CHAPTER 2. REQUIREMENTS FOR INSURERS AND OTHER RISK BEARING ENTITIES
PART I. KINDS OF INSURERS
SUBPART A. DOMESTIC INSURERS – GENERALLY

§61. Incorporators

Five or more natural persons of full age, or fully relieved by emancipation of all disabilities attaching to minority, who are citizens of the United States and a majority of whom are residents of this state, may form a corporation for the purpose of transacting any class or classes of insurance permitted under this ~~code~~ Code as a stock or mutual company.

§62. Articles of incorporation

Articles of incorporation shall be executed by authentic act signed by each of the incorporators and shall state in the English language:

(1) The name of the corporation, which shall not be the same as nor deceptively similar to the name of any other domestic insurer or of any alien or foreign insurer authorized to do business in this state unless (a) such other domestic, alien or foreign insurer is about to change its name or to cease to do business or is being wound up, or such foreign corporation is about to withdraw from doing business in this state, and the written consent of such other insurer to the adoption of its name or a deceptively similar name has been given in writing and is filed with the articles, or (b) such other insurer has heretofore been authorized to do business in this state for more than two years and has never actively engaged in business;

(2) The purpose or purposes for which it is formed;

(3) Its duration;

(4) The location and post office address of its registered office;

(5) The full names and post office addresses and municipal addresses or locations, which shall not be a post office box only, of its registered agents for service of process.

(6) The amount of paid in capital and minimum surplus, or initial fund, with which the corporation will begin business;

(7) If a stock company, the number of shares, the amount of each share, and the time when and the manner in which payment on stock subscribed shall be made;

(8) The names of the first directors, their post office address, and their classification and terms of office if they be named in the articles. Where the first board of directors is not named in the articles, the articles shall provide the place where, the date when the organization is to be perfected, and a meeting of the stockholders or policyholders for that purpose must be held not more than sixty days after the execution of the articles. At that meeting the directors shall be elected;

(9) The name and post office address of each of the incorporators, and, if a stock company, a statement of the number and class of shares subscribed by each, if any.

(10) The designation of general officers, the number of directors, which shall not be less than five nor more than fifty, and the mode and manner in which directors shall be elected, and officers elected or appointed;

(11) Any other provision for the regulation of the business and the conduct of the affairs of the corporation, not prohibited by this ~~code~~ Code or the other laws of this state.

§63. Approval of articles

Such articles shall be submitted to the commissioner of insurance for his examination and approval either before or after execution, but before recordation. The commissioner shall not approve such articles unless they strictly conform with the provisions of the Louisiana Insurance Code, being this Title ~~22 of the Louisiana Revised Statutes of 1950.~~

§64. Recordation

A. The articles, or a multiple original thereof, after having been submitted to and approved by the commissioner of insurance, shall be recorded in the office of the recorder of mortgages of the parish in which the

registered office of the corporation is situated and two certified copies of the articles, bearing the certificate of the proper recorder of mortgages, showing the date and hour when the articles were filed for record in his office, shall be delivered to the commissioner of insurance and one of said copies recorded in his office; and when all taxes, fees and charges have been paid as required by law, the commissioner of insurance shall certify the date and hour when the corporate existence began, according to the certificate of the recorder of mortgages showing the date and hour when the original articles were filed for record in the office of such recorder.

B. The corporation shall not have authority to transact an insurance business until a certificate of authority to transact such business is issued to it by the commissioner of insurance.

~~C. The secretary of state is authorized and directed to transfer to the commissioner of insurance the articles of incorporation, and all amendments thereto, of domestic incorporated insurers now holding or hereafter issued certificates of authority to transact the business of insurance in this state, as well as such other records as may pertain to such insurers, after having first reproduced such articles, amendments and records for preservation in the office of the secretary of state.~~

Comment [a1]: This language is outdated.

§65. Application for certificate of authority

An application shall be made by the first directors to the commissioner of insurance for a certificate of authority which shall be accompanied by:

(1) A copy of the acceptance of trust duly executed by each director.

(2) A copy of the oath of office taken by each officer.

(3) A statement verified by the oath of its president and its secretary, showing that said company is duly organized and that its funds are invested as required by law.

(4) An agreement signed by its president and secretary to abide by and comply with the rates, except for life, health and accident insurance, rules and regulations formulated and adopted by the commissioner of insurance or any duly authorized state board or commission.

~~(5) An appointment of at least one agent in this state.~~

(6) A copy of the bylaws, which in case of a mutual insurer must specify the minimum and maximum contingent liability of its policyholders for the payment of losses incurred under its policies.

~~(7) Organization bonds, if required.~~

(8) A statement verified by the oath of its president and its secretary, disclosing the identity and percentage of ownership of the company owners.

(9) Biographical background information, on a form prescribed by the commissioner, for each owner of a controlling interest, at least ten percent ownership, for each director, and for each officer.

(10) An agreement, at least three consecutive years in duration, signed by its president, engaging an independent qualified auditor who is a member in good standing with either the American Institute of Certified Public Accountants or with the Society of Financial Examiners which has designated the auditor as a certified financial examiner, to provide the commissioner an annual audited financial statement as required by the commissioner.

(11)(a) If a property or casualty insurer, an agreement, at least three consecutive years in duration, signed by its president engaging an independent qualified actuary who is a member in good standing of the American Academy of Actuaries or the Casualty Actuarial Society, to provide to the commissioner an annual actuarial reserves analysis as required by the commissioner.

(b) If a life or health insurer, an agreement, at least three consecutive years in duration, signed by its president engaging an independent qualified actuary who is a member in good standing of the American Academy of Actuaries, to provide to the commissioner an annual actuarial reserves analysis as required by the commissioner.

(c) The commissioner may adopt rules and regulations to implement the ~~provisions herein~~, provisions of this paragraph pursuant to the Administrative Procedure Act.

§67. Amendment to articles of incorporation

A. An incorporated insurer may, at a meeting of the shareholders or members duly called upon notice for this specific purpose and in the manner herein provided, amend its articles of incorporation. Such amendment altering the articles may be adopted by the vote of the holders of two-thirds of the voting power of all persons

present or represented by proxy entitled under the articles to vote.

B. After the amendment has been duly adopted, an authentic act setting forth the amendment and the manner of adoption thereof shall be executed by such person or persons authorized to do so at the meeting. A full copy of the minutes of the meeting at which such amendment was adopted, certified as a true copy by the secretary of the insurer or of the meeting, shall be annexed to the authentic act. The articles of amendment or multiple originals thereof shall be approved and recorded in the same manner as that provided herein for the original articles of incorporation.

C. The provisions of Subsections A and B of this Section shall not be applicable when an incorporated insurer changes either its registered agent or address, or both. In any such change, the incorporated insurer shall provide the commissioner of insurance with the board resolution and notice, in the manner provided for by Part III of Chapter 1 of Title 12 of the Louisiana Revised Statutes of 1950, R.S. 12:31 et seq.

§68. Books and records of domestic insurer; securities

A. Every domestic and redomesticated insurer shall keep its books, records, documents, accounts, and vouchers in such manner that its financial condition, affairs, and operations can be ascertained and so that its financial statements filed with the commissioner can be readily verified and its compliance with the law determined. Such insurer may cause any or all such books, records, documents, accounts, and vouchers to be photographed or reproduced on film. Any such photographs, microphotographs, optical imaging, or film reproductions of any original books, records, documents, accounts, and vouchers shall for all purposes be considered the same as the originals thereof and a transcript, exemplification, or certified copy of any such photograph, microphotograph, optical imaging, or film reproduction shall for all purposes be deemed to be a transcript, exemplification, or certified copy of the original. Any original so reproduced may thereafter be disposed of or destroyed, as provided for in Subsection B of this Section, if provision is made for preserving and examining such reproductions.

B. All such original books, records, documents, accounts, and vouchers, or such reproductions thereof, of the home office of any domestic company or of any principal United States office of a foreign or alien company located in this state shall be preserved and kept available in this state for the purpose of examination and until authority to destroy or otherwise dispose of such records is secured from the commissioner. At a minimum all such original records shall be maintained for the period commencing on the first day following the last period examined by the commissioner through the subsequent examination period, or three years, whichever is greater. Such original records may, however, be kept and maintained outside this state if, according to a plan adopted by the company's board of directors and approved by the commissioner, it maintains suitable records in lieu thereof.

C. Every domestic company shall keep its securities within the state of Louisiana except where:

(1) On deposit with other states of the United States of America, or political ~~subdivision~~ subdivisions thereof.

(2) On deposit with foreign countries where the company is licensed to transact an insurance business.

(3) Required for the normal transaction of the company's business and approved by the commissioner.

D. Any domestic company may maintain for its securities a limited agency, custodial or depository account, or other type of account for the safekeeping of those securities; collecting the income from those securities; and providing supportive accounting services relating to such safekeeping and collection; all provided the domestic company maintains full investment discretion over those securities. Such account shall be with either (1) a bank, qualified under state law to administer trusts in this state, and operating as described in R.S. 6:534(B); or (2) a member of the National Association of Securities Dealers, subject to the jurisdiction of the Securities and Exchange Commission, maintaining membership in the Securities Investors Protection Corporation, and having an agency office in this state. The bank or the National Association of Securities Dealers member, in safekeeping such securities, shall have all the powers, rights, duties, and responsibilities as it has under state law for holding securities in its fiduciary accounts. The commissioner of insurance is hereby authorized to promulgate rules and regulations pursuant to this Subsection.

E. Any director, officer, agent, or employee of any company who destroys any such books, records, or documents without the authority of the commissioner in violation of this Section or who fails to keep the books, records, documents, accounts, and vouchers required by this Section shall be fined not more than five thousand

dollars.

F. The commissioner of insurance may require that any domestic or redomesticated insurer maintaining its books, records, documents, accounts, and vouchers outside of this state pursuant to this Section shall, upon notice of a pending examination by the commissioner, deposit with the Department of Insurance such funds as the commissioner shall estimate as necessary for the conduct of the examination, including all expenses as set forth in R.S. 22:1985. The funds so deposited shall be maintained by the commissioner in a separate account for the purpose of paying such expenses during the progress of the examination as he may deem appropriate. The commissioner may require additional deposits where the expenses exceed the original estimate.

§69. Business Corporation Law governs when Insurance Code silent

The provisions of the Louisiana Business Corporation Law, as provided in R.S. 12:1 through R.S. 12:178, and other provisions of said Title 12 relative to business corporations, shall apply to the regulation of the business and the conduct of the affairs of any domestic insurer which has been incorporated pursuant to the provisions of this ~~Subparts A~~ this Subpart and Subpart B of this Part, ~~I of Chapter 2 of Title 22 of the Louisiana Revised Statutes,~~ in those situations in which the provisions of ~~said~~ this Title ~~22~~ are silent. If a conflict exists between the provisions of said Title 22 and said provisions of Title 12, the provisions of the Louisiana Insurance Code shall govern.

§71. Conversion requirements

~~After the effective date of this Section,~~ ~~no~~ No domestic life insurer may convert to a type of insurer having greater insuring power without meeting the full capital, surplus, and deposit requirements of the type insurer to which it desires to convert.

§72. Stock and mutual conversions

A. No domestic insurer may convert from a stock to a mutual, or from a mutual to a stock insurer, or from any type insurer to any other type insurer, except as provided in R.S. 22:71 unless a plan of conversion is submitted to and approved by the commissioner of insurance.

B. The commissioner of insurance shall not approve any such conversion unless in his opinion after a full investigation, and hearing if he deems it necessary, the best interests of the policyholders of any such insurer will be served.

C. The conversion of a mutual life insurer or a mutual life insurance holding company shall also comply with Subpart H-1 of this Part~~,~~ ~~I of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950~~. R.S. 22:231 et seq. "Mutual life insurer" and "mutual life insurance holding company" shall have the meanings set forth in R.S. 22:236.

§73. Order of dissolution

A. If the insurer against whom the petition for liquidation is filed be a corporation and the petition prays for dissolution of such insurer, the court shall have jurisdiction either before or after final liquidation of the property, business, and affairs of such insurer, after citation of an order to show cause as aforesaid and a full hearing, to enter a decree dissolving such insurer. The court may likewise, regardless of whether an order of liquidation is sought or has been obtained, upon proper petition by the commissioner of insurance, order dissolution of an insurer when it has failed to qualify for a certificate of authority authorizing it to commence the transaction of its business, or when an insurer has no assets and no means for payment of liabilities. In any such decree of dissolution, the court~~,~~ may, upon satisfactory demonstration that all of the assets of the insurer shall be applied to payment of liabilities of the insurer in the manner and priority as provided by law, and after such notice and hearing as the court shall require, issue an order discharging the insurer of all unsatisfied liabilities.

B. Notwithstanding any provision of Subsection A of this Section, upon application by the commissioner of insurance and following notice as prescribed by the court and a hearing, the court may authorize the commissioner of insurance to sell the corporation as an entity, together with any of its licenses to do business, despite the entry of an order of liquidation. The sale may be made on terms and conditions the court deems appropriate including but not limited to the distribution of the proceeds of the sale of the corporate entity and

licenses for the benefit of policyholders and creditors in the manner set forth in R.S. 22:2025. The legal existence of a legal entity that is placed under an order of rehabilitation, liquidation, or conservation shall be terminated only if the court orders its dissolution as a legal entity, as provided ~~herein.~~ in this section.

§74. Insurers prohibited from engaging in other businesses

No domestic insurer shall deal or trade in buying, or selling goods, wares or merchandise except articles insured by it on which losses are claimed and except in replacing, rebuilding, or repairing insured property as provided in its policies; nor discount commercial or other than first mortgage paper nor engage in any banking business whatsoever.

Comment [a2]: This section was moved from Chapter 1.

Comment [a3]:

SUBPART B. DOMESTIC STOCK INSURERS

§81. Capital requirements; applicants prior to September 1, 1989

A. Domestic stock insurers who apply for a certificate of authority prior to September 1, 1989, may transact the following kinds of insurance in this state upon qualifying therefor and by having paid-in capital and minimum surplus represented by assets as follows:

	Capital	Paid-in Surplus	Minimum	Insurance
(1)	Life	$ 100,000	$200,000	
(2)	Health and accident	100,000	200,000	
	(1) and (2) above	100,000	200,000	
(3)	Vehicle physical damage	100,000	150,000	
(4)	Title			
	(a) Any company licensed to transact title insurance prior to September 1, 1985	50,000	25,000	
	(b) Any company licensed to transact title insurance on or after September 1, 1985	100,000	200,000	
(5)	Industrial fire	200,000	100,000	
(6)	Any company organized and authorized to transact worker's compensation only as of July 27, 1966	100,000	50,000	
(7)	Any company organized and authorized to transact crop and livestock insurance only as of July 27, 1966	100,000	150,000	
(8)	Vehicle	650,000	350,000	
(9)	Liability	650,000	350,000	
(10)	Worker's compensation	650,000	350,000	
(11)	Burglary and forgery	650,000	350,000	
(12)	Glass	650,000	350,000	
(13)	Fidelity and surety	650,000	350,000	
(14)	Fire and extended coverage	650,000	350,000	
(15)	Steam boiler and sprinkler leakage	650,000	350,000	
(16)	Crop and livestock	650,000	350,000	
(17)	Marine and transportation	650,000	350,000	
(18)	Miscellaneous	650,000	350,000	
(19)	All insurances, except life and	650,000	350,000	

title or combined capital and surplus	1,000,000

B. For the ~~purpose~~ purposes of this Section, "vehicle physical damage insurance" shall be defined as insurance against loss or damage to any land vehicle or property while contained therein or thereon or being loaded or unloaded therein or therefrom.

~~B~~. C. Authority shall be granted stock insurers upon compliance with all applicable requirements to transact combinations of kinds of insurance except as follows:

(1) An insurer authorized to transact life insurance shall not be authorized to transact any additional kind of insurance other than health and accident insurance.

(2) An insurer authorized to transact title insurance shall not be authorized to transact any additional kind of insurance.

~~C~~. D. Domestic stock insurers who apply for a certificate of authority on or after September 1, 1989, shall meet the paid-in capital, minimum surplus, operating surplus, and other requirements of R.S. 22:82.

§82. Capital requirements; applicants on and after September 1, 1989

A. Domestic stock insurers which apply for a certificate of authority on or after September 1, 1989, may transact the following kinds of insurance in this state upon qualifying therefor and by having paid-in capital, minimum surplus, and operating surplus represented by assets as follows:

	Insurance	Paid-in Capital	Minimum Surplus	Operating Surplus
(1)	Life	$100,000	$1,900,000	$1,000,000
(2)	Health and accident	100,000	1,900,000	1,000,000
	(1) and (2) above	100,000	1,900,000	1,000,000
(3)	Vehicle physical damage	100,000	1,150,000	1,000,000
(4)	Title	100,000	400,000	500,000
(5)	Industrial fire	200,000	800,000	1,000,000
(6)	Vehicle	650,000	1,350,000	1,000,000
(7)	Liability	650,000	1,350,000	1,000,000
(8)	Worker's compensation	650,000	1,350,000	1,000,000
(9)	Burglary and forgery	650,000	1,350,000	1,000,000
(10)	Glass	650,000	1,350,000	1,000,000
(11)	Fidelity and surety	650,000	1,350,000	1,000,000
(12)	Fire and extended coverage	650,000	1,350,000	1,000,000
(13)	Steam boiler and sprinkler leakage	650,000	1,350,000	1,000,000
(14)	Crop and livestock	650,000	1,350,000	1,000,000
(15)	Marine and transportation	650,000	1,350,000	1,000,000
(16)	Miscellaneous	650,000	1,350,000	1,000,000
(17)	All insurances, except life and title	650,000	1,350,000	1,000,000

B. For the ~~purpose~~ purposes of this Section, "vehicle physical damage insurance" shall be defined as insurance against loss or damage to any land vehicle or property while contained therein or thereon or being loaded or unloaded therein or therefrom.

C. Authority shall be granted stock insurers upon compliance with all applicable requirements to transact combinations of kinds of insurance except as follows:

(1) An insurer authorized to transact life insurance shall not be authorized to transact any additional kind of insurance other than:

(a) Health and accident insurance

(b) Annuity~~:~~ or

(c) Credit life, health, and accident insurance.

(2) An insurer authorized to transact title insurance shall not be authorized to transact any additional kind of insurance.

D. For the ~~purpose~~ purposes of this Section, assets representing at least fifty percent of the operating

surplus must be maintained in cash or in cash equivalents as prescribed by the commissioner.

§86. Dividends on stock

No domestic stock insurer shall declare and pay any dividends to its stockholders unless its capital is fully paid in cash and is unimpaired and it has a surplus beyond its capital stock and the initial minimum surplus required and all other liabilities equal to fifteen ~~per cent~~ percent of its capital stock, provided that this restriction shall not apply to an insurer when its paid-in capital and surplus exceed the minimum required by this Code by one hundred percent or more.

§88. Sales of stock

A.(1) All sales of stock as defined in this Section shall be made in accordance with the ~~following~~ regulations~~:~~ contained in this Section.

~~A.~~ (2) When used in this Section, the following terms shall have the following respective meanings:

~~(1)~~(a) (i) "Security" as used in this Section shall include any insurance stock, note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or certificate of deposit for security, any certificate of deposit, or group or index of securities, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing issued by an insurance company, an investment, or holding company with a stated purpose, either by charter or prospectus, of forming an insurance company.

(b) (ii) For the ~~purpose~~ purposes of this Section, security shall not mean any insurance or endowment policy or annuity contract under which any insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period nor any variable life or annuity contract as provided for in and regulated by this Title and issued by a life insurance company licensed to do business in the state of Louisiana.

~~(2)~~ (b) "Person" shall include a natural person, a corporation created under the laws of this state, or of any other state, country, sovereignty, or political subdivision thereof, a partnership, an association, a joint stock company and any unincorporated association or organization.

~~(3)~~ (c) "Sale" or "sell" shall include every disposition, or attempt to dispose of a security as defined in this ~~section~~ Section or interest in such a security for value. Any security as defined in this Section given or delivered with, or as a bonus on account of, any purchase of such securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. "Sale" or "sell" shall also include an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a subscription of an offer to sell, directly or by an agent, or a circular, letter, advertisement or otherwise, except an isolated transaction in which any security as defined in this ~~section~~ Section is sold, offered for sale or delivery by the owner not being made in the course of repeated and successive transactions of a like character by such owner, provided the owner is not the underwriter of such security.

~~(4)~~ (d) "Dealer" shall include every person, or investment counsel or investment counsellor, as those terms are generally used, other than a salesman, as hereinafter defined, who in this state engages either for all or part of his time, directly or through an agent in the business of selling any securities as defined in this Section issued by another person or purchasing or otherwise acquiring such securities from another for the purpose of re-selling them or of offering them for sale to the public, or offering, buying, selling or otherwise dealing or trading in such securities as principal or agent for a commodity or commission or at a profit, or who deals in futures or differences in market quotations of prices or values of any such securities; ~~provided that~~ however the word "dealer" shall not include a person having no place of business in this state who sells or offers to sell securities exclusively to brokers or dealers actually engaged in buying and selling such securities as a business.

~~(5)~~(e) "Issuer" shall mean and include every person who proposes to issue, has issued or who shall hereafter issue any security as defined in this Section. Any person who acts as a promoter for and on behalf of a corporation, unincorporated association or partnership of any kind, formed or to be formed, shall be deemed to be an issuer.

~~(6)~~(f) "Salesman" shall include every natural person, including ~~insurance agents~~ producers, other than a

dealer, employed or appointed or authorized by a dealer or issuer to sell securities as defined in this section in any manner in this state. The partners of a partnership and the executive officers of a corporation or other corporate entity or association registered as a dealer shall not be salesmen within the meaning of this definition.

~~(7)~~ (g) "Broker" shall mean dealer as ~~herein~~ defined in this Subsection.

~~(8)~~ (h) "Agent" shall mean salesman as ~~herein~~ defined in this Subsection.

~~(9)~~ (i) "Commissioner" shall mean the ~~Commissioner~~ commissioner of ~~Insurance~~ insurance of the ~~State~~ state of Louisiana.

B. Exempt securities.

Except as hereinafter otherwise expressly provided, the provisions of this Section shall not apply to any of the following classes of securities:

(1) Securities appearing in any list of securities dealt in on the New York or American Stock Exchange, and which securities have been so listed pursuant to official authorization by such exchange, and also all securities senior to any securities so listed, or represented by subscription rights which have been so listed or evidences of indebtedness guaranteed by companies, any stock of which is so listed, such securities to be exempt only so long as such listing shall remain in effect. The commissioner shall have the power to deny this exemption with reference to any particular security listed on any such exchanges, by order published in such manner as the commissioner shall find proper.

(2) Securities appearing in any list of securities dealt in on any other recognized and responsible stock exchange which has been previously approved by the commissioner, and which securities have been so listed pursuant to official authorization by such exchange, and also all securities senior to any securities so listed, or represented by subscription rights which have been so listed, or evidences of indebtedness guaranteed by companies any stock of which is so listed, such securities to be exempt only so long as such listing shall remain in effect. The commissioner shall have power at any time to withdraw approval theretofore granted by him to any exchange, and upon such withdrawal no security listed on such exchange shall be entitled to the benefit of such exemption, unless such security is also listed upon an exchange mentioned in ~~paragraph~~ Paragraph (1) of this Subsection, and has not been denied this exemption by the commissioner as provided in said ~~paragraph~~ Paragraph (1)~~ of this Subsection.~~

(3) Any security, other than common stock, providing for a fixed return which has been outstanding and in the hands of the public for a period of not less than five years, upon which no default in payment of principal or failure to pay the return fixed, has occurred for a continuous immediately preceding period of five years.

C. (1) Except as hereinafter expressly provided, the provisions of this ~~section~~ Section shall not apply to the sale of any security in any of the following transactions:

~~(1)~~ (a) At any judicial, executor's, administrator's, tutor's, curator's or liquidator's sale, or at any sale by a receiver, syndic, or trustee in insolvency or bankruptcy.

~~(2)~~ (b) By or for the account of a pledge holder or mortgagee selling or offering for sale or delivery in the ordinary course of business, and not for the purpose of avoiding the provisions of this Section, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

~~(3)~~ (c) An isolated transaction in which any security is sold, offered for sale, subscription or delivery by the owner thereof, or by his representative for the owner's account, such sale or offer for sale, subscription or delivery not being made in the course of repeated and successive transactions of a like character by such owner, or on his account by such representative, and such owner or representative not being the underwriter of such security.

~~(4)~~ (d) The distribution by a corporation, actively engaged in the business authorized by its charter, of securities to its stockholders or other security holders as a stock dividend or other distribution out of earnings or surplus; or the issuance of securities to the security holders or other creditors of a corporation in the process of a bona fide reorganization or liquidation of such corporation made in good faith and not for the purpose of avoiding the provisions of this Section, either in exchange for the securities of such security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such security holders or creditors; or the issuance of additional capital stock of a corporation sold or distributed by it among its own stockholders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such increased capital stock.

~~(5)~~ (e) The transfer or exchange by one corporation to another corporation of their own securities in

connection with a consolidation or merger of such corporations, or in the exchange of outstanding shares for a greater or smaller number of shares of the same corporation.

~~(6)~~ (f) The sale, transfer or delivery of any securities to any bank, savings institution, trust company, insurance company or to any corporation or to any broker or dealer; provided, that such broker or dealer is actually engaged in buying and selling securities as a business.

~~(7)~~ (g) The sale by a registered dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public, provided that:

~~(a)~~ (i) Such securities are sold at prices reasonably related to the current market price thereof at the time of sale, and if such registered dealer is acting as agent, the commission collected by such registered dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics; and

~~(b)~~ (ii) Such securities do not constitute an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter; and

~~(c)~~ (iii) Either Moody's, Standard and Poor's, or Fitch securities manuals, or any other recognized securities manuals approved by the commissioner of insurance, contain the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than ~~18~~ eighteen months prior to the date of such sale, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations.

(2) The commissioner may revoke the exemption afforded by this ~~subsection~~ Subsection with respect to any securities by issuing an order to that effect if he finds that the further sale of such securities in this state would work or tend to work a fraud on purchasers thereof.

D. (1) No insurance securities or securities in an investment or holding company with a stated purpose, either by charter or prospectus, of forming an insurance company shall be sold within this state unless such securities have been registered as hereinafter defined. Registration of stocks as defined in this Section, shall be deemed to include the registration of rights to subscribe to such stock if the statement under Subsection E of this Section required for registration of such stock includes any provision that such rights are to be issued. A record of the registration of insurance securities or securities in an investment or holding company as ~~hereinabove~~ defined in Subsection A of this Section shall be kept in a register of securities to be kept in the office of the commissioner, in which register shall also be recorded any orders entered by the commissioner with respect to such securities. Such registration, and all information with respect to the securities registered in accordance with this Section, shall be open to public inspection.

(2) The commissioner of insurance shall have the right to adopt such rules and regulations as he may deem necessary to carry out the purposes of this Section.

(3) The commissioner of insurance may take depositions, compel production of books and records, subpoena witnesses or documentary evidence, administer oaths and examine under oath any individual relative to the sale of securities as defined in this ~~section~~ Section. Any person who testifies falsely or makes any false affidavit during the course of such an examination under this Section shall be guilty of perjury.

E.(1) Securities as defined in this ~~section~~ Section shall be registered by the filing of the issuer, or of any dealer registered with the office of the commissioner of insurance, in the office of the commissioner with respect to such securities of the following:

~~(1)~~ (a) Name of issuer, location, and, if incorporated, place of incorporation.

~~(2)~~ (b) A brief description of the security, including amount of the issue.

~~(3)~~ (c) Amount of securities to be offered in the state.

~~(4)~~ (d) The par value, the price at which the securities are to be offered for sale to the public, and a statement as to how the proceeds are to be used, including commissions to be paid, which commissions, however, shall in no event exceed fifteen percent.

~~(5)~~ (e) A copy of the circular or prospectus to be used by the issuer or dealer for the public offering.

~~(6)~~ (f) Any other information or documents required by the commissioner of insurance.

(2) Every statement required to be filed with the commissioner under any of the provisions of this ~~section~~ Section shall be transmitted by United States mail, and the commissioner shall never receive nor shall he be authorized to receive or accept for filing any statement or documents transmitted to him by any mode other than by United States mail.

(3) The filing of such statement and documents in the office of the commissioner, and the payment of the fee ~~hereinafter~~ provided~~,~~ for in this Subsection shall, after being authorized by the commissioner, constitute the registration of such securities. Upon such registration, such securities may be sold in this state by any registered dealer, subject, however, to the further order of the commissioner as ~~hereinafter~~ provided~~.~~ for in this Subsection. Every registration under this ~~section~~ Section for an insurance company on primary issues of stock shall expire in accordance with the statutory provisions of R.S. 22:85. Every registration under this ~~section~~ Section for an investment or holding company, or on issued and outstanding shares of stock of an insurance company, shall expire on December thirty-first of each year, but new registrations for the succeeding period or succeeding year, as the case may be, shall be issued upon written application and upon payment of the fee as ~~hereinafter~~ provided~~.~~ in this Subsection.

(4) If, at any time in the opinion of the commissioner, the information contained in the statement, circular or prospectus filed is, or has become, misleading, incorrect, inadequate or incomplete, or the sale or offering for sale of the security as defined in this ~~section~~ Section may work or tend to work a fraud, the commissioner may require from the person filing such statement such further information as may in his judgment be necessary to establish the classification of such security as claimed in said statement, or to enable the commissioner to ascertain whether other steps should be taken and the registration rejected or revoked on any ground ~~hereinafter~~ specified~~,~~ in Subsection F of this section and the commissioner may refuse to register or suspend the right to sell such security pending further investigation by entering an order specifying the grounds for such action, and by notifying by mail, or personally, or by telephone confirmed in writing, or by telegraph, the person filing such a statement and documents, and every registered dealer who shall have notified the commissioner of an intention to sell such security. The refusal to furnish information required by the commissioner within a reasonable time to be fixed by the commissioner may be a proper ground for the entry of such order of suspension. The commissioner shall notify every registered dealer of such order and upon the entry of any such order of suspension no further sales of such security shall be made until the further order of the commissioner.

(5) In the event of the entry of such order of rejection or suspension, the commissioner shall, upon request, give a prompt hearing in accordance with Chapter 12 of this Code, R.S. 22:2191 et seq., to the parties interested. If no hearing is requested within a period of twenty days from the entry of such order, or, if upon such hearing the commissioner shall determine that any such security is not entitled to registration under this ~~section~~, Section or that the sale thereof should be revoked on any ground ~~hereinafter~~ specified~~,~~ in Subsection F of this Section, he shall enter a final order prohibiting sales of such security, with his findings with respect thereto. Until the entry of such final order, the rejection or suspension of the right to sell, though binding upon the persons notified thereof, shall be deemed confidential, and shall not be published, unless it shall appear that the order of suspension has been violated after notice. Appeals from such final order may be taken as ~~hereinafter~~ provided~~.~~ in this Section. If, however, upon such hearing, the commissioner shall find that the security being offered for sale will neither be fraudulent nor result in fraud, he shall forthwith enter an order revoking such order of suspension and such security shall be restored to its status as a security registered under this ~~section~~ Section as of the date of such order of suspension.

(6) At the time of filing the statement and documents ~~hereinabove~~ enumerated~~,~~ in this Subsection and upon re-registration, the applicant shall pay to the commissioner a fee of one-twentieth of one ~~per centum~~ percent of the aggregate price of such securities to be sold in this state, for which the applicant is seeking registration, but in no case shall such fee be less than twenty-five dollars or more than two hundred dollars. The commissioner of insurance is authorized to withhold the funds collected under this ~~section~~ Section to defray the expenses actually and necessarily incurred by him for salaries and expenses in carrying out the purposes of this ~~section~~ Section.

F. Revocation of registration of securities as defined in this Section.

(1) The commissioner may revoke the registration of any security as defined in this Section by entering an order to that effect, with his findings in respect thereto, if upon the examination into the affairs of the issuer, it shall appear that the company:

~~(1)~~ (a) Is insolvent~~, or~~ .

~~(2)~~ (b) Has violated any of the provisions of this Section, or any order of the commissioner of which such issuer has notice, or any of the rules and regulations adopted by the commissioner of insurance under this Section~~;~~ ~~or~~

~~(3)~~ (c) Has been or is engaged or is about to engage in a fraudulent transaction~~, or~~

~~(4)~~ (d) Is in any other way dishonest or has made any fraudulent representations in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities, or

~~(5)~~ (e) Is of bad business repute, or

~~(6)~~ (f) Does not conduct its business in accordance with law; or

~~(7)~~ (g) That the affairs of the insurance company or other company issuing such securities are in an unsound condition, or

~~(8)~~ (h) That the enterprise or business or the security offered is not based upon sound business principles.

(2) In making such examination, the commissioner shall have access to and may compel the production of all the books and papers of such insurance company or other company issuing such securities, subpoena witnesses, and administer oaths to and examine the officers of such issuer, or any expert, whose statement was filed by any issuer in connection with an application, or any other person connected therewith as to its business and affairs, and may also require a balance sheet exhibiting the assets and liabilities of any such issuer or its income statement, or both, to be certified to by a public accountant either of this state, or of any other state approved by the commissioner. The commissioner may also require that any statement made on the authority of any expert be verified by another expert to be selected by the commissioner.

(3) Whenever the commissioner may deem it necessary, he may also require such balance sheets or income statements or statements of experts to be made more specific in such particulars as the commissioner of insurance shall point out, or to be brought down to the latest practicable date.

(4) If any issuer of securities as defined in this Section shall refuse to permit an examination to be made by the commissioner, or if it should refuse or fail to cause, at its own expense, any statement or valuation required to be made by an expert to be verified by another expert selected by the commissioner, it shall be proper ground for revocation of registration.

(5) If the commissioner shall deem it necessary, he may enter an order suspending the right to sell such securities pending any investigation provided that the order shall state the grounds for taking such action.

(6) Notice of the entry of such order shall be given by mail, or personally, or by telephone confirmed in writing, or by telegraph, to the issuer of such securities, which company shall in turn notify every registered dealer.

(7) Before an order is made final, the insurance company or other issuer applying for registration shall on application be entitled to a hearing, and after such hearing the commissioner shall notify it of the final ruling on the matter.

G. Consent to service. Upon any application for registration where the issuer is not domiciled in this state, there shall be filed with such application the irrevocable written consent of the issuer that in suits, proceedings and actions growing out of the violation of any provision of this Section, the service on the commissioner of any notice, process, or pleadings therein, authorized by law, shall be as valid and binding as if due service had been made on the issuer. Any such action shall be brought either in the parish of the plaintiff's domicile or in the parish of East Baton Rouge. Said written consent shall be authenticated by the seal of said issuer, if it has a seal, and by the acknowledged signature of a member of the co-partnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, if it be an incorporated or unincorporated association, duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association, and shall in such case be accompanied by a duly certified copy of the resolution of the board of directors, trustees or managers of the corporation or association authorizing the officers to execute same. In case any process or pleadings mentioned in this Section are served upon the commissioner, it shall be by duplicate copies, one of which shall be filed in the office of the commissioner and another immediately forwarded by the commissioner by registered mail to the principal office of the issuer against which said process or pleadings are directed.

H. Registration of dealers and salesmen.

(1) No dealer or salesman shall engage in business in this state as such dealer or salesman or sell any securities as defined in this Section unless he has been registered as a dealer or salesman in the office of the commissioner pursuant to the provisions of this Section.

(2)An application for registration, in writing, shall be sent by United States mail to the commissioner to be filed in the office of the commissioner in such form as the commissioner may prescribe, duly verified by oath, which shall state the principal place of business or office of the applicant, wherever situated, and the location of the principal office and all branch offices in this state, if any, the name or style of doing business, the names, residence

and business addresses of all persons interested in the business as principals, co-partners, officers and directors, specifying as to each his capacity and title, the general plan and character of business and the length of time the dealer has been engaged in business. The commissioner may also require such additional information as to the applicant's previous history, record and association as he may deem necessary to establish the good repute in business of the applicant.

(3) There shall be filed by each dealer with such application for registration, where such dealer is not domiciled in this state, an irrevocable written consent of the dealer that in all suits, proceedings or actions growing out of the violation of any provision of this Section, the service on the commissioner of any notice, process or pleading therein authorized by the laws of this state, shall be as valid and binding as if due service had been made on the dealer. The place for bringing any such action and the manner in which the written consent shall be authenticated are the same as outlined in Subsection G of this Section.

(4) If the commissioner shall find that the applicant is of good repute and has complied with the provisions of this Section, including the payment of the fee ~~hereinafter~~ provided~~,~~ for in this Subsection, he shall register such applicant as a dealer.

(5) Upon the written application of a registered dealer and general satisfactory showing as to good character and the payment of the proper fee, the commissioner shall register as a salesman of such dealer such natural person as the dealer may request. Such registration shall cease upon the termination of the employment of such salesman by such dealer.

(6) The names and addresses of all persons approved for registration as dealers or salesmen and all order with respect thereto shall be recorded in a register of dealers and salesmen kept in the office of the commissioner, which shall be open to public inspection. Every registration under this Section shall expire on December thirty-first of each year, but new registrations for the succeeding year shall be issued upon written application and upon payment of the fee as ~~hereinafter~~ provided~~,~~ for in this Subsection without filing of further statements or furnishing any further information, unless specifically required by the commissioner. Applications for renewals must be made not less than thirty days nor more than sixty days before the first day of the ensuing year, otherwise they shall be treated as original applications.

(7) The fee for such registration and for each annual renewal shall be fifty dollars in the case of dealers and ten dollars in the case of salesmen. The commissioner of insurance is authorized to withhold the funds collected under this Section to defray the expenses actually and necessarily incurred by him for salaries and expenses in carrying out the purposes of this Section.

(8) Changes in registration occasioned by changes in the personnel of a partnership or in the principals, co-partners, officers, or directors of any dealer may be made from time to time by written application setting forth the facts with respect to such change.

(9) Any issuer of a security as defined in this Section required to be registered under the provisions of this Section, selling such securities except in exempt transactions as herein defined shall be deemed a dealer within the meaning of this Section and required to comply with all the provisions hereof.

I. Revocation of dealers' and salesmen's registration.

(1) Registration under Subsection H of this Section may be refused or any registration granted may be revoked by the commissioner if after a reasonable notice and a hearing the commissioner determines that such applicant or registrant so registered:

~~(1)~~ (a) Has violated any provision of this Section or any regulation made ~~hereunder, or~~ pursuant to this Section.

~~(2)~~ (b) Has made a material false statement in the application for registration, or

~~(3)~~ (c) Has been guilty of a fraudulent act in connection with any sale of securities as defined in this Section, or has been or is engaged or is about to engage in making fictitious or pretended sales or purchases of any such securities or has been or is engaged or is about to engage in any practice or sale of such securities which is fraudulent or in violation of the law~~, or~~.

~~(4)~~ (d) Has demonstrated his unworthiness to transact the business of dealer or salesman.

(2) In cases of charges against a salesman notice thereof shall also be given the dealer employing such salesman.

(3) Pending the hearing, the commissioner shall have the power to order the suspension of such dealer's or

salesman's registration, provided such order shall state the cause for such suspension, and provided further, that such hearing shall be held within ten days from the date of such suspension. Failure of the commissioner to hold such a hearing within such time shall constitute complete restoration of the registration of the dealer or salesman involved.

(4) Until the entry of a final order, the suspension of such dealer's registration, though binding upon the persons notified thereof, shall be deemed confidential, and shall not be published unless it shall appear that the order of suspension has been violated after notice.

(5) In the event the commissioner determines to refuse or to revoke a registration as ~~hereinabove~~ provided~~,~~ in this Subsection, he shall enter a final order herein with his findings on the register of dealers and salesmen; and suspension or revocation of the registration of a dealer shall also suspend or revoke the registration of all his salesmen.

(6) It shall be sufficient cause for refusal or cancellation of registration in case of a partnership or corporation or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of an individual dealer or salesman.

J. Escrow agreement. If the statement containing information as to insurance securities which are required to be registered shall disclose that any such insurance securities shall have been or shall be intended to be issued for any organization or promotion fees or expenses, the amount and nature thereof shall be fully set forth and the commissioner may require that such insurance securities so issued in payment for organization or promotion fees or expenses shall be delivered in escrow to the commissioner or other depository satisfactory to the commissioner under an escrow agreement that the owners of such insurance securities shall not be entitled to withdraw such insurance securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six ~~per cent~~ percent, shown to the satisfaction of said commissioner to have actually been earned on the investment in any stock so held, and in case of dissolution or insolvency during the time such insurance securities are held in escrow, the owners of such insurance securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

K. Injunctions.

(1) Whenever it shall appear to the commissioner, either upon complaint or otherwise, that in the issuance, sale, promotion, negotiation, advertisement, or distribution of any securities as defined in this Section within this state, any person has committed any of the following acts, the commissioner may investigate and, upon evidence satisfactory to him, may, in addition to any other remedies, bring action in the name and on behalf of the state of Louisiana against such person and any other person or person concerned in or in any way participating in or about to participate in such fraudulent practices or acting in violation of this Section, to enjoin such person and such other person or person from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof, or in violation of this Section:

~~(1)~~ (a) ~~Shall have~~ Has employed or employs, or is about to employ any device, scheme or artifice to defraud or for obtaining money or property by means of any false pretense, representation or promise, or

~~(2)~~ (b) ~~Shall have~~ Has made, makes or attempts to make in this state fictitious or pretended purchases or sales of securities as defined in this Section~~, or~~.

~~(3)~~ (c) ~~Shall have~~ Has engaged in or engages in or is about to engage in any practice or transaction or course of business relating to the purchase or sale of securities as defined in this Section:

~~(a)~~ (i) Which is in violation of law, or in violation of any of the rules and regulations adopted by the commissioner of insurance under this Section, or

~~(b)~~ (ii) Which is fraudulent, or

~~(c)~~ (iii) Which is operated, or which would operate, as a fraud upon the purchaser, any one or all of which devices, schemes, artifices, fictitious or pretended purchases or sales of securities as defined in this Section, practices, transactions, and courses of business are hereby declared to be and are ~~hereinafter~~ referred to in this Section as fraudulent practices~~, or~~.

~~(4)~~ (d) Is acting as a dealer or salesman within this state without being duly registered as such dealer or salesman as provided in this Section.~~, the commissioner may investigate, and whenever he shall believe from evidence satisfactory to him:~~

~~(a) That any such person has engaged in, is engaged in or is about to engage in any of the practices or transactions hereinabove referred to as and declared to be fraudulent practices, or~~

~~(b) Is selling or offering for sale any securities as defined herein in violation of this Section, or is acting as a dealer or salesman without being duly registered as provided in this Section, the commissioner may, in addition to any other remedies, bring action in the name and on behalf of the state of Louisiana against such person and any other person or persons concerned in or in any way participating in or about to participate in such fraudulent practices or acting in violation of this Section, to enjoin such person and such other person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof, or in violation of this Section.~~

(2) In any such court proceedings, the commissioner may apply for and on due showing be entitled to have issued the court's subpoena requiring forthwith: the appearance of any defendant and its employees, salesmen, or agents; ~~, and~~ the production of documents, books, and records as may appear necessary for the hearing of such petition; ~~to testify and give evidence~~ and testimony and evidence concerning the acts or conduct or things complained of in such application for injunction. In such action, the district court of the domicile of any of the persons, firms or corporations involved, or the district court of the parish of East Baton Rouge shall have jurisdiction of the parties and the subject matter, and a judgment may be entered awarding such injunctive relief as may be proper.

L. Remedies. Every sale of securities as defined in this Section, the registration of which has been revoked or suspended by the commissioner, or made by any unregistered dealer or salesman, or by any dealer or salesman whose license has been suspended or revoked, shall be voidable at the election of the purchaser, and the person making such sale, and every director, officer or agent of or for such seller who shall have personally participated or aided in any way in the making of such sales, shall be liable in solido to such purchaser upon tender of such securities sold, or of the contract made, for the full amount paid by such purchaser with interest, all taxable court costs and a reasonable attorney's fee to be fixed by the court; provided that no such action shall be brought for the recovery of the purchase price after thirteen months from the date of such sale, or the delivery of such security to the purchaser, whichever date is latest; and provided, further, that the aforesaid interest shall be computed at the rate of six ~~per centum~~ percent per annum, less, in any case, the amount of any income from said insurance securities that may have been received by such purchaser.

M.~~(1)~~ Violations; penalties.

(1)(a) No issuer of securities as defined in this Section, or any officer, director, trustee or agent thereof, or any dealer shall sell or offer to sell any such securities without full compliance with the provisions of this Section.

(b) Whoever violates this ~~Subsection~~ Paragraph shall be fined not more than five thousand dollars for the first offense and not more than twenty-five thousand dollars for each subsequent offense, and the officer, director, trustee or agent thereof, or the issuer, if a natural person, may be imprisoned for not more than one year, or both.

(2)(a) No person or corporation, whether acting on his or its own behalf, or on behalf of another, shall violate any of the provisions of this Section.

(b) Whoever violates this ~~Subsection~~ Paragraph shall be fined not less than one hundred dollars nor more than five hundred dollars for the first offense, and not less than five hundred dollars nor more than one thousand dollars for each subsequent offense, or imprisoned for not more than six months for the first offense, nor more than one year for each subsequent offense, or both.

(3)(a) No dealer or salesman shall make any statement or representation not authorized by the issuer, or by a dealer registering securities under the provisions of ~~R.S. 22:88(E)~~, Subsection E of this Section, or any statement or representation at variance with, or not reasonably predicated upon, statements and documents filed by the issuer or dealer in the office of the commissioner.

(b) Whoever violates this ~~Subsection~~ Paragraph shall be fined not more than one thousand dollars for the first offense, and not more than five thousand dollars for each subsequent offense, or imprisoned for not more than six months for the first offense and for not more than one year for each subsequent offense, or both.

(4)(a) No person shall sign any statement, list, inventory, balance sheet or other paper or document required by any provision of this Section to be verified or sworn to, knowing any representation therein contained to be false, misleading, or untrue, and the depositing of any such statement or document in the office of the commissioner

shall be deemed prima facie evidence of knowledge of the falsity thereof or of any representation therein contained, and of the wilfull signing of such statement or document.

Whoever violates this ~~Subsection~~ Paragraph shall be guilty of perjury.

N. Statutory and civil remedies. Nothing in this Section shall limit any statutory or civil right of any person to bring action in any court for any act involved in the sale of securities as defined in this Section, or the right of this state to punish any person for any violation of any law. The attorney general and each of the district attorneys throughout this state, with regard to violations of this Section in their respective districts, shall lend full assistance to the commissioner in any investigations or prosecutions that the commissioner may deem necessary under the provisions of this Section.

O. Appeals. An appeal may be taken by any person interested from any final order of the commissioner to the district court of the parish of East Baton Rouge by filing a petition therein against the commissioner, officially as defendant, within twenty days after notice of the entry of such order and stating in said petition the grounds upon which a reversal of such final order is sought. Such petition may be accompanied by a demand upon the commissioner for a certified transcript of the record and of all papers on file in his office affecting or relating to such order, and such demand may be granted by the court and an order may be issued by the court ordering the production of a transcript of such records upon the furnishing of bond by the plaintiff, with good and sufficient security, to be approved by the court, conditioned upon the faithful prosecution of such action to final judgment and upon the payment of all costs including costs of making such transcript. Thereupon, the commissioner shall within ten days make, certify**,** and file with the clerk of said court such a transcript, or in lieu thereof, the original papers if the court shall so order; such suit shall be given preference by the court over all matters pending in said court. The court shall receive and consider the evidence, both oral and documentary concerning the order of the commissioner objected to by the plaintiff. If the order of the commissioner shall be reversed, the court shall enter such judgment, order**,** and decree as the equities and exigencies may require, directing the commissioner as to his further action in the matter, including the making and entering of any order or orders in connection therewith, and the conditions, limitations and restrictions to be therein contained; ~~provided that~~ however, the commissioner shall not thereby be barred from thereafter revoking or altering such order for any proper cause which may thereafter accrue or be discovered. If said order shall be affirmed, the plaintiff shall not be barred after thirty days from filing a new application, provided such new application is not otherwise barred or limited. The court shall not in any wise suspend the operation of any order of the commissioner during the pendency of the action. Mere technical irregularities in the procedure of the commissioner shall be disregarded and the burden shall rest on the plaintiff to prove his rights to a reversal of the order of the commissioner. A devolutive appeal may be taken from the judgment of the district court on the same terms and conditions as an appeal is taken in other civil actions.

P. Fees.

(1) In the event that any issue of securities as defined in this Section is not registered for any cause by the commissioner, the commissioner is hereby authorized to withhold from the application fee the sum of twenty-five dollars to defray the expense actually and necessarily incurred by him for salaries and expenses in carrying out the purposes of this Section.

(2) In the event that the application of any dealer or salesman is for any cause not approved by the commissioner, the commissioner is hereby authorized to withhold from the application fee the sum of ten dollars in the case of a dealer and the sum of two and ~~50/100~~ one half dollars in the case of a salesman to defray the expenses actually necessarily incurred by him for salaries and expenses in carrying out the purposes of this Section.

Q. Construction.

Nothing in this Section shall be construed to relieve insurance companies from making reports now or hereafter required by law to be made to the commissioner, or to any other state department or agency, or from paying the fees, taxes and charges now or hereafter to be paid by insurance companies. This Section shall never be construed to repeal any law now in force regulating the organization of insurance companies in this state or the admission of any foreign insurance company, but the provisions of this Section shall be additional to any provisions otherwise regulating the business of insurance.

§91. ~~Stockholders~~ Stockholders' meetings

Domestic stock insurers shall hold at least one stockholders' meeting annually at a time and place specified in the articles of incorporation or by-laws of the insurer. Each stockholder shall be entitled to vote each share of stock which he holds in his own name at any and all stockholders' meetings. The right to vote any share of stock may be conferred upon another stockholder by a written proxy. Any proxy may be revoked at any time by the owner of the shares upon written notice to the secretary of the insurer or the presiding officer at any meeting.

Acts 1958, No. 125; Redesignated from R.S. 22:79 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

§94. Duties of officers

A. The president or, in his absence, the one so designated to act for him, shall preside at all meetings of the directors and of the stockholders, unless otherwise provided in the charter or bylaws.

B. The secretary shall keep a record of the votes and proceedings of all meetings of the directors and stockholders, a list of the stockholders, the number of shares standing in the name of each, and a record of all transfers of shares. The secretary, or other authorized officer, shall keep a record of policies issued and all authorized assignments, cancellations, and transfers thereof. He shall keep such other books and perform such other duties as the president and board of directors may require. The intentional making of any false record by the secretary or any other officer of the insurer shall be deemed an act of perjury.

Acts 1958, No. 125. Amended by Acts 1974, No. 4, §1; Redesignated from R.S. 22:82 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

§96. Voluntary dissolution

A. A domestic insurer may, after a two-thirds affirmative vote of its stockholders, policyholders or subscribers, voluntarily discontinue its business and dissolve its corporate existence by: (1) consolidation or merger~~;~~; (2) reinsuring its entire business under Subpart E of Part III of this Chapter ~~2 of this Title~~, R.S. 22:651, et seq.; or (3) cancelling its policy obligations and refunding the pro rata unearned premiums thereon, except as to its life insurance contracts, which shall be reinsured pursuant to Subpart E of Part III of this Chapter. ~~2 of this Title.~~ After adequate provision has been made for the protection of its policyholders and creditors, such domestic insurer may petition the commissioner of insurance to distribute its remaining assets to its stockholders, policyholders or subscribers as may be provided in a dissolution agreement. No such plan of voluntary dissolution under this Section shall be effective until approved in writing by the commissioner of insurance.

B. When the commissioner of insurance has determined that all the proper steps have been taken and that adequate provision has been made to protect the policyholders and creditors of the retiring insurer, he shall issue a formal certificate of dissolution to such insurer.

Acts 1958, No. 125; Redesignated from R.S. 22:764 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

SUBPART C. DOMESTIC MUTUAL INSURERS

§111. Surplus requirements; applicants prior to September 1, 1989

A. Domestic mutual insurers who apply for a certificate of authority prior to September 1, 1989, may transact the following kinds of insurance in this state upon qualifying therefor and by having an initial minimum surplus represented by assets as follows:

	Insurance	Initial Minimum Surplus
(1)	Life	$ 300,000
(2)	Health and accident	300,000
	(1) and (2) above	300,000
(3)	Vehicle physical damage	250,000

(4)	Title	75,000
(5)	Industrial fire	300,000
(6)	Any company organized and authorized to transact worker's compensation only as of July 27, 1966	150,000
(7)	Any company organized and authorized to transact crop and livestock insurance only as of July 27, 1966	250,000
(8)	Vehicle	1,000,000
(9)	Liability	1,000,000
(10)	Worker's compensation	1,000,000
(11)	Burglary and forgery	1,000,000
(12)	Glass	1,000,000
(13)	Fidelity and surety	1,000,000
(14)	Fire and extended coverage	1,000,000
(15)	Steam boiler and sprinkler leakage	1,000,000
(16)	Crop and livestock	1,000,000
(17)	Marine and transportation (except hull)	1,000,000
(18)	Miscellaneous	1,000,000
(19)	All insurances, except life and title	1,000,000

B. For the ~~purpose~~ purposes of this Section, "vehicle physical damage insurance" shall be defined as insurance against loss or damage to any land vehicle or property while contained therein or thereon or being loaded or unloaded therein or therefrom.

~~B.~~ C. Authority shall be granted mutual insurers upon compliance with all applicable requirements to transact combinations of kinds of insurance except as follows:

(1) An insurer authorized to transact life insurance shall not be authorized to transact any additional kind of insurance other than health and accident insurance.

(2) An insurer authorized to transact title insurance shall not be authorized to transact any additional kind of insurance.

~~C.~~ D. Domestic mutual insurers who apply for a certificate of authority on or after September 1, 1989, shall meet the initial minimum surplus and operating surplus requirements and other requirements of R.S. 22:112.

Acts 1958, No. 125. Amended by Acts 1958, No. 103, §1; Acts 1962, No. 49, §1; Acts 1966, No. 71, §1; Acts 1980, No. 471, §1; Acts 1980, 2nd Ex.Sess., No. 5, §1, eff. Sept. 15, 1980; Acts 1983, 1st Ex.Sess., No. 1, §6; Acts 1985, No. 504, §1; Acts 1989, No. 561, §1; Redesignated from R.S. 22:121 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

§112. Surplus requirements; applicants on and after September 1, 1989

A. Domestic mutual insurers who apply for a certificate of authority on or after September 1, 1989, may transact the following kinds of insurance in this state upon qualifying therefor and by having an initial minimum surplus and operating surplus represented by assets as follows:

	Insurance	Initial Minimum Surplus	Operating Surplus
(1)	Life	$2,000,000	$1,000,000
(2)	Health and accident	2,000,000	1,000,000
	(1) and (2) above	2,000,000	1,000,000
(3)	Vehicle physical damage	1,250,000	1,000,000
(4)	Title	500,000	500,000
(5)	Industrial fire	1,000,000	1,000,000

(6)	Vehicle	2,000,000	1,000,000
(7)	Liability	2,000,000	1,000,000
(8)	Worker's compensation	2,000,000	1,000,000
(9)	Burglary and forgery	2,000,000	1,000,000
(10)	Glass	2,000,000	1,000,000
(11)	Fidelity and surety	2,000,000	1,000,000
(12)	Fire and extended coverage	2,000,000	1,000,000
(13)	Steam boiler and sprinkler leakage	2,000,000	1,000,000
(14)	Crop and livestock	2,000,000	1,000,000
(15)	Marine and transportation (except hull)	2,000,000	1,000,000
(16)	Miscellaneous	2,000,000	1,000,000
(17)	All insurances, except life and title	2,000,000	1,000,000

B. For the ~~purpose~~ purposes of this Section, "vehicle physical damage insurance" shall be defined as insurance against loss or damage to any land vehicle or property while contained therein or thereon or being loaded or unloaded therein or therefrom.

C. Authority shall be granted mutual insurers upon compliance with all applicable requirements to transact combinations of kinds of insurance except as follows:

(1) An insurer authorized to transact life insurance shall not be authorized to transact any additional kinds of insurance other than health and accident insurance.

(2) An insurer authorized to transact title insurance shall not be authorized to transact any additional kinds of insurance.

D. For the ~~purpose~~ purposes of this Section, assets representing at least fifty percent of the operating surplus shall be maintained in cash or cash equivalents prescribed by the commissioner.

§116. Methods of acquiring surplus

The initial minimum sum required may be raised by the insurer in the following manner:

(1) By payment in advance of premiums by persons who desire to become policyholders and members of the mutual insurer. Such payments must be made in cash, and all sums so received shall be delivered in escrow to a depository satisfactory to the ~~Commissioner~~ commissioner of ~~Insurance~~ insurance under an escrow agreement providing that the organizers or promoters of the mutual insurer shall not be entitled to withdraw such sums so deposited in escrow until sufficient initial minimum surplus shall have been raised within the prescribed period of time as provided by R.S. 22:115, and further containing a provision that in case sufficient funds have not been raised within the said prescribed period, all funds so deposited in escrow shall be refunded to the advance premium payors by the escrow agent, or

(2) The mutual insurer may borrow a sum of money sufficient to defray the reasonable expenses of its organization and to meet the requirements of R.S. 22:111 upon an agreement with the lender that the same, with interest at a rate not exceeding eight ~~per cent~~ percent per annum, shall be repaid only in the event that after such repayment with interest, the insurer shall be left possessed of sufficient assets to meet all of its liabilities and to maintain a full reserve against all its policies and to maintain the minimum surplus required by R.S. 22:111. Such agreement shall provide that the insurer shall have the option to make such payment of the loan or any part thereof whenever it shall be able to do so in accordance with the ~~above~~ requirements of this Section.

§117. Dividends

No domestic mutual insurer shall pay any dividends to its policyholders unless it has a surplus beyond the initial minimum surplus required and all other liabilities, except a liability created under R.S. 22:116(2), equal to fifteen ~~per cent~~ percent of such initial minimum surplus.

§119. Policyholders' meetings; voting rights

A. Domestic mutual insurers shall hold at least one policyholders' meeting annually at a time and place specified in the charter or bylaws of the insurer. Each policyholder shall be entitled to one vote on matters coming before corporate meetings of the policyholders, subject to such reasonable minimum requirements as to duration of his policy and amount of insurance held as may be made in the insurer's charter or by-laws.

B. The right to vote by any policyholder may be conferred upon any other policyholder by a written proxy. Any proxy may be revoked at any time by the policyholder, upon written notice to the secretary of the insurer or the presiding officer at any meeting.

§120. Elections of officers and directors

Election of officers and directors shall be made in the manner specified in the charter or bylaws of the insurer, provided that:

(1) Each policyholder shall be entitled to one vote in accordance with the provisions of R.S. 22:119;

(2) At least a majority of the directors shall be policyholders of the insurer;

(3) Each director, before being qualified to act, shall file with the secretary of the company a written acceptance of his trust;

(4) Vacancies in the board of directors are to be filled by the directors or the policyholders as the charter or bylaws of the insurer may provide;

(5) Directors may call special meetings of the policyholders whenever they deem it proper and must call such a meeting upon the written application of the owners of one-tenth of the amount of insurance in force as of the preceding December thirty-first report of the insurer;

(6) The board of directors shall meet at least six times a year and ~~oftener~~ often as may be required in the bylaws of the company;

(7) The directors shall annually elect a president, who shall be a member of the board, a secretary, and such other officers as the charter or bylaws may provide. However, the directors of a risk retention insurer to which the laws of this Subpart apply shall annually elect from the nonpolicy holder directors a president, a secretary, and such other officers as the charter or bylaws may provide.

§124. Domestic nonprofit mutual associations; insurer

Notwithstanding any law, regulation, or definition to the contrary, a domestic nonprofit mutual association, as defined in this Section, is deemed to be an insurer for the purposes of all surplus requirements, policy reserve requirements, and liquidation, conservation, rehabilitation, and receivership proceedings all as defined and set out in ~~R.S. 22:1 et seq~~. this Title. For purposes of this Section, a domestic nonprofit mutual association shall include a domestic nonprofit mutual association which is engaged exclusively in the business of furnishing hospital service, medical, or surgical benefits, or any similar entity.

SUBPART D. DOMESTIC SERVICE INSURERS

§132. Policy provisions

A. No service insurer shall issue a policy for a term of more than twenty years and all policies issued shall be incontestable after the lapse of one year from the date of its issue, except for non-payment of premiums or assessments. Thirty days written notice must be given to the policyholder before any policy shall be lapsed or forfeited for non-payment of premiums or assessments. All policy forms, endorsements, riders, and applications must be submitted to and approved by the ~~Commissioner~~ commissioner of ~~Insurance~~ insurance before being used.

B. Each policy must specify those things which constitute the service to be furnished, performed, or rendered; and must also provide on the face of the funeral benefit policy a stated cash payment which will be made in lieu of such services in the event it is impossible or impractical to furnish such services as set forth in the policy. This cash payment shall be not less than one hundred percent of the stated value of such services. ~~on policies written after the effective date of this Section~~.

C. If for any reason the beneficiary does not avail himself of the contractual services as set forth in the funeral policy when it is practical and possible to furnish such services, then, in lieu thereof, the policy shall provide for a stated cash payment which shall not be less than seventy-five percent of the face amount.

D. Such funeral policies shall also conform to the requirements of R.S. 22:149(A)(2), (4), (5), (6), (7), (8), and (9).

§133. Deposits

~~A.~~ All domestic service insurers shall, in addition to all other requirements, deposit with the commissioner of insurance a safekeeping or trust receipt of a bank doing business within this state or a savings and loan association chartered to do business in this state, indicating that five thousand dollars in money or approved bonds of the United States, the state of Louisiana, or any political subdivision thereof, of the par value of not less than twenty thousand dollars has been deposited, the value thereof to be maintained~~;~~ . ~~which~~ Such deposit shall be held subject to the claim of any judgment creditor arising and accruing by virtue of any policy or certificates issued by such insurer, through judgment obtained against it in any court of this state, or in any federal court in this state.

~~B. Service insurers already organized and qualified under the laws of this state as of the effective date of this Section shall continue to have the same underwriting powers they had as of that date, provided all such insurers shall increase the deposit requirement to the amount set out in Subsection A of this Section on or before October 1, 1982.~~

§135. Incorporation of service insurers prohibited

No domestic service insurance company may be organized and no alien or foreign service insurer may be qualified ~~hereunder~~ by this Subpart to do business in this state after twelve o'clock noon of August 1, 1964.

SUBPART E. INDUSTRIAL INSURERS

§141. Industrial insurance defined

Industrial life insurance is hereby defined and shall be construed to be that insurance which is issued by a (1) domestic life insurance company, qualified as an industrial insurer, or (2) a life insurer, domestic or foreign, whose policies provide any or all of the benefits enumerated in R.S. 22:142, and whose policies shall not exceed the limitation set forth therein and whose policy provisions and nonforfeiture benefits are at least as favorable to the policyholder as those contained in R.S. 22:~~149, and R.S. 22:~~146 and 149, respectively.

§142. Limitations

A. No domestic industrial insurer whose capital, surplus, and deposit or whose minimum initial surplus and deposit is less than that required by R.S. 22:81 or 111 shall issue any policy or contract, or combination of policies or contracts, on a single life, in excess of the following limitations:

(1) A life insurance policy, including funeral benefits, in the aggregate value of two thousand five hundred dollars in death benefits, exclusive of multiple indemnity benefits.

(2) A disability policy in the aggregate benefits of forty dollars per week.

(3) A policy providing benefits for dismembered and broken limbs, and/or loss of eyesight in the aggregate of one thousand dollars per policy year.

(4) A policy which provides benefits for the payment for or furnishing of hospitalization, drugs, attending physicians and surgical costs in the aggregate of one thousand dollars per policy year.

(5) A policy providing accidental death benefits of one thousand dollars.

B. Repealed by Acts 1997, No. 184, §2.

C. The limits provided in Subsection~~s~~ A ~~and B~~ of this Section shall be increased to the underwriting limits provided in R.S. 22:148 for those insurers who are entitled to increased underwriting powers under its provisions.

D. No insurer shall issue an industrial life insurance policy on more than a single life, except life insurance covering the spouse and/or the minor children of an insured under a policy naming each member of the insured's family thereby covered and stipulating a separate premium for each such family member determined according to

the attained age of each.

§143. Funeral described; benefits payable

A.(1) Every funeral policy shall state the dollar value of the funeral to be furnished and shall specify therein those benefits which shall constitute the funeral to be furnished. If upon the death of the insured, the dollar value of the funeral to be furnished, as stated in the policy or policies, is less than the retail price of the funeral benefits specified in the policy or policies, the beneficiary shall be entitled to a cash payment which shall be equal to one hundred percent of the face amount of the policy or policies.

(2) It is the intent of the legislature that under no circumstances shall an insurer be required to provide services or reimburse to a beneficiary at amounts greater than the stated dollar amount of the policy.

(3) The provisions of this Subsection are interpretive of Subpart E of Part I of Chapter 2 of the Louisiana Insurance Code and are intended to explain the original intent.

(4) The provisions of this Subsection shall be applicable to all claims existing or actions pending on July 6, 2004, and all claims arising or actions filed on or after July 6, 2004. The provisions of this Paragraph shall not be construed to ~~effect~~[1] affect any claim arising from or involving any misrepresentation as to the terms and conditions of the policy by an insurer or its agent to the insured.

B.(1) If for any reason the beneficiary does not avail himself of the contractual services as set forth in the funeral policy, in lieu thereof, the policy shall provide for a stated cash payment, which shall not be less than one hundred percent of the face amount of the policy on policies written after January 1, 1978.

(2) If the casket offered is not the casket described in the policy, the beneficiary may choose to not accept the offered casket and the funeral provider shall agree to substitute a casket other than the one offered by the funeral provider. The beneficiary shall be entitled to select and purchase the substitute casket at retail without forfeiting the remaining contractual funeral services specifically enumerated in the policy.

(3) If for any other reason the beneficiary and the funeral provider agree to substitute a casket other than the one described in the policy, the beneficiary shall be entitled to select and purchase the substitute casket at retail without forfeiting the remaining contractual funeral services specifically enumerated in the policy.

C. Every funeral policy which includes among its benefits the payment for burial lot, tombstone, marker, plot, tomb, vault or coping shall state in dollars the value of the said benefits, and shall specify therein those things which shall constitute the said benefits to be furnished. Such policy shall be valued without the reduction of reserves provided for in R.S. 22:751. In the event such services are not furnished or paid for by the insurer then the amount of insurance shall be paid in cash to the beneficiary by the insurer, at the option of the beneficiary.

D. No funeral service policies as described in R.S. 22:142, 143, 131(1), 192, and 197 shall be sold after 12:00 midnight July 31, 1997.

§146. Nonforfeiture benefits

A. From and after twelve o'clock noon of October 1, 1948, no policy of industrial life insurance, other than a term policy of twenty years or less, shall be issued or delivered in this state unless the same shall contain in substance the following provisions: that in the event of default of premium payments, after premiums have been paid for five years, the insured shall be entitled to a stipulated form of insurance, or a cash value, the net value of which shall be at least equal to two-thirds of the reserve on the policy at the end of the policy quarter year nearest to the date to which premiums have been paid, computed in accordance with R.S. 22:751 from which any existing indebtedness to the company on or secured by the policy shall be deducted, provided that the said reserve shall not be less than the legal minimum standard, as provided in this Code, for such valuation of policies, and that in computing paid-up or extended insurance granted as a nonforfeiture benefit under this section, the insurer may use single premiums based upon the Standard Industrial Table of Mortality with interest at not more than three and one-half percent per annum.

B. Within eight weeks after the due date of the first defaulted premium on policies of industrial life insurance on which premiums have been paid for five full years, application shall be made in writing by the assured, on blanks to be furnished by the insurer at the insured's request for that purpose, for paid-up insurance, payable at the same time, and under the same conditions, except as to payment of premiums, as the original policy, or for the continuance of the insurance in force at its full amount, less any indebtedness to the insurer, for such

period as the net reserve will purchase, or for cash value of the policy, all computed as ~~hereinabove~~ provided in this Section. The term of temporary insurance herein provided for shall include the period of grace, if any. If no option herein provided for shall be availed of by the assured, the reserve herein provided, without further action on the part of the assured, shall be applied either to purchase paid-up insurance or to continue the insurance in force at its full amount as ~~hereinabove~~ provided in this Section. However, in the case of any endowment policy, if the sum applicable to the purchase of temporary insurance be more than sufficient to continue the insurance to the end of the endowment term named in the policy the excess shall be used to purchase in the same amount pure endowment insurance payable at the end of the endowment term named in the policy under the conditions on which the original policy was issued. The policy shall state which of the two forms will be automatic. In calculating nonforfeiture values as herein provided there shall be included all dividend additions from participating policies.

C. The insurer shall, at any time after five full years' premiums have been paid at the request of the insured in writing, furnish the insured with a statement showing the nonforfeiture benefits available under his policy in terms of dollars, and years, months and days of insurance protection, unless this information is shown by appropriate tables in his policy.

D. Any condition or stipulation in any policy of industrial life insurance contrary to the provisions of this section, or any attempted waiver of such provisions shall be void. Nothing in this section shall limit the right of industrial life insurers to include multiple indemnity benefits in any policy issued by them.

E. A table or tables showing the cash value and the insurance available as an automatic option must be included in each policy, except funeral policies which must contain a table showing the insurance available as an automatic option.

§148. Powers of existing industrial insurers

Industrial insurers already organized and qualified under the industrial laws of this state as of twelve o'clock noon of October 1, 1948, shall continue to have the same underwriting powers they had as of that date without the necessity of meeting the increased capital or deposit requirements of this ~~code~~ Code. All policies issued subsequent to twelve o'clock noon of October 1, 1948, by such insurers must conform to the provisions of this ~~code~~ Code, except as to the amount of insurance which may be written on a single life. No industrial insurer, not authorized to write policies in excess of one thousand two hundred fifty dollars as of twelve o'clock noon of October 1, 1948, can acquire such authority except by conversion to another type insurer, provided, however, that when any domestic industrial insurer, not so previously authorized, shall meet the minimum capital, surplus and deposit requirements, if a stock company, or the minimum initial surplus and deposit requirements, if a mutual company, required by this ~~code~~ Code of an ordinary insurer, it may, after appropriate charter amendment and without conversion to an ordinary insurer, or after conversion, issue industrial insurance on a single life in an amount not to exceed two thousand five hundred dollars exclusive of multiple indemnity, subject to all other provisions of this Subpart applicable to industrial insurers except as to amount.

§149. Required policy provisions

A. All industrial life insurance policies, delivered or issued for delivery in this state, shall contain, in substance, the following provisions, or provisions submitted by the insurer which in the opinion of the commissioner of insurance are more favorable to policyholders:

(1) Grace period. A provision that the insured is entitled to a grace period of four weeks within which the payment of any premium after the first may be made, except that where premiums are payable monthly, or less frequently, the period of grace shall be either one month or thirty days, during which period of grace the policy shall continue in full force but in case the policy becomes a claim within said grace period any overdue premiums may be deducted in any settlement under the policy.

(2) The contract. A provision that the policy shall constitute the entire contract between the parties, or at the option of the insurer, a provision that the policy and the application therefor shall constitute the entire contract between the parties, and in the latter case the policy must contain a provision that all statements made by the insured shall, in the absence of fraud, be deemed to be representations and not warranties.

(3) ~~(A)~~ Incontestability. A provision that the policy shall be incontestable after it shall have been in force during the lifetime of the insured for a specified period, not more than two years from its date, except for

nonpayment of premiums and except for violation of the conditions of the policy relative to naval or military service, or services auxiliary thereto, and except as to provisions relating to benefits in the event of disability as defined in the policy, and those granting additional insurance specifically against death by accident or by accidental means, or to additional insurance against loss of, or loss of use of, specific members of the body. Provided a clause in any policy of industrial life insurance issued under this Code providing such policy shall be incontestable after a specified period shall preclude only the contest of the validity of the policy, and shall not preclude the assertion at any time of defenses based upon provisions which exclude or restrict coverages approved in this Paragraph ~~(3)~~ whether or not such restriction or exclusions are excepted in such clause; nor upon a provision regarding misstatement of age as provided in Paragraph (4) of this ~~Section~~ subsection, whether or not such provision is excepted in such clause.

~~(B) No policy of industrial life insurance issued under this Section shall contain any provision which excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except the following provisions, or provisions which in the opinion of the insurance commissioner are substantially the same or more favorable to the policyholders:~~

~~Provisions excluding or restricting coverage in the event of death occurring:~~

~~(a) As a result of war declared or undeclared under conditions specified in the policy.~~

~~(b) While in~~

~~(i) the military, naval or air forces of any country at war declared or undeclared, or~~

~~(ii) any ambulance, medical, hospital, or civilian noncombatant units serving with such forces, either while serving with or within six months after termination of service in such forces or units.~~

~~(c) As a result of self-destruction while sane or insane within two years from the date of issue of the policy.~~

~~(d) As a result of aviation under conditions specified in the policy.~~

~~(e) Within two years from date of issue of the policy as a result of a specified hazardous occupation or occupations, or while the insured is residing in a specified foreign country or countries.~~

~~In the event of death as to which there is an exclusion or restriction pursuant to Subparagraphs (a), (c), (d), or (e) of this provision, the insurer shall pay an amount not less than the reserve on the policy, together with the reserve for any paid-up additions thereto and any dividends standing to the credit of the policy, less any indebtedness to the insurer on the policy, including interest due or accrued.~~

~~In the event of death as to which there is an exclusion or restriction pursuant to Subparagraph (b) of this provision, the insurer shall pay the greater of (a) the amount specified in the preceding paragraph or (b) the amount of the gross premiums charged on the policy less dividends paid in cash or used in the payment of premiums thereon and less any indebtedness to the insurer on the policy, including interest due or accrued.~~

~~None of the provisions of this Subsection shall apply to policies issued under R.S. 22:143 and 751(E), nor to any accidental benefits in the event such death be by accident or accidental means included in a life policy.~~

(4) Mistatement of age. A provision that if the age of the person insured (or the age of any other person considered in determining the premium) has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium paid would have purchased at the correct age or ages.

(5) Participating policy. If the policy is a participating policy, a provision that the insurer shall periodically ascertain and apportion any divisible surplus accruing on the policy.

(6) Reinstatement. A provision that the policy may be reinstated at any time within one year from the due date of the premium in default unless the cash surrender value has been paid, or the extension period expired, upon the production of evidence of insurability including good health satisfactory to the insurer and the payment of all overdue premiums and any unpaid loans or advances made by the insurer against the policy with interest at a rate not exceeding six percent payable annually.

(7) Claim provision. A provision that when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of due proof of death or after a specified period not exceeding two months after receipt of such proof.

(8) Subject of insurance. A title on the face of the policy briefly describing its form.

(9) Beneficiary requirement. A space on the front or back page of the policy for the name of the beneficiary designated with a reservation of the right to designate or change the beneficiary after the issuance of the policy.

The policy may also provide that no designation or change of beneficiary shall be binding on the insurer until endorsed on the policy by the insurer, and that the insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insurer to have an insurable interest in the life of the insured. Such policy may also contain a provision that the insurer may make any payment or grant any non-forfeiture provision to any of the insured's relatives by blood or legal adoption or connection by marriage, or to any person appearing to the insurer to be equitably entitled thereto by reason of having been named beneficiary, or by reason of having incurred expense for the maintenance, medical attention or burial of the insured, and the production by the insurer of a receipt signed by any of said persons shall be evidence that such payment or privilege has been made or granted to the person or persons entitled thereto and that all claims under the policy have been fully satisfied.

B. Exclusions and limitations. No policy of industrial life insurance issued under this Section shall contain any provision which excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except the following provisions, or provisions which in the opinion of the insurance commissioner are substantially the same or more favorable to the policyholders:

(1) Provisions excluding or restricting coverage in the event of death occurring:

(a) As a result of war declared or undeclared under conditions specified in the policy.

(b) While in:

(i) The military, naval, or air forces of any country at war declared or undeclared; or

(ii) Any ambulance, medical, hospital, or civilian noncombatant units serving with such forces, either while serving with or within six months after termination of service in such forces or units.

(c) As a result of self-destruction while sane or insane within two years from the date of issue of the policy.

(d) As a result of aviation under conditions specified in the policy.

(e) Within two years from date of issue of the policy as a result of a specified hazardous occupation or occupations, or while the insured is residing in a specified foreign country or countries.

(2) In the event of death as to which there is an exclusion or restriction pursuant to Subparagraphs (1)(a), (c), (d), or (e) of this Subsection, the insurer shall pay an amount not less than the reserve on the policy, together with the reserve for any paid-up additions thereto and any dividends standing to the credit of the policy, less any indebtedness to the insurer on the policy, including interest due or accrued.

(3) In the event of death as to which there is an exclusion or restriction pursuant to Subparagraph (1)(b) of this Subsection, the insurer shall pay the greater of: (a) the amount specified in Paragraph (2) of this Subsection; or (b) the amount of the gross premiums charged on the policy less dividends paid in cash or used in the payment of premiums thereon and less any indebtedness to the insurer on the policy, including interest due or accrued.

(4) None of the provisions of this Subsection shall apply to policies issued under R.S. 22:143 and 751(E), nor to any accidental benefits in the event such death be by accident or accidental means included in a life policy.

§150. Exceptions

The requirements in R.S. 22:149 shall not be applicable as follows:

(1) When an industrial life insurance policy is issued by any domestic, foreign, or alien insurer providing other benefits, in addition to life insurance, the ~~foregoing~~ provisions of R.S. 22:149 shall apply only to the life insurance portion of the policy.

(2) Any of the ~~foregoing~~ provisions of R.S. 22:149 or portions thereof not applicable to non-participating or term or paid-up policies shall to that extent not be incorporated therein.

SUBPART F. RECIPROCAL INSURERS

§161. Scope of Subpart

A. This Subpart shall apply to all reciprocal insurers organized or authorized to transact business in this

state.

B. As used in this Subpart, "subscriber" means the participant or policyholder; "attorney-in-fact" means the representative of the subscribers through whom reciprocal insurance is exchanged; and "reciprocal insurer" means the organization or group of all the subscribers.

§165. Minimum application and surplus requirements

A. A domestic reciprocal insurer, if it has otherwise complied with the provisions of this Code, may be authorized to exchange contracts of insurance in this state upon qualifying therefor and by having initial minimum assets as follows:

	Insurance	Initial Minimum Surplus
(1)	Health and accident	$ 300,000
(2)	Vehicle physical damage	250,000
(3)	Title	75,000
(4)	Industrial fire	300,000
(5)	Any company organized and authorized to transact worker's compensation only as of July 27, 1966	150,000
(6)	Any company organized and authorized to transact crop and livestock insurance only as of July 27, 1966	250,000
(7)	Vehicle	1,000,000
(8)	Liability	1,000,000
(9)	Worker's compensation	1,000,000
(10)	Burglary and forgery	1,000,000
(11)	Glass	1,000,000
(12)	Fidelity and surety	1,000,000
(13)	Fire and extended coverage	1,000,000
(14)	Steam boiler and sprinkler leakage	1,000,000
(15)	Crop and livestock	1,000,000
(16)	Marine and transportation	1,000,000
(17)	Miscellaneous	1,000,000
(18)	All insurances, except life and title	1,000,000

B. For the ~~purpose~~ purposes of this Section, vehicle physical damage insurance shall be defined as insurance against loss or damage to any land vehicle or property while contained therein or thereon or being loaded or unloaded therein or therefrom.

~~B~~.C. Insurers already organized and qualified under the laws of this state as of July 27, 1966 shall continue to have the same underwriting powers they had as of that date, provided all such insurers shall increase the surplus requirements to the amounts set out in Subsection A of this Section 165 on or before August 1, 1967.

§168. Documents to be filed

A. Upon execution of the declaration of organization, there shall be filed with the commissioner of insurance the following:

(1) The declaration of organization.

(2) A copy of the power of attorney of the attorney-in-fact under or by virtue of which insurance contracts are to be effected or exchanged.

(3) The insurer's irrevocable authorization of the secretary of state, and his successors in office, to receive legal process issued in this state against the insurer.

(4) All forms of insurance policies or contracts and endorsements proposed to be used and the forms of applications therefor.

(~~5) Two organization bonds, or the cash or securities provided for in R.S. 22:169.~~

Upon approval of the commissioner of insurance, he shall record with the secretary of state ~~Paragraphs (1), (2) and (3) of this Section.~~ a copy of the insurer's irrevocable authorization of the secretary of state, and his successors in office, to receive legal process issued in this state against the insurer.

§171. Deposit

Each domestic reciprocal insurer shall make and maintain with the commissioner of insurance a safekeeping or trust receipt from a bank doing business in this state indicating that a deposit of cash or approved securities has been made in an amount required by Part II of Chapter 3 of this Title ~~22 of the Louisiana Revised Statutes of 1950.~~

§172. Certificate of authority

When the commissioner of insurance has been notified that the required bona fide applications have been received and that the reciprocal insurer has received from each subscriber the full annual premium or premium deposit required for each policy applied for and has on hand the initial surplus provided in R.S. 22:165, ~~or, in lieu of these requirements, that the minimum surplus provided in R.S. 22:436[1]~~ if it is to transact one kind of business only is on hand, he shall conduct an examination of the insurer. If he finds that the organization is complete, and that all of the requirements of the Code have been met, he shall issue to the attorney-in-fact a certificate of authority in the name of the insurer to transact the kind or kinds of business specified therein. No attorney-in-fact shall transact any business of insurance until the certificate of authority has been received nor any business not specified in such certificate of authority.

§175. Non-assessable contracts

~~Except as provided in R.S. 22:436[1], any~~ Any domestic reciprocal insurer authorized so to do by its declaration of organization may issue policies without contingent liability of the subscriber for assessment upon approval of the commissioner of insurance and upon compliance with the following requirements:

(1) It shall have and at all times maintain a surplus as determined from its last annual statement, which is at least equal to the minimum capital and the paid in surplus required on organization of a domestic stock insurer organized under the provisions of this Code.

(2) It shall have submitted a copy of its proposed non-assessable policy or policies for approval of the commissioner of insurance and shall have obtained his approval thereof.

§176. Contributed surplus

The attorney-in-fact or subscribers of a reciprocal insurer may make contributions to surplus under agreements approved by the commissioner of insurance which may provide for the payment of interest not exceeding eight ~~per cent~~ percent per annum and shall provide that the contributions and interest thereon shall be repaid only out of the surplus of such insurer in excess of the original surplus required of such insurer by R.S. 22:165. Such excess of surplus shall be calculated upon the fair market value of the assets of the insurer, and any contributions to surplus shall constitute and be enforceable as a liability of the insurer only as against such excess of surplus. Any unpaid balance of such contributions to surplus shall be reported in the annual statement to be filed with the commissioner of insurance and no part of such contributions shall be repaid to the contributors, except under such terms and in such circumstances as are approved by the commissioner of insurance.

§177. Process

A. Legal process may be served upon such insurer by service upon the insurer's attorney-in-fact at the principal office of the attorney-in-fact or by service upon the secretary of state. Service of process upon an individual subscriber shall not constitute service upon the insurer.

B. When such process is served upon the secretary of state, duplicate copies of such process shall be delivered to him and he shall immediately forward one copy of such process to the insurer's attorney-in-fact, by registered mail with return receipt requested, postage prepaid, giving the day and hour of such service.

§183. Application for receiver~~, etc.~~

No proceedings for the dissolution of, or the appointment of a receiver for, any domestic reciprocal insurer shall be entertained by any court in this state unless the same is made by the commissioner of insurance in accordance with R.S. 22:73, 96, ~~Chapter 9 of this Title and~~ Subpart H of Part III of this Chapter ~~2 of this Title~~.R.S. 22:731 et seq., and Chapter 9 of this Title, R.S. 22:2001 et seq.

SUBPART G. ~~NON-PROFIT~~ NONPROFIT FUNERAL SERVICE ASSOCIATIONS

§191. Definitions

For the purposes of this Subpart, the terms stated ~~below~~ in this Section have the meanings assigned to them, respectively, unless the context otherwise requires:

(1) "~~Non-profit~~ Nonprofit funeral service association" or "~~non-profit~~ nonprofit association" means a corporation organized, incorporated and operated under the provisions of this Subpart which furnishes to its policyholders funeral services, supplies, and other benefits hereinafter authorized on the assessment or ~~co-operative~~ cooperative plan, but the term shall not be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows, Knights of Columbus, Daughters of America, or to any other fraternal benefit society organized and qualified prior to 12:00 noon October 1, 1948.

(2) "Policyholder" means any person who is named as a beneficiary in a policy or certificate of membership issued by a ~~non-profit~~ nonprofit funeral association.

(3) "Insured bank" means a bank, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(4) "Funeral services and supplies" means the general and usual services rendered and supplies furnished by undertakers, embalmers and funeral directors.

§192. Incorporation and qualification of incorporators

A.(1) Five or more natural persons who are residents of this state of full age, or fully relieved by emancipation of all disabilities attaching to minority, may form a ~~non-profit~~ nonprofit corporation, under the provisions of this Subpart, having for its purpose the establishing, maintaining, and operating of a ~~non-profit~~ nonprofit funeral service plan.

(2) No such insurer, however, may be organized and no alien or foreign insurer may be qualified hereunder to do business in this state after 12:00 noon of August 1, 1956.

B. All associations now operating and authorized under this Subpart, as of 12:00 noon, August 1, 1956, to do business in this state, may continue to operate, provided that, from and after December 31, 1956, all policies issued by such insurers and the income therefrom and investment thereof, shall be subject to and in accordance with the laws and regulations of this state relative to industrial life insurance, and especially subject to the provisions of this Code relative to domestic industrial insurers, and shall be authorized to issue only funeral benefit policies in amounts not exceeding an aggregate of five hundred dollars (including the amount of any existing assessment policies) on any single life, with no multiple indemnity benefits. The operation of all present insurers shall be governed by the provisions of this Subpart~~:~~ and by all the applicable provisions of this Code.

§193. Articles of incorporation

A. Articles of incorporation shall be executed by authentic act signed by each of the incorporators, or by his agent duly authorized by authentic act, which authorization shall be attached to the articles of incorporation, and shall state:

(1) The name of the association~~:~~.

(2) That it is formed for the purposes of establishing, maintaining, and operating a ~~non-profit~~ nonprofit funeral service plan;

(3) Its duration~~:~~.

(4) The location and post office address of its principal office~~:~~.

(5) The full names and post office addresses of officers designated by it for service of process~~:~~.

(6) The number, terms of office, and manner of election of directors and officers~~;~~ and the names and post office addresses and respective titles of the first officers~~:~~.

(7) Provisions for meetings at least annually of the policyholders;.

B. In addition to the ~~above~~ information specified in Subsection A of this Section, the articles may contain any provision creating, defining, dividing, limiting, or regulating the powers of the directors, officers, or policyholders or any other provisions not inconsistent with this Subpart or the laws of this state for the carrying out of the purposes and the conduct of the affairs of the association.

§194. The corporate name

A. The corporate name must end with the words "Funeral Association" or the words "Funeral Association Incorporated" or the words and abbreviation "Funeral Association, Inc."

B. The corporate name shall not be the same as nor deceptively similar to the name of any other domestic insurer nor any foreign insurer authorized to do business in this state.

§195. Filing and recording articles; application for certificate of authority; issuing certificates of incorporation and authority

A. The articles, or a multiple original thereof, shall be recorded in the office of the recorder of mortgages of the parish in which the registered office of the association is situated and a certified copy of the articles bearing the certificate of the proper recorder of mortgages showing the date when the articles were filed for record in his office, together with an application signed by the first directors for a certificate of authority to operate under this Subpart, shall be delivered to the commissioner of insurance. If the commissioner of insurance finds the facts conform to the law, he shall approve same, and the ~~Articles~~ articles shall be recorded in the manner specified in R.S. 22:64.

B. There shall be attached to the application for certificate of authority the following:

(1) A sworn statement of its president or vice-president and treasurer showing:

(a) The number of persons, which shall not be less than five hundred, who have, in good faith, made application in writing for policies and the number of those persons who fall within each class or group as provided in the ~~by-laws~~ bylaws of the association~~:~~.

(b) That there has been created and deposited with an insured bank to the credit of the association a sum of money as a reserve fund equal to the aggregate amount of the initial membership fees, as required by the ~~by-laws,~~ bylaws of all persons who have made application in writing for policies or the sum of ten thousand dollars, whichever is the greater~~:~~.

(c) That the association has created no debts and is under no obligation except to issue policies to the persons who have made application therefor~~:~~.

(2) Copies of proposed forms of applications, policies, or membership certificates and ~~by-laws;~~ bylaws.

(3) Treasurer's fidelity bond in the sum of two thousand five hundred dollars, signed by the treasurer of the association and a surety approved by the commissioner of insurance.

C. When all taxes, fees and charges have been paid as required by law, the provisions as outlined in R.S. 22:64 shall be complied with.

§196. Application for policies

A. All applications for policies shall be signed on a written, typewritten, or printed form identical with the form of application filed with the commissioner of insurance for policies of the type to be issued and, in addition to the signature of the applicant, or his mark in case he is unable to write, must be signed by the officer or agent of the association soliciting or receiving the application. No ~~agent~~ producer may sign any application which he has not personally solicited or received.

B. The applications for policies must state the age on the nearest birthday of each person for whose benefit the application is made; that no person named in the application as a beneficiary is less than one month nor more

than seventy years of age; that each person named in the application as a beneficiary is in good health, free from any chronic disease, and not under treatment by any doctor and that, subject to its incontestability after one year from its date, except for non-payment of assessments, any misrepresentation in the application in regard to the health or age of any beneficiary at the time the application is signed will forfeit all rights to policy benefits; and such other statements not inconsistent herewith as may be required by the articles or by-laws.

C. All applications for policies must be kept on file in the office of the association. When any policyholder shall die, the application of such policyholder shall be retained for a period of at least three years after his death and the original applications for all policies which subsequently become lapsed or forfeited shall be retained for a period of at least three years after the date of the lapse or forfeiture thereof.

D. A policyholder in good health and not over seventy years of age who has permitted his policy to lapse may rejoin upon terms fixed in the ~~by-laws~~ bylaws of the association and signing a statement in regard to his health as in the original application. Policyholders whose policies have lapsed and who are over seventy and under ninety years of age may reinstate only in the old age group.

E. In the case of family group policies the application must be signed by one or more members of the family group to be covered by the policy.

§197. Policies

A. Every policy issued by any association authorized under this Subpart shall have plainly printed on the first page thereof the words "Assessment or ~~Co-operative~~ Cooperative Plan", shall specify the services which it promises to furnish, the contingency upon which it agrees to furnish the same, the name of each beneficiary, the class or group in which each beneficiary is placed, the amount of each assessment to be required of each beneficiary and the value of the benefit to be furnished each beneficiary. There shall be printed on each policy, either on the reverse thereof or a sheet attached thereto, a copy of the bylaws of the association. The policy may also contain any other provision, language, or appendage not calculated to operate as a fraud upon, or mislead, the policyholder.

B. No policy shall be issued which provides for any benefit in excess of three hundred dollars for any one individual and no policy shall be issued which provides for any benefit in excess of two hundred dollars for any person who is at the time of the issuance of the policy more than sixty years of age.

C. No person may hold a policy of more than one association at one time. When one person holds more than one policy, the one first issued shall be regarded as in effect and policies subsequently issued as null and void.

D. Groups of insureds seventy years of age or older are authorized, but all records, accounts, funds, expenses, and other matters shall be kept separate from other groups.

E. Every policy issued by any association authorized pursuant to this Subpart shall be incontestable after one year from the date of its issue except for nonpayment of assessments.

§198. ~~By-laws~~ Bylaws

A. The board of directors of an association authorized under this Subpart may make and alter ~~by-laws~~ bylaws not inconsistent with the law or articles. The initial ~~by-laws~~ bylaws filed with the articles shall be signed by the first directors named in the articles.

B. The by-laws of all associations authorized under this Subpart shall contain:

(1) A statement that the treasurer shall make all assessments and pay out all money belonging to the association~~;~~.

(2) The name of the undertaker or funeral directing firm with which the association has contracted to furnish the services specified in the policies~~;~~.

(3) A description of the various classes or groups into which the policyholders are divided, the benefits to be furnished each class or group, the amount of the assessment of the members of each class or group and the contingency upon which the assessment shall or may be made~~;~~.

(4) The period of delay after assessment, which shall be not less than thirty days, within which assessments must be paid in order to prevent the forfeiture of policies~~;~~.

(5) The person, firm, or corporation to be notified in event of the death of a policyholder or beneficiary~~;~~.

(6) The time and place of the annual meeting of policyholders~~;~~.

(7) The notice and manner of calling special meetings of policyholders~~;~~. ~~and~~

C. The bylaws may contain any other lawful provisions which may be desired for the purpose of defining, limiting, and regulating the exercise of the authority of the association, directors, officers, or policyholders.

§199. Amendment of articles and ~~by-laws~~ bylaws

A. The articles may be amended by the board of directors with the approval of the commissioner of insurance. The amendment shall be adopted by the board at any regular or special meeting and then submitted to the commissioner of insurance, who shall approve the same unless it is contrary to law. Upon its approval by the commissioner of insurance the amendment shall be recorded in the manner provided in R.S. 22:67.

B. The board of directors may at any regular or special meeting adopt amendments to the ~~by-laws,~~ bylaws, subject to the approval of the commissioner of insurance, but no amendment that provides for the extension of the benefits of the policies of the association to a group or class of persons not previously provided for or provides for any change with respect to the benefits to be furnished any group or class of policyholders or provides for any change regarding the amount of any assessments or contingency upon which any assessment shall or may be made or provides for any change as to the period of delay within which assessments must be paid in order to prevent the forfeiture of policies or changes the time or place of the annual meeting of policyholders, shall be approved unless ratified by the policyholders at a regular or special called meeting of policyholders.

§200. Directors

A. Subject to such limitations, restrictions or reservations as may be provided in the articles, the ~~by-laws~~ bylaws or this Subpart, all of the corporate powers shall be vested in and the affairs of the association shall be managed by a board of not less than three nor more than fifteen directors who must be policyholders in good standing.

B. The number, qualifications, terms of office, manner of election, time and place of and manner of calling and holding meetings, powers and duties, and method of and cause for removal of directors may, subject to the provisions of this Subpart, be prescribed by the articles or ~~by-laws.~~ bylaws.

C. Unless otherwise provided in the articles, a majority of the board of directors shall be necessary to constitute a quorum for the exercise of any of the powers conferred by the articles or this Subpart upon the board.

§201. Officers and ~~agents~~ directors

A. The board of directors shall elect a president, a vice-president, a secretary and a treasurer, all of whom, except the treasurer, shall be members of the board of directors. Any two of ~~the above named~~ these officers may be combined in one person and should the office of treasurer and another one of said officers be combined in one person, said officer need not be a member of the board of directors. The treasurer may be a member of the board.

B. The president shall be ~~ex-officio~~ ex officio chairman of the board of directors. He shall preside at all meetings of the said board and at all meetings of the policyholders, and shall perform such other duties and functions as are required or permitted by this Subpart and the provisions of the articles. In the absence of the president, the vice-president shall act in his place and stead.

C. The secretary shall record all proceedings of the meetings of the board of directors and policyholders and perform such other duties and functions as are required or permitted by this Subpart and the provisions of the articles.

D. The qualifications, terms of office, manner of election and the powers and duties of the officers may, subject to the provisions of this Subpart, be prescribed by the articles or ~~by-laws.~~ bylaws. No person shall solicit, write, or issue any policy under this Subpart without having first been duly licensed by the commissioner of insurance as ~~an agent.~~ a producer.

§202. Policyholders' meetings

A. Meetings of the policyholders shall be held at such times and places as the articles and ~~by-laws~~ bylaws may provide but the articles and ~~by-laws~~ bylaws shall provide for the manner of calling and the notice to be given of special meetings of the policyholders. The articles or ~~by-laws~~ bylaws shall provide that notice of any special

meeting of policyholders shall be in writing addressed to each policyholder and deposited in the mails at the location of the office of the corporation with postage paid not less than fifteen days prior to the meeting date.

B. In case of family group policies, notice given to the head of the family group covered thereby shall be deemed sufficient notice to all of the members of such group.

C. The policyholders present at any regular or special meeting of policyholders shall constitute a quorum and any act which requires the authorization or approval of the policyholders shall be valid if authorized or approved by the majority of those present at any such meeting.

§204. Service

Except as hereinafter authorized, funeral services and supplies only can be furnished by any association operating hereunder and payment therefor shall be made to the undertaker or funeral-directing firm furnishing the funeral and not the family of the deceased. The funeral services and supplies shall be furnished by the undertaker or funeral-directing firm named in the ~~by-laws~~ bylaws of the association but in a case of emergency the undertaker or firm so named, upon being notified of the death of a policyholder, may select another undertaker or firm to provide the services and supplies, in which event payment of the stipulated benefit shall be made in cash to the undertaker or funeral-directing firm named in the ~~by-laws~~ bylaws of the association.

§205. Uniform classes of policyholders and stipulated benefits; assessments

A. The classification or grouping of policyholders into classes according to age and the value of the benefit provided in the policies shall be uniform and, except as hereinafter specified, all associations operating hereunder shall prescribe the same per capita rate of assessment for each class or age group entitled under the provisions of its policies to the same amount of benefit.

B. The classification or groupings of policyholders and per capita assessment of each class or group shall be filed with the commissioner of insurance.

C. Any association operating hereunder may issue policies embracing any or all the approved classifications or groupings of policyholders until December 31, 1982, and provide for the payment of benefits and per capita rates of assessment accordingly, but except as herein expressly authorized, shall not adopt any different classifications, groupings, or rates.

D. Policies providing for benefits not in excess of one hundred fifty dollars may be issued to persons between the ages of seventy and ninety years at special rates approved by the commissioner of insurance.

E. Policies may, in addition to the benefits herein specially authorized, provide for the payment of a thirty-five dollar benefit for children of policyholders who are stillborn or who die before reaching the age of three months.

F. Assessments must be made often enough to provide funds to meet the current obligations of the association, keep out of debt, and maintain the reserve fund required by this Part, and in no case shall any association levy less than four assessments annually. At least once every year there shall be furnished to all policyholders a statement of the receipts and disbursements since the previous statement, a list of the names of the policyholders who have died since the date of the previous statement, and the amount or value of the benefit furnished to each.

G. All policyholders receiving policies more than sixty days prior to an assessment must be included in the assessment.

§206. Expenses

The expenses of necessary printing, stationery, postage, office supplies and expenses, clerical hire, statutory fees, and examination fees, may be paid by the association. The total of all expenses shall not exceed twenty-five percent of each assessment and shall be paid out of the general fund of the association.

§208. Books and records

Every association shall keep at its office a record of all proceedings of the board of directors and policyholders in regular or special called meetings and shall keep such other books, accounts and records as may be

necessary to accurately reflect at all times the actual condition of the association and whether or not it is complying with the provisions of this Subpart, the articles and ~~by-laws~~ bylaws. All records of the association shall be available for inspection by representatives of the office of the commissioner of insurance and the policyholders at all times. The books of an association may be closed not more than thirty days prior to an assessment.

§210. Reports and financial statements

Every association shall, on or before the first day of March in each year, make and file with the commissioner of insurance a report of its affairs and its operations during the year ending on the ~~31st~~ thirty-first of December immediately preceding. Such report shall be signed by the president or vice-president and the secretary and treasurer and shall contain the following:

(1) The number of policies in force at the beginning and at the end of the year and the aggregate face value thereof;

(2) The number of policies issued during the year;

(3) The number of policies lapsed during the year;

(4) The number of death losses;

(5) The number of death losses paid;

(6) The number of death losses compromised or resisted and a brief statement of the reason;

(7) The number of assessments which have been made during the year;

(8) The total amount received from death assessments during the year;

(9) The total amount of benefits paid on death losses;

(10) An itemized statement of all expenses paid during the year;

(11) The amount of general funds, the amount of the reserve fund, the name of the bank or banks wherein the same are deposited, and the amount on deposit with each depository.

§211. Expiration of certificate of authority; renewal

Every certificate of authority issued by the commissioner of insurance to any association~~, and agents' licenses issued under this Subpart~~ shall continue in force until the thirty-first day of March, inclusive, next following its issuance, unless the same be sooner revoked, and shall be reinstated each year upon compliance with all of the provisions of this Subpart.

§212. Merger and consolidation

A. Any two or more associations operating under this Subpart having in the aggregate a number of policyholders of not less than five hundred to each of the constituent associations may merge or become consolidated by complying with the provisions of this Section.

B. The boards of directors of the constituent associations shall enter into an agreement by authentic act setting forth the terms, conditions and the plan of the proposed merger or consolidation and shall submit the same to the commissioner of insurance for his approval. If from an examination made by him or his authorized representative it shall appear to the commissioner of insurance that the proposed plan is feasible and that the same will not operate injuriously to the policyholders of any of the constituent associations, he shall approve the same and the merger or consolidation shall become effective upon his approval. The commissioner of insurance may if he deems it advisable, direct that meetings of the policyholders of the constituent associations or any of them be called for the purpose of ratifying or approving the proposed plan.

C. In addition to the ~~above~~ other requirements of this Section, any association incorporated or hereinafter incorporated under the provisions of this Subpart, may with the consent of the board of directors and any other association or corporation operating a ~~non-profit~~ nonprofit funeral association other than under the provisions of this Subpart by and with the consent of the officers ~~and/or~~ or board of directors of the other association or corporation, as provided for under the ~~by-laws,~~ bylaws, rules, and regulations of the association or corporation, and upon approval of the commissioner of insurance or his authorized representative, if the plan shall appear to the commissioner of insurance or his authorized representative to be feasible and that the same will not appear to operate injuriously to the policyholders of either association, shall by written contract in authentic form, assume the debts, policies, and obligations of the other association or corporation, and continue to satisfy the terms and conditions of the outstanding policies ~~and/or~~ or contracts under the same rates as provided for in the policies until

all policies outstanding have expired, provided that all new policies shall be issued according to the provisions of this Subpart, and by and under the name of the association incorporated under the provisions of this Subpart.

§213. Liquidation

A. Whenever the board of directors of any association operating under this Subpart shall be desirous of discontinuing the operations of the association, it shall immediately notify the commissioner of insurance and submit a plan for the liquidation of the association. The commissioner of insurance shall cause an examination of the association to be made and if it appears that the association has complied with all the provisions of this Subpart, he shall direct that a meeting of the policyholders be called, at which meeting the proposed plan of liquidation shall be submitted and if approved by the policyholders, shall be carried into effect. At such meeting the policyholders shall be permitted, if they elect to do so, to elect a new board of directors and in lieu of liquidating continue the operation of the association. Should the policyholders disapprove of the plan of liquidation and fail to reorganize in such a manner as to continue the operation of the association, the association shall be liquidated under the direction of the commissioner of insurance as in the case of associations which have persisted in the violation of the provisions of this Subpart, the articles, or ~~by-laws.~~ bylaws.

B. Whenever it appears to the commissioner of insurance that any association is failing to comply with the provisions of this Subpart or its articles or ~~by-laws.~~ bylaws. in any respect, he shall immediately notify the officers of the association to that effect, specifying in what respects it is claimed that the association is failing to comply and if after such notice the association persists in the violations of the provisions hereof, the commissioner of insurance shall proceed to apply for liquidation of the association in accordance with R.S. 22:73, 96, ~~Chapter 9 of this Title and~~ Subpart H of Part III of this Chapter, ~~2 of this Title.~~ R.S.22:731 et seq., and Chapter 9 of this Title, R.S. 22:2001 et seq.

§214. Fees payable

Every non-profit funeral service association shall pay the following fees:

~~A.~~ (1) To the secretary of state:

~~1.~~ (a) For filing and recording articles, twenty-five cents per one hundred words.

~~2.~~ (b) For certificate of recordation, one dollar.

~~B.~~ (2) To the commissioner of insurance:

~~1.~~ (a) For each certificate of authority, twenty-five dollars.

~~2.~~ (b) For each examination, not exceeding twenty-five dollars per diem and expenses for each examiner.

~~3.~~ (c) Each ~~agent's~~ producer's license, two dollars.

§215. Exemption from taxation

All ~~non-profit~~ nonprofit funeral service associations operating hereunder are declared to be charitable and beneficial institutions and they as well as all of their receipts, funds, reserves and all of their property, except real estate, used in connection with the operation of their affairs shall be exempted from any and all forms of taxation, except the fees prescribed in R.S. 22:214, by the state or any of its political subdivisions.

§216. Penalties

A. Any person who shall solicit any application for or issue or cause to be issued any policy or membership certificate of any association within the provisions of this Subpart without a certificate of authority having been procured by such association from the commissioner of insurance or after such certificate has expired or become suspended or revoked, or any person representing himself to be an ~~agent~~ a producer without having been duly licensed as ~~hereinabove~~ provided~~,~~ in this Subpart shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or be imprisoned for not more than three months or both at the discretion of the court.

B. Any officer, director, or ~~agent~~ producer of any association embraced within the provisions of this Subpart who shall wilfully commit any of the following acts and any officer, director, or producer of any such association who shall wilfully condone or acquiesce in any of these acts shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars or be imprisoned for not more than six

months or both at the discretion of the court:

(1) ~~Solicit or receive~~ Soliciting or receiving any application which does not comply with ~~the first two paragraphs~~ of R.S. 22:196(A) or (B)~~; or~~.

(2) ~~Fail~~ Failing to retain the original applications for policies as required by ~~the third paragraph of~~ R.S. 22:196(C)~~; or~~.

(3) ~~Issue~~ Issuing any policy which does not comply with R.S. 22:197~~; or~~.

(4) Fail to maintain the reserve fund required by R.S. 22:203~~; or~~.

(5) ~~Withdraw or use~~ Withdrawing any funds of such association in any other manner than is ~~herein~~ specifically authorized~~; or~~ in this Subpart.

(6) ~~Issue~~ Issuing any policy or make or cause to be made any assessment not provided for or authorized by R.S. 22:205~~; or~~.

(7) ~~Fail~~ Failing to maintain books or records as required by R.S. 22:208; or.

(8) ~~Refuse~~ Refusing to any duly authorized representative of the office of the commissioner of insurance access to the books and records of the association~~; or~~.

(9) ~~Fail~~ Failing to file or ~~fail~~ failing to file within the required time the reports required by R.S. 22:210~~; or~~.

(10) ~~Make or cause~~ Making or causing to be made any assessment without a certificate of authority having been secured from the commissioner of insurance or after such certificate has expired or become suspended or revoked~~; or~~.

(11) ~~Make or cause~~ Making or causing to be made any assessment for any death which occurred prior to the date as of which any previous assessment was made as shown by the statement and list accompanying such previous assessment~~; or~~.

(12) ~~Fail~~ Failing to furnish with any assessment a statement of the receipts and disbursements of the previous assessment and list of the names of the policyholders who have died since the previous assessment and the value or amount of benefit furnished each~~; or~~.

(13) ~~Fail~~ Failing to include in any assessment any policyholder who has received a policy more than sixty days prior to such assessment~~:~~. and any officer, director or agent of any such association who shall wilfully condone or acquiesce in any of said acts, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars or be imprisoned for not more than six months or both at the discretion of the court.

C. Any person who at one time holds or is named as the beneficiary in more than one policy of any association embraced within the provisions of this Subpart; or who at one time holds or is named as the beneficiary in policies of more than one association embraced within the provisions of this Subpart shall in addition to incurring the penalty of the nullity of that one of the policies which was subsequently issued, forfeit all fees or assessments paid on account of such subsequently issued policy.

D. The treasurer of any association who shall wilfully and without reasonable cause make any assessment on account of the death of any person who died prior to the date as of which the previous assessment was made as indicated by the statement of the receipts and disbursements of such previous assessment, the surety on his bond and any officer, director of any such association or any other persons who shall wilfully condone or acquiesce in such conduct, shall be liable in solido to the association at the instance of any policyholder for the amount of the benefit paid for such decedent.

SUBPART H-1. CONVERSIONS OF MUTUAL LIFE INSURERS AND MUTUAL LIFE INSURANCE HOLDING COMPANIES

§236. Definitions

As used in this Subpart, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(1) "Adoption date" means the date as of which the board of directors of the reorganizing mutual initially approves and adopts the plan of reorganization.

(2) "Affiliate" means a person who directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.

(3) "Commissioner" means the commissioner of insurance, or his deputy, or the Department of Insurance, as appropriate.

(4) "Control" has the meaning set forth in R.S. 22:692.

(5) "Dividend protections" means provisions in a plan of reorganization designed to protect, through a closed block or other means, the reasonable dividend expectations of policyholders who own individual, dividend-paying policies.

(6) "Effective date" means the date upon which the reorganization of the reorganizing mutual is effective, as provided in R.S. 22:236.8.

(7) "Eligible member" means a person who, on the adoption date, owns, or is deemed by the plan of reorganization to own, a policy of a mutual insurer or a reorganized insurer that is, or that is deemed by the plan of reorganization to be, in force with such insurer on such adoption date, or a person who is deemed eligible by the plan of reorganization.

(8) "Member" means: (a) with respect to a mutual insurer, a policyholder who owns or is deemed by the plan of reorganization to own a policy of the mutual insurer; or (b) with respect to a mutual insurance holding company, a member of such mutual insurance holding company, as defined in such company's articles of incorporation and bylaws or as defined in the plan of reorganization.

(9) "Membership interest" means: (a) with respect to a mutual insurer, all rights and interests of a policyholder as a member arising under the mutual insurer's articles of incorporation and bylaws, by law or otherwise, which rights include but are not limited to the right, if any, to vote and the right, if any, with regard to the surplus of the mutual insurer not apportioned or declared by the board of directors for policyholder dividends; or (b) with respect to a mutual insurance holding company, all rights and interests of the member arising under the mutual insurance holding company's articles of incorporation and bylaws, by law or otherwise, which rights include but are not limited to the right, if any, to vote and the right, if any, to receive consideration upon the demutualization or liquidation of the mutual insurance holding company.

(10) "Mutual insurance holding company" and "mutual life insurance holding company" both mean a domestic mutual holding company formed as a result of the conversion of a mutual insurer as defined in this Subpart pursuant to R.S. 22:231 and 691 et seq. in accordance with a plan of reorganization approved by the commissioner.

(11) "Mutual insurer" and "mutual life insurer" both mean for purposes of this Subpart a domestic mutual insurer subject to Subpart C of ~~Chapter 2 of this Title~~ this Part, R.S. 22:111 et seq., that is authorized to transact life, or life and accident and health insurance in this state, but does not mean a domestic nonprofit mutual association as described in R.S. 22:124.

(12) "Parent corporation" means a stock corporation that is or has been organized for the purpose of acquiring, directly or indirectly, all of the common shares of a reorganized insurer.

(13) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, a limited liability company, a limited liability partnership, a government or governmental agency, a state or political subdivision of a state, board, estate, trustee or fiduciary, or any other legal entity.

(14) "Plan of reorganization" means the plan of reorganization adopted by the reorganizing mutual in compliance with this Subpart.

(15) "Policy" means an individual or group policy of insurance or annuity contract issued, or deemed by the plan of reorganization to have been issued, by a mutual insurer or by a reorganized insurer. If a policy is a group policy, the individual certificates or other evidences of interests in the group policy shall not be treated as separate policies; however, in the case of a policy or contract that was issued to a trust or group established or deemed by the plan of reorganization to have been established by the mutual insurer or the reorganized insurer, the reorganizing mutual may provide in its plan of reorganization that each certificate or other evidence of interest is deemed to be a policy for the sole purpose of determining the rights, if any, of the holders of those certificates to receive consideration under the plan of reorganization.

(16) "Policyholder" means a person who, on the basis of the records and the organizational documents of the mutual insurer or reorganized insurer, is deemed to be a policyholder of such insurer.

(17) "Qualified voter" is a member of the reorganizing mutual that is entitled to vote on matters coming

before corporate meetings of the reorganizing mutual pursuant to its articles of incorporation and bylaws.

(18) "Reorganized company" means either: (a) a reorganized insurer resulting from the reorganization of a mutual insurer under this Subpart; or (b) a reorganized insurance holding company.

(19) "Reorganized insurance holding company" means a former mutual insurance holding company reorganized as a stock insurance holding company, or a stock insurance holding company into which a mutual insurance holding company has been merged, pursuant to a plan of reorganization under this Subpart.

(20) "Reorganized insurer" means: (a) with respect to a conversion of a mutual insurer under this Subpart, the domestic stock insurer into which a mutual insurer is being or has been reorganized; or (b) with respect to the conversion of a mutual insurance holding company under this Subpart, any former mutual insurance company previously reorganized as a stock insurance company as part of a mutual insurance holding company reorganization under R.S. 22:231 and 697 or under the mutual insurance holding company laws of another state.

(21) "Reorganizing mutual" means a mutual insurer or mutual insurance holding company that is reorganizing pursuant to this Subpart.

§236.3. Consideration and dividend protections

A. In effecting a conversion of a reorganizing mutual, each eligible member shall be entitled to consideration in an amount equal to his or its equitable share of the value of the reorganizing mutual as provided for in the plan of reorganization~~.~~, as follows:

(1) The consideration to be distributed to eligible members may consist of cash, stock of the reorganized company or its parent corporation, or if appropriate for tax or other reasons, additional life insurance and annuity benefits, any combination of these forms of consideration, or other forms of consideration acceptable to the commissioner. The form or forms of consideration to be distributed to an eligible member may differ according to the class or category of policy owned by the eligible member. The choice of the form or forms of consideration to be distributed to eligible members in accordance with the class or category of policy owned by such members may take into account such factors as the type of policy with respect to which the consideration is being distributed and the amount being distributed with respect to such policies, the country of residence, or tax status of the member or other appropriate factors; however, if the consideration to be distributed to an eligible member will be in a form other than common stock of a publicly traded company, the plan of reorganization shall include provisions for determining, in a reasonable manner, the value of the consideration by means of reference to the per share public market value of the registered common stock of the reorganized company or its parent corporation or another method acceptable to the commissioner.

(2) The reorganizing mutual shall obtain an opinion addressed to the board of directors of the reorganizing mutual from a qualified investment banker that the provision of consideration upon the extinguishment of the membership interests pursuant to the plan of reorganization is fair to the eligible members, as a group, from a financial point of view.

B. The method of allocating consideration among eligible members shall be fair and equitable~~.~~, as follows:

(1) The method shall provide for each eligible member to receive: (a) a fixed component of consideration or a variable component of consideration, or both; or (b) any other component of consideration acceptable to the commissioner. Components may reflect, based upon fair and equitable formulas, methods, and assumptions, factors such as estimated proportionate historical and prospective contributions to surplus of classes or groupings of policies and contracts to the aggregate component of consideration being distributed to eligible members, with each eligible member receiving a distribution in accordance with the type of policy owned by the eligible member, or other factors the commissioner may approve.

(2) The reorganizing mutual shall obtain an opinion addressed to the board of directors of the reorganizing mutual from an actuary who is a member of the American Academy of Actuaries that the methodology and underlying assumptions for allocation of consideration among eligible members are reasonable and appropriate and the resulting allocation is fair and equitable.

C. At the option of the reorganizing mutual, any common shares of the reorganized insurer or its parent corporation included in the eligible members' consideration may be placed on the effective date of the

reorganization in a trust or other entity existing for the exclusive benefit of eligible members and established for the purpose of effecting the reorganization, such consideration or the proceeds of the sale of such consideration to be distributed to such eligible members by means of a process specified in the plan of reorganization and not to last more than ten years after the effective date of the reorganization or until notification of the death of the eligible member or the death of the insured, whichever occurs first.

D.(1) The plan of reorganization shall provide for the reasonable dividend expectations of policyholders of any reorganized insurer through the establishment, or in the case of a reorganizing mutual insurance holding company the continuation, of dividend protections, which may consist of a closed block or any other method acceptable to the commissioner. The sole purpose of any dividend protections shall be to provide for reasonable policyholder dividend expectations.

~~(1)~~ (2) Any dividend protections provision may be limited to participating individual life insurance policies and participating individual annuity contracts in force or deemed to be in force by the plan of reorganization on the effective date of the reorganization, or, in the case of a reorganized insurer in a mutual insurance holding company system, on the effective date of its reorganization as such, for which the insurer has or had an experience-based dividend scale due, paid or accrued by action of the board of directors of the insurer in the year in which the plan of reorganization is or was adopted; however, other categories of policies and benefits not described in this Paragraph may be included or excluded, subject to the approval of the commissioner.

~~(2)~~ (3) In the event that dividend protections have been provided to policyholders of a reorganized insurer as part of a previous plan of reorganization, such dividend protections may be continued in effect without change in satisfaction of the requirements of this Section.

§236.4. Approval by commissioner after public hearing

A. The commissioner shall hold a public hearing upon notice as set forth in this Section to hear evidence upon whether the plan of reorganization: (1) properly protects the interests of the policyholders as such and as members, (2) serves the best interests of policyholders and members, and (3) is fair and equitable to policyholders and members. Subpart G of Part III of this Chapter~~, 2 of this Title,~~ R.S. 22:691 et seq., is not applicable to any hearing held under this Subpart, and any such hearing shall be governed by the procedures set forth herein.

B.(1) Within thirty days after the closing of the administrative record after the public hearing as provided in this Section, the commissioner shall issue a final order or decision approving the plan if satisfied that each of the following conditions are met:

(a) The interests of the policyholders as such and as members are properly protected.

(b) The plan of reorganization serves the best interests of policyholders and members.

(c) The plan of reorganization is fair and equitable to policyholders and members.

(2) Any such final decision or order by the commissioner shall be subject to any modifications of the plan of reorganization the commissioner finds necessary for the protection of the policyholders and members.

C. Subject to the review and appeal process under Subsection E of this Section, the commissioner's public hearing shall be the exclusive hearing with respect to the plan of reorganization and shall be held pursuant to the provisions of Chapter 12 of this Title, R.S. 22:2191 et seq., except as otherwise provided in this Section, and within ninety days after the plan of reorganization has been filed with the commissioner. Not less than thirty days notice of such public hearing shall be provided by the reorganizing mutual to qualified voters and to such additional persons and in such manner as may be specified by the commissioner.

D. The commissioner may retain at the reorganizing mutual's expense such attorneys, actuaries, accountants, and other experts as may be reasonably necessary to assist the commissioner in his examination of a proposed conversion, including any part of such examination that may occur, at the request of a reorganizing mutual, prior to a plan of reorganization having been filed with the commissioner pursuant to R.S. 22:236.2. Such experts must prepare a projection of the amount of time and expenses necessary to complete the examination, and all work of these experts is subject to review. If the projected amount of time and expenses required to complete the examination appear excessive, the reorganizing mutual may petition the commissioner for appropriate relief, and the commissioner's decision shall be final.

E. Except as otherwise provided in this Section, the procedures and requirements for the order and any appeal thereof shall be as set forth in Chapter 12 of this Title and, to the extent not specified therein, as set forth in

Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950.

(1) The district court reviewing an order of the commissioner shall consider only the certified administrative record and the issues raised before the commissioner. The district court reviewing an order of the commissioner shall not modify or set aside the order unless the court finds: (a) error to the prejudice of the appellant's substantial rights arising from the commissioner's application of the law so grossly as necessarily to imply bad faith; (b) the commissioner's order or decision was procured by fraud; (c) the commissioner acted outside of the statutory authority of the Department of Insurance; or (d) the commissioner's action was arbitrary and capricious. Any appeal of the district court's review of the commissioner's order shall be taken within thirty days of the judgment of the district court; if not so taken, the right to have an appellate court review or restrain action under the commissioner's order or decision shall be preempted and shall forever expire. Collateral attacks on an order of the commissioner are impermissible and shall be dismissed by the reviewing court.

(2) In any action challenging the validity of or arising out of any action taken or proposed to be taken under this Subpart, the reorganizing mutual or reorganized company shall be entitled at any stage of the proceedings before final judgment to petition the court to require the plaintiff or plaintiffs to give security for the reasonable costs, including attorney fees, which may be incurred by the reorganizing mutual or reorganized company, to which security the reorganizing mutual or reorganized company shall have recourse in such amount as the court having jurisdiction of such action shall determine upon termination of such action. The amount of security may thereafter from time to time be increased or decreased in the discretion of the court having jurisdiction of such action upon a showing that the security provided has or may become inadequate or excessive. If the court renders judgment in favor of the reorganizing mutual or reorganized company, the court may in its discretion award attorney fees and costs to such prevailing party.

F. The provisions of this Section shall apply to all actions challenging the validity of or arising out of any action taken or proposed to be taken under this Subpart and R.S. 22:71 and 72.

§236.5. Approval by qualified voters

A. The plan of reorganization shall be approved at a meeting convened for that purpose by a vote of not less than two-thirds of the qualified voters of the reorganizing mutual entitled to vote on matters and present or represented by special ballot or special proxy.

B. The meeting of qualified voters to consider the plan of reorganization shall occur after the public hearing before the commissioner, and the closing of the administrative record after the public hearing shall not occur until such time as it includes certification by the reorganizing mutual to the commissioner of the vote on the plan of reorganization by the qualified voters of the reorganizing mutual.

C. All qualified voters shall be given notice of their opportunity to vote on the plan of reorganization, which notice shall include a copy of the plan of reorganization or a summary thereof and which shall be in a form that the commissioner has determined is adequate and may be provided to qualified voters. The notice may be combined with notice of the public hearing. The notice shall be mailed, or provided by some other method or methods as may be approved by the commissioner, not less than thirty days before the date of the meeting of qualified voters to vote on the plan of reorganization. If the reorganizing mutual complies substantially and in good faith with the notice requirements of this Section, the failure of any person to actually receive any required notice will not impair the validity of any action taken under this Subpart.

D. A quorum for the meeting of qualified voters to consider the plan of reorganization shall consist of the qualified voters present or represented by special ballot or special proxy.

E. Voting, ballot, and proxy submission may take place electronically or telephonically consistent with the requirements of the Louisiana Uniform Electronic Transactions Act, R.S. 9:2601 et seq.

SUBPART I. HEALTH MAINTENANCE ORGANIZATIONS

§242. Definitions

As used in this Subpart:

(1) "Commissioner" means the commissioner of insurance.

(2) "Secretary" means the secretary of the Department of Health and Hospitals.

(3) "Basic health care services" means emergency care, inpatient hospital and physician care, outpatient medical and chiropractic services, and laboratory and x-ray services. The term shall include optional coverage for mental health services for alcohol or drug abuse. With respect to chiropractic services, such services shall be provided on a referral basis at the request of the enrollee who presents a condition of an orthopedic or neurological nature necessitating referral, the treatment for which falls within the scope of a licensed chiropractor. ~~Effective January 1, 2004, the~~ The term shall also include coverage for low protein food products as provided in R.S. 22:246.

(4) "Enrollee" means an individual who is enrolled in a health maintenance organization.

(5) "Evidence of coverage" means any certificate, agreement, or contract issued to an enrollee setting out the coverage to which the enrollee is entitled by reason of payment of a prepaid charge.

(6) "Health care services" means any services rendered by providers which include but are not limited to medical and surgical care; psychological, optometric, optic, chiropractic, podiatric, nursing, and pharmaceutical services; health education, rehabilitative, and home health services; physical therapy; inpatient and outpatient hospital services; dietary and nutritional services; laboratory and ambulance services; and any other services for the purpose of preventing, alleviating, curing, or healing human illness, injury, or physical disability. Health care services shall also mean dental care, limited to oral and maxillofacial surgery as performed by board qualified oral and maxillofacial surgeons. ~~Effective January 1, 1992, the~~ The term shall also include an annual Pap test for cervical cancer and minimum mammography examination as defined in R.S. 22:1028. ~~Effective January 1, 2004, the term shall also include~~ and coverage for low protein food products as provided in R.S. 22:246.

(7) "Health maintenance organization" means any corporation organized and domiciled in this state which undertakes to provide or arrange for the provision of basic health care services to enrollees in return for a prepaid charge. The health maintenance organization may also provide or arrange for the provision of other health care services to enrollees on a prepayment or other financial basis. A health maintenance organization is deemed to be an insurer for the purposes of ~~R.S. 22:1022 and 1023,~~ R.S. 22:73, 96, ~~Chapter 9 of this Title and Subpart H of Part III of Chapter 2 of this Title, R.S. 22:691~~ through 713, ~~and~~ Subpart H of Part III of this Chapter, R.S. 22:731 et seq., R.S. 22:1022 and 1023, Part II of Chapter 7 of this Title, ~~comprised of~~ R.S. 22:1921 through 1929~~.~~, and Chapter 9 of this Title, R.S. 22:2001 et seq. A health maintenance organization shall not be considered an insurer for any other purpose.

(8) "Provider" means any physician, hospital, or other person, organization, institution, or group of persons licensed or otherwise authorized in this state to furnish health care services.

(9) "Subscriber" means the person who is responsible for payment to a health maintenance organization or whose employment or other status, except for family dependence, is the basis for eligibility for enrollment in the health maintenance organization.

(10) "Point of service policy" means any policy of coverage that meets the definition of a health and accident insurance policy pursuant to R.S. 22:972, 973, 975 - 983, 985 - 990, 992, 993, 999 - 1014, 1021 - 1048, 1091, 1096, 1111 and 1156 and R.S. 22:34, 35, 851 - 870, 872 - 883, 885 - 889, 901, 902, 944, 945, 974, 994 - 998, 1015, 1043, 1097, 1261 - 1270, 1281 - 1283, 1285 - 1288, 1290 - 1293, 1295 - 1297, 1331, 1333 - 1335, 1441, 1442, 1555, 1811, 1821 - 1823, and 1891 - 1894.

§243. Incorporation

A. Three or more artificial or natural persons capable of contracting, who are citizens of the United States and a majority of whom are residents of this state, may act as incorporators to form a corporation for the purpose of transacting business as a health maintenance organization.

B. Articles of incorporation shall be executed by authentic act signed by each of the incorporators and shall state in the English language:

(1) The name of the corporation, which shall not be the same as nor deceptively similar to the name of any other unaffiliated health maintenance organization authorized to do business in this state unless:

(a) Such other health maintenance organization is about to change its name or to cease to do business or is being wound up, and the written consent of such other health maintenance organization to the adoption of its name or a deceptively similar name has been given in writing and is filed with the articles, or

(b) Such other health maintenance organization has heretofore been authorized to do business in this state for more than two years and has never actively engaged in business.

(2) The purpose or purposes for which it is formed.

(3) Its duration.

(4) The location and post office address of its registered office.

(5) The full names and post office addresses and municipal addresses or locations, which shall not be a post office box only, of its registered agents for service of process.

(6) The amount of paid-in capital and minimum surplus, or initial fund, with which the corporation will begin business.

(7) The number of authorized shares, the par value of each share, the time when and the manner in which payment on stock subscribed shall be made.

(8) The names of the first directors, their post office address, and their classification and terms of office if they be named in the articles. Where the first board of directors is not named in the articles, the articles shall provide the place where and the date when the organization is to be perfected, and a meeting of the stockholders for that purpose must be held not more than sixty days after the execution of the articles. At that meeting the directors shall be elected.

(9) The name and post office address of each of the incorporators and a statement of the number and class of shares subscribed by each, if any.

(10) The designation of general officers, the number of directors, which shall not be less than three nor more than fifty, and the mode and manner in which directors shall be elected, and officers elected or appointed.

(11) Any other provision for the regulation of the business and the conduct of the affairs of the corporation, not prohibited by the laws of this state.

C. Such articles shall be submitted to the commissioner for his examination for a period not to exceed thirty days from receipt and approval either before or after execution, but before recordation. The commissioner shall not approve such articles unless they strictly conform with the provisions of this Subpart.

D.(1) After the payment of all fees owed to the Department of Insurance, the articles showing the approval of the commissioner shall be filed in the office of the secretary of state by the commissioner together with an initial report, as prescribed by R.S. 12:101. If the first directors are not named in the articles of incorporation and the initial report, a supplemental report, setting forth their names and addresses, and signed by each incorporator or by any shareholder, shall be filed with the secretary of state and filed for record as provided by ~~Subsection (D)~~ Paragraph(4) of this ~~Section~~ Subsection as soon as they have been selected.

(2) If the secretary of state finds that the articles have been approved by the commissioner and that the articles and initial report are in compliance with this Subpart and Title 12 of the Louisiana Revised Statutes, and after all fees have been paid as required by law, the secretary of state shall record the articles and the initial report in his office, endorse on each the date and, if requested, the hour of filing thereof with him, and issue a certificate of incorporation that shall show the date and, if endorsed on the articles, the hour of filing of the articles with him. The certificate of incorporation shall be conclusive evidence of the fact that the corporation has been duly incorporated except that in any proceeding brought by the state to annul, forfeit, or vacate a corporation's franchise, or by the commissioner to prohibit, suspend or limit the corporation's right to conduct business as a health maintenance organization, the certificate of incorporation shall be only prima facie evidence of due incorporation.

(3) Upon the issuance of the certificate of incorporation, the corporation shall be duly incorporated, and the corporate existence shall begin, as of the time when the articles were filed with the secretary of state.

(4) A multiple original of the articles or a copy certified by the secretary of state, with a copy of the certificate of incorporation, and a multiple original of the initial report, or a copy certified by the secretary of state, shall be filed in the office of the recorder of mortgages of the parish in which the registered office of the corporation is situated, and a certified copy of the articles and initial report, bearing the certificate of the proper parish recorder with a copy of the certificate of incorporation, shall be filed with the commissioner.

(5) The corporation shall not have authority to transact a health maintenance organization business until a certificate of authority to transact such business is issued to it by the commissioner.

E.(1) Except as otherwise provided in the articles of incorporation, an incorporated health maintenance organization may amend its articles of incorporation in the manner provided in R.S. 12:31.

(2) After such amendment has been duly adopted, an authentic act setting forth the amendment and the manner of adoption thereof shall be executed by such person or persons authorized to do so at the meeting. A full

copy of the resolution adopting such amendment, certified as true copy by the secretary of the health maintenance organization, shall be annexed to the authentic act. The articles of amendment shall be approved by the commissioner and recorded with the secretary of state, the recorder of mortgages, and the commissioner, in the same manner as that provided herein for the original articles of incorporation.

(3) The provisions of ~~Subsections (E)~~ Paragraphs (1) and (2) of this ~~Section~~ Subsection shall not be applicable when an incorporated health maintenance organization changes either its registered agent or address, or both. In any such change, the incorporated health maintenance organization shall provide the commissioner with the board resolution and notice, and shall follow the requirements of Part X of Chapter 1, Title 12 of the Louisiana Revised Statutes of 1950.

F. The provisions of R.S. 12:1 through R.S. 12:178, and other provisions of the Louisiana Revised Statutes of 1950, relative to business corporations, shall apply to the regulation of the business and the conduct of the affairs of any health maintenance organization which has been incorporated pursuant to the provisions of this Subpart. If a conflict exists between the provisions of this Subpart and said provisions of Title 12, the provisions of this Subpart shall govern.

§247. Reimbursement for chiropractic services

Notwithstanding any provision of any policy or contract of insurance or health benefits issued by a health maintenance organization, ~~after the effective date of this Section,~~ whenever such policy or contract provides for payment or reimbursement for any service, and such service may be legally performed by a chiropractor licensed in this state, such payment or reimbursement under such policy or contract shall not be denied when such service is rendered by a person so licensed. Terminology in such policy or contract deemed discriminatory against any such person or method of practice shall be void.

§249. ~~Powers~~ Authority of health maintenance organizations

Subject to the provisions of R.S. 22:260(E) and regulations adopted and approved by the commissioner, the ~~powers~~ authority of a health maintenance organization ~~include~~ includes but ~~are~~ is not limited to the following:

(1) The ~~power~~ authority to purchase, lease, construct, renovate, operate, or maintain hospitals, medical facilities, nursing care and intermediate care facilities, their ancillary equipment, and such property, including the stock of corporations, as may reasonably be required for its administrative offices or for such other purposes as may be necessary in the transaction of the business of the health maintenance organization.

(2) The ~~power~~ authority to make secured or guaranteed loans to providers under contract with the health maintenance organization in furtherance of its operations or the making of the loans to a corporation or corporations under its control for the purpose of acquiring or constructing medical facilities, hospitals, nursing care and intermediate care facilities, and other institutions of like nature providing health care services to enrollees, or in furtherance of a program providing health care services to its enrollees.

(3) The ~~power~~ authority to furnish health care services through providers which are under contract with or employed by the health maintenance organization.

(4) The ~~power~~ authority to contract with any person for the performance on its behalf of certain functions such as marketing, enrollment, and administration.

(5) The ~~power~~ authority to contract with an insurance company licensed to do business in this state or with a hospital or medical service corporation authorized to do business in this state, for the provision of insurance, indemnity, or reimbursement against the cost of health care services provided by the health maintenance organization.

(6) The ~~power~~ authority to offer other health care services in addition to basic health care services.

(7) The ~~power~~ authority to coordinate benefits, subrogate to third party funds,* and engage in the assignment of claims to the extent that insurers are permitted to do so by the laws of this state.

(8) The ~~power~~ authority to issue point of service policies that have been approved by the commissioner to groups and individuals. The indemnity exposure of such policies shall conform to the same solvency requirements for claim reserves that are required of accident and health insurance companies licensed to operate in this state.

§250. Fiduciary duties of certain persons; bond required; encumbering assets

A. Any director, officer, or employee of a health maintenance organization who receives, collects, disburses, or invests funds in connection with the activities of such health maintenance organization shall be responsible for such funds in a fiduciary relationship to the health maintenance organization.

B. A health maintenance organization shall maintain in force a fidelity bond on employees and officers in an amount not less than one hundred thousand dollars or insurance in a form satisfactory to the commissioner in lieu of such bond. All such bonds or insurance shall be written with at least a one-year discovery period and if written with less than a three-year discovery period shall contain a provision that no cancellation or termination of the bond or insurance, whether by or at the request of the insured or by the underwriter, shall take effect prior to the expiration of ninety days after written notice of such cancellation or termination has been filed with the commissioner, unless an earlier date of such cancellation or termination is approved by the commissioner.

C. No asset of a health maintenance organization may be encumbered, pledged, or utilized to secure a loan or to confer a personal benefit on any officer, director, employee, agent, stockholder, or any beneficiary of any trust of any other person responsible to the health maintenance organization; however, nothing herein contained shall prevent any such person from receiving benefits as an enrollee. Any person and any officer, director, employee, agent, partner, stockholder, or any beneficiary of any trust violating this provision shall be fined two times the amount of the benefit conferred but not less than ten thousand dollars and shall be removed forthwith from any office, position, capacity, or relationship with the health maintenance organization.

D. In the event any situation described in Subsection C of this Section occurs, the commissioner shall have a cause of action and standing to sue to recover and conserve such property.

§252. Annual report

A. On or before the first day of March, every health maintenance organization shall annually file a report with the commissioner covering the preceding calendar year and shall file a copy of the report with the secretary of the Department of Health and Hospitals. The report shall be verified by at least two principal officers or duly authorized representatives of the health maintenance organization. The report shall be on forms prescribed by the National Association of Insurance Commissioners. The report shall be accompanied by the filing fee and any penalty for unauthorized late filing set forth in R.S. 22:269.

B. The commissioner for good cause may grant an extension of up to thirty days for the filing of the annual report.

C. In addition to Subsection A of this Section, the following reports shall also be filed with the commissioner:

(1) Quarterly statements as required by R.S. 22:571.

(2) Management and discussion reports as required by R.S. 22:571 and the National Association of Insurance Commissioners Annual Statement Instructions Handbook.

(3) A ~~CPA audited~~ CPA audited report as required by R.S. 22:674 and ~~Regulation 50~~ any applicable regulation issued by the Department of Insurance.

(4) Holding Company Act filings as required under Subpart G of Part III of this Chapter. ~~2 of this Title 22 of the Louisiana Revised Statutes of 1950.~~ R.S. 22:691 et seq.

§254. Protection against insolvency

A. Prior to the issuance of any certificate of authority, each health maintenance organization applying therefor shall deposit with the commissioner a safe keeping receipt or trust receipt from banking corporations doing a banking business within the state of Louisiana or from a savings and loan association or other insured financial institution chartered to do business in the state of Louisiana, evidencing that the health maintenance organization has deposited with the several institutions one million dollars in cash to guarantee its financial responsibility. No single deposit shall exceed the insured deposit limit of any financial depository.

B. Each certificate or other evidence of deposit or security shall contain a restriction which reads as follows, to wit:

ACKNOWLEDGMENT OF RESTRICTION

The cash or other deposit evidenced by this certificate shall be held by the issuer, its successors, and assigns, to demonstrate to the Louisiana Department of Insurance that the owner-payee of the certificate is financially responsible and capable of performing its obligations as a health maintenance organization. This certificate shall be renewed and renegotiated between the issuer and the owner-payee without the necessity of the certificate's release or surrender and funds evidenced hereby shall remain on deposit at or with the issuing institution, its successors or assigns, until notice of release or a demand of payment signed by the duly authorized elected incumbent commissioner of insurance of the state of Louisiana, or his duly authorized deputy, has been presented to issuer. Any issuer making payment to the commissioner upon his written demand and upon a showing of good cause shall not be liable in any manner to the owner-payee or any other person for having made such disbursements of funds. Interest earned on the funds evidenced hereby shall be paid to the owner-payee on a regular periodic basis as agreed to by the issuer and the owner-payee.

C. Each health maintenance organization shall establish prior to the issuance of any certificate of authority, and shall maintain as long as it does business in Louisiana as a health maintenance organization, the following capital and surplus requirements:

(1) For each health maintenance organization which, by July 1, 1995, has not filed its application for a certificate of authority with the commissioner as required by law, a minimum of the greater of three million dollars or the amounts required by Subpart D of Part III of this Chapter~~.~~,R.S. 22:631 et seq. The million dollar deposit required pursuant to ~~R.S. 22:2010(A)~~ Subsection A of this Section shall apply as a part of this minimum requirement.

(2) For each health maintenance organization which, by July 1, 1995, has filed its application for a certificate of authority with the commissioner as required by law, the minimum capital and surplus shall be:

(i) Eight hundred thousand dollars by July 1, 1996.

(ii) One million five hundred thousand dollars by July 1, 1997.

(iii) Two million dollars by July 1, 1998.

D.(1) In lieu of the one million dollar aggregate deposit or deposits provided by Subsection A of this Section, each health maintenance organization applying for a certificate of authority may deposit with the commissioner an irrevocable letter or letters of credit issued in his favor in the amount of one million dollars in the aggregate, which shall be issued and maintained subject to the terms and conditions hereinafter set forth. The letter or letters of credit shall be issued by a banking corporation doing a banking business within the state of Louisiana or a savings and loan association or other insured financial institution chartered to do business in the state of Louisiana.

(2) Each letter of credit shall be issued for a term of three years from date thereof. Once issued, the letter or letters of credit shall not be cancelled regardless of the financial status of the applicant or the bank during the term thereof. Every letter of credit shall contain the following restrictions, to wit: After the initial three-year term, the letter or letters of credit shall be automatically extended, renewed, and reissued from year to year unless notice to the contrary by the issuing bank or institution is given to the commissioner by registered mail not less than ninety days prior to the expiration date. Upon receipt of notice that the letter or letters of credit will not be renewed, the commissioner shall have the following options:

(a) He may convert the letter or letters of credit to a cash deposit by calling for funding or payment in full thereon;

(b) He may accept a substitute letter or letters of credit if they meet all requirements of this Subpart; or

(c) He may convert the letter or letters of credit to a cash deposit and suspend the certificate of authority as provided by R.S. 22:257.

E. After three years of successful operations, the commissioner may, but is not required to, waive or release up to twenty-five percent of the aggregate total deposits or letters of credit requirement set forth in Subsections A and D of this Section whenever he is satisfied that the organization has sufficient net worth and an adequate history of generating net income to assure its financial viability, or that its performance and obligations are reasonably guaranteed by an organization with sufficient net worth and with an adequate history of generating net income, or that the assets of the organization or its contracts with insurers, hospital or medical service corporations, governments, or other organizations are sufficient to reasonably assure the performance of its

obligations as a health maintenance organization, to fully protect all enrollees, and to guarantee the services to which all enrollees are entitled.

F.(1) No letter or letters of credit issued or other security provided for herein shall be revoked, cancelled, terminated, substituted, or withdrawn by any issuing bank or financial institution without the written approval of, and ninety days prior written notice to, the commissioner at his office in Baton Rouge, such notices to be given by registered mail return receipt requested. Upon receipt of any such notice, the commissioner may exercise the powers and options granted hereinabove with respect to the letter or letters of credit. Upon a final decision of which option the commissioner will exercise, he shall give written notice by registered mail to the issuing bank or institution and the health maintenance organization at least ten days prior to termination of the letter or letters of credit. The issuer of the letter or letters of credit shall fully fund the letter or letters of credit within twenty-four hours after receipt of notice to do so from the commissioner.

(2) Upon failure of any bank or financial institution to fund any letter or letters of credit, the commissioner shall proceed to collect same by rule to show cause by applying to the Nineteenth Judicial District Court in and for the parish of East Baton Rouge.

G. In the liquidation or windup of the affairs of the health maintenance organization, notwithstanding any provision of law to the contrary, the commissioner shall assure any payments authorized by the Department of Insurance and issued prior to any order of liquidation are honored; thereafter, the following schedule of preferences shall be followed:

(1) The commissioner's costs and expenses of administration, including unpaid federal and state employment withholding taxes.

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

(3) Claims for covered benefits prior to cancellation that are filed within ninety days of an order of liquidation. The commissioner shall, within one hundred twenty days, present a plan for timely payment of such claims to the court for approval. The Department of Insurance shall not require refiling any claim received for covered benefits or provision of any proof of claim that would otherwise be applicable to non-benefit claims. The maximum amount paid shall not exceed the amount that would be paid under Title XVIII of the Social Security Act, 42 U.S.C. §301 et seq. The department shall establish reasonable amounts for any services or supplies covered under a health policy or contract for which an amount has not been determined under the federal Medicare program.

(4) Claims for unearned premiums or other premium refunds.

(5) All other claims, including claims for covered benefits provided prior to cancellation that are not filed within ninety days of an order of liquidation.

§255. Regulation of ~~agents~~ producers

The commissioner may, after notice and hearing, promulgate such reasonable rules and regulations as are necessary to provide for the licensing of ~~agents.~~ producers. ~~An agent~~ A producer means a person licensed as a life and health insurance ~~agent~~ producer in the state of Louisiana who is appointed or employed by a health maintenance organization to engage in solicitation of membership in such organization. It shall not include a person enrolling members on behalf of an employer, union, or other organization to whom a master group contract has been issued.

§256. Examination of health maintenance organization and other parties

A. The commissioner or a member of his staff may make an examination of the affairs of any health maintenance organization as often as it is reasonably necessary for the protection of the interest of the people of this

state, but not less frequently than once every ~~three~~ five years.

B. The commissioner or a member of his staff shall conduct all examinations in accordance with R.S. 22:1981 through 1995.

§260. Statutory construction; relationship to other laws

A. Except as otherwise provided in this Subpart and in R.S. 22:1037, provisions of the insurance law and provisions of Subpart C of this Part, ~~I of this Chapter~~ R.S. 22:111 et seq., shall not be applicable to any health maintenance organization granted a certificate of authority under this Subpart. This provision shall not apply to an insurer or an entity licensed under the provisions of Subpart C of this Part I ~~of this Chapter~~ except with respect to its health maintenance organization activities authorized and regulated pursuant to this Subpart.

B. Solicitation of enrollees by a health maintenance organization granted a certificate of authority, or its representatives, shall not be construed to violate any provision of law relating to solicitation or advertising by health professionals, but such health professionals shall be individually subject to the laws, rules, and regulations governing their individual profession.

C. Every health maintenance organization shall make available in writing to its potential enrollees a reasonable explanation of the services to be provided or arranged for. This explanation shall also identify those services excluded from coverage and shall set forth the methods of access to all forms of treatment or class of providers included in the plan.

D. Any health maintenance organization authorized under this Subpart shall not practice medicine and shall not be deemed to practice medicine, provided however, that the administrative treatment guidelines of the health maintenance organization shall not impinge upon nor encumber the independent medical judgment of the treating physician or health care provider. Nothing in this Subsection shall be construed to prevent a health maintenance organization from conducting a utilization review and quality assurance program.

E. Each health maintenance organization shall meet the following requirements:

(1) All facilities located in this state including but not limited to hospitals, medical facilities, and nursing care and intermediate care facilities to be utilized by the health maintenance organization shall be licensed, if such licensure is required by law.

(2) All personnel employed by or under contract to the health maintenance organization shall be licensed or certified by their respective board or agency, if such licensure or certification is required by law.

(3) All equipment required to be licensed or registered by law shall be so licensed or registered and the operating personnel for such equipment shall be licensed or certified as required by law.

§262. Technical advice, advisors, and other technical services

A. The commissioner or the secretary may at any time call upon any other state agency, to serve as an advisor on technical or health care matters and for such technical data, statistics, or other information as he may from time to time require in the administration and enforcement of this Subpart.

B. In the event it is necessary for the commissioner or secretary to invoke or defend any legal proceedings arising hereunder or with respect hereto, the attorney general of the state shall serve as legal counsel of record for the commissioner or secretary.

C. ~~No later than December 31, 1997, every~~ Every health maintenance organization which has been licensed under this ~~Chapter~~ Subpart shall submit to the commissioner a plan for accreditation under an organization or entity recognized by the commissioner. The commissioner shall be authorized to make an inspection no less frequently than once every three years of each health maintenance organization, which has not been accredited by an organization or entity recognized by the commissioner, to determine whether it is adhering to the minimum standards for utilization review and grievances. The commissioner shall be authorized to establish agreements with the secretary for review of such health maintenance organization's contractual providers and the quality of services it offers and provides to its enrollees. Within thirty days after inspection, the secretary shall transmit a report of such inspection to the governor with a copy thereof transmitted to the commissioner. The costs of all such inspections shall be assessed as regulatory costs by the commissioner.

§266. Medical necessity review

Every health maintenance organization shall assure full compliance with Subpart F of Part III of Chapter 4 of this Title R.S. 22:1121 et seq., in establishing procedures for continuous review of quality of care, performance of providers, utilization of health services, facilities, and costs. The medical necessity review requirements and administrative treatment guidelines of the health maintenance organization shall not fall below the appropriate standard of care and shall not impinge upon the independent medical judgment of the treating health care provider. Nothing in this Section shall be construed to prevent a health maintenance organization from conducting a medical necessity review and quality assurance program.

§270. Taxes and tax base

A. In lieu of the state income tax and the corporate franchise tax levied in Title 47 of the Louisiana Revised Statutes of 1950, every health maintenance organization authorized and certified to engage in the business of issuing contracts or other evidences or similar forms of coverage to enrollees for health care services or prepaid medical services in this state, including Louisiana partnerships authorized under R.S. 22:244(B), shall pay an annual license tax ~~for the year 1986, and each subsequent year,~~ on the gross amount of its receipts from contracts and other evidences of coverage at the same rate as the license tax on life insurance companies provided in R.S. 22:842 and R.S. 22:844.

B. The license taxes levied under this Section shall be paid to the commissioner at Baton Rouge and shall be remitted on a quarterly basis by the same procedure as established under R.S. 22:845. The tax payment shall be accompanied by a license tax form supplied by the commissioner and completed in full by the health maintenance organizations. Nothing contained herein shall be construed as relieving any insurer from paying to the commissioner the fees otherwise required for qualifying to do business, or for the renewal thereof.

C. Taxes due hereunder shall be paid in advance based on writings of the previous calendar year computed on the same base as provided for in R.S. 22:843.

D. The tax credit provided pursuant to R.S. 22:832 shall apply the same for health maintenance organizations as for insurance companies.

E. The provisions of R.S. 22:846 shall apply in the event a health maintenance organization fails to pay a license tax required by this Section.

F. The commissioner of insurance shall follow the provisions of R.S. 22:795 regarding the maintenance of books and records and the disposition of collections.

SUBPART J. FRATERNAL BENEFIT SOCIETIES

§290. Organization

A domestic society organized ~~on or after the effective date of~~ pursuant to this Subpart shall be formed as follows:

(1) Seven or more citizens of the United States, a majority of whom are citizens of this state, who desire to form a fraternal benefit society, may execute by authentic act or by private act duly acknowledged articles of incorporation, in which shall be stated:

(a) The proposed corporate name of the society, which shall not so closely resemble the name of any other society or insurance company as to be misleading or confusing.

(b) The purposes for which it is being formed and the mode in which its corporate powers are to be exercised. Such purposes shall not include more liberal powers than are granted by this Subpart.

(c) The names and resident addresses of the incorporators and the names, resident addresses, and official titles of all the officers, trustees, directors, or other persons who are to exercise general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme governing body, which election shall be held not later than one year from the date of issuance of the permanent certificate of authority.

(2) The articles of incorporation, certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one year shall be filed with and approved by the commissioner of insurance, who may require such further information as the

commissioner deems necessary. The articles of incorporation, bylaws, and rules shall also be filed with the secretary of state. The bond with sureties approved by the commissioner of insurance shall be in such amount, but not less than three hundred thousand dollars nor more than one million five hundred thousand dollars, as required by the commissioner of insurance of which the minimum must be maintained if the association is to maintain its certificate of authority. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this Subpart and all provisions of the law have been complied with, the commissioner of insurance shall so certify, and the secretary of state shall file the articles of incorporation in the manner provided in R.S. 22:64. The commissioner of insurance shall furnish the incorporators a preliminary certificate of authority authorizing the society to solicit members as hereinafter provided.

(3) No preliminary certificate of authority granted under the provisions of this Section shall be valid after one year from its date or after such further period, not exceeding one year, as may be authorized by the commissioner of insurance upon cause shown, unless the five hundred applicants hereinafter required have been secured and the organization has been completed as provided herein. The articles of incorporation and all other proceedings thereunder shall become null and void in one year from the date of the preliminary certificate of authority, or at the expiration of the extended period, unless the society shall have completed its organization and received a certificate of authority to do business as provided hereinafter.

(4) Upon receipt of a preliminary certificate of authority from the commissioner of insurance, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each such applicant a receipt for the amount so collected. No society shall incur any liability other than for the return of such advance premium, nor issue any certificate, nor pay, or allow, or offer or promise to pay or allow, any benefit to any person until all of the following conditions are met:

(a) Actual bona fide applications for benefits have been secured on not less than five hundred applicants, and any necessary evidence of insurability has been furnished to and approved by the society.

(b) At least ten subordinate lodges have been established into which the five hundred applicants have been admitted.

(c) There has been submitted to the commissioner of insurance, under oath of the president or secretary, or corresponding officer of the society, a list of such applicants, giving their names and addresses, the date each was admitted, the name and number of the subordinate lodge of which each applicant is a member, the amount of benefits to be granted and the premiums collected therefor.

(d) It shall have been shown to the commissioner of insurance, by sworn statement of the treasurer, or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly premium as herein provided, which premiums in the aggregate shall amount to at least one hundred and fifty thousand dollars. The advance premiums shall be held in trust during the period of organization and if the society has not qualified for a certificate of authority within one year, as provided herein, the premiums shall be returned to said applicants.

(5) The commissioner of insurance may make such examination and require such further information as the commissioner deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the commissioner shall issue to the society a certificate of authority to that effect and that the society is authorized to transact business pursuant to the provisions of this Subpart. The certificate of authority shall be prima facie evidence of the existence of the society at the date of issuance of such certificate. The commissioner of insurance shall cause a record of the certificate of authority to be made. A certified copy of such record may be given in evidence with like effect as the original certificate of authority.

(6) Any incorporated society authorized to transact business in this state ~~at the time this Subpart becomes effective~~ shall not be required to reincorporate. Any voluntary fraternal benefit association ~~existing on such date~~ may incorporate hereunder.

§310. Injunction; liquidation; receivership of domestic society

A.(1) The commissioner of insurance shall notify a domestic society in writing of a deficiency and of the need to correct the deficiency when the society has done one of the following:

(a) Exceeded its powers.

(b) Failed to comply with any provision of this Subpart.

(c) Failed to fulfill its contracts in good faith.

(d) Failed to maintain its membership of four hundred or more after an existence of one year or more.

(e) Conducted business fraudulently or in a manner hazardous to its members, creditors, the public, or the business.

(2) After such notice, the society shall have a thirty day period in which to comply with the commissioner's request for correction. If the society fails to comply, the commissioner shall notify the society of such findings of noncompliance and require the society to show cause why it should not be enjoined from carrying on any business until the violation complained of has been corrected, or why an action should not be commenced against the society under R.S. 22:73 and 96, Subpart H of Part III of this Chapter, ~~2~~ R.S. 22:731 et seq., and Chapter 9 of this Title~~.~~, R.S. 22:2001 et seq.

B. If on such date the society does not present good and sufficient reasons why it should not be so enjoined or why such action should not be commenced, the commissioner of insurance may proceed in accordance with R.S. 22:73 and 96, Subpart H of Part III of this Chapter ~~2~~ and Chapter 9 of this Title for the rehabilitation or liquidation of such society.

C. No action under this Section shall be recognized in any court of this state unless brought upon request of the commissioner of insurance. Whenever a receiver is to be appointed for a domestic society, the court shall appoint the commissioner of insurance as the receiver.

D. The provisions of this Section relating to hearing by the commissioner of insurance and any action by the commissioner of insurance under R.S. 22:73 and 96, Subpart H of Part III of this Chapter, ~~2~~ and Chapter 9 of this Title shall be applicable to a society which shall voluntarily determine to discontinue business.

§313. Unfair methods of competition; unfair and deceptive acts and practices

Every society authorized to do business in this state shall be subject to the provisions of Part IV of Chapter 7 of this Title, R.S. 22:1961 et seq., relating to unfair methods of competition and unfair or deceptive acts or practices; however, nothing in such provisions shall be construed as applying to or affecting the right of any society to determine its eligibility requirements for membership, or as applying to or affecting the offering of benefits exclusively to members of persons eligible for membership in the society by a subsidiary corporation or affiliated organization of the society.

SUBPART K. FOREIGN OR ALIEN INSURERS

§331. Foreign or alien insurers may be admitted

A. Any foreign or alien insurer, including reciprocals, Lloyds and fraternals, may be admitted to transact business in this state, upon complying with the provisions of this Subpart, and all other applicable provisions of this Code, to transact the kind or kinds of business which a similar domestic insurer may legally transact under this Code, except ~~non-profit~~ nonprofit funeral insurance, and life, health and accident insurers on the ~~co-operative~~ cooperative or assessment plan, provided insurers admitted to transact the kinds of business provided in Subparts D and E of this Part, R.S. 22:131 et seq. and R.S. 22:141 et seq., shall meet the requirements for life insurers under R.S. 22:81 through 95 and Subpart C of this Part~~.~~ R.S. 22:111 et seq.

B. Any foreign insurance company which has been licensed to do the business of life insurance in this state continuously during a period of ten years next preceding October 1, 1948, may continue to be licensed to do the kind or kinds of insurance business which it was authorized to do immediately prior to October 1, 1948.

§332. Application for certificate of authority

A. A foreign or alien insurer in order to procure a certificate of authority to transact business in this state shall prepare and deliver to the commissioner of insurance:

(1) Two copies of its charter or articles of incorporation, certified by the proper official of its domiciliary state or country, or if a reciprocal or Lloyds the power of attorney of the attorney-in-fact; and if an alien insurer two copies of the appointment and authority of its United States manager.

(2) An instrument authorizing service of process on the secretary of state, as required by R.S. 22:335.

(3) An application setting forth its name, location of home office, type of insurer, organization date, kinds of insurance it proposes to transact in this state, except for reinsurers licensed or accredited by the state, the location and telephone number of the applicant's supervisory claims office responsible for Louisiana claims, the name of a qualified appointed actuary who will provide actuarial opinions when required by the state of Louisiana, and such additional information, including biographical information, as the commissioner of insurance may reasonably require to determine if the applicant is entitled to a certificate.

(4) A copy of its ~~by-laws~~, bylaws and if a fraternal society, a copy of its constitution, certified by its proper officers.

(5) A copy of the applications and insurance contracts it proposes to use in this state.

(6) A copy of its last annual statement and a financial statement as of such later date as the commissioner of insurance may require.

(7) A copy of the last report of examination certified by a proper supervisory official.

(8) A certificate from the proper official of its domiciliary state or country that it is duly incorporated or organized and is presently authorized to write the kind or kinds of insurance which it proposes to write in this state.

(9) Such other documents or stipulations as the commissioner of insurance may reasonably require to evidence compliance with the provisions of this Code.

(10) A certificate of valuation of reserves by the domiciliary state which meets the minimum standards of valuation for the state of Louisiana.

(11), (12) Repealed by Acts 2001, No. 276, §2.

(13) A certificate from the proper official of the domiciliary state of the company applying for admission to the state of Louisiana showing that a deposit has been made in the domiciliary state of the foreign insurer in an amount of not less than one hundred thousand dollars, as evidenced by a safekeeping or trust receipt, for the benefit and protection of and as security for all policyholders and creditors of the insurer making such deposit.

B. Upon approval by the commissioner of insurance, a certified copy of the instrument authorizing service of process on the secretary of state, as required by R.S. 22:335 shall be recorded with the secretary of state by the said commissioner.

C. The secretary of state is authorized and directed to transfer to the commissioner of insurance those documents now on record in the office of the secretary of state and described in Paragraph (A)(1) of this Section pertaining to foreign or alien insurers now or hereafter authorized to transact the business of insurance in this state, after having first reproduced said documents for preservation in the records of the secretary of state.

§333. Conditions of issuance of certificate of authority

A. After the requirements of R.S. 22:332 have been completed and before a certificate of authority is issued by the commissioner of insurance, a foreign or alien insurer shall satisfy the commissioner of insurance that:

(1) Its name is not the same as, or deceptively similar to the name of any other insurer already authorized to transact business in this state;

(2) It is possessed of at least the minimum capital and surplus requirements for similar domestic insurers authorized to transact like kinds of insurance which it is authorized to transact in the state of its domicile or entry, including:

(a) If a stock insurer, at least the minimum paid-in capital, and total capital and surplus equal to or greater than the sum of the minimum paid-in capital, minimum surplus, and the operating surplus.

(b) If a mutual insurer, total surplus equal to or greater than the sum of the initial minimum surplus and the operating surplus.

(c) If a mutual or reciprocal insurer, writing non-assessable policies, the surplus requirement for a similar domestic mutual insurer to issue non-assessable policies.

(3) Its funds are invested in accordance with the laws of its domicile.

B. Before issuance of the certificate of authority to a foreign or alien insurer, such insurer shall make a deposit as required by Part II of Chapter 3 of this Title~~.~~, R.S. 22:801 et seq.

C. Before issuance of the certificate of authority to an alien insurer, such insurer shall make a deposit as required by Part II of Chapter 3 of this Title and must maintain within the United States assets in amount not less

than its outstanding liabilities arising out of its insurance transactions in the United States~~.~~ ~~and which~~ Such assets shall be in addition to the larger of the following sums:

(1) The largest amount of deposit required by this Code to be made in this state by any type of domestic insurer transacting like kinds of insurance~~; or~~.

(2) Two hundred thousand dollars.

(a) The trust deposit shall be for the security of all policyholders or policyholders and obligees of the insurer in the United States. It shall not be subject to diminution below the amount currently determined in accordance with this Subsection so long as the insurer has outstanding any liabilities arising out of its business transacted in the United States.

(b) The trust deposit shall be maintained with public depositories or trust institutions within the United States approved by the commissioner of insurance.

D. Before issuing a certificate of authority to a foreign or alien insurer, the commissioner of insurance may cause an examination to be made of its condition and affairs.

E. The transacting of business in this state by a foreign or alien insurer pursuant to a certificate of authority issued under this Subpart shall constitute a consent to being sued by the injured person or his or her heirs in a direct action as provided in R.S. 22:1269, whether the policy of insurance sued upon was written or delivered in the state of Louisiana or not, and whether or not such policy contains a provision forbidding such direct action, provided that the accident or injury occurred within the state of Louisiana.

§337. Refusal, suspension, and revocation of certificate of authority

A. The commissioner of insurance may refuse, suspend, or revoke the certificate of authority of a foreign or alien insurer whenever he shall find that such insurer:

(1) Is insolvent;

(2) Fails to comply with the requirements for admission in respect to capital, contingent liability, the investment of its assets or the maintenance of deposits in this or another state or fails to maintain the surplus which similar domestic insurers transacting the same kind or kinds of business are required to maintain;

(3) Is in such a condition that its further transaction of business in this state would be hazardous to policyholders and creditors in this state and to the public;

(4) Has refused or neglected to pay a valid final judgment against such insurer within sixty days after the rendition of such judgment;

(5) Has violated any law of this state or has in this state violated its charter or exceeded its corporate powers;

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

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

(8) Fails to file its annual statement within sixty days after the date when it is required by law to file such statement;

(9) Fails to file a copy of an amendment to its charter or articles of incorporation within sixty days after the effective date of such amendment, in accordance with the provisions of this Subpart;

(10) Fails to file copies of the agreement and certificate of merger and the financial statements of the merged insurers, if required, within sixty days after the effective date of the merger, as provided in this Subpart;

(11) Fails to pay any fees, taxes or charges prescribed by this Code within sixty days after they are due and payable; provided, however, that in case of objection or legal contest the insurer shall not be required to pay the tax until sixty days after final disposition of the objection or legal contest;

(12) Fails to file any report or reports for the purpose of enabling the commissioner of insurance to compute the taxes to be paid by such insurer within sixty days after the date when it is required by law to file such report or reports;

(13) Has had its corporate existence dissolved or its certificate of authority revoked or suspended in the state in which it was organized or in any other state in which it is admitted;

(14) Has had all its risks reinsured in their entirety in another insurer;

(15) Refuses to remove or discharge a director or officer who has been convicted of any crime involving

fraud, dishonesty, or like moral turpitude; or

(16) Is affiliated with and under the same general management, or interlocking directorate, or ownership as another insurer which transacts insurance in this state without having a certificate of authority therefor, except as is permitted by this Code.

(17) Fails to maintain a claims office for processing workers' compensation insurance claims in this state, as required by R.S. 23:1161.1, or to retain the services of Louisiana domiciled independent claims adjusters. This Paragraph shall not apply to reinsurers licensed or accredited to do business in the state.

(18) Fails to require its producers ~~or agents~~ to maintain licensure as producers ~~or agents~~ as provided by law or by regulation of the Department of Insurance.

(19) Fails to file required biographical information within sixty days of the appointment of officers and directors appointed after issuance of the certificate of authority.

B. Except for the grounds stated in Paragraphs ~~1, 11, 13 and 14~~ (1), (11), (13), and (14) of Subsection A of this Section, the commissioner of insurance shall not revoke or suspend the certificate of authority of a foreign or alien insurer until he has given the insurer at least thirty days notice of the proposed revocation or suspension and of the grounds therefor and has afforded the insurer an opportunity for a hearing.

C. Upon such refusal, suspension or revocation, the commissioner of insurance shall likewise refuse, suspend or revoke the authority of the insurer's agents in this state and give notice thereof to such agents.

D. The commissioner of insurance shall not suspend an insurer's certificate of authority for a period in excess of one year, and he shall state in his order of suspension the period during which it shall be effective.

E. No insurer whose certificate of authority has been suspended, revoked, or refused shall subsequently be authorized unless the grounds for such suspension, revocation, or refusal no longer exist and the insurer is otherwise fully qualified.

§340. Procedure following merger or consolidation

A. Whenever a foreign or alien insurer authorized to transact business in this state shall be the surviving insurer of a statutory merger permitted by the laws of the state or country under which it is organized, and such merger is not subject to the provisions of R.S. 22:73 and 96, ~~and~~ Subpart H of this Part III of Chapter, ~~2~~ R.S. 22:731 et seq., and Chapter 9 of this Title, R.S. 22:2001 et seq., it shall forthwith file with the commissioner of insurance:

(1) Two copies of the agreement and certificate of merger duly authenticated by the proper official of the state or country under the laws of which such statutory merger was effected, one of which copies shall be retained by the commissioner of insurance, and one of which certified copies shall be filed with the secretary of state by said commissioner.

(2) If any of the insurers party to such merger were not admitted to transact business in this state, a statement of the financial condition and business of each of such insurers, as of the end of the preceding calendar year complying as to form, content and verification with the requirements of this Code for annual statements, or a financial statement as of such later date as the commissioner of insurance may require.

B. It shall not be necessary for such surviving insurer to procure a new certificate of authority to transact business in this state nor an amended certificate unless the name of such insurer be changed thereby or unless the insurer desires to transact in this state a kind or kinds of business other than those which it is then authorized to transact.

C. Whenever a foreign or alien insurer authorized to transact business in this state shall be a party to a statutory merger and such insurer shall not be the surviving insurer, or if such foreign or alien insurer shall be a party to a consolidation, then the certificate of authority of such foreign or alien insurer shall terminate upon such merger or consolidation, and the surviving insurer, if not previously authorized to transact business in this state, or the new insurer, in the case of consolidation, shall be subject to the same requirements for admission to transact business in this state as any other foreign or alien insurer.

§347. Disposition of tax money

A. Monies collected under R.S. 22:342 through 349, after being first credited to the Bond Security and Redemption Fund in accordance with Article VII, Section 9 (B) of the Constitution of Louisiana, shall be credited to a special fund hereby established in the state treasury and known as the "Two Percent Fire Insurance Fund"

hereinafter the "fund". Monies in the fund shall be available in amounts appropriated annually by the legislature for the following purposes in the following order of priority:

(1) For the state fire marshal, an amount necessary to satisfy the requirements of R.S. 40:1593, relative to the purchase of group insurance for volunteer firefighters.

(2)(a) For the Fire and Emergency Training Institute at Louisiana State University at Baton Rouge for allocation to the Pine Country Education Center in the parish of Webster, the sum of seventy thousand dollars per year, which shall be transferred without imposition of administrative fee or cost, to be used to develop and operate a firefighter training center operated in accordance with the standards and requirements of the Fire and Emergency Training Institute at Louisiana State University at Baton Rouge.

(b) For the Fire and Emergency Training Institute at Louisiana State University at Baton Rouge for allocation to Delgado Community College, the sum of seventy thousand dollars per year, which shall be transferred without imposition of administrative fee or cost, to be used to develop and operate a firefighter training center operated in accordance with the standards and requirements of the Fire and Emergency Training Institute at Louisiana State University at Baton Rouge.

(3) For the Fire and Emergency Training Institute at Louisiana State University at Baton Rouge, the sum of seventy thousand dollars per year for support of the firefighter training program.

(4) For distribution to each parish governing authority in accordance with rules and regulations established by the state treasurer based upon the formula provided for herein:

(a) Except in Orleans Parish, the state treasurer shall pay over to the treasurer of each governing authority of the parish described in R.S. 22:343 the full amount of money due as determined by the state treasurer. These funds shall be allocated, distributed, and paid to each parish on the basis of a determination of the established population category of each parish as shown by the latest federal census or as determined by the Division of Business and Economic Research of Louisiana Tech University under the latest federal-state cooperative program for local population estimates. Such determination shall be submitted by the Division of Business and Economic Research of Louisiana Tech University to the state treasurer annually not later than January fifteenth of each calendar year. Any parish governing authority which is aggrieved by such determination may file a petition for administrative review with the state treasurer not later than March fifteenth of each calendar year. The determination so submitted shall have no effect on the distribution for the fiscal year in which it is made, but shall be utilized for purposes of this Subpart for distribution during the next ensuing fiscal year as follows:

(i) Those regularly paid fire departments of an incorporated municipality or fire and waterworks district in any unincorporated municipality or active volunteer fire departments having a population within its geographical area of one to two thousand five hundred shall receive seven hundred fifty dollars per annum.

(ii) Those regularly paid fire departments of an incorporated municipality or fire and waterworks district in any unincorporated municipality or active volunteer fire departments having a population of two thousand five hundred one to five thousand shall receive one thousand dollars per annum.

(iii) Those regularly paid fire departments of an incorporated municipality or fire and waterworks district in any unincorporated municipality or active volunteer fire departments having a population of five thousand one or more shall receive one thousand two hundred fifty dollars per annum.

(b) Additional funds shall be distributed to each parish based on the following population formula:

(i) Where the population is twenty-four thousand or less, the parish shall receive thirty-four cents for each inhabitant.

(ii) Where the population is twenty-four thousand one to fifty-five thousand inclusive, the parish shall receive thirty-seven cents per inhabitant.

(iii) Where the population is fifty-five thousand one to one hundred thousand inclusive, the parish shall receive forty cents per inhabitant.

(iv) Where the population is one hundred thousand one to two hundred fifty thousand inclusive, the parish shall receive forty-four cents per inhabitant.

(v) Where the population is two hundred fifty thousand one to four hundred twenty-five thousand inclusive, the parish shall receive forty-seven cents per inhabitant.

(vi) Where the population is over four hundred twenty-five thousand, the parish shall receive fifty cents per inhabitant.

(c) Any balance which remains after making the distributions required in Subparagraph (b) of this Paragraph shall be allocated on an equal per capita basis until all of the available funds are utilized.

(d) If the total amount of monies available for distribution pursuant to Subparagraph (b) of this Paragraph is less than the one hundred percent required to fully implement such formula, the amount distributed shall be prorated equally among the formula categories by the state treasurer prior to distribution to each parish governing authority.

B. These funds shall be allocated, distributed, and paid by each parish governing authority to each regularly constituted fire department of the municipality or district, or active volunteer fire department certified by the parish governing authority, based on the population within the area serviced by said regularly constituted fire department of the municipality or district, or active volunteer fire department. In order to determine the amount of the funds which shall be paid to each fire department, district, or municipality, from the parish governing authority, the following formula shall be applied:

(1) Total population serviced by all certified fire units in the parish divided into the total monies received by the parish from this tax equals the per capita available for distribution to certified local fire units.

(2) Total population serviced by each certified local fire unit in the parish multiplied by the per capita available as determined by Paragraph (1) of this Subsection equals the funds due each certified local fire unit in the parish.

C. The distribution of the proceeds from the premium tax shall in no way be considered as a basis for reduction of any additional parish funds currently remitted to local fire units for the purpose of fire protection.

D.(1) All money received under the provisions of R.S. 22:342 through 349 by the treasurer of the governing authority of the parish shall, within thirty days from the time it is received, be paid over by the treasurer to the fiscal representative of the regularly constituted fire department of the municipality or district or active volunteer fire department, as the case may be. If any of said funds are not so distributed either by mutual consent or without consent of the regularly paid fire department of the municipality or district or active volunteer fire department certified by the parish governing authority, such funds shall be invested in an interest-bearing account and any accrued interest on the investment of funds shall be credited and distributed per capita to the regularly paid fire department of the municipality or district or active volunteer fire department, as provided by ~~R.S. 22:347.~~ this Section.

(2) Such money shall be used only for the purpose of rendering more efficient and efficacious the regularly paid fire department of the municipality or district or active volunteer fire department, as the case may be, in such manner as the governing body shall direct.

E. In Orleans Parish the state treasurer shall pay over to the secretary-treasurer of the board of trustees of the Firefighter's Pension and Relief Fund of the city of New Orleans all monies due under the provisions of R.S. 22:342 through 349 collected pursuant to R.S. 22:345. Such money shall be used only for the purpose of rendering more efficient and efficacious the pension system of the fire department of the city of New Orleans in such manner as the governing body of said pension fund shall direct as provided by law.

SUBPART L. VEHICLE MECHANICAL BREAKDOWN INSURERS

§361. Definitions

As used in this Subpart:

(1) "Commissioner" means the commissioner of insurance of the state of Louisiana.

(2) "Credit disability insurance" means insurance on a debtor to provide indemnity for payment becoming due on a specified loan or other credit transaction while the debtor is disabled as defined in the insurance policy or certificate issued to the debtor.

(3) "Mechanical reimbursement insurance" means an insurance policy issued to a motor vehicle dealer or authorized representative thereunto to insure the performance of a vehicle service contract issued to a consumer if the motor vehicle dealer or the issuer of a service contract becomes insolvent or ceases to do business, or a policy whereby the motor vehicle dealer or designee is fully reimbursed for any and all liability resulting from a service contract issued to a consumer, or an insurance policy whereby such insurance company shall reimburse said motor

vehicle dealer after a defined deductible has been reached, or an insurance policy whereby the insurance company shall issue a policy directly to the consumer to insure for the mechanical breakdown or mechanical failure of a motor vehicle.

(4) "Person" means any individual, ~~person, firm, company, corporation, partnership or association~~ company, insurer, association, organization, reciprocal or inter-insurance exchange, partnership, business, trust, limited liability company, or corporation which provides vehicle mechanical breakdown insurance in this state.

(5) "Reinsurer" ~~as used in this Subpart~~, means a person licensed under this Subpart engaged in the reinsuring of mechanical reimbursement insurance, residual value insurance, or credit disability insurance policies, or any combination of kinds of insurance.

(6) "Vehicle" means any vehicle that is required to be titled pursuant to the Vehicle Certificate of Title Law (R.S. 32:701 et seq.).

(7) "Vehicle mechanical breakdown insurance policy" means any contract, agreement, or instrument whereby a person other than the owner, seller, or lessor of a vehicle assumes the risk of and/or the expense or portion thereof for the mechanical breakdown or mechanical failure of a motor vehicle and other customer assistance and convenience services, such as vehicle rental assistance, towing assistance, trip interruption, and roadside assistance, and shall include those agreements commonly known as vehicle service agreements or extended warranty agreements.

(8) "Vehicle mechanical breakdown insurer" means any person or organization, whether domestic, foreign or alien, issuing or attempting to issue vehicle mechanical breakdown policies as defined herein.

§364. Qualifications

The commissioner shall not ~~issue a~~ license ~~as~~ a vehicle mechanical breakdown insurer unless all of the following conditions are met:

(1) ~~If the~~ The applicant ~~is a corporation, it~~ shall be ~~a~~ solvent. ~~corporation, incorporated under the laws of Louisiana, or another state, district, territory or possession of the United States of America~~.

(2) Applicant shall furnish such proof as necessary to the commissioner that the directors and management of the company are competent and trustworthy and are capable of successfully managing its affairs in compliance with law.

(3) Applicant shall make the deposit or file such surety as required by R.S. 22:365, and

(4) Applicant shall be in compliance with and continue to be in compliance with all applicable laws.

§365. Deposit or surety; required

A. To assure faithful performance of its obligations to policyholders, every vehicle mechanical breakdown insurer shall, prior to the issuance of a license, deposit with or for the benefit of the insurance commissioner, securities which, at all times shall have a value of not less than one hundred ~~and~~ fifty thousand dollars.

B. Those securities which may be used as a deposit shall be cash, certificates of deposit purchased from a financial institution licensed to conduct business in the state of Louisiana, bonds of the state of Louisiana or any of its political subdivisions, or bonds of the United States government.

C. In lieu of the deposit of securities required by this Section, the applicant may file with the commissioner a surety bond in the amount required by Subsection A of this Section. The bond shall be ~~authorized~~ issued by a surety insurer ~~licensed~~ authorized to do business in the state of Louisiana, and shall be for the same purpose as the deposit in lieu of which it is filed and shall be subject to the approval of the commissioner. No such bond shall be cancelled or subject to cancellation unless thirty days written notice is given to the commissioner.

D. If deposit is made in the form of bonds or certificates of deposit, they shall be irrevocably pledged to the commissioner; ~~provided~~ however, ~~that~~ any interest earned on said securities shall be the property of ~~applicant.~~ vehicle mechanical breakdown insurer.

E. Each deposit or surety shall be maintained unimpaired, unencumbered, and pledged to the commissioner until such time as all outstanding policies or agreements of Louisiana have run their full term and expired. It is the intent of this Subsection that the deposit or surety remain fully in force until such time as all of the

vehicle mechanical breakdown insurer's obligations to the ~~policy holders~~ policyholders are fulfilled.

F. The deposit or surety required by this Section may from time to time be substituted ~~for~~ with other acceptable securities, or surety bond, subject to the approval of the commissioner.

§369. Revocation or suspension of license

The commissioner may revoke or suspend any license required by this Subpart after a hearing duly called for that purpose which is conducted pursuant to the provisions of the Administrative Procedure Act contained in Title 49 of the Louisiana Revised Statutes of 1950. Causes for revocation or suspension shall be the following:

(1) If any judgment in favor of a policy holder or his heir or assignees has become final and has not been paid in full within sixty days.

(2) If, in the opinion of the ~~commission~~ commissioner, the reserve for losses maintained by the insurer are insufficient to cover future losses.

(3) If, in the opinion of the commissioner, the insurer is insolvent.

(4) If the insurer refuses to allow an inspection as provided ~~by~~ in R.S. 22:~~371~~ 370.

§371. Cease and desist order; penalty for violation

A. If a hearing is held pursuant to the provisions of the Administrative Procedure Act in Title 49 of the Louisiana Revised Statutes of 1950 and if the commissioner should determine that the provisions of this Subpart have been violated, the commissioner shall, in addition to the authority to revoke or suspend a license as provided in R.S. 22:~~370~~ 369, have the authority to issue an order requiring such person or insurer violating the provisions of this Subpart, to cease and desist from such method, act, or practice. A written record shall be made of the commissioner's findings.

B. If, after issuing such cease and desist order, such person or insurer continues to violate the provisions of this Subpart, the commissioner may seek the enforcement of such order by civil legal action filed in the district court for the parish of East Baton Rouge. Any person who violates a cease and desist order of the commissioner after it has become final and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the state of Louisiana a sum not to exceed five hundred dollars, except that, if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed five thousand dollars.

C. The commissioner may issue a cease and desist order prior to a hearing in accordance with the Administrative Procedure Act as provided herein for violation of R.S. 22:362 or 366.

SUBPART M. PROPERTY RESIDUAL VALUE INSURERS

§381. Definitions

As used in this Subpart:

(1) "Commissioner" means the commissioner of insurance of the state of Louisiana.

(2) "Property" means all classes of movable or immovable property recognized under the laws of this state.

(3) "Person" means any individual ~~person, firm, company, corporation, partnership, or association~~ company, insurer, association, organization, reciprocal or inter-insurance exchange, partnership, business, trust, limited liability company, or corporation which provides property residual value insurance in this state.

(4) "Property residual value insurer" means any person or organization, whether domestic, foreign, or alien, issuing or attempting to issue property residual value policies as defined herein.

(5) "Property residual value insurance policy" means any contract, agreement, or instrument whereby a person, other than the owner, seller, lessee, or lessor of property, either directly or indirectly, assumes the risk of and/or the expense or portion thereof for the residual value of property, including but not limited to auto-gap* insurance.

(6) "Residual value" shall mean the value of property at a specific future time, which value is determined by agreement at the time the contract of lease or sale is entered into.

§384. Qualifications

The commissioner shall not ~~issue a~~ license ~~as~~ a property residual value insurer unless all of the following conditions are met:

(1) ~~If the~~ The applicant ~~is a corporation, it~~ shall be ~~a~~ solvent. ~~corporation, incorporated under the laws of Louisiana or another state, district, territory, or possession of the United States.~~

(2) Applicant shall furnish such proof as necessary to the commissioner that the directors and management of the company are competent and trustworthy and are capable of successfully managing its affairs in compliance with law.

(3) Applicant shall make the deposit or file such surety as required by R.S. 22:385.

(4) Applicant shall be in compliance with and continue to be in compliance with all applicable laws.

§385. Deposit or surety

A. To assure faithful performance of its obligations to policyholders, every property residual value insurer shall, prior to the issuance of a license, deposit with or for the benefit of the insurance commissioner, securities which, at all times, shall have a value of not less than one hundred fifty thousand dollars.

B. Those securities which may be used as a deposit shall be cash, certificates of deposit purchased from a financial institution licensed to conduct business in the state of Louisiana, bonds of the state of Louisiana or any of its political subdivisions, or bonds of the United States government.

C. In lieu of the deposit of securities required by this Section, the applicant may file with the commissioner a surety bond in the amount of not less than one hundred fifty thousand dollars. The bond shall be ~~authorized~~ issued by a surety insurer ~~licensed~~ authorized to do business in the state of Louisiana, shall be for the same purpose as the deposit in lieu of which it is filed, and shall be subject to the approval of the commissioner. No such bond shall be cancelled or subject to cancellation unless thirty days written notice is given to the commissioner.

D. If deposit is made in the form of bonds or certificates of deposit, they shall be irrevocably pledged to the commissioner; however, any interest earned on said securities shall be the property of ~~depositor.~~ the property residual value insurer.

E. Each deposit or surety shall be maintained unimpaired, unencumbered, and pledged to the commissioner until such time as all outstanding policies have run their full term and expired. The deposit or surety shall remain fully in force until such time as all of the property residual value insurer's obligations to the policyholders are fulfilled.

§388.1. Filing of contracts

No property residual value insurance policy or application form, where written application is required and is to be attached to the policy, or any rider or endorsement of such a contract shall be issued, delivered, or used unless it has been filed with the commissioner of insurance. Each submission shall be accompanied by the fees provided for in R.S. 22:~~1078(B)(26).~~ 821.

§393. Scope and limitations

A. Nothing in this Subpart shall alter or diminish any right, privilege, or authority granted to any insurance company under any other provisions of this Title. ~~22 of the Louisiana Revised Statutes of 1950.~~

B. All property residual value insurers operating pursuant to a license as required by this Subpart shall be exempt from the applicability of all other insurance laws of this state, except where such laws are specifically incorporated herein by reference.

SUBPART N. NONPROFIT BENEFICIARY ORGANIZATIONS AND RISK INDEMNIFICATION TRUSTS

§409. Board of trustees; terms; removal; meetings; salary

~~(A)~~ A. Every trust fund shall be governed by a board of no fewer than five trustees. The initial trustees need not be appointed or elected by the beneficiaries of the trust fund. During the second year following the creation of an authorized trust fund, at least one-fourth of all its trustees in office shall have been elected or

appointed by the beneficiaries. After the end of the second year following the creation of an authorized trust fund, a majority of all trustees in office shall have been elected or appointed by the beneficiaries.

~~(B)~~ B. All trustees serving during the first two years following the creation of an authorized trust fund shall be elected or appointed for one-year terms. All trustees serving thereafter shall be elected or appointed for two-year terms, provided that the trustees may be elected or appointed for one-year terms to the extent necessary in order to create staggered terms.

~~(C)~~ C. Any trustee may be removed at any time, with or without cause, by a majority vote of the beneficiaries.

~~(D)~~ D. The board of trustees shall meet ~~no fewer than~~ at least four times each year.

~~(E)~~ E. No trustee shall be paid a salary or receive other compensation for service as a trustee, except that the bylaws or plan of operation may provide for reimbursement for actual expenses incurred on behalf of the trust fund and for the payment of a reasonable per diem amount for attendance at meetings of the board.

§413. Contracts with risk ~~managements~~ management service providers

Authorized trust funds may enter into contracts with risk management service providers, actuarial consultants, or other vendors as are necessary to ensure the effective and efficient operation of such trust ~~fund.~~ funds. Fees paid to vendors for services provided shall not be excessive.

SUBPART O. SURPLUS LINES

§432. Surplus ~~line~~ lines insurance from unauthorized insurers

If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated as "surplus lines", may be procured from approved unauthorized insurers provided that the insurance is procured through a licensed surplus ~~line~~ lines broker.

§433. Endorsement of contract

A. Every insurance contract procured and delivered as a surplus line coverage pursuant to this Subpart shall have stamped or printed upon it and be signed by the surplus lines broker who procured it, in bold type and the face of which shall not be less than ten-point type, the following:

~~NOTICE~~

~~This insurance policy is delivered as a surplus line coverage under the Insurance Code of the State of Louisiana.~~

~~In the event of insolvency of the company issuing this contract, the policyholder or claimant is not covered by the Louisiana Insurance Guaranty Association which guarantees only specific policies issued by an insurance company authorized to do business in Louisiana.~~

~~This surplus lines policy has been procured by the following licensed Louisiana surplus lines broker:~~

~~Signature of Licensed Louisiana Surplus Lines Broker~~

~~or Authorized Representative~~

~~Printed Name of Licensed Louisiana Surplus Lines Broker~~

B. The notice required under this Section shall, whether stamped or printed, be distinguished in either one of the following ways:

(1) The notice shall be prominently displayed in the color red.

(2) If the notice is printed or stamped in the color black, it shall be prominently offset by a black border.

§434. Surplus ~~line~~ lines insurance valid

Insurance contracts procured as surplus ~~line~~ lines coverage from approved unauthorized insurers in accordance with this Subpart shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by authorized insurers.

§435. Surplus lines in solvent insurers; capital and surplus requirements; deposits and bond requirements

A.(1) A surplus lines broker shall not knowingly place surplus lines insurance with insurers unsound financially.

(2) Each insurer is authorized to write the type of insurance in its domiciliary jurisdiction.

(3) The full amount or type of insurance cannot be obtained from insurers who are authorized to do business in this state. In addition to the other requirements of this Subpart, including but not limited to R.S. 22:432 and 438, the full amount or type of insurance may be procured from an approved unauthorized insurer, provided that a diligent search is made among the insurers who are authorized to transact business and are actually writing the particular type of insurance in this state if any are writing it.

B. The surplus lines broker shall not so insure with any insurer unless the insurer has met the requirements of R.S. 22:436, unless otherwise provided by law, has established satisfactory evidence of good repute and financial integrity, and has done the following:

(1) If it is a foreign insurer:

(a) Has capital and surplus of not less than fifteen million dollars exclusive of either surplus debentures or subordinated notes if a stock insurer, or surplus of not less than fifteen million dollars exclusive of either surplus debentures or subordinated notes if any other type insurer, and has on deposit with the commissioner of insurance a safekeeping or trust receipt from a bank or a savings and loan association doing business within Louisiana, indicating that one hundred thousand dollars in money, or approved bonds of the United States government, the state of Louisiana, or any political subdivision thereof, or in lieu of such deposit has delivered to the commissioner of insurance a bond in the amount of one hundred thousand dollars ~~of~~ issued by an authorized surety company doing business in this state and approved by the commissioner of insurance.

(b) Such deposit or surety bond shall be conditioned for the prompt payment of all claims arising and accruing to any person by virtue of any policy issued by any such unauthorized insurer ~~upon the life or person of any citizen of the state of Louisiana, or~~ upon any property or other risk situated in this state, and to be held subject to any claims, liens or judgments that may be judicially obtained against any such company in the courts of this state, or arising from any contract of insurance, or indemnity, or fidelity, or guaranty entered into in this state, and shall be liable to seizure and sale at the instance of any judgment creditor of such insurer, under judgment obtained in any of the courts of this state or in any of the federal courts of this state.

(c) No surety bond furnished as provided herein shall be cancelled unless a new bond or deposit has been substituted or satisfactory evidence has been submitted to the commissioner of insurance that the insurer has discharged all of its assured obligations and liabilities in this state, and that it has no assessed liabilities whatever remaining in this state. The term of these bonds shall be for one year ending March first, but the last bond filed shall always remain in effect until a new bond is filed or a deposit is made as a substitution therefor. Withdrawal of any bond or deposit required herein may be made only upon the approval by the commissioner of insurance.

(d) The requirements of Subparagraph (a) of this Paragraph, with respect only to capital and surplus, may be satisfied by an insurer's possessing less than the minimum capital and surplus upon an affirmative finding by the commissioner. If the commissioner finds such acceptable, the finding shall be in effect for a one-year period and shall be applied for annually thereafter to be renewed on an annual basis, unless the finding is revoked by the commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. In no event shall the commissioner make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars.

(e) In the case of an insurance exchange created by the laws of a state other than this state:

(i) The syndicates of the exchange shall maintain under terms acceptable to the commissioner capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of not less than seventy-five million dollars in the aggregate.

(ii) The exchange shall maintain under terms acceptable to the commissioner not less than fifty percent of the policyholder surplus of each syndicate in a custodial account accessible to the exchange or its domiciliary commissioner in the event of insolvency or impairment of the individual syndicate.

(iii) In addition, each individual syndicate to be eligible to accept surplus lines insurance placements from

this state shall meet either of the following requirements: For insurance exchanges which maintain funds in an amount of not less than fifteen million dollars for the protection of all exchange policyholders, the syndicate shall maintain under terms acceptable to the commissioner minimum capital and surplus, or its equivalent under the laws of the domiciliary jurisdiction, of not less than five million dollars; or for insurance exchanges which do not maintain funds in an amount of not less than fifteen million dollars for the protection of all exchange policyholders, the syndicate shall maintain under terms acceptable to the commissioner minimum capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of not less than the minimum capital and surplus requirements under the laws of its domiciliary jurisdiction or fifteen million dollars, whichever is greater.

(2) If it is an alien Lloyd's plan or other similar group of insurers, which consists of unincorporated individual insurers, or a combination of both unincorporated and incorporated insurers:

(a) The plan or group maintains in the United States a trust or trusts equal to thirty percent of the group's United States surplus lines gross liabilities excluding those types of insurance liabilities set forth in R.S. 22:1903(C)(4), not to exceed five hundred million dollars; however, after notice and an opportunity to be heard, the commissioner may require that the trust or trusts equal an amount in excess of five hundred million dollars if he finds such higher amount to be reasonably necessary to protect the interests of the public and policyholders of this state.

(b) In addition, the group shall maintain in trust a surplus in the amount of one hundred million dollars, which shall be available for the benefit of United States surplus lines policyholders of any member of the group.

(c) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members.

(d) The trust funds shall be maintained in an irrevocable trust account in the United States in a qualified financial institution, consisting of cash, securities, letters of credit, or investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of authorized insurers to write like kinds of insurance in this state and, in addition, the trust required by Subparagraph (b) of this Paragraph shall satisfy the requirements of the standard trust agreement required for listing with the International Insurers Department of the National Association of Insurance Commissioners.

(3) In the case of a group of incorporated alien insurers under common administration, which has continuously transacted an insurance business outside the United States for at least three years immediately prior to December 31, 1997, and which submits to this state's authority to examine its books and records and bears the expense of the examination:

(a) The group shall maintain an aggregate policyholders' surplus of ten billion dollars.

(b) The group shall maintain in trust a surplus in the amount of one hundred million dollars. The surplus shall be available for the benefit of United States surplus lines policyholders of any member of the group.

(c) Each insurer shall individually maintain capital and surplus of not less than twenty-five million dollars per company.

(d) The trust funds shall satisfy the requirements of the Standard Trust Agreement requirement for listing with the International Insurers Department of the National Association of Insurance Commissioners and shall be maintained in an irrevocable trust account in the United States in a qualified financial institution, and shall consist of cash, securities, letters of credit, or investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers to write like kinds of insurance in this state.

(e) Additionally, each member of the group shall make available to the commissioner an annual certification of the solvency of the member by the domiciliary regulator of the member and its independent public accountant.

(4) Except for an exchange or plan complying with Subparagraph (B)(1)(e) or Paragraph (B)(2) or (B)(3) of this Section, an alien insurer shall satisfy the capital and surplus requirements of Subparagraphs (B)(1)(a) through (d) of this Section and shall have in force a trust fund of not less than the greater of:

(a) Five million four hundred thousand dollars.

(b) Thirty percent of the United States surplus lines gross liabilities, which does not include those types of insurance liabilities set forth in R.S. 22:1903(C)(4), not to exceed sixty million dollars, to be determined annually

on the basis of accounting practices and procedures substantially equivalent to those promulgated by this state, as of December thirty-first next preceding the date of determination, where:

(i) The liabilities are maintained in an irrevocable trust account in the United States in a qualified financial institution, on behalf of United States policyholders consisting of cash, securities, letters of credit, or other investments of substantially the same character and quality as those which are eligible investments pursuant to R.S. 22:584 et seq. for the capital and statutory reserves of admitted insurers to write like kinds of insurance in this state. The trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall satisfy the requirements of the Standard Trust Agreement required for listing with the International Insurers Department of the National Association of Insurance Commissioners.

(ii) The insurer may request approval from the commissioner to use the trust fund to pay valid surplus lines claims. The balance of the trust fund shall never be less than the greater of five million four hundred thousand dollars or thirty percent of the current gross United States surplus lines liabilities of the insurer, excluding those types of liabilities set forth in R.S. 22:1903(C)(4).

(iii) In calculating the trust fund amount required by this Paragraph, credit shall be given for surplus lines deposits separately required and maintained for a particular state or United States territory, not to exceed the amount of the loss and loss adjustment reserves of the insurer in the particular state or territory.

(5) An alien insurer subject to the provisions of Paragraph (4) of this Subsection that meets the requirements to do a surplus lines business in this state on July 15, 1997, shall have two years from the date of enactment to meet the requirements of Paragraph (4), with the commissioner having the authority to adjust at any time, in response to inflation, the trust fund amounts required in Paragraph (4), as follows:

(a) By December 31, 1998, the trust fund requirement shall be fifteen percent of surplus lines liabilities in the United States, excluding those types of liabilities set forth in R.S. 22:1903(C)(4), with a maximum of thirty million dollars.

(b) By December 31, 1999, the trust fund requirements shall be thirty percent of surplus lines liabilities in the United States, excluding those types of liabilities set forth in R.S. 22:1903(C)(4), with a maximum of sixty million dollars.

(6) In addition to all of the other requirements of this Section, an insurer not domiciled in the United States or its territories shall be listed by the International Insurers Department of the National Association of Insurance Commissioners. The commissioner may waive the requirement in this Paragraph or the requirements of Subparagraph (B)(4)(b) of this Section upon an affirmative finding of acceptability by the commissioner if the commissioner is satisfied that the placement of insurance with the insurer is necessary and will not be detrimental to the public and the policyholder. In determining whether business may be placed with the insurer, the commissioner may consider such factors as:

(a) The interests of the public and policyholders.

(b) The length of time the insurer has been authorized in its domiciliary jurisdiction and elsewhere.

(c) Unavailability of particular coverages from authorized insurers or unauthorized insurers meeting the requirements of this Section.

(d) The size of the company as calculated by its assets, capital and surplus, reserves, premium writings, insurance in force or other appropriate criteria; the kinds of business the company writes, its net exposure and the extent to which the business of the company is diversified among several lines of insurance and geographic locations.

(e) The past and projected trend in the size of the company's capital and surplus of the company considering such factors as premium growth, operating history, loss and expense ratios, or other appropriate criteria.

(7) Has caused to be provided to the commissioner a copy of its current annual statement certified by the insurer and an actuarial opinion as to the adequacy of, and methodology used to determine, the loss reserves of the insurer. The statement shall be provided at the same time it is provided to the insurer's domicile, but in no event more than eight months after the close of the period reported upon, and shall be certified as a true and correct copy by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile and certified by a senior officer of the unauthorized insurer as a true and correct copy of the statement filed with the regulatory authority in the domicile of the unauthorized insurer. In the case of an insurance exchange qualifying under Subparagraph

(B)(1)(e) of this Section, the statement may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

C. Repealed by Acts 1997, No. 1340, §2, eff. July 15, 1997.

D. In addition to any other statements or reports required by this ~~Chapter,~~ Subpart, the commissioner of insurance may request from any ~~licensee~~ surplus lines broker full and complete information respecting the financial stability, reputation and integrity of any unauthorized insurer with whom any such ~~licensee~~ surplus lines broker has dealt, or proposes to deal, in the transaction of insurance business. The ~~licensee~~ surplus lines broker shall promptly furnish in written or printed form so much of the information requested as he can produce. The commissioner of insurance, if he believes it to be in the public interest, may order such ~~licensee~~ surplus lines broker in writing to place no further insurance business on Louisiana risks through such unauthorized company.

E-G. Repealed by Acts 1997, No. 1340, §2, eff. July 15, 1997.

H.(1) Notwithstanding any law to the contrary, no person shall act in this state as ~~agent~~ producer for or broker to any unauthorized insurer which has not been approved by the Department of Insurance in accordance with this Section and R.S. 22:436, unless the following criteria are met:

(a) The insurance is limited to commercial property and liability, including commercial marine.

(b) The insurance coverage is excess coverage and the attachment point is at least twenty five million dollars for property and ten million dollars for liability or such other amount as the Department of Insurance in its discretion shall require.

(c) Approval from the Department of Insurance is required for each policy.

(d) The insured has been informed in writing by the agent or broker that the insurer has not been approved by the Department of Insurance.

(2) The commissioner by regulation or directive, may require that the insured meet minimum financial requirements and may require certification from the ~~agent~~ producer or broker that the insurer meets the financial and any other requirements promulgated by the Department of Insurance for insurance coverage by an unauthorized insurer which has not been approved by the Department of Insurance under this Section and R.S. 22:436.

§436. Approved unauthorized insurers; list; requirements; removal

A. No surplus ~~line~~ lines broker shall place surplus ~~line~~ lines insurance with an insurer who is not on the list of approved unauthorized insurers as compiled and maintained by the commissioner of insurance.

B.(1) To obtain and maintain placement on the list of approved unauthorized insurers, a foreign insurer shall comply with the provisions of R.S. 22:435 applicable to foreign insurers and shall annually file with the commissioner the following:

(a) A copy of the insurer's annual statement, signed and sworn to by its president and secretary as to its condition as of the preceding December thirty-first, evidencing that the insurer has capital and surplus of not less than fifteen million dollars exclusive of either surplus debentures or subordinated notes, and complied with the provisions of R.S. 22:435(B)(7).

(b) Evidence that the amount of net premiums written does not exceed four times the insurer's capital and surplus.

(c) Evidence that, if the insurer issues workers' compensation insurance in this state, it has established and maintained a workers' compensation claims office pursuant to R.S. 23:1161.1 or has retained a licensed claims adjuster.

(d) A copy of the producer production report in a form required by the commissioner listing all business placed with the company by licensed surplus lines brokers. The report shall be filed with the Department of Insurance no later than April fifteenth of each year.

(2) An insurer that fails to file a copy of its annual statement on or before March first of each year shall be removed from the list of approved unauthorized insurers. The commissioner may grant an extension, not to exceed thirty days, if presented with satisfactory evidence showing the reasonableness of the extension.

C. To obtain and maintain placement on the list of approved unauthorized insurers, an alien insurer shall comply with the provisions of R.S. 22:435 applicable to alien insurers including but not limited to the provisions of R.S. 22:435(B)(7), and the commissioner may require an alien insurer to file a copy of the producer production report in a form prescribed by the commissioner listing all business placed with the company by licensed surplus

lines brokers. The report shall be filed with the Department of Insurance no later than April fifteenth of each year. The commissioner shall remove any alien insurer from the list of approved unauthorized insurers if it ceases to comply with the provisions of R.S. 22:435 applicable to alien insurers, or if he determines that continued placement of surplus lines insurance with the insurer would not be in the best interest of the policyholders or citizens of Louisiana.

D. The commissioner shall remove a foreign insurer from the list of approved unauthorized insurers if:

(1) The insurer does not have capital and surplus of at least fifteen million dollars exclusive of surplus debentures and subordinated notes, as determined by his examiners.

(2) It is determined that the continued placement of surplus ~~line~~ lines insurance with the insurer would not be in the best interest of the policyholders or the citizens of Louisiana.

E. The commissioner may remove a foreign insurer from the list of approved unauthorized insurers if:

(1) The amount of net premiums written exceeds four times the insurer's capital and surplus.

(2) The insurer fails to deliver any information requested by the commissioner within thirty days.

(3) The insurer issues workers' compensation insurance within the state, and fails to establish and maintain a workers' compensation claims office pursuant to R.S. 23:1161.1 or fails to retain a licensed claims adjuster.

F.(1) The commissioner may declare an approved unauthorized insurer ineligible if at anytime he determines any of the following:

(a) The insurer is in unsound financial condition or has acted in an untrustworthy manner.

(b) The insurer no longer satisfies the requirements set forth in R.S. 22:435.

(c) The insurer has willfully violated the laws of this state.

(d) The insurer does not conduct a proper claims practice.

(2) Repealed by Acts 2005, No. 167, §2, eff. June 28, 2005.

G. Upon removing an insurer from the list of approved unauthorized insurers, the commissioner shall notify the insurer and all licensed surplus lines brokers of such action in writing. Such notice to licensed surplus ~~line~~ lines brokers may, at the option of the surplus lines broker, be sent by the commissioner via electronic mail.

H. The commissioner shall have the authority to adopt and promulgate such rules and regulations as are necessary to carry out the provisions of this Section in accordance with the Administrative Procedure Act.

§437. Records of surplus ~~line~~ lines broker

A. Each licensed surplus ~~line~~ lines broker shall keep a full and true record of each surplus line contract, procured by him including a copy of the daily report, if any, showing such of the following items as may be applicable:

(1) Amount of the insurance~~;~~.

(2) Gross premiums charged~~;~~.

(3) Return premium paid, if any~~;~~.

(4) Rate of premium charged upon the several items of property~~;~~.

(5) Effective date of the contract, and the terms thereof~~;~~.

(6) Name and address of the insurer~~;~~.

(7) Name and address of the insured~~;~~.

(8) Brief general description of property insured and where located~~;~~.

(9) Other information as may be required by the commissioner of insurance, including but not limited to the address of the worker's compensation claims office established by the insurer pursuant to R.S. 23:1161.1 and the name and address of the person authorized by the insurer to settle worker's compensation claims through such office or of the licensed claims adjuster retained by the insurer.

B. The record shall at all times be open to examination by the commissioner of insurance and whenever an examination shall be made by him of a surplus ~~line~~ lines broker, such examination shall be in compliance with and pursuant to the provisions of Chapter 8 of this Title, R.S. 22:1981 et seq., insofar as the provisions of that Chapter are applicable to such examination.

§438. Proof of uninsurability; affidavit

A. Any licensed surplus lines broker that procures a personal lines policy with an approved unauthorized

insurer shall obtain from the duly licensed submitting ~~agent~~ producer or broker within thirty days of binding an affidavit on a standardized form promulgated by the commissioner of insurance which shall be maintained by the licensed surplus lines broker that attests to the diligent efforts of the ~~agent~~ producer or broker to place insurance coverage with admitted insurers and the results thereof. The affidavit shall affirm that the insured applicant for insurance was expressly advised prior to placement of insurance that the surplus lines insurer with whom the insurance is being placed is an approved unauthorized insurer, and that in the event of insolvency of the insurer, losses shall not be paid by the state insurance guaranty fund, and that the coverage is being procured through a duly licensed Louisiana surplus lines broker.

B. As long as the personal lines policy continues to be renewed by the same approved unauthorized insurer, there shall not be a need for new affidavits at each renewal. At renewal, if the personal lines policy is placed with a different approved unauthorized insurer, then the procurement of a new affidavit will be secured in the manner outlined in Subsection A of this Section.

§439. Tax on surplus lines

A.(1) On or before March first, June first, September first, and December first of each year, each surplus lines broker shall transmit to the commissioner of insurance a surplus lines tax report for the prior calendar quarter. This report shall be in a manner and format prescribed by the commissioner of insurance and include any additional information as required by the commissioner. The reporting of transactions shall be as follows:

(a) All new and renewal policies will be included in the report for the calendar quarter in which the effective date of the policy falls.

(b) All other premium transactions will be included in the report for the calendar quarter in which the invoice falls.

(2) Along with the report required to be filed on the due dates provided in Paragraph (1) of this Subsection, each surplus lines broker shall remit to the commissioner of insurance a tax on the premiums on surplus lines insurance reported in the quarterly surplus lines tax report, at the rate of five percent per annum. Such tax when collected by the commissioner of insurance shall be paid to the state treasurer and be credited to the general fund.

B. Every person placing insurance with an unauthorized insurer without going through a licensed Louisiana ~~agent~~ producer or surplus lines broker, except as provided in R.S. 22:432, shall remit to the commissioner of insurance a tax of five percent of the gross premium, such tax to be paid at the same time and under the same conditions as that levied on surplus lines brokers under the provisions of Subsection A of this Section. Such tax when collected by the commissioner of insurance shall be paid to the state treasurer and be credited to the general fund.

C. If a surplus ~~line~~ lines policy covers risks or exposures only partially in this State the tax so payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this State.

D. The tax imposed on surplus lines under this Section shall not apply to the purchase of excess insurance obtained by an interlocal risk management agency pursuant to R.S. 33:1359 or 1485.

§440. Penalty for failure to file statement or remit tax

In case of any failure of a surplus ~~line~~ lines broker to make a report or to make payment of the tax provided by R.S. 22:439, ten ~~percentum~~ percent shall be added to the amount of tax due, and paid to the commissioner of insurance along with the tax due, unless evidence to his satisfaction is submitted to him to show that such failure was due to some unforeseen or unavoidable reason other than mere neglect. If the delinquency be for more than thirty days after the due date of the report or after the due date for the payment of taxes as provided by R.S. 22:439, neglect will be presumed and the ten ~~percentum~~ percent shall be added without any discretion on the part of the commissioner of insurance. After the lapse of thirty days, until the report is filed and the delinquent tax paid, the commissioner of insurance may revoke the license of the delinquent surplus ~~line~~ lines broker to do business in this state. Any fine collected by the commissioner of insurance hereunder shall be paid to the state treasurer and credited to the general fund.

§441. Suspension or revocation of licenses; surplus lines broker; fines

A. The commissioner of insurance shall revoke any surplus lines broker's license:

(1) If the broker fails to comply with R.S. 22:439 or to remit required taxes on surplus lines premiums as required by this Part.

(2) If the broker fails to maintain the required records and accounts from this state as prescribed by R.S. 22:437, or to allow the commissioner of insurance to examine his records as required by this Subpart.

(3) For closing of the surplus ~~line~~ lines broker's office for a period of more than thirty calendar days, exclusive of legal holidays, Saturdays, and Sundays, unless permission is granted by the commissioner.

(4) For failure to make and file required reports.

(5) For violation of any of the provisions of this Subpart.

(6) For any other cause for which an insurance license could be denied, revoked, suspended, or the renewal thereof refused under the provisions of R.S. 22:1554.

B. The commissioner of insurance may deny, suspend, revoke, or refuse to renew or reinstate any such license whenever he deems such denial, suspension, revocation, or refusal to renew or reinstate to be for the best interest of the people of this state. The ~~agent's or~~ producer's license may also be denied, suspended, revoked, or refused renewal or reinstatement whenever there is a denial, suspension, revocation, or refusal to renew or reinstate a surplus ~~line~~ lines broker's license.

C. The procedures provided by this Code for the denial, suspension, revocation, or refusal to renew or reinstate ~~an agent's or~~ producer's license shall be applicable to denial, suspension, revocation, or refusal to renew or reinstate a surplus line broker's license. The procedures provided for by this Code for the levying of fines against ~~an agent's or~~ a producer shall be applicable to the levying of fines against a surplus line broker.

D. No surplus ~~line~~ lines broker whose license has been so revoked, suspended, or refused renewal or reinstatement shall again be so licensed within one year thereafter, nor until any fines or delinquent taxes owing by him have been paid.

§442. Legal process against ~~surplus line~~ unauthorized insurer

A. An unauthorized insurer shall be sued, upon any cause of action arising in this state under any contract issued by it as a surplus ~~line~~ lines contract, pursuant to this Subpart, in the district court of the parish in which the cause of action arose.

B. Service of legal process against the insurer may be made in any such action by service upon the secretary of state or some other person in his office whom he may designate during his absence. The secretary of state shall forthwith mail the documents of process served, or a true copy thereof, to the person designated by the insurer in the policy for the purpose by prepaid registered mail with return receipt requested. The insurer shall have forty days from the date of service upon the secretary of state within which to plead, answer, or otherwise defend the action. Upon service of process upon the secretary of state in accordance with this provision, the court shall be deemed to have jurisdiction in personam over the insurer.

C. An unauthorized insurer issuing such policy shall be deemed thereby to have authorized service of process against it in the manner and to the effect as provided in this Section. Any such policy shall contain a provision stating the substance of this Section, and designating the person to whom the secretary of state shall mail process as provided in Subsection B of this Section.

§443. Exemptions

A. The provisions of R.S. 22:432 through 442, 444, and 1910 controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed surplus lines brokers of this state, except that a tax on the portion of the premiums received from ocean marine and foreign trade coverages which is properly allocable to the risks or exposures located in this state during the preceding calendar quarter shall be due on the dates and in a manner as provided in R.S. 22:439 at the rate of five percent, such tax when collected by the commissioner of insurance shall be paid to the state treasurer and to be credited to the state general fund, and such licensed surplus lines broker placing ocean marine insurance shall be subject to the provisions of R.S. 22:435, notwithstanding the provisions of R.S. 22:1902, 1903, and 1906, and must show on any document issued by ~~and/or~~ or delivered by them evidencing such insurance, all of the insurers and must clearly stamp on any such documents that on the demand of the ~~assured~~ policyholder or ~~its~~ his representative

the latest financial statements of any such insurers are available at its office for inspection as follows:

(1) Ocean marine and foreign trade insurance.

(2) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside of this state.

(3) Insurance on property or operation of railroads engaged in interstate commerce.

(4) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in scheduled interstate flight, or cargo of such aircraft, or against liability, other than worker's compensation and employer's liability, arising out of the ownership, maintenance, or use of such aircraft.

B.(1) Surplus ~~line~~ lines brokers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus ~~line~~ lines insurance under this Subpart. The record shall be preserved for not less than five years from the effective date of the insurance and shall be kept available in this state and open to the examination of the commissioner of insurance. The surplus ~~line~~ lines broker shall furnish to the commissioner of insurance at his request and on forms as designated and furnished by him a report of all such coverages so placed in a designated calendar year.

(2) Notwithstanding anything to the contrary herein contained, the rates for the exempt lines of insurance set out in ~~Subsection~~ Paragraphs (A)(1), (2), (3) and (4) of this Section shall not be regulated.

§445. Tontine funds; sales prohibited

A. ~~On and after July 29, 1964, the~~ The sale by any ~~individual, company, partnership, corporation, non-profit corporation or insurance company~~ person of tontine funds whereby any part of the principal or interest earned on individual contributions is to be used for the benefit of other contributors is hereby prohibited.

B. Nothing herein contained shall in any way be construed as prohibiting the sale of insurance policies approved for use in the ~~State~~ state of Louisiana by the ~~Commissioner~~ commissioner of ~~Insurance.~~ insurance.

SUBPART P. GROUP ~~SELF-INSURERS~~ SELF-INSURERS

§451. Scope of provisions

A. This Subpart shall be applicable to and shall regulate self-insurers and self-insurance plans, as defined in this Subpart, which are subject to jurisdiction of the commissioner of insurance under ~~Chapter 1 of~~ this Title. This Subpart shall not be applicable to any worker's compensation plan, except as otherwise provided in this Subpart.

B. Regulation under this ~~Chapter~~ Subpart shall not be deemed to and shall not make any self-insurer or insurance plan an insurer or insurance policy solely because of such regulation hereunder. Any entity regulated under this Subpart shall not be considered or treated as an insurer or insurance policy solely because of such regulation.

§453. Certificate of authority

A. It is unlawful for any self-insurer to transact business or to issue or provide health care benefits under or pursuant to a self-insurance plan in this state without a certificate of authority issued by the commissioner of insurance. Any self-insurer which transacts business in this state without the certificate of authority required by this Subpartshall be considered an unauthorized insurer within the meaning of Subpart O of this Part, ~~I of Chapter 2 of this Title~~ R.S. 22:431 et seq., and Part I of Chapter 7 of this Title, R.S. 22:1901 et seq., and all remedies and penalties prescribed therein shall apply to such self-insurer.

B. Each application for a certificate of authority shall be made on forms prescribed by the commissioner, shall be verified by the self-insurer or its authorized representative, and shall set forth or be accompanied by the following:

(1) A copy of the plan's bylaws and all management, administration, or trust agreements which the plan has made or proposes to make for the conduct of its business and affairs. Any proposed change or amendment to the foregoing shall also be filed with the commissioner within sixty days of its implementation.

(2) A list of names, permanent addresses, and official positions, if any, of the persons responsible for the formation of the self-insurer and for the organization, establishment, administration, and maintenance of the self-insurance plan.

(3) A copy of the application for coverage, contract, certificate, or policy of insurance or schedules of benefits to be issued or provided to persons covered under the self-insurance plan.

(4) A current financial statement verified by the applicant or its authorized representative showing the applicant's assets, liabilities, and sources of financial means and support.

(5) A copy of all advertising and marketing materials, including the marketing plan.

C. Within ninety days of receipt of a completed application, the commissioner of insurance shall issue a certificate of authority to do business in the state to an applicant if the commissioner determines that the following conditions are met:

(1) The persons responsible for the administration of the self-insurance plan are competent, trustworthy, and of good reputation.

(2) The applicant is financially sound and responsible.

(3) The applicant has deposited cash or securities and has otherwise complied with all of the requirements of this Subpart.

§455. Administrators; license

An administrator of a self-insurance plan shall be licensed as a life and health insurance ~~agent~~ producer and shall be subject to all laws and regulations governing life and health insurance ~~agents~~ producer as set forth in R.S. 22:1541 through 1554 and 1556 through 1565.

§456. ~~Agents;~~ Producers appointment

A. Any self-insurer who has been issued a certificate of authority under this Subpart may contract with and appoint as its representatives in this state, as its ~~agent~~ producer or ~~agents,~~ producer any person or persons licensed as a life and health ~~agent~~ producer under Chapter 1 of this Title~~.~~, R.S. 22:1541 et seq. No solicitation of insurance shall be made by any ~~agent~~ producer prior to notification of such self-insurer that its appointment has been recorded by the commissioner of insurance. If the commissioner has not notified the self-insurer of his disapproval of a particular ~~agent~~ producer within thirty days after receipt of the self-insurer's appointment of such ~~agent,~~ producer, the ~~agent~~ producer thereafter may commence solicitation of insurance.

B. On or before the first day of March of each year, each self-insurer shall submit to the commissioner of insurance by certified mail an alphabetical list of the licensed ~~agents~~ producer which it wishes to appoint, together with a fee of ten dollars for each such appointment. Any appointment shall remain in full force and effect until the thirtieth day of April following the date of recordation by the commissioner of insurance, unless the license of the appointed ~~agent~~ producer is revoked by the commissioner or until cancelled by the self-insurer upon written notice to the ~~agent~~ producer and the commissioner.

C. Any self-insurer who violates the provisions of this Section shall be fined the sum of ten dollars for each ~~agent's~~ producer's appointment received after the first day of March of each year.

§457. ~~Agents;~~ Producers; acting for unauthorized self-insurer prohibited

A. No natural or juridical person shall, within this state, solicit, procure, receive, or forward applications for coverage under any self-insurance plan or issue or deliver policies, certificates, schedules of benefits, or other evidence of such coverage or in any manner secure, assist, or aid in the placing of any such coverage for any person other than himself, directly or indirectly, with any self-insurer not authorized to do business in this state under this Subpart.

B. Any such person shall be liable personally for the full amount of any loss sustained under such coverage provided by or through him or it, directly or indirectly, with any self-insurer not authorized to do business in this state, including any taxes which may become due under the laws of this state by reason of such coverage.

C. The commissioner may revoke, suspend, or refuse to renew an ~~agent's, broker's, or solicitor's~~ a producer's license, or may levy a fine not to exceed two thousand five hundred dollars against ~~an agent, broker, or solicitor~~ a producer who, after notice and hearing, has been found by the commissioner to have violated the

provisions of this Section.

§460. Disclosures

A. No contract, certificate, policy, schedule of benefits, or other evidence or agreement of insurance shall be delivered or issued for delivery in this state under any self-insurance plan unless there is prominently printed on the front thereof in ten-point type a notice to the insured that the plan pursuant to which the coverage is issued or provided is uninsured.

B. Each application for coverage under a self-insurance plan and any and all advertisements or marketing pieces or material disseminated in relation to any self-insured plan shall contain a statement prominently printed thereon or therein in ten point type that the self-insurance plan for which coverage is being solicited is uninsured.

C. Any entity, including but not limited to a production agency or third party or other administrator, that advertises, sells, transacts, or administers coverage for health care services in this state, shall inform any purchaser or prospective purchaser of coverage under a self-insurance plan or person covered under a self-insurance plan of the lack of insurance for the coverage issued or provided or to be issued or provided. Any administrator that advertises or administers coverage for health care services in this state that is provided by a self-insurer shall inform its appointed ~~production agencies and agents~~ producers of the elements of coverage, including the amount of any reinsurance or "stop-loss" insurance in effect.

§461. Annual ~~examination;~~ audit; rate review

A. Each self-insurer shall cause to be conducted an annual ~~examination;~~ audit; by a licensed independent certified public accountant of its financial statements reporting the financial condition and results of operations of the self-insurer.

B. This Section shall apply to all self-insurers; however, a self-insurer having direct premiums in this state of less than two hundred fifty thousand dollars in any year and having less than five hundred policyholders in this state at the end of any year shall be exempt from this Section for such year unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities.

C. The audit report required in this Section shall be filed with the commissioner on or before the thirtieth day of the sixth month following the year end of the self-insurer. Up to two thirty-day extensions may be granted by the commissioner upon showing by the self-insurer and its independent certified public accountant of the reasons for requesting such extension and upon determination by the commissioner of good cause for an extension. The request for extension shall be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

D. The annual audited financial statement shall report the financial condition of the self-insurer as of the end of the most recent fiscal or calendar year and the results of its operations, changes in financial position, and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department of Insurance of the state of domicile of the self-insurer.

E. The annual audited financial report shall include the following:

(1) Report of independent certified public accountant.

(2) Balance sheet reporting admitted assets, liabilities, capital, and surplus.

(3) Statement of gain or loss from operations.

(4) State of cash flows.

(5) Statement of changes in capital and surplus.

(6) Notes to financial statements. These notes shall be those required by generally accepted accounting principles and shall include:

(a) A reconciliation of difference, if any, between the audited statutory financial statements and the annual statement filed pursuant to this Chapter with a written description of the nature of these differences.

(b) A narrative explanation of all significant intercompany transactions and balances.

(7) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and:

(a) The financial statement shall be comparative.

(b) Amounts may be rounded to the nearest thousand dollars.

(c) Insignificant amounts may be combined.

F. Financial statements furnished pursuant to this Section shall be ~~examined~~ audited by an independent certified public accountant. The ~~examination~~ audit of the self-insurer's financial statements shall be conducted in accordance with generally accepted auditing standards.

G. Every self-insurer required to file an audited financial report pursuant to this Chapter shall require the accountant to make available for review by the commissioner, the workpapers prepared in the conduct of his ~~examination.~~ audit. The ~~insurer~~ self-insurer shall require that the accountant retain the audit workpapers for a period of not less than five years after the period reported thereon.

H. In the conduct of the aforementioned review by the commissioner, photocopies of pertinent audit workpapers may be made and retained by the department. Such working papers or copies thereof obtained by the commissioner shall be confidential and shall not constitute a public record. The workpapers of a certified public accountant subject to maintenance and ~~examination~~ audit pursuant to this Section shall nonetheless remain the property of the certified public accountant.

I. With the commissioner's approval, ~~an insurer~~ a self-insurer may comply with this Chapter by filing the requisite reports which have been prepared in accordance with generally accepted accounting principles, provided that the notes to the financial statements include a reconciliation of differences between net income and capital and surplus on the annual statement filed pursuant to this and comparable totals on the audited financial statements, with a written description of the nature of these differences.

J. Upon the request of the commissioner of insurance, each group self-insurance fund established pursuant to R.S. 23:1191 shall cause a rate review to be conducted by a national independent actuarial firm, provided that the commissioner shall not make more than two requests in any calendar year for a rate review under the provisions of this Subsection. Such firm shall report its findings to the commissioner of insurance.

§465. Insolvency of plan

When the commissioner, after examination or review of the audit statement required under R.S. 22:463, finds that a self-insurance plan is nearing an insolvent condition or is insolvent, he may issue such orders as he deems necessary to rehabilitate the plan, or he may petition a court of competent jurisdiction for an injunction and rehabilitation as provided for in R.S. 22:73 and 96, Subpart H of Part III of this Chapter, ~~2~~, R.S. 22:731 et seq., and Chapter 9 of this Title~~.~~, R.S. 22:2001 et seq.

Acts 1990, No. 902, §1; Redesignated from R.S. 22:3015 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

§466. Transaction of ~~business; required filings~~ business

~~A. Each self-insurer doing business in this state on September 3, 1984, shall by January 1, 1985, file with the commissioner a complete copy of its plan including eligibility requirements, employee contributions, benefits provided, limitations on and exclusions from coverage, and provisions relating to the termination of individual coverages.~~

~~B. Except as otherwise specifically provided in this Subpart, each self-insurer doing business in this state or issuing or providing in this state a self-insurance plan on September 7, 1990, shall take all actions necessary for full compliance with the provisions of this Subpart by July 1, 1991.~~

~~C.~~ A. No self-insurer shall transact business in this state or shall issue or provide any coverage for health and accident benefits under any self-insurance plan until it has complied with all applicable requirements of this Subpart and of any other applicable provisions of this Title, including R.S. 22:1824.

~~D.~~ B. Each self-insurer shall pay fees in advance in the amount specified in R.S. 22:821 for its filings, certificates, copies, and other services specified therein which are applicable to self-insurers.

~~E.~~ C. The commissioner may take any action available to him under this Title to ensure compliance with and to enforce the provisions of this Subpart.

Acts 1990, No. 902, §1; Acts 1993, No. 653, §1; Redesignated from R.S. 22:3016 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

§467. Duties of commissioner; rules and regulations

~~A. The commissioner shall, no later than September 1, 1990, transmit a notice by first class mail to each licensed agent who is authorized to market self-insurance regulated by this Subpart. The notice shall summarize the provisions of this Subpart and shall particularly specify the restrictions and prohibitions which apply to such agents, including but not limited to the provisions of R.S. 22:457 relative to an agent's personal liability and sanctions.~~

~~B.~~ The commissioner shall promulgate such rules and regulations in accordance with the Administrative Procedure Act as are necessary to effectuate the provisions and purposes of this Subpart.

§469. Inherited metabolic diseases; coverage for food products

A. Every self-insurer and self-insurance plan, as defined in this Subpart, which are subject to the jurisdiction of the commissioner under ~~Chapter 1~~ of this Title shall provide coverage, subject to applicable deductibles, coinsurance, and copayments, for low protein food products for treatment of inherited metabolic diseases, if the low protein food products are medically necessary and, if applicable, are obtained from a source approved by the self-insurer or self-insurance plan, provided coverage will not be denied if the self-insurer or self-insurance plan does not approve a source.

B. As used in this Section, the following words shall have the following meanings:

(1) "Inherited metabolic disease" shall mean a disease caused by an inherited abnormality of body chemistry. Such diseases shall be limited to:

(a) Glutaric Acidemia.
(b) Isovaleric Acidemia (IVA).
(c) Maple Syrup Urine Disease (MSUD).
(d) Methylmalonic Acidemia (MMA).
(e) Phenylketonuria (PKU)
(f) Propionic Acidemia.
(g) Tyrosinemia.
(h) Urea Cycle Defects.

(2) "Low protein food products" shall mean a food product that is especially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of an inherited metabolic disease. Low protein food products shall not include a natural food that is naturally low in protein.

C. Coverage provided pursuant to this Section shall not exceed eligible benefits of two hundred dollars per month.

D. The provisions of this Section shall apply to any new policy, contract, program, or plan issued by an entity subject to the provisions of this Section on or after January 1, 2004. Any such policy, contract, program, or plan in effect prior to January 1, 2004, shall convert to the provisions of this Section on or before the renewal date thereof but in no event later than January 1, 2005.

SUBPART Q. RISK RETENTION GROUPS

§481. Purpose <u>and Designation</u>

A. The purpose of this Subpart shall be to regulate the formation and operation of risk retention groups in Louisiana, formed pursuant to the provisions of the federal Risk Retention Amendments of 1986, as amended.

B. This Subpart shall be known and may be cited as the “Risk Retention Group Law”.

§482. Definitions

As used in this Subpart, the following terms shall have the meanings ascribed to them in this Section:

(1) "Commissioner" means the commissioner of insurance of Louisiana or the commissioner, director, or superintendent of insurance in any other state.

(2) "Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by:

(a) Any person who performs that work.

(b) Any person who hires an independent contractor to perform that work; but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.

(3) "Domicile." for purposes of determining the state in which a purchasing group is domiciled, means:

(a) For a corporation, the state in which the purchasing group is incorporated.

(b) For an unincorporated entity, the state of its principal place of business.

(4) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able to:

(a) Meet obligations to policyholders with respect to known claims and reasonably anticipated claims.

(b) Pay other obligations in the normal course of business.

(5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state.

(6)(a) "Liability" means legal liability for damages including costs of defense, legal costs and fees, and other claims expenses because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from, or arising out of:

(i) Any business, whether profit or nonprofit, trade, product, services including professional services, premises, or operations.

(ii) Any activity of any state or local government, or any agency or political subdivision thereof.

(b) "Liability" does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.).

(7) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in Paragraph (6) of this Section.

(8) "Plan of operation or a feasibility study" means an analysis which presents the expected activities and results of a risk retention group including, at a minimum:

(a) The coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.

(b) Historical and expected loss experience of the proposed members and national experience of similar exposures.

(c) Pro forma financial statements and projections.

(d) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition.

(e) Identification of management, underwriting and claims procedures, managerial oversight methods, investment policies, and reinsurance agreements.

(f) Such other matters as may be prescribed by the department for liability insurance companies authorized by the insurance laws of the state.

(9) "Product liability" means the liability for personal injury and property damages arising from the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product as defined and construed by the laws of this state.

(10) "Purchasing group" means any group domiciled in any state which:

(a) Has as one of its purposes the purchase of liability insurance on a group basis.

(b) Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in Subparagraph (c) of this Paragraph.

(c) Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations.

(11) "Risk Retention Amendments of 1986" means Public Law 99-563.

(12) "Risk retention group" means any corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands:

(a) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure

of its group members.

(b) Which is organized for the primary purpose of conducting the activity described under Subparagraph (a) of this Paragraph.

(c) Which:

(i) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state.

(ii) Before January 1, 1985 was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability as such terms were defined in the federal Product Liability Risk Retention Act of 1981 before the date of the enactment of the federal Risk Retention Amendments of 1986.

(d) Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

(e) Which:

(i) Has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the risk retention group; or

(ii) Has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group, and has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group.

(f) Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members or secondary owners are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations.

(g) Whose activities do not include the provision of insurance other than:

(i) Liability insurance for assuming and spreading all or any portion of the liability of its group members.

(ii) Reinsurance with respect to the liability of any other risk retention group or any members or secondary owners of such other group which is engaged in businesses or activities so that such group or member or secondary owner meets the requirement described in this Subparagraph ~~(g) of this Paragraph~~ from membership in the risk retention group which provides such reinsurance.

(h) The name of which includes the phrase "Risk Retention Group".

(13) "State" means any state of the United States and the District of Columbia.

§483. Risk retention groups chartered in Louisiana

A. A risk retention group seeking to be chartered in this state shall be chartered and licensed as a liability insurance company authorized by the insurance laws of this state and, except as provided elsewhere in this ~~Part~~ subpart, shall comply with all of the laws, rules, regulations, and requirements applicable to such insurers chartered and licensed in this state and with R.S. 22:484 to the extent such requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before it may offer insurance in any state, each risk retention group shall also submit for approval to the department of insurance a plan of operation or a feasibility study.

B. A risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the plan of operation or a feasibility study, on the fifteenth day of the month following the material change. The group shall not offer any additional kinds of liability insurance, in this state or in any other state, until a revision of the plan or study is approved by the department.

§484. Risk retention groups not chartered in Louisiana

A. Law applicable. Risk retention groups chartered in states other than Louisiana and seeking to do business as a risk retention group in this state shall observe and abide by the laws of this state governing the formation and operation of a risk retention group and the provisions of the federal Risk Retention Amendments of 1986, as amended. However, if a risk retention group fails to qualify under the provisions of the federal Risk Retention Amendments of 1986, the commissioner may apply any state law that may be preempted by the federal

Risk Retention Amendments of 1986, as amended.

B. Notice of operations and designation of department as agent. Before offering insurance in this state, a risk retention group shall submit to the department, on a form prescribed by the department:

(1) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, its members, and such other information as the commissioner of this state may require to verify that the risk retention group meets the qualifications of R.S. 22:482~~(11)~~ 12.

(2) A copy of its plan of operations or a feasibility study and revisions of such plan or study submitted to its state of domicile; except that this Section shall not apply with respect to any line or classification of liability insurance which:

(a) ~~was~~ Was defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of this Act; and

(b) ~~was~~ Was offered before such date of enactment by any risk retention group which has been chartered and operating for not less than three years before such date of enactment.

(3) A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(4) Payment of the fee as prescribed by R.S. 22:821.

C. Financial condition. Any risk retention group doing business in this state shall submit to the commissioner:

(1) A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners.

(2) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination.

(3) A copy of any audit performed with respect to the risk retention group upon request of the commissioner.

(4) Such information as may be required to verify its continuing qualification as a risk retention group under the provisions of R.S. 22:482.

D.(1) Taxation. All premiums paid for coverages within this state to risk-retention groups shall be subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment as that applicable to foreign admitted insurers. To the extent licensed ~~agents or brokers~~ producers are utilized, they shall report and pay the taxes for the premiums for risks which they have placed with or on behalf of a risk-retention group not chartered in this state. To the extent licensed ~~agents or brokers~~ producers are not utilized or fail to pay the tax, each risk-retention group shall pay the tax for risks insured with the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state.

(2) To the extent that licensed insurance ~~agents or brokers~~ producers are compensated by a risk-retention group, they shall keep a complete and separate record of all policies procured from each ~~risk retention~~ risk retention group. The record shall be open to examination by the department, as provided in R.S. 22:492. The records shall include for each policy and type of insurance the following:

(a) The limit of liability.

(b) The time period covered.

(c) The effective date.

(d) The name of the risk retention group which issued the policy.

(e) The gross premium charged.

(f) The amount of return premiums, if any.

E. Compliance with unfair claims settlement practices law. Any risk retention group, its ~~agents~~ producers and representatives, shall comply with the unfair claims settlement practices laws of this state.

F. Deceptive, false, or fraudulent practices. Any risk retention group shall comply with the laws of this state regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such conduct, the injunction shall be obtained from a court of competent jurisdiction.

G. Examination regarding financial condition. Any risk retention group shall submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty days after notice from the commissioner of this state. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioners examiner handbook.

H. Notice to purchasers. Any policy issued by a risk retention group shall contain in ten point type on the front page and the declaration page, the following notice:

"~~NOTICE~~

~~This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."~~

"**NOTICE**

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

I. Prohibited acts regarding solicitation or sale. The following acts by a risk retention group are hereby prohibited:

(1) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group.

(2) The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

J. Prohibition on ownership by an insurance company. No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

K. Prohibited coverage. No risk retention group may offer insurance policy coverage prohibited by ~~the Louisiana Insurance Code~~ this or declared unlawful by the Louisiana Supreme Court.

L. Delinquency proceedings. A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under the provisions of Subsection G of this Section.

§485. Additional authority, risk-retention groups

The commissioner may refuse, suspend, or revoke the registration of a risk retention group whenever he shall find that such risk retention group meets anyone of the following:

(1) Is insolvent.

(2) Is in such condition that its further transaction of business in this state would be hazardous to the policyholders, creditors, or the public.

(3) Fails to pay any fees, taxes, or charges prescribed by this Title within sixty days after the same are due and payable.

(4) Has had its corporate existence dissolved or its certificate of authority revoked or suspended in the state in which it was organized.

(5) Refuses to remove or discharge an officer or director who has been convicted of any felony involving dishonesty or breach of trust, where the convicted person has not been granted a waiver under 18 USC 1033. The provisions of this Paragraph shall not apply to a risk retention group that is not domiciled in this state.

~~**§487. Countersignatures not required**~~

~~A policy of insurance issued to a risk retention group or any member of that group shall not be required to be countersigned as otherwise provided in the Louisiana Insurance Code.~~

§490. Registration and annual renewal; fees

Upon registration with the department, each risk purchasing group shall pay the department a fee of one hundred dollars. Such registration shall expire on the first day of March of each year, unless renewed, and shall be renewed by filing an annual report on a form prescribed by the commissioner and paying a renewal fee of fifty dollars to the department.

Acts 1999, No. 299, §1, eff. June 11, 1999; Redesignated from R.S. 22:20781 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

§491. Restrictions on insurance purchased by purchasing groups

A. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed ~~agent or broker~~ producer acting pursuant to the ~~surplus lines~~ laws and regulations of such state.

B. For purposes of this Section, a purchasing group is located in each and every state in which a member of the purchasing group has a risk or exposure where the liability insured against could arise.

C. A purchasing group which obtains liability insurance from an insurer not admitted in this state or a ~~risk retention~~ risk retention group shall inform each of the members of the group which have a risk located in this state that the risk is not protected by the fund of an insurance guaranty association in this state and that the ~~risk retention~~ risk retention group or insurer may not be subject to all insurance laws and regulations of this state.

D. No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole. The insurance coverage may provide for a deductible or self-insured retention applicable to individual members.

E. Any purchase of insurance by purchasing groups is subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance.

§492. Administrative and procedural authority regarding risk retention groups and purchasing groups

The commissioner may use any of the powers established under ~~the Insurance~~ this Code of this state to enforce the laws of this state so long as those powers are not specifically preempted by the federal Product Liability Risk Retention Act of 1981, as amended by the federal Risk Retention Amendments of 1986. This includes, but is not limited to, the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. With regard to any investigation, administrative proceeding, or litigation, the commissioner may rely on the procedural law and regulations of the state. However, the injunctive authority of the commissioner in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

§493. Penalties

A risk retention group which violates any provision of this Subpart shall be subject to fines and penalties applicable to licensed insurers generally, including revocation of its ~~license~~ registration and the right to do business in this state.

§494. Duty on ~~agents or brokers~~ producers to obtain license

Any person acting, or offering to act, as a~~n~~ ~~agent or broker~~ producer for a risk retention group or purchasing group which solicits members, sells insurance coverage, purchases coverage for its members located within the state, or otherwise does business in this state shall obtain a license from the commissioner pursuant to R.S. 22:1541 through 1554 and 1556 through 1565.

~~**§497. Designation**~~

~~This Subpart shall be known and may be cited as the "Risk Retention Group Law".~~

~~Acts 1987, No. 462, §1, eff. Sept. 1, 1987; Redesignated from R.S. 22:2085 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.~~

Comment [a4]: This language was moved to 481 B.

§498. Policyholder's liability

A. Notwithstanding any other provisions in this Subpart, any contract of insurance issued by an admitted risk retention group may provide for the contingent liability of the policyholder for payment of actual losses and expenses incurred while such contract was in force, provided prior approval is granted by the commissioner of insurance.

B. Each assessable policy issued by an admitted risk retention group shall provide the following notice in ten-point print: "~~This is an assessable policy. The maximum potential contingent liability shall not exceed one annual premium per annum.~~**"This is an assessable policy. The maximum potential contingent liability shall not exceed one annual premium per annum."**

C. The contingent liability of each member of the group for the obligations of the risk retention group shall not be joint but shall be individual and several.

D. "Risk retention group", in this Section, means any corporation or other limited liability association organized pursuant to 15 U.S.C. 3901 and 3902, the Federal Liability Risk Retention Act of 1986, having the following:

(1) The group is chartered or licensed as an insurance company in at least one state and is chartered or licensed as an insurance company or registered as a risk retention group in at least thirty states.

(2) The group maintains admitted assets at all times in an amount which is equal to or exceeds twenty million dollars.

SUBPART R. TITLE INSURANCE

§511. Title; purpose

A. This Subpart shall be known and cited as the "Louisiana Title Insurance Act".

B. The purpose of this Subpart is to provide the state of Louisiana with a comprehensive body of law for the effective regulation and supervision of title insurance, title insurers licensed to write title insurance in this state, title insurance ~~agents~~ producers, and the escrow, accounting, closing, and settlement practices of insurers and ~~agents~~ producers wherein title insurance is issued or contemplated to be issued.

§512. Definitions

As used only in this Subpart, the following words are defined as:

(1) "Abstract of title" or "abstract" shall mean a written history, synopsis, or summary of the recorded instruments affecting the title to movable or immovable property.

(2) "Closing" shall mean "settlement" as the term is defined by Paragraph (15) of this Section.

(3) "Department" shall mean the Department of Insurance or its employees, deputies, or representatives or the equivalent department or state entity that provides insurance regulation in another state.

(4) "Depositor" shall mean the person providing the funds or documents for delivery to the depository in connection with a transaction involving immovable property.

(5) "Depository" shall mean the title insurer, title insurance ~~agent~~ producer, or qualified financial institution receiving a deposit of funds or documents.

(5.1) "Depository check" shall mean a depository check as defined by the Expedited Funds Availability Act, 12 U.S.C. 4001 et seq.

(6) "Escrow" shall mean the act or process of providing closing and settlement services or services pursuant to an escrow agreement by the title insurer or title insurance ~~agent~~ producer.

(7) "Escrow account" shall mean the demand deposit account maintained by a title insurer or title insurance ~~agent~~ producer at a qualified financial institution into which the insurer or ~~agent~~ producer deposits all funds collected from any person who is or will be a party to a transaction involving immovable property in which a title insurance policy is contemplated to be issued.

(8) "Escrow agreement" shall mean the written agreement by which a depositor delivers funds or documents to a title insurer or title ~~agent~~ producer and which specifies the conditions to be satisfied or the event to be performed before the release or delivery of the funds or documents to another person.

(9) "Escrow instructions" shall mean the written instructions or directions furnished in connection with the closing of a real estate transaction in which title insurance is contemplated to be issued, and shall include but not be limited to a closing or settlement statement, purchase agreement for immovable property, lender's written instructions or directions, escrow agreement, or written directive.

(10) "Funds" shall mean money, or "items" as that term is defined in R.S. 10:4-104(a)(9), and "checks" as that term is defined in R.S. 10:3-104(f).

(11) "Person" shall mean any natural or juridical person, or any partnership, association, cooperative, corporation, firm, trust, limited liability company, or other legal entity.

(12) "Qualified financial institution" shall mean an institution that is:

(a) Organized or licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers.

(b) Regulated, supervised, or examined by federal and state authorities having regulatory authority over banks and trust companies.

(c) Insured by the appropriate federal entity.

(13) "Risks" shall mean the danger or hazards of a loss of title to movable or immovable property by the insured under a title insurance policy.

(14) "Security agreement" shall mean an agreement by which funds or other property are received by the title insurer or the title insurance ~~agent~~ producer as collateral to secure the obligation of a person under an indemnity agreement to indemnify or protect a title insurer in exchange for agreeing to provide coverage in a title insurance policy.

(15) "Settlement" shall mean the process of executing legally binding documents in a transaction involving either movable or immovable property, including the transfer of title or creation of a lien on the title, or the collection and disbursement of funds in connection therewith.

(16) "Title insurance ~~agent~~ producer" or "~~agent~~ producer" shall mean a person authorized on behalf of the title insurer to issue title insurance reports or policies.

(17) "Title insurance business" or "business of title insurance" shall mean:

(a) Issuing as an insurer or offering to issue as insurer a title insurance policy; or

(b) Transacting or proposing to transact by a title insurer or a title insurance ~~agent~~ producer any of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of a title insurance report or policy:

(i) Soliciting or negotiating the issuance of a title insurance policy.

(ii) Guaranteeing, warranting, or otherwise insuring the status of title, liens, encumbrances or other matters of record.

(iii) Handling of escrows, settlements, or closings.

(iv) Executing title insurance policies.

(v) Effecting contracts of reinsurance.

(vi) Examining titles; however, any title insurance report or title insurance policy relating to immovable property shall be based upon an examination of title which shall be conducted only by attorneys duly licensed and authorized to practice law in Louisiana. The examination and resulting opinion, if it furnishes the basis of a title insurance report or title insurance policy relating to immovable property, shall be reduced to writing by the attorney. The title opinion shall contain the following:

(aa) Complete name of individuals with an ownership or other interest in the property.

(bb) Complete list of all encumbrances, mortgages, judgments, liens, and privileges. This list shall contain the name of secured creditors, date filed, amounts, and recordation information.

(cc) Complete list of all servitudes, rights-of-way, leases, options, rights of first refusal, and usufructs encumbering the property.

(dd) Legal description of property examined.

(ee) Any curative measures which are required in order to render title merchantable.

(ff) All parish and municipal property taxes which are past due.

(gg) Length of examiner's search and date of earliest recorded instrument reviewed by the examiner.

(hh) Name and attorney bar roll number of the examining attorney.

(ii) Collecting, disbursing, or receiving premiums, escrow, settlement, or other funds.

(jj) Recording closing documents.

(c) Doing or proposing to do any business substantially equivalent to any of the foregoing in a manner designed to evade the provisions of this Subpart.

(18) "Title insurance policy" or "policy" shall mean a contract, including any affirmative assurances, enhancements to coverage, or endorsements, insuring or indemnifying owners of, or other persons lawfully interested in, movable or immovable property against loss or damage arising from any or all of the following conditions existing on, before, or subsequent to the policy date and not specifically excepted or excluded:

(a) Defects in or liens or encumbrances on the insured title.

(b) Unmarketability of the insured title.

(c) Invalidity or unenforceability of liens or encumbrances on the insured title of the movable, where a title search is required for the purpose of registration, or immovable property.

(d) Title being vested otherwise than as stated in the policy.

(e) Lack of a legal right of access to the land which is part of the insured title in a policy relating to immovable property.

(f) Lack of priority of the lien of any insured mortgage over any statutory lien for services, labor, or materials as specifically described in the policy.

(g) Invalidity or unenforceability of any assignment of an insured mortgage subject to certain conditions.

(h) The priority of any lien or encumbrance over the lien of the insured mortgage.

(19) "Title insurance report" or "report" shall mean a preliminary report, commitment, or binder issued prior to the issuance of a title insurance policy containing the requirements, terms, conditions, exceptions, and any other matters incorporated by reference under which the title insurer is willing to issue its title insurance policy.

(20) "Title insurer" or "insurer" shall mean a company authorized under the laws of this state to transact the business of title insurance.

(21) "Underwrite" shall mean the acceptance or rejection of risk on behalf of the title insurer.

§513. Title insurers and ~~agents~~ producers; qualifications

Only those persons authorized as a title insurer or ~~agent~~ producer pursuant to this Title shall be qualified to issue a title insurance policy or report or otherwise transact the business of title insurance. Notwithstanding any other law to the contrary, all title insurance policies and reports covering any insurable interest in title to immovable property located in this state shall be signed by an ~~agent~~ producer licensed in this state under this Subpart or by an employee of a title insurer issuing the title insurance policies and reports when such employee is an ~~agent~~ producer licensed in this state under this Subpart.

§515. Title insurers; limitation of authority, powers

A.(1) No insurer that transacts any class, type, or kind of insurance other than title insurance shall be eligible for the issuance or renewal of a license to transact the business of title insurance in this state.

(2) No title insurance shall be transacted, underwritten, or issued by any insurer transacting or licensed to transact any other class, type, or kind of business.

B. No title insurer shall engage in the business of guaranteeing payment of the principal or the interest on bonds or mortgages.

C.(1) Notwithstanding Subsection A of this Section, a title insurer may issue closing or settlement protection to a person who is a party to a transaction in which a title insurance policy is contemplated to be issued. The closing or settlement protection shall conform to the terms of coverage and form of instrument as may be required by the department and may indemnify a person solely against loss of settlement funds because of the following acts of a settlement agent, title insurer's named employee, or title insurance ~~agent~~ producer:

(a) Theft or misappropriation of settlement funds.

(b) Failure to comply with instructions when agreed to by the settlement agent, employee, or title insurance

~~agent~~ producer.

(2) The premium charged by a title insurer for this coverage shall be submitted to and approved by the commissioner of insurance.

(3) A title insurer shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow or settlement services.

§517. Title insurance ~~agents~~ producers; licensing and reporting requirements

Every title insurance ~~agent~~ producer licensed in the state shall provide, in a timely fashion, each title insurer with which it places business all information the title insurer may request in compliance with the licensing and reporting requirements of the department.

§518. Title insurance ~~agents~~ producers; errors and omissions requirements

A. Every title insurance ~~agent~~ producer licensed in this state shall maintain an errors and omissions policy, which includes coverage for their acts or omissions as a title insurance ~~agent~~ producer, for the benefit of the title insurer or the depositor in amounts, under terms and conditions, and from insurers approved by the department, after considering the reasonableness of the cost and availability thereof.

B. The title insurance ~~agent~~ producer shall furnish the title insurer with proof that the ~~agent~~ producer complies with this Section.

§519. Title insurance ~~agents~~ producers; examination

The department or title insurer may during normal business hours examine, audit, and inspect any and all books, records, files, and escrow and operating accounts related to the title insurance business maintained by a title insurance ~~agent~~ producer, its successor in interest, transferee, or receiver as provided under this Subpart.

§520. Underwriting contracts required, title insurer, ~~agent~~ producer

A. No person acting in the capacity of a title insurance ~~agent~~ producer shall place business with a title insurer, and no title insurer shall accept business from a title insurance ~~agent~~ producer, unless there exists a written contract between the parties. The written contract shall establish the responsibilities of each party, and where both parties share responsibility for a particular function, specify the division of such responsibilities. The written contract shall also contain the following provisions as a minimum:

(1) The basis of the rates to be charged.
(2) The types of risks which may be undertaken.
(3) Maximum authority or limits of liability.
(4) Territorial limitations.
(5) Guidelines for title searches and examinations.
(6) Underwriting guidelines.
(7) All terms of compensation for the title insurance ~~agent~~ producer.
(8) Policies and funds remittance.
(9) Termination provisions.

B. The contract shall not be assigned in whole or in part by the title insurance ~~agent~~ producer without the express written consent of the title insurer.

§521. Title insurance ~~agent~~ producer; policies and funds remittance

A. Unless a later date is specifically authorized by the title insurer for a particular transaction, the title insurance ~~agent~~ producer shall account for and remit all funds and policies due under the contract to the title insurer by the earlier of:

(1) Sixty days after the effective date of the policy.

(2) The time specified by the underwriting contract.

B. Notwithstanding the provisions of Subsection A of this Section, when a report has been issued, the title insurance ~~agent~~ producer shall account for and remit all funds and policies due under the contract to the title insurer within sixty days after satisfaction of all requirements and conditions of the report.

C. The premium for any policy of insurance shall be due and payable at the settlement of the transaction.

D. No title insurer or title insurance ~~agent~~ producer shall issue a title insurance report wherein the issuance of a policy of insurance is not contemplated.

§522. Title insurance ~~agent~~ producer; termination

A. The title insurer may terminate the contract upon written notice to the title insurance ~~agent~~ producer under any of the following circumstances:

(1) Fraud, insolvency, appointment of a receiver or conservator, bankruptcy, cancellation of the license or permit to do business of the ~~agent~~ producer, or the commencement of legal proceedings by the state of the domicile of the ~~agent~~ producer, which if successful, would lead to the cancellation of the permit or license to do business of the ~~agent~~ producer.

(2) Material breach of any provision of the contract between the title insurer and the title insurance ~~agent~~ producer.

(3) In accordance with any other termination provision of the contract.

B. Upon the effective date as set forth in the notice of termination from a title insurer, unless otherwise agreed to in writing by the title insurer, the ~~agent~~ producer shall immediately discontinue all title insurance business on behalf of that title insurer.

C. Nothing in this Subsection shall relieve the title insurance ~~agent~~ producer or title insurer of any other contractual obligation.

§523. Title insurance ~~agent~~ producer; claims

It shall be the duty of the title ~~agent~~ insurance producer to immediately report and forward to the title insurer all claims reported to the ~~agent~~ producer by policyholders or other persons.

§524. Title insurance ~~agent~~ producer; restrictions

The title insurance ~~agent~~ producer shall not:

(1) Bind reinsurance on behalf of the title insurer.

(2) Permit any of its directors, officers, controlling shareholders, or employees to serve on the title insurer's board of directors if the title insurance ~~agent~~ producer wrote one percent or more of the direct premiums of the title insurer written in the previous calendar year as shown on the title insurer's most recent annual statement filed with the department. This Subsection shall not apply to relationships governed by R.S. 22:691 through 713.

(3) Jointly employ an individual who is employed with the title insurer unless the title insurer and the title insurance ~~agent~~ producer are affiliated or otherwise under common control as defined by R.S. 22:692(3).

§525. Title insurance ~~agent~~ producer; inventory maintenance

The title insurance ~~agent~~ producer shall maintain an inventory of all numbered policy forms or policy numbers assigned to the ~~agent~~ producer by the title insurer.

§526. Title insurer; audit

A. The title insurer shall, at least once every three years, conduct an on-site audit of the escrow and settlement practices, escrow accounts, security arrangements, files, underwriting and claims practices, and policy inventory of the ~~agent~~ producer. If the title ~~agent~~ insurance producer fails to maintain separate escrow or trust accounts for each title insurer it represents, the title insurer shall verify that the funds related to closings in which the title insurer's policies are issued are reasonably ascertainable from the books of account and records of the title ~~agent~~ insurance producer.

B. The department may promulgate regulations setting forth the standards of audit and the form of audit required. The department may also require the title insurer to provide a copy of its audit reports to the department.

§527. Title insurer; agency appointment and termination

Within five days of executing or terminating a contract with a title insurance ~~agent~~ producer, the title insurer shall provide written notification of the appointment or termination and the reason for termination to the department. All notices of appointment and termination of a title insurance ~~agent~~ producer shall be made on a form promulgated by the department.

§528. Title insurer; restrictions

A title insurer shall not:

(1) Appoint any director, officer, controlling shareholder, or employee of a title insurance ~~agent~~ producer to serve on the title insurer's board of directors if the title insurance ~~agent~~ producer wrote one percent or more of the direct premiums of the title insurer written during the previous calendar year as shown on the title insurer's most recent annual statement on file with the department. This Subsection shall not apply to relationships governed by R.S. 22:691 through 713.

(2) Jointly employ an individual who is employed with the title insurance ~~agent~~ producer unless the title insurer and the title insurance ~~agent~~ producer are affiliated or otherwise under common control as defined by R.S. 22:692(3).

(3) Engage in the practice of law as defined by R.S. 37:212.

§529. Title insurer; inventory maintenance

The title insurer shall maintain an inventory of all numbered policy forms or policy numbers allocated to each title insurance ~~agent~~ producer.

§530. Title insurer; agency licensing and errors and omissions insurance requirements

The title insurer shall have on file evidence that each appointed title insurance ~~agent~~ producer is licensed by the state and maintains the errors and omissions insurance required by this Subpart.

§531. Policyholder rights and disclosure

A. A title insurer or a title insurance ~~agent~~ producer issuing a title insurance policy to a lender in conjunction with a mortgage loan involving immovable property made simultaneously with the purchase of all or part of the immovable estate securing the loan, when no owner's title insurance policy has been requested, shall give written notice, on a form prescribed or approved by the department, to the purchaser-mortgagor at the closing.

B. The notice shall explain that a title insurance policy for the lender involving immovable property is issued for the protection of the mortgage lender, and that the policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the immovable property being purchased.

C. The notice shall explain what a title policy relating to immovable property insures and what possible exposures exist for the purchaser-mortgagor of immovable property that could be insured through the purchase of an owner's title policy involving immovable property. The notice shall also explain that the purchaser-mortgagor may obtain an owner's title insurance policy at a specified premium.

D. A copy of the notice, signed by the purchaser-mortgagor, shall be retained in the closing file for at least three years after the effective date of the lender's title insurance policy.

§532. Maintenance, conditions; escrow, closing, or settlement services, deposit accounts by title insurer or its ~~agent~~ producer

A. A title insurer or a title insurance ~~agent~~ producer may operate in a fiduciary capacity as a closing, escrow, or settlement agent, provided that:

(1) All funds deposited with the title insurer or the title insurance ~~agent~~ producer in connection with any closing, escrow agreement, or security agreement shall be deposited or submitted for collection to a qualified financial institution no later than the close of the next business day following receipt or, in the case where a borrower has a right of rescission, no later than the close of the next business day following the termination of the right of rescission, in accordance with the following requirements:

(a) All funds collected for the business of title insurance shall be deposited and held in an escrow account as defined herein, in the name of the title insurer or title insurance ~~agent~~ producer and clearly titled as an escrow, settlement, closing, or trust account.

(b) The funds shall be property of the person or persons entitled to them under the provisions of the escrow instructions, and shall be identified for each depositor in the manner that permits the funds to be identified on an individual basis.

(c) The funds shall be used only in accordance with the terms of the escrow instructions.

(2) Funds held in an escrow account shall be disbursed only pursuant to escrow instructions specifying how and to whom the funds may be disbursed.

(3) Funds held in a security agreement for the purpose of clearing, writing over, or insuring over an exception to title shall be disbursed only pursuant to a written agreement specifying:

(a) The necessary actions to satisfy the obligation under the arrangement.

(b) The duties of the title insurer or the title insurance ~~agent~~ producer with respect to disbursement of the funds held, including a requirement to maintain evidence of the disposition of the title exception before any balance may be paid over to the depositor or his ~~or her~~ designee.

(4) Funds held in connection with a real estate closing where no escrow instructions or security agreement is applicable shall be disbursed in accordance with a signed closing or disbursement statement.

B. All disbursements shall be drawn out of an escrow account only if:

(1) The funds directly relating to the transaction are in amounts at least equal to the disbursements;

(2) The funds are in the possession of the title insurer or title insurance ~~agent~~ producer; and

(3) The funds are in one or more of the following forms:

(a) Cash.

(b) Wire transfers unconditionally received by the title insurer or the title insurance ~~agent~~ producer or the depository of the insurer or ~~agent~~ producer.

(c) A depository check, including a certified check, cashier's check, or teller's check as defined by the Expedited Funds Availability Act, 12 U.S.C. 4001 et seq.

(d) A personal check or other item which has been presented for payment and for which funds have been unconditionally collected by the title insurer or the title insurance ~~agent~~ producer.

(e) Credit transfers through the Automated Clearing House which have been deemed available by the depository institution receiving the credit. The credit shall conform to the operating rules established by the National Automated Clearing House Association.

(f) Checks unconditionally issued by mortgage lenders which are subject to periodic audit by the Department of Housing and Urban Development or the secretary of Veterans Affairs, and which are drawn on financial institutions insured by the Federal Deposit Insurance Corporation.

(g) A check or checks, drawn on the trust account or sales escrow account of the real estate broker licensed under R.S. 37:1430 et seq., in an amount up to the amount of the then current guarantee provided by the Real Estate Recovery Fund as established in R.S. 37:1463.

(h) A personal or commercial check or checks in an aggregate amount not exceeding two thousand five hundred dollars per closing if the settlement agent making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the settlement agent's trust or escrow account.

(i) Checks unconditionally issued by credit unions chartered by applicable state or federal statute.

(j) Checks unconditionally issued by municipalities or political subdivisions of the state of Louisiana.

(k) Checks drawn on the escrow accounts of title insurers or title insurance ~~agents~~ producers when the title insurance ~~agent~~ producer issuing the check shall have certified by affidavit the following:

(i) That funds drawn at the time of the real estate closing and settlement are from an escrow account as defined by R.S. 22:512(6).

(ii) That the funds disbursed are from those funds received by the title insurance ~~agent~~ producer at the time of the real estate closing and settlement and were in one of the forms enumerated in Paragraph (B)(3) of this Subsection.

C. Repealed by Acts 1999, No. 192, §2, eff. June 9, 1999.

D. Nothing in this Subpart shall be deemed to prohibit the recording of documents prior to the time funds

are available for disbursement with respect to a transaction, provided all parties consent to the recordation in writing.

E. Nothing in this Section is intended to amend, alter, or supersede other provisions of this Subpart or of the laws of this state or the United States regarding the duties and obligations of an escrow agent.

§533. Record retention; requirements

The title insurer and the title insurance ~~agent~~ producer shall maintain sufficient records of their affairs, including evidence of the examination of title and determination of insurability and records of its escrow operations and escrow accounts. The department may prescribe the specific record entries and documents to be kept and the length of time for which the records shall be maintained.

§534. Louisiana Insurance Code; applicability to title insurers, title insurance ~~agents~~ producers

All title insurers and title insurance ~~agents~~ producers shall be subject to all other applicable provisions of this Title unless specifically exempted by this Subpart.

§536. Penalties; liabilities

A. If the department determines that the title insurer or the title insurance ~~agent~~ producer or any other person has violated this Subpart, or any rule, regulation, or order promulgated thereunder, the department, pursuant to R.S. 22:2191 et seq., may order:

(1) If a corporation, a penalty not exceeding fifty thousand dollars for each violation, and if a natural person, a penalty not exceeding ten thousand dollars for each violation.

(2) Revocation or suspension of the license of the title insurance ~~agent~~ producer or the certificate of authority of the title insurer.

B. If an order of rehabilitation or liquidation of the insurer or of conservation of assets of the insurer has been entered pursuant to R.S. 22:73 and 96, Subpart H of Part III of this Chapter, ~~2~~ R.S. 22: 731 et seq., and Chapter 9 ~~both~~ of this Title R.S. 22:2001 et seq., and the receiver appointed under that order determines that the title insurance ~~agent~~ producer or any other person has not complied with this Subpart, or any related rule, regulation, or order, and the insurer suffered any resulting loss or damage thereunder, the receiver shall maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer and its policyholders and creditors.

C. Nothing contained in this Section shall affect the right of the department to impose any other penalties provided for in this Title.

D. Nothing contained in this Subpart is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and creditors of the title insurer or the title insurance ~~agent~~ producer.

PART II. BUSINESS TRANSACTED WITH ~~BROKER~~ PRODUCER CONTROLLED INSURER LAW

§551. Title

This Part shall be known and may be cited as the "Business Transacted with ~~Broker~~ Producer Controlled Insurer Law".

§552. Definitions

As used in this Part, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(1) "Accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners.

(2) "~~Broker~~ Producer" means an insurance ~~broker~~ producer as defined in R.S. 22:~~1162~~ 1542.

(3) "Control" or "controlled" has the meaning as defined in R.S. 22:692(3).

(4) "Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a ~~broker~~

producer.

(5) "Controlling ~~broker~~ producer" means a ~~broker~~ producer who, directly or indirectly, controls an insurer.

(6) "Licensed insurer" or "insurer" means any person, firm, association, or corporation licensed to transact property and casualty insurance business in this state. The following are not licensed insurers for the purposes of this Part:

(a) All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C. Section 3901 et seq. (1982 & Supp. 1986) and the Risk Retention Group Law (R.S. 22:481 et seq.).

(b) All residual market pools and joint underwriting authorities or associations.

(c) All insurers owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations and/or group members and their affiliates.

§553. Applicability

This Part shall apply to licensed insurers as defined in R.S. 22:552, either domiciled in this state or domiciled in a state that is not an accredited state having in effect a law substantially similar to this Part. All provisions of the Insurance Holding Company System Regulatory Law R.S. 22:691 et seq., to the extent they are not superseded by this Part, shall continue to apply to all parties within holding company systems subject to this Part.

§554. Minimum standards

A. Applicability of Section. (1) The provisions of this Section shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling ~~broker~~ producer is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the quarterly statement of the controlled insurer filed as of September thirtieth of the prior year.

(2) Notwithstanding Paragraph (1) of this Subsection, the provisions of this Section shall not apply if:

(a) The controlling ~~broker~~ producer places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the holding company system of the controlled insurer, or the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance.

(b) The controlling ~~broker~~ producer accepts insurance placements only from nonaffiliated ~~brokers~~ producers, and not directly from insureds.

(c) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling ~~broker~~ producer, a ~~broker~~ producer controlled by the controlled insurer, or a ~~broker~~ producer that is a subsidiary of the controlled insurer.

B. Required contract provisions. A controlled insurer shall not accept business from a controlling ~~broker~~ producer and a controlling ~~broker~~ producer shall not place business with a controlled insurer, unless there is a written contract between the controlling ~~broker~~ producer and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

(1) The controlled insurer may terminate the contract for cause, upon written notice to the controlling ~~broker~~ producer. The controlled insurer shall suspend the authority of the controlling ~~broker~~ producer to write business during the pendency of any dispute regarding the cause for the termination.

(2) The controlling ~~broker~~ producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling ~~broker~~ producer.

(3) The controlling ~~broker~~ producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments collected shall be remitted no later than ninety days after the effective date of any policy placed with the controlled insurer under this contract.

(4) All funds collected for the controlled insurer's account shall be held by the controlling ~~broker~~ producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with the applicable provisions of ~~the Louisiana Insurance~~ this Code. However, the funds of a controlling ~~broker~~ producer not required to be licensed in this state shall be maintained in compliance with the requirements of the domiciliary jurisdiction of the controlling ~~broker~~ producer.

(5) The controlling ~~broker~~ producer shall maintain separately identifiable records of business written for the controlled insurer.

(6) The contract shall not be assigned in whole or in part by the controlling ~~broker~~ producer.

(7) The controlled insurer shall provide the controlling ~~broker~~ producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling ~~broker~~ producer shall adhere to the standards, rules, procedures, rates, and conditions, which shall be the same as those applicable to comparable business placed with the controlled insurer by a ~~broker~~ producer other than the controlling ~~broker~~ producer.

(8) The contract shall specify the rates and terms of the commissions, charges, and other fees of the controlling ~~broker~~ producer and the purposes for those charges or fees. The rates of the commissions, charges, and other fees, shall be no greater than those applicable to comparable business placed with the controlled insurer by ~~broker~~ producer other than controlling ~~broker~~ producer. For purposes of this Paragraph and Paragraph (7) of this Subsection, comparable business shall include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(9) If the contract provides that the controlling ~~broker~~ producer, on insurance business placed with the insurer, is to be compensated contingent upon the profits of the insurer on that business, then such compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the reserves of the controlled insurer on remaining claims has been independently verified pursuant to Subsection C of this Section.

(10) The contract shall specify a limit on the writings of the controlling ~~broker~~ producer in relation to the surplus and total writings of the controlled insurer. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling ~~broker~~ producer when the applicable limit is approached and shall not accept business from the controlling ~~broker~~ producer if the limit is reached. The controlling ~~broker~~ producer shall not place business with the controlled insurer if he has been notified by the controlled insurer that the limit has been reached.

(11) The controlling ~~broker~~ producer may negotiate, but shall not bind reinsurance on behalf of the controlled insurer on business the controlling ~~broker~~ producer places with the controlled insurer, except that the controlling ~~broker~~ producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

C. Audit committee. Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the independent certified public accountants of the insurer, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner of insurance to review the adequacy of the loss reserves of the insurer.

D. Reporting requirements. (1) In addition to any other required loss reserve certification, the controlled insurer shall annually, on April first of each year, file with the commissioner an opinion of an independent casualty actuary, or such other independent loss reserve specialist approved by the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including losses incurred but not reported, on business placed by the controlling ~~broker~~ producer.

(2) The controlled insurer shall annually report to the commissioner the amount of commissions paid to the controlling ~~broker~~ producer, the percentage such amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling ~~brokers~~ producers for placements of the same kinds of insurance.

~~E. Compliance date. Controlled insurers and controlling brokers shall comply with this Section no later~~

~~than November 1, 1992.~~

§555. Disclosure

~~A.~~ The controlling ~~broker~~ producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the controlling ~~broker~~ producer and the controlled insurer; except that, if the business is placed through another ~~broker~~ producer, who is not a controlling ~~broker~~ producer, the controlling ~~broker~~ producer shall retain in his records a signed commitment from the other ~~broker~~ producer that such ~~broker~~ producer is aware of the relationship between the insurer and the controlling ~~broker~~ producer and that such ~~broker~~ producer has or will notify the insured.

~~B. Controlled insurers and controlling brokers shall comply with this Section beginning with all policies written or renewed on and after November 1, 1992.~~

§556. Penalties

A. If the commissioner believes that the controlling ~~broker~~ producer, or any other person, has not materially complied with this Part, or any regulation or order promulgated hereunder, after notice and opportunity to be heard, the commissioner may order the controlling ~~broker~~ producer to cease placing business with the controlled insurer.

B. If it is found that, because the controlling ~~broker~~ producer or any other person has not materially complied with this Part, the controlled insurer or any policyholder thereof has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages, for the benefit of the insurer or policyholder, or other appropriate relief.

C. If an order for liquidation or rehabilitation of the controlled insurer has been entered and the receiver appointed pursuant to that order believes that the controlling ~~broker~~ producer or any other person has not materially complied with this Part, or any regulation or order promulgated hereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

D. Nothing contained in this Section shall affect the right of the commissioner to impose any additional penalties provided in ~~the Louisiana Insurance~~ this Code.

E. Nothing contained in this Section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties.

PART III. FINANCIAL SOLVENCY AND REPORTING REQUIREMENTS
SUBPART A. FINANCIAL REPORTING REQUIREMENTS

§571. Annual reports required

Comment [a5]: We have merged Section 571 with 572 due to the that fact that the sections were repetitive and some of the language in 572 was outdated.

A. Every insurer authorized to do business in this state shall annually and quarterly file with the commissioner of insurance a true statement of its financial condition, transactions, and affairs, as hereafter required~~.~~ along with such additional filings as are prescribed by the commissioner for the preceding year, on or before March first of each year, with the National Association of Insurance Commissioners. The statement shall be on forms and shall contain information as required by this Code and by the commissioner of insurance, including supplementals for additional information required by the commissioner of insurance, and shall be verified by the oaths of at least two of the insurer's principal officers. Statements shall also be filed ~~on computer diskettes, as approved by the commissioner of insurance. The commissioner of insurance, under specific regulations promulgated by the commissioner, may annually waive the computer diskette reporting requirement.~~ electronically with the National Association of Insurance Commissioners. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the National Association of Insurance Commissioners.

B. The annual statement shall be due before the first day of March and show the condition of the company as of the preceding thirty-first day of December~~. preceding.~~ The first quarterly report shall be due prior to

May fifteenth and show the condition of the company as of the preceding thirty-first day of March. ~~preceding.~~ The second quarterly report shall be due prior to August fifteenth and show the condition of the company as of the preceding thirtieth day of June. ~~preceding.~~ The third quarterly report shall be due prior to November fifteenth and show the condition of the company as of the preceding thirtieth day of September. ~~preceding.~~

C. ~~The~~ Upon the request of an insurer, the commissioner of insurance shall ~~annually during November and December~~ furnish each such insurer duplicate copies of annual and quarterly forms as next required to be filed.

D. Each such insurer shall file the appropriate National Association of Insurance Commissioners annual statement blank and quarterly statement blank, which shall be prepared in accordance with the National Association of Insurance Commissioners annual statement instructions handbook, and shall follow those accounting practices and procedures prescribed by the appropriate National Association of Insurance Commissioners Accounting Practices and Procedures Manual.

E. In the absence of actual malice, members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, employees of the National Association of Insurance Commissioners, and all others charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the commissioner under the authority of this Section and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from such filings.

F. All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the Department of Insurance by the National Association of Insurance Commissioners Insurance Regulatory Information System shall be confidential and shall not be disclosed by the department.

~~E.~~ G. The annual and quarterly statement of an alien insurer shall relate only to its transactions and affairs in the United States unless the commissioner of insurance requires otherwise. The statement shall be verified by the insurer's United States manager or by its officers duly authorized.

~~F.~~ H. The commissioner of insurance may suspend or revoke the certificate of authority of any insurer failing to file its annual statement when due or during any extension of time thereof which the commissioner of insurance, for good cause, may grant.

~~G.~~ I. Upon written application and approval by the commissioner, a domestic company may be exempted from the following filings required by this Section:

(1) Quarterly statements.

(2) Management discussion and analysis accompanying the annual statement.

(3) Electronic filings with the National Association of Insurance Commissioners.

(4) Holding company registration.

~~**§572. Participation in the Insurance Regulatory Information System of the National Association of Insurance Commissioners**~~ **Written catastrophe response plans**

~~A.(1) Each domestic, foreign, or alien insurer who is authorized to transact insurance in this state shall file a copy of its annual statement convention blank, along with such additional filings as are prescribed by the commissioner for the preceding year, on or before March first of each year, with the National Association of Insurance Commissioners. The information filed with the National Association of Insurance Commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the National Association of Insurance Commissioners.~~

~~(2) Foreign insurers that are domiciled in a state which has a law substantially similar to this Section shall be deemed in compliance with this Section.~~

~~B. In the absence of actual malice, members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, employees of the National Association~~

Comment [a6]: This section is being repealed and some of the language is being moved to Section 571.

~~of Insurance Commissioners, and all others charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the commissioner under the authority of this Section and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from such filings.~~

~~C. All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the Department of Insurance by the National Association of Insurance Commissioners Insurance Regulatory Information System shall be confidential and shall not be disclosed by the department.~~

~~D. The commissioner may suspend, revoke, or refuse to renew the certificate of authority of any insurer failing to file its annual statement when due or within any extension of time which the commissioner, for good cause, may have granted.~~

Every insurer writing any form of commercial or residential property insurance, automobile insurance, marine, or inland marine insurance or writing life or health and accident insurance shall maintain a written catastrophe response plan or plan that describes how the insurer will respond to a catastrophe affecting its policyholders. Additionally, each health maintenance organization, managing general agent, and third-party administrator shall maintain a written catastrophe response plan or plan that describes how it will respond to a catastrophe affecting its business operations. During an examination required by R.S. 22:1981, or at such other time as the commissioner deems appropriate, he shall review the written catastrophe response plan of each insurer, health maintenance organization, managing general agent, and third-party administrator, the insurance written, and the response plan most appropriate for the type of insureds or business operations at issue. The written catastrophe response plan of each insurer, health maintenance organization, managing general agent, and third-party administrator shall be deemed to be confidential, proprietary information subject to the protections of the Uniform Trade Secrets Act, pursuant to Chapter 13-A of Title 51 of the Louisiana Revised Statues of 1950, shall not be subject to the public records disclosures of R.S. 44:1, and shall not be made public by the commissioner.

§574. Material transactions; report, domestic insurers

A. As used in this Section, the following terms shall have the following meanings:

(1) "Acquisition of assets" shall include any purchase, lease, exchange, merger, consolidation, succession, or other acquisition, other than the construction or development of immovable property, by or for the reporting insurer or the acquisition of materials for that purpose.

(2) "Disposition of assets" shall include any sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment, whether for the benefit of creditors or others, abandonment, destruction, or other disposition.

(3) "Material acquisition" or "material disposition" is an acquisition or disposition or the aggregate of any series of related acquisitions or dispositions during any thirty-day period which is nonrecurring, is not in the ordinary course of business, and involves more than five percent of the insurer's total admitted assets reported in the most recent quarterly or annual statement filed by the insurer with the department.

(4) "Material nonrenewal, cancellation, or revision" shall mean:

(a) For property and casualty insurers, including health and accident business written by a property and casualty insurer:

(i) More than fifty percent of the total ceded written premium by the insurer.

(ii) More than fifty percent of the total ceded indemnity and loss adjustment reserves by the insurer.

(b) For life, annuity, and health and accident insurers, more than fifty percent of the total reserve credit taken for the business ceded, on an annualized basis, as indicated in the most recent annual report of the insurer.

(5) "Material revision" for property and casualty or life, annuity, and health and accident insurers shall include the following:

(a) The replacement by one or more unauthorized reinsurers of an authorized reinsurer representing more than ten percent of a total cession.

(b) The reduction or waiver of previously established collateral requirements for one or more unauthorized

reinsurers representing collectively more than ten percent of a total cession.

B.(1) Every domestic insurer shall file a report, including any exhibits or other attachments with the department and with the National Association of Insurance ~~Departments~~ Commissioners disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements. No report shall be filed if the acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the department for review, approval, or informational purposes for other provisions of ~~the Louisiana Insurance~~ this Code, laws, regulations, or other requirements.

(2) No filing shall be required of ceded reinsurance agreements if:

(a) For property and casualty insurance, including accident and health business written by a property and casualty insurer, the total ceded written premium of the insurer represents on an annualized basis less than ten percent of its total written premium for direct and assumed business.

(b) For life, annuity, and accident and health insurance, the total reserve credit taken for business ceded represents on an annualized basis less than ten percent of the statutory reserve requirement prior to any cession.

C.(1) The report required in Subsection B of this Section is due within fifteen days after the end of the calendar month in which any of the foregoing transactions occur.

(2) The report shall be on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the reserves of the insurer and the insurer ceded substantially all of its direct and assumed business to the pool.

(3) An insurer shall have ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars total direct premiums, plus assumed written premiums, during a calendar year that are not subject to a pooling arrangement and which net income of the business not subject to the pooling arrangements represents less than five percent of the capital and surplus of the insurer.

D. All reports obtained by or disclosed to the department pursuant to this Section shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the department, the National Association of Insurance ~~Departments~~ Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the reporting insurer. The department may disclose the report after giving the reporting insurer notice and an opportunity to be heard if it determines that the interest of policyholders, shareholders, or the public will be served by the publication of the report. The department may publish all or any part of the report in any form as the department may deem appropriate.

E. The following information shall be disclosed in any report of a material acquisition or disposition of assets:

(1) The date of the transaction.
(2) The manner of acquisition or disposition.
(3) The description of the assets involved.
(4) The nature and amount of the consideration given or received.
(5) The purpose or reason for the transaction.
(6) The manner by which the amount of consideration was determined.
(7) The gain or loss recognized or realized as a result of the transaction.

F. The following information shall be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

(1) The effective date of the nonrenewal, cancellation, or revision.
(2) The description of the transaction with an identification of its initiator.
(3) The purpose of or reason for the transaction.
(4) The identity of the replacement insurer, if applicable.

SUBPART B. INVESTMENTS OF DOMESTIC INSURERS

§583. General limitation on investment in obligations of any one person

An insurer shall not, except with the consent of the commissioner of insurance, have at any time any combination of investments in or loans upon the security of the obligations, property, and securities of any one person or institution aggregating an amount exceeding five ~~per cent~~ percent of the insurer's assets, except in the case of mortgage loans as provided in R.S. 22:584(A)(5) and in case of investments in stocks of corporations owning funeral homes as provided in R.S. 22:584(C). This Section shall not apply to investments in, or loans upon the security of general obligations of the government of the United States or of any state or territory of the United States, or the District of Columbia nor to investments in foreign securities pursuant to R.S. 22:589(A), nor include policy loans made pursuant to R.S. 22:584(E).

§584. Investments in securities

A. Any domestic insurer may invest in the following securities:

(1) Bonds or securities not in default as to principal or interest, which are the direct obligations of or which are secured or guaranteed as to principal and interest by the United States, any state or territory of the United States, or the District of Columbia where there exists the power to levy taxes for the prompt payment of the principal and interest of such bonds or evidences of indebtedness and any federal farm loan bonds issued by federal land banks, debentures issued by federal intermediate credit banks, debentures issued by banks for cooperatives, collateralized mortgage obligations (CMO), bonds, and other mortgage-backed securities issued by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Corporation, and the Vendee Mortgage Trust. Nothing in this Subpart shall prohibit the acquisition by a domestic insurer of United States government securities, the purchases of which are otherwise permitted under this Subpart in accordance with the Federal Reserve System United States Treasury Department program relating to the utilization of book entry recordkeeping procedures.

(2) Bonds or evidences of indebtedness which are direct general obligations of any county, parish, city, town, village, school district, drainage district, sanitary district, park district, or other political subdivision or municipal corporation of this state or any other state or territory of the United States or the District of Columbia which shall not be in default in the payment of any of its general obligation bonds, either principal or interest, at the date of such investment.

(3) Bonds of any levee or other board of this state, and obligations issued or guaranteed by the International Bank for Reconstruction and Development, or the Asian Development Bank.

(4) Investment grade bonds or other obligations which are payable from revenues or earnings specifically pledged therefor of a public utility, state or municipally owned, either directly or through any civil divisions, authority or public instrumentality of a state or municipality, provided that the laws of the state or municipality authorizing the issuance of such bonds or other obligations require that rates for service shall be fixed, maintained, and collected at all times so as to produce sufficient revenue or earnings to pay all operating and maintenance charges and both principal and interest of such bonds or obligations, and provided further that no such bonds or other obligations shall be in default at the date of such investment; and investment grade bonds or evidences of indebtedness, which are payable from tax revenues of any parish, city, town, village, school district, drainage district, sanitary district, park district, or other political subdivision or municipal corporation of this state or any territory of the United States or the District of Columbia, which shall not be in default in the payment of any of its general obligation bonds or tax revenue bonds, either principal or interest, at the date of such investment, and which shall have sufficient tax revenues specifically pledged therefore at the date of such investment; however, no company shall invest an aggregate of more than thirty-three and one-third ~~per centum~~ percent of its admitted assets in bonds or other obligations described in this Paragraph and also those described in ~~R.S. 22:584(A)(13)~~ Paragraph (13) of this Subsection.

(5)(a)(i) First mortgages on improved unencumbered real estate or bonds secured thereby located within any of the states of the United States or the District of Columbia, including leasehold estates in improved unencumbered real property having an unexpired term of not less than twenty-one years inclusive of the term which may be provided by an enforceable option of renewal, in an amount not exceeding eighty ~~per centum~~ percent of the

appraised value, said appraised value to be substantiated by the appraisal by a recognized and experienced real estate appraiser who is a member of a recognized appraisal organization, which the commissioner of insurance may accept if he is satisfied that the appraiser is competent and disinterested. Before making such investment, a certificate of the value of such property, based on such appraisal shall be executed by the board of directors, by an investment committee, or by a member of the board of directors making or authorizing such investment on behalf of the insurer, provided that the investment in any one mortgage, any one issue of bonds, or any one contract for deed does not exceed ten ~~per centum~~ percent of the company's admitted assets.

(ii) No mortgage loan upon a leasehold shall be made or acquired by an insurer pursuant to this Paragraph unless the terms thereof shall provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient to amortize the loan completely within a period of four-fifths of the term of the leasehold, inclusive of the term which may be provided by an enforceable option of renewal, which is unexpired at the time the loan is made, but in no event exceeding thirty-five years.

(b) Subject to the provisions of Subparagraph (a) of this Paragraph, any domestic insurer may invest in obligations secured by mortgages or deeds of trust on real property otherwise encumbered only by a first mortgage or first deed of trust, subject to the following conditions:

(i) The aggregate value of both mortgages or deeds of trust does not exceed eighty percent of the appraised value; and

(ii) The obligation is secured by a wrap-around mortgage where:

(aa) Only one preexisting mortgage or deed of trust encumbers the real property.

(bb) The mortgage or deed of trust securing the loan is recorded and is insured under a policy of title insurance in an amount not less than the total amount of the obligation of the borrower to the insurer under the loan.

(cc) The insurer agrees as part of the wrap-around mortgage agreement to make the payments due under the first mortgage or first deed of trust upon receipt of payments due from the borrower under the wrap-around mortgage.

(c) For all purposes of this Subpart, the wrap-around mortgage or deed of trust shall be treated in the same manner as if the insurer held the first mortgage or deed of trust.

(d) As used in this Subsection, "improved real estate" means all farmland which has been reclaimed and is used for the purpose of husbandry, whether for tillage, pasture, or improved forestation, and all other real property on which permanent buildings suitable for residence or commercial use are situated, including but not limited to condominium property, as defined in R.S. 9:1122.101 through 1124.115.

(e) Real property for the purpose of this Subsection shall not be deemed to be encumbered within the meaning of this Section by reason of the existence of instruments reserving rights of way, sewer rights, and rights in walls, nor by reason of building restrictions or other restrictive covenants, nor by the reason of the fact that it is subject to lease under which rents or profits are reserved to the owner. The security for such investment shall be a full and unrestricted first lien or mortgage upon such real property, and there shall be no condition nor right of reentry or forfeiture under which such investments can be cut off, subordinated, or otherwise disturbed. Structures thereon must be insured for an amount not less than the appraised value of such structures, and the proceeds of the policy shall be payable to and held by the company or a trustee for its benefit. The insurance shall be continued in force as long as the loan continues.

(f) Notwithstanding the restrictions herein set forth, any domestic insurer may, to the full extent of the amount insured or guaranteed, invest:

(i) In bonds or notes secured by a mortgage or trust deed issued, assumed, guaranteed, or insured by the United States, by any agency of the United States, or by any state;

(ii) In securities issued or mortgages guaranteed by the Federal National Mortgage Association or other similar corporations regulated by any agency of the United States; and

(iii) In securities issued by other entities and secured by conventional first mortgage loans. When such loans exceed the loan-to-value ratio of eighty percent, said loans shall be covered by private mortgage insurance to the extent that the loan-to-value ratio exceeds eighty percent.

(iv) In bonds issued, assured, and guaranteed by the Inter-American Development Bank and the African Development Bank.

(g) Notwithstanding the restrictions herein set forth, the amount of any first mortgage investment as

limited by Subparagraph (a) of this Paragraph herein may be exceeded if and to the extent that such excess shall be guaranteed by the administrator of veterans affairs pursuant to the provisions of Title III of an Act of Congress of the United States on June 22, 1944, entitled the Servicemen's Readjustment Act of 1944,[1] as heretofore or hereafter amended.

(h) No such domestic insurer shall invest in any manner, either directly or indirectly by means of corporations, holding companies, trustees, or otherwise, in real estate securities junior to first mortgages, except as set forth above and in Subsection H of this Section. Such domestic insurer shall not invest in excess of sixty-six and two-thirds ~~per centum~~ percent of its admitted assets in the securities described herein and in Subsection G of this Section.

(i) Participation or pass through interests representing an ownership interest in bonds, notes, or other evidences of indebtedness, which are entitled to receive both principal and interest, and are secured or backed by mortgage loans or trust deeds, subject to the following:

(i) All participation or pass through interests shall:

(aa) Maintain a minimum quality rating of one or two by the National Association of Insurance Commissioners, Securities Valuation Office, or if unrated shall be promptly submitted, upon acquisition, to the National Association of Insurance Commissioners, Securities Valuation Office, and receive a minimum quality rating of one or two; and

(bb) Retain a servicing agent or other person obligated to distribute all payments, proceeds, and recoveries from the participation and pass through interests, after deduction of reasonable fees and expenses, to the participants as provided by the trust or participation agreement for the issue.

(ii) Notification by the domestic insurer to the servicing agent, or other person obligated to make distributions, of any transfer of interest, by pledge or otherwise, in participation or pass through interests.

(iii) The investments by the domestic insurer in any one issue described by this Subparagraph shall not exceed five percent of the admitted assets of the domestic insurer and the total amount of the investments of the domestic insurer in all issues described by this Subparagraph shall not exceed forty percent of the admitted assets of the domestic insurer, provided however any direct United States agency issued or United States government guaranteed bonds, participating or pass through interests, or other evidences of indebtedness shall not be included under nor limited herein.

(iv) The interests of the domestic insurer in the participation or pass through interests and mortgage loans or trust deeds shall be superior to the interests of the ordinary creditors of the servicing agent, or other person obligated to make distributions, and shall also be superior to any federal regulatory authority having jurisdiction over the servicing agent, or other person obligated to make distribution, in the event of the insolvency or other failure of the servicing agent, or other person obligated to make distributions.

(6)(a) Subject to the limit set forth in Subsection B of this Section, bonds or evidences of indebtedness issued or guaranteed by any railroad corporation or corporations, ~~(~~other than those organized and chartered for the sole purpose of holding stocks of other corporations~~)~~ created under the laws of the United States or of any of the states of the United States or the District of Columbia or any certificates of any equipment trust created on behalf of any such railroad corporation; provided that such bonds or certificates have not been in default as to principal or interest payments during any of the five years next preceding the date of such investment or during the tenure of such issue if issued less than five years prior to such investment, and provided further that no insurer shall invest in any one issue of such bonds, certificates or evidences of indebtedness, an amount in excess of two ~~per cent~~ percent of such insurer's admitted assets.

(b) Such domestic insurer shall not invest in excess of thirty-three and one-third ~~per centum~~ percent of its admitted assets in bonds, certificates, or other evidences of indebtedness described in this ~~paragraph~~ Paragraph.

(7)(a) Subject to the limit set forth in Subsection B of this Section, bonds or evidences of indebtedness issued or guaranteed by any solvent public utility corporation or corporations, other than those organized and chartered for the sole purpose of holding the stocks of other corporations, created under the laws of the United States or of any of the states of the United States or the District of Columbia, provided that such bonds or evidences of indebtedness are not in default either as to principal or interest and provided no insurer shall invest in any one issue of such bonds or evidences of indebtedness, an amount in excess of two percent of the insurer's admitted assets.

(b) Such domestic insurer shall not invest in excess of fifty percent of its admitted assets in bonds or other evidences of indebtedness described in this Paragraph.

(8)(a) Subject to the limit set forth in Subsection B of this Section, bonds or evidences of indebtedness issued or guaranteed by any solvent corporation or corporations, other than those mentioned in Paragraphs (6) and (7) of this Subsection and other than corporations organized and chartered for the sole purpose of holding the stocks of other corporations, created under the laws of the United States or of any of the states of the United States or the District of Columbia, provided that no insurer shall invest in any one issue of any such bonds or evidences of indebtedness an amount in excess of two percent of such domestic insurer's admitted assets except as provided in Subsection D of this Section, and provided that the corporation issuing such bonds or evidences of indebtedness shall have paid the prescribed interest thereon during each of the five years next preceding the date of such investment, or the tenure of such issue if issued less than five years prior to such investment.

(b) Such domestic insurer shall not invest in excess of fifty percent of its admitted assets in bonds or other evidences of indebtedness described in this Paragraph, except as provided in Subsection D of this Section.

(9)(a) Subject to the limit set forth in Subsection B of this Section, preferred or guaranteed stocks issued or guaranteed by any solvent corporation or corporations, except the stocks of other insurance companies, created under the laws of the United States or any of the states of the United States or the District of Columbia; provided that no insurer shall invest in any one issue of any such preferred or guaranteed stocks in an amount in excess of two percent of such insurer's admitted assets; and provided further that no such stocks shall be purchased unless the prescribed dividends are being paid thereon.

(b) Such domestic insurer shall not invest in excess of twenty-five percent of its admitted assets in the stocks described in this Paragraph; but in no event shall it invest in common stocks, other than guaranteed stocks, except as provided in Subsections C and D of this Section; nor shall it invest in or loan any of its funds on its own stock.

(10) Loans upon the pledge of bonds, mortgages, securities, stock or evidence of indebtedness acceptable as investment for the lending insurer under the terms of this Code and subject to the same limits as to each security as is provided in this Code for investment, if the face or current market value whichever is less of such mortgages is more than the amount loaned thereon, and the current market value of such bonds, securities, preferred or guaranteed stock or evidences of indebtedness is at least twenty per cent more than the amount loaned thereon. This limitation shall not apply to loans on the pledge of bonds or securities of the United States.

(11) Shares of insured state chartered building and loan or homestead associations and federal savings and loan associations, if such shares are insured by the Federal Savings and Loan Insurance Corporation as specifically set forth under the terms of Title IV of an Act of the Congress of the United States entitled the "National Housing Act."[2]

(12) Shares or securities of any open-end or closed-end management type investment company or investment trust registered under 15 U.S.C.A. §80a-1 et seq., which men of prudence, discretion, and intelligence acquire or retain for their own account, including mutual funds that invest in foreign securities; however, no company shall invest more than five percent of its admitted assets in any one investment or an aggregate of fifty percent of admitted assets in stocks or securities described in this Paragraph. Mutual funds that invest in foreign securities shall be limited to twenty percent of admitted assets.

(13)(a) Dormitory and union building revenue bonds issued by the state board of education for the state colleges, or by the board of supervisors of Louisiana State University and Agricultural and Mechanical College, provided that the governing body of any state college or state university authorizing the issuance of such bonds requires that rates for service shall be fixed, maintained and collected at all times so as to produce sufficient revenue or earnings to pay all operating and maintenance charges and both principal and interest of such bonds, and provided, further, that no such bonds shall be in default at the date of such investment.

(b) No company shall invest an aggregate of more than thirty-three and one-third ~~per centum~~ percent of its admitted assets in the bonds or other obligations described in ~~R.S. 22:584(A)(4)~~ Paragraph (4) of this Subsection and also those bonds described in ~~the preceding paragraph.~~ Subparagraph (a) of this Paragraph.

(14) Bonds or other obligations issued or guaranteed by the Inter-American Development Bank.

(15) Student loan notes or other obligations which are guaranteed or insured as to principal by the Louisiana Student Financial Assistance Commission or any other authorized agency or instrumentality of the state

of Louisiana or by any authorized agency or instrumentality of the United States government.

~~(16) The department shall have the authority to promulgate rules and regulations to further the objective of this Subsection and to establish the volatility and pricing and reporting requirements for investments authorized herein.~~

Comment [a7]: This was moved to become B. (2) of Section 584.

(17) Equipment trust obligations or certificates, or pass-through certificates, which are adequately secured evidencing an interest in equipment operated wholly or in part within the United States and have a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of such equipment. Obligations, certificates, or pass-through certificates hereunder shall have a minimum quality rating by the National Association of Insurance Commissioners Securities Valuation Office of one or two, or if unrated, shall be promptly submitted upon acquisition to the National Association of Insurance Commissioners Securities Valuation Office and receive a minimum quality rating of one or two. Such domestic insurer shall not invest in excess of ten percent of its admitted assets in obligations, certificates, or pass-through certificates described in this Paragraph.

(18)(a) Asset-backed securities or other instruments evidencing a senior (nonsubordinated) secured interest in, and the right to receive both principal and interest payments from distributions on a pool of financial assets, other than mortgages on real property, held by a business entity on the following conditions:

(i) The business entity is established solely for the purpose of acquiring specific types of financial assets, issuing securities and other instruments representing an interest in or right to receive cash flows from those assets, and engaging in related activities.

(ii) The pool of assets consists solely of interest-bearing obligations or other contractual obligations representing the right to receive payment from the assets; however, the existence of credit enhancement or other support features such as letters of credit, guarantees, and swap agreements shall not cause a security or other instrument to be disqualified under this Section.

(b) Investments hereunder shall have a current and continuing minimum quality rating of "A" by one or more of the ~~four~~ nationally recognized securities rating organizations and a rating by the National Association of Insurance Commissioners Securities Valuation Office of one, or if unrated, shall be promptly submitted upon acquisition to the National Association of Insurance Commissioners Securities Valuation Office and receive a minimum quality rating of one. Such domestic insurer shall not invest in excess of one percent of its admitted assets in any one issue of asset-backed obligations or in excess of five percent of its admitted assets in the aggregate of asset-backed obligations described in this Paragraph.

B. (1) The total investment of a domestic insurer in the securities described in Paragraphs (6) through (9), ~~and~~ (17), and (18) of Subsection A of this Section, subject to the limitations stated in said ~~paragraphs~~ Paragraphs, shall not exceed in the aggregate, seventy-five percent of its admitted assets.

(2) The department shall have the authority to promulgate rules and regulations to further the objectives of Subsection A of this Section to establish the volatility and pricing and reporting requirements for investments in that Subsection.

C.(1)(a) Any domestic life insurer, in addition to the investment permitted by Subsection A of this Section, may invest in the shares of capital stock, American Depository Receipts, which are listed on a national securities exchange, and securities of any solvent corporation (other than a corporation engaged solely in the business of owning and operating real estate, or a corporation having substantially all of its assets invested in the shares of such corporations, except as specifically provided in Subparagraph (b) of this Paragraph) created under the laws of the United States, or of any of the states of the United States, or the District of Columbia, provided that the shares or American Depository Receipts of such corporation are registered on a national securities exchange, as provided in an Act of Congress of the United States, entitled the "Securities Exchange Act of 1934", approved June 6, 1934, as amended,[4] or local exchanges, or are readily marketable, or shares of foreign corporations listed on the New York Stock Exchange or the American Stock Exchange, and provided further that such corporation is listed on a national securities exchange at the time of the investment or has earned during any three years of the five-year period next preceding the date of the investment, a sum applicable to dividends equal in the aggregate to not less than twelve percent of the par value (or, in the case of shares having no par value, the stated value) of its outstanding shares.

(b) Any domestic life insurer, in addition to the investment permitted by Subsection A of this Section, may

invest in the stock of a real estate investment trust (REIT) whose stock is listed on the New York Stock Exchange or the American Stock Exchange, provided such investment shall not exceed five percent of the total number of shares of any one such trust and that not more than two percent of the insurer's admitted assets are invested in shares of any one such trust. Shares in each such trust which has over one-half of its assets invested in ownership of real estate or which has such ownership as its stated investment objective shall be considered real estate investment for purposes of conforming with the limitation on real estate ownership imposed by Subsection G of this Section.

(2) Such insurer shall not invest more than five percent of its admitted assets in the shares or securities of any one such corporation, provided that in the case of insurers issuing funeral policies, such insurers may invest an amount not exceeding twenty-five percent of the admitted assets in the stock of a corporation owning a funeral home or homes, provided that at least ninety percent of the assets of the corporation owning a funeral home or homes shall consist of such funeral home or homes and equipment, provided such investment in the shares or securities of corporations owning a funeral home or homes was made prior to 12:00 noon of October 1, 1948.

D. Any domestic insurer, in addition to the investments permitted by Subsection A of this Section, may invest an amount equal to its capital and surplus if it is a stock company, and, if it is a company other than stock, it may invest an amount equal to its surplus over all liabilities as follows:

(1)(a)(i) In shares of capital stock, American Depository Receipts listed on a national securities exchange, bonds, securities, or other evidences of indebtedness of any solvent corporation (other than a corporation engaged solely in the business of operating real estate or a corporation having substantially all of its assets invested in the shares of such corporation except as specifically provided in Item (ii) of this Subparagraph) created under the laws of the United States, or the states of the United States, or the District of Columbia, or a foreign corporation whose stock is listed on the New York Stock Exchange or the American Stock Exchange, provided that such insurer may not, except in the case of shares permitted by Paragraph (9) of Subsection A, invest in the shares or American Depository Receipts of a manufacturing corporation, commonly known as "industrial", unless such corporation is listed on a national securities exchange at the time of the investment or has earned during any three years of the five-year period next preceding the date of the investment, a sum applicable to dividends equal in the aggregate to not less than twelve percent of the par value (or, in the case of shares having no par value, the issued value) of its outstanding shares, or if such shares have been issued less than five years, has earned a sum applicable to dividends during the tenure of such issue, equal to not less than four percent per annum of the par value, (or, in the case of shares having no par value, the issued value) of its outstanding shares.

(ii) In the stock of a real estate investment trust (REIT) whose stock is listed on the New York Stock Exchange or the American Stock Exchange, provided such investment shall not exceed five percent of the total number of shares of any one such trust and that not more than two percent of its admitted assets are invested in shares of any one such trust. Shares in each such trust which has over one-half of its assets invested in ownership of real estate or which has such ownership as its stated investment objective shall be considered real estate investment for purposes of conforming with the limitation on real estate ownership imposed by Subsection G of this Section.

(b) Such insurers shall not invest more than five percent of its admitted assets in the shares of any one such manufacturing corporation. Such insurers may acquire the stock or other share capital of another insurer but shall not invest more than fifty percent of said funds, directly or indirectly, in shares of another insurer, nor shall such insurer acquire the whole or any part of the stock or other share capital of another insurer which transacts the same kind or kinds of insurance where the effect of such acquisition may be to substantially lessen competition generally or tend to create a monopoly. Investing in the stocks, bonds, or other evidence of indebtedness of any corporation, a substantial portion of whose funds are invested directly or indirectly in the shares of insurance companies, shall be regarded as investing indirectly in such shares. Whenever the commissioner of insurance has reason to believe that there is a violation of this Subsection, he shall hold a hearing, and if he shall find that such investment is in violation of this Subsection, he shall cause such insurer to divest itself of such investment within such reasonable time, or such extension thereof, as he shall specify. Any such order of the commissioner of insurance shall be subject to review as provided in Chapter 12 of this Title, R.S. 22:2191 et seq.

(2) If such insurer is operating in any foreign country, in securities which are direct obligations of such foreign country or state, province or political subdivision thereof, to an amount not to exceed the total unearned

premium reserve of policies issued in said foreign country, or in such an amount as it may be required by law to transact business therein, or as permitted in R.S. 22:589.

(3) An insurer may invest in, acquire debt obligations of, or otherwise acquire and hold an interest in any limited partnership or limited liability company which is formed pursuant to the laws of any state or the United States of America and which invests in assets otherwise permitted under this Subpart. No limited partnership interest, limited liability company interest, or debt obligation shall be acquired under this Section if the cost thereof would exceed two percent of the assets of such insurer, nor if such cost, plus the book value on the date of such acquisition of all limited partnership interests, limited liability interests, or debt obligations then held by such insurer and acquired under this Section would exceed ten percent of such assets.

E. Nothing in this Code shall prevent any life insurer from purchasing for its own benefit any policy of insurance or other obligation of the insurer or any claim of its policyholders nor from lending to any holder of a policy a sum not exceeding the reserve value of such policy at the time the loan is made, for the payment of which loan the policy and all profits thereon shall be pledged.

F. In applying the percentage limitation imposed by this Section there shall be used as a base the total of all assets which would be admitted by this Code without regard to percentage limitations.

G.(1)(a) Any domestic insurer, in addition to the other investments permitted by this Section, as provided in this Subsection, may purchase land situated in this state and in any other state in which the domestic insurer is licensed to do business. On such land the insurer shall erect within three years, if not already thereon, apartments, tenements, or other dwelling houses, hotels, retail stores, shops, offices, warehouses, shopping centers, funeral homes, other complexes for commercial purposes, general merchandising stores, and other community services reasonably incident to such projects.

(b) The insurer may thereafter own, hold, maintain, and manage the land so acquired and the improvements thereon and collect or receive income therefrom and may grant, sell, or convey the same in whole or in part. Ownership, management, and control shall be entire and complete by one insurer unless shared by two or more insurers subject to this Code or unless the insurer is a general partner under agreements that will assure concerted action in the management and control of the property and in case of the insolvency of any participating insurer.

(2) The aggregate investment by any such insurer under the terms of this Subsection, as evidenced by its original purchase price, shall not exceed five ~~per cent~~ percent of the admitted assets of the insurer.

(3) The combined investments by a domestic insurer under the provisions of this Subsection and Paragraph (5) of Subsection A of this Section shall not exceed sixty-six and two-thirds ~~per cent~~ percent of the admitted assets of such insurer on the December ~~31~~ thirty-first next preceding such investment.

(4), (5) Repealed by Acts 2004, No. 505, §2.

(6) ~~Such orders~~ Orders or decisions of the commissioner of insurance shall be subject to review as provided in Chapter 12 of this Title, R.S. 22:2191 et seq.

H. Any domestic insurer, in addition to the other investments permitted by this Section, may invest in an amount equal to twenty-five percent of its capital and surplus if a stock company, and if a company other than stock twenty-five percent of its surplus, or five percent of its admitted assets, whichever is the greater, in an admitted asset pursuant to this Section without regard to the percentage limitations, except that no such insurer may invest in its own stock or in real estate securities junior to first mortgages; however, if an insurer who holds a first mortgage on immovable property makes an additional loan secured by a mortgage on that immovable property, and if the total of the balance due on the original loan and the amount of the additional loan does not exceed the percentage of the appraised value of the immovable property set forth in Paragraph (5) of Subsection A of this Section, and if there are no intervening liens, the mortgage securing this additional loan shall be admitted as a first lien and mortgage. No investment under this Subsection shall be eligible for purchase at a price above its market value, nor shall any investment made under this Subsection be sold below its market value.

I.(1) Any domestic insurer, in addition to the other investments permitted by this Subpart, may, with the direction or approval of a majority of its board of directors or an authorized committee thereof, invest any of its funds or any part thereof in repurchase agreements whereby the principal amount of the agreement represents investments otherwise authorized by this Subpart.

(2) The repurchase agreement shall be in writing; shall have a specific maturity date; shall adequately

identify each security to which the agreement applies; and shall state that in the event of default by the party agreeing to repurchase the securities described in the agreement at the term contained in the agreement, title to the described securities shall pass immediately to the insurance company without recourse.

J, K. Repealed by Acts 2001, No. 61, §2.

L. A domestic insurer may invest in the following:

(1) Loans secured by first liens on interest in oil, gas, or condensate properties or leaseholds in the United States and Canada on which there are fully completed commercially producing wells. The value of the proved oil and gas reserves, as determined by a registered petroleum engineer, shall not be less than one hundred fifty percent of the loans thereon.

(2) Notwithstanding the provisions of Subsection H of this Section, the total of loans and investments made pursuant to this Subsection shall not exceed two percent of the insurer's admitted assets.

M. A domestic insurer may invest in venture or seed capital investments offered by a professionally managed capital company which are certified under the provisions of Chapter 26 of Title 51 of the Louisiana Revised Statutes of 1950, in a small business investment company (SBIC), or in a minority small business investment company (MSBIC) domiciled in this state, or in any such company itself, investments of bonds or investments provided through the Louisiana Science and Technology Foundation as provided in R.S. 22:832(E), any university research or incubator venture and opportunity, the Louisiana Small Business Development Corporation, the Louisiana Small Business Equity Corporation, and the rural relief fund, or any combination of investments and companies thereof. No insurer shall invest in excess of one percent of its available admitted assets, nor more than ten percent of the allowable one percent investment in any one venture, investment, offering, or company. No insurer shall make any such investment under this Subsection unless its statutorily mandated capitalization and surplus level is one million dollars or more, or if it is under any supervisory action or administration of the Department of Insurance. Any investment authorized by this Subsection shall be eligible for a reduction of taxes as stipulated by R.S. 22:832 provided that either the investment or the company is in Louisiana.

N. A domestic insurer may purchase contracts for the servicing of first mortgage loans. The total investment in such contracts shall not exceed ten percent in the aggregate of the insurer's admitted assets.

§586. Derivative transactions

A. In this Section, unless the context otherwise requires, the following definitions shall be applicable:

(1)(a) "Counterparty exposure amount" on over-the-counter derivatives means:

(i) The market value of the derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to or by the insurer; or

(ii) Zero, if the liquidation of the derivative instrument would not result in a final cash payment to or by the insurer; or

(iii) The net sum payable to or by the insurer in connection with all derivative instruments subject to the written master agreement on their liquidation in the event of default by the counterparty under the master agreement, if there are no conditions precedent to the obligations of the counterparty to make such a payment and no set off of amounts payable under any other instrument or agreement.

(b) Insurers can only enter into a written master agreement that provides for netting of payments owed by or to the respective parties if the domiciliary jurisdiction of the counterparty is either in the United States or in a foreign jurisdiction listed in the Purposes and Procedures Manual of the Securities Valuation Office as eligible for netting.

(c) For purposes of this Section, the market value or the net sum payable, as applicable, is determined at the end of the most recent quarter of the insurer's fiscal year and is reduced by the market value of acceptable collateral held by the insurer or a custodian on the insurer's behalf.

(2) "Derivative instrument" means an agreement, option or instrument, or any series or combination thereof, to make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or instead to make a cash settlement, or that has a price, yield, level, performance, value, or cash flow which is based primarily on that of one or more underlying interests. The term includes options (calls and puts), a warrant not otherwise permitted to be held by the insurer under this Section, a cap, a floor, a collar, a swap, a swaption, a forward, a future, and any other substantially similar instruments. The term does not include a

collateralized mortgage obligation, another asset-backed security, a principal-protected structured security, a floating rate security, an instrument that an insurer is otherwise permitted to invest in or receive under this Section other than under this definition, or any debt obligation of the insurer.

(3) "Market value" means the price for a security or derivative obtained from a generally recognized source or the most recent quotation from such a source or, if a generally recognized source does not exist, the price for the security or derivative instrument as determined under the terms of the instrument or in good faith by the insurer, as can be reasonably demonstrated to the commissioner on request, plus accrued but unpaid income on the security or derivative instrument to the extent not included in the price as of the applicable date.

(4) "Potential exposure" means:

(a) As to a futures position, the amount of the initial margin required for that position.

(b) As to swaps, swaptions, collars, and forwards, one-half percent times the notional amount times the square root of the remaining years to maturity.

(5) "Replication transaction" means a derivative transaction or combination of derivative transactions affected either separately or in conjunction with cash market investments included in the insurer's investment portfolio to replicate the risks and returns of another authorized transaction, investment, or instrument or to operate as a substitute for a cash market transaction. The term does not include a derivative transaction entered into by the insurer as a hedging transaction.

B. ~~An~~ A domestic insurer may engage in derivative transactions under this Section under the following general conditions:

(1) An insurer may use derivative instruments under this Section to engage in hedging transactions and income generation transactions.

(2) An insurer may use derivative instruments only if prior thereto the board of directors of such insurer has adopted a written policy and has filed the policy with the commissioner of insurance specifying the following:

(a) The types of risk-limiting practices and income-generating transactions approved for such insurer.

(b) The aggregate maximum limits in such instruments, which maximum limits must be reasonably related to the insurer's business needs and its capacity to fulfill its obligations thereunder.

(c) The specific assets or class of assets or cash flows for which risk-limiting practices may be employed.

(d) The insurer's accounting or investment records shall specifically identify the assets or cash flows for which each risk-limiting practice is used.

(3) All transactions in derivative instruments shall be authorized or approved by the insurer's board of directors or by a committee authorized by such board and charged with the supervision or making of such transactions. The minutes of any such committee shall be recorded and regular reports of the committee shall be submitted to the board of directors.

(4) With respect to all hedging transactions, an insurer shall be able to demonstrate to the commissioner the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash-flow testing or other appropriate analyses.

(5) The counterparty must have a quality rating of NAIC 1.

(6) The commissioner may adopt reasonable rules for investments and transactions under this Section, including but not limited to rules which impose financial solvency standards, valuation standards, and reporting requirements.

C. An insurer may enter into hedging transactions under this Section if, as a result of and after giving effect to the transaction:

(1) The aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions then engaged in by the insurer does not exceed the lesser of thirty percent of its surplus and three percent of its admitted assets.

(2) The aggregate statement value of options, caps, and floors written or sold in hedging transactions then engaged in by the insurer does not exceed the lesser of ten percent of its surplus and one percent of its admitted assets.

(3) The aggregate potential exposure of collars, swaps, swaptions, forwards, and futures used in hedging transactions then engaged in by the insurer does not exceed the lesser of twenty percent of its surplus and two percent of its admitted assets.

(4) The limitations specified in this Subsection can be exceeded if the insurer obtains prior approval from the commissioner.

D.(1) An insurer may enter into the following types of income-generating transactions subject to the quantitative limits of Paragraph (2) of this Subsection:

(a) Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed income securities.

(b) Sales of covered call options on equity securities, if the insurer holds in its portfolio or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold.

(c) Sales of covered puts on investments that the insurer is permitted to acquire under this Section, if the insurer has escrowed, or entered into a custodian agreement segregating, cash or cash equivalents with a market value equal to the amount of the purchase obligations under the put during the complete term of the put option sold.

(d) Sales of covered caps or floors, if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under the caps or floors during the complete term that the cap or floor is outstanding.

(2) If as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flow for payments under the caps or floors, plus the face value of fixed-income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, shall not exceed the lesser of fifty percent of its surplus and five percent of its admitted assets.

E.(1) An insurer may enter into a replication transaction only with the prior written approval of the commissioner. To be eligible for approval by the commissioner:

(a) The insurer must be otherwise authorized to invest its funds under this Subpart in the asset being replicated; and

(b) Any asset being replicated is subject to all the provisions and limitations on the making thereof specified in this Section with respect to investments by the insurer as if the transaction constituted a direct investment by the insurer in the replicated asset.

(2) The commissioner may adopt rules regarding replication transactions as necessary to implement this Subsection.

F.(1) Before engaging in a transaction authorized under this Section, an insurer that has a statutory net capital and surplus of less than ten million dollars shall file a written notice with the commissioner describing the need to engage in the transaction, the lack of acceptable alternatives, and the insurer's plan to engage in the transaction. If the commissioner does not issue an order prohibiting the insurer from engaging in the transaction within ninety days after the date of receipt of the insurer's notice, the insurer may engage in the transaction described in the notice.

(2) An insurer that has a statutory net capital and surplus of ten million dollars or greater shall file a written notice with the commissioner describing the need to engage in the transaction and the lack of acceptable alternatives within ninety days of initiating the transaction.

(3) The commissioner may at any time issue an order prohibiting an insurer or insurers from engaging in transactions otherwise authorized under this Section, if the transactions are deemed likely to subject the insurance company to a hazardous financial condition.

(4) An insurer with a statutory net capital and surplus less than the minimum amount of capital and surplus required for a new charter and certificate of authority for the same type of insurer may not engage in the transactions authorized under this Section.

G. The commissioner of insurance may adopt regulations to implement the provisions of this Section.

§588. Restriction on acquisition and holding of real property

A. No domestic insurer may acquire or hold real property except as follows:

(1) Such as shall be requisite for the convenient accommodation of the transaction of its own business; the

amount invested in such real property shall not exceed twenty per cent of the investing insurer's admitted assets, but the commissioner of insurance may grant permission to the insurer to invest in real property for such purpose, in such increased amount as he may deem proper on the showing made if, upon a hearing held before him, he shall find that the amount represented by such percentage of its admitted assets is insufficient to provide convenient accommodation for the insurer's business;

(2) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for monies due;

(3) Such as shall have been conveyed to it in satisfaction of debts previously contracted in course of its dealings;

(4) Such as shall have been purchased at sales on judgments, decrees or mortgages obtained or made for such debts; and

(5) Such unencumbered real property as shall have been acquired, in whole or in part, in exchange for real property of approximately the same value theretofore legally acquired and held by it, provided that the amount invested in any one parcel of property so acquired, other than property acquired for the purpose, specified in ~~paragraph~~ Paragraph (1) of this Subsection, shall not exceed two ~~per cent~~ percent of the investing insurer's admitted assets.

(6) Such real estate as shall have been acquired in R.S. 22:584.

(7) Such as shall be held as security for contracts for deeds acquired in accordance with the provisions of R.S. 22:584(A)(5), and not in default.

(8) Such as may be acquired or held in connection with a loan or investment permitted by R.S. 22:584(H).

B. All real property acquired for purposes, or in the manner, specified in paragraphs other than Paragraphs (1), (6), (7), and (8) of Subsection A of this Section may be held for a period of five years after the insurer shall have acquired title to the same and thereafter until the date specified in an order issued by the commissioner of insurance directing the insurer to dispose of the same. The date specified in such order shall be not less than six months from the date of the service of the said order upon the insurer. No such order shall be issued without a hearing and a determination by the commissioner of insurance that the interests of the insurer will not suffer materially by the sale of the same within the period to be specified.

§589. Foreign securities

A. ~~An~~ A domestic insurer authorized to transact insurance in a foreign country may invest any of its funds, in an aggregate amount not exceeding one hundred twenty ~~per cent~~ percent of its reserves and other statutory obligations incurred in such country, or such greater amount as it may be required by law to invest in such country, and maintain the same there, in securities of such country possessing characteristics and of a quality similar to those required pursuant to this Subpart for investments in the United States; ~~provided that~~ however, if an insurer shall show, to the satisfaction of the commissioner of insurance, that it is impossible to withdraw from a foreign country, or that the interest of the insurer will suffer materially by such withdrawal, any of its funds in excess of the limit imposed in this Section, such insurer shall not be deemed to be in violation of the provisions ~~hereof.~~ of this Subsection.

B. ~~An~~ A domestic insurer may invest any of its funds, in an aggregate amount not exceeding five ~~per cent~~ percent of its admitted assets, in addition to any amount permitted pursuant to ~~Sub-section~~ Subsection A of this Section, in obligations of the government of the Dominion of Canada or of Canadian provinces or municipalities, and in obligations of Canadian corporations, which have not been in default during the five years next preceding date of acquisition, and which are otherwise of equal quality to like United States public or corporate securities as prescribed in this Subpart.

C. In addition to the investments authorized in Subsections A and B of this Section, an insurer authorized to transact insurance in a foreign country may invest an amount or amounts in the aggregate not exceeding thirty percent of its capital and surplus if a stock company, or thirty percent of its surplus if a mutual company, in such investments as are allowed in R.S. 22:584 in a foreign country with which the United States has diplomatic relations or had diplomatic relations on January 1, 1978. For the purposes of investments made under this Subsection, all references to the United States appearing in R.S. 22:584 shall be considered to name the particular foreign country or countries in which the investments made hereunder are placed.

§590. When restrictions not applicable

A. The restrictions of R.S. 22:584 and 22:588 shall not apply to securities or other assets acquired through merger or consolidation with any other insurer or through a reinsurance agreement, if such assets when originally acquired constituted legal investments for the merged, consolidated or ceding insurer which acquired them, nor shall such provisions apply to securities, obligations or other assets accepted incident to the adjustment or realization of any debt or investment when deemed by the board of directors or investment committee to be in the best interests of the insurer~~, but, subject to the provisions of Sub-section B all such securities, obligations or other assets so acquired or accepted after 12:00 noon of October 1, 1948, which are not in accordance with the provisions of this Subpart shall be disposed of not later than five years after the date of such acquisition or acceptance, or if acquired prior to 12:00 noon of October 1, 1948, not later than five years after such latter date.~~ .

B. The commissioner of insurance, upon application by the insurer, may extend the time for the disposition of such securities, obligations or other assets for such period or periods as he may deem proper on the showing made, if such insurer may suffer materially by the forced sale thereof; and the commissioner of insurance shall grant a hearing to the insurer upon request.

§593. Record of investments

A. As to each investment or loan of the funds of a domestic insurer, a written authorization thereof in permanent form shall be made~~,~~ and signed by the officer or chairman of such committee authorizing the investment or loan.

B. As to each such investment or loan, the insurer's records shall contain:

(1) In the case of loans: ~~The~~ the name of the borrower; the location and legal description of the property; a physical description~~,~~ and the appraised value of the security; and the amount of the loan, rate of interest, and terms of repayment.

(2) In the case of securities: ~~The~~ the name of the obligor~~;~~ and a description of the security, the amount invested, the rate of interest or dividend, and the maturity and yield based upon the purchase price.

(3) In the case of real estate: ~~The~~ the location and legal description of the property; a physical description and the appraised value; and the purchase price and terms.

(4) In the case of all investments:

(a) The amount of expenses estimated, if details are not available and commissions if any are incurred on account of any investment or loan, and by whom and to whom payable if not covered by contracts with mortgage loan representatives or correspondents which are part of the insurer's records~~;~~ .

(b) The name of any officer or director of the insurer having any direct, indirect, or contingent interest in the securities or loan representing the investment, or in the assets of the person in whose behalf the investment or loan is made, and the nature of such interest.

Acts 1958, No. 125; Redesignated from R.S. 22:850 by Acts 2008, No. 415, §1, eff. Jan. 1, 2009.

~~§595. When investments must comply~~

~~The investments in securities and real estate of all domestic insurers shall be made to conform to the requirements of this Subpart by not later than 12:00 noon of October 1, 1953, but the commissioner of insurance may, on application by the insurer, extend the time for such conformance for such period or periods as he may deem proper on the showing made, if he is satisfied that such insurer will suffer materially by the forced sale of any securities or property not conforming; and the commissioner of insurance shall grant a hearing to the insurer upon request.~~

Comment [a8]: The section is no longer relevant.

§596. Acquisition and holding of real property by domestic insurers in foreign countries

A. An insurer authorized to transact insurance in a foreign country may acquire and hold real property such as shall be requisite for the convenient accommodation of the transacting of its own business in any such country

and such property may include additional space to be rented or leased to third parties for the purpose of producing income to help defray the cost of acquisition, construction, and maintenance of the building, as well as a return on the investment in addition to that derived from the company's own use of a portion of the property. The investment in such a building shall not exceed ten ~~per cent~~ percent of the company's assets in such country and must be built from funds arising from the transaction of business in such country.

B. Such property shall be considered as a foreign security within the meaning of R.S. 22:589. The investment in such property shall also be included, together with that of other real estate held under the terms of R.S. 22:588 in determining whether or not there has been compliance with the limit on investments fixed by R.S. 22:588(A)(1).

§598. Admitted assets

For the purposes of this Subpart, the following assets, if owned by ~~an~~ a domestic insurer, shall be known as admitted assets:

(1) Cash in the possession of the insurer or in transit under its control, and including the true balance of any deposit in a solvent bank or trust company.

(2) Investments, securities, properties, and loans acquired, or held, in accordance with this Subpart and in connection therewith the following items:

(a) Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

(b) Declared and unpaid dividends on stock and shares, unless such amount has otherwise been allowed as an asset.

(c) Interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon.

(d) Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets, if such interest is in the judgment of the commissioner a collectible asset.

(e) Interest due or accrued on a mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of twelve months be allowed as an asset.

(f) Rent due or accrued on real property, if such rent is not in arrears for more than three months, and rent more than three months in arrears, if the payment of such rent is adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral.

(g) The unaccrued portion of taxes paid prior to the due date on real property.

(3) Premium notes, except as specifically excluded by R.S. 22:599(7), policy loans and other policy assets and liens on policies and certificates of life insurance and annuity contracts, and accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy.

(4) The net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer.

(5) Premiums in the course of collection, other than for life insurance, not more than three months due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable, directly or indirectly, by the United States government or by any of its instrumentalities.

(6) Installment premiums, other than life insurance premiums, to the extent of the unearned premium reserve carried on the policy to which premiums apply.

(7) Notes and life written obligations not past due taken for premiums, other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon.

(8) The full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under ~~the Louisiana Insurance~~ this Code.

(9) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance agreement.

(10) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the commissioner, available for the payment of losses and claims and at values to be determined by him.

(11) Electronic and mechanical machines constituting a data processing and accounting system, if the cost of such system is at least ten thousand dollars, which costs shall be amortized in full over a period not to exceed ten calendar years. The book value of the apparatus and equipment shall not exceed two percent of the admitted assets of the insurer.

(12) Other assets, not inconsistent with the provisions of this Section, deemed by the commissioner to be available for the payment of losses and claims, at values to be determined by him.

(13) Goodwill purchased by a domestic life insurance company possessing twice the required capital and surplus. Goodwill shall be the same as defined in the Purposes and Procedures Manual of the Securities Valuation Office of the National Association of Insurance Commissioners. Goodwill shall be amortized in accordance with the instructions set forth in the same manual, and amounts in excess of ten percent of an insurer's capital and surplus shall be written off immediately by a direct charge to surplus.

§599. Excluded assets

In addition to assets impliedly excluded by the provisions of R.S. 22:598, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

(1) Goodwill, trade names, and other intangible assets, except as provided for pursuant to R.S. 22:598(13).

(2) Advances to officers, directors, and controlling stockholders, other than policy loans, unless the same are secured by collateral satisfactory to the commissioner, and advances to employees, agents, and other persons on personal security only.

(3) Stock of such insurer owned by it, or any equity therein, or loans secured thereby or any material proportionate interest in such stock acquired, or held, through the ownership by such insurer of an interest in another firm, corporation, or business unit.

(4) Furniture, fixtures, furnishings, safes, vehicles, libraries, stationery, literature, and supplies, except:

(a) Such personal property as is required through foreclosure of chattel mortgages under loans insured or guaranteed under provisions of the National Housing Act or any act of congress relating to veterans benefits.

(b) Such as is reasonably necessary for the maintenance and operation of real estate held by it other than real estate for home office, branch office, and similar purposes.

(c) In the case of title insurers, abstract plant and equipment not to exceed fifty percent of the paid-in capital stock of such title insurer.

(5) The amount, if any, by which the aggregate book value of investments, as carried in the assets of the insurer, exceeds the aggregate value, as determined under the provisions of ~~the Louisiana Insurance~~ this Code.

(6) Rental assets, which for the purposes of this Section shall include but not be limited to the following:

(a) Any item carried as an asset on the insurer's balance sheet which is not, in fact, actually owned by the insurer.

(b) Any item carried as an asset on the insurer's balance sheet, the ownership of which is subject to resolution, recision, or revocation upon the insurer's insolvency, receivership, bankruptcy, statutory supervision, rehabilitation, liquidation, or upon the occurrence of any other contingency.

(c) Any item carried as an asset on the insurer's balance sheet for which the insurer pays a regular or periodic fee for the right to carry such items as an asset, whether or not such fee is characterized as a rental, a management fee, or an extraordinary dividend not previously approved by the commissioner of insurance, or other periodic payment for such right.

(d) Any asset purchased by the insurer on credit whereby the interest rate paid by the insurer on its credit instrument is greater than the interest rate or yield generated by the purchased asset.

(e) Any item carried by the insurer as an asset on its balance sheet which is subject to a mortgage, lien, privilege, preference, pledge, charge, or other encumbrance which is not accurately reflected on the liability section of the company's balance sheet.

(f) Any asset received by the company as a contribution to capital from any affiliate, holding company, or control person, or from any affiliate of any such affiliate, holding company, or control person, which meets any of the criteria set forth in Subparagraphs (a) through (e) of this Paragraph while in the hands of such contributing party, or at the moment of such contribution to capital, or thereafter.

(7) Premium notes on policies and certificates of life insurance and annuity contracts, and accrued interest

thereon, except when the insurer, issuer, or noteholder agrees to an examination by the department to determine whether any inflation or duplication of assets exists.

§601. Insurer investment pools

A. For purposes of this Section:

(1) "Affiliate" means, as to any person, another person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person.

(2) "Business entity" means a corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy, or other similar form of business organization, whether organized for-profit or not-for-profit.

(3) "Class one money market mutual fund" means a money market fund that at all times qualifies for investment using the bond class one reserve factor under the Purposes and Procedures of the Securities Valuation Office of the National Association of Insurance Commissioners, or any successor publication.

(4) "Government money market mutual fund" means a money market mutual fund that complies with all of the following requirements:

(a) Invests only in obligations issued, guaranteed, or insured by the federal government of the United States or collateralized repurchase agreements composed of these obligations.

(b) Qualifies for investment without a reserve under the Purposes and Procedures of the Securities Valuation Office of the National Association of Insurance Commissioners, or any successor publication.

(5) "Money market mutual fund" means a mutual fund that meets the conditions of 17 Code of Federal Regulations Par. 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. 80-a-1 et seq.), as amended or renumbered.

(6) "Obligation" means a bond, note, debenture, trust certificate, including equipment certificate, production payment, negotiable bank certificate of deposit, bankers' acceptance, credit tenant loan, loan secured by financing net leases and other evidence of indebtedness for the payment of money or participations, certificates or other evidences of an interest in any of the foregoing, whether constituting a general obligation of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment.

(7) "Qualified bank" means a national bank, state bank, or trust company that at all times is no less than adequately capitalized as determined by the standards adopted by the United States banking regulators and that is either regulated by state banking laws or is a member of the Federal Reserve System.

(8) "Repurchase transaction" means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand.

(9) "Reverse repurchase transaction" means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand.

(10) "Securities lending transaction" means a transaction in which securities are loaned by an insurer to a business entity that is obligated to return the loaned securities or equivalent securities to the insurer, either within a specified period of time or upon demand.

(11) "SVO" means the Securities Valuation Office of the National Association of Insurance Commissioners.

B. An insurer may acquire investments in investment pools that:

(1) Invest only in the following:

(a) Obligations that are rated one or two by the SVO or have an equivalent of an SVO one or two rating, or in the absence of a one or two rating or equivalent rating the issuer has outstanding obligations with an SVO one or two or equivalent rating, as rated by a nationally recognized statistical rating organization recognized by the SVO and have:

(i) A remaining maturity of three hundred ninety-seven days or less or a put that entitles the holder to receive the principal amount of the obligation which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven days.

(ii) A remaining maturity of three years or less and a floating interest rate that resets no less frequently

than quarterly on the basis of a current short-term index, such as federal funds, prime rate, treasury bills, London InterBank Offered Rate, or commercial paper, and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes.

(b) Government money market mutual funds or class one money market mutual funds.

(c) Securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of R.S. 22:584(I) and 587.

(2) Invest only in investments which an insurer may acquire under this Subpart, if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limit of this Title.

C. For an investment in an investment pool to be qualified under this Subpart, the investment pool shall not:

(1) Acquire securities issued, assumed, guaranteed or insured by the insurer or an affiliate of the insurer.

(2) Borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of this Subpart.

(3) Permit the aggregate value of securities then loaned or sold to, purchased from, or invested in any one business entity under this Section to exceed ten percent of the total assets of the investment pool.

D. The limitations of R.S. 22:584 shall not apply to an insurer's investment in an investment pool, however, an insurer shall not acquire an investment in an investment pool under this Section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this Section:

(1) In any one investment pool would exceed ten percent of its admitted assets.

(2) In all investment pools investing in investments permitted under Paragraph (B)(2) of this Section would exceed twenty-five percent of its admitted assets.

(3) In all investment pools would exceed thirty-five percent of its admitted assets.

E. For an investment in an investment pool to be qualified under this Section, the manager of the investment pool shall:

(1) Be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement.

(2) Be the insurer, an affiliated insurer or a business entity affiliated with the insurer, a qualified bank, a business entity registered under the Investment Advisors Act of 1940 (15 U.S.C. 80A-1 et seq.), as amended or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact, or in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager.

(3) Compile and maintain detailed accounting records setting forth:

(a) The cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool.

(b) A complete description of all underlying assets of the investment pool including amount, interest rate, maturity date, if any, and other appropriate designations.

(c) Other records which, on a daily basis, allow third parties to verify each participant's investment in the investment pool.

(4) Maintain the assets of the investment pool in one or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:

(a) State and recognize the claims and rights of each participant.

(b) Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the investment pool.

(c) Contain an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the custodian qualified bank or any other person.

F. The pooling agreement for each investment pool shall be in writing and shall provide that:

(1) An insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under Paragraph ~~B~~ (B)(1) of this Section, the insurer and its subsidiaries, affiliates, or, in the case of a United States branch of an alien insurer, affiliates or subsidiaries of its United States manager, shall at all times, hold one hundred percent of the interests in the investment pool.

(2) The underlying assets of the investment pool shall not be commingled with the general assets of the

pool manager or any other person.

(3) In proportion to the aggregate amount of each pool participant's interest in the investment pool:

(a) Each participant owns an undivided interest in the underlying assets of the investment pool.

(b) The underlying assets of the investment pool are held solely for the benefit of each participant.

(4) A participant may withdraw all or any portion of its investment from the pool under the terms of the pooling agreement. In the event of the participant's insolvency, bankruptcy or receivership, its trustee, receiver, or other successor-in-interest shall have the authority to withdraw all of the investment from the pool. The investment shall be considered an asset pursuant to R.S. 22:2034.

(5) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter not to exceed five business days. Distributions under this Paragraph shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:

(a) In cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool.

(b) In kind, a pro rata share of each underlying asset.

(c) In a combination of cash and in kind distributions, a pro rata share in each underlying asset.

(6) The pool manager shall make the records of the investment pool available for inspection by the commissioner.

G. The investment pool authorized under this Section shall be a business entity.

H. Transactions between the pool and its participants shall not be subject to R.S. 22:704(A)(6). Investment activities of pools and transactions between pools and participants shall be reported annually in the registration statement required by R.S. 22:703.

SUBPART C. RISK-BASED CAPITAL FOR DOMESTIC INSURERS

§611. Definitions

As used in this Subpart, the following terms shall have the following meanings:

(1) "Adjusted risk-based report" means a risk-based capital report which has been adjusted by the department in accordance with R.S. 22:612(C).

(2) "Corrective order" means an order issued by the department specifying corrective actions which are required.

(3) "Life or health and accident insurer" means any insurance company possessing a certificate of authority in the state that issues the kind of insurance listed in R.S. 22:47(1) or (2) or a property and casualty insurer possessing a certificate of authority in the state that issues only health and accident insurance as specified in R.S. 22:47(2).

(4) "NAIC" means the National Association of Insurance ~~Departments~~ Commissioners.

(5) "Negative trend" shall have that meaning, with respect to a life and/or health insurer, as determined in accordance with the trend test calculation included in the risk-based capital instructions.

(6) "Property and casualty insurer" means any insurance company possessing a certificate of authority in the state that issues insurance other than the kinds specified in R.S. 22:47(1), (2), and (9).

(7) "Risk-based capital instructions" means the risk-based capital report including risk-based capital instructions adopted by the NAIC, as such risk-based capital instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(8) "Risk-based capital level" means an action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital, or mandatory control level risk-based capital of an insurer where:

(a) "Authorized-control level risk-based capital" means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.

(b) "Company-action level risk-based capital" means the product of two multiplied by its authorized control level risk-based capital.

(c) "Mandatory-control level risk-based capital" means seven-tenths multiplied by the authorized control level risk-based capital.

(d) "Regulatory-action level risk-based capital" means one and one-half multiplied by the authorized control level risk-based capital.

(9) "Risk-based capital plan" means a comprehensive financial plan containing the requirements of R.S. 22:613(B). If the department rejects a risk-based capital plan, and it is revised by the insurer, with or without the recommendation of the department, the plan shall be designated a revised risk-based capital plan.

(10) "Risk-based capital report" means the report required pursuant to R.S. 22:612.

(11) "Total adjusted capital" means the sum of:

(a) An insurer's statutory capital and surplus.

(b) Such other items, if any, as required by ~~R.S. 22:611(7)~~ Paragraph (7) of this Section.

§613. Company-action level event

A. "Company-action level event" means any of the following events:

(1) The filing of a risk-based capital report by an insurer that indicates that:

(a) The total adjusted capital of the insurer is greater than or equal to its regulatory-action level risk-based capital, but less than its company-action level risk-based capital.

(b) The life or health and accident insurer maintains a total adjusted capital which is greater than or equal to its company-action level risk-based capital, but less than the product of its authorized-control level risk-based capital and two and one-half but has a negative trend.

(2) The notification of a domestic insurer by the department of an adjusted risk-based capital report which indicates an event under Paragraph ~~B~~ (B)(1) of this Section unless the insurer fails to dispute the adjusted risk-based capital report required by R.S. 22:617.

(3) If a domestic insurer disputes an adjusted risk-based capital report and notification by the department to the insurer that the department has rejected the dispute after an administrative hearing.

B. In the event a company-action event occurs, the insurer shall prepare and submit to the department a risk-based capital plan that shall:

(1) Identify the conditions which contribute to the ~~company action~~ company-action level event.

(2) Contain proposals of corrective actions which the insurer intends and which would be expected to result in the elimination of the company-action level event.

(3) Provide projections of the financial results of the insurer in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, or surplus. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each income, expense, and benefit component.

(4) Identify the key assumptions impacting the projections of the insurer and the sensitivity of the projections to those assumptions.

(5) Identify the quality and problems with the business of the insurer including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mixture of business, and use of reinsurance, if applicable.

C. The risk-based capital plan shall be submitted:

(1) Within forty-five days of the company-action level event.

(2) Within forty-five days after notification to the insurer that the department has rejected the dispute by an insurer after an administrative hearing.

D.(1) Within forty-five days after the submission by an insurer of a risk-based capital plan to the department, the department shall notify the insurer whether the risk-based capital plan shall be implemented or determined to be unsatisfactory by the department.

(2) If the department determines the risk-based capital plan is unsatisfactory, the notification to the insurer shall state the reasons for the unsatisfactory determination and set forth proposed revisions to render the risk-based

capital plan satisfactory.

(3) Upon notification from the department, the insurer shall prepare a revised risk-based capital plan that may incorporate any revisions proposed by the department. The insurer shall submit the revised risk-based capital plan to the department:

(a) Within forty-five days after the notification from the department, unless otherwise disputed by the insurer.

(b) Within forty-five days after a notification to the insurer that the department has rejected the dispute of the insurer after an administrative hearing.

E. In the event of a notification by the department to an insurer that the risk-based capital plan is unsatisfactory, the department may state in the notification that the notification constitutes a regulatory-action level event, unless an administrative hearing is requested under R.S. 22:617.

F.(1) Every domestic insurer that files a risk-based capital plan or revised risk-based capital plan with the department shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance department in any state in which the insurer is authorized to do business if:

(a) The state has a risk-based capital provision substantially similar to R.S. 22:618(A).

(b) The insurance department of that state has notified the insurer of its request for the filing in writing.

(2) The insurer shall file a copy of the risk-based capital plan or revised risk-based capital plan in that state no later than:

(a) Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state.

(b) The date on which the risk-based capital plan or revised risk-based capital plan is filed pursuant to Subsections C and D of this Section.

§615. Authorized-control level event

A. "Authorized-control level event" shall mean any of the following events:

(1) The filing of a risk-based capital report by the insurer which indicates that the total adjusted capital of the insurer is greater than or equal to its mandatory control level risk-based capital but less than its authorized-control level risk-based capital.

(2) The notification by the department to the insurer of an adjusted risk-based capital report that indicates the event in Paragraph (1) of this Subsection, unless the insurer disputes the adjusted risk-based capital report pursuant to R.S. 22:617.

(3) When the insurer challenges an adjusted risk-based capital report that indicates the event in Paragraph (1) of this Subsection, notification by the department to the insurer that the department has rejected the dispute by the insurer.

(4) The failure of the insurer to respond to a corrective order in a manner satisfactory to the department unless the insurer has disputed the corrective order pursuant to R.S. 22:617.

(5) If the insurer has disputed a corrective order pursuant to R.S. 22:617 and the department has rejected the dispute after an administrative hearing or modified the corrective order, the failure of the insurer to respond to the corrective order in a satisfactory manner subsequent to rejection or modification by the department.

B. In the event of an authorized-control level event by an insurer, the department shall:

(1) Take actions required pursuant to R.S. 22:614 against an insurer.

(2)(a) If the department deems it to be in the best interest of the policyholders, creditors of the insurer, and the public, place the insurer under those proceedings provided by R.S. 22:73 and 96, Subpart H of this Part, ~~III of Chapter 2~~, R.S. 22:731 et seq., and Chapter 9 of ~~the Louisiana Insurance~~ this Code~~.~~, R.S. 22:2001 et seq.

(b) In the event the department takes the actions permitted by this Section, the authorized-control level event shall be deemed sufficient grounds for the department to take action as provided by R.S. 22:73 and 96, Subpart H of this Part, ~~III of Chapter 2~~, and Chapter 9 of ~~the Louisiana Insurance~~ this Code and to have the rights, powers, and duties with respect to the insurer as are set forth in R.S. 22:73 and 96, Subpart H of this Part, ~~III of Chapter 2~~, and Chapter 9 of the ~~Louisiana Insurance~~ this Code.

(c) In the event the department takes any action under this Section based on an adjusted risk-based capital report, the insurer shall be entitled to such protection as provided in R.S. 22:73 and 96, Subpart H of this Part, ~~III of~~

~~Chapter 2~~, and Chapter 9 of ~~the Louisiana Insurance~~ this Code.

§616. Mandatory-control level event

A. "Mandatory-control level event" shall mean any of the following events:

(1) The filing of a risk-based capital report which indicates that the total adjusted capital of the insurer is less than the mandatory-control level risk-based capital.

(2) Notification by the department to the insurer of an adjusted risk-based capital report that indicates the event in Paragraph (1) of this Subsection, unless the insurer fails to dispute the adjusted risk-based capital report under R.S. 22:617.

(3) If the insurer disputes an adjusted risk-based capital report that contains the event in Paragraph (1) of this Subsection, notification by the department to the insurer that the department has rejected the dispute by the insurer after an administrative hearing.

B. In the event of a mandatory-control level event:

(1) For any domestic life insurer, the department shall take any actions necessary to place the insurer under regulatory control as provided by R.S. 22:73 and 96, Subpart H of this Part, ~~III of Chapter 2~~, R.S. 22:731 et. seq., and Chapter 9 of ~~the Louisiana Insurance~~ this Code~~.~~, R.S. 22:2001 et seq.. The mandatory-control level event shall be deemed sufficient grounds for the department to place and maintain the rights, powers, and duties with respect to the insurer as are set forth in R.S. 22:73 and 96, Subpart H of this Part, ~~III of Chapter 2,~~ and Chapter 9 of ~~the Louisiana Insurance~~ this Code. If the department takes actions pursuant to an adjusted risk-based capital report, the insurer shall be entitled to the protection of ~~the Louisiana Insurance~~ this Code. The department may forego action for up to ninety days after the mandatory-control level event if the department determines there is a reasonable expectation that the mandatory-control level event may be eliminated within the ninety-day period.

(2)(a) For any domestic property and casualty insurer, the department shall act as necessary to place the insurer under regulatory control as provided by R.S. 22:73 and 96, Subpart H of this Part, ~~III of Chapter 2,~~ and Chapter 9 of ~~the Louisiana Insurance~~ this Code, or, in the case of an insurer which is writing no business and which is running off of its existing business, may allow the insurer to continue its runoff under the administrative supervision of the department.

(b) The mandatory-control level event shall be deemed sufficient grounds for the department to place the insurer and maintain the rights, powers, and duties with respect to the insurer as are set forth in R.S. 22:73 and 96, Subpart H of this Part, ~~III of Chapter 2,~~ and Chapter 9 of ~~the Louisiana Insurance~~ this Code. If the department takes actions pursuant to an adjusted risk-based capital report, the insurer shall be entitled to the protection of ~~the Louisiana Insurance~~ this Code pertaining to summary proceedings.

(c) The department may forego any action for up to ninety days after the mandatory-control level event if the department finds there is a reasonable expectation that the mandatory-control level event may be eliminated within the ninety-day period.

§617. Hearings; administrative

An insurer may make written demand for an administrative hearing, pursuant to the provisions of Chapter 12 of this Title, ~~22 of the Louisiana Revised Statutes of 1950~~, R.S. 22:2191 et seq. within thirty days after receipt of notification by the department of one of the following:

(1) Notification to an insurer by the department of an adjusted risk-based capital report.

(2) Notification to an insurer by the department that:

(a) The insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory.

(b) Such notification constitutes a regulatory-action level event with respect to such insurer.

(3) Notification to an insurer by the department that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the company-action level event with respect to the insurer in accordance with its risk-based capital plan or revised risk-based capital plan.

(4) Notification to an insurer by the department of a corrective order for the insurer.

§618. Confidentiality; prohibition on announcements, prohibition on use in ratemaking

A. All risk-based capital reports, to the extent the information is not set forth in a publicly available annual statement schedule and risk-based capital plans, including the results or report of any examination or analysis of an insurer performed pursuant to any corrective order issued by the department pursuant to examination or analysis, with respect to any domestic insurer or foreign insurer, which are filed with the department, constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential by the department. The information shall not be made public or be subject to civil subpoena, other than by the department and then only for the purpose of enforcement actions taken by the department pursuant to this Subpart or any other provision of ~~the Louisiana Insurance~~ this Code.

B. The total adjusted capital of an insurer to any of its risk-based capital level shall be a regulatory tool which may indicate the need for possible corrective action with respect to the insurer and shall not be intended as a means to rank insurers. The making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any insurer, or any component derived in the calculation by an insurer, agent, broker, or other person engaged in any manner in the insurance business may be misleading and prohibited. Except as otherwise required under the provisions of this Subpart, if any materially false statement about the total adjusted capital of an insurer or inappropriate comparison of any other amount of the risk-based capital level of an insurer is published in any written publication, the insurer, after due proof to the commissioner of insurance, may publish an announcement in any written publication solely to rebut the materially false statement.

C. The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans shall be intended solely for the use by the commissioner in monitoring the solvency of insurers. The need for possible corrective action with respect to insurers shall not be used by the commissioner for ratemaking or consideration or introduction for evidence in any rating procedure and shall not be used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

§619. Supplemental provisions; rules; exemption

A. The provisions of this Subpart are supplemental to any other provision of the laws of this state and shall not preclude or limit any other powers or duties of the department under ~~the Louisiana Insurance~~ this Code.

B. The department may adopt reasonable rules and regulations necessary for the implementation of this Subpart.

C. The department may exempt from the application of this Subpart any domestic property and casualty insurer which:

(1) Writes direct business only in this state.

(2) Writes direct annual premiums of two million dollars or less, and

(3) Assumes no reinsurance in excess of five percent of direct premium written.

§620. Foreign insurers

A.(1) Any foreign insurer shall submit to the department upon written request, a risk-based capital report as of the end of the preceding calendar year but not later than the date a risk-based capital report would be required to be filed by a domestic insurer under this Subpart or fifteen days after the request is received by the foreign insurer.

(2) Any foreign insurer shall promptly submit to the department upon written request, a copy of any risk-based capital report that is filed with the insurance department of any other state.

B. In the event of a company-action level event, regulatory-action level event, or authorized-control level event of any foreign insurer as determined under the risk-based capital statute applicable in the state of domicile of the insurer or, if no risk-based capital statute is in force in that state, under the provisions of this Subpart, if the insurance department of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk-based capital plan in the manner specified under that state's risk-based capital statute or, if no risk-based capital

statute is in force in that state, under R.S. 22:613, the department may require the foreign insurer to file a risk-based capital plan with the department. In such event, the failure of the foreign insurer to file a risk-based capital plan with the department shall be grounds to order the insurer to cease and desist from writing new insurance business in this state.

C. In the event of a mandatory-control level event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the department may make application to the Nineteenth Judicial District Court for and in the parish of East Baton Rouge in accordance with ~~the Louisiana Insurance~~ this Code with respect to the liquidation of property of the foreign insurers located in the state. The occurrence of the mandatory-control level event shall be considered adequate grounds for the application to the court.

PART D. RISK-BASED CAPITAL FOR HEALTH MAINTENANCE ORGANIZATIONS

§631. Definitions

As used in this Subpart, these terms shall have the following meanings:

(1) "Adjusted risk-based capital report" means a risk-based capital report which has been adjusted by the commissioner in accordance with R.S. 22:632(C).

(2) "Commissioner" means the commissioner of insurance.

(3) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

(4) "Health organization" means a health maintenance organization licensed under Subpart I of Part I of this Chapter~~.2 of this Title~~ R.S. 22:241 et seq.

(5) "Risk-based capital instructions" means the risk-based capital report including risk-based capital instructions adopted by the National Association of Insurance Commissioners, as these risk-based capital instructions may be amended by the National Association of Insurance Commissioners from time to time in accordance with the procedures adopted by the National Association of Insurance Commissioners.

(6) "Risk-based capital level" means a health organization's ~~company action~~ company-action level risk-based capital, ~~regulatory action~~ regulatory-action level risk-based capital, ~~authorized control~~ authorized-control level risk-based capital, or ~~mandatory control~~ mandatory-control level risk-based capital where:

~~(a) Effective December 31, 2003:~~

~~(i) "Company action level risk-based capital" means the product of 1.5 and the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.~~

~~(ii) "Regulatory action level risk-based capital" means the product of 1.25 and the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.~~

~~(iii) "Authorized control level risk-based capital" means the product of 1.1 and the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.~~

~~(iv) "Mandatory control level risk-based capital" means the product of .95 and the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.~~

~~(b) Effective December 31, 2004:~~

(a) ~~(i)~~ "~~Company action~~ Company-action level risk-based capital" means the product of ~~2.0~~ two and the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.

(b) ~~(ii)~~ "~~Regulatory action~~ Regulatory-action level risk-based capital" means the product of ~~1.5~~ one and one half and the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.

(c) ~~(iii)~~ "~~Authorized control~~ Authorized-control level risk-based capital" means the product of ~~1.25~~ one and one quarter and the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.

(d) ~~(iv)~~ "~~Mandatory control~~ Mandatory-control level risk-based capital" means the product of ~~.95~~ ninety-five hundredths and the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.

(7) "Risk-based capital plan" means a comprehensive financial plan containing the elements specified in R.S. 22:634(B). If the commissioner rejects the risk-based capital plan and it is revised by the health organization, with or without the commissioner's recommendation, the plan shall be called the "revised risk-based capital plan".

(8) "Risk-based capital report" means the report required in R.S. 22:632.

(9) "Total adjusted capital" means the sum of the following:

(a) A health organization's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under R.S. 22:252.

(b) Such other items, if any, as the risk-based capital instructions may provide.

§634. ~~Company action~~ Company-action level event

A. A "~~company action~~ company-action level event" means any of the following:

(1) The filing of a risk-based capital report by a health organization that indicates that the health organization's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its ~~company action~~ company-action level risk-based capital.

(2) Notification by the commissioner to the health organization of an adjusted risk-based capital report that indicates an event in Paragraph (1) of this Subsection, provided the health organization does not challenge the adjusted risk-based capital report under R.S. 22:638.

(3) If pursuant to R.S. 22:638, a health organization challenges an adjusted risk-based capital report that indicates the event in Paragraph (1) of this Subsection, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

B. In the event of a ~~company action~~ company-action level event, the health organization shall prepare and submit to the commissioner a risk-based capital plan that shall do the following:

(1) Identify the conditions that contribute to the ~~company action~~ company-action level event.

(2) Contain proposals of corrective actions that the health organization intends to take and that would be expected to result in the elimination of the ~~company action~~ company-action level event.

(3) Provide projections of the health organization's financial results in the current year and at least the two succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and risk-based capital levels. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

(4) Identify the key assumptions impacting the health organization's projections and the sensitivity of the projections to the assumptions.

(5) Identify the quality of and problems associated with the health organization's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

C. The risk-based capital plan shall be submitted either:

(1) Within forty-five days of the ~~company action~~ company-action level event.

(2) If the health organization challenges an adjusted risk-based capital report pursuant to R.S. 22:638, within forty-five days after notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

D. Within sixty days after the submission by a health organization of a risk-based capital plan to the commissioner, the commissioner shall notify the health organization whether the risk-based capital plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the risk-based capital plan is unsatisfactory, the notification to the health organization shall set forth the reasons for the determination and may set forth proposed revisions which will render the risk-based capital plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the health organization shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised risk-based capital plan to the commissioner either:

(1) Within forty-five days after the notification from the commissioner.

(2) If the health organization challenges the notification from the commissioner pursuant to R.S. 22:638, within forty-five days after a notification to the health organization that the commissioner has, after a hearing,

rejected the health organization's challenge.

E. In the event of a notification by the commissioner to a health organization that the health organization's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the commissioner may at the commissioner's discretion, subject to the health organization's right to a hearing under R.S. 22:638, specify in the notification that the notification constitutes a regulatory action level event.

§635. ~~Regulatory action~~ Regulatory-action level event

A. "~~Regulatory action~~ Regulatory-action level event" means any of the following events:

(1) The filing of a risk-based capital report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its authorized control level risk-based capital but less than its ~~regulatory action~~ regulatory-action level risk-based capital.

(2) Notification by the commissioner to a health organization of an adjusted risk-based capital report that indicates the event in Paragraph (1) of this Subsection, provided the health organization does not challenge the adjusted risk-based capital report under R.S. 22:638.

(3) If, pursuant to R.S. 22:638, the health organization challenges an adjusted risk-based capital report that indicates the event in Paragraph (1) of this Subsection, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

(4) The failure of the health organization to file a risk-based capital report by the filing date, unless the health organization has provided an explanation for the failure that is satisfactory to the commissioner and has cured the failure within ten days after the filing date.

(5) The failure of the health organization to submit a risk-based capital plan to the commissioner within the time period set forth in R.S. 22:634(C).

(6) Notification by the commissioner to the health organization that both of the following apply:

(a) The risk-based capital plan or revised risk-based capital plan submitted by the health organization is, in the judgment of the commissioner, unsatisfactory.

(b) Notification constitutes a ~~regulatory action~~ regulatory-action level event with respect to the health organization, provided the health organization has not challenged the determination pursuant to R.S. 22:638.

(7) If, pursuant to R.S. 22:638, the health organization challenges a determination by the commissioner pursuant to Paragraph (6) of this Subsection, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the challenge.

(8) Notification by the commissioner to the health organization that the health organization has failed to adhere to its risk-based capital plan or revised risk-based capital plan, but only if the failure has a substantial adverse effect on the ability of the health organization to eliminate the ~~company action~~ company-action level event in accordance with its risk-based capital plan or revised risk-based capital plan and the commissioner has so stated in the notification, provided the health organization has not challenged the determination under R.S. 22:638.

(9) If, pursuant to R.S. 22:638, the health organization challenges a determination by the commissioner under Paragraph (8) of this Subsection, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the challenge.

B. In the event of a ~~regulatory action~~ regulatory-action level event the commissioner shall do the following:

(1) Require the health organization to prepare and submit a risk-based capital plan or, if applicable, a revised risk-based capital plan.

(2) Perform such examination or analysis as the commissioner deems necessary of the assets, liabilities, and operations of the health organization including a review of its risk-based capital plan or revised risk-based capital plan.

(3) Subsequent to the examination or analysis, issue an order specifying such corrective actions as the commissioner shall determine are required.

C. In determining corrective actions, the commissioner may take into account factors the commissioner deems relevant with respect to the health organization based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the health organization, including but not limited to the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised

risk-based capital plan shall be submitted either:

(1) Within forty-five days after the occurrence of the ~~regulatory action~~ regulatory-action level event.

(2) If the health organization challenges an adjusted risk-based capital report pursuant to R.S. 22:638 and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after the notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

(3) If the health organization challenges a revised risk-based capital plan pursuant to R.S. 22:638 and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after the notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

D. The commissioner may retain actuaries, investment experts, and other consultants as may be necessary in the judgment of the commissioner to review the health organization's risk-based capital plan or revised risk-based capital plan, examine or analyze the assets, liabilities, and operations, including contractual relationships of the health organization, and formulate the corrective order with respect to the health organization. The fees, costs, and expenses relating to such consultants shall be borne by the affected health organization or such other party as directed by the commissioner.

§636. ~~Authorized control~~ authorized-control level event

A. "~~Authorized control~~ Authorized-control level event" means any of the following events:

(1) The filing of a risk-based capital report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its ~~mandatory control~~ mandatory-control level risk-based capital but less than its ~~authorized control~~ authorized-control level risk-based capital.

(2) The notification by the commissioner to the health organization of an adjusted risk-based capital report that indicates the event in Paragraph (1) of this Subsection, provided the health organization does not challenge the adjusted risk-based capital report pursuant to R.S. 22:638.

(3) If, pursuant to R.S. 22:638, the health organization challenges an adjusted risk-based capital report that indicates the event in Paragraph (1) of this Subsection, notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

(4) The failure of the health organization to respond, in a manner satisfactory to the commissioner, to a corrective order, provided the health organization has not challenged the corrective order pursuant to R.S. 22:638.

(5) If the health organization has challenged a corrective order pursuant to R.S. 22:638 and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the health organization to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

B. In the event of an ~~authorized control~~ authorized-control level event with respect to a health organization, the commissioner shall do either of the following:

(1) Take such actions as are required under R.S. 22:635 regarding a health organization with respect to which a ~~regulatory action~~ regulatory-action level event has occurred.

(2) If the commissioner deems it to be in the best interests of the policyholders and creditors of the health organization and of the public, take such actions as are necessary to cause the health organization to be placed under regulatory control pursuant to R.S. 22:73 and 96, Subpart H of this Part, ~~III of Chapter 2~~,R.S. 22:731 et seq., and Chapter 9 of this Title R.S. 22:2001 et seq. In the event the commissioner takes such actions, the ~~authorized control~~ authorized-control level event shall be deemed sufficient grounds for the commissioner to take action pursuant to R.S. 22:73 and 96, Subpart H of this Part ~~III of Chapter 2~~, and Chapter 9 of this Title and the commissioner shall have the rights, powers, and duties with respect to the health organization as are set forth in R.S. 22:73 and 96, Subpart H of this Part, ~~III of Chapter 2~~, and Chapter 9 of this Title.

§637. ~~Mandatory control~~ Mandatory-control level event

A. ~~"Mandatory control~~ Mandatory-control level event" means any of the following events:

(1) The filing of a risk-based capital report which indicates that the health organization's total adjusted capital is less than its ~~mandatory control~~ mandatory-control level risk-based capital.

(2) Notification by the commissioner to the health organization of an adjusted risk-based capital report that indicates the event in Paragraph (1) of this Subsection, provided the health organization does not challenge the

adjusted risk-based capital report pursuant to R.S. 22:638.

(3) If, pursuant to R.S. 22:638, the health organization challenges an adjusted risk-based capital report that indicates the event in Paragraph (1) of this Subsection, notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

B. In the event of a ~~mandatory control~~ mandatory-control level event, the commissioner shall take such actions as are necessary to place the health organization under regulatory control pursuant to R.S. 22:73 and 96, Subpart H of this Part, ~~III of Chapter 2,~~R.S. 22:731 et seq., and Chapter 9 of this Title R.S. 22:2001 et seq.. In that event, the ~~mandatory control~~ mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under, and the commissioner shall have the rights, powers, and duties with respect to the health organization as are set forth in R.S. 22:73 and 96, Subpart H of this Part, ~~III of Chapter 2~~, and Chapter 9 of this Title. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety days after the ~~mandatory control~~ mandatory-control level event if the commissioner finds there is a reasonable expectation that the ~~mandatory control~~ mandatory-control level event may be eliminated within the ninety-day period.

§638. Hearings

Upon the occurrence of any of the following events, the health organization shall have the right to a confidential departmental hearing, on a record, at which the health organization may challenge any determination or action by the commissioner. The health organization shall notify the commissioner of its request for a hearing within five days after the notification by the commissioner under Paragraph (1), (2), (3), or (4) of this Section. Upon receipt of the health organization's request for a hearing, the commissioner shall set a date for the hearing, which shall be no less than ten nor more than thirty days after the date of the health organization's request. The events include:

(1) Notification to a health organization by the commissioner of an adjusted risk-based capital report.

(2) Notification to a health organization by the commissioner that both of the following apply:

(a) The health organization's risk-based capital plan or revised risk-based capital plan is unsatisfactory.

(b) Notification constitutes a ~~regulatory action~~ regulatory-action level event with respect to the health organization.

(3) Notification to a health organization by the commissioner that the health organization has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has a substantial adverse effect on the ability of the health organization to eliminate the ~~company action~~ company-action level event with respect to the health organization in accordance with its risk-based capital plan or revised risk-based capital plan.

(4) Notification to a health organization by the commissioner of a corrective order with respect to the health organization.

SUBPART E. REINSURANCE

§651. Reinsurance credits

A. Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or deduction from liability when the assuming insurer satisfies the requirements of Subsection B, C, D, or E of this Section. If the requirements of Subsection D are satisfied, the requirements of Subsection F of this Section shall also be satisfied.

B. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is authorized in this state. An authorized insurer is one which holds a certificate of authority to transact insurance or reinsurance.

C. Credit shall also be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer shall be approved by the Department of Insurance after filing an application for accreditation, and:

(1) Filing with the Department of Insurance evidence of its submission to the jurisdiction of this state, and as may be set forth by the department in regulations.

(2) Submission of the reinsurer to the authority of the Department of Insurance to examine books and records of the reinsurer.

(3) Demonstration by the reinsurer that the reinsurer is licensed or authorized to transact insurance or reinsurance in, or in the case of a United States branch of an alien assuming insurer, is entered through, at least one

state which employs standards regarding credit for reinsurance equal to or exceeding those applicable under this Subpart.

(4) Annual filing with the Department of Insurance a true copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement.

D.(1)(a) Credit shall also be allowed under ~~Subparagraph~~ Paragraph (2) of this Subsection when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in R.S. 22:653(B), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report and submit annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners (NAIC) annual statement form by authorized insurers to enable the commissioner to determine the sufficiency of the trust fund.

(b) Any credit for reinsurance shall not be granted under ~~Subparagraph~~ Paragraph (2) of this Subsection unless the form of the trust and amendments to the trust have been approved by the Department of Insurance. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States ceding insurers, their assigns, and successors in interest. The trust shall be subject to examination as determined by the department. The trust described herein shall remain in existence for as long as the assuming insurer shall have obligations due under the reinsurance agreements subject to the trust.

(c) Not later than the twenty-eighth day of each February, the trustees of the trust established under ~~Subparagraph~~ Paragraph (2) of this Subsection shall provide a written report to the department setting forth the balance of the trust and listing the investments of the trust of the preceding calendar year, and shall certify the date of termination of the trust, if so planned, or shall certify that the trust shall not expire prior to the succeeding December thirty-first.

(2)(a) In the case of a single assuming insurer, the trust shall consist of a trusteed account in an amount not less than the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars.

(b) In the case of a group of insurers that include individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by its domiciliary regulator and its independent public accountants.

(c) In the case of a group of incorporated insurers under common administration, the group shall:

(i) Submit to this state's authority to examine its books and records and bear the expense of the examination.

(ii) Maintain aggregate policyholders' surplus of ten billion dollars.

(iii) Maintain a trust consisting of a trusteed account in an amount not less than the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group.

(iv) In addition, maintain a joint trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of the United States ceding insurers of any member of the group as additional security for these liabilities.

(v) Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group audited by independent public accountants.

E. Any credit for reinsurance shall also be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of Subsection B, C, or D of this Section, only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law of that jurisdiction.

F. If the assuming insurer is not authorized or accredited to transact insurance or reinsurance in this state, credit permitted by Subsection D shall not be allowed unless:

(1) The assuming insurer provides the following in all reinsurance agreements:

(a) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, comply with all requirements necessary to give such court jurisdiction, and abide by the final decision of the district court or appellate court.

(b) To designate the commissioner as its true and lawful attorney, who may be served any lawful service of process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

(c) The provisions of Subparagraphs (a) and (b) of this Paragraph shall not be construed to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the reinsurance agreement.

(2) The assuming insurer files with the department a list identifying its officers and directors, or similar principals, along with biographical information for each and provides an annual update of this information.

(3) The assuming insurer agrees to allow the department to examine its books and records and to waive any protection it has under any secrecy laws of its domiciliary jurisdiction of the reinsurer, except that any examination shall only take place upon showing of good cause by the department for concern about the financial soundness or solvency of the subject entity.

G. The ceding insurer may take credit for the reserves on such ceded risks to the extent reinsured, except that:

(1) No credit shall be taken for such reserves unless the insurer accepting the reinsurance meets the requirements set forth in this Section as valid assuming insurers.

(2) No credit shall be allowed to any ceding insurer for reinsurance, as an admitted asset or as a deduction from liability, unless the reinsurance shall be payable, in the event of insolvency of the ceding insurer, to its liquidator or receiver on the basis of the claim or claims allowed against the insolvent ceding insurer by any court of competent jurisdiction or any justice or judge thereof, or by any receiver or liquidator having authority to determine and allow such claims, except either where the reinsurance contract with the consent of the direct insured or insureds specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer, or when the assuming insurer with the consent of the direct insured or insureds has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.

(3) No credit for reinsurance shall be permitted unless the assuming insurer has been doing business in its country of domicile for at least three years, or is an affiliate of an insurer or reinsurer which has been doing business in its country of domicile for at least three years, unless the department, for good cause shown, waives this three-year operating requirement by rule or regulation.

§654. Calculation of reinsurance credits

A. For the purpose of determining the financial condition of a ceding insurer, only if such reinsurance is effected by the ceding insurer in any assuming insurer authorized to do such business in this state, the ceding insurer shall, in addition to any credit allowed against its loss reserves, receive credit for such reinsurance calculated in the following manner:

(1) In the case of reinsurance of the whole or any part of any risk other than as specified in Paragraph (2) ~~following,~~ of this Subsection, the ceding insurer shall receive credit for such reinsurance by way of deduction from its unearned premium liability calculated in accordance with the provisions of Subpart B of Part IV of this Chapter~~,~~ ~~2 of this Title~~ R.S. 22:761 et seq.

(2) In the case of reinsurance of the whole or any part of any life insurance or annuity or noncancellable disability risk, the ceding insurer shall receive credit, by way of deduction from its reserve liability, in an amount not exceeding the amount of the reserve on the reinsured portion of such risk which the ceding insurer would have maintained if such portion had not been reinsured.

B. For the purpose of determining the financial condition of any assuming insurer, the assuming insurer shall be charged with an amount in its unearned premium liability equal to the amount of the deduction specified in Paragraph (1) of Subsection A of this Section and in its valuation reserve liability with an amount at least equal to the amount which it would be required to maintain in accordance with the provisions of this Subpart if it were the

direct insurer of such assumed risks on the basis specified in the reinsurance agreement.

§661. Authorization; hearings on violations

A. The commissioner may adopt, pursuant to the provisions of the Administrative Procedure Act, rules and regulations to implement any provision of this Subpart.

B. The commissioner may conduct hearings in accordance with Chapter 12 of this Title, R.S. 22:2191 et seq., on any matters arising out of the application or violation of the provisions of this Subpart or any rules and regulations promulgated pursuant thereto.

SUBPART F. AUDITED FINANCIAL REPORTING

§672. Purpose and scope

The purpose of this Subpart is to improve the commissioner's surveillance of the financial condition of insurers by requiring an annual ~~examination~~ audit by independent certified public accountants of the financial statements reporting the financial condition and the results of operations of insurers.

§673. Audited financial report

By June first of each year, every admitted insurer in the state shall file an annual financial report for the immediately preceding year ending December thirty-first, audited by a certified public accountant as required by the National Association of Insurance Commissioners, as ~~evidenced~~ required by its annual statement instruction handbook. The commissioner may determine and require that additional information be submitted in the annual financial report.

§674. Exemptions and filing dates

A.(1) The commissioner shall grant an exemption from the provisions of this Subpart if:

(a) After written application for an exemption submitted by an insurer, the commissioner determines that compliance with this Subpart would constitute a financial or organizational hardship on the insurer; or

(b) The insurer is a domestic life insurer which does business exclusively in the state of Louisiana, with gross annual premiums totaling twenty million dollars or less and has entered into reinsurance agreements having a net aggregate amount of five million dollars or less and has admitted assets of less than twenty-five million dollars. No domestic life insurer under this Subsection that fails to satisfy the financial solvency requirements promulgated by the Department of Insurance shall be exempt from the provisions of this Subpart, including the submission of annual audited financial statements.

(2) An exemption may be granted, in writing, at any time and from time to time for a specified period or periods.

(3) Within ten days after a denial of the written request for an exemption from this Subpart, the insurer may request, in writing, a hearing on its application for an exemption. The hearing shall be held in accordance with Chapter 12 of ~~the Louisiana Insurance~~ this Code, R.S. 22:2191 et seq.

(4) Notwithstanding any provision to the contrary, any domestic insurer that is licensed to write business only in the state of Louisiana may make written application to the commissioner for a waiver from the requirements of this Subsection.

B. Upon written application of an insurer, the commissioner may permit an insurer to file ~~annual~~ audited financial reports for specified periods on another basis other than a calendar year basis. Within ten days from a denial of such a written request, the insurer may request, in writing, a hearing on its application. The hearing shall be held in accordance with Chapter 12 of ~~the Louisiana Insurance~~ this Code.

SUBPART G. INSURANCE HOLDING COMPANY REQUIREMENTS

§693. Subsidiaries of insurers

A. Authorization. Any domestic insurer, as defined in R.S. 22:46(3), either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries. Such subsidiaries may conduct any kind of business or businesses, and their authority to do so will not be limited by reason of the fact that they are subsidiaries of a domestic insurer.

B. Additional investment authority. In addition to investments in common stock, preferred stock, debt obligations, and securities permitted under all other Sections of this Code, a domestic insurer may also:

(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed, for such additional investments, the lesser of either ten percent of such insurer's assets or fifty percent of such insurer's surplus as regards policyholders, provided that after such investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:

(a) Total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and

(b) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.

(2) Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer, provided that each subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in ~~Subsection B~~ Paragraph (1) of this ~~Section~~ Subsection or any other limitations set forth in this Code applicable to the insurer. For the ~~purpose~~ purposes of this Section, "the total investment of the insurer" shall include:

(a) Any direct investment by the insurer in an asset, and

(b) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such subsidiary.

(3) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after such investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

C. Exemption from investment restrictions. Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to Subsection B of this Section shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this Code applicable to such investments of insurers.

D. Qualification of investment; when determined. Whether any investment pursuant to Subsection B of this Section meets the applicable requirements thereof is to be determined before such investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

E. Cessation of control. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this Section within three years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless, at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other Section of this Code, and the insurer has notified the commissioner thereof.

§694. Acquisition of control of or merger with domestic insurer

A. Filing requirements. No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities or, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, a statement containing the information required by this Section, and such offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

(1) For the purposes of this Section a "domestic insurer" shall include any person controlling a domestic insurer unless such person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(2) For purposes of this Section, "person" shall not include any securities broker holding, in the usual and customary brokers function, less than twenty percent of the voting securities of an insurance company or of any person which controls an insurance company.

B. Content of statement. The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in Subsection A of this Section is to be effected, hereinafter called "acquiring party":

(a) If such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction, of crimes other than minor traffic violations during the past ten years.

(b) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by Subparagraph (1)(a) of this Subsection.

(2) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been required by law to have such audited financial information, and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement.

(4) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets, or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(5) The number of shares of any security referred to in Subsection A of this Section which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection A of this Section, and a statement as to the method by which the fairness of the proposal was arrived at.

(6) The amount of each class of any security referred to in Subsection A of this Section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in Subsection A of this Section in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans,

guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.

(8) A description of the purchase of any security referred to in Subsection A of this Section during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(9) A description of any recommendations to purchase any security referred to in Subsection A of this Section made during the twelve calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(10) Copies of all tender offers for requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection A of this Section, and, if distributed, of additional soliciting material relating thereto.

(11) The term of any agreement, contract, or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in Subsection A of this Section for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto.

(12) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

(13) If the person required to file the statement referred to in Subsection A of this Section is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by Paragraphs (1) through (12) of this Subsection shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation, or the person required to file the statement referred to in Subsection A is a corporation, the commissioner may require that the information called for by Paragraphs (1) through (12) of this Subsection shall be given with respect to such corporation, each officer, and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of such corporation.

(14) If any material changes occur in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this Section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change.

C. Alternative filing materials. If any offer, request, invitation, agreement, or acquisition referred to in Subsection A of this Section is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in Subsection A of this Section may utilize such documents in furnishing the information called for by that statement.

D. Approval by commissioner; hearings.

(1) The commissioner shall approve any merger or other acquisition of control referred to in Subsection A of this Section unless, after a public hearing held pursuant to the provisions of Chapter 12 of this Title, ~~22 of the Louisiana Revised Statutes of 1950~~, R.S. 22:2191 et seq. he finds that:

(a) After the change of control, the domestic insurer referred to in Subsection A of this Section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.

(b) The effect of the merger or other acquisition of control would be to substantially lessen competition in insurance in this state or tend to create a monopoly therein.

(c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders.

(d) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest.

(e) The competence, experience, and integrity of those persons who would control the operation of the

insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(f) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

(2) The public hearing referred to in Paragraph (D)(1) of this Subsection shall be held within thirty days after the statement required by Subsection A of this Section is filed, and at least twenty days notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven days notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within thirty days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross examine witnesses, and offer oral and written arguments, and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district courts of this state. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

(3) The commissioner may retain at the acquiring person's expense, such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control. However, if these expenses exceed three thousand dollars, all work of these experts is subject to review, and such experts must prepare a projection of the amount of time and expenses necessary to complete the examination. If the projected amount of time and expenses required to complete the examination appear excessive, the acquiring person may request that a limit be placed on the expenses of the experts.

E. Exemptions. The provisions of this Section shall not apply to any offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as:

(1) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer.

(2) Not comprehended within the purposes of this Section.

F. Violations. The following shall be violations of this Section:

(1) The failure to file any statement, amendment, or other material required to be filed pursuant to the provisions of Subsections A or B of this Section; or

(2) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval.

G. Jurisdiction; consent to service of process. The courts or this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this Section, and over all actions involving such person arising out of violations of this Section. Each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of the violations of this Section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

§696. Incorporation of a mutual insurance holding company

A. A mutual insurance holding company or an intermediate holding company resulting from the reorganization of a domestic mutual insurance company under R.S. 22:231 shall be incorporated pursuant to Title 12 of the Louisiana Revised Statutes of 1950, the Louisiana Business Corporation Law, R.S. 12:1 through 178, and shall be subject to its provisions and other provisions of Title 12 relative to business corporations, except that:

(1) The articles of incorporation and any amendments thereto shall be prepared in accordance with R.S. 22:62 or 67 and shall be subject to prior approval of the commissioner in the same manner as those of a domestic incorporated insurer.

(2) The articles shall be recorded and filed with the secretary of state in the same manner as the articles of a domestic incorporated insurer under R.S. 22:64.

B. The commissioner shall retain jurisdiction over a mutual insurance holding company and an intermediate holding company established pursuant to R.S. 22:231 to protect policyholders' interests, and the mutual insurance holding company shall be subject to the requirements of this Subpart and the Insurance Holding Company System Regulatory Law, R.S. 22:691 et seq., to the same extent as any domestic insurer.

C. Any investments of the mutual insurance holding company, other than its investments in the intermediate holding company or the insurance company reorganized under R.S. 22:231, shall be subject to the limitations of Subpart B of this Part ~~III of Chapter 2 of this Title~~ as if the mutual insurance holding company were a domestic insurer. A mutual insurance holding company and an intermediate holding company organized under this Section shall be deemed an insurer that pays a license tax under Parts I and III of Chapter 3 of this Title, R.S. 22:791 et seq. and R.S. 22:821 et seq., and R.S. 22:831 through 838 and 842 through 846 for the purposes of R.S. 22:791.

D. Notwithstanding anything in the Louisiana Business Corporation Law, R.S. 12:1 through 178, meetings of the mutual insurance holding company and the exercise of a member's voting rights shall be governed by R.S. 22:119 through 121 and a written proxy conferred upon another policyholder either prior to, contemporaneously with, or after a reorganization under R.S. 22:231, shall remain in force indefinitely until revoked by the member.

E. Neither the mutual insurance holding company nor any intermediate holding company shall hold a certificate of authority or engage in the business of insurance.

§699. Insurer's rehabilitation and liquidation

A mutual insurance holding company established pursuant to R.S. 22:231 is deemed to be an insurer subject to R.S. 22:73 and 96, Subpart H of this Part, ~~III of Chapter 2~~, R.S. 22:731 et seq., and Chapter 9 of this Title, R.S. 22:2001 et seq., and shall automatically be a party to any proceeding under that Part involving an insurance company which, as a result of a reorganization pursuant to R.S. 22:231, is a subsidiary of the mutual insurance holding company or an intermediate holding company. In any proceeding under R.S. 22:73 and 96, Subpart H of this Part, ~~III of Chapter 2~~, and Chapter 9 of this Title involving an insurance company reorganized under R.S. 22:231, the assets of the mutual insurance holding company are deemed to be assets of the estate of the reorganized insurance company for purposes of satisfying the claims of the reorganized insurance company's policyholders. A mutual insurance holding company shall not dissolve or liquidate without the approval of the commissioner or as ordered by the district court pursuant to R.S. 22:73 and 96, Subpart H of this Part, ~~III of Chapter 2~~, and Chapter 9 of this Title.

§701. Sale of stock

An intermediate holding company established and an insurance company reorganized pursuant to R.S. 22:231 may issue stock to any persons legally permitted to own stock, provided that the mutual insurance holding company at all times owns either directly or indirectly a majority of the voting shares of the capital stock of the reorganized insurance company as required by R.S. 22:698. Except with respect to stock issued directly or indirectly for ownership by the ~~Mutual Insurance Holding Company~~ mutual insurance holding company, the reorganized insurance company or the intermediate holding company shall, prior to the initial issuance of stock, obtain a fairness opinion with respect to the value of the stock to be issued from an investment banking organization with experience and established credentials in the evaluation of insurance organizations. No solicitation for the sale of the stock of an insurance company reorganized under R.S. 22:231 or the intermediate holding company established under R.S. 22:231 may be made except in accordance with the provisions of R.S. 22:88.

§703. Registration of insurers

A. Registration.

(1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:

(a) This Section.

(b) R.S. 22:704(A)~~, R.S. 22:704~~ and (B).

(c) A provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each such change or addition.

(2)(a) Any insurer which is subject to registration under this Section shall register within ninety days after it becomes subject to registration, and annually thereafter by April thirtieth of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within such extended time.

(b) The commissioner may require any insurer authorized to do business in the state which is a member of a holding company system, and which is not subject to registration under this Section, to furnish a copy of the registration statement, the summary specified in Subsection C of this Section or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

B. Information and form required. Every insurer subject to registration shall file the registration statement on a form prescribed by the commissioner which shall contain the following current information:

(1) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer.

(2) The identity and relationship of every member of the insurance holding company system.

(3) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(a) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.

(b) Purchases, sales, or exchange of assets.

(c) Transactions not in the ordinary course of business.

(d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.

(e) All management agreements, service contracts, and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles.

(f) Reinsurance agreements.

(g) Dividends and other distributions to shareholders.

(h) Consolidated tax allocation agreements.

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the holding company system.

C. Summary of registration statement. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

D. Materiality. No information need be disclosed on the registration statement filed pursuant to Subsection B of this Section if such information is not material for the purposes of this Section. Unless the commissioner by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, investments, or guarantees involving one-half of one percent or less of admitted assets of the insurer as of the thirty-first day of December next preceding shall not be deemed material for purposes of this Section.

E. Reporting of dividends to shareholders. Subject to R.S. 22:704(B), each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen business days following the declaration thereof.

F. Information of insurers. Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where such information is reasonably necessary to enable the insurer to comply with the provisions of this Subpart.

G. Termination of registration. The commissioner shall terminate the registration of any insurer which demonstrates it no longer is a member of an insurance holding company system.

H. Consolidated filing. The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement.

I. Alternative registration. The commissioner may allow an insurer which is authorized to do business in

this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under Subsection A of this Section and to file all information and material required under this Section.

J. Exemptions

(1) The provisions of this Section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this Section.

(2) Unless it appears in the discretion of the commissioner that the condition of a small company renders the continuance of its business hazardous to the public or its insureds, a small company shall not be required to submit to the department a registration statement required by this Section, but shall be considered a registered insurer for the purposes of the following:

(a) Subsection E of this Section.

(b) R.S. 22:704(A).

(c) R.S. 22:705.

K. Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer, or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this Section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

L. Violations. The failure to file a registration statement or any summary of the registration statement required by this Section within the time specified for such filing shall be a violation of this Section.

M. Incorporation by reference. (1) Any information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference, provided the document is filed as an exhibit to the registration statement. Any excerpt of a document may be filed as an exhibit if the document is extensive. Any documents currently on file with the commissioner which were filed within three years need not be attached as exhibits, but shall be referred to if not so attached. All references to information contained in exhibits or in documents duly filed shall clearly identify the material and specifically indicate that the material is to be incorporated by reference to the item. No materials shall be incorporated by reference in any instance that the incorporation would render the statement incomplete, unclear, or confusing.

(2) If a filing requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the brief statement, the summary or outline may incorporate, by reference, particular parts of any exhibit or document currently on file with the commissioner which was filed within three years and may be included in its entirety by the reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties, the dates of execution, or other details, a copy of one of the documents shall be filed with a schedule identifying the omitted documents and setting forth the material details in which such documents differ from the documents filed.

§704. Standards and management of an insurer within a holding company system

A. Transactions within a holding company system. Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(1) The terms shall be fair and reasonable.

(2) Charges or fees for services performed shall be reasonable.

(3) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(4) The books, accounts, and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.

(5) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(6) The following transactions, involving a domestic insurer and any person in its holding company system, shall not be entered into unless the insurer has notified the commissioner, in writing, of its intention to enter into such transaction at least thirty days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved the transaction within such period:

(a) Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments provided such transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of three percent of the admitted assets of the insurer or twenty-five percent of surplus as regards policyholders;

(ii) With respect to life insurers, three percent of the admitted assets of the insurer;

each as of the thirty-first day of December next preceding.

(b) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, provided such transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of three percent of the admitted assets of the insurer or twenty-five percent of surplus as regards policyholders;

(ii) With respect to life insurers, three percent of the admitted assets of the insurer;

each as of the thirty-first day of December next preceding.

(c) All reinsurance agreements, or modifications thereto, in which the reinsurance premium, or a change in the liabilities of the insurer, equals or exceeds five percent of the surplus of the insurer as regards policyholders, as of the thirty-first day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer.

(d) All management agreements, service contracts, and all cost-sharing arrangements, other than cost-sharing arrangements based upon generally accepted accounting principles.

(e) Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the policyholders of the insurer.

(7) A domestic insurer shall not enter into transactions, which are part of a plan or series of similar transactions, with persons within the holding company system, if the purpose of the separate transactions is the avoidance of the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that the separate transactions were entered into over any twelve-month period for such purpose, he may exercise his authority under R.S. 22:709.

(8) The commissioner, in reviewing transactions pursuant to Paragraph (6) of this Subsection shall consider whether the transactions comply with the standards set forth in Paragraphs (1) through (5) of this Subsection and whether they may adversely affect the interest of policyholders.

(9) The commissioner shall be notified, within thirty days, of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds ten percent of the voting securities of the corporation.

B. Dividends and other distributions.

(1) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(a) Thirty days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment.

(b) The commissioner shall have approved such payment within such thirty-day period.

(2)(a) For purposes of this Section, ~~until~~ effective October 30, 1993, an extraordinary dividend or distribution shall include any dividend or distribution of cash or other property, whose fair market value, together with that of other dividends or distributions made within the preceding twelve months, exceeds the ~~greater~~ lesser of:

(i) Ten percent of the surplus of the insurer as regards policyholders as of the thirty-first day of December

next preceding; or

(ii) The net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the thirty-first day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(b) In determining whether a dividend or distribution is extraordinary, an insurer, other than a life insurer, may carry forward net income from the previous two calendar years that has not already been paid out as dividends. The carry forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years. ~~Effective October 30, 1993, any extraordinary dividend or distribution shall include any dividend or distribution of cash or other property whose fair market value, together with that of other dividends or distributions made within the preceding twelve months, exceeds the lesser of (i) or (ii) of Subparagraph (a).~~

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until:

(a) The commissioner has approved the payment of such a dividend or distribution.

(b) The commissioner has not disapproved such payment within the thirty-day period referred to above.

C. Adequacy of surplus. For purposes of this Subpart, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.

(2) The extent to which the insurer's business is diversified among the several lines of insurance.

(3) The number and size of risks insured in each line of business.

(4) The extent of the geographical dispersion of the insurer's insured risks.

(5) The nature and extent of the insurer's reinsurance program.

(6) The quality, diversification, and liquidity of the insurer's investment portfolio.

(7) The recent past and projected future trend in the size of the insurer's investment portfolio.

(8) The surplus as regards policyholders maintained by other comparable insurers.

(9) The adequacy of the insurer's reserves.

(10) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

§709. Sanctions

A. Any insurer failing, without just cause, to file a registration statement as required in this Subpart shall be required, after notice and hearing, to pay a penalty of one hundred dollars for each day's delay, to be recovered by the commissioner, and the penalty so recovered shall be paid into the general revenue fund of this state. The maximum penalty under this Section shall be ten thousand dollars. The commissioner may reduce the penalty if the insurer demonstrates that the imposition of the penalty would constitute a financial hardship to the insurer.

B. (1) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly permits any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or which violate this Subpart, shall pay, in their individual capacities, a civil forfeiture of not more than one thousand dollars per violation, after notice and hearing before the commissioner.

(2) In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

C. Whenever it appears to the commissioner that any insurer subject to this Subpart or any director, officer, employee, or agent thereof has engaged in any transaction or entered into a contract which violates this Subpart, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or

contract. After notice and hearing, the commissioner may also, order the insurer to void any such contracts and restore the status quo if such action is in the best interest of the policyholders, creditors, or the public.

D. Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of his duties under this Subpart, upon conviction thereof shall be imprisoned with or without hard labor for not more than five years or fined not more than fifty thousand dollars or both. Any fines imposed shall be paid by the officer, director, or employee in his individual capacity.

§710. Receivership

Whenever it appears to the commissioner that any person has committed a violation of this Subpart which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the commissioner may proceed as provided in R.S. 22:73 and 96, Subpart H of this Part, ~~III of Chapter 2~~, R.S. 22:731 et seq., and Chapter 9 all of this Title~~.~~, R.S. 22:2001 et seq.

§714. Substitution of policies; charge by lender prohibited; penalty

A. It shall be unlawful for any person, firm, or corporation engaged in financing the purchase of real or personal property, or of lending money on the security of real or personal property, or for any trustee, director, officer, agent, or other employee of any such person, firm or corporation, to require, directly or indirectly, that a borrower, or any other person, in obtaining insurance coverage on the property, pay a service charge or fee of any kind to substitute the insurance policy of one insurance company for that of another.

B. Any violation of any of the provisions of this Section by any person, firm, or corporation is declared to be a misdemeanor and is punishable by a fine of not less than one hundred dollars or more than five hundred dollars, or imprisonment for not less than sixty days or more than one year, or both fine and imprisonment, for each offense, in the discretion of the court.

§715. Ownership of domestic stock insurance company equity securities; filing of statements

Every person who is directly or indirectly the beneficial owner of more than ten ~~per cent~~ percent of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the commissioner of insurance~~, on or before the first day of July, 1966, or~~ within ten days after he becomes such beneficial owner, director or officer, a statement, in such form as the commissioner of insurance may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the commissioner of insurance a statement, in such form as the commissioner of insurance may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

§722. Securities exempt

The provisions of R.S. 22:715 through 717 shall not apply to such equity securities of a domestic stock insurance company if either of the following apply: ~~(a) such~~ (1) Such securities shall be registered~~,~~ or shall be required to be registered~~,~~ pursuant to Section 12 of the Securities Exchange Act of 1934, as amended~~, or if~~.

~~(b) such~~ (2) Such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of R.S. 22:715 through 717 except for the provisions of this ~~subsection~~ Paragraph. ~~(b)~~.

§723. Rules and regulations

The ~~Commissioner~~ commissioner of ~~Insurance~~ insurance shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in him by R.S. 22:49, 715 through 720, 722, and 723, and may for such purpose classify domestic stock insurance companies, securities, and other persons

or matters within his jurisdiction. No provision of R.S. 22:715 through 22:717 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the ~~Commissioner~~ commissioner of ~~Insurance~~ insurance, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

~~§724. Written catastrophe response plans~~

~~Every insurer writing any form of commercial or residential property insurance, automobile insurance, marine, or inland marine insurance or writing life or health and accident insurance shall maintain a written catastrophe response plan or plan that describes how the insurer will respond to a catastrophe affecting its policyholders. Additionally, each health maintenance organization, managing general agent, and third-party administrator shall maintain a written catastrophe response plan or plan that describes how it will respond to a catastrophe affecting its business operations. During an examination required by R.S. 22:1981, or at such other time as the commissioner deems appropriate, he shall review the written catastrophe response plan of each insurer, health maintenance organization, managing general agent, and third-party administrator, the insurance written, and the response plan most appropriate for the type of insureds or business operations at issue. The written catastrophe response plan of each insurer, health maintenance organization, managing general agent, and third-party administrator shall be deemed to be confidential, proprietary information subject to the protections of the Uniform Trade Secrets Act, pursuant to Chapter 13-A of Title 51 of the Louisiana Revised Statutes of 1950, shall not be subject to the public records disclosures of R.S. 44:1, and shall not be made public by the commissioner.~~

Comment [a9]: This section was moved to Section 572.

SUBPART H. ADMINISTRATIVE SUPERVISION

§731. Administrative supervision; commissioner

A. An insurer shall be subject to administrative supervision by the commissioner if upon examination or at any other time it appears in the discretion of the commissioner that:

(1) The condition of the insurer renders the continuance of its business hazardous to the public or its insureds.

(2) The insurer appears to have exceeded its powers granted under its certificate of authority and any applicable law.

(3) The insurer has failed to comply with the applicable provisions of ~~the Louisiana Insurance~~ this Code.

(4) The business of the insurer is being conducted fraudulently.

(5) The insurer grants its consent.

B. If the commissioner determines that any of the conditions set forth in Subsection A of this Section exist, the commissioner shall:

(1) Notify the insurer of his determination.

(2) Furnish to the insurer a written list of the requirements to abate this determination.

(3) Notify the insurer that it is under administrative supervision in accordance with the provisions of R.S. 22:731 through 736. This determination by the commissioner shall be subject to review in accordance with the Administrative Procedure Act.

C. If placed under administrative supervision, the insurer shall within sixty days, or within another period not to exceed one hundred twenty days prescribed by the commissioner, comply with the requirements directed by the commissioner pursuant to the provisions of R.S. 22:731 through 736.

D. If the commissioner determines after due notice and proper hearing that the conditions which precipitated the administrative supervision still exist, he may extend the period of supervision.

E. If the commissioner determines that none of these conditions still exist, the commissioner shall release the insurer from supervision.

PART IV. RESERVES

SUBPART A. LIFE INSURANCE RESERVES

§751. Commissioner of insurance to make valuation

A.(1)(a) The commissioner shall annually value, or cause to be valued, the reserve liabilities, hereinafter called "reserves", for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state. The commissioner shall certify the amount of any such reserves.

(b) In calculating such reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise.

(2)(a) Every foreign life insurance company or fraternal order shall either:

(i) Submit a valuation certificate from their domiciliary state before August first of the year following the year of valuation.

(ii) Be valued by the commissioner at the expense of the company.

(b) The commissioner shall require such documents and studies as he deems necessary in order to accomplish this valuation. In lieu of the valuation of the reserves herein required of any foreign or alien company, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if such official accepts as sufficient and for all valid legal purposes, the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

(3) The commissioner may adopt rules and regulations to implement the provisions of this Subsection, pursuant to the Administrative Procedure Act.

B. The legal minimum standard for such valuation of policies, including industrial life insurance policies, shall be the American Experience Table of Mortality with interest at four percent per annum, except that group insurance policies under which premium rates are not guaranteed for a period in excess of five years shall be valued on the American Men Ultimate Table of Mortality with interest at three and one-half percent per annum.

C. Such valuation shall be made according to a method producing reserves not less than those produced by the one year full preliminary term method and, with respect to policies ~~(~~other than industrial policies~~)~~ issued to residents of the continental United States on and after January 1, 1939, not less than those produced by the modified preliminary term method under what is known as the Illinois Standard.

D. The legal minimum standard for the valuation of annuities issued on and after January 1, 1939 shall be the American Annuitants Table with interest at five percent per annum for group annuities and four percent per annum for all other annuities, except that annuities deferred ten or more years and written in connection with life insurance shall be valued on the same basis as that used in computing the consideration or premiums therefor, or upon any higher standard at the option of the insurer. Annuities issued prior to January 1, 1939, shall continue to be valued on a basis not lower than that used for the annual statement for the year 1937.

E. ~~From and~~ On or after July 29, 1947, the reserves of industrial life insurance companies and service insurance companies chartered by this state shall be determined by the commissioner of insurance by applying the following reductions to the reserve figures produced, in each case, by the method of computation set forth in the foregoing provisions of this Section:

(1) On all policies issued by such insurers prior to January 1, 1937, which provide for the furnishing of a funeral as the obligation of the insurer to the insured and his beneficiary, a reduction not to exceed seventy percent of the reserve as computed in accordance with this Subpart.

(2) On all policies issued by such insurers from January 1, 1937, to December 31, 1946, inclusive, which provide for the furnishing of a funeral as the obligation of the insurer to the insured and his beneficiary, a reduction not to exceed forty percent of the reserve as computed in accordance with this Subpart.

(3)(a) On all policies issued by such an insurer from January 1, 1947 through December 31, 1977, which provide for the furnishing of a funeral as the obligation of the insurer to the insured and his beneficiary, a reduction not to exceed twenty-five percent of the reserve as computed in accordance with this Subpart. However, certain policies described in R.S. 22:142 and 143 shall be fully reserved without benefit of reduction in reserves.

(b) All policies issued by such an insurer on or after January 1, 1978, which provide for the furnishing of a funeral as the obligation of the insurer to the insured and his beneficiary, shall be fully reserved without benefit of reduction in reserves.

(4) Provided, that in all cases, this reduction shall be allowed only where the insurer produces satisfactory proof of a contract with an authorized funeral director who is capable of furnishing the service specified in the policy, allowing a discount for the furnishing of the service specified therein, and in no case shall the reduction allowed herein exceed the amount of the reduction allowed in such contract.

~~(5) For a period of five years, beginning July 29, 1947, on all policies issued by such insurers prior to January 1, 1937, which provide in whole or in part for cash benefits as the obligation of the insurer to the insured and his beneficiary, a reduction not to exceed fifty percent of the reserve on the cash portion of the policies, as computed in accordance with Subsections A, B, C and D of this Section.~~

(6) Provided, further, that such reduction shall only be granted to those insurers who agree by an instrument in writing, filed with the commissioner of insurance, to apportion to and to maintain in a separate reserve fund, and who actually do apportion to and maintain in a separate fund, at least two percent of their annual gross premium income, for the purpose of bringing up the reserves to which the above reduction would apply on all funeral policies to seventy-five percent, and on all policies providing in whole or part for cash benefits to one hundred percent, of the full reserve on that portion of funeral policies providing for cash benefits, as computed in accordance with Subsections A, B, C and D of this Section, the aforesaid two percent to be in addition to any normal increase in reserves during the year.

F. Any life insurer transacting insurance in foreign countries only and not transacting insurance in any state of the United States or of the District of Columbia shall calculate its reserves on insurance written on such residents of foreign countries in accordance with reserve standards approved by the commissioner of insurance for the state of Louisiana. Acts that would otherwise be considered the transaction of insurance as that term is defined in ~~R.S. 22:1 et seq.~~, this Title shall not be considered the transaction of insurance when undertaken in connection with the insurance of residents of foreign countries by life insurers that only insure residents of foreign countries. The mortality, interest, and other standards specified in this Section and in the standard nonforfeiture law as set forth in R.S. 22:936 shall not apply to policies and contracts approved for issuance only to residents of foreign countries.

§752. Actuarial opinion reserves

A. ~~Beginning December 31, 1992, each~~ Each life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commissioner by regulation shall define the specifics of this opinion and add any other items deemed to be necessary in its scope.

B.(1) ~~Beginning December 31, 1993, each~~ Each life insurance company, except as exempted by or pursuant to regulation, shall also annually include in the opinion required by Subsection A of this Section, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the obligations of the company under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(2) The commissioner may provide by regulation for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this Section.

C. Each opinion required by Subsection B of this Section shall be governed by the following provisions:

(1) A memorandum in form and substance acceptable to the commissioner, as specified by regulation, shall be prepared to support each actuarial opinion.

(2) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by regulation or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the regulations or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and to prepare such supporting memorandum as is required by the

commissioner.

D. Each opinion shall be governed by the following provisions:

(1) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ~~ending on or after December 31, 1992~~ as of the end of that year.

(2) The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by regulation.

(3) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the commissioner may by regulation prescribe.

(4) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(5) For the purposes of this Subpart, "qualified actuary" means a member in good standing of the American Academy of Actuaries who satisfies the requirements set forth in such regulations by the commissioner.

(6) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(7) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in regulations by the commissioner.

(8) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection therewith, shall be kept confidential by the commissioner, and shall not be made public, and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this Section or by regulations promulgated hereunder. However, the memorandum or other material may otherwise be released by the commissioner either with the written consent of the company or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. However, if any portion of the confidential memorandum is cited by the company in its marketing, is cited before any governmental agency other than a state insurance department, or is released by the company to the news media, all portions of the memorandum shall no longer be confidential.

§753. Policies under standard valuation law

A.(1) The mortality, interest, and other standards specified in R.S. 22:751 shall apply to policies and contracts issued in the United States or its territories except those issued subject to the standard non-forfeiture law as set forth in R.S. 22:936. Mortality, interest, and other standards, consistent with prevailing generally accepted actuarial assumptions at the time of issue, shall apply to policies and contracts issued outside of the United States and its territories.

(2) Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by R.S. 22:751.

B.(1) Except as otherwise provided in Paragraphs (2) and (3) of this Subsection, the minimum standard for the valuation of all other policies and contracts shall be the commissioner's reserve valuation methods defined in Paragraphs (4), (5), and (8) of this Subsection, five percent interest for group annuity and pure endowment contracts, four percent interest for all other such policies and contracts, and four and one-half percent interest for policies and contracts, other than annuities and pure endowment contracts, issued on or after September 7, 1979, and the following tables:

(a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies: the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to ~~the effective date of R.S. 22:936(E)~~ September 7, 1979, the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after the effective date of ~~R.S. 22:936(E)~~ September 7, 1979

and prior to the effective date of ~~R.S. 22:936(G)~~ January 1, 1989; provided that for any category of such policies issued on female risks, all modified net premiums and present values referred to in this Section may be calculated according to an age not more than six years younger than the actual age of the insured; and for such policies issued on or after the effective date of R.S. 22:168(G), the Commissioners 1980 Standard Ordinary Mortality Table, or, at the election of the insurer for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors, or any ordinary mortality table adopted after 1980, by the National Association of Insurance Commissioners that is approved by the commissioner.

(b) For all new industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies: the 1941 Standard Industrial Mortality Table for such policies issued prior to ~~the effective date of R.S. 22:936(F)~~ September 7, 1979 and for such policies issued on or after such effective date the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table adopted after 1980, by the National Association of Insurance Commissioners that is approved by the commissioner.

(c) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies: the 1937 Standard Annuity Mortality Table or, at the option of the insurer, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner.

(d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies: the Group Annuity Mortality Table for 1951, any modification of such table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts: for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted ~~after 1980~~ on or after January 1, 1981, by the National Association of Insurance Commissioners that are approved by the commissioner; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the insurer, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table authorized by this Subpart for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies: for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table or any accidental death benefits table adopted ~~after 1980~~ on or after January 1, 1981, by the National Association of Insurance Commissioners that is approved by the commissioner; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the insurer, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table authorized by this Subpart for calculating the reserves for life insurance policies.

(g) For group life insurance, life insurance issued on the substandard basis and other special benefits: such tables as approved by the commissioner.

(2)(a) Except as provided in Paragraph (3) of this Subsection, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after September 7, 1979, and for all annuities and pure endowments purchased on or after such effective date under group annuity and pure endowment contracts shall be the Commissioner's reserve valuation methods defined in Paragraphs (4) and (5) of this subsection, and the following tables and interest rates:

(i) For individual annuity and pure endowment contracts issued prior to September 7, 1979, excluding any disability and accidental death benefits in such contracts: the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and six percent interest for single premium immediate annuity contracts, and four percent interest for all other individual annuity and pure endowment contracts.

(ii) For individual single premium immediate annuity contracts issued on or after September 7, 1979, excluding any disability and accidental death benefits in such contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted ~~after 1980~~ on or after January 1, 1981, by the National Association of Insurance Commissioners that is approved by the commissioner, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.

(iii) For individual annuity and pure endowment contracts issued on or after September 7, 1979, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted ~~after 1980,~~ on or after January 1, 1981, by the National Association of Insurance Commissioners that is approved by the commissioner, or any modification of these tables approved by the commissioner, and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other such individual annuity and pure endowment contracts.

(iv) For all annuities and pure endowments purchased prior to September 7, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts: the 1971 Group Annuity Mortality Table, or any modification of this table approved by the commissioner, and six percent interest.

(v) For all annuities and pure endowments purchased on or after September 7, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts: the 1971 Group Annuity Mortality Table or any group annuity mortality table adopted ~~after 1980~~ on or after January 1, 1981 by the National Association of Insurance Commissioners that is approved by the commissioner, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.

~~(b) Any insurer may file with the commissioner a written notice of its election to comply with the provisions of this Paragraph after a specified date before January 1, 1981, which shall be the effective date of this Paragraph for such insurer; provided, an insurer may elect a different effective date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no such election, the effective date of this Paragraph for such insurer shall be January 1, 1981.~~

(3)(a) The interest rates used in determining minimum standard for the valuation of the policies and contracts listed in ~~Subparagraphs~~ Items (i), (ii), (iii), and (iv) ~~below~~ of this Subparagraph shall be the calendar year statutory valuation interest rates, as defined in this Paragraph, or, at the option of the insurer, for any category of policies or contracts, the rate or rates of interest provided in Paragraphs (1) or (2) of this Subsection.

(i) All life insurance policies issued in a particular calendar year, on or after ~~the operative date of R.S. 22:936(C)~~ January 1, 1989.

(ii) All individual annuity and pure endowment contracts issued ~~in a particular calendar year~~ on or after January 1, 1983.

(iii) All group annuities and pure endowments purchased ~~in a particular calendar year~~ on or after January 1, 1983~~, under group annuity and pure endowment contracts.~~.

(iv) The net increase, if any, in a particular calendar year after January 1, 1983, in the amounts held under guaranteed interest contracts.

(b)(i) The calendar year statutory valuation interest rates shall be determined as follows, ~~and~~ with the results rounded to the nearer one-quarter of one percent:

~~a.~~ (aa) For life insurance: $I = .03 + W (R_1 - .03) + \frac{W}{2} (R_2 - .09)$.

~~b.~~ (bb) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options: $I=.03 + W (R - .03)$ where R_1 is the lesser of R and .09; R_2 is the greater of R and .09; R is the reference interest rate defined in Subparagraph (d) of; this Paragraph and W is the weighting factor defined in subparagraph (c) of this Paragraph.

~~c.~~ (cc) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in ~~b. above,~~ Subitem (bb) of this Item, the formula for life insurance stated in ~~a. above~~ Subitem (aa) of this Item shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in ~~b. above~~ Subitem (bb) of this Item shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less.

~~d.~~ (dd) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in ~~b. above~~ Subitem (bb) of

this Item shall apply.

~~e~~. (ee) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in ~~b. above~~ Subitem (bb) of this Item shall apply.

(ii) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to Subparagraph differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for such life insurance policies shall then be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying this Subparagraph, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980, by using the reference interest rate defined for 1979, and shall be determined for each subsequent calendar year~~, regardless of when R.S. 22:936(G) becomes effective.~~

(iii) At the option of the insurer, calculation for life insurance policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the statutory interest rate, as defined in this Subsection, for life insurance policies issued in the immediately preceding calendar year.

(c) The weighting factors referred to in the formulae stated ~~above~~ in Subparagraph (b) of this Paragraph shall be as provided in the following tables:

(i) Weighting factors for life insurance:

Guarantee Duration in years	Weighting Factors
10 years or less	.50
More than 10, but not more than 20 years	.45
More than 20 years	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values, or both, which are guaranteed in the original policy;

(ii) The weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options is .80.

(iii) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in Item (ii) ~~above,~~ of this Subparagraph, shall be as specified in ~~tables a., b., and c. below:~~ Subitems (aa), (bb), and (cc) of this Item according to the provisions in ~~d., e., and f. below:~~ Subitems (dd), (ee), and (ff) of this Item:

~~a.~~ (aa) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration in Years	Weighting Factor for Plan Type A	B	C
5 years or less:	.80	.60	.50
More than 5 years, but not more than 10 years:	.75	.60	.50
More than 10 years, but not more than 20 years:	.65	.50	.45
More than 20 years:	.45	.35	.35

~~b.~~ (bb)

	Plan Type A	B	C
For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in (a) above increased by:	.15	.25	.05

~~c.~~ (cc)

	Plan Type A	B	C
For annuities and guaranteed interest			

contracts valued on an issue year basis, other than those with no cash settlement options, which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in ~~a.~~ Subitem (aa) or derived in ~~b.~~ Subitem (bb) increased by: .05 .05 .05

~~d.~~ (dd) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

~~e.~~ (ee) The plan type as used in the above tables is defined as follows:

Plan Type A: At any time the policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer, or without such adjustment but in installments over five years or more, or as an immediate life annuity, or no withdrawal as permitted.

Plan Type B: Before expiration of the interest rate guarantee, the policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer, or without such adjustment but in installments over five years or more, or no withdrawal is permitted. At the end of the interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years.

Plan Type C: The policyholder may withdraw funds before expiration of the interest rate guarantee in a single sum or installments over less than five years either without adjustment to reflect changes in the interest rates or asset values since receipt of the funds by the insurer, or subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

~~f.~~ (ff) An insurer may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options shall be valued on an issue year basis. As used in this Paragraph, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(d) The reference interest rate referred to in Subparagraph (b) of this Paragraph shall be defined as follows:

(i) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June thirtieth of the calendar year next preceding the year of issue, of the Monthly Average of the Composite Yield on Seasoned Bonds, as published by Moody's Investors Service, Inc.

(ii) For a single premium immediate annuity and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or year of purchase, of the Monthly Average of the Composite Yield on Seasoned Bonds, as published by Moody's Investors Service, Inc.

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement

options, valued on a year of issue basis, except as stated in ~~(b) above~~ Subitem (c) (iii)(bb) of this Paragraph with guarantee duration in excess of ten years, the lesser of the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Bonds, as published by Moody's Investors Service, Inc.

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options valued on a year of issue basis, except as stated in Item (ii) ~~above,~~ of this Subparagraph with guarantee duration of ten years or less, the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Bonds, as published by Moody's Investors Service, Inc.

(v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Bonds as published by Moody's Investors Service, Inc.

(vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in (ii) above, the average over a period of twelve months, ending on June thirtieth of the calendar year of the change in the fund, of the Monthly Average of the Composite Yield on Seasoned Bonds as published by Moody's Investors Service, Inc.

(e) In the event that the Monthly Average of the Composite Yield on Seasoned Bonds is no longer published by Moody's Investors Service, Inc., or in the event that the National Association of Insurance Commissioners determines that the Monthly Average of the Composite Yield on Seasoned Bonds as published by Moody's Investors Service, Inc. is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the National Association of Insurance Commissioners and approved by the commissioner, shall be substituted.

(4)(a) Except as otherwise provided in Paragraphs (5), (6), and (8) of this Subsection, reserves according to the ~~commissioner's reserve valuation method~~ Commissioner’s Reserve Valuation Method for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value at the date of valuation of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be the uniform percentage of the respective contract premiums, excluding extra premiums on substandard policies, for such benefits that, at the date of issue of the policy, the present value of all modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of Item (i) of this Subparagraph over Item (ii) of this Subparagraph as follows:

(i) A net level annual premium equal to the present value at the date of issue of such benefits provided for after the first policy year, divided by the present value at the date of issue of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided however, that such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(ii) A net one year term premium for such benefits provided for in the first policy year.

(b) Any life insurance policy issued on or after January 1, 1986, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value, or a combination thereof, in an amount greater than such excess premium, the reserve according to the Commissioner's ~~reserve valuation method~~ Reserve Valuation Method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in Paragraph (8)~~,~~ of this Subsection be the greater of the reserve as of such policy anniversary calculated as described in the ~~preceding paragraph~~ Subparagraph (a) of this Paragraph and the reserve as of such policy anniversary calculated as described in ~~said Paragraph,~~ that Subparagraph but with the value defined in that Subparagraph ~~(a) above~~ being reduced by fifteen percent of the amount of such excess first year premium, all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, the

policy being assumed to mature on such date as an endowment, and the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in Paragraphs (1) and (3) of this Subsection shall be used.

(c) Reserves according to the Commissioner's ~~reserve valuation method~~ Reserve Valuation Method for life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums shall be calculated by a method consistent with the principles of this Paragraph. Reserves for group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended; disability and accidental death benefits in all policies and contracts; and all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the benefits granted and approved by the commissioner

(5)(a) This Section shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended.

(b) Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(6)(a) An insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, shall in no event be less than the aggregate reserves calculated in accordance with the methods set forth in Paragraphs (4), (5), (8), and (10) of this Subsection and the mortality table or tables, and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(b) In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined to be necessary to render the opinion required in R.S. 22:752.

(c) The commissioner of insurance shall promulgate a regulation containing the minimum standards applicable to the valuation of health and accident plans.

(7) Reserves for any category of policies, contracts, or benefits may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher but may be lower than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

(8)(a) If in any contract year the gross premium charged by any life insurer on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this Paragraph are those standards stated in Paragraphs (1) and (3) of this Subsection.

(b) Any life insurance policy issued on or after January 1, 1986, for which the gross premium in the first

policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this Paragraph (8) of this Subsection shall be applied as if the method actually used in calculating the reserve for such policy were the method described in Paragraph (4)~~,~~ of this Subsection, ignoring ~~the~~ Subparagraph (b) of that Paragraph. ~~(4).~~ The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with Paragraph (4)~~,~~ of this Subsection, including Subparagraph (b) of that Paragraph, and the minimum reserve calculated in accordance with this Paragraph (8)~~.~~ of this Subsection.

(9) Nothing in this Subsection ~~B~~ shall apply to any policy issued by any insurer subject to the provisions of Subparts D and E of Part I of this Chapter, ~~2 of this Title,~~ R.S. 22:131 et seq. and R.S. 22:141 et seq., unless such insurer elects to comply with the standard non-forfeiture law.

(10) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in Paragraphs (4), (5), and (8)~~,~~ of this Subsection, the reserves which are held under any such plan shall be appropriate in relation to the benefits and the pattern of premiums for that plan, and shall be computed by a method which is consistent with the principles of this Section as determined by the commissioner.

C. Any such insurer which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner of insurance, adopt any lower standard of valuation, but not lower than the minimum herein. However, for the purposes of this Section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by the Subpart shall not be deemed to be the adoption of a higher standard of valuation.

§754. Dividends; payments limited when reserve deficient

A. Payments in the form of dividends or otherwise shall not be made to its stockholders by any domestic life insurer, unless its assets exceed, to the amount of such payment, the amount of its paid-up capital stock and all its liabilities, including its reinsurance reserves, computed upon a basis hereinabove provided~~,~~ in R.S. 22:753, and no payments shall be made to the policyholders of any such insurer, except for matured claims, and in the purchase of surrendered policies, unless its assets exceed to the amount of such payments, its liabilities, including its reinsurance reserves, computed as hereinabove provided.

B. ~~Provided that~~ However, in the case of any insurer availing itself of the reduction in the reserves allowed in R.S. 22:751 on funeral or cash policies, no payments shall be made to its stockholders in the form of dividends or otherwise, unless and until the reserve is equal to seventy-five per cent on funeral policies and one hundred per cent on the cash policies and that portion of combination policies providing for cash benefits, of the full reserve as computed in accordance with Subsections A, B, C, and D of R.S. 22:751.

§ 763. Reserve for marine and transportation (inland marine) insurance

In the case of policies of marine or inland navigation or transportation insurance the unearned premium reserve, to be charged as a liability, shall be fifty ~~per cent~~ percent of the amount of the premiums upon risks covering not more than one passage not terminated and shall be upon a pro rata basis for all other policies.

§ 768. Special reserve fund; title insurance

A. Each title insurer shall annually apportion to a special reserve fund an amount determined by applying the rate of twenty-five cents for each one thousand dollars of net increase of insurance it has in force as at the end of such year. Such apportionment shall be continued or resumed as needed to maintain the special reserve fund at an amount equal to not less than the guaranty fund deposit required of the insurer.

B. The special reserve fund shall be held by the insurer as additional guaranty fund, and shall be used only for the payment of losses after the insurer's liquid resources available for the payment of losses, other than such special reserve fund or the guaranty fund deposit, have been exhausted.

C. For the purposes of computing the special reserve fund as provided in this Section, net increases of insurance in force resulting from reinsurance of the risks of another title insurer shall not be included to the extent that a like special reserve fund on such insurance is maintained by the ceding insurer.

§ 769. Increased reserves

A. If the commissioner of insurance determines that an insurer's unearned premium reserves, however computed, are inadequate, he may require the insurer to compute such reserves or any part thereof according to such other method or methods as are prescribed in this Subpart.

B. If the loss experience of an insurer shows that its loss reserves however estimated, are inadequate, the commissioner of insurance shall require the insurer to maintain loss reserves in such increased amount as is needed to make them adequate.

§ 770. "Loss payments"~~;~~ and "loss ~~expense"~~ expense payments" defined

"Loss payments" and "loss expense payments" as used with reference to liability and worker's compensation insurances shall include all payments to claimants, payments for medical and surgical attendance, legal expenses, salaries and expenses of investigators, adjusters and claims fieldmen, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employees, home office expenses and all other payments made on account of claims, whether such payments are allocated to specific claims or are unallocated.

§ 771. Actuarial certification of loss ~~reserve~~ and loss expense reserves

~~A. Beginning January 1, 1997, the~~ The loss and loss expense reserves shall be accompanied by a statement of the opinion of an associate or fellow of the Casualty Actuarial Society or other qualified loss reserve specialist, setting forth his opinion relative to the reasonableness and sufficiency of loss and loss ~~adjustment~~ expense reserves.

~~B. The commissioner of insurance shall adopt reasonable rules and regulations for the implementation and administration of the provisions of this requirement, with due consideration of the establishment of a proper phase-in, thresholds for certification requirements based on premium volume or product lines or both, insurance solvency standards tests as performed by the National Association of Insurance Commissioners, and the financial condition of~~

~~each insurer to which these requirements apply. The rules and regulations shall be promulgated by the commissioner no later than November 1, 1996.~~

SUBPART C. SEPARATE ACCOUNTS

§781. Separate accounts and contracts issued in connection therewith

A. Any domestic life insurance company may establish one or more separate accounts, and may allocate to such separate account or accounts any amounts paid to or retained by the company which are to be applied under the terms of an individual or group contract to provide for life insurance, annuities, and other benefits incidental thereto, payable in fixed or in variable dollar amounts or in both.

B. To the extent such company deems it necessary to comply with the Investment Company Act of 1940, the Securities Exchange Act of 1934, and other applicable federal laws, as such acts are and may be amended, such company may, with respect to any separate account or any portion thereof, including without limitation any separate account which is a management investment company or a unit investment trust, provide for the benefit of persons having beneficial interest therein special voting and other rights and special procedures for the conduct of the business and affairs of such separate account or portion thereof, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such company, to manage the business and affairs of such separate account or portion thereof.

C. The amounts allocated to each such account and accumulations thereon may be invested and reinvested in any class of investments which are authorized by Subsections A through and including G of R.S. 22:584, except that the quantitative limitations contained in such Subsections A through G of R.S. 22:584 shall not apply to investments of amounts allocated to each such separate account; provided however, notwithstanding any of the restrictions or limitations contained in said Subsections A through G of R.S. 22:584 all of such amounts allocated to a separate account and accumulations thereon may be invested in the shares of an open-end investment company or companies registered under the Federal Investment Company Act of 1940; provided further, that to the extent that the company's reserve liability with regard to (1) benefits guaranteed as to dollar amount and duration and (2) funds guaranteed as to principal amount or stated rate of interest is maintained in any such separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be invested in accordance with the quantitative and qualitative requirements of Subpart B of Part III of this Chapter, ~~2 of this Title~~ R.S. 22:581 et seq., governing the investments of life insurance companies. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to other investments of the company.

D. The income, if any, and gains and losses, realized or unrealized, on each account shall be credited to or charged against the amounts allocated to the account in accordance with the contract, without regard to other income, gains or losses of the company.

E. That portion of the assets of any separate account equal to the reserves and other contract liabilities with respect to such account, if and to the extent so provided in the applicable contracts, shall not be chargeable with liabilities arising out of any other insurance business the company may conduct. Any portion of the assets in excess of such reserves and other contract liabilities shall be chargeable with liabilities arising out of any other insurance business the company may conduct.

F.(1) Amounts allocated to a separate account in the exercise of the power granted by this Section shall be owned by the company, and the company shall not be, or hold itself out to be, a trustee with respect to such amounts.

(2) Notwithstanding the provisions of Paragraph (1) of this Subsection, all assets of a separate account shall be deemed subject to a security interest granted by the company in favor of the holders of that separate account, to secure any and all of the company's obligations to such account holders. This security interest shall be deemed for any and all purposes to constitute a security interest arising by operation of law. This security interest need not be reflected in writing or comply with the provisions of R.S. 10:8-101 et seq., R.S. 10:9-101 et seq., Civil Code Art. 3158, or R.S. 9:4321 et seq. The company's continued possession or control of such assets, as well as its

continued ability to withdraw or substitute assets of such separate account at will, shall not be deemed to adversely affect the validity of the security interest provided hereunder. If delinquency proceedings are brought by or against the company, the security interest hereby granted shall continue to be recognized for all purposes, including but limited to liquidation of the company under the provisions of R.S. 22:2042(E).

G. Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then in accordance with uniform, nondiscriminatory standards applicable to the separate account assets or in accordance with the terms of the applicable contract; provided that, unless otherwise approved by the commissioner, the portion of the assets of such separate account at least equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in Subsection C of this Section, if any, shall be valued in accordance with the rules otherwise applicable to the company's assets.

H. If the contract provides for payment of benefits in variable amounts, it shall contain a statement of the essential features of the procedure to be followed by the company in determining the dollar amount of such variable benefits. Any such contract, including a group contract, and any certificates issued thereunder, shall state that such dollar amount may decrease or increase and shall contain on its first page a statement that the benefits thereunder are on a variable basis. The insurance commissioner, where appropriate, may require an annuity contract to provide a determinable cash value. The company issuing a contract on a variable basis shall furnish each contract holder with annual reports of the financial condition of the separate account, in such form as the insurance commissioner shall prescribe.

I. No domestic life insurance company, and no other life insurance company admitted to transact business in this state, shall be authorized to deliver within this state any contract providing benefits in variable amounts until said company has satisfied the commissioner that its condition or methods of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In determining the qualifications of a company requesting authority to deliver such contracts within this state, the commissioner shall consider, among other things:

(1) The history and financial condition of the company;

(2) The character, responsibility and general fitness of the officers and directors of the company; and

(3) (a) In the case of a company other than a domestic company, whether the statutes and regulations of the jurisdiction of its incorporation provide a degree of protection to policyholders and the public which is substantially equal to that provided by this section and the rules and regulations issued thereunder.

(b) An authorized life insurance company, whether domestic, foreign, or alien, which issues contracts providing benefits in variable amounts and which is a subsidiary of (or affiliated through common management or ownership with) another life insurance company authorized to do business in this state may be deemed to have met the provisions of this subsection if either it or the parent or affiliated company meets the requirements hereof.

J. The insurance commissioner shall have the sole and exclusive authority to regulate the issuance and sale of such contracts and to issue such reasonable rules and regulations as may be necessary to carry out the purposes and provisions of R.S. 22:781 and 914; and such contracts, the companies which issue them and the agents or other persons who sell them shall not be subject to the provisions of Part X of Title 51 of the Louisiana Revised Statutes of 1950 nor to the jurisdiction of the ~~Louisiana~~ commissioner of ~~securities~~ financial institutions.