

2022 Regular Session

HOUSE BILL NO. 1078 (Substitute for House Bill No. 1049 by Representative Seabaugh)

BY REPRESENTATIVES SEABAUGH AND MCFARLAND AND SENATOR ROBERT MILLS

INSURANCE/SELF: Authorizes the creation of Louisiana timber and agriculture transportation group self-insurance funds

1 AN ACT

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

3 comprised of R.S. 3:4351.1 through 4351.16, relative to forestry and agriculture; to

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

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

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

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

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

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

10 and investigations; to provide for licensed insurance producers; to provide for

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

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

13 for dissolution; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. Part IV-A of Chapter 28 of Title 3 of the Louisiana Revised Statutes of
16 1950, comprised of R.S. 3:4351.1 through 4351.16, is hereby enacted to read as follows:

1 PART IV-A. LOUISIANA TIMBER AND AGRICULTURE

2 TRANSPORTATION GROUP SELF-INSURANCE FUNDS

3 §4351.1. Definitions

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

7 (1)(a) "Bona fide trade or professional association" means an active trade or
8 professional association that is chartered and domiciled in Louisiana, or a successor
9 organization thereof, that meets all of the following requirements:

10 (i) Promotes Louisiana timber or agriculture production.

11 (ii) Provides industry support and services to its membership.

12 (iii) The primary function is for purposes other than the sponsorship,
13 operation, or management of a fund or primarily for purposes other than to provide
14 a related employee safety program or other activity necessary to the operation of the
15 fund.

16 (iv) Has been in existence and conducted regular meetings for a period of not
17 less than five years.

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

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

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

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

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

28 (5) "Insolvency" means the condition existing when the fund's liabilities are
29 greater than the fund's assets as determined in accordance with generally accepted

1 accounting principles as delineated in the fund's financial statement audited by an
2 independent certified public accountant and calculated before a member distribution
3 is payable or before a dividend is declared.

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

6 (7) "Principal" means a person or persons who own a majority interest or the
7 majority of the stock in a corporation, partnership, or limited liability company that
8 is established for the purpose of operating a timber or agriculture business and is a
9 member of the fund.

10 (8) "Timber or agriculture transportation vehicle" means a vehicle or
11 automobile used to collect and transport timber or agriculture products or used in the
12 course and scope of a timber or agriculture business.

13 (9) "Timber or agriculture transportation vehicle coverage" means
14 automobile coverage for a timber or agriculture transportation vehicle that includes
15 any of the following:

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

18 (b) Collision coverage to provide payment for repairs or replacement of a
19 timber or agriculture transportation vehicle.

20 (c) Comprehensive coverage to provide payment to repair or replace the
21 timber or agriculture transportation vehicle if it is damaged by some means other
22 than a collision.

23 (d) Uninsured motorists coverage as defined in R.S. 22:1295.
24 §4351.2. Authorization; trade or professional association; initial financial
25 requirements

26 A.(1) Five or more Louisiana timber or agriculture operators that are not
27 public entities, each of which has a positive net worth, is financially solvent, and is
28 capable of assuming the obligations set forth under this Part, and that are all
29 members of one or more bona fide trade or professional associations, may agree to

1 pool their liabilities for timber or agriculture transportation vehicle coverages as
2 provided by this Part. This arrangement shall not be deemed to be an insurer or
3 insurance and shall not be subject to the Louisiana Insurance Code, unless
4 specifically referenced in this Part. The members of the arrangement likewise shall
5 not be insurers or be subject to the Louisiana Insurance Code.

6 (2) An agreement to pool liabilities under this Part shall be set forth in an
7 indemnity agreement signed by the members and fund representatives
8 acknowledging and agreeing to the assumption of the liabilities as set forth in this
9 Part.

10 (3) The arrangement shall not be a member insured of the Louisiana
11 Insurance Guaranty Association, nor shall the Louisiana Insurance Guaranty
12 Association be liable under any circumstances for any claims, or increments of any
13 claims, made against the arrangement.

14 (4) The arrangement may include the establishment of a trust fund by a trade
15 or professional association for its members, and the arrangement, whether
16 established by association members or by an association, shall be known as the group
17 self-insurance fund for timber or agriculture transportation vehicle coverage and
18 shall be governed by a board of trustees.

19 (5)(a) The arrangement shall be domiciled in the state of Louisiana. All
20 books, records, documents, accounts, and vouchers shall be kept in such a manner
21 that the arrangement's financial condition, affairs, and operations can be ascertained
22 so that its financial statements filed with the department of insurance can be readily
23 verified and its compliance with the law determined. Any or all books, records,
24 documents, original indemnity agreements, accounts, and vouchers may be
25 photographed or reproduced on film. Any photographs, microphotographs, optical
26 imaging, or film reproductions of any original books, records, documents, original
27 indemnity agreements, accounts, and vouchers shall for all purposes, including but
28 not limited to admission into evidence in any court or adjudicatory proceeding, be
29 considered the same as the originals thereof, and a transcript, exemplification, or

1 certified copy of any such photograph, microphotograph, optical imaging, or film
2 reproduction shall for all purposes be deemed to be a transcript, exemplification, or
3 certified original. Any original considered reproduced may thereafter be disposed
4 of or destroyed, as provided for in Subparagraph (b) of this Paragraph, if provision
5 is made for preserving and examining the reproduction.

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

16 (6)(a) In order to maintain financial stability in the fund, the department shall
17 at all times require one of the following:

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

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

24 (b) Once the fund has been operating for three years and has a total surplus
25 of three million dollars, the department may waive the requirements of Subparagraph
26 (a) of this Paragraph.

27 (7)(a) In order to further maintain the financial stability of the fund, the fund
28 shall assess each member an amount which is equal to a certain percentage of the
29 premium dollars owed by the member and the percentage paid shall be known as a

1 reserve payment. The percentage amount to be paid by all members shall be
2 approved by the department.

3 (b) All reserve payments shall be deposited into a separate account known
4 as the reserve account and shall be maintained at all times that the fund is in
5 operation. No payments may be paid out of the reserve account unless approved by
6 the department.

7 B. The fund shall submit to the department an application, on an application
8 form prescribed and furnished by the department, for authority to act as a group self-
9 insurance fund for timber and agriculture transportation vehicle coverage. The
10 application shall include evidence of the fund's inception, which establishes financial
11 strength and liquidity of the members to pay timber and agriculture transportation
12 vehicle claims promptly and support the financial ability of the fund to satisfy its
13 obligations upon the establishment of the fund, including:

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

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

20 (3) Schedules of the entire membership showing:

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

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

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

28 (4) Other financial information and documents as required by the
29 department.

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

3 (a) Applications shall be submitted to the department at least ninety days
4 prior to the effective date of the establishment of a fund. Any application submitted
5 with fewer than ninety days remaining before the desired effective date, or which
6 does not contain answers to all questions, or which is not sworn to and subscribed
7 before a notary public, or which does not contain all required documents, statements,
8 reports, and required information, may be returned without review by the
9 department.

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

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

13 (ii) Security as required by this Part.

14 (iii) Copies of acceptable excess insurance or reinsurance, as required by this
15 Part. All excess insurance or reinsurance shall be approved by the department prior
16 to use.

17 (iv) A bond covering each third-party administrator as provided by this Part.
18 If the fund employs its own administrator, the fund shall be required to purchase a
19 bond, errors-and-omission insurance, directors-and-officers insurance, or other
20 security approved by the department for the administration of the fund.

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

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

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

1 (viii) Evidence of financial strength and liquidity of the members dated as
2 of the date of the filing of the application to satisfy the financial strength and
3 liquidity requirements of this Part.

4 (ix) Proof that the fund shall have the minimum annual earned normal
5 premium required by this Part.

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

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

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

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

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

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

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

1 §4351.3. Requirements; excess insurance; administrative and service companies;
2 status; liability; refunds

3 A. The fund established pursuant to R.S. 3:4351.2 shall:

4 (1) File rates in accordance with R.S. 3:4351.7 and maintain at least seven
5 hundred and fifty thousand dollars in earned premiums in the first fund year. For the
6 second and each subsequent year, the fund shall maintain at least two million dollars
7 in earned premiums. The amounts maintained shall be documented on the fund's
8 audited financial statement prepared in accordance with generally accepted
9 accounting principles.

10 (2)(a) During the first fund year, deposit with the department a safekeeping
11 receipt or trust receipt from a bank doing business in this state or from a savings and
12 loan association chartered to do business in the state indicating that the fund has
13 deposited and has pledged one hundred thousand dollars in money or bonds of the
14 United States, the state of Louisiana, or any political subdivision thereof, of the par
15 value of one hundred thousand dollars, or post a surety bond issued by a corporate
16 surety authorized to do business within the state, in the amount of one hundred
17 thousand dollars, to secure the obligations of the fund under this Part.

18 (b) During the second and subsequent fund years, deposit with the
19 department a safekeeping receipt or trust receipt from a bank doing business in this
20 state or from a savings and loan association chartered to do business in this state
21 indicating that the fund has deposited and has pledged two hundred fifty thousand
22 dollars in money or bonds of the United States, the state of Louisiana, or any
23 political subdivision thereof, of the par value of two hundred fifty thousand dollars,
24 or post a surety bond issued by a corporate surety authorized to do business within
25 the state, in the amount of two hundred fifty thousand dollars, to secure the
26 obligations of the fund under this Part.

27 (3) Provide timber and agriculture transportation vehicle coverage as
28 required by this Part.

1 (4) Maintain at all times, on a fund-year basis, a contract or contracts of
2 specific excess insurance or reinsurance of not less than two million dollars per
3 occurrence and aggregate excess insurance or reinsurance of not less than two
4 million dollars. The maximum retention under the excess insurance or reinsurance
5 contracts shall not exceed amounts as may be provided by the department by
6 regulation. Solely for the purposes of authorizing the purchase of reinsurance
7 permitted under this Subsection, the fund shall be deemed an insurer. The excess
8 insurance or reinsurance shall be purchased only from a company having a rating of
9 A- by A.M. Best Company, A- by Fitch Ratings, A by Weiss Ratings, A- by
10 Standard & Poor's, or A3 by Moody's Investors Services, or better, and this
11 reinsurance may be purchased from admitted or nonadmitted companies, provided
12 that the provisions of R.S. 22:651 through 661, and Financial Accounting Standard
13 Number 113 as promulgated and updated by the Financial Accounting Standards
14 Board, shall apply to all such reinsurance. All excess insurance policies or
15 reinsurance agreements shall be approved by the department prior to use by the fund.

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

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

27 C. Any fund administrator contracted by the fund and whose acts are not
28 covered by the fund's bond, errors-and-omissions insurance, directors-and-officers'
29 insurance, or other security approved by the department, and any person, which shall

1 include an individual, partnership, corporation, and other entity contracting, either
2 directly or indirectly, with a fund to provide claims adjusting, underwriting, safety
3 engineering, loss control, marketing, investment advisory, or administrative services
4 to the fund or its membership, other than bookkeeping, or auditing, or claims
5 investigation services to the fund shall:

6 (1) Post with the department a surety bond issued by a corporate surety
7 authorized to do business in the state of not less than fifty thousand dollars or deposit
8 with the department a safekeeping receipt or trust receipt from a bank doing business
9 in this state or from a savings and loan association chartered to do business in the
10 state indicating that the person has deposited fifty thousand dollars in money or
11 bonds of the United States, the state of Louisiana, or any political subdivision
12 thereof, of the par value of fifty thousand dollars, to secure the performance of its
13 obligations under the contract and under this Part.

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

17 D. The fund in this Part shall not be considered a partnership under the laws
18 of the state.

19 E. Fund members shall be solidarily liable for liabilities of the fund incurred
20 by the fund after the inception of the fund year in which the operator becomes a
21 member of the fund, to the extent required by this Part.

22 F. Any monies in excess of the amount necessary to fund all obligations of
23 the fund may be declared as refundable to the members of the fund by the board of
24 trustees. The board of trustees shall be authorized to distribute the refund at its
25 discretion, in accordance with the agreement establishing the fund and the following
26 conditions:

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

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

3 G. Any funds which are not guaranteed by a guaranty fund shall give written
4 notice of the lack of a guaranty to the department and the members of the fund.

5 §4351.4. Investments

6 A. No security or other investment shall be eligible for purchase or
7 acquisition by the fund unless it is interest-bearing or interest-accruing or dividend-
8 or income-paying, and is not then in default in any respect, and the fund is entitled
9 to receive for its exclusive account and benefit the interest or income accruing
10 thereon.

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

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

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

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

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

21 (3) Pass-through mortgage-backed securities and collateralized mortgage
22 obligations issued by the Federal National Mortgage Association, the Government
23 National Mortgage Association, the Federal Home Loan Mortgage Corporation, or
24 the Federal Housing Administration, without limitation, provided that the
25 collateralized mortgage obligations have a minimum rating of A by Moody's,
26 Standard & Poor's, or Fitch.

27 (4) Obligations of the state of Louisiana or its subdivisions having a
28 minimum rating of A by Moody's, Standard & Poor's, or Fitch. Not more than five

1 percent of the fund's assets may be invested in any particular issue and the type of
2 investment cannot exceed fifteen percent of the fund's assets in the aggregate.

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

7 (6) Commercial mortgage-backed securities with purchases having a
8 minimum rating of Aaa by Moody's, AAA by Standard and Poor's, or AAA by Fitch.
9 Not more than two percent of the fund's assets may be invested in one issue, and this
10 type of investment shall not exceed ten percent of the fund's assets in the aggregate.

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

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

18 (a) Be in writing.

19 (b) Have a specific maturity date.

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

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

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

25 (a) The bonds shall have a minimum rating of Baa by Moody's, BBB by
26 Standard and Poor's, or BBB by Fitch.

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

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

3 (d) The five percent and fifty percent limitations specified in Subparagraphs
4 (b) and (c) of this Paragraph, respectively, may be exceeded up to an additional ten
5 percent of the fund's assets in the event, and only in the event, of financial
6 circumstances acceptable to the department, such as an increase in market value after
7 initial purchase of a corporate bond, provided that:

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

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

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

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

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

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

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

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

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

27 (vi) Except as provided in Subparagraph (b) of this Paragraph, equity
28 holdings shall be restricted to high quality, readily marketable securities corporations
29 that are domiciled in the United States and that are actively traded on the major

1 United States exchanges, including the New York Stock Exchange and the National
2 Association of Securities Dealers Automated Quotation Stock Market, LLC.

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

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

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

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

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

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

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

27 (5) Any item carried by the fund as an asset on its balance sheet which is
28 subject to a mortgage, lien, privilege, preference, pledge, charge, or other

1 encumbrance which is not accurately reflected in the liability section of the fund's
2 balance sheet.

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

7 §4351.5. Authority of Department of Insurance

8 A. The fund shall not become operative until issued a certificate of authority
9 by the department. Except for the certificate of authority, the department shall keep
10 confidential all documents and records associated with the provision of this Section.

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

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

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

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

6 (a) Information sought has been provided pursuant to R.S. 3:4351.10(C) or
7 R.S. 3:4351.11(I).

8 (b) Documents sought are audited financial statements which have been filed
9 with the department.

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

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

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

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

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

5 (2) The corrective action plan shall be submitted by the fund to the
6 department for its approval and include standards, time frames, and other parameters
7 acceptable to the department. Any corrective action plan that is submitted to the
8 department by the fund shall be kept confidential by the department.

9 (3) Without limiting the discretion of the department, the corrective action
10 plan may include any of the following:

11 (a) Mandatory training.

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

15 (c) The submission of written progress reports.

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

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

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

22 (a) The imposition of fines and penalties.

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

24 (c) Placement of the fund into administrative supervision, pursuant to R.S.
25 22:731, et seq.

26 (d) Placement of the fund into receivership, pursuant to R.S. 22:2001, et seq.
27 §4351.6. Licensing of agents; claims against insurance agents

28 A. Any person soliciting membership for the fund shall be licensed by the
29 department as a property and casualty producer, pursuant to R.S. 22:1571, et seq.

1 No employee of a bona fide trade or professional association which has established
2 the fund or employee of the fund shall be required to be licensed if the solicitation
3 of membership for the fund is not the primary duty of the employee.

4 B. No action shall lie against an insurance producer or other person involved
5 in the marketing, selling, or solicitation of participation in the fund authorized by this
6 Part for any claims arising out of the insolvency of the fund or the inability of the
7 fund to pay claims as the claims become due unless and until any claimant shall have
8 first exhausted all remedies available to him against the members of the fund as
9 provided by this Part.

10 §4351.7. Rates; filing; review of rate determination

11 A. The fund shall file rates on an actuarially justified basis with the
12 department and may use the rates ninety days after filing, unless the department
13 disapproves the use of rates within the ninety-day period.

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

23 §4351.8. Consecutive net losses

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

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

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

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

11 §4351.9. Insolvencies

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

24 B. Upon determination by the department that a plan submitted by the fund
25 is disapproved or that the fund is not implementing a plan in accordance with the
26 terms of the plan, it shall notify the fund in writing of the determination.

27 C. If the fund fails to file a plan to eliminate an insolvency as called for
28 pursuant to this Section, or if the department notifies the fund that the plan has been
29 disapproved or that the fund is not implementing the plan according to the plan, the

1 department shall have the following powers and authority in addition to any other
2 powers and authority granted under law:

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

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

8 D.(1) In addition to any other powers of the department, in the event that the
9 group self-insurance fund is insolvent, operating in a hazardous financial condition,
10 or operating in violation of the requirements of this Part, the department is hereby
11 expressly authorized to institute delinquency proceedings against the fund, including
12 entering an order for injunctive relief or placing the fund into administrative
13 supervision, pursuant to R.S. 22:731, et seq. or into receivership, pursuant to R.S.
14 22:2001, et seq.

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

18 (b) The court may issue an injunction to restrain the fund and its officers,
19 agents, directors, or employees from transacting any insurance business or disposing
20 of property until further action by the court. The court may issue any other
21 injunction as it deems necessary to prevent interference with the proceedings or with
22 the ability of the department to conduct business, as well as any injunction sought
23 to protect any assets that are in the control of the department.

24 (3) The department shall promulgate rules and regulations in accordance
25 with the Administrative Procedure Act providing for the grounds, conduct, and
26 procedures applicable to the delinquency proceedings.

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

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

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

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

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

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

12 (6) Payment of all other claims.

13 §4351.10. Examination

14 A. The department shall make an examination, at least once every five years,
15 of the group self-insurance fund established pursuant to this Part doing business in
16 this state, and at any other time when in the opinion of the department it is necessary
17 for such an examination to be made.

18 B. Upon determining that an examination should be conducted, the
19 department shall appoint one or more examiners to perform the examination and
20 instruct them as to the scope of the examination. In conducting the examination, the
21 examiner or examiners shall observe those guidelines and procedures that the
22 department deems appropriate.

23 C. Nothing contained in this Part shall be construed to limit the department's
24 authority to use any final or preliminary examination report, any examiner or fund
25 work papers or other documents, or any other information discovered or developed
26 during the course of any examination in the furtherance of any legal or regulatory
27 action which the department may, in his sole discretion, considers appropriate.

28 D. Nothing contained in this Part shall be construed to limit the authority of
29 the department to terminate or suspend any examination in order to pursue other

1 legal or regulatory action pursuant to the applicable laws of this state. Findings of
2 fact and conclusions made pursuant to any examination shall be prima facie evidence
3 in any legal or regulatory action.

4 E. In conducting the examination pursuant to this Section, the department
5 shall examine the affairs, transactions, accounts, records, documents, and assets of
6 the authorized group self-insurance fund. For the purpose of ascertaining its
7 condition or compliance with this Part, the department may, as often as he deems
8 advisable, examine the accounts, records, documents and transactions of all of the
9 following:

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

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

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

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

24 H. Whenever the department makes an examination or investigation pursuant
25 to this Part, all expenses incurred by the department in conducting the examination
26 or investigation, including the expenses and fees of examiners, auditors, accountants,
27 actuaries, attorneys, or clerical or other assistants who are employed by the
28 commissioner to make the examination, shall be paid by the group self-insurance
29 fund.

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

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

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

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

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

1 §4351.11. Examination reports

2 A. All examination reports shall be comprised only of facts appearing upon
3 the books, records, or other documents of the group self-insurance fund or as
4 ascertained from the testimony of its officers or agents or other persons examined
5 concerning its affairs, and any conclusions and recommendations the examiners find
6 reasonably warranted from the facts. The department shall keep confidential all
7 documents and records associated with the provision of this Section.

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

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

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

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

27 D. Within thirty days of rejection by the department of an examination report
28 in accordance with Paragraph (C)(2) of this Section, unless the department extends
29 the time for reasonable cause, the examiner in charge shall refile with the department

1 a verified written report of examination, as may be modified or corrected, under oath.
2 Upon receipt of the refiled verified report, the department shall transmit the refiled
3 report to the fund examined, together with a notice similar to the notice provided for
4 in Subsection B of this Section, except that the notice shall indicate that the report
5 is a refiled report.

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

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

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

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

28 G. Within thirty days of receiving notification of the department's order
29 pursuant to Subsection F of this Section, the fund may make written demand for an

1 administrative law hearing in accordance with the provisions of the Administrative
2 Procedure Act.

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

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

13 I.(1) Upon the adoption of the examination report under Paragraph (C)(1) or
14 (E)(1) or Subsection H of this Section, the department shall continue to hold the
15 content of the examination report as private and confidential information for a period
16 not to exceed thirty consecutive days, unless the provisions of R.S. 3:4351.10(C) and
17 Subsection B of this Section apply. Thereafter, the department may open the report
18 for public inspection provided no court of competent jurisdiction has stayed its
19 publication.

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

1 (3) If the department determines that regulatory action is appropriate as a
2 result of any examination, he may initiate any proceedings or actions as provided by
3 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 other
6 person, in the course of an examination made under this Part, or pursuant to the
7 authority of the commissioner under this Part, shall be given confidential treatment
8 and are not subject to subpoena and may not be made public by the department or
9 any other person, unless the provisions of R.S. 3:4351.10(C) and Subsection I of this
10 Section apply. The parties shall agree, in writing prior to receiving the information,
11 to provide to it the same confidential treatment as required by this Section, unless the
12 prior written consent of the fund to which it pertains has been obtained.

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

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

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

26 (2) No cause of action shall arise, nor shall any liability be imposed, against
27 any person for the act of communicating or delivering information or data to the
28 department, or the authorized representative of the department, or an examiner,
29 pursuant to an examination made under this Part, if that act of communication or

1 delivery was performed in good faith and without fraudulent intent or the intent to
2 deceive.

3 M.(1) In addition to those examinations performed by the department
4 pursuant to R.S. 3:4351.10, the department shall conduct financial reviews of the
5 group self-insurance fund. The reviews shall include the audited financial statements
6 of the group self-insurance fund rendered pursuant to generally acceptable
7 accounting principles, results of prior examinations and office reviews, management
8 changes, consumer complaints, and any other relevant information as from time to
9 time may be required by the department.

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

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

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

25 (5) Nothing contained in this Part shall be construed to limit the department's
26 authority to use any final or preliminary analysis findings, any department or fund
27 work papers or other documents, or any other information discovered or developed
28 during the course of any analysis in the furtherance of any legal or regulatory action.

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

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

7 §4351.12. Authorization of the Department of Insurance to employ investigators

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

12 §4351.13. Disclosure

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

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

25 (2) Materially misrepresent to the department, or any employee, trustee, or
26 administrator of the department, the value of any asset or the amount of any liability
27 of the group self-insurance fund, or any affiliate, subsidiary, or holding fund
28 associated therewith, provided that with regard to a material misrepresentation of the
29 value of any asset or liability, any deviation from the actual value of such assets or

1 liability which results from utilization of and compliance with generally accepted
2 insurance accounting and reporting procedures shall not be deemed a violation of this
3 Section.

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

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

14 B. Whoever violates any provision of this Section, upon conviction, shall be
15 finned by the court not more than fifty thousand dollars, or imprisoned with or without
16 hard labor for not more than five years, or both.

17 §4351.14. Departmental complaint directives; failure to comply; fines; hearing

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

22 B. Any person against whom a fine has been levied shall be given ten days
23 notice of the action. Upon receipt of this notice, the person aggrieved may apply for
24 and shall be entitled to an administrative hearing conducted in accordance with the
25 provisions of the Administrative Procedure Act.

26 §4351.15. Dissolution

27 A. If the fund chooses to dissolve, it shall apply to the department for the
28 authority to dissolve. An application to dissolve shall be on a form prescribed by the

1 department and shall be approved or disapproved by the department within sixty
2 days of receipt.

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

7 C. An application to dissolve shall be granted if either of the following
8 conditions is met:

9 (1) The fund has no outstanding liabilities including incurred but not
10 reported liabilities.

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

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

20 §4351.16. Exclusive use of expirations

21 A.(1) Except as otherwise provided in this Section, for purposes of soliciting,
22 selling, or negotiating the renewal or sale of group self-insurance coverage, products,
23 or insurance services, an insurance agent or insurance broker shall have the exclusive
24 use of expirations, records, or other written or electronic information directly related
25 to the group self-insurance application submitted by or the group self-insurance
26 policy written through an insurance agent or insurance broker. The group self-
27 insurance fund shall not use expirations, records, or other written or electronic
28 information to solicit, sell, or negotiate the renewal or sale of insurance coverage,
29 insurance products, or insurance services to the insured, either directly or by

1 providing such information to others, without the express written consent of the
2 insurance agent or insurance broker.

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

9 B. This Section shall not apply:

10 (1) When the insured requests, individually or through an insurance producer
11 that the group self-insurance company renew the policy or write other insurance
12 business.

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

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

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

28 C. The insurance producer and insurer may in a written agreement separate
29 from the agency contract, mutually agree to terms different from the provisions set

1 forth in this Section. The terms of any such agreement shall be negotiated in good
2 faith between the parties.

3 D.(1) The department may adopt rules, in accordance with the
4 Administrative Procedure Act, to enforce the provisions of this Section, and any
5 violation of this Section or the rules adopted pursuant to this Section shall be subject
6 to regulation by the department under R.S. 3:4351.5.

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

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

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 1078 Original

2022 Regular Session

Seabaugh

Abstract: Authorizes the creation of self-insurance funds for the purpose of providing auto insurance for vehicles which transport timber and agriculture products.

Proposed law authorizes the creation of a self-insurance fund for the purpose of providing auto coverage for vehicles that transport timber and agriculture products.

Proposed law provides that any five or more La. timber or agriculture companies, who are not public entities, each of whom has a positive net worth and is financially solvent, may pool their liabilities and self-insure for the purposes of maintaining automobile coverage for timber and agriculture transportation vehicles. Proposed law provides that members of the fund must also be members of one or more bona fide trade or professional associations.

Proposed law defines "bona fide trade or professional association" as an active trade or professional association that promotes La. timber or agriculture production, is chartered and

domiciled in Louisiana, has been in existence and conducted regular meetings for at least five years, and is not established for the primary purpose of operating a self-insured fund.

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

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

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

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

Proposed law provides that to further the financial stability of the self-insured fund, the members will pay a percentage over and above their premiums to establish a reserve account. Proposed law further provides that the reserve account will be maintained at all times while the self-insured fund is in operation and no payments can be made from the reserve account unless approved by the department.

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

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

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

Proposed law provides for proper audits by the fund in a form that is acceptable to the department. Proposed law does not prohibit the legislative auditor from also reviewing the records and conducting an audit of the fund.

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

Proposed law provides that monies deposited into the fund may be invested in certain interest-bearing or interest-accruing investments and in certain bonds and securities that are

publically traded or have a certain minimum rating with Moody's, Standard and Poor's, or Fitch.

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

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

Proposed law provides that any administrative hearing that is necessary to resolve a dispute related to the regulation of the fund is to be conducted by the division of administrative law in accordance with present law.

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

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

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

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

Effective August 1, 2022.

(Adds R.S. 3:4351.1-4351.16)