

2022 Regular Session

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

BY REPRESENTATIVES SEABAUGH, CREWS, DESHOTEL, FIRMENT, FRIEMAN,  
GAROFALO, HARRIS, TRAVIS JOHNSON, MCCORMICK, MCFARLAND,  
CHARLES OWEN, ROMERO, SCHAMERHORN, THOMPSON, AND WHITE  
AND SENATOR ROBERT MILLS

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:

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  
21 context, the following terms, whether used in the singular or plural, shall have the  
22 following meanings:

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

4                   (a) Promotes Louisiana timber or agriculture production.

5                   (b) Provides industry support and services to its membership.

6                   (c) Is organized or created for purposes other than the sponsorship,  
 7                   operation, or management of a fund or to provide a related employee safety program  
 8                   or other activity necessary to the operation of the fund.

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

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

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

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

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

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

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

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

29                  (7) "Principal" means a person or persons who own a majority interest or the  
 30                  majority of the stock in a corporation, partnership, or limited liability company that

1 is established for the purpose of operating a timber or agriculture business and is a  
 2 member of the fund.

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

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

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

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

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

17 (d) Uninsured motorist coverage as defined in R.S. 22:1295.  
 18 §4351.2. Authorization; trade or professional association; initial financial  
 19 requirements

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

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

1 acknowledging and agreeing to the assumption of the liabilities as set forth in this  
2 Part.

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

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

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

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

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

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

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

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

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

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

28 B. The fund shall submit to the department an application, on an application  
29 form prescribed and furnished by the department, for authority to act as a group self-  
30 insurance fund for timber and agriculture transportation vehicle coverage. The

1 application shall include evidence of the fund's inception, which establishes financial  
 2 strength and liquidity of the members to pay timber and agriculture transportation  
 3 vehicle claims promptly and support the financial ability of the fund to satisfy its  
 4 obligations upon the establishment of the fund, including:

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

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

11 (3) Schedules of the entire membership showing:

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

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

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

19 (4) Other financial information and documents as required by the  
 20 department.

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

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

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

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

3                   (ii) Security as required by this Part.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16                  §4351.3. Requirements; excess insurance; administrative and service companies;  
17                  status; liability; refunds

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

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

25                  (2)(a) During the first fund year, deposit with the department a safekeeping  
26                  receipt or trust receipt from a bank doing business in this state or from a savings and  
27                  loan association chartered to do business in the state indicating that the fund has  
28                  deposited and has pledged one hundred thousand dollars in money or bonds of the  
29                  United States, the state of Louisiana, or any political subdivision thereof, of the par  
30                  value of one hundred thousand dollars, or post a surety bond issued by a corporate



1 surety authorized to do business within the state, in the amount of one hundred  
2 thousand dollars, to secure the obligations of the fund under this Part.

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

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

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

29 (5) File with the department financial statements and reports, including  
30 financial statements audited by an independent certified public accountant and

1           actuarial reports, as may be required by the department through rules promulgated  
2           pursuant to the Administrative Procedure Act.

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

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

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

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

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

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

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

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

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

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

16                  §4351.4. Investments

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

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

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

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

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

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

4                   (3) Pass-through mortgage-backed securities and collateralized mortgage  
 5                   obligations issued by the Federal National Mortgage Association, the Government  
 6                   National Mortgage Association, the Federal Home Loan Mortgage Corporation, or  
 7                   the Federal Housing Administration, without limitation, provided that the  
 8                   collateralized mortgage obligations have a minimum rating of A by Moody's,  
 9                   Standard & Poor's, or Fitch.

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

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

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

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

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

29                    (a) Be in writing.

30                    (b) Have a specific maturity date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27           (3) Any item carried as an asset on the fund's balance sheet for which the  
28           fund pays a regular or periodic fee for the right to carry the item as an asset, whether  
29           the fee is characterized as a rental, a management fee, or a dividend not previously  
30           approved by the department, or other periodic payment for such right. This

1 provision is not intended to apply to leases capitalized under generally accepted  
2 accounting principles.

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

6 (5) Any item carried by the fund as an asset on its balance sheet which is  
7 subject to a mortgage, lien, privilege, preference, pledge, charge, or other  
8 encumbrance which is not accurately reflected in the liability section of the fund's  
9 balance sheet.

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

14 §4351.5. Authority of Department of Insurance

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

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

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

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

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

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

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

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

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



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

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

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

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

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

15           (a) Mandatory training.

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

19           (c) The submission of written progress reports.

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

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

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

26           (a) The imposition of fines and penalties.

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

28           (c) Placement of the fund into administrative supervision, pursuant to R.S.

29           22:731, et seq.

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

1           §4351.6. Licensing of agents; claims against insurance agents

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

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

13           §4351.7. Rates; filing; review of rate determination

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

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

26           §4351.8. Consecutive net losses

27                   If the fund has three years of consecutive net losses on the audited financial  
28          statements of the fund, or two years of consecutive net losses on the audited financial  
29          statements of the fund in excess of five hundred thousand dollars or five percent of

1           the premium of the latest audited financial statement, whichever is greater, an  
2           authorized representative of the fund shall:

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

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

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

13           §4351.9. Insolvencies

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

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

29                   C. If the fund fails to file a plan to eliminate an insolvency as called for  
30                   pursuant to this Section, or if the department notifies the fund that the plan has been

1 disapproved or that the fund is not implementing the plan according to the plan, the  
2 department shall have the following powers and authority in addition to any other  
3 powers and authority granted under law:

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

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

9 D.(1) In addition to any other powers of the department, in the event that the  
10 group self-insurance fund is insolvent, operating in a hazardous financial condition,  
11 or operating in violation of the requirements of this Part, the department is hereby  
12 expressly authorized to institute delinquency proceedings against the fund, including  
13 entering an order for injunctive relief or placing the fund into administrative  
14 supervision, pursuant to R.S. 22:731, et seq. or into receivership, pursuant to R.S.  
15 22:2001, et seq.

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

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

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

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

30 (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  
 30                  legal or regulatory action pursuant to the applicable laws of this state. Findings of

1 fact and conclusions made pursuant to any examination shall be prima facie evidence  
2 in any legal or regulatory action.

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

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

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

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

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

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

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

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

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

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

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

26           §4351.11. Examination reports

27           A. All examination reports shall be comprised only of facts appearing upon  
28           the books, records, or other documents of the group self-insurance fund or as  
29           ascertained from the testimony of its officers or agents or other persons examined  
30           concerning its affairs, and any conclusions and recommendations the examiners find

1 reasonably warranted from the facts. The department shall keep confidential all  
2 documents and records associated with the provision of this Section.

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

10 C. Within thirty days of the end of the period allowed for the receipt of  
11 written submissions or rebuttals, the department shall fully consider and review the  
12 report, together with any written submissions or rebuttals and any relevant portions  
13 of the examiner's work papers, and enter an order for one of the 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 is  
16 operating in violation of any law, rule, regulation, or prior order or directive of the  
17 department, the department may order the fund to take any action the department  
18 determines is necessary and appropriate to cure the violation.

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

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



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

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

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

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

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

27           H.(1) The hearing provided for under Subsection G of this Section shall be  
28           conducted as required by the Administrative Procedure Act. At the conclusion of the  
29           hearing, the administrative law judge shall enter an order adopting the examination  
30           report as filed, or subsequently filed again with modifications or corrections, and

1           may order the fund to take any action that the department considers necessary and  
2           appropriate to cure any violation of any law, regulation, or prior order or directive  
3           of the department.

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

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

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

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

25          J. All work papers, recorded information, and documents, as well as all  
26          copies thereof produced by, obtained by, or disclosed to the department, or any other  
27          person, in the course of an examination made under this Part, or pursuant to the  
28          authority of the commissioner under this Part, shall be given confidential treatment  
29          and are not subject to subpoena and may not be made public by the department or  
30          any other person, unless the provisions of R.S. 3:4351.10(C) and Subsection I of this

1           Section apply. The parties shall agree, in writing prior to receiving the information,  
2           to provide to it the same confidential treatment as required by this Section, unless the  
3           prior written consent of the fund to which it pertains has been obtained.

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

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

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

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

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

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

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

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

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

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

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

26                   §4351.12. Authorization of the Department of Insurance to employ investigators

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

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1           §4351.13. Disclosure

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

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

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

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

26                   (4) Materially misrepresent, withhold, deny access to, or otherwise preclude  
27                   the obtainment of any information properly requested in writing and in accordance  
28                   with provisions of law affecting dissemination or disclosure of information by  
29                   specific institutions by an examiner or administrator of the department, which is

1 material and relevant to an examination properly conducted by the department and  
 2 examiners and administrators of the department.

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

6 §4351.14. Departmental complaint directives; failure to comply; fines; hearing

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

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

15 §4351.15. Dissolution

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

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

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

26 (1) The fund has no outstanding liabilities including incurred but not  
 27 reported liabilities.

28 (2) The fund is covered by an irrevocable commitment from a licensed  
 29 insurer which provides for payment of all outstanding liabilities and for providing  
 30 all related services, including payment of claims, preparation of reports, and

1           administration of transactions associated with the period during which the plan  
 2           provided coverage.

3           D. Upon the dissolution of the fund and after payment of all outstanding  
 4           liabilities and indebtedness, the assets of the fund shall be distributed to all  
 5           employers participating in the fund pursuant to a distribution plan submitted by the  
 6           fund to the department and approved by the department.

7           §4351.16. Exclusive use of expirations

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

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

25           B. This Section shall not apply:

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

29           (2) When the insurance agent has, by contract, agreed to act exclusively for  
 30           one company or group of affiliated companies, in which case the rights of the agent

1           shall be determined by the terms of the agent's contract with that company or  
2           affiliated group.

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

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

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

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

22          (2) In addition, the insurance producer shall have a right to a claim for lost  
23          commissions. The claim shall be resolved in accordance with the dispute resolution  
24          terms in the applicable contract or agreement. In the absence of any dispute  
25          resolution terms, the parties shall attempt to resolve their dispute through mediation.  
26          If the claim is not resolved through mediation, the claim may be resolved through  
27          binding arbitration if the parties agree. In the absence of an agreement to resolve the  
28          claim through binding arbitration, the insurance producer may maintain an action for  
29          lost commissions.



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

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_