

SENATE BILL NO. 147

BY SENATOR ROBERT MILLS AND REPRESENTATIVE KNOX

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

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AN ACT

To amend and reenact R.S. 44:4.1(B)(11) and to enact Subpart P-1 of Part I of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:472.1 through 472.20, relative to self-insurance funds; to authorize the creation of the Louisiana Churches and Nonprofit Religious Organizations Self-Insured Fund; to provide for legislative intent and public purpose; to provide for requirements and management of the self-insurance fund; to provide for definitions; to provide for agreements creating a self-insurance fund; to provide for financial documents; to provide for financial requirements; to provide for excess insurance; to provide for investments; to provide for insurance agents; to provide for rate filings and rate determinations; to provide for insolvencies; to provide for examinations; to provide for audits; to provide for reports; to provide for the hiring of certain professional services providers under certain circumstances; to provide for disclosures; to provide for terms of dissolution; to provide the use of certain fund information; to provide for jurisdiction; to provide for a public records exception; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Subpart P-1 of Part I of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:472.1 through 472.20, is hereby enacted to read as follows:

**SUBPART P-1. LOUISIANA CHURCHES AND NONPROFIT
RELIGIOUS ORGANIZATIONS SELF-INSURED FUND**

§472.1. Legislative finding; public purpose

A. Louisiana is currently experiencing a crisis in the availability and

1 affordability of insurance for churches and nonprofit religious organizations.
2 Louisiana property owners and their insurers sustained catastrophic losses in
3 2020 and 2021 from hurricanes Laura, Delta, Zeta, and Ida. As the result of
4 their losses and their assessment of the risk of loss from future storms, many
5 insurers, including the largest insurer of churches, have substantially reduced
6 their participation in the voluntary market for property insurance. With fewer
7 insurers in the voluntary market, competitive pressure on premium rates is
8 reduced. Current underwriting practices have resulted in a substantial increase
9 in the number of Louisiana churches that are forced to obtain their property
10 insurance coverage or their wind and hail coverage from Louisiana Citizens
11 Property Insurance Corporation, if they can indeed find coverage.

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

18 C. Throughout Louisiana, churches and other religious organizations are
19 the bedrock that holds many communities together. In addition to providing
20 spiritual and emotional support for their membership in times of crisis,
21 churches and other nonprofit religious organizations provide services to the
22 needy such as soup kitchens, food pantries, orphanages, adoption services, and
23 foster care. Churches and other nonprofit religious organizations provide
24 mentorship for the youth, assistance to the elderly, and disaster relief services
25 when hurricanes and tornadoes strike. Churches and other nonprofit religious
26 organizations also provide much needed hope, help, and services for those
27 individuals in addiction recovery. Church-supported nonviolent offender
28 programs at places such as the Louisiana State Penitentiary at Angola have
29 greatly reduced violence in these facilities and greatly reduced recidivism rates
30 in the state. This voluminous list of services, most of which are provided free of

1 charge to the community, results in the savings of untold millions of dollars each
2 year to state and local taxpayers.

3 D. The availability of property insurance for churches and other
4 nonprofit religious organizations at a reasonable cost is essential to the
5 well-being of the state. Churches and other religious organizations cannot invest
6 in, and lenders will not finance, the construction and ownership of churches and
7 religious buildings without adequate property insurance protection. The state
8 has a vital interest in fostering the availability of property insurance at
9 reasonable costs for churches and other religious organizations.

10 §472.2. Creation of fund

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

20 §472.3. Authorization; requirements; regulation

21 A. Two or more churches or nonprofit religious organizations or one or
22 more religious denominations may agree to pool their liabilities for the purposes
23 of providing property coverage for their buildings and properties, so long as
24 they have a positive net worth, are financially solvent, and capable of assuming
25 the obligations set forth in this Subpart.

26 B. The department shall promulgate necessary rules in accordance with
27 the Administrative Procedure Act to implement and regulate the activities
28 authorized in this Subpart.

29 §472.4. Definitions

30 Wherever used in this Subpart, unless a different meaning clearly

1 appears in the context, the following terms, whether used in the singular or
2 plural, shall have the following meanings:

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

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

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

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

13 (a) Meet obligations with respect to known claims and reasonably
14 anticipated claims.

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

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

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

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

25 (b) An organization formed for religious purposes.

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

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

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

30 (a) Premises liability coverage.

1 **(b) Contents coverage for furniture or equipment.**

2 **(c) Wind and hail coverage.**

3 **(d) Loss of use coverage.**

4 **(e) Medical payments coverage.**

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

8 **§472.5. Agreement to pool liabilities; initial financial requirements**

9 **A.(1) Any arrangement authorized pursuant to this Subpart shall not be**
10 **deemed to be an insurer or insurance and shall not be subject to the Louisiana**
11 **Insurance Code, unless specifically referenced in this Subpart. The members of**
12 **the arrangement shall not be insurers or be subject to the Louisiana Insurance**
13 **Code.**

14 **(2) An agreement to pool liabilities pursuant to this Subpart shall be set**
15 **forth in an indemnity agreement signed by the members and fund**
16 **representatives acknowledging and agreeing to the assumption of the liabilities**
17 **as set forth in this Subpart.**

18 **(3) The arrangement shall not be considered a member insurer of the**
19 **Louisiana Insurance Guaranty Association, nor shall the Louisiana Insurance**
20 **Guaranty Association be liable for any claim, or increments of any claim, made**
21 **against the arrangement.**

22 **(4) The arrangement may include establishment of a trust fund and shall**
23 **be for the purpose of serving as the group self-insurance fund for participating**
24 **Louisiana churches and nonprofit religious organizations and such**
25 **arrangement shall be governed by a board of trustees.**

26 **(5)(a) The arrangement shall be domiciled in this state. All books,**
27 **records, documents, accounts, and vouchers of the arrangement shall be kept**
28 **in a manner that its financial condition, affairs, and operations can be**
29 **ascertained so that financial statements filed with the department are readily**
30 **verified and determined whether to be in compliance. Any or all books, records,**

1 documents, original indemnity agreements, accounts, and vouchers may be
2 photographed or reproduced on film. Any photographs, microphotographs,
3 optical imaging, or film reproductions of any original books, records,
4 documents, original indemnity agreements, accounts, and vouchers shall for all
5 purposes, including but not limited to admission into evidence in any court or
6 adjudicatory proceeding, be considered the same as the originals, and a
7 transcript, exemplification, or certified copy of any photograph,
8 microphotograph, optical imaging, or film reproduction shall be deemed to be
9 a transcript, exemplification, or certified original. Any original considered
10 reproduced may thereafter be disposed of or destroyed, as provided for in
11 Subparagraph (b) of this Paragraph, provided provisions are made for
12 preserving and examining the reproduction.

13 (b) Except as otherwise provided in Subparagraph (a) of this Paragraph,
14 original books, records, documents, accounts, and vouchers, or reproductions
15 thereof, shall be preserved and kept in this state for the purpose of examination
16 and until the authority to destroy or otherwise dispose of the records is secured
17 from the department. All original records, or certified reproductions, shall be
18 maintained for the period commencing on the first day following the last period
19 examined by the department through the subsequent examination period, or
20 five years, whichever is longer, except that any original, or certified
21 reproduction, in which the member agrees to or acknowledges the members'
22 solidary liability for liabilities of the fund shall be permanently maintained.

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

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

30 (7)(a) To maintain the financial stability of the fund, the fund shall assess

1 each member an amount which equals to a certain percentage of the premium
2 dollars owed by the member and the percentage paid shall be known as a
3 reserve payment. The percentage amount to be paid by all members shall be
4 approved by the department.

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

9 B.(1) The fund shall submit to the department an application, on an
10 application form prescribed and furnished by the department, for authority to
11 act as a group self-insurance fund for property coverage. Each application shall
12 include evidence of the fund's inception, which establishes financial strength
13 and liquidity of the members to pay claims promptly and support the financial
14 ability of the fund to satisfy its obligations upon the establishment of the fund,
15 including all of the following:

16 (a) Financial statements, dated not less than one year prior to the
17 application, audited by an independent certified public accountant, showing at
18 the inception of the fund a combined net worth of those members of not less
19 than the amount required by Subsection A of this Section. In lieu of an audited
20 financial statement, the department may require that the fund submit necessary
21 financial documents in a form and manner approved by the department to
22 verify the combined net worth of those members or principals as required in
23 Subsection A of this Section.

24 (b) Current financial documents of all other members dated not less than
25 one year prior to the application.

26 (c) Schedules of the entire membership showing the following items:

27 (i) The ratio of current assets to current liabilities of all members
28 combined to be greater than one-to-one.

29 (ii) The working capital of all members combined to be of an amount
30 establishing the financial strength and liquidity of the members to pay claims

1 **promptly.**

2 **(iii) The net worth of all members combined to be not less than the**
3 **amount required by Subsection A of this Section.**

4 **(d) Other financial information and documents as required by the**
5 **department.**

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

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

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

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

18 **(ii) Security as required by this Subpart.**

19 **(iii) Copies of acceptable excess insurance or reinsurance, as required by**
20 **this Subpart. All excess insurance or reinsurance shall be approved by the**
21 **department prior to use.**

22 **(iv) A bond covering each third-party administrator as provided by this**
23 **Subpart. If the fund employs its own administrator, the fund shall be required**
24 **to purchase a bond, errors and omissions insurance, directors' and officers'**
25 **liability insurance, or other security approved by the department for the**
26 **administration of the fund.**

27 **(v) A certification from a designated depository attesting to the amount**
28 **of monies on hand.**

29 **(vi) Copies of fund bylaws and any trust agreement or other governance**
30 **documents.**

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

4 (viii) Evidence of financial strength and liquidity of the members dated
5 as of the date of the filing of the application to satisfy the financial strength and
6 liquidity requirements of this Subpart.

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

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

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

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

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

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

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

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

4 §472.6. Requirements; excess insurance; administrative and service companies;
5 status; liability; refunds

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

8 (1) File rates in accordance with R.S. 22:472.10 and maintain at least
9 seven hundred fifty thousand dollars in earned premiums in the first fund year.
10 In the second and each subsequent year, the fund shall maintain at least two
11 million dollars in earned premiums. The amounts maintained shall be
12 documented on the fund's audited financial statement prepared in accordance
13 with generally accepted accounting principles.

14 (2)(a) During the first fund year, the fund shall deposit with the
15 department a safekeeping receipt or trust receipt from a bank doing business
16 in this state or from a savings and loan association chartered to do business in
17 the state indicating that the fund has deposited and pledged one hundred
18 thousand dollars in money or bonds of the United States, the state of Louisiana,
19 or any political subdivision of the state, having a par value of one hundred
20 thousand dollars, or post a surety bond issued by a corporate surety authorized
21 to do business in this state, in the amount of one hundred thousand dollars, to
22 secure the obligations of the fund as required by this Subpart.

23 (b) In the second and subsequent fund years, the fund shall deposit with
24 the department a safekeeping receipt or trust receipt from a bank doing
25 business in this state or from a savings and loan association chartered to do
26 business in this state indicating that the fund has deposited and pledged two
27 hundred fifty thousand dollars in money or bonds of the United States, the state
28 of Louisiana, or any political subdivision of the state, having a par value of two
29 hundred fifty thousand dollars, or post a surety bond issued by a corporate
30 surety authorized to do business in this state, in the amount of two hundred fifty

1 thousand dollars, to secure the obligations of the fund as required by this
2 Subpart.

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

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

9 (b) For purposes of authorizing the purchase of reinsurance as required
10 by this Subsection, the fund shall be deemed an insurer. The excess insurance
11 or reinsurance shall be purchased only from a company having a rating of A-
12 by A.M. Best Rating Services, Inc., A- by Fitch Ratings, A by Weiss Ratings, A-
13 by S&P Global Ratings, or A3 by Moody's Investors Service, or better, and this
14 reinsurance may be purchased from admitted or nonadmitted companies,
15 provided that the provisions of R.S. 22:651 through 661, and Financial
16 Accounting Standard Number 113 as promulgated and updated by the
17 Financial Accounting Standards Board. The department shall approve all
18 excess insurance policies or reinsurance agreements prior to use by the fund.

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

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

1 C. Any fund administrator contracted by the fund and whose acts are
2 not covered by the fund's bond, errors and omissions insurance, directors' and
3 officers' liability insurance, or other security approved by the department, and
4 any person, including an individual, partnership, corporation, and other entity
5 contracting, either directly or indirectly, with a fund to provide claims
6 adjusting, underwriting, safety engineering, loss control, marketing, investment
7 advisory, or administrative services to the fund or its membership, other than
8 bookkeeping, or auditing, or claims investigation services to the fund shall
9 comply with all of the following:

10 (1) Post a surety bond with the department issued by a corporate surety
11 authorized to do business in this state of not less than fifty thousand dollars or
12 deposit with the department a safekeeping receipt or trust receipt from a bank
13 doing business in this state or from a savings and loan association chartered to
14 do business in this state indicating that the deposit of fifty thousand dollars in
15 money or bonds of the United States, the state of Louisiana, or any political
16 subdivision of the state, having a par value of fifty thousand dollars, to secure
17 the performance of its obligations under the contract and pursuant to this
18 Subpart.

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

22 D. A fund created pursuant to this Subpart shall not be considered a
23 partnership under the laws of this state.

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

27 F. The board of trustees may declare, as refundable to fund members,
28 any monies in excess of amounts necessary to fulfill obligations of the fund. The
29 board of trustees may distribute the refund at its discretion, in accordance with
30 the agreement establishing the fund and the following conditions:

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

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

6 G. Each application for membership in the fund shall contain written
7 notice that the fund is not covered by the Louisiana Guaranty Insurance
8 Association.

9 §472.7. Investments

10 A. Only a security or other investment that is interest-bearing or
11 interest- accruing or dividend-paying or income-paying and which is not then
12 in default may be purchased or acquired by the fund and the fund shall receive
13 for its exclusive account and benefit the interest or income accruing on the
14 security.

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

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

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

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

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

26 (3) Pass-through mortgage-backed securities and collateralized mortgage
27 obligations issued by the Federal National Mortgage Association, the
28 Government National Mortgage Association, the Federal Home Loan Mortgage
29 Corporation, or the Federal Housing Administration, without limitation,
30 provided that the collateralized mortgage obligations have a minimum rating

1 of A by Moody's Investors Service, S&P Global Ratings, or Fitch Ratings.

2 (4) Obligations of this state or its subdivisions having a minimum rating
3 of A by Moody's Investors Service, S&P Global Ratings, or Fitch Ratings. Not
4 more than five percent of the fund's assets may be invested in any particular
5 issue and the type of investment shall not exceed fifteen percent of the fund's
6 assets in the aggregate.

7 (5) Obligations of any state or its subdivisions having a minimum rating
8 of A by Moody's Investors Service, S&P Global Ratings, or Fitch Ratings. Not
9 more than five percent of the fund's assets may be invested in any particular
10 issue and the type of investment shall not exceed fifteen percent of the fund's
11 assets in the aggregate.

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

17 (7) Asset-backed securities with purchases having a minimum rating of
18 Aa by Moody's Investors Service, AA by S&P Global Ratings, or AA by Fitch
19 Ratings. No more than five percent of the fund's assets may be invested in one
20 issue, and this type of investment shall not exceed ten percent of the fund's
21 assets in the aggregate.

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

25 (a) Be in writing.

26 (b) Have a specific maturity date.

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

28 (d) State that in the event of default by the party agreeing to repurchase
29 the securities described in the agreement at the term contained in the
30 agreement, title to the described securities shall pass immediately to the fund

1 without recourse.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (vi) Except as provided in Subparagraph (b) of this Paragraph, equity
7 holdings are restricted to high quality, readily marketable securities
8 corporations that are domiciled in the United States and that are actively traded
9 on the major United States exchanges, including the New York Stock Exchange
10 and the National Association of Securities Dealers Automated Quotation Stock
11 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
15 exchange traded fund which pays a dividend and consists of securities which
16 have an average market capitalization of at least one billion dollars is permitted.
17 The same general quality constraints shall be met and the aggregate total of the
18 funds, plus any individual securities, may not exceed fifteen percent of the
19 overall investment fund.

20 C. The fund shall not invest in rental assets, which assets shall include,
21 without limitation, all of the following:

22 (1) Any item which is not, in fact, actually owned by the fund.

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

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

1 capitalized under generally accepted accounting principles.

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

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

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

12 §472.8. Authority of department

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

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

19 C.(1) The department may examine the affairs, books, transactions, work
20 papers, files, accounts, records, assets, and liabilities of the fund to determine
21 compliance with this Subpart and pursuant to any rules and regulations
22 promulgated by the department or orders and directives issued by the
23 department. In addition, to the extent necessary and material to the
24 examination of the fund, the department may examine the affairs, books,
25 transactions, work papers, files, accounts, and records of the fund's
26 administrator, service company, certified public accountant, or actuary
27 generated in the course of transacting business on behalf of the group
28 self-insurance fund being examined. All examinations shall be conducted in
29 accordance with the provisions of this Subpart. The reasonable expenses of the
30 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 Subpart shall cause a rate review to be conducted**
3 **by a national independent actuarial firm, provided that the department shall**
4 **not make more than two requests in any calendar year for a rate review**
5 **pursuant to the provisions of this Subsection. The firm shall report its findings**
6 **to the department.**

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

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

15 **(b) The documents sought are audited financial statements or financial**
16 **documents which have been filed with the department.**

17 **D. The department may issue cease and desist orders and suspend or**
18 **revoke the certificate of authority of the fund which the department determines**
19 **is not in compliance with this Subpart, any rule promulgated by the department**
20 **in accordance with the Administrative Procedure Act, or any order or directive**
21 **issued by the department. A cease and desist order may include a prohibition**
22 **on writing or incurring any new or renewal business by the fund.**

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

1 conducted in accordance with the Administrative Procedure Act.

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

4 G. The provisions of this Section do not prohibit the legislative auditor
5 from reviewing records and conducting an audit in accordance with R.S.
6 24:513.

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

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

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

16 (a) Mandatory training.

17 (b) Onsite or offsite monitoring and supervision of the activities of the
18 fund for a specified period of time to determine progress regarding correction
19 of deficiencies.

20 (c) The submission of written progress reports.

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

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

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

27 (a) The imposition of fines and penalties.

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

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

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

3 §472.9. Licensing of agents; claims against insurance agents

4 A. Any person soliciting membership for the fund shall be licensed by the
5 department as a property and casualty insurance producer pursuant to R.S.
6 22:1541 et seq. No employee of the fund, religious denomination, or association
7 of nonprofit religious organizations shall be required to be licensed as an agent
8 if the solicitation of membership for the fund is not the primary duty of the
9 employee.

10 B. No action shall lie against an insurance producer or other person
11 involved in the marketing, selling, or solicitation of participation in the fund for
12 claims arising out of the insolvency of the fund or the inability of the fund to pay
13 claims as they become due unless the claimant first exhausts all remedies
14 available to him against the members of the fund as provided by this Subpart.

15 §472.10. Rates; filing; review of rate determination

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

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

29 §472.11. Consecutive net losses

30 If the fund has three years of consecutive net losses on the audited

1 financial statements of the fund, or two years of consecutive net losses on the
2 audited financial statements of the fund in excess of five hundred thousand
3 dollars or five percent of the premium of the latest audited financial statement,
4 whichever is greater, an authorized representative of the fund shall do all of the
5 following:

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

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

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

16 §472.12. Insolvencies

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

29 B. If the department determines that a plan submitted by the fund is
30 disapproved or, once a plan has been approved by the department, that the fund

1 is not implementing a plan in accordance with the terms of the plan, the
2 department shall give written notification to the fund of its determination.

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

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

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

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

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

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

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

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

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

1 **(6) Payment of all other claims.**

2 **§472.13. Examination**

3 **A. The department shall, at least once every five years, conduct an**
4 **examination of the group self-insurance fund and at such other times as the**
5 **department deems it necessary.**

6 **B. If an examination is needed, the department shall appoint one or more**
7 **examiners to perform the examination and instruct them as to the scope of the**
8 **examination. In performing its examination, the examiner or examiners shall**
9 **observe the guidelines and procedures deemed appropriate by the department.**

10 **C. The provisions of this Subpart shall not be construed to limit the**
11 **department's authority to use any final or preliminary examination report, any**
12 **examiner or fund work papers or other documents, or any other information**
13 **discovered or developed during the course of any examination in the**
14 **furtherance of any legal or regulatory action which the department may**
15 **consider appropriate.**

16 **D. The provisions of this Subpart shall not be construed to limit the**
17 **authority of the department to terminate or suspend any examination in order**
18 **to pursue other legal or regulatory action pursuant to the applicable laws of this**
19 **state. Findings of fact and conclusions made pursuant to any examination shall**
20 **be prima facie evidence in any legal or regulatory action.**

21 **E. In conducting its examination, the department shall examine the**
22 **affairs, transactions, accounts, records, documents, and assets of the authorized**
23 **group self-insurance fund. For the purpose of ascertaining its condition or**
24 **compliance with this Subpart, the department may examine the accounts,**
25 **records, documents, and transactions of all of the following persons:**

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

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

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

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

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

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

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

28 K. Upon completion of the examination of the group self-insurance fund
29 or at stated periods during an examination, the department shall forward to the
30 group self-insurance fund a statement showing the amount of expenses incurred

1 in the examination to the date of the statement. Upon receipt, the group
2 self-insurance fund shall pay the amount of expenses to the department.

3 L. After the receipt of the billing, if the group self-insurance fund
4 considers the amount of expenses billed to it unreasonable or contrary to the
5 provisions of this Subpart, the fund, within fifteen days, may file a rule to show
6 cause in a court of competent jurisdiction upon the department as to the
7 reasonableness and legality of the amount of expenses billed to it by the
8 department. The rule to show cause shall be tried in court by preference as to
9 scheduling and, upon appeal, shall be given preference in the appellate court as
10 provided by the law in the same manner as that given to the state for other state
11 cases.

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

18 §472.14. Examination reports

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

26 B. Not later than sixty days following completion of the examination, the
27 examiner in charge shall file with the department a verified written report of
28 examination under oath. Upon receipt of the verified report, the department
29 shall transmit the report to the fund examined, together with a notice which
30 shall afford the fund examined a reasonable opportunity of not more than thirty

1 days to make a written submission or rebuttal with respect to any matters
2 contained in the examination report.

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

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

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

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

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

29 (1) Adoption of the examination report as refiled or with modification
30 or corrections. If the refiled examination report reveals that the group

1 self-insurance fund is operating in violation of any law, rule, regulation, or prior
2 order or directive of the department, the department may order the fund to
3 take any action the department considers necessary and appropriate to cure the
4 violation.

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

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

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

22 H.(1) At the conclusion of a hearing initiated pursuant to Subsection G
23 of this Section, the administrative law judge shall enter an order adopting the
24 examination report as filed, or subsequently filed again with modifications or
25 corrections, and may order the fund to take any action that the department
26 considers necessary and appropriate to cure any violation of any law,
27 regulation, or prior order or directive of the department.

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

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

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

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

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

29 K.(1) No examiner may be appointed by the department if that examiner,
30 either directly or indirectly, has a conflict of interest or is affiliated with the

1 management of or owns a pecuniary interest in any person or entity subject to
2 examination pursuant to this Subpart.

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

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

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

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

26 (2) Failure by the group self-insurance fund to supply information
27 requested by the department during the course of a financial review shall
28 subject the group self-insurance fund to revocation or suspension of its license
29 or a fine not to exceed ten thousand dollars per occurrence.

30 (3) All work papers, recorded information, and documents as well as all

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

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

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

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

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

25 **§472.15. Authorization of the department to employ investigators**

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

30 **§472.16. Disclosure**

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

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

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

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

1 conducted by the department and examiners and administrators of the
2 department.

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

6 §472.17. Departmental complaint directives; failure to comply; fines; hearing

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

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

15 §472.18. Dissolution

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

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

24 C. Applications to dissolve shall be granted if either of the following
25 conditions are 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 related
30 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 members participating in the fund pursuant to a distribution plan submitted by
6 the fund to the department and approved by the department.

7 §472.19. Exclusive use of information

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

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

27 B. This Section shall not apply in any of the following circumstances:

28 (1) When the member of the fund requests, individually or through an
29 insurance producer, that the group self-insurance fund renew the policy or
30 write other insurance business.

1 (2) When the insurance agent has, by contract, agreed to act exclusively
2 for one member or a group of affiliated members, in which case the rights of the
3 agent shall be determined by the terms of the agent's contract with that member
4 or affiliated group.

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

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

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

22 D.(1) The department may adopt rules, in accordance with the
23 Administrative Procedure Act, to enforce the provisions of this Section, and any
24 violation of this Section or the rules adopted pursuant to this Section shall be
25 subject to regulation by the department pursuant to R.S. 22:472.8.

26 (2) In addition, the insurance producer may have a claim for lost
27 commissions. The claim shall be resolved in accordance with the dispute
28 resolution terms in the applicable contract or agreement. In the absence of any
29 dispute resolution terms, the parties shall attempt to resolve their dispute
30 through mediation. If the claim is not resolved through mediation, the claim

1 may be resolved through binding arbitration if the parties agree. In the absence
2 of an agreement to resolve the claim through binding arbitration, the insurance
3 producer may maintain an action for lost commissions.

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

7 §472.20. Jurisdiction

8 The Nineteenth Judicial District Court shall have exclusive jurisdiction
9 over any proceeding instituted pursuant to this Subpart.

10 Section 2. R.S. 44:4.1(B)(11) is hereby amended and reenacted to read as follows:

11 §4.1. Exceptions

12 * * *

13 B. The legislature further recognizes that there exist exceptions, exemptions,
14 and limitations to the laws pertaining to public records throughout the revised
15 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
16 limitations are hereby continued in effect by incorporation into this Chapter by
17 citation:

18 * * *

19 (11) R.S. 22:2, 14, 31, 42.1, 88, 244, 263, 265, 461, 472.8, 472.14, 550.7,
20 571, 572, 572.1, 574, 601.3, 618, 639, 691.4, 691.5, 691.6, 691.7, 691.8, 691.9,
21 691.9.1, 691.10, 691.38, 691.56, 732, 752, 753, 771, 834, 972(D), 976, 1008, 1019.2,
22 1203, 1460, 1464, 1466, 1488, 1546, 1559, 1566(D), 1644, 1656, 1657.1, 1660.7,
23 1723, 1796, 1801, 1808.3, 1927, 1929, 1983, 1984, 2036, 2045, 2056, 2085, 2091,
24 2293, 2303, 2508

25 * * *

26 Section 3.(A) The Louisiana State Law Institute, in accordance with its statutory
27 authority, is hereby directed to redesignate the provisions of Subpart P-1 of Part I of Chapter
28 2 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:472.1 through
29 472.20, as enacted by Section 1 of this Act, as Chapter 28 of Title 12 of the Louisiana
30 Revised Statutes of 1950, to be comprised of R.S. 12:1851 through 1870.

1 (B) The Louisiana State Law Institute is hereby directed to change any references in
2 the Codes or Louisiana Revised Statutes of 1950 as necessary to reflect the citation changes
3 effected by this Section.

4 Section 4. 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.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____