

ACT No. 586

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.

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.

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 fined 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.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____