductory paragraph), and (D)(introductory paragraph), 1892(B)(1),
 27 (C)(1), and (D)(2), 1901(4), 1902(A)(2) and (9), 1903(C)(2)(introductory paragraph), 1904,
 28 1905(C)(introductory paragraph) and (1), 1907, 1909(B) and (C), 1921(B) and (C),
 29 1923(1)(a)(introductory paragraph) and (g), 1926(A), 1927(B), 1928(B), 1941, 1942, 1944,
 30 1945, 1946, 1962(C) and (F), 1964(1)(g), (7)(a), (b), and (h), (9), (10)(c), (11), (13),

1 (15)(c)(i), (iii), and (vii), (19)(b)(i)(introductory paragraph) and (c)(i), (20), (24), and (25),
2 1967, 1968, 1971(C), 1973(B)(introductory paragraph), 1981(A)(2) and (3) and
3 (C)(introductory paragraph), 1983(D) through (H) and (I)(1) and (2), 1984(A) and (G), 1988,
4 1989, 1992, 1994(A), 2001, 2002(2) and (4), 2003(1)(e) and (f), 2005, 2006, 2008(A),
5 2009(E)(2) and (4), 2010(D), 2012(A)(introductory paragraph) and (3) and (B), 2013(B),
6 2018(A) and (B), 2019, 2020(C), 2021(A), 2023(C)(2), 2025(4), 2026, 2027(B), 2028(B),
7 (C), and (D)(6), 2029, 2032, 2033(B), 2034(G) and (H), 2035(A) and (D), 2036(C), 2038(3),
8 2044, 2055(6)(a)(ii), (7)(introductory paragraph) and (a), (9)(a)(introductory paragraph) and
9 (i) and (b), (12), and (15), 2056(C)(2)(f), 2058(A)(1)(a)(i) and (ii), (b)(i) and (ii), and
10 (3)(a)(iv), 2059(A)(1), (C)(6), and (D), 2060(A)(1), 2061.1(A), 2062(A)(2)(a)(introductory
11 paragraph) and (i) and (ii), (5)(a), and (6), 2083(A)(2)(introductory paragraph) and (a) and
12 (C)(introductory paragraph) and (1), 2084(6), 2085(C)(1) and (3)(g), 2086(B) and (D),
13 2087(A)(2), (B)(1)(introductory paragraph) and (a) and (2)(introductory paragraph), (C)(2),
14 (D)(introductory paragraph) and (3) and (4)(a), (E), (I)(introductory paragraph), (J), and
15 (M)(3), 2088(D), 2089(A)(2) and (C)(8), 2091(A)(2) and (E)(1), 2092(D), 2093(E)(1),
16 2098(B) and (C)(introductory paragraph), 2112, 2113, 2114, 2118, 2119, 2132(C) and (D),
17 2133(2), 2135(A), 2147(A)(2), 2161(A)(introductory paragraph) and (6), 2171(A), (B),
18 (C)(7), (13), and (21), (E)(6) and (14), (F)(5) and (12), and (G)(5), (11), and (12), 2181(B),
19 2191(A)(introductory paragraph) and (1), 2205, 2206, 2208, 2221(introductory paragraph),
20 2222(D)(introductory paragraph), 2223(F), 2243(2), 2244(A)(2), 2261(B), 2291,
21 2292(introductory paragraph), 2293(D)(2)(a) and (f) and (3), 2294(A)(5), 2296(B)(1),
22 2297(D)(8), 2302(E), 2307(G), 2308, 2313, 2314(F), 2315(A), 2316, 2326(A), 2363(B),
23 2364(A) and (F), and 2369(E)(1) are hereby amended and reenacted to read as follows:

§23. Exclusive use of expirations

* * *

D.

* * *

(3)

* * *

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

4 * * *

5 §242. Definitions

6 As used in this Subpart:

7 * * *

8 (10) "Point of service policy" means any policy of coverage that meets the
9 definition of a health and accident insurance policy pursuant to R.S. 22:34, 35, 851-
10 870, 872-883, 885-889, 901, 902, 944, 945, 972-983, 985-990, 992-1015, 1021-1048,
11 1091-1097, 1111, 1156, 1261-1270, 1281-1283, 1285-1288, 1290-1293, 1295-1297,
12 1331, 1333-1335, 1441, ~~1442~~, 1555, 1811, 1821-1823, and 1891-1894.

13 * * *

14 §653. Qualified United States financial institutions

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

17 * * *

18 §851. Scope of ~~Part~~ Chapter

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

26 * * *

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

28 * * *

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

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

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

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

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

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

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

26 * * *

27 SUBPART B. INDIVIDUAL LIFE

28 §931. Life insurance policies; standard provisions

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

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

3 * * *

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

15 * * *

16 §1203. Creation of the plan

17 * * *

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

23 * * *

24 §1821. Payment of claims; health and accident policies; prospective review;
25 penalties; self-insurers; telemedicine reimbursement by insurers

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

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

* * *

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

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

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

6 (2)

7 * * *

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

13 * * *

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

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

20 (aa) Placing the health of the individual, or₁ with respect to a pregnant
21 woman₁ the health of the woman or her unborn child, in serious jeopardy.

22 * * *

23 (3)

24 * * *

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

27 (i) Previously certified or approved health care or medical services as
28 contracted for between the insurer and insured; ~~or~~₂

29 * * *

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

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

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

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

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

16 * * *

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

21 * * *

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

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

7 * * *

8 §1825. Billing audit guidelines, rules, and regulations

9 * * *

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

12 * * *

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

15 * * *

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

18 * * *

19 §1859. Recoupment of health insurance claims payments

20 * * *

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

25 * * *

26 §1875. Billing by noncontracted facility-based physicians providing services in a
 27 base health care facility

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

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

4 * * *

5 §1879. Louisiana consumer health care provider network disclosure

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

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

25 B.(1) Based on information received pursuant to Paragraphs (A)(1) and (2)
26 of this Section, a health insurance issuer shall report on its website, ~~no later than June~~
27 ~~30, 2010,~~ in a format that is clear and easy for its enrollees to understand, the
28 following information arranged by contracted facility:

29 * * *

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

* * *

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

* * *

D.

* * *

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

* * *

1 §1901. Purpose; necessity for regulation

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

4 * * *

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

7 * * *

8 §1902. Transacting a business of insurance by unauthorized insurer defined

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

13 * * *

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

16 * * *

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

24 * * *

25 §1903. Placement of insurance business; prohibitions and exclusions

26 * * *

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

29 * * *

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

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

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

30 ~~(†)~~ (a) Soliciting insurance, ~~or,~~

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

7 * * *

8 (g) Solicits or accepts new or renewal insurance risks by or for an
 9 unauthorized insurer, except as provided by Subpart O of Part I of Chapter 2 of this
 10 Title, R.S. 22:431 et seq., and Part III of this Chapter, ~~7 both of this Title. R.S.~~
 11 22:1941 et seq.

12 * * *

13 §1926. Duties of companies and others

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

26 * * *

27 §1927. Materials and evidence

28 * * *

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

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

11 §1928. Civil immunity

12 * * *

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

15 * * *

16 §1941. Purpose of Part

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

1 §1942. Definitions

2 When used in this Part:

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

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

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

9 * * *

10 §1944. Action by commissioner

11 If, after thirty days following the giving of the notice mentioned in R.S.
12 22:1943, such insurer has failed to cease making, issuing, or circulating such ~~false~~
13 misrepresentations or causing the same to be made, issued, or circulated in this state,
14 and if the commissioner has reason to believe that a proceeding by him in respect to
15 such matters would be to the interest of the public, and that such insurer is issuing
16 or delivering contracts of insurance to residents of this state or collecting premiums
17 on such contracts or doing any of the acts enumerated in R.S. 22:1945, he shall take
18 action against such insurer under the Unfair Trade Practice Law.

19 §1945. Service upon unauthorized insurer

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

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

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

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

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

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

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

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

- 6 ~~(1)~~ (a) Soliciting insurance; ~~or,~~
- 7 ~~(2)~~ (b) Making, issuing, or delivering any contract of insurance; ~~or,~~
- 8 ~~(3)~~ (c) Collecting or receiving in this state any premium for insurance; ~~and~~
- 9 a .

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

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

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

28 §1946. Advertisement by insurers

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

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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

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

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

13 * * *

14 §1962. Definitions

15 When used in this Part:

16 * * *

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

26 * * *

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

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

3 * * *

4 §1964. Methods, acts, and practices which are defined herein as unfair or deceptive

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

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

11 * * *

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

14 * * *

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

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

29 * * *

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

6 * * *

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

23 (10) Tying, which shall mean the following:

24 * * *

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

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

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

9 * * *

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

20 * * *

21 (15)

22 * * *

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

25 (i) "Drug" and "prescription" have the meanings assigned by R.S. 37:~~1171~~
 26 1164 and regulations of the Louisiana Board of Pharmacy.

27 * * *

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

1 condition not equally charged to or imposed on all insureds or other beneficiaries in
 2 or under the same program or policy or plan. However, "interferes" or "interferes
 3 with" does not mean or include the advertisement, or periodic dissemination, to all
 4 insureds or other beneficiaries of current lists of all pharmacies or pharmacists who
 5 have agreed to participate as a contract provider pursuant to the requirements of ~~R.S.~~
 6 ~~22:1964(15)~~ Item (a)(ii): of this Paragraph.

7 * * *

8 (vii) "Pharmacy" has the meaning assigned by R.S. 37:~~474~~ 1164 and
 9 regulations of the Louisiana Board of Pharmacy.

10 * * *

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

12 * * *

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

16 * * *

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

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

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

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

29 * * *

1 (20) Failure to provide claims history.

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

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

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

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

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

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

29 * * *

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

8 (25) Requiring ~~an agent or broker~~ a producer or offering any incentive for
 9 ~~agents or brokers~~, producers, who represent more than one insurance company, to
 10 limit the number of other insurance companies they may represent. This prohibition
 11 shall not apply to captive insurance ~~agents or brokers~~. producers. Failure to comply
 12 with the provisions of this Paragraph shall subject the insurer to a penalty up to ten
 13 thousand dollars and shall not be subject to the penalties provided for in R.S.
 14 22:1969.

* * *

§1967. Power of commissioner of insurance

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

§1968. Notice of hearing

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

* * *

1 §1971. Grant of civil immunity

2 * * *

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

5 * * *

6 §1973. Good faith duty; claims settlement practices; cause of action; penalties

7 * * *

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

11 * * *

12 §1981. Commissioner of insurance to examine insurers, ~~agents, and brokers~~ and
13 producers

14 A.

15 * * *

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

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

26 * * *

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

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

3 * * *

4 §1983. Examination reports

5 * * *

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

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

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

24 (2) Rejecting the examination report and ordering a hearing pursuant to the
25 provisions of Chapter 12 of this Title, ~~22 of the Louisiana Revised Statutes of 1950,~~
26 for purposes of obtaining additional documentation, data, information, and
27 testimony.

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

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

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

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

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

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

1 §1989. Scope of examination

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

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

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

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

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

20 * * *

21 §1992. Rating organizations, examining license bureau, advisory organization, joint
22 underwriters and joint reinsurance groups; examination of

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

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

3 * * *

4 §1994. Disclosure

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

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

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

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

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

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

5 * * *

6 §2001. Scope of Chapter

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

11 §2002. Persons covered

12 The proceedings authorized by this Chapter shall be applied to:

13 * * *

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

17 * * *

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

23 §2003. Definitions

24 For the purposes of this Chapter:

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

27 * * *

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

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

4 * * *

5 §2005. Grounds for rehabilitation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 §2006. Injunction

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

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

4 * * *

5 §2008. Order of rehabilitation or liquidation

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

16 * * *

17 §2009. Duties of commissioner of insurance as rehabilitator; termination

18 * * *

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

21 * * *

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

24 * * *

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

28 * * *

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

4 * * *

5 §2019. Exemption from filing fees

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

12 §2020. Prohibited and voidable transfer and liens

13 * * *

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

24 * * *

25 §2021. Fraudulent transfers prior to petition

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

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

11 * * *

12 §2023. Voidable preferences and liens

13 * * *

14 C.

15 * * *

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

27 * * *

1 §2025. Priority of claims

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

4 * * *

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

15 * * *

16 §2026. Set-offs

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

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

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

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

1 §2027. Time to file claims

2 * * *

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

6 §2028. Proof and allowance of claims

7 * * *

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

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

27 D.

28 * * *

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

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

4 * * *

5 §2029. Report for assessment

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

10 (1) The reasonable value of the assets of the insurer;;

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

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

14 * * *

15 §2032. Publication and transmittal of assessment order

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

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

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

23 §2033. Judgment upon the assessment

24 * * *

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

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

3 * * *

4 §2034. Distribution of assets; priorities; unpaid dividends

5 * * *

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

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

26 §2035. Grounds for conservation of assets of an authorized foreign or alien insurer
27 or an unauthorized insurer writing business on a surplus line basis

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

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

12 * * *

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

21 §2036. Provisions for conservation of assets of domestic company

22 * * *

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

25 * * *

26 §2038. Uniform Insurers Liquidation Law

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

29 * * *

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

3 * * *

4 §2044. Uniformity of interpretation

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

8 * * *

9 §2055. Definitions

10 As used in this Part:

11 * * *

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

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

18 * * *

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

23 * * *

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

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

29 * * *

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

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

4 * * *

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

10 * * *

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

17 * * *

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

24 §2056. Creation of the association

25 * * *

26 C.

27 * * *

28 (2) The association may hold an executive session pursuant to R.S. 42:16 for
29 discussion of one or more of the following, and R.S. 44:1 through 41 shall not apply

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

3 * * *

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

9 * * *

10 §2058. Powers and duties of the association

11 A. The association shall:

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

15 (i) Expiration of thirty days after the date of such determination of
16 insolvency; ;

17 (ii) Expiration of the policy; ~~or~~ ;

18 * * *

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

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

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

26 * * *

27 (3)(a)

28 * * *

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

1 in Item (3)(b)(ii) of this Subsection, against the assessment levied by R.S. 22:1476,
 2 ~~provided that~~ if such offset shall not be applied against any portion of the
 3 assessments to be deposited to the credit of the Municipal Police Employees'
 4 Retirement System, the Sheriffs' Pension and Relief Fund, and the Firefighters'
 5 Retirement System. To qualify for this offset, the payer shall file a sworn statement
 6 with the annual report required by ~~Parts I, III, and IV of Chapter 3 of this Title~~ R.S.
 7 22:791 et seq., 821 et seq., and 831 et seq., showing as of December thirty-first of
 8 the reporting period that at least the following amounts of the total admitted assets
 9 of the payer, less assets in an amount equal to the reserves on its policies issued in
 10 foreign countries in which it is authorized to do business and which countries require
 11 an investment therein as a condition of doing business, are invested and maintained
 12 in qualifying Louisiana investments as defined in R.S. 22:832(C). If one-sixth of the
 13 total admitted assets of the payer are in qualifying Louisiana investments, then the
 14 offset shall be sixty-six and two-thirds percent of the amount otherwise assessed; if
 15 at least one-fifth of the total admitted assets of the payer are in qualifying Louisiana
 16 investments, then the offset shall be seventy-five percent of the amount otherwise
 17 assessed; if at least one-fourth of the total admitted assets of the payer are in
 18 qualifying Louisiana investments, the offset shall be eighty-five percent of the
 19 amount otherwise assessed; and if at least one-third of the total admitted assets of the
 20 payer are in qualifying Louisiana investments, then the offset shall be ninety-five
 21 percent of the amount otherwise assessed. If the total of the net premium tax liability
 22 and the assessment for the expenses of the Department of Insurance paid for the
 23 previous year was less than the offset allowed under Item (3)(b)(ii) of this Subsection
 24 for the previous year, the member company may reduce its assessment payment to
 25 the Louisiana Insurance Guaranty Association for the current year by that difference.

* * *

§2059. Plan of operation

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

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

* * *

C. The plan of operation shall:

* * *

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

* * *

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

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

8 §2060. Duties and powers of the commissioner

9 A. The commissioner shall:

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

15 * * *

16 §2061.1. Net worth exclusion

17 A. For purposes of this Part, "high net worth insured" shall mean any
 18 policyholder or named insured, other than any state or local governmental agency or
 19 subdivision thereof, whose net worth exceeds twenty-five million dollars on
 20 December thirty-first of the year prior to the year in which the insurer becomes an
 21 insolvent insurer; ~~provided that~~ if an insured's net worth on that date shall be deemed
 22 to include the aggregate net worth of the insured and all of its subsidiaries and
 23 affiliates as calculated on a consolidated basis. The consolidated net worth of the
 24 insured and all of its affiliates shall be calculated on the basis of their fair market
 25 values. The members of a group self-insurance fund formed ~~under Subpart J of Part~~
 26 ~~1 of Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950~~ pursuant to
 27 R.S. 23:1191 et seq. shall not be deemed to be affiliates of the fund, and shall not be
 28 included in the determination of the net worth of the fund. For the purposes of this
 29 Section, a group self-insurance fund, and each individual member of the fund upon

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

3 * * *

4 §2083. Coverages and limitations

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

7 * * *

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

10 (a) ~~Is a~~ A resident; ~~or,~~

11 * * *

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

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

16 * * *

17 §2084. Definitions

18 As used in this Part:

19 * * *

20 (6) "Impaired insurer" means a member insurer which, after September 30,
21 1991, is not an insolvent insurer, and meets at least one of the following criteria:

22 (a) Is deemed by the commissioner to be potentially unable to fulfill its
23 contractual obligations; ~~;~~

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

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

30 * * *

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

3 * * *

4 (2) The association shall be subject to the requirements of ~~R.S.~~
5 ~~22:2087(B)(1)~~ Paragraph (1) of this Subsection only if:

6 * * *

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

9 * * *

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

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

15 * * *

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

25 (4)(a) In providing the substitute coverage required under ~~R.S.~~
26 ~~22:1395.7(D)(3)~~, Paragraph (3) of this Subsection, the association may offer either
27 to reissue the terminated coverage or to issue an alternative policy.

28 * * *

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

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

3 * * *

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

6 * * *

7 J. If the association fails to act within a reasonable period as provided in ~~R.S.~~
8 ~~22:2087~~ Subsections B and C; of this Section, the commissioner shall have the
9 powers and duties of the association under this Part with respect to impaired or
10 insolvent insurers.

11 * * *

12 M.

13 * * *

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

19 * * *

20 §2088. Assessments

21 * * *

22 D. The association may abate or defer, in whole or in part, the assessment
23 of an insurer if, in the opinion of the board, payment of the assessment would
24 endanger the ability of the insurer to fulfill its contractual obligations. In the event
25 an assessment against an insurer is abated, or deferred in whole or in part, the
26 amount by which such assessment is abated or deferred may be assessed against the
27 other insurers in a manner consistent with the basis for assessments set forth in ~~R.S.~~
28 ~~22:2088~~ this Section. Once the conditions that caused a deferral have been removed

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

3 * * *

4 §2089. Plan of operation

5 A.

6 * * *

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

14 * * *

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

17 * * *

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

21 * * *

22 §2091. Prevention of insolvencies

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

25 * * *

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

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

3 * * *

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

15 * * *

16 §2092. Offsets for assessments paid

17 * * *

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

23 * * *

24 §2093. Miscellaneous provisions

25 * * *

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

1 rehabilitation subject to the limitations of ~~R.S. 22:2093(E)~~ Paragraphs (2) and (4):
2 of this Subsection.

3 * * *

4 §2098. Prohibited advertisement of Insurance Guaranty Association Act in
5 insurance sales; notice to policyholders

6 * * *

7 B. Within one hundred eighty days of September 30, 1991, the association
8 shall prepare a summary document describing the general purposes and current
9 limitations of the Part and complying with R.S. 22:2092(C). This document shall be
10 submitted to the commissioner for approval. Sixty days after receiving such
11 approval, no insurer may deliver a policy or contract described in R.S. 22:2083(B)(1)
12 to a policy or contract holder unless the document is delivered to the policy or
13 contract holder prior to or at the time of delivery of the policy or contract except if
14 ~~R.S. 22:2098(D)~~ Subsection D of this Section applies. The document shall also be
15 available upon request by a policyholder. The distribution, delivery, or contents or
16 interpretation of this document shall not mean that either the policy or the contract
17 or the holder thereof would be covered in the event of the impairment or insolvency
18 of a member insurer. The description document shall be revised by the association
19 as amendments to this Part may require. Failure to receive this document shall not
20 give the policyholder, contract holder, certificate holder, or insured any greater rights
21 than those stated in this Part.

22 C. The document prepared pursuant to ~~R.S. 22:2098(B)~~ Subsection B of this
23 Section shall contain a clear and conspicuous disclaimer on its face. The
24 commissioner shall promulgate a rule establishing the form and content of the
25 disclaimer. The disclaimer shall:

26 * * *

27 §2112. Formation of fire insurance patrol associations

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

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

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

6 §2113. Officers; management

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

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

13 §2114. Certificate of approval

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

21 * * *

22 §2118. Annual statements by fire ~~insurers;~~ insurers; assessments for expenses of
23 associations

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

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

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

14 §2119. Delinquent members of associations; demand for statements and collection
 15 of assessments by commissioner of insurance

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

25 * * *

26 §2132. Authority; creation, powers

27 * * *

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

1 §2147. Plan of operation

2 A.

3 * * *

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

11 * * *

12 §2161. Louisiana Health Care Commission; creation

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

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

9 * * *

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

11 * * *

12 §2171. Louisiana Property and Casualty Insurance Commission

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

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

23 C. The commission shall consist of the following members:

24 * * *

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

28 * * *

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

3 * * *

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

8 * * *

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

11 * * *

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

14 * * *

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

17 * * *

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

20 * * *

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

23 * * *

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

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

28 * * *

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

3 * * *

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

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

9 * * *

10 §2181. Establishment of the Louisiana State University Health Sciences Center
11 Health Maintenance Organization

12 * * *

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

28 * * *

1 §2191. Hearings

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

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

6 * * *

7 §2205. Appeal

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

11 §2206. Use of injunctive process

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

19 * * *

20 §2208. Administrative hearings

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

24 * * *

25 §2221. Pilot programs; Department of Insurance; establishment

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

1 §2243. Small employer and individual insurance program criteria

2 Any small employer or individual insurance program developed shall include

3 but not be limited to the following features:

4 * * *

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

11 * * *

12 §2244. Blanket insurance program; criteria by Department of Health and Hospitals;
13 exemptions

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

16 * * *

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

24 * * *

25 §2261. Central database for contact information on life insurance policies

26 * * *

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

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

3 * * *

4 §2291. Louisiana Citizens Property Insurance Corporation; declaration and purpose;
5 construction

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

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

7 §2292. Definitions

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

9 * * *

10 §2293. Creation of the Louisiana Citizens Property Insurance Corporation

11 * * *

12 D.

13 * * *

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

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

20 * * *

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

26 * * *

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

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

6 §2294. Board of directors of corporation

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

10 * * *

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

17 * * *

18 §2296. Immunity from liability

19 * * *

20 B. Such immunity from liability does not apply to:

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

23 * * *

24 §2297. Powers and duties of Louisiana Citizens Property Insurance Corporation

25 * * *

26 D. The corporation shall:

27 * * *

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

30 * * *

1 §2302. Eligibility; application

2 * * *

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

12 * * *

13 §2307. Plan deficits; financing

14 * * *

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

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

* * *

§2308. Louisiana Citizens Property Insurance Corporation not taxable

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

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

6 * * *

7 §2313. ~~Agents; Producers;~~ authority to bind coverage

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

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

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

23 §2314. Policy take-out program

24 * * *

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

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

3 * * *

4 §2363. Cooperative endeavors; grants; regulations

5 * * *

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

13 §2364. Implementation; grant limitations

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

17 * * *

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

24 * * *

25 §2369. Net written premium requirements

26 * * *

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

1 shall include provisions for the return of grant money to the state, on a pro rata basis,
 2 for failure to meet the requirements of this Section. Notwithstanding the provisions
 3 of R.S. 22:2370 to the contrary, the commissioner shall seek the return of unearned
 4 grant money from any insurer who has not been in compliance with this Section for
 5 five consecutive years commencing on January 1, 2009, and ending on December 31,
 6 2013.

* * *

8 Section 2. R.S. 22:1824(C), 2028(D)(3), 2161(A)(7), (12), (34), and (37),
 9 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: _____