

2022 Regular Session

SENATE BILL NO. 437

BY SENATOR ROBERT MILLS AND REPRESENTATIVES MCFARLAND AND SEABAUGH

SELF INSURANCE. Authorizes the creation of Louisiana Timber and Agriculture Transportation Group Self-Insurance Funds. (8/1/22)

1 AN ACT

2 To enact Part IV-B of Chapter 28 of Title 3 of the Louisiana Revised Statutes of 1950, to be

3 comprised of R.S. 3:4341.1 through 3:4341.16, relative to forestry and agriculture;

4 to authorize the creation of timber and agriculture transportation group self-insurance

5 funds; to provide with respect to group self-insurance funds; to provide for

6 requirements; to provide for definitions; to provide with respect to the qualifications

7 for membership; to provide for regulatory authority; to provide for excess or

8 reinsurance insurance; to provide for the management of assets and investments; to

9 provide for liabilities and the payment of claims; to provide for audits, examinations,

10 and investigations; to provide for licensed insurance agents and brokers; to provide

11 for insolvencies; to provide for civil actions for enforcement; to provide for

12 reporting; to provide penalties for noncompliance; to provide for due process rights;

13 to provide for dissolution; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. Part IV-B of Chapter 28 of Title 3 of the Louisiana Revised Statutes of
16 1950, comprised of R.S. 3:4341.1 through 3:4341.16, is hereby enacted to read as follows:

17 **PART III-B. LOUISIANA TIMBER AND AGRICULTURE**

TRANSPORTATION GROUP SELF-INSURANCE FUNDS**§4341.1. Definitions**

Wherever used in this Part, unless a different meaning clearly appears in the context, the following terms, whether used in the singular or plural, shall have the following meanings:

(1) "Bona fide trade or professional association" means an active trade or professional association, or a successor organization thereof, that promotes Louisiana timber or agriculture production and has been in existence and conducted regular meetings for a period of not less than five years.

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

(3) "Department" means the Department of Insurance.

(4) "Fund" means a self-insurance fund established pursuant to this Part to provide automobile insurance coverage for timber transportation vehicles, agriculture transportation vehicles, or a combination of both types of vehicles.

(5) "Hazardous financial condition" means that, based upon its present or reasonably anticipated financial condition, a fund, although not yet financially impaired or insolvent, is unlikely to be able to:

(a) Meet obligations with respect to known claims and reasonably anticipated claims.

(b) Pay other obligations in the normal course of business.

(6) "Insolvency" means the condition existing when the fund's liabilities are greater than the fund's assets as determined in accordance with generally accepted accounting principles as delineated in the fund's financial statement audited by an independent certified public accountant and calculated before a member distribution is payable or before a dividend is declared.

(7) "Operator" means a person, partnership, corporation, or limited liability company who owns or operates a timber or agriculture transportation vehicle.

(8) "Principal" means a sole proprietor or a person or persons who own

1 a majority interest or the stock in a corporation, partnership, or limited liability
2 company that is established for the purpose of operating a timber or agriculture
3 business and is a member of the fund.

4 (9) "Timber or agriculture transportation vehicle" means a vehicle or
5 automobile used to collect and transport timber or agriculture products or used
6 in the course and scope of a timber or agriculture business.

7 (10) "Timber or agriculture transportation vehicle coverage" means
8 automobile insurance coverage for a timber or agriculture transportation
9 vehicle that includes any of the following:

10 (a) Liability payment for bodily injury caused by the operator of a
11 timber or agriculture transportation vehicle.

12 (b) Collision coverage to provide payment for repairs or replacement of
13 a timber or agriculture transportation vehicle if the operator is at fault in an
14 accident.

15 (c) Comprehensive coverage to provide payment to repair or replace the
16 timber or agriculture transportation vehicle if it is stolen or if it is damaged by
17 some means other than a collision with another vehicle.

18 (d) Uninsured motorists coverage as defined in R.S. 22:1295.
19 §4341.2. Authorization; trade or professional association; initial financial
20 requirements

21 A.(1) Any five or more Louisiana timber or agriculture operators that
22 are not public entities, each of which has a positive net worth, is financially
23 solvent, and is capable of assuming the obligations set forth under this Part, and
24 that are all members of one or more bona fide trade or professional
25 associations, may agree to pool their liabilities for automobile insurance
26 coverages as provided by this Part. This arrangement shall not be an insurer,
27 shall not be deemed to be insurance, and shall not be subject to the Louisiana
28 Insurance Code. The member employers of the arrangement likewise shall not
29 be insurers or be subject to the Louisiana Insurance Code.

1 **(2) An agreement to pool liabilities under this Part shall be set forth in**
2 **an indemnity agreement signed by the employers and fund representatives**
3 **acknowledging and agreeing to the assumption of the liabilities as set forth in**
4 **this Part.**

5 **(3) The arrangement shall not be a member insured of the Louisiana**
6 **Insurance Guaranty Association, nor shall the Louisiana Insurance Guaranty**
7 **Association be liable under any circumstances for any claims, or increments of**
8 **any claims, made against the arrangement.**

9 **(4) The arrangement may include the establishment of a trust fund by**
10 **a trade or professional association for its members, and the arrangement,**
11 **whether established by association members or by an association, shall be**
12 **known as a group self-insurance fund for timber or agriculture transportation**
13 **vehicle coverage and shall be governed by a board of trustees.**

14 **(5)(a) The arrangement shall be domiciled in the state of Louisiana. All**
15 **books, records, documents, accounts, and vouchers shall be kept in such a**
16 **manner that the arrangement's financial condition, affairs, and operations can**
17 **be ascertained so that its financial statements filed with the commissioner of**
18 **insurance can be readily verified and its compliance with the law determined.**
19 **Any or all books, records, documents, original indemnity agreements, accounts,**
20 **and vouchers may be photographed or reproduced on film. Any photographs,**
21 **microphotographs, optical imaging, or film reproductions of any original books,**
22 **records, documents, original indemnity agreements, accounts, and vouchers**
23 **shall for all purposes, including but not limited to admission into evidence in**
24 **any court or adjudicatory proceeding, be considered the same as the originals**
25 **thereof, and a transcript, exemplification, or certified copy of any such**
26 **photograph, microphotograph, optical imaging, or film reproduction shall for**
27 **all purposes be deemed to be a transcript, exemplification, or certified original.**
28 **Any original considered reproduced may thereafter be disposed of or destroyed,**
29 **as provided for in Subparagraph (b) of this Paragraph, if provision is made for**

1 preserving and examining the reproduction.

2 (b) Except as otherwise provided in Subparagraph (a) of this Paragraph,
3 original books, records, documents, accounts, and vouchers, or such
4 reproductions thereof, shall be preserved and kept in this state for the purpose
5 of examination and until the authority to destroy or otherwise dispose of the
6 records is secured from the commissioner. All original records, or certified
7 reproductions thereof, shall be maintained for the period commencing on the
8 first day following the last period examined by the commissioner through the
9 subsequent examination period, or three years, whichever is longer, except that
10 any original, or certified reproduction thereof, whereby the member agrees to
11 or acknowledges such member's solidary liability for liabilities of the fund shall
12 be permanently maintained.

13 (6)(a) In order to maintain financial stability in the fund, the
14 commissioner shall at all times require one of the following:

15 (i) Two or more members of the fund shall maintain a minimum
16 combined net worth of one million dollars and a ratio of current assets to
17 current liabilities of at least one-to-one.

18 (ii) Five or more principals of members of the fund who have a combined
19 net worth of one million dollars and a ratio of current assets to current
20 liabilities of at least one-to-one.

21 (b) Once the fund has been operating for three years and has a total
22 surplus of three million dollars, the commissioner may waive the requirements
23 of Subparagraph (a) of this Paragraph.

24 B. Each fund shall submit to the department an application, on an
25 application form prescribed and furnished by the department, for authority to
26 act as a group self-insurance fund for timber and agriculture transportation
27 vehicle coverage including evidence of the fund's inception, which establishes
28 financial strength and liquidity of the members to pay timber and agriculture
29 transportation vehicle claims promptly and support the financial ability of the

1 fund to satisfy its obligations upon the establishment of the fund, including:

2 (1) Financial statements, dated not less than one year prior to the
3 application, audited by an independent certified public accountant, showing at
4 the inception of the fund a combined net worth of those members or principals
5 of not less than the amount required by Subsection A of this Section.

6 (2) Current financial statements of all other members dated not less than
7 one year prior to the application.

8 (3) Schedules of the entire membership showing:

9 (a) The ratio of current assets to current liabilities of all members
10 combined to be greater than one-to-one.

11 (b) The working capital of all members combined to be of an amount
12 establishing financial strength and liquidity of the members to pay timber and
13 agriculture transportation vehicle claims promptly.

14 (c) The net worth of all members combined to be not less than the
15 amount required by Subsection A of this Section.

16 (4) Other financial information and documents as required by the
17 department.

18 (5) The application shall be in writing, on a form provided by the
19 department, and the application shall comply with all of the following:

20 (a) Applications shall be submitted to the department at least ninety days
21 prior to the effective date of the establishment of a fund. Any application
22 submitted with fewer than ninety days remaining before the desired effective
23 date, or which does not contain answers to all questions, or which is not sworn
24 to and subscribed before a notary public, or which does not contain all required
25 documents, statements, reports, and required information, may be returned
26 without review by the department.

27 (b) All applications shall be accompanied by the following items:

28 (i) The properly completed indemnity agreement in a form acceptable
29 to the department pursuant to Paragraph (A)(2) of this Section.

1 **(ii) Security as required by this Part.**

2 **(iii) Copies of acceptable excess insurance or reinsurance, as required by**
3 **this Part. All excess insurance or reinsurance must be approved by the**
4 **department prior to use.**

5 **(iv) A bond covering each third-party administrator as provided by this**
6 **Part. A fund which employ its own administrator shall be required to purchase**
7 **a bond, errors-and-omission insurance, directors-and-officers insurance, or**
8 **other security approved by the department for the administration of the fund.**

9 **(v) A certification from a designated depository attesting to the amount**
10 **of monies on hand.**

11 **(vi) Copies of fund bylaws and any trust agreement or other governance**
12 **documents.**

13 **(vii) Individual application of each member of the fund applying for**
14 **membership in the fund on the effective date of the fund and copies of each**
15 **member's executed indemnity agreements.**

16 **(viii) Evidence of financial strength and liquidity of the members dated**
17 **as of the date of the filing of the application to satisfy the financial strength and**
18 **liquidity requirements of this Part.**

19 **(ix) Proof that the fund shall have the minimum annual earned normal**
20 **premium required by this Part.**

21 **(x) The current annual report or financial statement of any casualty**
22 **insurance company providing excess or reinsurance coverage for the fund**
23 **meeting the requirements of this Part, if the statement is not already on file with**
24 **the department.**

25 **(xi) The name, address, and telephone number of each attorney**
26 **representing the fund, each qualified actuary for the fund and each certified**
27 **public accountant who will be auditing the annual financial statements of the**
28 **fund, as well as evidence of appointment of each by the fund.**

29 **(xii) The domicile address in this state where the books and records of**

1 the fund will be maintained, and the state from which the fund will be
2 administered.

3 (xiii) Proof of advance payment to the fund by each initial member of the
4 fund of not less than twenty-five percent of that member's first year estimated
5 annually earned normal premiums.

6 (xiv) A feasibility study or other analysis prepared by a qualified actuary
7 utilizing actual loss history of the initial members of the fund.

8 (xv) Pro forma financial statements projecting the first three years of
9 operations of the fund based upon a feasibility study or other analysis prepared
10 by a qualified actuary. The pro forma financial statements shall include a pro
11 forma balance sheet, income statement, and statement of cash flow, each of
12 which shall be prepared in accordance with generally accepted accounting
13 principles.

14 (xvi) A copy of the fund's premium billing policy indicating whether the
15 premium payments to the fund will be paid by members annually, monthly,
16 quarterly, or any combination thereof.

17 §4341.3. Requirements; excess insurance; administrative and service
18 companies; status; liability; refunds

19 A. Each fund established pursuant to R.S. 3:4341.2 shall:

20 (1) File rates in accordance with R.S. 3:4341.7 and maintain at least
21 seven hundred and fifty thousand dollars in earned premiums in the first fund
22 year. For the second and each subsequent year, the fund shall maintain at least
23 two million dollars in earned premiums. These amounts maintained shall be
24 documented on the fund's audited financial statement prepared in accordance
25 with generally accepted accounting principles.

26 (2)(a) During the first fund year, deposit with the department a
27 safekeeping receipt or trust receipt from a bank doing business in this state or
28 from a savings and loan association chartered to do business in the state
29 indicating that the fund has deposited and has pledged one hundred thousand

1 dollars in money or bonds of the United States, the state of Louisiana, or any
2 political subdivision thereof, of the par value of one hundred thousand dollars,
3 or post a surety bond issued by a corporate surety authorized to do business
4 within the state, in the amount of one hundred thousand dollars, to secure the
5 obligations of the fund under this Part.

6 (b) During the second and subsequent fund years, deposit with the
7 department a safekeeping receipt or trust receipt from a bank doing business
8 in this state or from a savings and loan association chartered to do business in
9 this state indicating that the fund has deposited and has pledged two hundred
10 fifty thousand dollars in money or bonds of the United States, the state of
11 Louisiana, or any political subdivision thereof, of the par value of two hundred
12 fifty thousand dollars, or post a surety bond issued by a corporate surety
13 authorized to do business within the state, in the amount of two hundred fifty
14 thousand dollars, to secure the obligations of the fund under this Part.

15 (3) Provide insurance as required by this Part.

16 (4) Maintain at all times, on a fund-year basis, a contract or contracts of
17 specific excess insurance or reinsurance of not less than two million dollars per
18 occurrence and aggregate excess insurance or reinsurance of not less than two
19 million dollars. The maximum retention under the excess insurance or
20 reinsurance contracts shall not exceed amounts as may be provided by the
21 department by regulation. Solely for the purposes of authorizing the purchase
22 of reinsurance permitted under this Subsection, each fund shall be deemed an
23 insurer. The excess insurance or reinsurance shall only be purchased from a
24 company having a rating of A- by A.M. Best Company, A- by Fitch Ratings, A
25 by Weiss Ratings, A- by Standard & Poor's, or A3 by Moody's Investors
26 Services, or better, and this reinsurance may be purchased from admitted or
27 nonadmitted companies, provided that the provisions of R.S. 22:651 through
28 661, and Financial Accounting Standard Number 113 as promulgated and
29 updated by the Financial Accounting Standards Board, shall apply to all such

1 reinsurance. All excess insurance policies or reinsurance agreements shall be
2 approved by the department prior to use by the fund.

3 (5) File with the department financial statements and reports, including
4 financial statements audited by an independent certified public accountant and
5 actuarial reports, as may be required by the department through rules
6 promulgated pursuant to the Administrative Procedure Act.

7 B. For any casualty insurance company to be eligible to write excess
8 coverage for a fund, the company shall at all times have on file with the
9 department its current financial statement showing assets, including surplus to
10 policyholders, at least equal to the current requirements by the department for
11 admission of a new company to do business in the state. Contracts or policies for
12 excess insurance coverage written by active underwriters of Lloyd's of London
13 shall be acceptable upon prior approval by the department.

14 C. Any fund administrator contracted by the fund and whose acts are
15 not covered by the fund's bond, errors-and-omissions insurance,
16 directors-and-officers' insurance, or other security approved by the
17 department, and any person, which shall include an individual, partnership,
18 corporation, and other entity contracting, either directly or indirectly, with a
19 fund to provide claims adjusting, underwriting, safety engineering, loss control,
20 marketing, investment advisory, or administrative services to the fund or its
21 membership, other than bookkeeping, or auditing, or claims investigation
22 services to a fund shall:

23 (1) Post with the department a surety bond issued by a corporate surety
24 authorized to do business in the state of not less than fifty thousand dollars or
25 deposit with the department a safekeeping receipt or trust receipt from a bank
26 doing business in this state or from a savings and loan association chartered to
27 do business in the state indicating that the person has deposited fifty thousand
28 dollars in money or bonds of the United States, the state of Louisiana, or any
29 political subdivision thereof, of the par value of fifty thousand dollars, to secure

1 the performance of its obligations under the contract and under this Part.

2 (2) Place all terms, agreements, fee arrangements, and any other
3 conditions in a written agreement, which shall constitute the entire agreement
4 between the parties, signed by the person and the fund.

5 D. Any funds under this Part shall not be considered a partnership under
6 the laws of the state.

7 E. The provisions of this Part shall not be construed to reduce or limit
8 the rights or obligations of a member with respect to the employees of the
9 member under the other provisions of this Part.

10 F. A fund member shall be solidarily liable for liabilities of the fund
11 incurred by the fund after the inception of the fund year in which the employer
12 becomes a member of the fund.

13 G. Any monies in excess of the amount necessary to fund all obligations
14 of the fund may be declared as refundable to the members of the fund by the
15 board of trustees. The board of trustees shall be authorized to distribute the
16 refund at its discretion, in accordance with the agreement establishing the fund
17 and the following limitations:

18 (1) The amount of the distribution shall not exceed the members'
19 distributions payable recorded on the balance sheet as indicated by the most
20 recently completed audited financial statements of the fund.

21 (2) No later than ten days after the payment of a distribution, the fund
22 shall provide written notification to the department.

23 H. Any funds which are not guaranteed by a guaranty fund shall give
24 written notice of the lack of a guaranty to the department and the members of
25 the fund.

26 §4341.4. Investments

27 A. No security or other investment shall be eligible for purchase or
28 acquisition by a fund unless it is interest-bearing or interest-accruing or
29 dividend- or income-paying, and is not then in default in any respect, and the

1 fund is entitled to receive for its exclusive account and benefit the interest or
2 income accruing thereon.

3 B. Amounts not needed for current obligations may be invested by the
4 board of trustees, only as provided in this Section, in any or all of the following:

5 (1) Deposits in federally insured banks or savings and loan associations
6 when any one of the following applies:

7 (a) The deposits are insured by the Federal Deposit Insurance
8 Corporation.

9 (b) The deposits are collateralized by direct obligations of the United
10 States government.

11 (2) Bonds or securities not in default as to principal or interest, which are
12 obligations of the United States government or of any agency of the United
13 States government, without limitation.

14 (3) Pass-through mortgage-backed securities and collateralized mortgage
15 obligations issued by the Federal National Mortgage Association, the
16 Government National Mortgage Association, the Federal Home Loan Mortgage
17 Corporation, or the Federal Housing Administration, without limitation,
18 provided that the collateralized mortgage obligations have a minimum rating
19 of A by Moody's, Standard & Poor's, or Fitch.

20 (4) Obligations of the state of Louisiana or its subdivisions having a
21 minimum rating of A by Moody's, Standard & Poor's, or Fitch. Not more than
22 five percent of a fund's assets may be invested in any particular issue and the
23 type of investment cannot exceed fifteen percent of the fund's assets in the
24 aggregate.

25 (5) Obligations of any state or its subdivisions having a minimum rating
26 of A by Moody's, Standard & Poor's, or Fitch. Not more than five percent of the
27 fund's assets may be invested in any particular issue and the type of investment
28 cannot exceed fifteen percent of the fund's assets in the aggregate.

29 (6) Commercial mortgage-backed securities with purchases having a

1 minimum rating of Aaa by Moody's, AAA by Standard and Poor's, or AAA by
2 Fitch. Not more than two percent of a fund's assets may be invested in one issue,
3 and this type of investment shall not exceed ten percent of the fund's assets in
4 the aggregate.

5 (7) Asset-backed securities with purchases having a minimum rating of
6 Aa by Moody's, AA by Standard and Poor's, or AA by Fitch. No more than five
7 percent of the fund's assets may be invested in one issue, and this type of
8 investment cannot exceed ten percent of the fund's assets in the aggregate.

9 (8) Repurchase agreements, without limitation, when the collateral for
10 the agreement is a direct obligation of the United States government, provided
11 that the repurchase agreement shall meet all of the following specifications:

12 (a) Be in writing.

13 (b) Have a specific maturity date.

14 (c) Adequately identify each security to which the agreement applies.

15 (d) State that in the event of default by the party agreeing to repurchase
16 the securities described in the agreement at the term contained in the
17 agreement, title to the described securities shall pass immediately to the fund
18 without recourse.

19 (9) Corporate bonds, subject to the following limitations:

20 (a) The bonds must have a minimum rating of Baa by Moody's, BBB by
21 Standard and Poor's, or BBB by Fitch.

22 (b) Except as provided in Subparagraph (d) of this Paragraph, not more
23 than five percent of a fund's assets may be invested in corporate bonds of any
24 particular issue or issuer.

25 (c) Except as provided in Subparagraph (d) of this Paragraph, not more
26 than fifty percent of a fund's assets may be invested in corporate bonds of all
27 types.

28 (d) The five percent and fifty percent limitations specified in
29 Subparagraphs (b) and (c) of this Paragraph, respectively, may be exceeded up

1 to an additional ten percent of a fund's assets in the event, and only in the event,
2 of financial circumstances acceptable to the Department of Insurance, such as
3 an increase in market value after initial purchase of a corporate bond, provided
4 that:

5 (i) The initial purchase of corporate bonds was within the limitations
6 specified in Subparagraphs (b) and (c) of this Paragraph.

7 (ii) For the purpose of determining the financial condition of a fund, the
8 department shall not include as assets of a fund those corporate bonds which
9 exceed fifty percent of a fund's total assets.

10 (10) Mutual or trust fund institutions registered with the Securities and
11 Exchange Commission under the Securities Act of 1933 and the Investment
12 Company Act of 1940 which have underlying investments consisting solely of
13 securities approved for investment as set forth in this Subsection. This type of
14 investment shall not exceed fifty percent of the fund's assets in the aggregate.

15 (11)(a) Equities subject to all of the following limitations:

16 (i) The equity sector shall not exceed fifteen percent of the overall
17 investment fund.

18 (ii) A minimum of five different issues shall be held in the equity sector
19 to provide for diversification.

20 (iii) No single issue may represent more than five percent, at cost, of the
21 overall investment fund.

22 (iv) Market capitalization of each issue shall be at least one billion
23 dollars.

24 (v) Each eligible issue shall be paying a cash dividend.

25 (vi) Except as provided in Subparagraph (b) of this Paragraph, equity
26 holdings shall be restricted to high quality, readily marketable securities
27 corporations that are domiciled in the United States and that are actively traded
28 on the major United States exchanges, including the New York Stock Exchange
29 and the National Association of Securities Dealers Automated Quotation Stock

1 Market, LLC (NASDAQ).

2 (b) Foreign domiciled corporations are eligible if they trade American
3 Depository Receipts on the major United States exchanges.

4 (c) In lieu of individual securities, investment in a mutual fund or
5 exchange traded fund which pays a dividend and consists of securities which
6 have an average market capitalization of at least one billion dollars shall be
7 permitted. The same general quality constraints shall be met and the aggregate
8 total of the funds, plus any individual securities, may not exceed fifteen percent
9 of the overall investment fund.

10 C. A fund may not invest in rental assets, which for the purposes of this
11 Section shall include but not be limited to any of the following:

12 (1) Any item carried as an asset on the fund's balance sheet which is not,
13 in fact, actually owned by the fund.

14 (2) Any item carried as an asset on the fund's balance sheet, the
15 ownership of which is subject to resolution, rescission, or revocation upon the
16 fund's insolvency, receivership, bankruptcy, statutory supervision,
17 rehabilitation, liquidation, or upon the occurrence of any other contingency.

18 (3) Any item carried as an asset on the fund's balance sheet for which the
19 fund pays a regular or periodic fee for the right to carry the item as an asset,
20 whether the fee is characterized as a rental, a management fee, or a dividend
21 not previously approved by the department, or other periodic payment for such
22 right. This provision is not intended to apply to leases capitalized under
23 generally accepted accounting principles.

24 (4) Any asset purchased for investment by the fund on credit whereby
25 the interest rate paid by the fund on its credit instrument is greater than the
26 interest rate or yield generated by the purchased asset.

27 (5) Any item carried by the fund as an asset on its balance sheet which
28 is subject to a mortgage, lien, privilege, preference, pledge, charge, or other
29 encumbrance which is not accurately reflected in the liability section of the

1 fund's balance sheet.

2 (6) Any asset received by the fund as a contribution to capital or surplus
3 from any person which meets any of the criteria set forth in Paragraphs (1)
4 through (5) of this Subsection while in the hands of that contributing person, or
5 at the moment of the contribution to capital, or thereafter.

6 §4341.5. Authority of Department of Insurance

7 A. No fund shall become operative until issued a certificate of authority
8 by the department. The department shall keep confidential all documents and
9 records associated with the provision of this Section.

10 B. The certificate of authority shall be continuous until revoked or
11 suspended by the department, or until it is voluntarily surrendered by the fund.

12 C.(1) The department shall have the authority to examine the affairs,
13 books, transactions, workpapers, files, accounts, records, assets, and liabilities
14 of a fund to determine compliance with this Part and with any rules and
15 regulations promulgated by the department or orders and directives issued by
16 the commissioner. In addition, to the extent necessary and material to the
17 examination of a fund, the department shall have the authority to examine the
18 affairs, books, transactions, workpapers, files, accounts, and records of any
19 fund's administrator, service company, certified public accountant, or actuary
20 generated in the course of transacting business on behalf of the group self-
21 insurance fund being examined. All examinations shall be conducted in
22 accordance with the provisions of this Part. The reasonable expenses of the
23 examinations shall be paid by the fund being examined.

24 (2) Upon the request of the commissioner, each group self-insurance fund
25 established pursuant to this Part shall cause a rate review to be conducted by
26 a national independent actuarial firm, provided that the commissioner shall not
27 make more than two requests in any calendar year for a rate review under the
28 provisions of this Subsection. The firm shall report its findings to the
29 commissioner of insurance.

1 **(3) All work papers, recorded information, documents, information, and**
2 **copies thereof produced by, obtained by, or disclosed to the commissioner or**
3 **any other person, pursuant to the authority of the commissioner under this**
4 **Part, shall be given confidential treatment and shall not be subject to subpoena,**
5 **except in the following circumstances:**

6 **(a) Information sought has been provided pursuant to R.S. 3:4341.10(C)**
7 **or R.S. 3:4341.11(I).**

8 **(b) Documents sought are audited financial statements which have been**
9 **filed with the Department of Insurance.**

10 **D. The department shall have authority to issue cease and desist orders**
11 **and suspend or revoke the certificate of authority of any fund which the**
12 **department determines is not in compliance with this Part or with any rule**
13 **promulgated by the department pursuant to the Administrative Procedures Act**
14 **by the department or order or directive issued by the commissioner. Without**
15 **limiting the generality of the provisions of this Subsection, a cease and desist**
16 **order may include a prohibition on writing or incurring any new or renewal**
17 **business by the fund.**

18 **E. Upon the determination by the commissioner that a fund or any**
19 **trustee, member, officer, director, or employee of a fund failed to comply with**
20 **the provisions of this Part, any applicable laws relating to the fund, or any rule**
21 **promulgated by the department or order or directive issued by the**
22 **commissioner, the department may levy a fine not to exceed two thousand**
23 **dollars for each violation. If the conduct for which a previous fine was levied by**
24 **the department is committed again, the department may levy a fine not to**
25 **exceed four thousand dollars. The enforcement of any fine and any appeal from**
26 **a fine shall be conducted in accordance with the Administrative Procedure Act.**

27 **F. The department shall conduct a hearing in accordance with all of the**
28 **following provisions:**

29 **(1) Within sixty days of the revocation or suspension by the department**

1 of a certificate of authority held by a fund.

2 (2) When requested by written demand by a fund aggrieved by any
3 action of the department, if submitted to the department within thirty days
4 after receipt of notice of the action by the department.

5 G. Nothing in this Section shall prohibit the legislative auditor from
6 reviewing records and conducting an audit in accordance with R.S. 24:513.

7 H.(1) The commissioner is authorized to order a group self-insurance
8 fund to submit a corrective action plan to the commissioner for his approval to
9 remediate any noncompliance or financial issues affecting the fund. This
10 authority is in addition to any other authority the commissioner holds.

11 (2) The corrective action plan shall be submitted by the fund to the
12 commissioner for his approval and include standards, time frames, and other
13 parameters acceptable to the commissioner. Any corrective action plan that is
14 submitted to the commissioner by a fund shall be kept confidential by the
15 commissioner.

16 (3) Without limiting the discretion of the commissioner, the corrective
17 action plan may include any of the following:

18 (a) Mandatory training.

19 (b) On-site or off-site monitoring and supervision of the activities of the
20 fund for a specified period of time to determine progress regarding correction
21 of deficiencies.

22 (c) The submission of written progress reports.

23 (d) The institution of measures to conserve or generate additional
24 funding for the fund.

25 (e) The imposition of fines and penalties for any misconduct which
26 contributed to the need for the imposition of the corrective action plan.

27 (4) Failure by the group self-insurance fund to comply with a corrective
28 action plan approved by the commissioner may result in any of the following:

29 (a) The imposition of fines and penalties.

1 **(b) Revocation of the fund's certificate of authority.**

2 **(c) Placement of the fund into confidential administrative supervision.**

3 **(d) Placement of the fund into conservation, rehabilitation, or**
4 **liquidation.**

5 **§4341.6. Licensing of agents; claims against insurance agents**

6 **A. Any person soliciting membership for a fund shall be licensed by the**
7 **department as a property and casualty agent. No employee of a bona fide trade**
8 **or professional association which has established a fund or employee of a fund**
9 **shall be required to be so licensed if the solicitation of membership for the fund**
10 **is not the primary duty of the employee.**

11 **B. No action shall lie against an insurance agent, insurance broker, or**
12 **other person involved in the marketing, selling, or solicitation of participation**
13 **in a fund authorized by this Part for any claims arising out of the insolvency of**
14 **any fund or the inability of a fund to pay claims as the claims become due unless**
15 **and until any claimant shall have first exhausted all remedies available to him**
16 **against the members of the fund as provided by this Part.**

17 **§4341.7. Rates; filing; review of rate determination**

18 **A. Each fund shall file rates on an actuarially justified class code basis**
19 **with the department and may use the rates ninety days after filing, unless the**
20 **department disapproves the use of rates within the ninety-day period.**

21 **B. Each fund shall provide a reasonable procedure for any member**
22 **aggrieved by the fund to request in written form a review of the application of**
23 **the rating system for the coverage afforded by the fund. The fund shall have**
24 **thirty days from receipt to grant or deny the request in written form. If the fund**
25 **rejects the request or fails to grant or reject the request within the thirty-day**
26 **period, the member may, within thirty days of the expiration of the thirty-day**
27 **period, appeal to the department for a hearing. The hearing before the**
28 **department shall be conducted in accordance with the provisions of this Part,**
29 **and the department, after the hearing, may affirm, modify, or reverse the action**

1 taken by the fund.

2 §4341.8 . Consecutive net losses

3 A fund with three years of consecutive net losses on the audited financial
4 statements of the fund, or two years of consecutive net losses on the audited
5 financial statements of the fund in excess of five hundred thousand dollars or
6 five percent of the premium of the latest audited financial statement, whichever
7 is greater, shall:

8 (1) Attend a meeting with the department, the administrator of the fund,
9 any third-party administrator contracted or performing services for the fund,
10 and the fund's board of trustees to discuss the financial condition of the fund
11 and to advise the department of the course of action the fund will take to obtain
12 net incomes on subsequent audited financial statements.

13 (2) File with the department a written and signed plan from the fund's
14 board of trustees describing the actions the fund will take to generate net
15 incomes on subsequent audited financial statements.

16 (3) Obtain an actuarial rate analysis, if an actuarial rate analysis was not
17 performed for the previous fund year.

18 §4341.9. Insolvencies

19 A. In the event a fund is insolvent, then in addition to any other provision
20 of law or rule, the department shall require that the fund file a plan in writing
21 within sixty days from the date that the fund becomes aware of the insolvency
22 and the plan shall be signed by the board of trustees. For the purpose of
23 determining insolvency, assets will not include intangible property, such as
24 patents, trade names, or goodwill. The plan submitted by the fund to eliminate
25 the insolvency shall set forth in detail the means by which the fund intends to
26 eliminate the insolvency, and may include an assessment of the members of the
27 fund. The fund shall also include the timetable for the implementation of the
28 plan and requirements for reporting to the department. The department shall
29 review the plan submitted by the fund and notify the fund of the plan's approval

1 or disapproval within thirty days of the department's receipt of the plan.

2 B. Upon determination by the department that a plan submitted by the
3 fund is disapproved or that a fund is not implementing a plan in accordance
4 with the terms of the plan, it shall notify the fund in writing of the
5 determination.

6 C. If a fund fails to file a plan to eliminate an insolvency as called for
7 pursuant to this Section, or if the department notifies a fund that the plan has
8 been disapproved or that the fund is not implementing the plan according to the
9 plan, the department shall have the following powers and authority in addition
10 to any other powers and authority granted under law:

11 (1) To order the fund to immediately levy an assessment upon its
12 members in an amount sufficient to eliminate the insolvency.

13 (2) To levy an assessment, in the name of the fund, upon the members of
14 the fund sufficient to eliminate the insolvency if the fund fails or refuses to levy
15 the assessment.

16 D.(1) In addition to any other powers of the commissioner, in the event
17 that a group self-insurance fund is insolvent, operating in a hazardous financial
18 condition, or operating in violation of the requirements of this Part, the
19 commissioner is hereby expressly authorized to institute delinquency
20 proceedings against the fund, including entering an order for injunctive relief
21 or placing the fund into confidential administrative supervision, conservation,
22 rehabilitation, or liquidation.

23 (2)(a) The Nineteenth Judicial District Court shall have exclusive
24 jurisdiction to hear any delinquency proceeding instituted by the commissioner
25 for the failure of a fund to comply with the approved corrective action plan.

26 (b) The court may issue an injunction to restrain the fund and its
27 officers, agents, directors, or employees from transacting any insurance
28 business or disposing of property until further action by the court. The court
29 may issue any other injunction as it deems necessary to prevent interference

1 with the proceedings or with the ability of the commissioner to conduct
2 business, as well as any injunction sought to protect any assets that are in the
3 control of the commissioner.

4 (3) The commissioner shall promulgate rules and regulations in
5 accordance with the Administrative Procedure Act providing for the grounds,
6 conduct, and procedures applicable to the delinquency proceedings.

7 E. The distribution of general assets from the estate of a fund shall be
8 prioritized as follows:

9 (1) The commissioner's costs and expenses of administration.

10 (2) Payment of claims by third-parties and insureds arising out of and
11 within the coverage of agreements or evidences of coverage issued by the fund,
12 up to the policy limits.

13 (3) Payment of claims by the federal government other than those claims
14 otherwise prioritized within this Subsection.

15 (4)(a) Payment of compensation owed to employees of the fund,
16 excluding officers, for services rendered within three months prior to the
17 commencement of a proceeding against the fund, up to two thousand five
18 hundred dollars for each employee.

19 (b) Payment to employees shall occur as soon as practicable after the
20 proceeding has commenced provided that the commissioner has reserved the
21 funds sufficient for the payment of claims as prioritized pursuant to this
22 Subsection.

23 (5) Payment of claims for unearned premiums or other premium refunds
24 and claims of general creditors, including claims of any ceding and assuming
25 company in their capacity as such.

26 (6) Payment of all other claims.

27 §4341.10. Examination

28 A. The commissioner shall make an examination, not less frequently than
29 once every five years, of each group self-insurance fund established pursuant

1 to this Part doing business in this state, and at any other time when in the
2 opinion of the commissioner it is necessary for such an examination to be made.

3 B. Upon determining that an examination should be conducted, the
4 commissioner shall appoint one or more examiners to perform the examination
5 and instruct them as to the scope of the examination. In conducting the
6 examination, the examiner or examiners shall observe those guidelines and
7 procedures that the commissioner deems appropriate.

8 C. Nothing contained in this Part shall be construed to limit the
9 commissioner's authority to use any final or preliminary examination report,
10 any examiner or fund work papers or other documents, or any other
11 information discovered or developed during the course of any examination in
12 the furtherance of any legal or regulatory action which the commissioner may,
13 in his sole discretion, considers appropriate.

14 D. Nothing contained in this Part shall be construed to limit the authority
15 of the commissioner to terminate or suspend any examination in order to
16 pursue other legal or regulatory action pursuant to the applicable laws of this
17 state. Findings of fact and conclusions made pursuant to any examination shall
18 be prima facie evidence in any legal or regulatory action.

19 E. In conducting the examination pursuant to this Section, the
20 commissioner shall examine the affairs, transactions, accounts, records,
21 documents, and assets of each authorized group self-insurance fund. For the
22 purpose of ascertaining its condition or compliance with this Part, the
23 commissioner may, as often as he deems advisable, examine the accounts,
24 records, documents and transactions of all of the following:

25 (1) Any insurance agent, solicitor or broker, but only insofar as the
26 accounts, records, documents and transactions relate to group self-insurance
27 funds.

28 (2) Any person having a contract under which he enjoys, in fact, the
29 exclusive or dominant right to manage or control a group self-insurance fund.

1 F. Every group self-insurance fund being examined, and its officers,
2 trustees, employees, administrators and representatives, shall produce and
3 make freely accessible to the commissioner the accounts, records, documents,
4 and files in its possession or control relating to the subject of the examination,
5 and shall otherwise facilitate the examination.

6 G. The commissioner may take depositions, subpoena witnesses or
7 documentary evidence, administer oaths, and examine under oath any
8 individual relative to the affairs of any group self-insurance fund being
9 examined. Any person who testifies falsely or makes any false affidavit during
10 the course of such an examination shall be guilty of perjury.

11 H. Whenever the commissioner makes an examination or investigation
12 pursuant to this Part, all expenses incurred by the commissioner of insurance
13 in conducting the examination or investigation, including the expenses and fees
14 of examiners, auditors, accountants, actuaries, attorneys, or clerical or other
15 assistants who are employed by the commissioner to make the examination,
16 shall be paid by the group self-insurance fund.

17 I. The commissioner may recover all expenses incurred from the
18 examination or investigation of any person or entity acting as an administrator
19 or third-party administrator in this state for any group self-insurance fund not
20 authorized to transact business in this state.

21 J. The commissioner shall employ the examiners, auditors, accountants,
22 actuaries, attorneys, and clerical or other assistants as are necessary to conduct
23 the examination and to compile and prepare a report thereon, and the
24 compensation for such examination shall be fixed according to the time actually
25 devoted to the work of conducting the examination and compiling the report
26 thereon as required by law. The compensation shall be reasonable and
27 commensurate with the value of the services performed.

28 K. Upon completion of the examination of any group self-insurance fund
29 or at stated periods during an examination, the commissioner shall forward to

1 the group self-insurance fund a statement showing the amount of expenses
2 incurred in the examination to the date of the statement. Upon receipt, the
3 group self-insurance fund shall pay the amount of expenses to the
4 commissioner. Upon receipt of the payment from the group self-insurance fund,
5 the commissioner shall deposit the payment in an account styled "commissioner
6 of insurance, revolving fund account", and withdrawals from the account shall
7 be made by the commissioner for the purpose of payment to examiners,
8 auditors, accountants, actuaries, attorneys, and clerical or other assistants of
9 their salaries and necessary expenses incurred in the conduction of the
10 examination.

11 L. If the group self-insurance fund considers the amount of expenses
12 billed to it unreasonable or contrary to the provisions of this Part, it may within
13 fifteen days after the receipt of the billing file a rule to show cause in a court of
14 competent jurisdiction upon the commissioner as to the reasonableness and
15 legality under this Part of the amount of expenses billed to it by the
16 commissioner, and the rule shall be tried by preference, and upon appeal, shall
17 be given preference in the appellate court, as provided by the laws of this state
18 for other state cases.

19 M. If any group self-insurance fund fails or refuses to pay the expenses
20 of examination as billed by the commissioner after fifteen days from the receipt
21 of the billing or after final judgment of the court where a rule has been filed as
22 provided in this Part, then the commissioner may suspend or revoke the
23 certificate of authority of such group self-insurance fund to do business in this
24 state until the full amount of the bill is paid.

25 §4341.11. Examination reports

26 A. All examination reports shall be comprised only of facts appearing
27 upon the books, records, or other documents of the group self-insurance fund
28 or as ascertained from the testimony of its officers or agents or other persons
29 examined concerning its affairs, and any conclusions and recommendations the

1 examiners find reasonably warranted from the facts. The commissioner shall
2 keep confidential all documents and records associated with the provision of
3 this Section.

4 B. Not later than sixty days following completion of the examination, the
5 examiner in charge shall file with the department a verified written report of
6 examination under oath. Upon receipt of the verified report, the Department of
7 Insurance shall transmit the report to the fund examined, together with a notice
8 which shall afford the fund examined a reasonable opportunity, of not more
9 than thirty days, to make a written submission or rebuttal with respect to any
10 matters contained in the examination report.

11 C. Within thirty days of the end of the period allowed for the receipt of
12 written submissions or rebuttals, the commissioner shall fully consider and
13 review the report, together with any written submissions or rebuttals and any
14 relevant portions of the examiner's work papers, and enter an order for one of
15 the following:

16 (1) Adoption of the examination report as filed, or with modifications or
17 corrections. If the examination report reveals that the group self-insurance fund
18 is operating in violation of any law, rule, regulation, or prior order or directive
19 of the commissioner, the commissioner may order the fund to take any action
20 the commissioner considers necessary and appropriate to cure the violation.

21 (2) Rejection of the examination report with direction to the examiners
22 to reopen the examination for purposes of obtaining additional documentation,
23 data, information, and testimony.

24 D. Within thirty days of rejection by the commissioner of an examination
25 report in accordance with Paragraph (C)(2) of this Section, unless the
26 commissioner extends the time for reasonable cause, the examiner in charge
27 shall refile with the department a verified written report of examination, as may
28 be modified or corrected, under oath. Upon receipt of the refiled verified report,
29 the department shall transmit the refiled report to the fund examined, together

1 with a notice similar to the notice provided for in Subsection B of this Section,
2 except that the notice shall indicate that the report is a refiled report.

3 E. Within thirty days of the end of the period allowed for the receipt of
4 written submissions or rebuttals, as provided for in Subsections B and D of this
5 Section, the commissioner shall fully consider and review the refiled report,
6 together with any written submissions or rebuttals and any relevant portions
7 of the work papers of the examiner, and enter an order for one of the following:

8 (1) Adoption of the examination report as refiled or with modification
9 or corrections. If the refiled examination report reveals that the group
10 self-insurance fund is operating in violation of any law, rule, regulation, or prior
11 order or directive of the commissioner, the commissioner may order the fund
12 to take any action the commissioner considers necessary and appropriate to
13 cure the violation.

14 (2) Reject the examination report and order a hearing in accordance
15 with the provisions of this Part, for purposes of obtaining additional
16 documentation, data, information, and testimony.

17 F. All orders entered pursuant to Paragraph (C)(1) or (E)(1) of this
18 Section shall be accompanied by findings and conclusions resulting from
19 consideration by the commissioner and review of the examination report,
20 relevant examiner work papers, and any written submissions or rebuttals. Any
21 order shall be served upon the fund by certified mail, together with a copy of
22 the adopted examination report. Within thirty days of the issuance of the
23 adopted report, the group self-insurance fund of its trustees stating, under oath,
24 that they have received a copy of the adopted report and related orders.

25 G. Within thirty days of receipt of notification of the order of the
26 commissioner to the group self-insurance fund made pursuant to Subsection F
27 of this Section, the fund may make written demand for a hearing in accordance
28 with the provisions of this Part.

29 H.(1) The hearing provided for under Paragraph (E)(2) or Subsection G

1 of this Section shall be conducted as a confidential proceeding. At the conclusion
2 of the hearing, the commissioner shall enter an order adopting the examination
3 report as filed or refiled, or with modifications or corrections, and may order
4 the fund to take any action the commissioner considers necessary and
5 appropriate to cure any violation of any law, regulation, or prior order or
6 directive of the commissioner.

7 (2) The commissioner shall issue the order within thirty days after the
8 termination of a hearing and shall, subject to Subsection E of this Section, give
9 a copy of the order to each person to whom notice of the hearing was given or
10 required to be given.

11 I.(1) Upon the adoption of the examination report under Paragraph
12 (C)(1) or (E)(1) or Subsection H of this Section, the commissioner shall continue
13 to hold the content of the examination report as private and confidential
14 information for a period not to exceed thirty consecutive days, unless the
15 provisions of R.S. 3:4341.10(C) and Subsection B of this Section apply.
16 Thereafter, the commissioner may open the report for public inspection
17 provided no court of competent jurisdiction has stayed its publication.

18 (2) Notwithstanding any provision of law to the contrary, nothing shall
19 prevent, or be construed as prohibiting, the commissioner from disclosing the
20 content of an examination report, preliminary examination report or results, or
21 any matter relating thereto, to the insurance department of this or any other
22 state or country, or to law enforcement officials of this or any other state or
23 agency of the federal government at any time, provided the agency or office
24 receiving the report or matters relating thereto agrees, in writing, to hold it
25 confidential and in a manner consistent with this Part.

26 (3) If the commissioner determines that regulatory action is appropriate
27 as a result of any examination, he may initiate any proceedings or actions as
28 provided by law.

29 J. All work papers, recorded information, and documents, as well as all

1 copies thereof produced by, obtained by, or disclosed to the commissioner, or
2 any other person, in the course of an examination made under this Part, or
3 pursuant to the authority of the commissioner under this Part, shall be given
4 confidential treatment and are not subject to subpoena and may not be made
5 public by the commissioner or any other person, unless the provisions of R.S.
6 3:4341.10(C) and Subsection I of this Section apply. The parties shall agree, in
7 writing prior to receiving the information, to provide to it the same confidential
8 treatment as required by this Section, unless the prior written consent of the
9 fund to which it pertains has been obtained.

10 K.(1) No examiner may be appointed by the commissioner if that
11 examiner, either directly or indirectly, has a conflict of interest or is affiliated
12 with the management of or owns a pecuniary interest in any person or entity
13 subject to examination under this Part.

14 (2) Notwithstanding the requirements of this Section, the commissioner
15 may retain from time to time, on an individual basis, qualified actuaries,
16 certified public accountants, or other similar individuals who are independently
17 practicing their professions, even though those persons may from time to time
18 be similarly employed or retained by persons subject to examination under this
19 Part.

20 L.(1) No cause of action shall arise nor shall any liability be imposed
21 against the commissioner, the authorized representative of the commissioner,
22 or any examiner appointed by the commissioner for any statement made or
23 conduct performed in good faith while carrying out the provisions of this Part.

24 (2) No cause of action shall arise, nor shall any liability be imposed,
25 against any person for the act of communicating or delivering information or
26 data to the commissioner, or the authorized representative of the commissioner,
27 or an examiner, pursuant to an examination made under this Part, if that act
28 of communication or delivery was performed in good faith and without
29 fraudulent intent or the intent to deceive.

1 **M.(1) In addition to those examinations performed by the commissioner**
2 **pursuant to R.S. 3:4341.10, the commissioner shall conduct financial reviews of**
3 **all group self-insurance funds authorized to do business in this state. The**
4 **reviews shall include the audited financial statements of the group**
5 **self-insurance fund rendered pursuant to generally acceptable accounting**
6 **principles, results of prior examinations and office reviews, management**
7 **changes, consumer complaints, and any other relevant information as from time**
8 **to time may be required by the commissioner.**

9 **(2) Failure by a group self-insurance fund to supply information**
10 **requested by the department during the course of a financial review shall**
11 **subject the group self-insurance fund to revocation or suspension of its license**
12 **or, in lieu thereof, a fine not to exceed ten thousand dollars per occurrence.**

13 **(3) All work papers, recorded information, and documents as well as all**
14 **copies thereof produced by, obtained by, or disclosed to the commissioner, or**
15 **any other person in the course of conducting a financial review shall be given**
16 **confidential treatment and are not subject to subpoena and may not be made**
17 **public by the commissioner or any other person, except that any access may be**
18 **granted to insurance departments of other states, international, federal or state**
19 **law enforcement agencies or international, federal, or state regulatory agencies**
20 **with statutory oversight over the financial services industry, if the recipient**
21 **agrees to maintain the confidentiality of those documents which are confidential**
22 **under the laws of this state.**

23 **(4) In conducting financial reviews, the examiner or examiners shall**
24 **observe those guidelines and procedures as the commissioner may deem**
25 **appropriate.**

26 **(5) Nothing contained in this Part shall be construed to limit the**
27 **commissioner's authority to use any final or preliminary analysis findings, any**
28 **Department of Insurance or fund work papers or other documents, or any other**
29 **information discovered or developed during the course of any analysis in the**

1 furtherance of any legal or regulatory action which the commissioner may, in
2 his sole discretion, deem appropriate.

3 (6) Any group self-insurance fund against whom a fine has been levied
4 shall be given ten days notice of such action. Upon receipt of this notice, the
5 aggrieved party may apply for and shall be entitled to a hearing pursuant to this
6 Part.

7 N. Nothing in this Section shall prohibit the legislative auditor from
8 reviewing records and conducting an audit in accordance with R.S. 24:513.

9 §4341.12. Commissioner of insurance authorized to employ investigators

10 The commissioner shall have authority to employ investigators to
11 investigate complaints received against any group self-insurance fund
12 authorized to do business in this state and against any unauthorized group
13 self-insurance fund that is reported to be operating in this state.

14 §4341.13. Disclosure

15 A. It shall be unlawful for any person who is an officer, trustee,
16 employee, administrator, agent, or representative of a group self-insurance
17 fund, as well as any person, partnership, corporation, banking corporation, or
18 any other legal entity which performs any service for a group self-insurance
19 fund, or prepares any report, audit, financial statement or report for, or makes
20 any representation on behalf of, for, or with regard to a group self-insurance
21 fund, in connection with any hearing, investigation, or examination authorized
22 by this Part, to act with the specific intent to do any of the following:

23 (1) Represent falsely, directly or indirectly, to the Department of
24 Insurance or any employee, trustee or administrator thereof, that an asset of
25 such group self-insurance fund is unencumbered, or to misrepresent any other
26 material fact pertaining to the status of any asset or liability of a group
27 self-insurance fund.

28 (2) Materially misrepresent to the department, or any employee, trustee
29 or administrator thereof, the value of any asset or the amount of any liability

1 of the group self-insurance fund, or any affiliate, subsidiary, or holding fund
2 associated therewith, provided that with regard to a material misrepresentation
3 of the value of any asset or liability, any deviation from the actual value of such
4 assets or liability which results from utilization of and compliance with
5 generally accepted insurance accounting and reporting procedures shall not be
6 deemed a violation of this Section.

7 (3) Fail to disclose to the department the existence of any liability of a
8 group self-insurance fund, or affiliate, subsidiary, or holding company
9 associated therewith when such disclosure is properly requested or required in
10 writing by an examiner or administrator of the department.

11 (4) Materially misrepresent, withhold, deny access to, or otherwise
12 preclude the obtainment of any information properly requested in writing and
13 in accordance with provisions of law affecting dissemination or disclosure of
14 information by specific institutions by an examiner or administrator of the
15 department, which is material and relevant to an examination properly
16 conducted by the department and examiners and administrators of the
17 department.

18 B. Whoever violates any provision of this Section, upon conviction, shall
19 be fined not more than fifty thousand dollars, or imprisoned with or without
20 hard labor for not more than five years, or both.

21 §4341.14. Departmental complaint directives; failure to comply; fines; hearing

22 A. Any person subject to the regulatory authority of the department who
23 fails to comply with any directive issued by the commissioner in connection with
24 a consumer complaint shall be fined an amount not to exceed two hundred fifty
25 dollars for each occurrence.

26 B. Any person against whom a fine has been levied shall be given ten
27 days notice of the action. Upon receipt of this notice, the person aggrieved may
28 apply for and shall be entitled to a hearing conducted in accordance with the
29 provisions of this Part.

1 **§4341.15. Dissolution**

2 **A. A fund wishing to dissolve shall apply to the commissioner for**
3 **authority to dissolve. An application to dissolve shall be on a form prescribed**
4 **by the commissioner and shall be approved or disapproved by the commissioner**
5 **within sixty days of receipt.**

6 **B. The dissolution of a fund without authorization is prohibited and shall**
7 **not absolve or release a fund, a member, or any person or entity which has**
8 **executed an indemnity agreement from the fund's or person's obligations**
9 **incurred or entered into prior to the dissolution of the fund.**

10 **C. An application to dissolve shall be granted if either of the following**
11 **conditions is met:**

12 **(1) The fund has no outstanding liabilities including incurred but not**
13 **reported liabilities.**

14 **(2) The fund is covered by an irrevocable commitment from a licensed**
15 **insurer which provides for payment of all outstanding liabilities and for**
16 **providing all related services, including payment of claims, preparation of**
17 **reports, and administration of transactions associated with the period during**
18 **which the plan provided coverage.**

19 **D. Upon the dissolution of any fund and after payment of all outstanding**
20 **liabilities and indebtedness, the assets of the fund shall be distributed to all**
21 **employers participating in the fund pursuant to a distribution plan submitted**
22 **by the fund to the department and approved by the commissioner.**

23 **§4341.16. Exclusive use of expirations**

24 **A.(1) Except as otherwise provided in this Section, for purposes of**
25 **soliciting, selling, or negotiating the renewal or sale of group self-insurance**
26 **coverage, products, or insurance services, an insurance agent or insurance**
27 **broker shall have the exclusive use of expirations, records, or other written or**
28 **electronic information directly related to a group self-insurance application**
29 **submitted by or a group self-insurance policy written through an insurance**

1 agent or insurance broker. No group self-insurance fund shall use expirations,
2 records, or other written or electronic information to solicit, sell, or negotiate
3 the renewal or sale of insurance coverage, insurance products, or insurance
4 services to the insured, either directly or by providing such information to
5 others, without the express written consent of the insurance agent or insurance
6 broker.

7 (2) The expirations, records, or other written or electronic information
8 may be used to review a group self-insurance application, to issue a policy, or
9 for any other purpose necessary for placing such business through the insurance
10 agent or insurance broker. The expirations, records, or other written or
11 electronic information may also be used for any other purpose which does not
12 involve the soliciting, selling, or negotiating the renewal or sale of group self-
13 insurance coverage, products, or services.

14 **B. This Section shall not apply:**

15 (1) When the insured requests, individually or through another agent,
16 that the group self-insurance company renew the policy or write other
17 insurance business.

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

22 (3) When the insurance agent or insurance broker is in default for
23 nonpayment of premiums under the insurance agent's or insurance broker's
24 contract or other agreement with the group self-insurer, unless there is a
25 legitimate dispute as to monies owed.

26 (4) When the agency contract is terminated and the insurance company
27 is required by law to continue coverage for the insured, in which event the
28 insurance company shall continue to pay the insurance agent or the insurance
29 broker commissions on such policies that the company is required to renew

1 during the thirty-six-month period following the effective date of the
2 termination. The commission shall be at the insurer's prevailing commission
3 rates in effect on the date of renewal for that class or line of business in effect
4 on the date of renewal for brokers or agents whose contracts are not
5 terminated.

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

10 D.(1) The commissioner may adopt rules, in accordance with the
11 Administrative Procedure Act, to enforce the provisions of this Section, and any
12 violation of this Section or the rules adopted hereunder shall be subject to
13 regulation by the commissioner under R.S. 3:4341.5.

14 (2) In addition, the insurance agent or insurance broker shall have a
15 right to a claim for lost commissions. The claim shall be resolved in accordance
16 with the dispute resolution terms in the applicable contract or agreement. In the
17 absence of any dispute resolution terms, the parties shall attempt to resolve
18 their dispute through mediation. If the claim is not resolved through mediation,
19 the claim may be resolved through binding arbitration if the parties agree. In
20 the absence of an agreement to resolve the claim through binding arbitration,
21 the agent or broker may maintain an action for lost commissions.

22 (3) Except as provided in Subsection B of this Section, nothing in this
23 Section shall be interpreted as impairing any rights in law or contract currently
24 enjoyed by any party.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

SB 437 Original

2022 Regular Session

Robert Mills

Proposed law authorizes the creation of self-insurance funds for the purpose of providing auto insurance for vehicles which transport timber and agriculture products.

Proposed law provides that any five or more Louisiana timber or agriculture companies, who are not public entities, each of whom has a positive net worth and is financially solvent, may pool their liabilities and self-insure for the purposes of maintaining automobile coverage for timber and agriculture transportation vehicles. Proposed law provides that members of the fund must also be members of one or more bona fide trade or professional associations. Proposed law defines "bona fide trade or professional association" as an active trade or professional association that promotes La. timber or agriculture production and has been in existence and conducted regular meetings for a period of not less than five years.

Proposed law provides that no fund can become operative until the fund is issued a certificate of authority by the Dept. of Insurance after the department has approved the application for the fund and the documents required to establish solvency and the ability to properly manage and pay claims.

Proposed law provides that no person may solicit membership for a fund unless they are licensed by the department as a licensed property and casualty insurance agent. Proposed law sets forth requirements for insurance agents and brokers who solicit membership for the fund and for the payment of commissions.

Proposed law provides that the rates for coverage, or the costs of premiums, that may be charged to the members must be in an amount that is actuarially justified. Proposed law further provides that once the rate filing is made to the department, the premium rates may be charged to the members of the fund for automobile coverage within 90 days after the rate filing is made.

Proposed law provides that, in order to maintain financial stability of the fund, the commissioner of insurance is to require two or more member timber or agriculture companies to maintain a combined net worth of \$1,000,000 or five or more principals of the member companies to maintain a combined net worth of \$1,000,000. Proposed law further provides that financial statements must not be more than one year old when submitted to the commissioner of insurance for approval of the self-insurance fund. Proposed law requires further security in the form of excess insurance or reinsurance in an amount and in form that is approved by the Dept. of Insurance to insure the ability to properly manage and pay claims.

Proposed law provides that, if the fund employs one or more third-party administrators, each third-party administrator of the fund must post a bond. Proposed law provides that, if the fund employees its own administrator, the fund is required to purchase a bond, errors and omission's insurance, or other security that is approved by the Dept. of Insurance.

Proposed law provides that a self-insurer's fund must obtain a minimum of \$750,000 in premiums in the fund for the first year and \$2,000,000 in premiums for each year thereafter.

Proposed law provides for agreements to pool liabilities to be set forth in the indemnity agreement or other instruments. Proposed law provides for annual premium audits to be conducted by an independent audit firm that is approved by the department.

Proposed law provides for proper audits by the fund in a form that is acceptable to the

department. Proposed law provides proposed law does not prohibit the legislative auditor from also reviewing the records and conducting an audit of the fund.

Proposed law provides that each member must sign mutual indemnity agreements to cover the risk of liability covered by the fund and copies of the agreements will be presented to the Dept. of Insurance when the application is made for approval of the fund. Proposed law provides that proof of advanced payments to the fund of at least 25% of each member's first year estimated annual earned premiums must be provided with the application.

Proposed law provides that moneys deposited into the fund may be invested in certain interest-bearing or interest-accruing investments and in certain bonds and securities that are publically traded or have certain minimum rating with Moody's, Standard and Poor's, or Fitch.

Proposed law further provides that the department may impose fines and penalties for failure to comply with requirements to operate the fund as required by proposed law. Proposed law further provides that the department may revoke the authority to operate the fund or issue cease and desist orders if the requirements of proposed law are not maintained by the fund and its members.

Proposed law provides for standards to which self-insurers must adhere and provides for authority for the department to take action when a self-insurer is in hazardous financial condition.

Proposed law provides that, if a fund becomes insolvent, the Dept. of Insurance will require the fund to submit a plan to take necessary action to restore solvency and plan must be approved by the department. Proposed law provides that, if a fund cannot be restored, the commissioner of insurance is authorized by proposed law to execute delinquency proceedings and place the fund into confidential administrative supervision, conservation, rehabilitation, or liquidation. Proposed law further provides that the 19th Judicial District Court has exclusive jurisdiction to hear any delinquency proceeding instituted by the commissioner for the failure of a fund to comply with the approved corrective action plan and the court may issue an injunction to restrain the fund and its officers, agents, directors, or employees from transacting any insurance business or disposing of property until further action by the court.

Proposed law provides that an examination of the fund is to be made by the commissioner at least every five years. Proposed law provides that the examiners are to be appointed by the commissioner, who is to instruct them on the scope of the examination in order to determine if the fund is operating in compliance with proposed law, and the examiners expenses are to be paid by the fund.

Proposed law provides that the commissioner may employ investigators to investigate complaints received against a fund that is approved to operate under proposed law or against any unauthorized group self-insurance fund that is reported to be operating in this state.

Proposed law provides that a fund wishing to dissolve may apply to the commissioner. Proposed law further provides the requirements for the dissolution of the fund, including the requirements for payment of future claims and the methods to secure future obligations of the fund.

Effective August 1, 2022.

(Adds R.S. 3:4341.1 - 3:4341.16)