

SENATE COMMITTEE AMENDMENTS

2023 Regular Session

Amendments proposed by Senate Committee on Insurance to Original Senate Bill No. 147
by Senator Robert Mills

1 AMENDMENT NO. 1

2 On page 1, line 3, change "472.3" to "472.20"

3 AMENDMENT NO. 2

4 On page 1, line 7, after "definitions;" insert the following:

5 "to provide for agreements creating a self-insurance fund; to provide for financial
6 documents; to provide for financial requirements; to provide for excess insurance;
7 to provide for investments; to provide for insurance agents; to provide for rate filings
8 and rate determinations; to provide for insolvencies; to provide for examinations; to
9 provide for audits; to provide for reports; to provide for the hiring of certain
10 professional services providers under certain circumstances; to provide for
11 disclosures; to provide for terms of dissolution; to provide the use of certain fund
12 information; to provide for jurisdiction;"

13 AMENDMENT NO. 2

14 On page 1, line 10, change "472.3" to "472.20"

15 AMENDMENT NO. 3

16 On page 3, delete line 9, and insert the following:

17 **"§472.2. Creation of fund**
18 **The Louisiana Churches and Nonprofit Religious"**

19 AMENDMENT NO. 4

20 On page 3, line 19, change "§472.2." to "§472.3."

21 AMENDMENT NO. 5

22 On page 3, line 22, delete "insurance"

23 AMENDMENT NO. 5

24 On page 3, line 27, change "§472.3." to "§472.4."

25 AMENDMENT NO. 6

26 On page 4, between lines 3 and 4, insert the following:

27 **"(2) "Department" means the Department of Insurance."**

28 AMENDMENT NO. 7

29 On page 4, line 4, changed "(2)" to "(3)"

30 AMENDMENT NO. 8

31 On page 4, delete lines 8 through 11, and insert the following:

32 **"(4) "Hazardous financial condition" means a condition in which, based**
33 **upon its present or reasonably anticipated financial condition, the fund,**
34 **although not yet financially impaired or insolvent, is unlikely to be able to:**
35 **(a) Meet obligations with respect to known claims and reasonably**
36 **anticipated claims.**
37 **(b) Pay other obligations in the normal course of business.**
38 **(5) "Insolvency" means the condition existing when the fund's liabilities**
39 **are greater than the fund's assets as determined in accordance with generally**
40 **accepted accounting principles as delineated in the fund's financial statement**

1 audited by an independent certified public accountant and calculated before a
2 member distribution is payable or before a dividend is declared.

3 (6) "Nonprofit religious organization" means an active corporation or
4 other entity organized under the United States Internal Revenue Code as a
5 nonprofit organization defined as any one of the following:

6 (a) A church or religious house of worship.

7 (b) An organization formed for religious purposes.

8 (c) A nonprofit institution affiliated with a faith-based organization.

9 (d) An integrated auxiliary organization of a church.

10 "(7) "Property coverage" means coverage for the damage or loss of a
11 structure or building and may include any or all of the following:

12 (a) Premises liability coverage.

13 (b) Contents coverage for furniture or equipment.

14 (b) Wind and hail coverage.

15 (c) Loss of use coverage.

16 (d) Medical payments coverage."

17 AMENDMENT NO. 9

18 On page 4, line 12, change "(4)" to "(8)"

19 AMENDMENT NO. 10

20 On page 4, between lines 14 and 15, insert the following:

21 "§472.5. Agreement to pool liabilities; initial financial requirements

22 A.(1) Any arrangement authorized pursuant to this Subpart shall not be
23 deemed to be an insurer or insurance and shall not be subject to the Louisiana
24 Insurance Code, unless specifically referenced in this Subpart. The members of
25 the arrangement shall not be insurers or be subject to the Louisiana Insurance
26 Code.

27 (2) An agreement to pool liabilities under this Subpart shall be set forth
28 in an indemnity agreement signed by the members and fund representatives
29 acknowledging and agreeing to the assumption of the liabilities as set forth in
30 this Subpart.

31 (3) The arrangement shall not be considered a member insurer of the
32 Louisiana Insurance Guaranty Association, nor shall the Louisiana Insurance
33 Guaranty Association be liable for any claim, or increments of any claim, made
34 against the arrangement.

35 (4) The arrangement may include establishment of a trust fund and shall
36 be for the purpose of serving as the group self-insurance fund for participating
37 Louisiana churches and nonprofit religious organizations which arrangement
38 shall be governed by a board of trustees.

39 (5)(a) The arrangement shall be domiciled in the state of Louisiana. All
40 books, records, documents, accounts, and vouchers of the arrangement shall be
41 kept in a manner that its financial condition, affairs, and operations can be
42 ascertained so that financial statements filed with the Department of Insurance
43 are readily verified and determined whether to be in compliance. Any or all
44 books, records, documents, original indemnity agreements, accounts, and
45 vouchers may be photographed or reproduced on film. Any photographs,
46 microphotographs, optical imaging, or film reproductions of any original books,
47 records, documents, original indemnity agreements, accounts, and vouchers
48 shall for all purposes, including but not limited to admission into evidence in
49 any court or adjudicatory proceeding, be considered the same as the originals,
50 and a transcript, exemplification, or certified copy of any photograph,
51 microphotograph, optical imaging, or film reproduction shall be deemed to be
52 a transcript, exemplification, or certified original. Any original considered
53 reproduced may thereafter be disposed of or destroyed, as provided for in
54 Subparagraph (b) of this Paragraph, provided provisions are made for
55 preserving and examining the reproduction.

56 (b) Except as otherwise provided in Subparagraph (a) of this Paragraph,
57 original books, records, documents, accounts, and vouchers, or reproductions,
58 shall be preserved and kept in this state for the purpose of examination and

1 until the authority to destroy or otherwise dispose of the records is secured from
 2 the department. All original records, or certified reproductions, shall be
 3 maintained for the period commencing on the first day following the last period
 4 examined by the department through the subsequent examination period, or
 5 five years, whichever is longer, except that any original, or certified
 6 reproduction, in which the member agrees to or acknowledges the members'
 7 solidary liability for liabilities of the fund shall be permanently maintained.

8 (6)(a) In order to maintain financial stability in the fund, the department
 9 shall times that require two or more members of the fund maintain a minimum
 10 combined net worth of one million dollars and a current assets to current
 11 liabilities ratio of at least one-to-one.

12 (b) After the fund has been operating for three years and has a total
 13 surplus of three million dollars, the department may waive the requirements of
 14 Subparagraph (a) of this Paragraph.

15 (7)(a) To maintain the financial stability of the fund, the fund shall assess
 16 each member an amount which equal to a certain percentage of the premium
 17 dollars owed by the member and the percentage paid shall be known as a
 18 reserve payment. The percentage amount to be paid by all members shall be
 19 approved by the department.

20 (b) All reserve payments shall be deposited into a separate account
 21 known as the reserve account and shall be maintained at all times while the
 22 fund is in operation. No payment may be paid out of the reserve account unless
 23 approved by the department.

24 B. The 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 property coverage. Each application shall
 27 include evidence of the fund's inception, which establishes financial strength
 28 and liquidity of the members to pay claims promptly and support the financial
 29 ability of the fund to satisfy its obligations upon the establishment of the fund,
 30 including all of the following:

31 (1) Financial statements, dated not less than one year prior to the
 32 application, audited by an independent certified public accountant, showing at
 33 the inception of the fund a combined net worth of those members of not less
 34 than the amount required by Subsection A of this Section. In lieu of an audited
 35 financial statement, the department may require that the fund submit necessary
 36 financial documents in a form and manner approved by the department to
 37 verify the combined net worth of those members or principals as required in
 38 Subsection A of this Section.

39 (2) Current financial documents of all other members dated not less than
 40 one year prior to the application.

41 (3) Schedules of the entire membership showing the following items:

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

44 (b) The working capital of all members combined to be of an amount
 45 establishing the financial strength and liquidity of the members to pay claims
 46 promptly.

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

49 (4) Other financial information and documents as required by the
 50 department.

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

53 (a) Applications shall be submitted to the department at least ninety days
 54 prior to the effective date of the establishment of a fund. Any application
 55 submitted with fewer than ninety days remaining before the desired effective
 56 date, or which does not contain answers to all questions, or which is not sworn
 57 to and subscribed before a notary public, or which does not contain all required
 58 documents, statements, reports, and required information, may be returned
 59 without review by the department.

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

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

3 (ii) Security as required by this Subpart.

4 (iii) Copies of acceptable excess insurance or reinsurance, as required by
 5 this Subpart. All excess insurance or reinsurance shall be approved by the
 6 department prior to use.

7 (iv) A bond covering each third-party administrator as provided by this
 8 Subpart. If the fund employs its own administrator, the fund shall be required
 9 to purchase a bond, errors-and-omission insurance, directors-and-officers
 10 insurance, or other security approved by the department for the administration
 11 of the fund.

12 (v) A certification from a designated depository attesting to the amount
 13 of monies on hand.

14 (vi) Copies of fund bylaws and any trust agreement or other governance
 15 documents.

16 (vii) Individual application of each member of the fund applying for
 17 membership in the fund on the effective date of the fund and copies of each
 18 member's executed indemnity agreements.

19 (viii) Evidence of financial strength and liquidity of the members dated
 20 as of the date of the filing of the application to satisfy the financial strength and
 21 liquidity requirements of this Subpart.

22 (ix) Proof that the fund shall have the minimum annual earned normal
 23 premium required by this Subpart.

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

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

32 (xii) The domicile address in this state where the books and records of
 33 the fund will be maintained, and the state from which the fund will be
 34 administered.

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

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

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

46 (xvi) A copy of the fund's premium billing policy indicating whether the
 47 premium payments to the fund are to be paid by members annually, monthly,
 48 quarterly, or any combination thereof.

49 §472.6. Requirements; excess insurance; administrative and service companies;
 50 status; liability; refunds

51 A. The fund established pursuant to this Subpart and shall comply with
 52 all of the following items:

53 (1) File rates in accordance with R.S.22:472.10 and maintain at least
 54 seven hundred fifty thousand dollars in earned premiums in the first fund year.
 55 In the second and each subsequent year, the fund shall maintain at least two
 56 million dollars in earned premiums. The amounts maintained shall be
 57 documented on the fund's audited financial statement prepared in accordance
 58 with generally accepted accounting principles.

59 (2)(a) During the first fund year, the fund shall deposit with the
 60 department a safekeeping receipt or trust receipt from a bank doing business

1 in this state or from a savings and loan association chartered to do business in
 2 the state indicating that the fund has deposited and pledged one hundred
 3 thousand dollars in money or bonds of the United States, the state of Louisiana,
 4 or any political subdivision of the state, having a par value of one hundred
 5 thousand dollars, or post a surety bond issued by a corporate surety authorized
 6 to do business in this state, in the amount of one hundred thousand dollars, to
 7 secure the obligations of the fund under this Subpart.

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

17 (3) Provide property coverage as required by this Subpart.

18 (4)(a) Maintain, on a fund-year basis, a contract or contracts of specific
 19 excess insurance or reinsurance of not less than an amount that is actuarially
 20 sound and approved by the department. The maximum retention under the
 21 excess insurance or reinsurance contracts shall not exceed amounts as may be
 22 provided by the department.

23 (b) For purposes of authorizing the purchase of reinsurance required
 24 under this Subsection, the fund shall be deemed an insurer. The excess
 25 insurance or reinsurance shall be purchased only from a company having a
 26 rating of A- by A.M. Best Company, A- by Fitch Ratings, A by Weiss Ratings,
 27 A- by S&P Global Ratings, or A3 by Moody's Investors Services, or better, and
 28 this reinsurance may be purchased from admitted or nonadmitted companies,
 29 provided that the provisions of R.S. 22:651 through 661, and Financial
 30 Accounting Standard Number 113 as promulgated and updated by the
 31 Financial Accounting Standards Board. The department shall approve all
 32 excess insurance policies or reinsurance agreements prior to use by the fund.

33 (5) File with the department financial statements and financial reports,
 34 including financial statements audited by an independent certified public
 35 accountant and actuarial reports, as may be required by the department under
 36 rules promulgated pursuant to the Administrative Procedure Act.

37 B. In order for a casualty insurance company to be eligible to write
 38 excess coverage for the fund, the company shall have on file with the
 39 department its current financial statement showing assets, including any
 40 surplus to policyholders, at least equal to the current requirements by the
 41 department for admission of a new company to do business in this state.
 42 Contracts or policies for excess insurance coverage written by active
 43 underwriters of Lloyd's of London are acceptable upon prior approval by the
 44 department.

45 C. Any fund administrator contracted by the fund and whose acts are
 46 not covered by the fund's bond, errors-and-omissions insurance,
 47 directors-and-officers' insurance, or other security approved by the
 48 department, and any person, including an individual, partnership, corporation,
 49 and other entity contracting, either directly or indirectly, with a fund to provide
 50 claims adjusting, underwriting, safety engineering, loss control, marketing,
 51 investment advisory, or administrative services to the fund or its membership,
 52 other than bookkeeping, or auditing, or claims investigation services to the fund
 53 shall comply with all of the following:

54 (1) Post a surety bond with the department issued by a corporate surety
 55 authorized to do business in this state of not less than fifty thousand dollars or
 56 deposit with the department a safekeeping receipt or trust receipt from a bank
 57 doing business in this state or from a savings and loan association chartered to
 58 do business in this state indicating that the deposit of fifty thousand dollars in
 59 money or bonds of the United States, the state of Louisiana, or any political
 60 subdivision of the state, having a par value of fifty thousand dollars, to secure
 61 the performance of its obligations under the contract and under this Subpart.

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

4 **D. A fund created pursuant to this Subpart shall not be considered a**
 5 **partnership under the laws of Louisiana.**

6 **E. All members of the fund are solidarily liable for liabilities of the fund**
 7 **incurred by the fund after the inception of the fund year in which the operator**
 8 **becomes a member of the fund, to the extent required by this Subpart.**

9 **F. The board of trustees may declare, as refundable to fund members,**
 10 **any monies in excess of amounts necessary to fulfil obligations of the fund. The**
 11 **board of trustees may distribute the refund at its discretion, in accordance with**
 12 **the agreement establishing the fund and the following conditions:**

13 **(1) The amount of the distribution shall not exceed the members'**
 14 **distributions payable and recorded on the balance sheet as indicated by the**
 15 **most recently completed audited financial statements of the fund.**

16 **(2) The fund shall provide written notification to the department at least**
 17 **ten days before the payment of a distribution.**

18 **G. Each application for membership in the fund shall contain written**
 19 **notice that the fund is not covered by the Louisiana Guarantee Association.**

20 **§472.7. Investments**

21 **A. Only a security or other investment that is interest-bearing or interest**
 22 **accruing or dividend-paying or income-paying and which is not then in default**
 23 **may be purchased or acquired by the fund and the fund shall receive for its**
 24 **exclusive account and benefit the interest or income accruing on the security.**

25 **B. The board of trustees may invest amounts not needed for current**
 26 **obligations in any or all of the following items:**

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

29 **(a) The deposits are insured by the Federal Deposit Insurance**
 30 **Corporation.**

31 **(b) The deposits are collateralized by direct obligations of the United**
 32 **States government.**

33 **(2) Bonds or securities not in default as to principal or interest, which are**
 34 **obligations of the United States government or of any agency of the United**
 35 **States government, without limitation.**

36 **(3) Pass-through mortgage-backed securities and collateralized mortgage**
 37 **obligations issued by the Federal National Mortgage Association, the**
 38 **Government National Mortgage Association, the Federal Home Loan Mortgage**
 39 **Corporation, or the Federal Housing Administration, without limitation,**
 40 **provided that the collateralized mortgage obligations have a minimum rating**
 41 **of A by Moody's, S&P Global Ratings, or Fitch.**

42 **(4) Obligations of the state of Louisiana or its subdivisions having a**
 43 **minimum rating of A by Moody's, S&P Global Ratings, or Fitch. Not more than**
 44 **five percent of the fund's assets may be invested in any particular issue and the**
 45 **type of investment cannot exceed fifteen percent of the fund's assets in the**
 46 **aggregate.**

47 **(5) Obligations of any state or its subdivisions having a minimum rating**
 48 **of A by Moody's, S &P Global Ratings, or Fitch. Not more than five percent of**
 49 **the fund's assets may be invested in any particular issue and the type of**
 50 **investment cannot exceed fifteen percent of the fund's assets in the aggregate.**

51 **(6) Commercial mortgage-backed securities with purchases having a**
 52 **minimum rating of Aaa by Moody's, AAA by S&P Global Ratings, or AAA by**
 53 **Fitch. Not more than two percent of the fund's assets may be invested in one**
 54 **issue, and this type of investment shall not exceed ten percent of the fund's**
 55 **assets in the aggregate.**

56 **(7) Asset-backed securities with purchases having a minimum rating of**
 57 **Aa by Moody's, AA by S&P Global Ratings, or AA by Fitch. No more than five**
 58 **percent of the fund's assets may be invested in one issue, and this type of**
 59 **investment cannot exceed ten percent of the fund's assets in the aggregate.**

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

4 **(a) Be in writing.**

5 **(b) Have a specific maturity date.**

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

7 **(d) State that in the event of default by the party agreeing to repurchase**
 8 **the securities described in the agreement at the term contained in the**
 9 **agreement, title to the described securities shall pass immediately to the fund**
 10 **without recourse.**

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

12 **(a) The bonds shall have a minimum rating of Baa by Moody's, BBB by**
 13 **S&P Global Ratings, or BBB by Fitch.**

14 **(b) Except as provided in Subparagraph (d) of this Paragraph, not more**
 15 **than five percent of the fund's assets may be invested in corporate bonds of any**
 16 **particular issue or issuer.**

17 **(c) Except as provided in Subparagraph (d) of this Paragraph, not more**
 18 **than fifty percent of the fund's assets may be invested in corporate bonds of all**
 19 **types.**

20 **(d) The five-percent and fifty-percent limitations specified in**
 21 **Subparagraphs (b) and (c) of this Paragraph, respectively, may be exceeded up**
 22 **to an additional ten percent of the fund's assets if the financial circumstances**
 23 **acceptable to the department, like an increase in market value after initial**
 24 **purchase of a corporate bond, provided that the following occur:**

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

27 **(ii) In determining the financial condition of the fund, the department**
 28 **shall not include as assets of the fund those corporate bonds which exceed fifty**
 29 **percent of the fund's total assets.**

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

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

36 **(i) The equity sector shall not exceed fifteen percent of the overall**
 37 **investment fund.**

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

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

42 **(iv) Market capitalization of each issue shall be at least one billion**
 43 **dollars.**

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

45 **(vi) Except as provided in Subparagraph (b) of this Paragraph, equity**
 46 **holdings are restricted to high quality, readily marketable securities**
 47 **corporations that are domiciled in the United States and that are actively traded**
 48 **on the major United States exchanges, including the New York Stock Exchange**
 49 **and the National Association of Securities Dealers Automated Quotation Stock**
 50 **Market, LLC.**

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

53 **(c) In lieu of individual securities, investment in a mutual fund or**
 54 **exchange traded fund which pays a dividend and consists of securities which**
 55 **have an average market capitalization of at least one billion dollars is permitted.**
 56 **The same general quality constraints shall be met and the aggregate total of the**
 57 **funds, plus any individual securities, may not exceed fifteen percent of the**
 58 **overall investment fund.**

59 **C. The fund shall not invest in rental assets shall include but not be**
 60 **limited to any of the following items:**

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

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

7 **(3) Any item carried as an asset on the fund's balance sheet for which the**
 8 **fund pays a regular or periodic fee for the right to carry the item as an asset,**
 9 **whether the fee is characterized as a rental, a management fee, or a dividend**
 10 **not previously approved by the department, or other periodic payment for such**
 11 **right. This provision does not apply to leases capitalized under generally**
 12 **accepted accounting principles.**

13 **(4) Any asset purchased for investment by the fund on credit in which**
 14 **the interest rate paid by the fund on its credit instrument is greater than the**
 15 **interest rate or yield generated by the purchased asset.**

16 **(5) Any asset on the fund's balance sheet subject to a mortgage, lien,**
 17 **privilege, preference, pledge, charge, or other encumbrance which is not**
 18 **accurately reflected in the liability section of the fund's balance sheet.**

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

23 **§472.8. Authority of Department of Insurance**

24 **A. No fund shall become operative until it is issued a certificate of**
 25 **authority by the department. Except for the certificate of authority, the**
 26 **department shall keep confidential all documents and records associated with**
 27 **the provisions of this Section.**

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

30 **C.(1) The department may examine the affairs, books, transactions, work**
 31 **papers, files, accounts, records, assets, and liabilities of the fund to determine**
 32 **compliance with this Subpart and pursuant to any rules and regulations**
 33 **promulgated by the department or orders and directives issued by the**
 34 **department. In addition, to the extent necessary and material to the**
 35 **examination of the fund, the department shall have the authority to examine the**
 36 **affairs, books, transactions, work papers, files, accounts, and records of the**
 37 **fund's administrator, service company, certified public accountant, or actuary**
 38 **generated in the course of transacting business on behalf of the group self-**
 39 **insurance fund being examined. All examinations shall be conducted in**
 40 **accordance with the provisions of this Subpart. The reasonable expenses of the**
 41 **examinations shall be paid by the fund.**

42 **(2) Upon the request of the department, the group self-insurance fund**
 43 **established pursuant to this Subpart shall cause a rate review to be conducted**
 44 **by a national independent actuarial firm, provided that the department shall**
 45 **not make more than two requests in any calendar year for a rate review under**
 46 **the provisions of this Subsection. The firm shall report its findings to the**
 47 **department.**

48 **(3) All work papers, recorded information, documents, information, and**
 49 **copies thereof produced by, obtained by, or disclosed to the department or any**
 50 **other person, pursuant to the authority of the department under this Subpart,**
 51 **shall be given confidential treatment and are not be subject to subpoena, except**
 52 **in the following circumstances:**

53 **(a) The information sought has been provided pursuant to an**
 54 **examination, as authorized by R.S. 22:472.13(C), or provided in examination**
 55 **reports, as required by R.S. 22:472.14(I).**

56 **(b) The documents sought are audited financial statements or financial**
 57 **documents which have been filed with the department.**

58 **D. The department may issue cease and desist orders and suspend or**
 59 **revoke the certificate of authority of the fund which the department determines**
 60 **is not in compliance with this Subpart or with any rule promulgated by the**

1 department pursuant to the Administrative Procedure Act or order or directive
 2 issued by the department. A cease and desist order may include a prohibition
 3 on writing or incurring any new or renewal business by the fund.

4 E. If the department determines that the fund or any trustee, member,
 5 officer, director, or employee of the fund failed to comply with the provisions
 6 of this Subpart, any applicable laws relating to the fund, any rule promulgated
 7 by the department, or any order or directive issued by the department, the
 8 department may levy a fine not to exceed two thousand dollars for each
 9 violation. If the conduct for which a previous fine was levied by the department
 10 is committed again, the department may levy a fine not to exceed four thousand
 11 dollars. The enforcement of any fine and any appeal from a fine shall be
 12 conducted in accordance with the Administrative Procedure Act.

13 F. The division of administrative law shall conduct a hearing in
 14 accordance with R.S. 22:2191.

15 G. The provisions of this Section shall not prohibit the legislative auditor
 16 from reviewing records and conducting an audit in accordance with R.S.
 17 24:513.

18 H.(1) The department may order that the group self-insurance fund
 19 submit a corrective action plan to the department for its approval to remediate
 20 any noncompliance or financial issues affecting the fund.

21 (2) The corrective action plan shall be submitted by the fund to the
 22 department for its approval and include standards, time frames, and other
 23 parameters acceptable to the department. Any corrective action plan that is
 24 submitted to the department by the fund shall be kept confidential by the
 25 department.

26 (3) The corrective action plan may include any of the following:

27 (a) Mandatory training.

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

31 (c) The submission of written progress reports.

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

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

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

38 (a) The imposition of fines and penalties.

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

40 (c) Placement of the fund into administrative supervision pursuant to
 41 R.S. 22:731, et seq.

42 (d) Placement of the fund into receivership pursuant to R.S. 22:2001, et
 43 seq.

44 **§472.9. Licensing of agents; claims against insurance agents**

45 A. Any person soliciting membership for the fund shall be licensed by the
 46 department as a property and casualty producer pursuant to R.S. 22:1571 et
 47 seq. No employee of the fund, religious denomination, or association of
 48 nonprofit religious organizations shall be required to be licensed as an agent if
 49 the solicitation of membership for the fund is not the primary duty of the
 50 employee.

51 B. No action shall lie against an insurance producer or other person
 52 involved in the marketing, selling, or solicitation of participation in the fund for
 53 claims arising out of the insolvency of the fund or the inability of the fund to pay
 54 claims as they become due unless the claimant first exhaust all remedies
 55 available to him against the members of the fund as provided by this Subpart.

56 **§472.10. Rates; filing; review of rate determination**

57 A. The fund shall use rates filed on an actuarially justified basis with the
 58 department for ninety days, unless the department disapproves the use of rates
 59 within the ninety-day period.

1 **B. The fund shall provide a reasonable procedure for any member**
 2 **aggrieved by the fund to request in written form a review of the application of**
 3 **the rating system for the coverage afforded by the fund. The fund may grant or**
 4 **deny the request in written form within thirty days after receipt of the request.**
 5 **If the fund rejects a request or fails to grant or reject a request within the**
 6 **thirty-day period, the member may appeal to the division of administrative law**
 7 **for a hearing in accordance with the provisions of the Administrative Procedure**
 8 **Act within thirty days after expiration of the thirty day period. After the**
 9 **hearing, the administrative law judge may affirm, modify, or reverse the action**
 10 **taken by the fund.**

11 **§472.11. Consecutive net losses**

12 **If the fund has three years of consecutive net losses on the audited**
 13 **financial statements of the fund, or two years of consecutive net losses on the**
 14 **audited financial statements of the fund in excess of five hundred thousand**
 15 **dollars or five percent of the premium of the latest audited financial statement,**
 16 **whichever is greater, an authorized representative of the fund shall do all of the**
 17 **following:**

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

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

26 **(3) Obtain an actuarial rate analysis, if an actuarial rate analysis was not**
 27 **performed for the previous fund year.**

28 **§472.12. Insolvencies**

29 **A. If the fund is insolvent, in addition to any other provision of law or**
 30 **rule, the department shall require that the fund files a written plan in within**
 31 **sixty days from the date the fund becomes aware of the insolvency, and the plan**
 32 **shall be signed by the board of trustees. In determining the fund's insolvency,**
 33 **assets shall not include intangible property, like as patents, trade names, or**
 34 **goodwill. The plan submitted by the fund to eliminate the insolvency shall set**
 35 **forth in detail the means by which the fund intends to eliminate the insolvency**
 36 **and may include an assessment of the members of the fund including the**
 37 **timetable for implementation of the plan and requirements for reporting to the**
 38 **department. The department shall review the plan submitted by the fund and**
 39 **notify the fund of the plan's approval or disapproval within thirty days of the**
 40 **department's receipt of the plan.**

41 **B. If the department determines that a plan submitted by the fund is**
 42 **disapproved or, once a plan has been approved by the department, that the fund**
 43 **is not implementing a plan in accordance with the terms of the plan, the**
 44 **department shall give written notification to the fund of its determination.**

45 **C. If administrative supervision becomes necessary, the provisions of**
 46 **Subpart H of Part III of Chapter 2 of this Title shall apply to the fund and the**
 47 **department shall have administrative supervision over the fund in the same**
 48 **manner as if the fund were an insurance company.**

49 **D. In addition to any other powers of the department, if the group self-**
 50 **insurance fund is insolvent, operating in a hazardous financial condition, or**
 51 **operating in violation of the requirements of this Subpart, the department may**
 52 **institute delinquency proceedings against the fund, including entering an order**
 53 **for injunctive relief or placing the fund into administrative supervision,**
 54 **pursuant to R.S. 22:731 et seq. or into receivership pursuant to R.S. 22:2001 et**
 55 **seq.**

56 **(2) The department shall promulgate rules and regulations in accordance**
 57 **with the Administrative Procedure Act providing for the grounds, conduct, and**
 58 **procedures applicable to the delinquency proceedings.**

1 E. The distribution of general assets from the estate of the fund shall be
 2 prioritized as follows:

3 (1) The department's costs and expenses of administration.

4 (2) Payment of claims to third parties and insureds arising out of and
 5 within the coverage of agreements or evidences of coverage issued by the fund,
 6 up to the policy limits.

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

9 (4) Payment of compensation owed to employees of the fund shall be paid
 10 in accordance with the applicable provisions of administrative supervision,
 11 pursuant to R.S. 22:731 et seq. or receivership pursuant to R.S. 22:2001 et seq.

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

15 (6) Payment of all other claims.

16 §472.13. Examination

17 A. The department shall, at least once every five years conduct an
 18 examination of the group self-insurance fund and at such other times as the
 19 department deems it is necessary.

20 B. If an examination is needed, the department shall appoint one or more
 21 examiners to perform the examination and instruct them as to the scope of the
 22 examination. In performing its examination, the examiner or examiners shall
 23 observe the guidelines and procedures deemed appropriate by the department.

24 C. The provisions of this Subpart shall not be construed to limit the
 25 department's authority to use any final or preliminary examination report, any
 26 examiner or fund work papers or other documents, or any other information
 27 discovered or developed during the course of any examination in the
 28 furtherance of any legal or regulatory action which the department may
 29 consider appropriate.

30 D. The provisions of this Subpart shall not be construed to limit the
 31 authority of the department to terminate or suspend any examination in order
 32 to pursue other legal or regulatory action pursuant to the applicable laws of this
 33 state. Findings of fact and conclusions made pursuant to any examination shall
 34 be prima facie evidence in any legal or regulatory action.

35 E. In conducting its examination, the department shall examine the
 36 affairs, transactions, accounts, records, documents, and assets of the authorized
 37 group self-insurance fund. For the purpose of ascertaining its condition or
 38 compliance with this Subpart, the department may examine the accounts,
 39 records, documents, and transactions of all of the following items:

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

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

45 F. The group self-insurance fund being examined, and its officers,
 46 trustees, employees, administrators, and representatives, shall produce and
 47 make freely accessible to the department the accounts, records, documents, and
 48 files in its possession or control relating to the subject of the examination and
 49 shall otherwise facilitate the examination.

50 G. The department may take depositions, subpoena witnesses or
 51 documentary evidence, administer oaths, and examine under oath any
 52 individual relative to the affairs of the group self-insurance fund being
 53 examined. Any person who testifies falsely or makes any false affidavit during
 54 the course of an examination shall be guilty of perjury.

55 H. If the department conducts an examination or investigation pursuant
 56 to this Subpart, all expenses incurred by the department including the expenses
 57 and fees of examiners, auditors, accountants, actuaries, attorneys, or clerical or
 58 other assistants who are employed by the department to make the examination,
 59 shall be paid by the group self-insurance fund.

1 I. The department may recover all expenses incurred from time to time
 2 for the examination or investigation of any person or entity acting as an
 3 administrator or third-party administrator in this state for the group self-
 4 insurance fund.

5 J. The department shall employ the examiners, auditors, accountants,
 6 actuaries, attorneys, and clerical or other assistants as are necessary to conduct
 7 the examination and to compile and prepare a report thereon, and the
 8 compensation for such examination shall be fixed according to the time actually
 9 devoted to the work, including conducting the examination and compiling the
 10 report thereon, as required by law. Compensation paid pursuant to this
 11 Subsection shall be reasonable and commensurate with the value of the services
 12 performed.

13 K. Upon completion of the examination of the group self-insurance fund
 14 or at stated periods during an examination, the department shall forward to the
 15 group self-insurance fund a statement showing the amount of expenses incurred
 16 in the examination to the date of the statement. Upon receipt, the group self-
 17 insurance fund shall pay the amount of expenses to the department.

18 L. After the receipt of the billing, if the group self-insurance fund
 19 considers the amount of expenses billed to it unreasonable or contrary to the
 20 provisions of this Subpart, the fund within fifteen days, may file a rule to show
 21 cause in a court of competent jurisdiction upon the department as to the
 22 reasonableness and legality of the amount of expenses billed to it by the
 23 department. The rule to show shall be tried in court by preference as to
 24 scheduling, and upon appeal, shall be given preference in the appellate court,
 25 as provided by the law in the same manner as that given to the state for other
 26 state cases.

27 M. If the group self-insurance fund fails or refuses to pay the expenses
 28 of examination as billed by the department after fifteen days from the receipt
 29 of the billing or after final judgment of the court where a rule has been filed as
 30 provided in this Subpart, then the department may suspend or revoke the
 31 certificate of authority of such group self-insurance fund to do business in this
 32 state until the full amount of the bill is paid.

33 §472.14. Examination reports

34 A. All examination reports shall be comprised only of facts appearing
 35 upon the books, records, or other documents of the group self-insurance fund
 36 or as ascertained from the testimony of its officers or agents or other persons
 37 examined concerning its affairs, and any conclusions and recommendations the
 38 examiners find reasonably warranted from the facts. The department shall keep
 39 confidential all documents and records associated with the provisions of this
 40 Section.

41 B. Not later than sixty days following completion of the examination, the
 42 examiner in charge shall file with the department a verified written report of
 43 examination under oath. Upon receipt of the verified report, the department
 44 shall transmit the report to the fund examined, together with a notice which
 45 shall afford the fund examined a reasonable opportunity of not more than thirty
 46 days to make a written submission or rebuttal with respect to any matters
 47 contained in the examination report.

48 C. Within thirty days of the end of the period allowed for the receipt of
 49 written submissions or rebuttals, the department shall fully consider and review
 50 the report, together with any written submissions or rebuttals and any relevant
 51 portions of the examiner's work papers, and enter an order for one of the
 52 following:

53 (1) Adoption of the examination report as filed, or with modifications or
 54 corrections. If the examination report reveals that the group self-insurance fund
 55 is operating in violation of any law, rule, regulation, or prior order or directive
 56 of the department, the department may order the fund to take any action the
 57 department determines is necessary and appropriate to cure the violation.

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

1 D. Within thirty days of rejection by the department of an examination
2 report in accordance with Paragraph (C)(2) of this Section, unless the
3 department extends the time for reasonable cause, the examiner in charge shall
4 refile with the department a verified written report of examination, as may be
5 modified or corrected, under oath. Upon receipt of the refiled verified report,
6 the department shall transmit the refiled report to the fund examined, together
7 with a notice similar to the notice provided for in Subsection B of this Section,
8 except the notice shall indicate that the report is a refiled report.

9 E. Within thirty days of the end of the period allowed for the receipt of
10 written submissions or rebuttals, as provided for in Subsections B and D of this
11 Section, the department shall fully consider and review the refiled report,
12 together with any written submissions or rebuttals and any relevant portions
13 of the work papers of the examiner, and enter an order for one of the following:

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

20 (2) Rejection of the examination report and referral of the matter for
21 hearing before an administrative law judge within the division of administrative
22 law in accordance with the provisions of the Administrative Procedure Act, for
23 purposes of obtaining additional documentation, data, information, and
24 testimony.

25 F. All orders entered pursuant to Paragraph (C)(1) or (E)(1) of this
26 Section shall be accompanied by findings and conclusions resulting from
27 consideration by the department and review of the examination report, relevant
28 examiner work papers, and any written submissions or rebuttals. Any order
29 shall be served upon the fund by certified mail, together with a copy of the
30 adopted examination report. Within thirty days of the issuance of the adopted
31 report, the trustees of the group self-insurance fund shall state, under oath, that
32 they have received a copy of the adopted report and related orders.

33 G. Within thirty days after receipt of notification of the department's
34 order pursuant to Subsection F of this Section, the fund may make written
35 demand for an administrative law hearing in accordance with the provisions of
36 the Administrative Procedure Act.

37 H.(1) The hearing provided for under Subsection G of this Section shall
38 be conducted as required by the Administrative Procedure Act. At the
39 conclusion of the hearing, the administrative law judge shall enter an order
40 adopting the examination report as filed, or subsequently filed again with
41 modifications or corrections, and may order the fund to take any action that the
42 department considers necessary and appropriate to cure any violation of any
43 law, regulation, or prior order or directive of the department.

44 (2) The division of administrative law shall issue the order within thirty
45 days after the conclusion of the hearing and shall give a copy of the order to
46 each person to whom notice of the hearing was given or required to be given.

47 I.(1) Upon the adoption of the examination report under Paragraph
48 (C)(1) or (E)(1) or Subsection H of this Section, the department shall continue
49 to hold the content of the examination report as private and confidential
50 information for a period not to exceed thirty consecutive days, unless the
51 provisions of R.S. 22:472.13(C) and Subsection B of this Section apply.
52 Thereafter, the department may open the report for public inspection provided
53 no court of competent jurisdiction has stayed its publication.

54 (2) Notwithstanding any provision of law to the contrary, nothing shall
55 prevent, or be construed to prohibit, the department from disclosing the content
56 of an examination report, preliminary examination report or results, or any
57 matter relating thereto, to another office of the department or to the insurance
58 department of any other state or country, or to law enforcement officials of this
59 or any other state or agency of the federal government at any time, provided the
60 agency or office receiving the report or matters relating thereto agrees, in
61 writing, to hold it confidential and in a manner consistent with this Subpart.

1 **(3) If the department determines that regulatory action is appropriate**
2 **as a result of any examination, it may initiate any proceedings or actions as**
3 **provided by law.**

4 **J. All work papers, recorded information, and documents, as well as all**
5 **copies thereof produced by, obtained by, or disclosed to the department, or any**
6 **other person, in the course of an examination made under this Subpart, or**
7 **pursuant to the authority of the commissioner under this Subpart, shall be given**
8 **confidential treatment and are not subject to subpoena and may not be made**
9 **public by the department or any other person, unless the provisions of R.S.**
10 **22:472.13(C) and Subsection I of this Section apply. The parties shall agree, in**
11 **writing prior to receiving the information, to provide to it the same confidential**
12 **treatment as required by this Section, unless the prior written consent of the**
13 **fund has been obtained.**

14 **K.(1) No examiner may be appointed by the department if that examiner,**
15 **either directly or indirectly, has a conflict of interest or is affiliated with the**
16 **management of or owns a pecuniary interest in any person or entity subject to**
17 **examination under this Subpart.**

18 **(2) Notwithstanding the requirements of this Section, the department**
19 **may retain from time to time, on an individual basis, qualified actuaries,**
20 **certified public accountants, or other similar individuals who are independently**
21 **practicing their professions, even though those persons may from time to time**
22 **be similarly employed or retained by persons subject to examination under this**
23 **Subpart.**

24 **L.(1) No cause of action shall arise nor shall any liability be imposed**
25 **against the department, the authorized representative of the department, or any**
26 **examiner appointed by the department for any statement made or conduct**
27 **performed in good faith while carrying out the provisions of this Subpart.**

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

34 **M.(1) In addition to those examinations performed pursuant to R.S.**
35 **22:472.13, the department shall conduct financial reviews of the group self-**
36 **insurance fund. The reviews shall include the audited financial statements of the**
37 **group self-insurance fund rendered pursuant to generally acceptable accounting**
38 **principles, results of prior examinations and office reviews, management**
39 **changes, consumer complaints, and any other relevant information as from time**
40 **to time may be required by the department.**

41 **(2) Failure by the group self-insurance fund to supply information**
42 **requested by the department during the course of a financial review shall**
43 **subject the group self-insurance fund to revocation or suspension of its license**
44 **or a fine not to exceed ten thousand dollars per occurrence.**

45 **(3) All work papers, recorded information, and documents as well as all**
46 **copies thereof produced by, obtained by, or disclosed to the department, or any**
47 **other person in the course of conducting a financial review, shall be given**
48 **confidential treatment and are not subject to subpoena and may not be made**
49 **public by the department or any other person, except that any access may be**
50 **granted to insurance departments of other states; international, federal, or state**
51 **law enforcement agencies; or international, federal, or state regulatory agencies**
52 **with statutory oversight over the financial services industry, if the recipient**
53 **agrees to maintain the confidentiality of those documents which are confidential**
54 **under the laws of this state.**

55 **(4) In conducting financial reviews, the examiner or examiners shall**
56 **observe those guidelines and procedures as the department may deem**
57 **appropriate.**

58 **(5) Nothing contained in this Subpart shall be construed to limit the**
59 **department's authority to use any final or preliminary analysis findings, any**
60 **department or fund work papers or other documents, or any other information**

1 discovered or developed during the course of any analysis in the furtherance of
 2 any legal or regulatory action.

3 (6) The group self-insurance fund against whom a fine has been levied
 4 shall be given ten days' notice of imposition of the fine. Upon receipt of this
 5 notice, the aggrieved party may apply for and is entitled to an administrative
 6 hearing pursuant to the Administrative Procedure Act.

7 N. The provisions of this shall not prohibit the legislative auditor from
 8 reviewing records and conducting an audit in accordance with R.S. 24:513.

9 §472.15. Authorization of the Department of Insurance to employ investigators

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

14 §472.16. Disclosure

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

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

28 (2) Materially misrepresent to the department, or any employee, trustee,
 29 or administrator of the department, the value of any asset or the amount of any
 30 liability of the group self-insurance fund, or any affiliate, subsidiary, or holding
 31 fund associated therewith, provided that with regard to a material
 32 misrepresentation of the value of any asset or liability, any deviation from the
 33 actual value of assets or liability which results from utilization of and
 34 compliance with generally accepted insurance accounting and reporting
 35 procedures shall not be deemed a violation of this Section.

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

40 (4) Materially misrepresent, withhold, deny access to, or otherwise
 41 preclude the obtainment of any information properly requested in writing and
 42 in accordance with provisions of law affecting dissemination or disclosure of
 43 information by specific institutions by an examiner or administrator of the
 44 department, which is material and relevant to an examination properly
 45 conducted by the department and examiners and administrators of the
 46 department.

47 B. Whoever violates any provision of this Section, upon conviction, shall
 48 be fined by the court not more than fifty thousand dollars or subject to the
 49 penalties provided in R.S. 22:1924.

50 §472.17. Departmental complaint directives; failure to comply; fines; hearing

51 A. Any person subject to the regulatory authority of the department who
 52 fails to comply with any directive issued by the department in connection with
 53 a consumer complaint filed pursuant to this Subpart shall be fined an amount
 54 not to exceed two hundred fifty dollars for each occurrence.

55 B. Any person against whom a fine has been levied shall be given ten
 56 days, notice of the action. Upon receipt of this notice, the person aggrieved may
 57 apply for and may have an administrative hearing conducted in accordance
 58 with the provisions of the Administrative Procedure Act.

59 §472.18. Dissolution

1 A. If the fund elects to dissolve, it shall apply to the department for
 2 authority to dissolve. An application for dissolution shall be on forms prescribed
 3 by the department and shall be approved or disapproved by the department
 4 within sixty days of receipt.

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

9 C. Applications to dissolve shall be granted if either of the following
 10 conditions are met:

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

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

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

22 §472.19. Exclusive use of information

23 A.(1) Except as otherwise provided in this Section, for purposes of
 24 soliciting, selling, or negotiating the renewal or sale of group self-insurance
 25 coverage, products, or insurance services, an insurance agent or insurance
 26 broker shall have the exclusive use of expirations, records, or other written or
 27 electronic information directly related to the group self-insurance application
 28 submitted by or the group self-insurance policy written through an insurance
 29 agent or insurance broker. The group self-insurance fund shall not use
 30 expirations, records, or other written or electronic information to solicit, sell,
 31 or negotiate the renewal or sale of insurance coverage, insurance products, or
 32 insurance services to the insured, either directly or by providing such
 33 information to others, without the express written consent of the insurance
 34 agent or insurance broker.

35 (2) The expirations, records, or other written or electronic information
 36 may be used to review the group self-insurance application, to issue a policy, or
 37 for any other purpose necessary for placing such business through the insurance
 38 producer. The expirations, records, or other written or electronic information
 39 may also be used for any other purpose which does not involve the soliciting,
 40 selling, or negotiating the renewal or sale of group self-insurance coverage,
 41 products, or services.

42 B. This Section shall not apply:

43 (1) When the member of the fund requests, individually or through an
 44 insurance producer, that the group self-insurance company renew the policy or
 45 write other insurance business.

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

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

54 (4) When the agency contract is terminated and the insurance company
 55 is required by law to continue coverage for the insured, in which event the
 56 insurance company shall continue to pay the insurance agent or the insurance
 57 broker commissions on such policies that the company is required to renew
 58 during the thirty-six-month period following the effective date of the
 59 termination. The commission shall be at the insurer's prevailing commission
 60 rates in effect on the date of renewal for that class or line of business in effect

1 on the date of renewal for brokers or agents whose contracts are not
2 terminated.

3 C. The insurance producer and insurer may, in a written agreement
4 separate from the agency contract, mutually agree to terms different from the
5 provisions set forth in this Section. The terms of the agreement shall be
6 negotiated in good faith between the parties.

7 D.(1) The department may adopt rules, in accordance with the
8 Administrative Procedure Act, to enforce the provisions of this Section, and any
9 violation of this Section or the rules adopted pursuant to this Section shall be
10 subject to regulation by the department under R.S. 22:472.8.

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

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

22 §472.20. Jurisdiction

23 The Nineteenth Judicial District Court shall have exclusive jurisdiction
24 over any proceeding instituted pursuant to this Subpart."