**LOUISIANA**

**INSURANCE GUARANTY ASSOCIATION LAW**

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**§ 2051. Title**

This Part shall be known and may be cited as the Louisiana Insurance Guaranty Association Law. Added by Acts 1970, No. 81, § 1; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw); Acts 2010 No. 959 §1, eff. July 6, 2010.

**§ 2052. Purpose**

The purpose of this Part is to provide for the payment of covered claims under certain insurance policies with a minimum delay and a minimum financial loss to claimants or policyholders due to the insolvency of an insurer, to provide financial assistance to member insurers under rehabilitation or liquidation, and to provide an association to assess the cost of such operations among insurers. Added by Acts 1970, No. 81, § 1; Amended by Acts 1992, No. 517, § 1, eff. June 25, 1992; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw) Act 2010, No. 959, §1, eff. July 6, 2010.

**§ 2053. Scope; policy coverage determination**

1. This Part shall apply to all kinds of direct insurance, except:
2. Life, annuity, health and accident or disability insurance.
3. Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks.
4. Fidelity or surety bonds, bail bond contracts, or any other bonding obligations.
5. Credit insurance, vendor's single interest insurance or collateral protection insurance or any similar insurance which protects the interests of a creditor arising out of a creditor-debtor transaction.
6. Insurance of warranties or service contracts including vehicle mechanical breakdown insurance or other insurance that provides for the repair, replacement or service for the operational or structural failure of the goods or property due to a defect in materials, workmanship or normal wear and tear, or provides for the liability incurred by the issuer of agreements or service contracts that provide such benefits.
7. Title insurance.
8. Ocean marine insurance.
9. Any transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk.
10. Any insurance provided by or guaranteed by government.
11. Property residual value insurance.
12. The kind and coverage of insurance afforded by any policy shall be determined solely by the coverage specified and established in the provisions of that policy regardless of any name, label, or marketing designation for the policy. Added by Acts 1970, No. 81, § 1; amended by Acts 1989, No. 618, § 1; Acts 1989, No. 620, § 1; Acts 1990, No. 101, § 1; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw); [Acts 2009, No. 326, § 1, eff. Jan. 1, 2010](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28IA908AF806B-CD11DE9B38D-78C56E01319%29&tc=-1&pbc=595170FE&ordoc=20071691&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw). Act No. 959, eff. July 6, 2010.

**§ 2054. Construction**

This Part shall be construed to effect its purpose under R.S. 22:2052, which shall constitute an aid and guide to interpretation. Added by Acts 1970, No. 81, § 1; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw). Acts 2010, No. 959, §1 eff. July 6, 2010.

**§ 2055. Definitions**

As used in this Part:

1. “Affiliate” means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person
2. "Association" means the Louisiana Insurance Guaranty Association created under R.S. 22:2056.
3. “Association similar to the association” means any guaranty association, security fund, or other insolvency mechanism that affords protection similar to that of the association. The term shall also include any property and casualty insolvency mechanism that obtains assessments or other contributions from insurers on a pre-insolvency basis
4. "Commissioner" means the commissioner of insurance of this state.
5. “Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.
6. "Covered claim" means the following:
	* + - 1. An unpaid claim, including one for unearned premiums that arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Part applies issued by an insurer, if such insurer becomes an insolvent insurer after September 1, 1970, and the policy was issued by such insurer and any of the following:

The claimant or insured is a resident of this state at the time of the insured event, provided that, for entities, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event.

The claimant is a self-insurer, including an arrangement or trust formed under R.S. 23:1191 et seq., and is principally domiciled in this state at the time of the insured event,

The claim is a first party claim for damage to property with a permanent location in this state.

* + - * 1. "Covered claim" shall not include:

Any amount awarded as penalties, punitive or exemplary damages.

Any amount sought as a return of premium under any retrospective rating plan.

Any amount due any reinsurer, insurer, insurance pool or underwriting association, health maintenance organization or plan, preferred provider organization or plan, hospital plan corporation, professional health service corporation, employee retirement fund including but not limited to plans subject to the Employee Retirement Income Security Act of 1974, Medicare or Medicare Advantage, Medicaid, or the self-insured portion due any self-insurer as subrogation recoveries, reinsurance recoveries, contribution, indemnification or otherwise. In addition, any person insured under a policy issued by an insolvent insurer shall likewise not be liable for any subrogation claim or any contractual indemnity claim asserted by any reinsurer, insurer, insurance pool, underwriting association, health maintenance organization or plan, hospital plan corporation, professional health service corporation, preferred provider organization or plan, employee retirement fund including but not limited to plans subject to the Employee Retirement Income Security Act of 1974, Medicare or Medicare Advantage, Medicaid, self-insurer, or any other person with an interest in the claim, other than to the extent the claim exceeds the association’s obligation limitations.

Any claims excluded due to the high net worth of an insured as defined in this Part.

Any first party claims by an insured that is an affiliate of the insolvent insurer.

Any fee or other amount relating to goods or services sought by or on behalf of any attorney or other provider of goods or services retained by the insolvent insurer or an insured prior to the date it was determined to be insolvent.

Any fee or other amount sought by or on behalf of any attorney or other provider of goods or services retained by any insured or claimant in connection with the assertion or prosecution of any claim, covered or otherwise, against the association.

Any claim for interest.

Any claim filed with the association or a liquidator for protection afforded under the insured’s policy for incurred-but-not-reported losses.

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

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

Any claim by any agency or program of the federal government or of any state or political subdivision thereof.

1. "Insolvent insurer" means an insurer who meets both of the following criteria:
	* + - 1. Is licensed and authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred.
				2. Against whom an order of liquidation with a finding of insolvency has been entered by a final judgment of a court of competent jurisdiction in the insurer's state of domicile or of this state, and which order of liquidation has not been stayed or been the subject of a perfected suspensive appeal or other comparable order.

(8) “Insurance policy” means an insurance contract as defined in [R.S. 22:864](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a864&originatingDoc=ND3EB9680700C11E7B87BCD742DF415CE&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)), and shall not include an agreement in which an insurer agrees to assume and carry out directly with the policyholder any of the policy obligations of another insurer, such as cut-through endorsements, reinsurance endorsements, facultative reinsurance agreements, treaty reinsurance agreements, and other such agreements, when either insurer is an affiliate of the other.

1. “Insured” means any named insured, any additional insured, any vendor, lessor, or any other party identified as an insured under the policy.
2. (a) "Member insurer" means any person who meets both of the following criteria:

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

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

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

1. "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this Part applies, including policy and membership fees, less return premiums thereon, premiums on policies not taken, and dividends paid or credited to policyholders on such direct business. “Net direct written premiums” does not include premiums on contracts between insurers or reinsurers. Notwithstanding any law to the contrary, no assuming reinsurer shall be required to pay or otherwise contribute to any fund or assessment of the association except for any insurance that the reinsurer directly writes in the state.
2. “Ocean marine insurance” shall have the same meaning as that term is defined in [R.S. 22:46](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS22%3a46&originatingDoc=ND3EB9680700C11E7B87BCD742DF415CE&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).
3. "Person" means any natural or juridical person, company, insurer, association, organization, reciprocal or inter-insurance exchange, partnership, business, trust, corporation, or other entity, including governmental entities.
4. “Receiver” means liquidator, rehabilitator, conservator or ancillary receiver, as the context requires.
5. “Self-insurer” means a person that covers its liabilities through a qualified individual or group self-insurance program created for the specific purpose of covering liabilities typically covered by insurance. A group self-insurance fund formed under R.s. 23:1191 et seq. shall not be deemed to be an insurer with respect to this Chapter. Added by Acts 1970, No. 81, § 1; 1980, No. 486, § 1; Amended by Acts 1987, No. 172, § 1, eff. June 19, 1987; Acts 1989, No. 620, § 1; Acts 1989, No. 688, § 1; Acts 1990, No. 105, § 1; Acts 1990, No. 129, § 1; 1990, No. 254, § 1; 1992, No. 835, § 1; Acts 1997, No. 1340, § 1; Acts 1999, No. 475, § 1; Acts 1999, No. 476 § 1; Acts 1999, No. 477, § 1, eff. June 18, 1999; Acts 2004 No. 109, § 1, eff. 8-15-2004; [Acts 2008, No. 109, § 1](http://web2.westlaw.com/find/default.wl?vc=0&ordoc=791521&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28I68AE0CD037%2D1911DD9B11F%2DA38F14B94A2%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW8.10&mt=WestlawGC&vr=2.0&sv=Split); [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw) Acts 2010, §1, No. 959, eff. July 6, 2010; [Acts 2012, No. 271, § 1](http://web2.westlaw.com/find/default.wl?mt=WestlawGC&db=1077005&rs=WLW13.10&docname=UUID(I2F9E7FE0AE-D111E1A5C1D-6154FEC68E1)&rp=%2ffind%2fdefault.wl&findtype=l&ordoc=20071693&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=20EF0BCD&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d);  [Acts 2017, No. 183, § 2](https://1.next.westlaw.com/Link/Document/FullText?findType=l&pubNum=1077005&cite=UUID(I72D7C8F046-C711E78F7CF-08930C27AA3)&originatingDoc=ND3EB9680700C11E7B87BCD742DF415CE&refType=SL&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)).

**§ 2056. Creation of the association**

1. There is created a private nonprofit unincorporated legal entity to be known as the "Louisiana Insurance Guaranty Association". All member insurers defined in R.S. 22:2055 shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under R.S. 22:2059 and shall exercise its powers through a board of directors established under R.S. 22:2057.
2. The association is not and may not be deemed a department, unit, agency, or instrumentality of the state for any purpose, and shall not be subject to laws governing such departments, units, agencies, instrumentalities, commissions or boards of the state. All debts, claims, obligations, and liabilities of the association, whenever incurred, shall be the debts, claims, obligations, and liabilities of the association only and not of the state, its agencies, instrumentalities, officers, or employees. Association monies may not be considered part of the general fund of the state. The state may not budget for or provide general fund appropriations to the association, and the debts, claims, obligations, and liabilities of the association may not be considered to be a debt of the state or a pledge of its credit.
3. (1)Notwithstanding the provisions of Subsections A and B of this Section, and except as provided by Paragraph (2) of this Subsection, the association shall be subject to R.S. 42: 1et seq. and to R.S. 44:1 through 41, and may be considered as if it were a public body for the purpose of those provisions.

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

1. Information on any matter relevant to the solvency, liquidation, rehabilitation, or conservation of any member insurer, until such insolvency has been declared or the member insurer has been placed in liquidation, rehabilitation, or conservation.
2. Matters protected by attorney-client privilege.
3. Matters with respect to claims or claim files, except documents contained in those files which are otherwise deemed public records.
4. Prospective litigation against the association after formal written demand, prospective litigation by the association after referral to counsel for review, or pending litigation by or against the association.
5. Any other matters now provided for or as may be provided for by the legislature.
6. Discussion by or documents in the custody or control of any committee or subcommittee of the association, or any member or agent thereof, or the board of directors or any member or agent thereof, if such discussion or documents would otherwise be protected from disclosure by any of the exceptions provided in this Paragraph. Added by Acts 1970, No. 81, § 1; Amended by Acts 1990, No. 968, § 1, eff. July 25, 1990; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw); Acts 2010, No. 959 §1, eff. July 6, 2010; [Acts 2012, No. 271, § 1](http://web2.westlaw.com/find/default.wl?mt=WestlawGC&db=1077005&rs=WLW13.10&docname=UUID(I2F9E7FE0AE-D111E1A5C1D-6154FEC68E1)&rp=%2ffind%2fdefault.wl&findtype=l&ordoc=20071693&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=20EF0BCD&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d).

**§ 2057. Board of directors**

1. The board of directors of the association shall consist of nine persons serving terms as established in the plan of operation. The board shall be composed of two consumer representatives appointed by the commissioner, one person appointed by the president of the Senate, one person appointed by the speaker of the House of Representatives, all of whom shall be residents of the state of Louisiana, and five additional persons selected by member insurers, one of which shall be a representative selected by the membership of the Louisiana Association of Fire and Casualty Companies (LAFAC), subject to the approval of the commissioner. Vacancies in the positions for which persons are selected by member insurers shall be filled until the next regularly scheduled election for a member of the board by a majority vote of the remaining members, subject to the approval of the commissioner. At the next regularly scheduled election for a member of the board, the member insurers shall select a member to serve the remainder of the unexpired term of any member appointed by the board, subject to the approval of the commissioner. No person shall serve as a member after his replacement has been either appointed or selected by member insurers and approved by the commissioner. The commissioner shall transmit to the board his approval or disapproval of new board members within thirty days after he has been notified of their selection, and he shall accompany any disapproval of a board member with his written reasons for such disapproval. One of the two consumer representatives may not be an officer, director or employee of an insurance company or any person engaged in the business of insurance.
2. In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.
3. Members of the board may be reimbursed from the assets of the association for reasonable expenses incurred by them as members of the board of directors.
4. Any member of the board whose relationship to an insurer in receivership presents a conflict of interest shall be terminated as a board member by the commissioner and the seat declared vacant as of the date of the entry of the order of receivership.
5. If the commissioner has reasonable cause to believe that a board member failed to disclose a known conflict of interest with his duties on the board, failed to take appropriate action based on a known conflict of interest with his duties on the board, or has been indicted or charged with a felony, or misdemeanor involving moral turpitude, the commissioner may suspend that board member pending the outcome of an investigation or hearing by the commissioner or the conclusion of any criminal proceedings. In the event that the allegations are substantiated at the conclusion of an investigation, hearing or criminal proceeding, the seat shall be declared vacant. Added by Acts 1970, No. 81, § 1; Amended by Acts 1989, No. 619, § 1; Acts 1990, No. 129, § 1; Acts 1993, No. 397, § 1; Acts 1997, No. 468, § 1, eff 6-26-97; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw); Acts 2010, No. 959, §1, eff. July 6, 2010.

**§ 2058. Powers and duties of the association**

A. The association shall:

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

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

(ii) Expiration of the policy.

(iii) Replacement or cancellation of the policy at the instance of the insured if the insured does so within thirty days of such determination.

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

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

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

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

(c)(i) In no event be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises. Notwithstanding any other provision of this Part, a “covered claim” shall not include a claim filed with the association after the earlier of five years after the date of the order of liquidation of the insolvent insurer or the final date set by the domiciliary court for the filing of claims against the liquidator or receiver of an insolvent insurer.

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

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

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

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

(2) To the extent of its obligation on the covered claims ,have all rights, duties and obligations of the insolvent insurer as if the insurer had not become insolvent, including but not limited to, the right to pursue and retain salvage and subrogation recoverable on covered claim obligations to the extent paid by the association. The association shall not be deemed the insolvent insurer for the purpose of conferring jurisdiction.

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

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

(iii) The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance.

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

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

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

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

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

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

(iii) To the extent amounts have been written off under Item (ii) of this Subparagraph, the provisions of R.S. 22:2066 shall not apply.

(c) Not subject the premium dollars paid to an insurer by any “high net worth insured” as defined in this Part to the assessment provided for in this Section for the next calendar year. Any insurer deducting the premium dollars from its assessment shall provide a net worth affidavit to the association from each insured whose premium dollars are being deducted together with a statement of the amount of premium dollars paid by such insured in accordance with procedures established by the association.

(4) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims. The association may pay claims in any order that it may deem reasonable, including the payment of claims as they are received from the claimants or in groups or categories of claims. The association shall have the right to appoint and to direct legal counsel retained under liability insurance policies for the defense of covered claims.

(5) Notify claimants, insureds and other interested parties of the determination of insolvency and of their rights under this Part as deemed necessary by the commissioner and upon the commissioner’s request, to the extent records are available to the association. The association may discharge this duty by notice mailed to the last known address or notice by publication in a newspaper of general circulation when a mailing address is unavailable or insufficient.

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

(i) The association is not bound by an unsatisfied settlement, release, compromise or waiver executed by an insured or the insurer, or any unsatisfied judgment entered against an insured or the insurer by consent or through a failure to exhaust all appeals, if the settlement, release, compromise, waiver or judgment was executed or entered within one hundred twenty days prior to the entry of an order of liquidation, and the insured or the insurer did not use reasonable care in entering into the settlement, release, compromise, waiver or judgment, or did not pursue all reasonable appeals of an adverse judgment; or executed by or taken against an insured or the insurer based on default, fraud, ill practice, collusion, the insurer’s failure to defend, or the clearly excessive amount of any settlement, release, compromise, waiver or judgment considering all relevant issues including but not limited to coverage, liability, and quantum.

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

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

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

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

(8) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this Part.

(9) Implement a system of alternative dispute resolution of lawsuits and claims.

(10) Coordinate and work in conjunction with the commissioner of insurance, or his designee charged with oversight and implementation of the provisions of this Part.

B. The association may:

(1) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(2) Borrow funds necessary to effect the purposes of this Part. In connection therewith the association may agree to such terms and conditions as it deems necessary and proper, and the association may assign to the state or any agency or authority thereof, or to any private entity, the right to the receipt of assessments to the extent necessary to provide for the payment of bonds issued by the state or such agency or authority, or such private agency, for the purpose of providing for the repayment of such borrowings.

(3) Sue or be sued. The power to sue includes the power and right to intervene as a party before any court in this state that has jurisdiction over an insolvent insurer.

(4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this Part.

(5) Perform such other acts as are necessary or proper to effectuate the purpose of this Part.

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

 (b) With respect to state fiscal year 2014-2015, the association is hereby authorized to make a one-time transfer to the state general fund of the amount of such excess as determined by the board of directors. This one-time authorization is not intended to create any right or interest of the state in and to the association’s funds, and the legislature hereby affirms its intent that association monies may not be considered part of the general fund of the state other than monies subject to the one-time transfer hereby authorized.

(7) Submit with the commissioner to the court having jurisdiction over an impaired or insolvent insurer a joint written plan of full or partial rehabilitation or liquidation that satisfies the court that such plan is the most cost-effective method of addressing the member insurer's impairment or insolvency is in the best interest of the member insurer's policyholders and claimants and is in the best interests of the association, and may, upon approval of the court:

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

(b) Lend money to such member insurer.

C. Suits involving the association:

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

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

(3) Any person, and any attorney who represents a person, who files a petition against the association alleging as a basis for the claim the insolvency of an insurer, where said insurer is not an insolvent insurer within the meaning of this Part, shall pay the reasonable expenses incurred because of the filing of the petition, including a reasonable attorney fee, subject to the following conditions:

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

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

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

(2) This Section shall not apply to R.S. 24:38(C) and 654. Added by Acts 1970, No. 81, § 1. Amended by Acts 1975, No. 234, § 1; Acts 1985, No. 780, § 1, eff. Sept. 1, 1985; [Acts 1987, No. 172, § 1, eff. June 19, 1987](https://web2.westlaw.com/find/default.wl?vc=0&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28I4B096D4C97%2DED44EB808F2%2D70A62A207B4%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW7.11&mt=WestlawGC&vr=2.0&sv=Split); [Acts 1989, No. 685, § 1](https://web2.westlaw.com/find/default.wl?vc=0&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28I55F044944C%2D9E4C3E8A9BA%2D50D03564DDA%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW7.11&mt=WestlawGC&vr=2.0&sv=Split); [Acts 1990, No. 1, § 1, eff. May 1, 1990](https://web2.westlaw.com/find/default.wl?vc=0&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28ID26F83189E%2DC64141A4B96%2DA53289BCB77%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW7.11&mt=WestlawGC&vr=2.0&sv=Split); [Acts 1990, No. 253, § 1](https://web2.westlaw.com/find/default.wl?vc=0&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28I0054F79579%2D19427DB9C56%2D0B6689A13E0%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW7.11&mt=WestlawGC&vr=2.0&sv=Split); [Acts 1991, No. 941, § 1, eff. July 24, 1991](https://web2.westlaw.com/find/default.wl?vc=0&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28I55C6F17CEC%2D6745F6B35F1%2DC2F66F9940E%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW7.11&mt=WestlawGC&vr=2.0&sv=Split); [Acts 1992, No. 237, § 1, eff. June 10, 1992](https://web2.westlaw.com/find/default.wl?vc=0&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28IF5750341D2%2D9B4A1699A44%2D2D5B49F0001%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW7.11&mt=WestlawGC&vr=2.0&sv=Split); [Acts 1992, No. 500, § 1](https://web2.westlaw.com/find/default.wl?vc=0&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28IF7B660B481%2D6C418AA2EA9%2D6B8F2A52457%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW7.11&mt=WestlawGC&vr=2.0&sv=Split); [Acts 1992, No. 517, § 1, eff. June 25, 1992](https://web2.westlaw.com/find/default.wl?vc=0&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28I0200475CAD%2D60405C88432%2DE774291E354%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW7.11&mt=WestlawGC&vr=2.0&sv=Split); [Acts 1993, No. 397, § 2, eff. June 2, 1993](https://web2.westlaw.com/find/default.wl?vc=0&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28I15B65101DE%2D7E4F88A4971%2D4C4111FD66B%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW7.11&mt=WestlawGC&vr=2.0&sv=Split); [Acts 1993, No. 955, § 1](https://web2.westlaw.com/find/default.wl?vc=0&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28IBABCBE7E14%2DCB438794931%2D3304947CDB2%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW7.11&mt=WestlawGC&vr=2.0&sv=Split); [Acts 1999, No. 77, § 1, eff. June 9, 1999](https://web2.westlaw.com/find/default.wl?vc=0&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28IA543E6A5E8%2DD745BA94854%2DAD7087BFB31%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW7.11&mt=WestlawGC&vr=2.0&sv=Split); [Acts 1999, No. 475, § 1, eff. June 18, 1999](https://web2.westlaw.com/find/default.wl?vc=0&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28I74C54AE7EF%2D0341BEB6DCF%2D527D59FC928%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW7.11&mt=WestlawGC&vr=2.0&sv=Split); [Acts 1999, No. 1327, § 1](https://web2.westlaw.com/find/default.wl?vc=0&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28I462238F8EF%2D204775BB8D2%2DA9BE930D3F0%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW7.11&mt=WestlawGC&vr=2.0&sv=Split); [Acts 2004, No. 109, § 1](https://web2.westlaw.com/find/default.wl?vc=0&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28I40AE5640B3%2DFB11D8A74D8%2D7B95E93B7F0%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW7.11&mt=WestlawGC&vr=2.0&sv=Split); [Acts 2007, No. 459, § 1, eff. Jan. 1, 2008](https://web2.westlaw.com/find/default.wl?vc=0&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28I71752D1034%2D8D11DC86A49%2DA062CC35207%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW7.11&mt=WestlawGC&vr=2.0&sv=Split); [Acts 2008, No. 687, § 1](http://web2.westlaw.com/find/default.wl?vc=0&ordoc=791544&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28I021540F04D%2D2C11DDA8B1D%2D62D96992BCE%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW8.10&mt=WestlawGC&vr=2.0&sv=Split); §1382 A (1) (a) (iii) applies prospectively only and to covered claims which arise out of a liquidation proceeding which is commenced on or after August 15, 2008; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw) Acts 2010, No. 959, §1, eff. July 6, 2010; [Acts 2012, No. 271, § 1](http://web2.westlaw.com/find/default.wl?mt=WestlawGC&db=1077005&rs=WLW13.10&docname=UUID(I2F9E7FE0AE-D111E1A5C1D-6154FEC68E1)&rp=%2ffind%2fdefault.wl&findtype=l&ordoc=20071693&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=20EF0BCD&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d); [Acts 2015, No. 274, § 1, eff. June 29, 2015](https://1.next.westlaw.com/Link/Document/FullText?findType=l&pubNum=1077005&cite=UUID(I509B5E000D-1211E59CE3F-75BFB74D0D0)&originatingDoc=ND43DF940634611E5B976AA85E9B97932&refType=SL&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)).

**§ 2059. Plan of operation**

A(1) The association shall submit to the commissioner, the Senate Committee on Insurance, and the House Committee on Insurance a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner; however, prior to the implementation of any new plan or any amendment to such new plan or an existing plan of operation, the Senate Committee on Insurance and the House Committee on Insurance may hold a hearing on such new plan or any amendments to a new or existing plan of operation. After a hearing, if any, the respective legislative committees shall either approve or reject the plan or amendment as presented. No plan or amendment shall be implemented if it was rejected by a legislative committee. If a hearing is not held within thirty days after receipt of the plan or amendment by such committees, then the plan or amendment may be implemented as approved by the commissioner. Approval by the commissioner shall not be unreasonably withheld. If the plan of operation is disapproved in whole or in part, the commissioner shall provide written reasons as to each disapproved part, and the association shall resubmit the part of the plan which has been disapproved by the commissioner within thirty days thereafter. The preceding plan of operation shall remain in effect until such time as the revised plan is effective.

(2) If the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this Part. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner. All rules and regulations promulgated by the commissioner under the provisions of this Paragraph shall have no effect until they are reviewed and approved by the Senate Committee on Insurance and the House Committee on Insurance. If a hearing is not held by such committees within thirty days after receipt of the rules and regulations promulgated by the commissioner under the provisions of this Paragraph, then the rules and regulations may be implemented as promulgated by the commissioner.

B. All member insurers shall comply with the plan of operation.

C. The plan of operation shall:

(1) Establish procedures for performing the powers and duties of the association.

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

(3) Establish procedures for reimbursing the members of the board of directors for reasonable expenses.

(4) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims.

(5) Establish regular places and times for meetings of the board of directors.

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

(7) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty days after the action or decision.

(8) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

(9) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

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

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

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

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

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

D. The plan of operation may provide that any or all powers and duties of the association, except those under R.S. 22:2058(A)(3) and (B)(2) are delegated to a corporation, association or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this Subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association or organization which extends protection not substantially less favorably and effective than that provided by this Part. Added by Acts 1970, No. 81, § 1; Acts 1993, No. 397, § 2, eff. June 2, 1993; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw). Acts 2010, No. 959, §1, eff. July 6, 2010; [Acts 2012, No. 271, § 1](http://web2.westlaw.com/find/default.wl?mt=WestlawGC&db=1077005&rs=WLW13.10&docname=UUID(I2F9E7FE0AE-D111E1A5C1D-6154FEC68E1)&rp=%2ffind%2fdefault.wl&findtype=l&ordoc=20071693&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=20EF0BCD&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d).

**§ 2060. Duties and powers of the commissioner**

A. The commissioner shall:

(1) Notify the association of the existence of an insolvent insurer no later than three days after he receives notice of the determination of the insolvency. The association shall be entitled to a copy of a petition seeking an order of liquidation with a finding of insolvency against a member company at the same time that the petition is filed.

(2) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(3) Repealed by Acts 2010, No. 959, §1, eff. July 6, 2010.

B. The commissioner may:

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

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

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

C. An aggrieved party affected by the commissioner’s decision, act, or order may demand a hearing in accordance with Chapter 12 of this Title, R.S. 22:2191 et.seq. Added by Acts 1970, No. 81, § 1. Amended by Acts 1976, No. 219, § 1. Amended by Acts 1979, No. 474, § 1; [Acts 2008, No. 467, § 1](http://web2.westlaw.com/find/default.wl?vc=0&ordoc=791586&rp=%2ffind%2fdefault.wl&DB=1077005&DocName=UU%28I6338293046%2DDB11DD923CC%2D8345062523C%29&FindType=l&AP=&fn=_top&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW8.10&mt=WestlawGC&vr=2.0&sv=Split); [Acts 2008, ; [Acts 2009, No. 317, § 1](http://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW10.10&fn=_top&sv=Split&docname=UUID%28IA78B37406B-CD11DEBD79D-6894E9F3892%29&tc=-1&pbc=FE627BFE&ordoc=20071698&findtype=l&db=1077005&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&vr=2.0&rp=%2ffind%2fdefault.wl&mt=WestlawGC);No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw). Acts 2010, No. 959, §1, eff. July 6, 2010; [Acts 2012, No. 271, § 1](http://web2.westlaw.com/find/default.wl?mt=WestlawGC&db=1077005&rs=WLW13.10&docname=UUID(I2F9E7FE0AE-D111E1A5C1D-6154FEC68E1)&rp=%2ffind%2fdefault.wl&findtype=l&ordoc=20071693&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=20EF0BCD&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d).

**§ 2060.1. Coordination among guaranty associations**

1. The association may join one or more organizations of other state associations of similar purposes, to further the purposes and administer the powers and duties of the association. The association may designate one or more of these organizations to act as a liaison for the association and, to the extent the association authorizes, to bind the association in agreements or settlements with receivers of insolvent insurance companies or their designated representatives.
2. The association, in cooperation with other obligated or potentially obligated guaranty associations, or their designated representatives, shall make all reasonable efforts to coordinate and cooperate with receivers, or their designated representatives, in the most efficient and uniform manner, including the use of Uniform Data Standards as promulgated or approved by the National Association of Insurance Commissioners. Acts 2010, No. 959, § 1, eff. July 6, 2010.

**§ 2061. Effect of paid claims**

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

B. The receiver, liquidator or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this Part against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

C. The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

D. The association and any association similar to the association in another state shall be entitled to file a claim in the liquidation of an insolvent insurer for any amounts paid by them on covered claim obligations as determined under this Part or similar laws in other states and shall receive dividends and other distributions at the priority set forth in R. S. 22: 2025. Added by Acts 1970, No. 81, § 1; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw). Acts 2010, §1, No. 959, eff. July 6, 2010.

**§ 2061.1 Net worth exclusion**

A. For purposes of this Part, “high net worth insured” shall mean any policyholder or named insured, other than any state or local governmental agency or subdivision thereof, whose net worth exceeds twenty-five million dollars on December thirty-first of the year prior to the year in which the insurer becomes an insolvent insurer; if an insured’s net worth on that date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis. The consolidated net worth of the insured and all of its affiliates shall be calculated on the basis of their fair market values. The members of a group self-insurance fund formed pursuant to R.S. 23.1191 et seq. shall not be deemed to be affiliates of the fund, and shall not be included in the determination of the net worth of the fund. For the purposes of this Section, a group self-insurance fund, and each individual member of the fund upon whose behalf a claim is submitted, shall be deemed to be policyholders or named insureds of any policy of insurance issued to the fund.

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

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

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

D. The association shall establish reasonable procedures subject to the approval of the commissioner for requesting financial information from insureds on a confidential basis for purposes of applying this Section, provided that the financial information may be shared with any other association similar to the association and the liquidator for the insolvent insurer on the same confidential basis. Any request to an insured seeking financial information must advise the insured of the consequences of failing to provide the financial information. If an insured refuses to provide the requested financial information where it is requested and available, the association may, until such time as the information is provided, provisionally deem the insured to be a high net worth insured for the purpose of denying a claim under Subsection B of this Section

E. In any lawsuit contesting the applicability of this Section where the insured has refused to provide financial information under the procedure established pursuant to Subsection D of this Section, the insured shall bear the burden of proof concerning its net worth at the relevant time. If the insured fails to prove that its net worth at the relevant time was less than the applicable amount, the court shall award the association its full costs, expenses and reasonable attorney fees in contesting the claim. Acts 2010, No. 959,§1, eff. July 6, 2010; [Acts 2012, No. 271, § 1](http://web2.westlaw.com/find/default.wl?mt=WestlawGC&db=1077005&rs=WLW13.10&docname=UUID(I2F9E7FE0AE-D111E1A5C1D-6154FEC68E1)&rp=%2ffind%2fdefault.wl&findtype=l&ordoc=20071693&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=20EF0BCD&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d).

**§ 2062. Exhaustion of other coverage**

A.(1) Any person having a claim against an insurer, shall be required first to exhaust all coverage provided by any other policy, including the right to a defense under the other policy, if the claim under the other policy arises from the same facts, injury or loss that gave rise to the covered claim against the association. The requirement to exhaust shall apply without regard to whether or not the other insurance policy is a policy written by a member insurer. However, no person shall be required to exhaust any right under the policy of an insolvent insurer or any right under a life insurance policy or annuity.

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

* 1. The credit shall be deducted from the lesser of the following:
		1. The association’s covered claim limit.
		2. The amount of the judgment or settlement of the claim.
	2. In no case, however, shall the obligation of the association exceed the covered claim limit of this Part.
	3. The provisions of this Paragraph shall not apply to uninsured or underinsured motorist policies.

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

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

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

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

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

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

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

B. Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a worker's compensation claim, he shall seek recovery first from the association of the residence of the claimant. For purposes of this Section, the “residence of the insured” shall be the residence on the date of insolvency of the insurer or self-insurer, of the first named or primary insured or the state to which the insolvent insurer or self-insurer was or would have been liable for the payment of a surcharge or assessment on the subject insurance policy to an insurance guaranty association or its equivalent. A claimant alleging personal injury or death caused by exposure to asbestos fibers or other claim resulting from exposure to, release of, or contamination from any environmental pollutant or contaminant, asserted against the association must either be a domiciliary of the state of Louisiana at the time of the exposure or allege that his exposure to asbestos or other environmental hazard, which is a substantial contributing factor to the physical impairment upon which the claim is based, occurred in Louisiana. Where more than one claimant is joined, each claimant must independently establish that Louisiana is either his domicile or place in which the alleged exposure occurred.

C. Any recovery under this Part by any claimant not a resident of the state of Louisiana at the time such claim arose, shall not exceed the lesser of the recovery allowed under this Part or that payable by the insurance guaranty association or its equivalent in the claimant's state of residence. As to the association, any amount payable by the other guaranty association or its equivalent shall act as a credit against the damages of the claimant, and the association shall not be liable for that portion of the damages of the claimant.

D. The association shall have no duty to provide a separate defense at its cost to an insured of an insolvent insurer as to any issue arising out of the coverage of this Section. Added by Acts 1970, No. 81, § 1; 1983, 1st Ex. Sess., No. 1, § 6; Amended by Acts 1990, No. 130, § 1; Acts 1992, No. 237, § 2, eff. June 10, 1992; Amended by Acts 1999, No. 477, § 1, eff. June 18, 1999; 2004 Act. No. 108, § 1, eff. August 15, 2004; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw) Acts 2010, No. 59, §1, eff. July 6, 2010; [Acts 2012, No. 271, § 1](http://web2.westlaw.com/find/default.wl?mt=WestlawGC&db=1077005&rs=WLW13.10&docname=UUID(I2F9E7FE0AE-D111E1A5C1D-6154FEC68E1)&rp=%2ffind%2fdefault.wl&findtype=l&ordoc=20071693&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=20EF0BCD&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d);  [Acts 2017, No. 166, § 1](https://1.next.westlaw.com/Link/Document/FullText?findType=l&pubNum=1077005&cite=UUID(I99EA6EB047-9011E7862C9-0C9D71F4ABF)&originatingDoc=N8361D130700611E799A4C440C6302D98&refType=SL&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)).

**Note.**—Pursuant to Acts 1992, No. 237, § 3:

“This Act shall apply to all covered claims, as defined in R.S. 22-1386, pending on or arising on or after the effective date of this Act.” The effective date of this act is June 19, 1992.

**§ 2063. Prevention of insolvencies**

To aid in the detection and prevention of insurer insolvencies:

(1) The board of directors may, upon majority vote, make recommendations to the commissioner on matters generally related to improving or enhancing regulation for solvency.

(2) At the conclusion of any domestic insurer insolvency in which the association was obligated to pay covered claims, the board of directors may, upon majority vote, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner. Added by Acts 1970, No. 81, § 1; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw); Acts 2010, No. 959, **§** 1, eff. July 6, 2010.

**§ 2064. Examination of the association**

The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March thirtieth of each year, a financial report for the preceding calendar year in a form approved by the commissioner. The form established by the commissioner shall determine the association’s accounting method and basis of financial reporting for all purposes. Added by Acts 1970, No. 81, § 1; Amended by Acts 1997, No. 468, § 1, eff. 6-26-97; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw).

**§ 2065. Tax exemption**

The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property. Added by Acts 1970, No. 81, § 1; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw).

**§ 2066. Recognition of assessments in rates**

The rates and premiums charged for insurance policies to which this Part applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer. Added by Acts 1970, No. 81, § 1; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw).

**§ 2067. Immunity**

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this Part. This immunity shall extend to the participation in any organization of one or more other state associations of similar purposes and to any such organization, and its agents or employees. Added by Acts 1970, No.81, § 1; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw); Acts 2010, No. 959, §1 eff. July 6, 2010.

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

A. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for six months and such additional time as may be determined by the court from the date the insolvency is determined to permit proper defense by the association of all pending causes of action.

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

C. In addition to any other requirement imposed by law, no judgment creditor shall attempt the execution of any judgment against the association without providing prior notice of its intent to do so. As a prerequisite of the execution of judgment, the executive director of the association or the chairman of the board of directors of the association shall be notified by certified mail, return receipt requested, not less than fifteen days prior to the execution of the judgment.

D. Any proration pursuant to R.S. 22:2058(A)(3)(a)(ii) shall apply to all covered claims existing as of the date the proration becomes effective, as well as the covered claims arising subsequently, including but not limited to settlements, agreements, consent judgments, and other judgments. Added by Acts 1970, No. 81, § 1. Amended by Acts 1990, No. 102, § 1; Acts 1991, No. 222, § 1, eff. July 2, 1991; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw); Acts 2010, No. 959, §1, eff. July 6, 2010.

**§ 2069. Advertisements**

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

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

C.(1) Whoever violates this Section shall, upon conviction, be fined not less than five hundred dollars nor more than one thousand dollars for a first offense, and not less than one thousand dollars nor more than two thousand dollars for a second offense.

(2) Conviction for violations of this Section as a second offense shall be grounds for suspension or revocation of the license of the violator by the commissioner. Added by Acts 1970, No. 81, § 1. Amended by Acts 1990, No. 260, § 1; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw); Acts 2010, No. 959, **§**1, eff. July 6, 2010.

**§ 2070. Effective date**

The provisions of this Part shall become effective on September 1, 1970. Added by Acts 1970, No. 81, § 1; [Acts 2008, No. 415, § 1, eff. Jan. 1, 2009](https://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW9.11&fn=_top&sv=Split&docname=UUID%28I6D83859047-7311DD9A0DC-4DA298F7FC3%29&tc=-1&pbc=B61C88D7&ordoc=20071689&findtype=l&db=1077005&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw).