

TITLE 22. INSURANCE CODE
CHAPTER 1. GENERAL PROVISIONS
PART I. TITLE, DEFINITIONS, CLASSIFICATIONS, AND
OTHER REGULATORY MATTERS

SUBPART A. OFFICE OF THE INSURANCE COMMISSIONER;
GENERAL DUTIES AND RESPONSIBILITIES

§2. Insurance regulated in the public interest

A.(1) Insurance is an industry affected with the public interest and it is the purpose of this Code to regulate that industry in all its phases. Pursuant to the authority contained in the Constitution of Louisiana, the office of the commissioner of insurance is created. It shall be the duty of the commissioner of insurance to administer the provisions of this Code. The term of office of the commissioner shall be four years and said officer shall be elected at the election for governor and other state officers.

(2) The commissioner shall appoint a chief deputy commissioner and also an assistant to the commissioner, both of whom shall serve at his pleasure and whose salaries and duties shall be fixed by him.

(3) The chief deputy commissioner shall have the authority to perform all the acts and duties of the office of the commissioner of insurance in the absence of the commissioner of insurance, in case of his inability to act, or under his direction.

~~B. The duties and functions relating to insurance heretofore vested in and attached to the office of the Secretary of State by authority of Section 20 of Article V of the Constitution of Louisiana and all duties and functions relative to insurance matters heretofore performed by the secretary of state are hereby transferred to the office of the Commissioner of Insurance created by this Code. No compensation shall be paid to the secretary of state in connection with insurance matters after the effective date of this Code.~~

Comment [a1]: B, C, D, and E of §2 will be repealed. The provisions are outdated.

~~C. All books, papers, records, moneys, choses in action, and any other property heretofore used or possessed by any agency or person in the exercise of the duties and functions hereby transferred shall be transferred to and become the property of the office of the commissioner of insurance created herein.~~

~~All fees, revenues, appropriations, dedicated revenues and other funds having to do with insurance matters heretofore under the authority of any agency or person in the exercise of functions hereby transferred, are hereby transferred to the office of the commissioner of insurance.~~

~~D. All employees heretofore engaged in the performance of duties, in any agency, in the exercise of functions transferred by this Code shall be transferred with such functions to the office of the commissioner of insurance and, so far as practicable, shall continue to perform the duties heretofore performed.~~

~~E. Upon the transfer of functions, any pending or unfinished business shall be taken over and completed by the commissioner of insurance, with the same power and authority as the agency from which the functions are transferred. The commissioner of insurance shall be the successor in every way to the agency from which such functions are transferred, and every act done in the exercise of such functions by the commissioner~~

of insurance shall be deemed to have the same force and effect under any provisions of law in effect as if done by the agency from which such functions are transferred. Whenever any agency from which functions are transferred is referred to, or designated by any law or contract or other document, such reference or designations shall be deemed to apply to the commissioner of insurance. Whenever the secretary of state is referred to, or designated by any law or contract or other document, such reference or designation shall be deemed to apply to the commissioner of insurance.

F. In addition to any other authority granted by this Title, the Department of Insurance is hereby authorized to regulate the coordination of medical, surgical, and hospital benefits of a self-insurance plan with such benefits of any other insurance plan. For purposes of this Subsection, a self-insurance plan shall be defined as any plan by a person, partnership, corporation or other organization, or the state of Louisiana, other than a domestic or foreign insurance company which has qualified with the Department of Insurance, which provides or contracts to provide coverage as a self-insurer for his or its employees, stockholders, or any other persons. This Subsection shall not apply to: (1) the Office of Group Benefits, or (2) any plan of a labor organization or fraternal organization to the extent that it provides benefits to its members or the immediate family of its members, which benefits are supplemental to an employer-sponsored benefit plan.

Comment [a2]: F and G of § 2 will be moved to Chapter 4 Part III, Subpart A as §971.1

G.(1) Notwithstanding any other provision of law to the contrary, any entity issuing or providing coverage in this state for health care services, whether the coverage is by direct payment of or reimbursement for expenses incurred for such services, or otherwise, shall be presumed to be subject to the jurisdiction of the commissioner of insurance, unless the entity shows that, while providing the coverage, it is subject to the jurisdiction of another department or agency of the state, or any political subdivision of this state, or of the federal government.

(2) An entity providing or issuing coverage for health care services in this state as described in Paragraph (1) of this Subsection may show that it is subject to the jurisdiction of another department or agency of this state, any political subdivision of this state, or the federal government by submitting to the commissioner of insurance the appropriate certificate, license, or other document or documentary evidence issued by such other governmental entity that authorizes or qualifies it to issue or provide such coverage.

(3) Proof of jurisdiction by such other governmental agency shall be submitted to the commissioner of insurance prior to the issuance or provision in this state of any coverage as described in this Subsection. The commissioner of insurance may take any action as may be authorized in this Title to enforce the provisions of this Subsection.

(4) Any entity that fails to show that it is subject to the jurisdiction of any other governmental entity as described in this Subsection shall be subject to all appropriate provisions of this Title and shall submit to an examination by the commissioner of insurance to determine its organization and solvency and whether it is in compliance with the applicable provisions of this Title.

H. In addition to any other powers granted by the Louisiana Insurance Code, the commissioner of insurance is hereby empowered to promulgate any rule or regulation necessary to meet the requirements for the accreditation of the Louisiana Department of Insurance under the National Association of Insurance Commissioners, Financial

Comment [a3]: H will be moved to §11(B).

~~Regulation Standards and Accreditation Program. Such implementation shall be subject to the legislative oversight of the Senate and House Committees on Insurance in accordance with R.S. 49:968.~~

I. B. The commissioner shall maintain, as confidential, any document or information received from the National Association of Insurance Commissioners, insurance department of other states, international, federal, or state law enforcement agencies, and international, federal, or state regulatory agencies with statutory oversight over the financial services industry, which is confidential under the law of the state that sent the document or the applicable laws and regulations of the federal agency. The commissioner may provide documents or information, including otherwise confidential documents or information, to state, federal, or international law enforcement agencies, to the National Association of Insurance Commissioners, insurance departments of other states, or to other state, federal, or international regulatory agencies with statutory oversight over the financial services industry, including but not limited to the Louisiana Office of Financial Institutions, if the recipient agrees to maintain the confidentiality of those documents which are confidential under the laws of this state. The sharing of confidential or privileged information in accordance with this Subsection shall not be deemed a waiver of any privilege or claim of confidentiality in the documents, materials, or information. The commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

I. C. The commissioner of insurance shall assess every insurer subject to the jurisdiction of the Department of Insurance, as provided by law.

K. D. Subject to the exceptions contained in Article VII, Section 9 of the Constitution of Louisiana, all monies, funds, proceeds, and fees except for insurance premium taxes, and dedicated funds for the Municipal Police Employee's Retirement System, Sheriff's Pension and Relief Fund, and the Firefighters' Retirement System received or collected by the commissioner under the provisions of this Title shall be deposited immediately upon receipt into the state treasury and shall be credited to the Bond Security and Redemption Fund.

E. The commissioner of insurance shall have the authority to make reasonable rules and regulations, not inconsistent with law, to enforce, carry out, and make effective the implementation of this Code.

Comment [a4]: This language was moved here from §15.

§3. Composition of Department of Insurance

The Department of Insurance shall be comprised of the office of the commissioner, the office of management and finance, the office of property and casualty, the office of receivership, the office of licensing and compliance, the office of financial solvency, the office of consumer advocacy, the office of health insurance, the division of legal services, the division of public affairs, the division of minority affairs, and any other office or division that may be included by the Executive Reorganization Act or other law. Each office or division shall be administered as prescribed by Titles 36 and 39 of the Louisiana Revised Statutes of 1950.

Comment [a5]: The office of consumer advocacy reference was not added to this section when created during the 08 session.

**SUBPART B. COMPLIANCE WITH CODE REQUIRED;
RULES AND REGULATIONS BY COMMISSIONER;
QUALIFICATION REQUIRED**

§11. ~~Compliance with Code required; rules~~ **Rules and regulations by commissioner**

~~No person shall be authorized to transact or shall transact a business of insurance in this state without complying with the provisions of this Code.~~

A. The commissioner of insurance may promulgate rules and regulations that he determines are necessary for implementation of this Title. Such implementation shall be subject to the legislative oversight of the House of Representatives and Senate committees on insurance in accordance with R.S. 49:968.

B. In addition to any other powers granted by the Louisiana Insurance Code, the commissioner of insurance is hereby empowered to promulgate any rule or regulation necessary to meet the requirements for the accreditation of the Louisiana Department of Insurance under the National Association of Insurance Commissioners, Financial Regulation Standards and Accreditation Program. Such implementation shall be subject to the legislative oversight of the Senate and House Committees on Insurance in accordance with R.S. 49:968.

Comment [a6]: This language was moved here from §2 H.

§12. Insurer: ; qualification required ; compliance with Code required

No person shall act as an insurer in this state unless properly qualified as an insurer of a type permitted under the provisions of this Code. ~~No person shall be authorized to transact or shall transact a business of insurance in this state without complying with the provisions of this Code.~~

Comment [a7]: This language was moved here from §11.

§14. Violations reported by employees; retaliation by insurer prohibited

A. Any insurer transacting business in this state is prohibited from penalizing any of its employees for reporting to the commissioner of insurance or other appropriate authorities, in good faith, a suspected violation of this Code, or any law in Title 22 of the Louisiana Revised Statutes of 1950 this Title relative to required reserves, capital, assets, deposits, minimum and operating surplus, investments, and separate accounts of entities regulated by the Department of Insurance, illegal discrimination against a person, or other prohibitory provisions that provide criminal penalties for their violation, or any rule with criminal sanctions adopted by the commissioner of insurance. For purposes of this Section, "penalize" or "penalizing" shall include:

- (1) Discharging, disciplining, demoting, transferring, or otherwise discriminating against an employee of the insurer.
- (2) Reducing the benefits, pay, or work privileges of an employee of the insurer.
- (3) Preparing a negative work performance evaluation of an employee of the insurer.
- (4) Threatening to take any of the actions described in Paragraphs (1) through (3) above. of this Subsection.

B. Whenever the commissioner of insurance, a state agency, or law enforcement agency conducts an investigation based upon a written sworn report or with the participation of an employee as provided in this Section, it may not disclose the identity of the employee without the employee's consent. If it is determined that such disclosure is required for an administrative proceeding or criminal prosecution based upon the findings of the investigation, then the person or entity conducting the investigation shall notify the employee prior to disclosure of the employee's identity. Any proceeding or hearing by the commissioner of insurance under this Section shall be conducted in accordance with **Chapter 12 of this Title**, R.S 22:2191 et seq.

C. Any employee who makes a written sworn report on the activities of an insurer, as described in this Section, to the commissioner of insurance or appropriate authority, is not subject to civil liability for making the report and no civil cause of action may arise against the employee for making the report. This immunity shall apply provided that the information available to the employee would support a reasonable belief that the activity, policy, or practice reported violates this Code, a rule, or the law as described above, or impairs or endangers the solvency of the insurer. No such immunity shall apply to any report that is fraudulent or made in bad faith. Employees who intentionally make fraudulent reports or make reports in bad faith shall be guilty of the crime of false swearing and subject to the penalties provided for in R.S. 14:125.

D.(1) To the extent necessary to protect the anonymity of the employee who makes a written sworn report under this Section, the records of the commissioner of insurance or other state or law enforcement agency referring to the report shall be confidential for purposes of the state public records laws and are not subject to inspection or copying as a public record.

(2) The Department of Insurance shall report the name of the employee to the insurer if the statement is determined by the commissioner of insurance to be false or made in bad faith.

E. In addition to any other applicable penalties, any insurer found to be in violation of this Section shall be subject to a fine not to exceed ten thousand dollars.

§15. Rules and regulations

~~The commissioner of insurance shall have authority to make reasonable rules and regulations, not inconsistent with law, to enforce, carry out and make effective the provisions of this Subpart.~~

Comment [a8]: This section will be repealed and moved to §2 E.

§16. Failure to comply with written orders or directives; penalties

If any insurance company or rating organization fails to comply with a written directive or order issued by the commissioner of insurance pursuant to this Subpart within thirty days of the issuance thereof, the commissioner may levy and receive a fine of up to twenty-five thousand dollars. The penalty shall not be imposed until such time that the commissioner makes a finding that the penalty is warranted in a proper hearing, held in the manner provided in Chapter 12 of this Title, **R.S. 22:2191 et seq** .

§18. Suspension or revocation of insurers' licenses; fines

A. The commissioner of insurance may refuse to renew, or may suspend, or revoke the certificate of authority of any insurer violating any of the provisions of this Code, or in lieu of suspension or revocation of a license duly issued, the commissioner may levy a fine not to exceed one thousand dollars for each violation per insurer, up to one hundred thousand dollars aggregate for all violations in a calendar year per insurer, when such violations, in his opinion, after a proper hearing, warrant the refusal, suspension, or revocation of such certificate, or the imposition of the fine. The commissioner of insurance is authorized to withhold fines imposed under this Section. Such hearing shall be held in the manner provided in Chapter 12 of this Title, R.S. 22:2191 et seq.

B. The commissioner may deny, refuse to renew, suspend, or revoke any certificate of authority of any health insurer that writes a sub-line limited benefit line of health insurance or otherwise issues a health policy in the same sub-line limited benefit line in the state or for a citizen of the state within five years after it has ceased to write such sub-line limited benefit line of health insurance in the state. A sub-line limited benefit line of health insurance means a specified form of health benefit coverage including but not limited to cancer, credit health, dental, disability income, dread disease, hospitalization, long term care medical expense insurance, as defined in R.S. 22:47(2)(b)(i).

Comment [a9]: This language was added to properly reference limited benefit line. The old language was outdated.

§19. Duration of licenses

All licenses issued to foreign or domestic insurers of any kind, including fraternal benefit societies, agents, sub-agents, solicitors, brokers, producers, and all other persons shall remain in effect until cancelled, suspended, revoked, or the renewal thereof refused, provided all requirements of this Title relating to such insurers or persons are met.

§20. ~~Producers' compensation~~

~~The commission paid by each fire, casualty, surety, fidelity, guaranty, and bonding insurer doing business in this state to its producers in this state shall be uniform and equal as to all classes of producers of said insurer throughout this state.~~

Comment [a10]: §20 will be redesignated as §1566 of Chapter 5 Producers and Other Regulated Entities

§21. Agreement on agents' producers' compensation prohibited

No insurer shall enter into any combination or agreement with another insurer to prevent its legally authorized agents producers and representatives in this state from accepting a higher compensation than that paid by any party or parties to such agreement.

§22. ~~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~~

Comment [a11]: This section will be moved to Chapter 2 as the new § 74.

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.

§23. Exclusive use of expirations

A.(1) Except as otherwise provided herein, for purposes of soliciting, selling, or negotiating the renewal or sale of insurance coverage, insurance products, or insurance services, an insurance ~~agent or insurance broker~~ **producer** shall have the exclusive use of expirations, records, or other written or electronic information directly related to an insurance application submitted by or an insurance policy written through an ~~insurance agent or insurance broker~~ **producer**. No insurance company, managing general agent, surplus lines insurance broker, wholesale broker, third party administrator, or residual markets including but not limited to the Louisiana Automobile Insurance Plan, the Louisiana Joint Reinsurance Plan, or the Louisiana Insurance Underwriting Plan, shall use such expirations, records, or other written or electronic information to solicit, sell, or negotiate the renewal or sale of insurance coverage, insurance products, or insurance services to the insured, either directly or by providing such information to others without the express written consent of the ~~insurance agent or insurance broker~~ **producer**.

(2) Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the ~~insurance agent or insurance broker~~ **producer**. Such expirations, records, or other written or electronic information may also be used for any other purpose which does not involve the soliciting, selling, or negotiating the renewal or sale of insurance coverage, insurance products, or insurance services.

B. This Section shall not apply:

(1) When the insured requests, individually or through another ~~agent~~ **producer**, that the insurance company renew the policy or write other insurance business.

(2) When the insurance ~~agent~~ **producer** has, by contract, agreed to act exclusively for one company or group of affiliated insurance companies, in which case the rights of the ~~agent~~ **producer** shall be determined by the terms of the ~~agent's~~ **producer's** contract with that company or affiliated group.

(3) When the ~~insurance agent or insurance broker~~ **producer** is in default for nonpayment of premiums or other monies due and owing for which the agent is in default under the ~~insurance agent's or insurance broker's~~ **producer's** contract or other agreement with the insurer, unless there is a legitimate dispute as to monies owed.

(4) When the agency contract is terminated and the insurance company is required by law to continue coverage for the insured; however, in that event, the insurance company shall continue to pay the ~~insurance agent or insurance broker~~ **producer** commissions on such policies that the company is required to renew during the thirty-six month period following the effective date of the termination or three years, whichever is sooner. The commission shall be at the insurer's prevailing commission rates in effect on the date of renewal for that class or line of business in effect on the date of renewal for ~~brokers or agents~~ **producers** whose contracts are not terminated.

(5) To policies providing group coverage and health insurance.

C. The ~~insurance agent or insurance broker~~ producer and insurer may in a written agreement, separate from the agency contract, mutually agree to terms different than the provisions set forth in this Section. The terms of any such agreement shall be negotiated in good faith between the parties.

D.(1) The commissioner of insurance may adopt rules, in accordance with the Administrative Procedure Act, to enforce the provisions of this Section and any violation of this Section or the rules adopted thereunder shall be subject to regulation by the commissioner of insurance under R.S. 22:18.

(2) In addition, the ~~insurance agent or insurance broker~~ producer shall have a right to a claim for lost commissions. Such claim shall be resolved in accordance with the dispute resolution terms in the applicable contract or agreement. In the absence of any dispute resolution term, the parties shall attempt to resolve their dispute through mediation. If the claim is not resolved through mediation, the claim may be resolved through binding arbitration if the parties agree. In the absence of an agreement to resolve the claim through binding arbitration, the ~~agent or broker~~ producer may maintain ~~an~~ a civil action ~~of~~ in a court of competent jurisdiction for lost commissions.

Comment [a12]: Language was added to clarify in what form the action is to be filed.

(3)(a) All life insurance, disability income, long-term care, and annuity files, whether paper or electronic, submitted to an insurance company, are owned by the insurance company. The producer who sold the policy has the right to retain a copy of the file submitted to the issuing company. The producer has the right to retain a copy of the file after terminating his affiliation with the issuing company, unless the producer and the issuing company agree in writing that the producer shall not have such a right. Should the issuing company wish to make copies of the information retained by the producer, such copies shall be made at the issuing company's expense.

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

(c) As used in this Paragraph, files include all records, written or electronic, that were gathered and maintained by the producer.

(d) Notwithstanding any other provision of this Paragraph to the contrary, information a producer may retain shall not include real-time data and updates maintained on the insurance company computer system or any data protected by the Gramm-Leach-Bliley Act, 15 U.S.C. 6801-15 U.S.C. 6809, or the security laws.

(4) Except as provided in this Section, nothing in this Section shall be interpreted as impairing any rights in law or contract currently enjoyed by any party.

§24. Life and health sales quotas; prohibitions

No existing contract between an insurer and ~~an agent~~ an agent producer may be amended to add any provision that may require, as a quota, ~~an agent~~ an agent producer to sell a specific number of life or health policies or a specific dollar amount of life or health insurance, unless that contract contains a provision requiring the ~~agent~~ agent producer to sell life or health insurance.

SUBPART C. EQUAL OPPORTUNITY IN INSURANCE

§31. Division of minority affairs

There is hereby created within the Department of Insurance a division of minority affairs which shall have the following functions and duties:

(1) To assist in coordinating the activities of the Advisory Committee on Equal Opportunity.

(2) To maintain a list of a contact person within each insurance company transacting business in this state who is specifically charged with a duty by the company to respond to inquiries from members of minority groups regarding opportunities for employment, appointment as **agents producers**, and contracting for services with insurance companies.

(3) In cooperation with insurance companies transacting business in the state, to establish educational and informational services to foster a greater awareness of the opportunities available in the insurance industry and of the skills, training, and education necessary to prepare for opportunities in employment, appointment as **agents producers**, and contracting for services with insurance companies.

(4) To assist members of minority groups in obtaining employment, **agent's producer** or agency contracts, and contracting for services with insurance companies transacting business in Louisiana.

(5) To submit an annual report by April first of each year to the House and Senate insurance committees relative to educational and informational services made available to minorities, the number and types of inquiries, and all available relevant information from applicants and **agents producers**.

(6)(a) To develop a pilot program which seeks to address the needs and concerns of minority and women insurance **agents producers** in this state. The pilot program, at a minimum, shall provide training for **agents producers** in all areas of agency management, training and education for agency personnel, and automation support for the **agents producers** in the pilot program. The commissioner of insurance may adopt rules and regulations necessary for the implementation of the provisions of this Section.

(b) This Paragraph shall not apply to insurance **agents producers** who exclusively sell insurance for one company or a group of companies under common management which already has a training program in place for all **agents producers**.

§32. Advisory Committee on Equal Opportunity

A.(1) There is hereby created within the Department of Insurance, in the division of minority affairs, the Advisory Committee on Equal Opportunity. The committee shall be composed of fifteen members. Fourteen members shall be appointed by the governor and shall serve at his pleasure. The deputy commissioner for minority affairs shall serve ex officio as the fifteenth member. Four members shall be appointed from a list of nominees submitted by the Louisiana chapter of The National Association for the Advancement of Colored People, the Urban League of Greater New Orleans, Inc., the Baton Rouge chapter of the National Association for the Advancement of Colored

People, and the Shreveport chapter of the National Association for the Advancement of Colored People. Two members shall be appointed from a list of nominees submitted by the deans of the business schools of Dillard University, Xavier University, Southern University, and Grambling University. Eight members shall be appointed from a list of nominees, one nominee to be submitted by each of the following associations or groups:

- (a) Louisiana Insurers' Conference.
- (b) American Council of Life Insurance.
- (c) Life Insurers' Conference.
- (d) National Association of Life Companies.
- (e) Louisiana Association of Fire and Casualty Companies.
- (f) National Association of Independent Insurers.
- (g) American Insurance Association.
- (h) Alliance of American Insurers.
- (i) Health Insurance Association of America.
- (j) Property and casualty insurers unaffiliated with the trade associations

designated above.

- (k) The state chapter of the Louis A. Martinet Society.
- (l) National Independent Insurance Agents.
- (m) Louisiana Realtists Association.
- (n) National Business League, Louisiana chapter.
- (o) An organization representing Hispanic Americans, as identified by the

commissioner of insurance.

(p) An organization representing Asian Americans, as identified by the commissioner of insurance.

(q) An organization representing Native Americans, as identified by the commissioner of insurance.

(2) Each appointment by the governor shall be submitted to the Senate for confirmation.

(3) The committee shall serve without compensation, except for compensation for mileage and meals expenses incurred in connection with actual attendance at meetings of the committee or while on business of the committee assigned by the committee, but only when properly vouchered.

B. The committee shall assist the commissioner of insurance and the division of minority affairs in establishing educational and informational services to foster a greater awareness of the opportunities available in the insurance industry and of the skills, training, and education necessary to prepare for opportunities in employment, appointment as **agents producers**, and contracting for services with insurance companies transacting business in Louisiana. The commissioner of insurance shall promulgate rules and regulations to implement this Subpart.

C. The committee shall review all complaints alleging a violation of the provisions of this Subpart. Upon receipt of a complaint, the committee shall notify the insurer against whom the complaint was filed of the nature of the complaint and provide **him the insurer** with an opportunity to make a written explanation. As a part of the response, the insurer may submit to the committee any affirmative action plan it may have in effect. The committee shall consider any affirmative action plan submitted to it,

along with any other pertinent information submitted to it, in determining whether the insurer has engaged in a pattern or practice of employment discrimination prohibited by **Part IV of Chapter 3-A of Title 23, R.S. 23:4006, 332 et seq.**

D. The committee shall report apparent violations of this Subpart to the commissioner of insurance, who may then, and only then, commence enforcement proceedings in accordance with R.S. 22:33.

E. Nothing contained in this Section or in R.S. 22:31 shall be construed to expand the coverage of **Part IV of Chapter 3-A of Title 23, R.S. 23:4006, 332 et seq.** for purposes of the sanctions authorized against insurers under R.S. 22:33.

§33. Sanctions

A. Whenever the commissioner of insurance receives notification of an apparent violation from the advisory committee, and determines, after notice and opportunity for a hearing in accordance with the Administrative Procedure Act, that an insurer has engaged in a pattern or practice of employment discrimination prohibited by **Part IV of Chapter 3-A of Title 23, R.S. 23:4006, 332,** he may issue an order requiring the insurer to cease and desist engaging in such unlawful act or practice. If the insurer does not comply with the cease and desist order, the commissioner may then:

(1) Require the insurer to file an affirmative action plan in accordance with rules and regulations adopted by the commissioner. If the insurer fails to file such affirmative action plan, the commissioner may then:

(2) Levy a civil penalty of up to ten thousand dollars against the insurer. If, after levy of such a fine, the violation still exists, the commissioner may then:

(3) Restrict the insurer's agency appointment powers.

B. Nothing in this Subpart shall be construed to authorize the commissioner to revoke a certificate of authority of any insurer for any violation of this Subpart.

C. The authority of the commissioner to impose any sanctions provided for in this Section shall not apply in any of the following instances:

(1) When there is an order or a conciliation agreement in effect rendered by a federal court or federal agency arising out of the same facts.

(2) When there is a complaint pending with a federal court or federal agency arising out of the same facts.

(3) When there is a complaint filed with the appropriate federal agency and with the commissioner under the provisions of this Subpart involving the same parties, with respect to the same subject matter, and arising out of the same facts or circumstances.

(4) When the insurer has an affirmative action plan. The plan shall contain the following minimum requirements:

(a) A stated purpose of the insurer to foster equal opportunities for minorities.

(b) The delineation of active steps and efforts by the insurer reasonably calculated to achieve the stated purpose.

SUBPART D. INSURANCE IN GENERAL

§41. Policyholder bill of rights

The following items exist in Louisiana statutes and shall serve as standards for a policyholder bill of rights and do not create additional causes of actions or further penalties not otherwise provided under Louisiana statutes:

- (1) Policyholders shall have the right to competitive pricing practices and marketing methods that enable them to determine the best value among comparable coverage in accordance with R.S. 22:1964.
- (2) Policyholders shall have the right to insurance advertising that is not false and other selling approaches that provide accurate and balanced information on the benefits and limitations of a policy in accordance with R.S. 22:1964.
- (3) Policyholders shall have the right to an insurance company that is financially stable.
- (4) Policyholders shall have the right to be treated fairly and be free from unfair or deceptive acts or practices in accordance with R.S. 22:1961 et seq.
- (5) Policyholders shall have the right to receive service from competent, honest insurance producers that will answer their questions promptly.
- (6) Policyholders shall have the right to receive the appropriate disclosure form as an insert in the front of the policy that complies with R.S. 36:696 and ~~R.S. 22:1332~~.
- (7) Policyholders shall have the right to balanced and positive regulation by the Department of Insurance.
- (8) Policyholders shall have the right to check the license status of an insurance company, producer, or adjuster.
- (9) Policyholders shall have the right to receive written notice of cancellation or nonrenewal at least thirty days prior to the effective date of the cancellation or nonrenewal, unless the cancellation or nonrenewal is for non-payment of premium and shall have the right to protection from improper cancellation or nonrenewal in accordance with R.S. 22:1333 and 1265.
- (10) Policyholders shall have the right to receive in writing the reason for any cancellation or nonrenewal of coverage. The written statement must provide an explanation for the cancellation or nonrenewal of coverage.
- (11) Policyholders shall have the right to cancel their policy and receive a refund of any unearned premium. If a policy was funded by a premium finance company, the unearned premium will be returned to the premium finance company to pay toward the policyholder's financing loan.
- (12) Policyholders shall have the right to a written notification detailing any change in policy provisions at renewal.
- (13) Policyholders shall have the right to receive payment of the amount of any property damage claim, or a portion of the claim, due or a written offer to settle any property damage claim within thirty days after receipt of satisfactory proof of loss in accordance with R.S. 22:1892 and ~~R.S. 22:1973~~. If a claim is denied, policyholders shall have the right to receive a written explanation as to the reason for denial, in whole or in part, of any claim made under their policy of insurance.

(14) Relative to first party property damage claims, policyholders shall have the right to request and receive from the insurance company any estimates, bids, plans, measurements, drawings, engineer reports, contractor reports, statements or documents that are not legally privileged that the insurance company prepared, had prepared, or used during its adjustment of the policyholder's claim. A company may keep confidential adjuster notes, logs, and any documents prepared in conjunction with a fraud investigation.

(15) Policyholders shall have the right to file a complaint against any insurance company, producer, or adjuster with the Department of Insurance, and have that complaint investigated by the department.

(16) Policyholders shall have the right to a readable policy, to receive a complete property insurance policy, and to request a duplicate or replacement policy as needed.

(17) Policyholders shall have the right to the remedies provided for in R.S. 22:1892 if an insurer violates that Section in the handling of the claim.

§43. Complaints against insurers; file by company; public information

A. The Department of Insurance shall file all complaints which it receives against a named insurer in a separate file for each insurer. This record shall be maintained in such a manner as to permit the public to readily ascertain information concerning complaints against insurance companies, without the necessity of reviewing each individual complaint. The commissioner of insurance shall avail himself of such computer equipment as he has available to perform this task.

B.(1) The record required by this Section shall contain information including but not limited to the following:

- (a) Date of complaint.
- (b) Name of the company against whom the complaint is lodged.
- (c) Name of the complainant.
- (d) Nature of the complaint.
- (e) Action and findings by the department.
- (f) Date of any such action.
- (g) The response of the insurance company.

(2) The computer program employed by the commissioner shall, at a minimum, be able to sort the information in this database on any of the fields described ~~in the preceding~~ Paragraph (1) of this Subsection and print out a written report thereof.

C. Failure to maintain this record in the manner prescribed herein shall constitute malfeasance on the part of the commissioner of insurance.

§46. General definitions

In this Code, unless the context otherwise requires, the following definitions shall be applicable:

(1) "Alien ~~Insurer~~ insurer" is one formed under the laws of any country other than the United States.

(2) "Approved unauthorized insurer" means an insurer without a certificate of authority, or otherwise qualified under the provisions of this Code, and which is on the

list of approved unauthorized insurers under the provisions of R.S. 22:436, and from which a licensed surplus lines broker may procure insurance under provisions of R.S. 22:432.

(3) "Authorized insurer" means an insurer with a certificate of authority or license issued under provisions of this Code or otherwise qualified under R.S. 22:481 et seq.

(4) "Commissioner of Insurance" as that office is created and defined by this Code shall have full power and authority to act as insurance commissioner for the state of Louisiana and is hereby declared to be the proper officer to act for this state and to represent this state as a member of the National Association of Insurance Commissioners. **"Commissioner" shall mean commissioner of insurance.**

(5) "Control", ~~as used in this Code~~ relative to ownership, shall mean ownership representing or the authority to represent over fifty percent of the total one hundred percent ownership.

(6) "Directive" means a written communication or order issued by or on behalf of the commissioner of insurance to a person whose activities are regulated by this Title, which instructs the person to act in conformance with this Title, or any rule or regulation adopted in accordance with the Administrative Procedure Act.

(7) "Domestic ~~insurer insurer~~" is one formed under the laws of this state.

(8) "Foreign ~~insurer insurer~~" is one formed under the laws of any other state or territory of the United States or the District of Columbia.

(9)(a) "Insurance" is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies. It shall include any trust, plan or agreement, popularly known as employee benefit trusts, not specifically exempted from state regulation under Public Law 93-406, except collectively bargained union welfare plans, single employer plans or plans of the state or political subdivisions.

(b) The establishment and operation of one or more professional or public liability trust funds by a statewide hospital association in this state for the purpose of providing a means by which any type of professional malpractice or public liability claims or judgments arising from such claims against hospitals which are members of the association and claims against members of societies of the association shall be paid or settled shall not be deemed to be insurance and such trust or trusts shall not be deemed to be licensed, admitted or authorized insurers but shall be subject to Subpart E of Part III of Chapter 2, ~~R.S. 22:651 et seq.,~~ Part IV of Chapter 7, ~~R.S. 22:1961 et seq., and~~ Chapters 8 and 12 of ~~this Title, 22 of the Louisiana Revised Statutes of 1950,~~ ~~R.S. 22:1981 et seq., and R.S. 22:2191 et seq.~~ An annual audited statement for each such trust shall be filed with the commissioner of insurance. The commissioner of insurance shall also have the authority to examine the books, records and affairs of the trust funds.

(c) The establishment and operation of professional and public liability trust funds by a nonprofit beneficiary organization as set forth in Subpart N of Part I of Chapter 2 of ~~this Title, 22 of the Louisiana Revised Statutes of 1950~~ ~~R.S. 22:401 et seq.,~~ shall not be deemed to be insurance and the trusts shall not be deemed to be a licensed, admitted, or authorized insurer but shall be subject to Subpart E of Part III of Chapter 2, Part IV of Chapter 7, ~~and~~ Chapters 8 and 12 of ~~this Title, 22 of the Louisiana Revised Statutes of 1950.~~ An annual audited statement shall be filed

with the commissioner of insurance. The commissioner of insurance shall also have the authority to examine the books, records, and affairs of the trust fund.

(d) The establishment and operation of one or more professional, trade, and occupational or public liability trust funds by professional associations in this state for the purpose of providing a means by which professional malpractice and public liability claims or judgments arising from such claims against members of the associations shall be paid or settled shall not be deemed to be insurance, and the trust shall not be deemed to be a licensed, admitted, or authorized insurer but shall be subject to Subpart E of Part III of Chapter 2, Part IV of Chapter 7, and Chapters 8 and 12 of ~~this Title 22 of the Louisiana Revised Statutes of 1950.~~ An annual audited statement shall be filed with the commissioner of insurance. The commissioner of insurance shall also have the authority to examine the books, records, and affairs of the trust fund.

(10) "Insurer" includes every person engaged in the business of making contracts of insurance, other than a fraternal benefit society. A reciprocal, an inter-insurance exchange, insurance exchange syndicate, or a Lloyds organization is an "insurer". Any person who provides an employee benefit trust as specified in Subparagraph (9)(a) of this Section is an insurer. A health maintenance organization is an insurer but only for the purposes enumerated in R.S. 22:242(7).

(11) "Life ~~insurer insurer~~ as used in this Code, shall mean all insurers issuing life insurance contracts, including industrial and service insurers.

(12) "Person" means any individual, company, insurer, association, organization, reciprocal or inter-insurance exchange, partnership, business, trust, limited liability company, or corporation.

Comment [a13]: Expands the definition of person to new entities.

(13) "Premium" ~~as used in this Code~~ means all sums charged, received, or deposited as consideration for the purchase or continuance of insurance for a definitely stated term, and shall include any assessment, membership, policy, survey, inspection, service or similar fee or charge made by an insurer as a part of the consideration for the purchase or continuance of insurance. The term premium, as used in R.S. 22:887(D) and 885(B), shall not include any assessment, membership, policy, survey, inspection, service or similar fee or charge made by an insurer as part of the consideration for the purchase or continuance of insurance.

(14) "Resident" shall mean any individual, company, insurer, partnership, association, organization, corporation, reciprocal or inter-insurance exchange, business, or trust that principally resides or maintains a principal place of business in this state.

(15) "Secretary of State" ~~as used in this Code~~ means the secretary of state of the state of Louisiana where that designation appears, to the extent that the functions to be performed by the secretary of state as designated therein involve the recordation of documents or his appointment as attorney to accept service of process in legal proceedings.

(16) "Small company" means a domestic life insurer which does business exclusively in the state of Louisiana, with admitted assets not exceeding ten million dollars and having gross annual premiums not exceeding two million dollars.

(17) "Surplus lines insurance" means any property and casualty insurance in this state on properties, risks, or exposures, located or to be performed in this state, permitted

to be placed through a licensed surplus lines broker with an approved unauthorized insurer.

(18) "Unauthorized insurer" means an insurer which does not possess a certificate of authority to do business in the state.

(19) "Officer" shall mean a president, vice president, treasurer, actuary, secretary, controller, and any other person who performs for the company functions corresponding to those performed by the foregoing officers.

Comment [a14]: This language was moved from §49

(20) "Producer" shall mean a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance and includes all persons or business entities otherwise referred to in this Code as "insurance agent", "agent", "insurance broker", "broker", "insurance solicitor", "solicitor", or "surplus lines broker".

Comment [a15]: This language was copied from Chapter 5 Producers and Other Regulated Entities.

§47. Kinds of insurance

Insurance shall be classified as follows:

(1) Life. Insurance on human lives and insurances appertaining thereto or connected therewith. For the purposes of this Code, the transacting of life insurance includes additional benefits, including the acceleration of life benefits in advance of the time they would otherwise be payable, in the event of death by accident; additional benefits in event of the total and permanent disability of the insured; and optional modes of settlement of proceeds.

(2)(a) Health and accident.

(a) Insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement, or expense resulting from sickness or old age, or against major expenses incurred by an employee benefit plan due to the illness or injury of a covered employee, or against major expenses incurred by a health care provider at financial risk for provision of health care to persons under an agreement, and every insurance appertaining thereto, including insurance wherein the benefits are covered at a higher level when health care is received from a defined network of health care providers, provided, however, that such insurance meets all applicable requirements of Subpart I of Part I of Chapter 2 of this Title, R.S. 22:241 et seq., for provision of coverage through designated providers of medical services.

(b)(i) Limited benefit. Health and accident insurance policy designed, advertised, and marketed to supplement major medical insurance that includes accident-only, the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), dental, disability income, fixed indemnity, long-term care, Medicare supplement, specified disease, vision, and any other health and accident insurance, other than basic hospital expense, basic medical-surgical expense, or other major medical insurance.

(ii) Repealed by Acts 1999, No. 294, §2.

(3) Vehicle.

(a) Insurance against loss or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, and against any loss or liability resulting from or incident to ownership, maintenance, or use of any such vehicle or aircraft or animal.

(b) Insurance against accidental death or accidental injury to individuals including

the named insured while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if such insurance is issued as part of insurance on the vehicle, aircraft, or draft or riding animal, shall be deemed to be vehicle insurance.

(4) Liability. Insurance against the liability of the insured for the death, injury or disability of an employee or other person, and insurance against the liability of the insured for damage to or destruction of another person's property.

(5) Worker's compensation. Insurance of the obligations accepted by, imposed upon, or assumed by employers under law for worker's compensation.

(6) Burglary and ~~Forgery.~~ ~~forgery~~ Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud or otherwise, including the personal property floater.

(7) Glass. Insurance against loss or damage to glass including lettering, ornamentation and fittings from any cause.

(8) Fidelity and ~~Surety.~~ ~~surety~~ Becoming surety or guarantor for any person, copartnership, or corporation in any position or place of trust or as custodian of money or property, public or private; or becoming a surety or guarantor for the performance of any person, copartnership or corporation of any lawful obligation, undertaking, agreement, or contract of any kind, except contracts or policies of insurance; or guaranteeing against loss or damage resulting from failure of debtors to pay their obligations to the insured; and underwriting blanket bonds; however, no insurer, except the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration, or any similar insurance corporation hereinafter created by the Congress of the United States or the legislature of any state, shall insure deposits in banks, savings and loan associations, credit unions, finance operations, or similar institutions. Such obligations shall be known and treated as suretyship obligations and such business shall be known as surety business.

(9) Title. Insurance of owners of property or others having an interest therein, against loss by encumbrance, or defective titles, or adverse claim to title, and services connected therewith.

(10) Fire and extended coverage.

(a) Insurance against loss or damage by fire, smoke and smudge, lightning or other electrical disturbances;

(b) Insurance against loss or damage by earthquake, windstorms, cyclone, tornado, tempests, hail, frost, snow, ice, sleet, flood, rain, drought, or other weather or climatic conditions including excess or deficiency of moisture, or rising of the waters of the ocean or its tributaries;

(c) Insurance against loss or damage by bombardment, invasion, insurrection, riot, strikes, civil war or commotion, military or usurped power, or explosion (other than explosion of steam boilers and the breaking of fly wheels);

(d) Insurance authorizing the insurer to repair, rebuild or replace with new materials of like size, kind and quality, property damaged or destroyed by fire or other perils insured against.

(e) Insurance against loss or damage to property from any other hazard or cause and against loss consequential upon such loss or damage.

(11) Steam boiler and sprinkler leakage.

(a) Insurance against loss or damage to property and any liability of the insured resulting from the ownership, maintenance or use of elevators, except loss by fire or caused by the explosion of or accidents to boilers, pipes, pressure containers, machinery, and apparatus of any kind and any apparatus connected thereto, or used for creating, transmitting or applying power, light, heat, steam or refrigeration, and including the making of, inspection of and issuing certificates of inspection upon elevators, boilers, machinery and apparatus of any kind and all mechanical apparatus and appliances appertaining thereto;

(b) Insurance against loss or damage by water entering through leaks or openings in buildings, or from the breakage or leakage of a sprinkler, pumps, water pipes, plumbing and all tanks, apparatus, conduits and containers designed to bring water into buildings or for its storage or utilization therein, or caused by the falling of a tank, tank platform or supports, or against loss or damage from any cause to such sprinkler, pumps, water pipes, plumbing, tanks, apparatus, conduits, or containers.

(12) Crop and ~~live stock~~ livestock.

(a) Insurance against loss or damage from insects, diseases, or other causes to trees, crops, or other products of the soil;

(b) Insurance against loss by death or damage to any domesticated or wild animal from disease, lightning, tornadoes, cyclones, accidents, and every other casual or accidental cause; also against theft.

(13) Marine and transportation (inland marine).

(a) Insurance against loss or damage to vessels, craft, aircraft, or vehicles of every kind, (excluding vehicles operating under their own power or while in storage not incidental to transportation) as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests, and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any or all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed, or similarly prepared for shipment or while awaiting the same or during any delays, storage, trans-shipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks;

(b) Insurance against loss or damage to persons or property in connection with or appertaining to marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either arising out of or in connection with the construction, repair, operation, maintenance, or use of the subject matter of such insurance, (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance or use of automobiles);

(c) Insurance against loss or damage to precious stones, jewels, jewelry, gold, silver, and other precious metals whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise, which shall include jewelers' block insurance;

(d) Insurance against loss or damage to bridges, tunnels and other

instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and civil commotion are the only hazards to be covered; and to piers, wharves, docks and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and civil commotion; and to other aids to navigation and transportation, including dry docks and marine railways, dams and appurtenant facilities for the control of waterways, against all risks;

(e) "Marine protection and indemnity insurance", meaning insurance against, or against legal liability of the insured for, loss, damage, or expense incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death or for the loss of or damage to the property of another person, except this definition shall not include vessels and watercraft under five tons gross weight.

(14) Miscellaneous. Any other kind of loss, damage, or liability properly the subject of insurance and not within any other kind or kinds of insurance as defined in this Section, if such insurance is not contrary to law or public policy.

(15) Homeowners' insurance. A policy of insurance on a one- or two-family owner-occupied premises, which combines fire and allied lines with any one or more perils of casualty, liability, or other types of insurance within one policy form at a single premium, where the insurer's liability for damage to the premises under said policy is determined with reference to the replacement value of the premises.

(16)(a) Credit life, health, and accident insurance. Insurance generally sold in connection with a credit transaction and limited to partially or wholly extinguishing the credit obligation, including but not limited to agreements, contracts, or policies of insurance containing the following: credit life, credit health, and disability. It also includes accidental death and dismemberment insurance sold in connection with a credit transaction that may or may not require benefits payable to wholly or partially extinguish the credit obligation. The credit obligation is the total sum payable, including all loan finance charges and credit service charges, pursuant to the credit transaction.

(b) Credit property and casualty insurance. Insurance generally sold in connection with a credit transaction and limited to partially or wholly extinguishing the credit obligation, including but not limited to agreements, contracts, or policies of insurance containing any of the following: involuntary unemployment, vendors single interest, vendors dual interest, and credit fire, or GAP. The credit obligation is the total sum payable, including all loan finance charges and credit service charges, pursuant to the credit transaction.

(17) Annuity. A contract sold by insurance companies that pays an income benefit for the life of a person, for the lives of two or more persons, or for a specified period of time, or a contract that may provide for a series of payments to be made or received at regular intervals at the direction of the contract holder.

§48. Types of insurers and other risk bearing entities

A. The following entities are regulated by the specific provisions in the Louisiana

Insurance Code.

- (1) Domestic Stock Insurers.
- (2) Domestic Mutual Insurers.
- (3) Domestic Service Insurers.
- (4) Industrial Insurers.
- (5) Reciprocal Insurers.
- (6) Non-Profit Funeral Service Associations.
- (7) Mutual Insurance Holding Companies.
- (8) Health Maintenance Organizations.
- (9) Fraternal Benefit Societies.
- (10) Foreign and Alien Insurers.
- (11) Vehicle Mechanical Breakdown Insurers.
- (12) Property Residual Value Insurers.
- (13) Non-Profit Beneficiary Organizations and Risk Indemnification Trusts.
- (14) Surplus Lines Insurers.
- (15) Group Self Insurers.
- (16) Risk Retention Groups.
- (17) Title Insurers.

B. The provisions of this Section shall not preclude the Department of Insurance from regulating any other entity that meets the definition of an insurer or risk bearing entity as defined in this Title unless specifically excluded from regulation by the department.

~~§49. "Officer" defined~~

~~The term "officer" means a president, vice president, treasurer, actuary, secretary, controller, and any other person who performs for the company functions corresponding to those performed by the foregoing officers.~~

Comment [a16]: §49 will be repealed and incorporated into §46 definitions.