

2023 Regular Session

SENATE BILL NO. 147

BY SENATOR ROBERT MILLS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

SELF INSURANCE. Creates the Louisiana Churches and Nonprofit Religious Organizations Self-Insured Fund. (gov sig)

1 AN ACT

2 To enact Subpart P-1 of Part I of Chapter 2 of Title 22 of the Louisiana Revised Statutes of

3 1950, to be comprised of R.S. 22:472.1 through 472.20, relative to self-insurance

4 funds; to authorize the creation of the Louisiana Churches and Nonprofit Religious

5 Organizations Self-Insured Fund; to provide for legislative intent and public purpose;

6 to provide for requirements and management of the self-insurance fund; to provide

7 for definitions; to provide for agreements creating a self-insurance fund; to provide

8 for financial documents; to provide for financial requirements; to provide for excess

9 insurance; to provide for investments; to provide for insurance agents; to provide for

10 rate filings and rate determinations; to provide for insolvencies; to provide for

11 examinations; to provide for audits; to provide for reports; to provide for the hiring

12 of certain professional services providers under certain circumstances; to provide for

13 disclosures; to provide for terms of dissolution; to provide the use of certain fund

14 information; to provide for jurisdiction; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. Subpart P-1 of Part I of Chapter 2 of Title 22 of the Louisiana Revised

17 Statutes of 1950, comprised of R.S. 22:472.1 through 472.20, is hereby enacted to read as

1 follows:

2 SUBPART P-1. LOUISIANA CHURCHES AND NONPROFIT

3 RELIGIOUS ORGANIZATIONS SELF-INSURED FUND

4 §472.1. Legislative finding; public purpose

5 A. Louisiana is currently experiencing a crisis in the availability and  
6 affordability of insurance for churches and nonprofit religious organizations.  
7 Louisiana property owners and their insurers sustained catastrophic losses in  
8 2020 and 2021 from hurricanes Laura, Delta, Zeta, and Ida. As the result of  
9 their losses and their assessment of the risk of loss from future storms, many  
10 insurers, including the largest insurer of churches, have substantially reduced  
11 their participation in the voluntary market for property insurance. With fewer  
12 insurers in the voluntary market, competitive pressure on premium rates is  
13 reduced. Current underwriting practices have resulted in a substantial increase  
14 in the number of Louisiana churches that are forced to obtain their property  
15 insurance coverage or their wind and hail coverage from Louisiana Citizens  
16 Property Insurance Corporation, if they can indeed find coverage.

17 B. Increased premiums and assessments make property insurance  
18 coverage unaffordable for some churches and nonprofit religious organizations.  
19 Due to the fact that property insurance is often unavailable or unaffordable,  
20 many churches and nonprofit religious organizations are being forced to sell or  
21 abandon their churches and religious buildings or are prevented from restoring  
22 storm-damaged properties.

23 C. Throughout Louisiana, churches and other religious organizations are  
24 the bedrock that holds many communities together. In addition to providing  
25 spiritual and emotional support for their membership in times of crisis,  
26 churches and other nonprofit religious organizations provide services to the  
27 needy such as soup kitchens, food pantries, orphanages, adoption services, and  
28 foster care. Churches and other nonprofit religious organizations provide  
29 mentorship for the youth, assistance to the elderly, and disaster relief services

1 when hurricanes and tornadoes strike. Churches and other nonprofit religious  
2 organizations also provide much needed hope, help, and services for those  
3 individuals in addiction recovery. Church-supported nonviolent offender  
4 programs at places such as Angola State Prison have greatly reduced violence  
5 in these facilities and greatly reduced recidivism rates in the state. This  
6 voluminous list of services, most of which are provided free of charge to the  
7 community, resulting in the savings of untold millions of dollars each year to  
8 state and local taxpayers.

9 D. The availability of property insurance for churches and other  
10 nonprofit religious organizations at a reasonable cost is essential to the  
11 well-being of the state. Churches and other religious organizations cannot invest  
12 in, and lenders will not finance, the construction and ownership of churches and  
13 religious buildings without adequate property insurance protection. The state  
14 has a vital interest in fostering the availability of property insurance at  
15 reasonable cost for churches and other religious organizations.

16 §472.2. Creation of fund

17 The Louisiana Churches and Nonprofit Religious Organizations  
18 Self-Insured Fund is hereby created for the purpose of allowing churches,  
19 religious organizations, and religious denominations to band together and  
20 self-insure, thereby, increasing the availability of property insurance for local  
21 churches and religious buildings, increasing competitive pressure on insurance  
22 rates, and reducing the volume of business written by the Louisiana Citizens  
23 Property Insurance Corporation by offering a less expensive alternative to its  
24 policyholders and reducing the exposure and potential assessments to  
25 policyholders by the Louisiana Citizens Property Insurance Corporation.

26 §472.3. Authorization; requirements; regulation

27 A. Two or more churches or nonprofit religious organizations or one or  
28 more religious denominations may agree to pool their liabilities for the purposes  
29 of providing property coverage for their buildings and properties, so long as

1 they have a positive net worth, are financially solvent, and capable of assuming  
2 the obligations set forth under this Part.

3 B. The Department of Insurance shall promulgate necessary rules to  
4 implement and regulate the activities authorized in this Subpart.

5 §472.4. Definitions

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

9 (1) "Church" means a nonprofit religious organization made up of a  
10 group of religious believers.

11 (2) "Department" means the Department of Insurance.

12 (3) "Fund" means the self-insurance fund established pursuant to this  
13 Subpart to provide property insurance for churches and nonprofit religious  
14 organizations and shall be known as the Louisiana Churches and Nonprofit  
15 Religious Organizations Self-Insured Fund.

16 (4) "Hazardous financial condition" means a condition in which, based  
17 upon its present or reasonably anticipated financial condition, the fund,  
18 although not yet financially impaired or insolvent, is unlikely to be able to:

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

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

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

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

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

2           (b) An organization formed for religious purposes.

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

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

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

7           (a) Premises liability coverage.

8           (b) Contents coverage for furniture or equipment.

9           (c) Wind and hail coverage.

10          (d) Loss of use coverage.

11          (e) Medical payments coverage.

12          (8) "Religious denomination" means a group of individual churches or  
13 houses of worship who are called or identified using the same terms and a  
14 particular set of beliefs or spiritual or religious values.

15          §472.5. Agreement to pool liabilities; initial financial requirements

16           A.(1) Any arrangement authorized pursuant to this Subpart shall not be  
17 deemed to be an insurer or insurance and shall not be subject to the Louisiana  
18 Insurance Code, unless specifically referenced in this Subpart. The members of  
19 the arrangement shall not be insurers or be subject to the Louisiana Insurance  
20 Code.

21           (2) An agreement to pool liabilities under this Subpart shall be set forth  
22 in an indemnity agreement signed by the members and fund representatives  
23 acknowledging and agreeing to the assumption of the liabilities as set forth in  
24 this Subpart.

25           (3) The arrangement shall not be considered a member insurer of the  
26 Louisiana Insurance Guaranty Association, nor shall the Louisiana Insurance  
27 Guaranty Association be liable for any claim, or increments of any claim, made  
28 against the arrangement.

29           (4) The arrangement may include establishment of a trust fund and shall

1 be for the purpose of serving as the group self-insurance fund for participating  
2 Louisiana churches and nonprofit religious organizations which arrangement  
3 shall be governed by a board of trustees.

4 (5)(a) The arrangement shall be domiciled in the state of Louisiana. All  
5 books, records, documents, accounts, and vouchers of the arrangement shall be  
6 kept in a manner that its financial condition, affairs, and operations can be  
7 ascertained so that financial statements filed with the Department of Insurance  
8 are readily verified and determined whether to be in compliance. Any or all  
9 books, records, documents, original indemnity agreements, accounts, and  
10 vouchers may be photographed or reproduced on film. Any photographs,  
11 microphotographs, optical imaging, or film reproductions of any original books,  
12 records, documents, original indemnity agreements, accounts, and vouchers  
13 shall for all purposes, including but not limited to admission into evidence in  
14 any court or adjudicatory proceeding, be considered the same as the originals,  
15 and a transcript, exemplification, or certified copy of any photograph,  
16 microphotograph, optical imaging, or film reproduction shall be deemed to be  
17 a transcript, exemplification, or certified original. Any original considered  
18 reproduced may thereafter be disposed of or destroyed, as provided for in  
19 Subparagraph (b) of this Paragraph, provided provisions are made for  
20 preserving and examining the reproduction.

21 (b) Except as otherwise provided in Subparagraph (a) of this Paragraph,  
22 original books, records, documents, accounts, and vouchers, or reproductions,  
23 shall be preserved and kept in this state for the purpose of examination and  
24 until the authority to destroy or otherwise dispose of the records is secured from  
25 the department. All original records, or certified reproductions, shall be  
26 maintained for the period commencing on the first day following the last period  
27 examined by the department through the subsequent examination period, or  
28 five years, whichever is longer, except that any original, or certified  
29 reproduction, in which the member agrees to or acknowledges the members'

1 solidary liability for liabilities of the fund shall be permanently maintained.

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

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

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

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

18 B. The fund shall submit to the department an application, on an  
19 application form prescribed and furnished by the department, for authority to  
20 act as a group self-insurance fund for property coverage. Each application shall  
21 include evidence of the fund's inception, which establishes financial strength  
22 and liquidity of the members to pay claims promptly and support the financial  
23 ability of the fund to satisfy its obligations upon the establishment of the fund,  
24 including all of the following:

25 (1) Financial statements, dated not less than one year prior to the  
26 application, audited by an independent certified public accountant, showing at  
27 the inception of the fund a combined net worth of those members of not less  
28 than the amount required by Subsection A of this Section. In lieu of an audited  
29 financial statement, the department may require that the fund submit necessary

1 financial documents in a form and manner approved by the department to  
2 verify the combined net worth of those members or principals as required in  
3 Subsection A of this Section.

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

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

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

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

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

14 (4) Other financial information and documents as required by the  
15 department.

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

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

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

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

28 (ii) Security as required by this Subpart.

29 (iii) Copies of acceptable excess insurance or reinsurance, as required by



1 this Subpart. All excess insurance or reinsurance shall be approved by the  
2 department prior to use.

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

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

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

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

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

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

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

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

28 (xii) The domicile address in this state where the books and records of  
29 the fund will be maintained, and the state from which the fund will be

1 administered.

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

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

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

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

16 §472.6. Requirements; excess insurance; administrative and service companies;  
17 status; liability; refunds

18 A. The fund established pursuant to this Subpart shall comply with all  
19 of the following items:

20 (1) File rates in accordance with R.S. 22:472.10 and maintain at least  
21 seven hundred fifty thousand dollars in earned premiums in the first fund year.  
22 In the second and each subsequent year, the fund shall maintain at least two  
23 million dollars in earned premiums. The 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, the fund shall deposit with the  
27 department a safekeeping receipt or trust receipt from a bank doing business  
28 in this state or from a savings and loan association chartered to do business in  
29 the state indicating that the fund has deposited and pledged one hundred

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

6 (b) In the second and subsequent fund years, it shall 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 pledged two hundred fifty  
10 thousand dollars in money or bonds of the United States, the state of Louisiana,  
11 or any political subdivision of the state, having a par value of two hundred fifty  
12 thousand dollars, or post a surety bond issued by a corporate surety authorized  
13 to do business in this state, in the amount of two hundred fifty thousand dollars,  
14 to secure the obligations of the fund under this Subpart.

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

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

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

1 excess insurance policies or reinsurance agreements prior to use by the fund.

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

6 B. In order for a casualty insurance company to be eligible to write  
7 excess coverage for the fund, the company shall have on file with the  
8 department its current financial statement showing assets, including any  
9 surplus to policyholders, at least equal to the current requirements by the  
10 department for admission of a new company to do business in this state.  
11 Contracts or policies for excess insurance coverage written by active  
12 underwriters of Lloyd's of London are acceptable upon prior approval by the  
13 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, including an individual, partnership, corporation,  
18 and other entity contracting, either directly or indirectly, with a fund to provide  
19 claims adjusting, underwriting, safety engineering, loss control, marketing,  
20 investment advisory, or administrative services to the fund or its membership,  
21 other than bookkeeping, or auditing, or claims investigation services to the fund  
22 shall comply with all of the following:

23 (1) Post a surety bond with the department issued by a corporate surety  
24 authorized to do business in this 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 this state indicating that the deposit of fifty thousand dollars in  
28 money or bonds of the United States, the state of Louisiana, or any political  
29 subdivision of the state, having a par value of fifty thousand dollars, to secure

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

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

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

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

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

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

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

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

22 §472.7. Investments

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

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

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

3                   **(a) The deposits are insured by the Federal Deposit Insurance**  
4 **Corporation.**

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

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

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

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

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

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

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

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

8                   (a) Be in writing.

9                   (b) Have a specific maturity date.

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

11                  (d) State that in the event of default by the party agreeing to repurchase  
12                  the securities described in the agreement at the term contained in the  
13                  agreement, title to the described securities shall pass immediately to the fund  
14                  without recourse.

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

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

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

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

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

29                   (i) The initial purchase of corporate bonds was within the limitations

1 specified in Subparagraphs (b) and (c) of this Paragraph.

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

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

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

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

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

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

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

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

20 (vi) Except as provided in Subparagraph (b) of this Paragraph, equity  
21 holdings are restricted to high quality, readily marketable securities  
22 corporations that are domiciled in the United States and that are actively traded  
23 on the major United States exchanges, including the New York Stock Exchange  
24 and the National Association of Securities Dealers Automated Quotation Stock  
25 Market, L.L.C.

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

28 (c) In lieu of individual securities, investment in a mutual fund or  
29 exchange traded fund which pays a dividend and consists of securities which



1 have an average market capitalization of at least one billion dollars is permitted.

2 The same general quality constraints shall be met and the aggregate total of the  
3 funds, plus any individual securities, may not exceed fifteen percent of the  
4 overall investment fund.

5 C. The fund shall not invest in rental assets and shall include but not be  
6 limited to any of the following items:

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

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

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

19 (4) Any asset purchased for investment by the fund on credit in which  
20 the interest rate paid by the fund on its credit instrument is greater than the  
21 interest rate or yield generated by the purchased asset.

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

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

29 §472.8. Authority of Department of Insurance

1           A. No fund shall become operative until it is issued a certificate of  
2           authority by the department. Except for the certificate of authority, the  
3           department shall keep confidential all documents and records associated with  
4           the provisions of this Section.

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

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

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

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

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

4           (b) The documents sought are audited financial statements or financial  
5           documents which have been filed with the department.

6           D. The department may issue cease and desist orders and suspend or  
7           revoke the certificate of authority of the fund which the department determines  
8           is not in compliance with this Subpart or with any rule promulgated by the  
9           department pursuant to the Administrative Procedure Act or order or directive  
10           issued by the department. A cease and desist order may include a prohibition  
11           on writing or incurring any new or renewal business by the fund.

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

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

23           G. The provisions of this Section shall not prohibit the legislative auditor  
24           from reviewing records and conducting an audit in accordance with R.S.  
25           24:513.

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

29           (2) The corrective action plan shall be submitted by the fund to the

1 department for its approval and include standards, time frames, and other  
2 parameters acceptable to the department. Any corrective action plan that is  
3 submitted to the department by the fund shall be kept confidential by the  
4 department.

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

6 (a) Mandatory training.

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

10 (c) The submission of written progress reports.

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

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

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

17 (a) The imposition of fines and penalties.

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

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

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

23 §472.9. Licensing of agents; claims against insurance agents

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

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

6           **§472.10. Rates; filing; review of rate determination**

7           **A. The fund shall use rates filed on an actuarially justified basis with the**  
8           **department for ninety days, unless the department disapproves the use of rates**  
9           **within the ninety-day period.**

10           **B. The fund shall provide a reasonable procedure for any member**  
11           **aggrieved by the fund to request in written form a review of the application of**  
12           **the rating system for the coverage afforded by the fund. The fund may grant or**  
13           **deny the request in written form within thirty days after receipt of the request.**  
14           **If the fund rejects a request or fails to grant or reject a request within the**  
15           **thirty-day period, the member may appeal to the division of administrative law**  
16           **for a hearing in accordance with the provisions of the Administrative Procedure**  
17           **Act within thirty days after expiration of the thirty day period. After the**  
18           **hearing, the administrative law judge may affirm, modify, or reverse the action**  
19           **taken by the fund.**

20           **§472.11. Consecutive net losses**

21           **If the fund has three years of consecutive net losses on the audited**  
22           **financial statements of the fund, or two years of consecutive net losses on the**  
23           **audited financial statements of the fund in excess of five hundred thousand**  
24           **dollars or five percent of the premium of the latest audited financial statement,**  
25           **whichever is greater, an authorized representative of the fund shall do all of the**  
26           **following:**

27           **(1) Attend a meeting with the department, the administrator of the fund,**  
28           **any third-party administrator contracted or performing services for the fund,**  
29           **and the fund's board of trustees to discuss the financial condition of the fund**

1 and to advise the department of the course of action the fund will take to obtain  
2 net incomes on subsequent audited financial statements.

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

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

8 §472.12. Insolvencies

9 A. If the fund is insolvent, in addition to any other provision of law or  
10 rule, the department shall require that the fund files a written plan within sixty  
11 days from the date the fund becomes aware of the insolvency, and the plan shall  
12 be signed by the board of trustees. In determining the fund's insolvency, assets  
13 shall not include intangible property, like patents, trade names, or goodwill. The  
14 plan submitted by the fund to eliminate the insolvency shall set forth in detail  
15 the means by which the fund intends to eliminate the insolvency and may  
16 include an assessment of the members of the fund including the timetable for  
17 implementation of the plan and requirements for reporting to the department.  
18 The department shall review the plan submitted by the fund and notify the fund  
19 of the plan's approval or disapproval within thirty days of the department's  
20 receipt of the plan.

21 B. If the department determines that a plan submitted by the fund is  
22 disapproved or, once a plan has been approved by the department, that the fund  
23 is not implementing a plan in accordance with the terms of the plan, the  
24 department shall give written notification to the fund of its determination.

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

29 D.(1) In addition to any other powers of the department, if the group

1 self-insurance fund is insolvent, operating in a hazardous financial condition,  
2 or operating in violation of the requirements of this Subpart, the department  
3 may institute delinquency proceedings against the fund, including entering an  
4 order for injunctive relief or placing the fund into administrative supervision,  
5 pursuant to R.S. 22:731 et seq. or into receivership pursuant to R.S. 22:2001 et  
6 seq.

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

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

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

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

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

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

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

24 (6) Payment of all other claims.

25 §472.13. Examination

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

29 B. If an examination is needed, the department shall appoint one or more

1 examiners to perform the examination and instruct them as to the scope of the  
2 examination. In performing its examination, the examiner or examiners shall  
3 observe the guidelines and procedures deemed appropriate by the department.

4 C. The provisions of this Subpart shall not be construed to limit the  
5 department's authority to use any final or preliminary examination report, any  
6 examiner or fund work papers or other documents, or any other information  
7 discovered or developed during the course of any examination in the  
8 furtherance of any legal or regulatory action which the department may  
9 consider appropriate.

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

15 E. In conducting its examination, the department shall examine the  
16 affairs, transactions, accounts, records, documents, and assets of the authorized  
17 group self-insurance fund. For the purpose of ascertaining its condition or  
18 compliance with this Subpart, the department may examine the accounts,  
19 records, documents, and transactions of all of the following items:

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

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

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



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

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

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

15          J. The department shall employ the examiners, auditors, accountants,  
16          actuaries, attorneys, and clerical or other assistants as are necessary to conduct  
17          the examination and to compile and prepare a report thereon, and the  
18          compensation for such examination shall be fixed according to the time actually  
19          devoted to the work, including conducting the examination and compiling the  
20          report thereon, as required by law. Compensation paid pursuant to this  
21          Subsection shall be reasonable and commensurate with the value of the services  
22          performed.

23          K. Upon completion of the examination of the group self-insurance fund  
24          or at stated periods during an examination, the department shall forward to the  
25          group self-insurance fund a statement showing the amount of expenses incurred  
26          in the examination to the date of the statement. Upon receipt, the group  
27          self-insurance fund shall pay the amount of expenses to the department.

28          L. After the receipt of the billing, if the group self-insurance fund  
29          considers the amount of expenses billed to it unreasonable or contrary to the

1 provisions of this Subpart, the fund within fifteen days, may file a rule to show  
2 cause in a court of competent jurisdiction upon the department as to the  
3 reasonableness and legality of the amount of expenses billed to it by the  
4 department. The rule to show shall be tried in court by preference as to  
5 scheduling, and upon appeal, shall be given preference in the appellate court,  
6 as provided by the law in the same manner as that given to the state for other  
7 state cases.

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

14 §472.14. Examination reports

15 A. All examination reports shall be comprised only of facts appearing  
16 upon the books, records, or other documents of the group self-insurance fund  
17 or as ascertained from the testimony of its officers or agents or other persons  
18 examined concerning its affairs, and any conclusions and recommendations the  
19 examiners find reasonably warranted from the facts. The department shall keep  
20 confidential all documents and records associated with the provisions of this  
21 Section.

22 B. Not later than sixty days following completion of the examination, the  
23 examiner in charge shall file with the department a verified written report of  
24 examination under oath. Upon receipt of the verified report, the department  
25 shall transmit the report to the fund examined, together with a notice which  
26 shall afford the fund examined a reasonable opportunity of not more than thirty  
27 days to make a written submission or rebuttal with respect to any matters  
28 contained in the examination report.

29 C. Within thirty days of the end of the period allowed for the receipt of

1 written submissions or rebuttals, the department shall fully consider and review  
2 the report, together with any written submissions or rebuttals and any relevant  
3 portions of the examiner's work papers, and enter an order for one of the  
4 following:

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

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

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

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

26 (1) Adoption of the examination report as refiled or with modification  
27 or corrections. If the refiled examination report reveals that the group  
28 self-insurance fund is operating in violation of any law, rule, regulation, or prior  
29 order or directive of the department, the department may order the fund to

1 take any action the department considers necessary and appropriate to cure the  
2 violation.

3 (2) Rejection of the examination report and referral of the matter for  
4 hearing before an administrative law judge within the division of administrative  
5 law in accordance with the provisions of the Administrative Procedure Act, for  
6 purposes of obtaining additional documentation, data, information, and  
7 testimony.

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

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

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

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

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

8           (2) Notwithstanding any provision of law to the contrary, nothing shall  
9           prevent, or be construed to prohibit, the department from disclosing the content  
10           of an examination report, preliminary examination report or results, or any  
11           matter relating thereto, to another office of the department or to the insurance  
12           department of any other state or country, or to law enforcement officials of this  
13           or any other state or agency of the federal government at any time, provided the  
14           agency or office receiving the report or matters relating thereto agrees, in  
15           writing, to hold it confidential and in a manner consistent with this Subpart.

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

19           J. All work papers, recorded information, and documents, as well as all  
20           copies thereof produced by, obtained by, or disclosed to the department, or any  
21           other person, in the course of an examination made under this Subpart, or  
22           pursuant to the authority of the commissioner under this Subpart, shall be given  
23           confidential treatment and are not subject to subpoena and may not be made  
24           public by the department or any other person, unless the provisions of R.S.  
25           22:472.13(C) and Subsection I of this Section apply. The parties shall agree, in  
26           writing prior to receiving the information, to provide to it the same confidential  
27           treatment as required by this Section, unless the prior written consent of the  
28           fund has been obtained.

29           K.(1) No examiner may be appointed by the department if that examiner,

1 either directly or indirectly, has a conflict of interest or is affiliated with the  
2 management of or owns a pecuniary interest in any person or entity subject to  
3 examination under this Subpart.

4 (2) Notwithstanding the requirements of this Section, the department  
5 may retain from time to time, on an individual basis, qualified actuaries,  
6 certified public accountants, or other similar individuals who are independently  
7 practicing their professions, even though those persons may from time to time  
8 be similarly employed or retained by persons subject to examination under this  
9 Subpart.

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

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

20 M.(1) In addition to those examinations performed pursuant to R.S.  
21 22:472.13, the department shall conduct financial reviews of the group self-  
22 insurance fund. The reviews shall include the audited financial statements of the  
23 group self-insurance fund rendered pursuant to generally acceptable accounting  
24 principles, results of prior examinations and office reviews, management  
25 changes, consumer complaints, and any other relevant information as from time  
26 to time may be required by the department.

27 (2) Failure by the group self-insurance fund to supply information  
28 requested by the department during the course of a financial review shall  
29 subject the group self-insurance fund to revocation or suspension of its license

1 or a fine not to exceed ten thousand dollars per occurrence.

2 (3) All work papers, recorded information, and documents as well as all  
3 copies thereof produced by, obtained by, or disclosed to the department, or any  
4 other person in the course of conducting a financial review, shall be given  
5 confidential treatment and are not subject to subpoena and may not be made  
6 public by the department or any other person, except that any access may be  
7 granted to insurance departments of other states; international, federal, or state  
8 law enforcement agencies; or international, federal, or state regulatory agencies  
9 with statutory oversight over the financial services industry, if the recipient  
10 agrees to maintain the confidentiality of those documents which are confidential  
11 under the laws of this state.

12 (4) In conducting financial reviews, the examiner or examiners shall  
13 observe those guidelines and procedures as the department may deem  
14 appropriate.

15 (5) Nothing contained in this Subpart shall be construed to limit the  
16 department's authority to use any final or preliminary analysis findings, any  
17 department or fund work papers or other documents, or any other information  
18 discovered or developed during the course of any analysis in the furtherance of  
19 any legal or regulatory action.

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

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

26 §472.15. Authorization of the Department of Insurance to employ investigators

27 The department may to employ investigators to investigate complaints  
28 received against the group self-insurance fund authorized to do business in this  
29 state and against any unauthorized group self-insurance fund that is reported

1 to be operating in this state.

2 §472.16. Disclosure

3 A. It is unlawful for any person who is an officer, trustee, employee,  
4 administrator, agent, or representative of the group self-insurance fund, as well  
5 as any person, partnership, corporation, banking corporation, or any other  
6 legal entity which performs any service for the group self-insurance fund, or  
7 prepares any report, audit, financial statement or report for, or makes any  
8 representation on behalf of, for, or with regard to the group self-insurance fund,  
9 in connection with any investigation, or examination authorized by this  
10 Subpart, to act with the specific intent to do any of the following items:

11 (1) Represent falsely, directly or indirectly, to the department or any  
12 employee, trustee, or administrator of the department, that an asset of the  
13 group self-insurance fund is unencumbered, or to misrepresent any other  
14 material fact pertaining to the status of any asset or liability of the group  
15 self-insurance fund.

16 (2) Materially misrepresent to the department, or any employee, trustee,  
17 or administrator of the department, the value of any asset or the amount of any  
18 liability of the group self-insurance fund, or any affiliate, subsidiary, or holding  
19 fund associated therewith, provided that with regard to a material  
20 misrepresentation of the value of any asset or liability, any deviation from the  
21 actual value of assets or liability which results from utilization of and  
22 compliance with generally accepted insurance accounting and reporting  
23 procedures shall not be deemed a violation of this Section.

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

28 (4) Materially misrepresent, withhold, deny access to, or otherwise  
29 preclude the obtainment of any information properly requested in writing and



1 in accordance with provisions of law affecting dissemination or disclosure of  
2 information by specific institutions by an examiner or administrator of the  
3 department, which is material and relevant to an examination properly  
4 conducted by the department and examiners and administrators of the  
5 department.

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

9 §472.17. Departmental complaint directives; failure to comply; fines; hearing

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

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

18 §472.18. Dissolution

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

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

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

29 (1) The fund has no outstanding liabilities including incurred but not

1        reported liabilities.

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

7                D. Upon the dissolution of the fund and after payment of all outstanding  
8        liabilities and indebtedness, the assets of the fund shall be distributed to all  
9        employers participating in the fund pursuant to a distribution plan submitted  
10       by the fund to the department and approved by the department.

11        §472.19. Exclusive use of information

12                A.(1) Except as otherwise provided in this Section, for purposes of  
13        soliciting, selling, or negotiating the renewal or sale of group self-insurance  
14        coverage, products, or insurance services, an insurance agent or insurance  
15        broker shall have the exclusive use of expirations, records, or other written or  
16        electronic information directly related to the group self-insurance application  
17        submitted by or the group self-insurance policy written through an insurance  
18        agent or insurance broker. The group self-insurance fund shall not use  
19        expirations, records, or other written or electronic information to solicit, sell,  
20        or negotiate the renewal or sale of insurance coverage, insurance products, or  
21        insurance services to the insured, either directly or by providing such  
22        information to others, without the express written consent of the insurance  
23        agent or insurance broker.

24                (2) The expirations, records, or other written or electronic information  
25        may be used to review the group self-insurance application, to issue a policy, or  
26        for any other purpose necessary for placing such business through the insurance  
27        producer. The expirations, records, or other written or electronic information  
28        may also be used for any other purpose which does not involve the soliciting,  
29        selling, or negotiating the renewal or sale of group self-insurance coverage,

1        products, or services.

2                B. This Section shall not apply:

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

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

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

14               (4) When the agency contract is terminated and the insurance company  
15               is required by law to continue coverage for the insured, in which event the  
16               insurance company shall continue to pay the insurance agent or the insurance  
17               broker commissions on such policies that the company is required to renew  
18               during the thirty-six-month period following the effective date of the  
19               termination. The commission shall be at the insurer's prevailing commission  
20               rates in effect on the date of renewal for that class or line of business in effect  
21               on the date of renewal for brokers or agents whose contracts are not  
22               terminated.

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

27               D.(1) The department may adopt rules, in accordance with the  
28               Administrative Procedure Act, to enforce the provisions of this Section, and any  
29               violation of this Section or the rules adopted pursuant to this Section shall be

1 **subject to regulation by the department under R.S. 22:472.8.**

2 **(2) In addition, the insurance producer may have a claim for lost**  
 3 **commissions. The claim shall be resolved in accordance with the dispute**  
 4 **resolution terms in the applicable contract or agreement. In the absence of any**  
 5 **dispute resolution terms, the parties shall attempt to resolve their dispute**  
 6 **through mediation. If the claim is not resolved through mediation, the claim**  
 7 **may be resolved through binding arbitration if the parties agree. In the absence**  
 8 **of an agreement to resolve the claim through binding arbitration, the insurance**  
 9 **producer may maintain an action for lost commissions.**

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

13 **§472.20. Jurisdiction**

14 **The Nineteenth Judicial District Court shall have exclusive jurisdiction**  
 15 **over any proceeding instituted pursuant to this Subpart.**

16 Section 2. This Act shall become effective upon signature by the governor or, if not  
 17 signed by the governor, upon expiration of the time for bills to become law without signature  
 18 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 19 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 20 effective on the day following such approval.

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The original instrument was prepared by Carla S. Roberts. The following  
 digest, which does not constitute a part of the legislative instrument, was  
 prepared by Thomas L. Tyler.

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SB 147 Engrossed

DIGEST  
 2023 Regular Session

Robert Mills

Proposed law authorizes the creation of a self-insurance fund to provide property coverage for churches and nonprofit religious organizations. Creates the Louisiana Churches and Nonprofit Religious Organizations Self-Insured Fund to allow churches and religious organizations to self-insure by allowing churches, religious organizations, and religious denominations to ban together and self-insure to increase availability of property insurance for local churches and religious buildings, increasing competition on insurance rates, and reducing the volume of business written by the Louisiana Citizens Property Insurance Corporation.

Proposed law authorizes two or more churches or nonprofit religious organizations or one

or more religious denominations to pool their liabilities for the purposes of providing property coverage for their buildings and properties, so long as they have a positive net worth, are financially solvent, and capable of assuming the obligations.

Proposed law defines "hazardous financial condition", "insolvency", "nonprofit religious organization", and "property coverage" which includes coverage for damage or loss of a structure or building and may include any or all of the following:

- (1) Premises liability coverage.
- (2) Contents coverage for furniture or equipment.
- (3) Wind and hail coverage.
- (4) Loss of use coverage.
- (5) Medical payments coverage.

Proposed law provides that agreements to pool liabilities are not to be deemed insurance and are not subject to the Louisiana Insurance Code nor shall it be insured by the La. Insurance Guaranty Association nor shall the Association be liable for any claims under the agreement.

Proposed law provides for establishment of a trust fund to serve as the group self-insurance fund governed by a board of trustees.

Proposed law requires that two or more members of the fund maintain a minimum combined net worth of one million dollars with a ratio of current assets to liabilities of at least one-to-one. Provides that once the fund has been in operation for three years and has a total surplus of three million dollars, the Department of Insurance may waive the one million dollar requirement.

Proposed law provides for audit of financial statements or the department may require submission of necessary financial documents in a form and manner approved by the Department of Insurance.

Proposed law provides for written application to the Department of Insurance to form a self-insurance fund. Requires that applications contain the following items:

- (1) The properly completed indemnity agreement in a form acceptable to the department.
- (2) Security as required by law.
- (3) Copies of acceptable excess insurance or reinsurance as required by law.
- (4) A bond covering each third-party administrator as provided by law. If the fund employs its own administrator, the fund shall purchase a bond, errors-and-omission insurance, directors-and-officers insurance, or other security approved by the department for the administration of the fund.
- (5) A certification from a designated depository attesting to the amount of monies on hand.
- (6) Copies of fund bylaws and any trust agreement or other governance documents.
- (7) Individual application of each member of the fund applying for membership in the fund and copies of each member's executed indemnity agreement.
- (8) Evidence of financial strength and liquidity of the members dated as of the date of

- the filing of the application.
- (9) Proof that the fund shall have the minimum annual earned normal premium required by law.
  - (10) The current annual report or financial statement of any casualty insurance company providing excess or reinsurance coverage for the fund meeting the requirements of law.
  - (11) The name, address, and telephone number of each attorney representing the fund, each qualified actuary for the fund, and each certified public accountant who will be auditing the annual financial statements of the fund, as well as evidence of appointment of each by the fund.
  - (12) The domicile address in this state where the books and records of the fund will be maintained, and the state from which the fund will be administered.
  - (13) Proof of advance payment to the fund by each initial member of the fund of not less than 25% of that member's first year estimated annually earned normal premiums.
  - (14) A feasibility study or other analysis prepared by a qualified actuary utilizing actual loss history of the initial members of the fund.
  - (15) Pro forma financial statements projecting the first three years of operations of the fund based upon a feasibility study or other analysis prepared by a qualified actuary which shall include a pro forma balance sheet, income statement, and statement of cash flow, each of which shall be prepared in accordance with generally accepted accounting principles.
  - (16) A copy of the fund's premium billing policy indicating whether the premium payments to the fund will be paid by members annually, monthly, quarterly, or any combination thereof.

Proposed law sets forth certain requirements for the fund; provides for excess insurance; administrative and service companies; liability of the fund; and refunds. Provides that the fund is not to be considered a partnership under state law; that fund members shall be solidarily liable for liabilities of the fund incurred by the fund after the inception of the fund year in which the operator becomes a member of the fund, to the extent required by law.

Proposed law provides that monies in excess of that necessary to pay all obligations of the fund may be declared as refundable to the members of the fund by the board of trustees.

Proposed law provides for investments by the fund and that securities or other investments be interest-bearing or interest-accruing or dividend-paying or income-paying. Prohibits investment in rental assets.

Proposed law delineates the authority of the Department of Insurance in the self-insurance fund. Provides that nothing shall prohibit the legislative auditor from reviewing records and conducting an audit in accordance with law.

Proposed law requires licensing of persons soliciting membership except that no employee of the fund, religious denomination, or association of nonprofit religious organizations shall be required to be licensed as an agent if the solicitation of membership for the fund is not the primary duty of the employee.

Proposed law requires the fund to file rates on an actuarially justified basis with the department and to use the rates ninety days after filing, unless disapproved by the department within the ninety-day period.

Proposed law provides for actions when the fund has three years of consecutive net losses on the audited financial statements of the fund, or two years of consecutive net losses on the audited financial statements of the fund in excess of five hundred thousand dollars or five percent of the premium of the latest audited financial statement, whichever is greater.

Proposed law provides for insolvencies involving the fund and for the department to conduct examination of the fund at least once every five years. Provides that the examination include the affairs, transactions, accounts, records, documents, and assets of the authorized group self-insurance fund. Provides that all expenses incurred by the department in conducting the examination or investigation, including the expenses and fees of examiners, auditors, accountants, actuaries, attorneys, or clerical or other assistants who are employed by the department, shall be paid by the group self-insurance fund.

Proposed law provides for response to issues related in the examination by the fund.

Proposed law provides for instances procedures in which the fund chooses to dissolve and for approval or disapproval by the department. Prohibits dissolution of the fund without authorization. Provides that application to dissolve be granted if either of the following conditions is met:

- (1) The fund has no outstanding liabilities including incurred but not reported liabilities.
- (2) The fund is covered by an irrevocable commitment from a licensed insurer which provides for payment of all outstanding liabilities and for providing all related services, including payment of claims, preparation of reports, and administration of transactions associated with the period during which the plan provided coverage.

Proposed law grants exclusive jurisdiction over any proceeding instituted under proposed law to the Nineteenth Judicial District Court.

Effective upon signature of the governor or upon lapse of time for gubernatorial action.

(Adds R.S. 22:472.1 through 472.20)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Insurance to the original bill

1. Adds comprehensive provisions regarding the obligations, operations, and responsibilities of the self-insurance fund.
2. Adds provisions for financial audits of the fund.
3. Adds provisions as to requirements for application of the self-insurance fund.
4. Adds provisions for excess insurance; administrative and service companies; and for fund members to be solidarily liable for liabilities of the fund.
5. Adds provisions for investments by the fund.
6. Adds provisions as to fund audits by the Department of Insurance.
7. Adds provisions regarding records of the fund.