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

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SB 437 Engrossed

DIGEST  
2022 Regular Session

Robert Mills

Proposed law authorizes the creation of a self-insurance fund for the purpose of providing auto coverage for vehicles that 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, is chartered and domiciled in Louisiana, has been in existence and conducted regular meetings for at least five years, and is not established for the primary purpose of operating a self-insured fund.

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 insurance producer. Proposed law sets forth requirements for insurance producers 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 Dept. of Insurance is to require two or more 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 department 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 to further the financial stability of the self-insured fund, the members will pay a percentage over and above their premiums to establish a reserve account. Proposed law further provides that the reserve account will be maintained at all times while the self-insured fund

is in operation and no payments can be made from the reserve account unless approved by the department.

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 employs 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 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 a 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 any administrative hearing that is necessary to resolve a dispute related to the regulation of the fund is to be conducted by an administrative law judge with the Division of Administrative Law and in accordance with present law.

Proposed law provides that, if the fund becomes insolvent, the Dept. of Insurance will require the fund to submit a plan to take necessary action to restore solvency and the plan must be approved by the department. Proposed law provides that, if the fund cannot be restored, the Dept. 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 department 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 department at least every five years. Proposed law provides that the examiners are to be appointed by the department, 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 department 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 department. 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. 3:4345.1 - 3:4345.16)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Agriculture, Forestry, Aquaculture, and Rural Development to the original bill

1. Adds requirements to the definition of a bona fide trade or professional association.
2. Adds a requirement for a reserve account.
3. Transfers administrative hearings from the Dept. of Insurance to the Division of Administrative Law.
4. Makes technical changes.