

SENATE BILL NO. 437

BY SENATOR ROBERT MILLS AND REPRESENTATIVES GAROFALO,
MCFARLAND AND SEABAUGH

1

AN ACT

2

To enact Part IV-A of Chapter 28 of Title 3 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 3:4351.1 through 4351.16, relative to forestry and agriculture; to authorize the creation of the timber and agriculture transportation group self-insurance fund; to provide with respect to group self-insurance funds; to provide for requirements; to provide for definitions; to provide with respect to the qualifications for membership; to provide for regulatory authority; to provide for excess or reinsurance insurance; to provide for the management of assets and investments; to provide for liabilities and the payment of claims; to provide for audits, examinations, and investigations; to provide for licensed insurance producers; to provide for insolvencies; to provide for civil actions for enforcement; to provide for reporting; to provide penalties for noncompliance; to provide for due process rights; to provide 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 1950, comprised of R.S. 3:4351.1 through 4351.16, is hereby enacted to read as follows:

17

PART IV-A. LOUISIANA TIMBER AND AGRICULTURE

18

TRANSPORTATION GROUP SELF-INSURANCE FUNDS

19

§4351.1. Definitions

20

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

23

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

26

(a) Promotes Louisiana timber or agriculture production.

1 (b) Provides industry support and services to its membership.
2 (c) Is organized or created for purposes other than the sponsorship,
3 operation, or management of a fund or to provide a related employee safety
4 program or other activity necessary to the operation of the fund.

5 (d) Has been in existence and conducted regular meetings for a period
6 of not less than five years.

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

8 (3) "Fund" means the self-insurance fund established pursuant to this
9 Part to provide automobile coverage for timber transportation vehicles,
10 agriculture transportation vehicles, or a combination of both types of vehicles
11 and shall be known as the Louisiana Agriculture Transportation Group Self-
12 Insured Fund.

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

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

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

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

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

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

1 (8) "Timber or agriculture transportation vehicle" means a vehicle or
2 automobile used to collect and transport timber or agriculture products, or used
3 in the course and scope of a timber or agriculture business, or used by an
4 operator or principal.

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

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

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

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

15 (d) Uninsured motorist coverage as defined in R.S. 22:1295.

16 §4351.2. Authorization; trade or professional association; initial financial
17 requirements

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

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

1 this Part.

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

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

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

28 (b) Except as otherwise provided in Subparagraph (a) of this Paragraph,
29 original books, records, documents, accounts, and vouchers, or such
30 reproductions thereof, shall be preserved and kept in this state for the purpose

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

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

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

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

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

20 (7)(a) In order to further maintain the financial stability of the fund, the
21 fund shall assess each member an amount which is equal to a certain percentage
22 of the premium dollars owed by the member and the percentage paid shall be
23 known as a reserve payment. The percentage amount to be paid by all members
24 shall be approved by the department.

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

29 B. The fund shall submit to the department an application, on an
30 application form prescribed and furnished by the department, for authority to

1 act as a group self-insurance fund for timber and agriculture transportation
2 vehicle coverage. The application shall include evidence of the fund's inception,
3 which establishes financial strength and liquidity of the members to pay timber
4 and agriculture transportation vehicle claims promptly and support the
5 financial ability of the fund to satisfy its obligations upon the establishment of
6 the fund, including:

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

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

13 (3) Schedules of the entire membership showing:

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

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

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

21 (4) Other financial information and documents as required by the
22 department.

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

25 (a) Applications shall be submitted to the department at least ninety days
26 prior to the effective date of the establishment of a fund. Any application
27 submitted with fewer than ninety days remaining before the desired effective
28 date, or which does not contain answers to all questions, or which is not sworn
29 to and subscribed before a notary public, or which does not contain all required
30 documents, statements, reports, and required information, may be returned

1 without review by the department.

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

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

5 (ii) Security as required by this Part.

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

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

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

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

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

21 (viii) Evidence of financial strength and liquidity of the members dated
22 as of the date of the filing of the application to satisfy the financial strength and
23 liquidity requirements of this Part.

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

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

30 (xi) The name, address, and telephone number of each attorney

1 representing the fund, each qualified actuary for the fund and each certified
2 public accountant who will be auditing the annual financial statements of the
3 fund, as well as evidence of appointment of each by the fund.

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

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

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

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

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

21 §4351.3. Requirements; excess insurance; administrative and service
22 companies; status; liability; refunds

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

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

30 (2)(a) During the first fund year, deposit with the department a

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

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

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

20 (4) Maintain at all times, on a fund-year basis, a contract or contracts of
21 specific excess insurance or reinsurance of not less than two million dollars per
22 occurrence and aggregate excess insurance or reinsurance of not less than two
23 million dollars. The maximum retention under the excess insurance or
24 reinsurance contracts shall not exceed amounts as may be provided by the
25 department by regulation. Solely for the purposes of authorizing the purchase
26 of reinsurance permitted under this Subsection, the fund shall be deemed an
27 insurer. The excess insurance or reinsurance shall be purchased only from a
28 company having a rating of A- by A.M. Best Company, A- by Fitch Ratings, A
29 by Weiss Ratings, A- by Standard & Poor's, or A3 by Moody's Investors
30 Services, or better, and this reinsurance may be purchased from admitted or

1 nonadmitted companies, provided that the provisions of R.S. 22:651 through
2 661, and Financial Accounting Standard Number 113 as promulgated and
3 updated by the Financial Accounting Standards Board, shall apply to all such
4 reinsurance. All excess insurance policies or reinsurance agreements shall be
5 approved by the department prior to use by the fund.

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

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

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

26 (1) Post with the department a surety bond issued by a corporate surety
27 authorized to do business in the state of not less than fifty thousand dollars or
28 deposit with the department a safekeeping receipt or trust receipt from a bank
29 doing business in this state or from a savings and loan association chartered to
30 do business in the state indicating that the person has deposited fifty thousand

1 dollars in money or bonds of the United States, the state of Louisiana, or any
2 political subdivision thereof, of the par value of fifty thousand dollars, to secure
3 the performance of its obligations under the contract and under this Part.

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

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

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

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

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

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

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

25 **§4351.4. Investments**

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

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

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

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

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

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

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

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

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

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

1 assets in the aggregate.

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

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

9 (a) Be in writing.

10 (b) Have a specific maturity date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 have an average market capitalization of at least one billion dollars shall be
2 permitted. The same general quality constraints shall be met and the aggregate
3 total of the funds, plus any individual securities, may not exceed fifteen percent
4 of the overall investment fund.

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

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 is not intended to apply to leases capitalized under
18 generally accepted accounting principles.

19 (4) Any asset purchased for investment by the fund on credit whereby
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 item carried by the fund as an asset on its balance sheet which
23 is subject to a mortgage, lien, privilege, preference, pledge, charge, or other
24 encumbrance which is not accurately reflected in the liability section of the
25 fund's balance sheet.

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

30 **§4351.5. Authority of Department of Insurance**

1 A. The fund shall not become operative until 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 provision 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 shall have the authority to examine the affairs,
8 books, transactions, workpapers, files, accounts, records, assets, and liabilities
9 of the fund to determine compliance with this Part and with any rules and
10 regulations promulgated by the department or orders and directives issued by
11 the 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, workpapers, 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 self-
16 insurance fund being examined. All examinations shall be conducted in
17 accordance with the provisions of this Part. 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 Part shall cause a rate review to be conducted by
21 a national independent actuarial firm, provided that the department shall not
22 make more than two requests in any calendar year for a rate review under the
23 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 Part, shall
28 be given confidential treatment and shall not be subject to subpoena, except in
29 the following circumstances:

30 (a) Information sought has been provided pursuant to R.S. 3:4351.10(C)

1 or R.S. 3:4351.11(I).

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

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

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

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

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

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

28 (2) The corrective action plan shall be submitted by the fund to the
29 department for its approval and include standards, time frames, and other
30 parameters acceptable to the department. Any corrective action plan that is

1 submitted to the department by the fund shall be kept confidential by the
2 department.

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

5 (a) Mandatory training.

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

9 (c) The submission of written progress reports.

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

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

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

16 (a) The imposition of fines and penalties.

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

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

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

22 **§4351.6. Licensing of agents; claims against insurance agents**

23 A. Any person soliciting membership for the fund shall be licensed by the
24 department as a property and casualty producer, pursuant to R.S. 22:1571, et
25 seq. No employee of a bona fide trade or professional association which has
26 established the fund or employee of the fund shall be required to be licensed if
27 the solicitation of membership for the fund is not the primary duty of the
28 employee.

29 B. No action shall lie against an insurance producer or other person
30 involved in the marketing, selling, or solicitation of participation in the fund

1 authorized by this Part for any claims arising out of the insolvency of the fund
2 or the inability of the fund to pay claims as the claims become due unless and
3 until any claimant shall have first exhausted all remedies available to him
4 against the members of the fund as provided by this Part.

5 §4351.7. Rates; filing; review of rate determination

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

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

19 §4351.8. Consecutive net losses

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

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

30 (2) File with the department a written and signed plan from the fund's

1 board of trustees describing the actions the fund will take to generate net
2 incomes on subsequent audited financial statements.

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

5 §4351.9. Insolvencies

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

18 B. Upon determination by the department that a plan submitted by the
19 fund is disapproved or that the fund is not implementing a plan in accordance
20 with the terms of the plan, it shall notify the fund in writing of the
21 determination.

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

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

29 (2) To levy an assessment, in the name of the fund, upon the members of
30 the fund sufficient to eliminate the insolvency if the fund fails or refuses to levy

1 the assessment.

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

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

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

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

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

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

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

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

30 (4) Payment of compensation owed to employees of the fund shall be paid

1 in accordance with the applicable provisions of administrative supervision,
2 pursuant to R.S. 22:731, et seq. or receivership, pursuant to R.S. 22:2001, et seq.

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

6 (6) Payment of all other claims.

7 **§4351.10. Examination**

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

12 B. Upon determining that an examination should be conducted, the
13 department shall appoint one or more examiners to perform the examination
14 and instruct them as to the scope of the examination. In conducting the
15 examination, the examiner or examiners shall observe those guidelines and
16 procedures that the department deems appropriate.

17 C. Nothing contained in this Part shall be construed to limit the
18 department's authority to use any final or preliminary examination report, any
19 examiner or fund work papers or other documents, or any other information
20 discovered or developed during the course of any examination in the
21 furtherance of any legal or regulatory action which the department may, in its
22 sole discretion, considers appropriate.

23 D. Nothing contained in this Part shall be construed to limit the authority
24 of the department to terminate or suspend any examination in order to pursue
25 other legal or regulatory action pursuant to the applicable laws of this state.
26 Findings of fact and conclusions made pursuant to any examination shall be
27 prima facie evidence in any legal or regulatory action.

28 E. In conducting the examination pursuant to this Section, the
29 department shall examine the affairs, transactions, accounts, records,
30 documents, and assets of the authorized group self-insurance fund. For the

1 purpose of ascertaining its condition or compliance with this Part, the
2 department may, as often as it deems advisable, examine the accounts, records,
3 documents and transactions of all of the following:

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

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

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

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

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

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

28 J. The department shall employ the examiners, auditors, accountants,
29 actuaries, attorneys, and clerical or other assistants as are necessary to conduct
30 the examination and to compile and prepare a report thereon, and the

1 compensation for such examination shall be fixed according to the time actually
2 devoted to the work, including conducting the examination and compiling the
3 report thereon, as required by law. The compensation shall be reasonable and
4 commensurate with the value of the services performed.

5 K. Upon completion of the examination of the group self-insurance fund
6 or at stated periods during an examination, the department shall forward to the
7 group self-insurance fund a statement showing the amount of expenses incurred
8 in the examination to the date of the statement. Upon receipt, the group self-
9 insurance fund shall pay the amount of expenses to the department.

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

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

24 §4351.11. Examination reports

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

1 Section.

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

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

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

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

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

30 E. Within thirty days of the end of the period allowed for the receipt of

1 written submissions or rebuttals, as provided for in Subsections B and D of this
2 Section, the department shall fully consider and review the refiled report,
3 together with any written submissions or rebuttals and any relevant portions
4 of the work papers of the examiner, and enter an order for one of the following:

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

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

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

24 G. Within thirty days of receiving notification of the department's order
25 pursuant to Subsection F of this Section, the fund may make written demand
26 for an administrative law hearing in accordance with the provisions of the
27 Administrative Procedure Act.

28 H.(1) The hearing provided for under Subsection G of this Section shall
29 be conducted as required by the Administrative Procedure Act. At the
30 conclusion of the hearing, the administrative law judge shall enter an order

1 adopting the examination report as filed, or subsequently filed again with
2 modifications or corrections, and may order the fund to take any action that the
3 department considers necessary and appropriate to cure any violation of any
4 law, regulation, or prior order or directive of the department.

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

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

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

23 (3) If the department determines that regulatory action is appropriate
24 as a result of any examination, he may initiate any proceedings or actions as
25 provided by law.

26 J. All work papers, recorded information, and documents, as well as all
27 copies thereof produced by, obtained by, or disclosed to the department, or any
28 other person, in the course of an examination made under this Part, or pursuant
29 to the authority of the commissioner under this Part, shall be given confidential
30 treatment and are not subject to subpoena and may not be made public by the

1 department or any other person, unless the provisions of R.S. 3:4351.10(C) and
2 Subsection I of this Section apply. The parties shall agree, in writing prior to
3 receiving the information, to provide to it the same confidential treatment as
4 required by this Section, unless the prior written consent of the fund to which
5 it pertains has been obtained.

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

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

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

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

26 M.(1) In addition to those examinations performed by the department
27 pursuant to R.S. 3:4351.10, the department shall conduct financial reviews of
28 the group self-insurance fund. The reviews shall include the audited financial
29 statements of the group self-insurance fund rendered pursuant to generally
30 acceptable accounting principles, results of prior examinations and office

1 reviews, management changes, consumer complaints, and any other relevant
2 information as from time to time may be required by the department.

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

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

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

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

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

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

1 §4351.12. Authorization of the Department of Insurance to employ
2 investigators

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

7 §4351.13. Disclosure

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

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

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

28 (3) Fail to disclose to the department the existence of any liability of the
29 group self-insurance fund, or affiliate, subsidiary, or holding company
30 associated therewith when such disclosure is properly requested or required in

1 writing by an examiner or administrator of the department.

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

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

12 **§4351.14. Departmental complaint directives; failure to comply; fines; hearing**

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

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

21 **§4351.15. Dissolution**

22 A. If the fund chooses to dissolve, it shall apply to the department for the
23 authority to dissolve. An application to dissolve shall be on a form prescribed
24 by the department and shall be approved or disapproved by the department
25 within sixty days of receipt.

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

30 C. An application to dissolve shall be granted if either of the following

1 conditions is met:

2 (1) The fund has no outstanding liabilities including incurred but not
3 reported liabilities.

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

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

13 §4351.16. Exclusive use of expirations

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

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

1 selling, or negotiating the renewal or sale of group self-insurance coverage,
2 products, or services.

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

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

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

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

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

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

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

1 subject to regulation by the department under R.S. 3:4351.5.

2 (2) In addition, the insurance producer shall have a right to a claim for
3 lost 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 Section 2. This Act shall become effective upon signature by the governor or, if not
14 signed by the governor, upon expiration of the time for bills to become law without signature
15 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
16 vetoed by the governor and subsequently approved by the legislature, this Act shall become
17 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____