

2016 Regular Session

HOUSE BILL NO. 280

BY REPRESENTATIVE BROADWATER

WORKERS COMPENSATION: Provides with respect to group self-insurance funds for workers' compensation

1 AN ACT

2 To amend and reenact R.S. 23:1197(D) and (E) and to enact R.S. 23:1191(3), 1197(H),  
3 1200.5(D), and 1200.18, relative to workers' compensation group self-insurance  
4 funds; to provide for the authority of the commissioner of insurance; to provide with  
5 respect to the insolvency of funds; to provide for hazardous financial conditions and  
6 corrective action plans; to provide for fund dissolution; and to provide for related  
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 23:1197(D) and (E) are hereby amended and reenacted and R.S.  
10 23:1191(3), 1197(H), 1200.5(D), and 1200.18 are hereby enacted to read as follows:

11 §1191. Definitions

12 For the purposes of this Subpart, the following terms have the following  
13 meaning:

14 \* \* \*

15 (3) "Hazardous financial condition" means that, based upon its present or  
16 reasonably anticipated financial condition, a fund, although not yet financially  
17 impaired or insolvent, is unlikely to be able to:

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

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

2   \*       \*       \*

3           §1197. Authority of Department of Insurance

4   \*       \*       \*

5                   D. The department shall have authority to issue cease and desist orders and  
6                   suspend or revoke the certificate of authority of any fund which the department  
7                   determines is not in compliance with this Subpart or with any rules and regulations  
8                   issued by the department or orders and directives issued by the commissioner.  
9                   Without limiting the generality of the provisions of this Subsection, a cease and  
10                   desist order may include a prohibition on writing or incurring any new or renewal  
11                   business by the fund.

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

21   \*       \*       \*

22                   H.(1) The commissioner is authorized to place a group self-insurance fund  
23                   on a corrective action plan to remediate any noncompliance or financial issues  
24                   affecting the fund. This authority is in addition to any other authority the  
25                   commissioner holds.

26                   (2) The corrective action plan shall be established by the commissioner  
27                   following a written notice and an opportunity for a hearing with standards, time  
28                   frames, and other parameters as deemed appropriate by the commissioner.

1           (3) Without limiting the discretion of the commissioner, the corrective action  
2 plan may include any of the following:

3           (a) Mandatory training.

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

6           (c) The submission of written progress reports.

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

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

11           (4) Failure by the group self-insurance fund to comply with a corrective  
12 action plan may result in the imposition of additional fines and penalties including  
13 but not limited to monetary penalties and may also include revocation of the fund's  
14 certificate of authority.

15                                   \*       \*       \*

16 §1200.5. Insolvencies

17                                   \*       \*       \*

18           D. In addition to any other powers of the commissioner, in the event that a  
19 group self-insurance fund is insolvent, operating in a hazardous financial condition,  
20 or operating in violation of the requirements of this Subpart, the commissioner is  
21 authorized to institute delinquency proceedings against the fund, including placing  
22 the fund into confidential administrative supervision; conservation; rehabilitation;  
23 or liquidation. The commissioner shall promulgate rules and regulations in  
24 accordance with the Administrative Procedure Act providing for the grounds,  
25 conduct, and procedures applicable to the delinquency proceedings.

26                                   \*       \*       \*

27 §1200.18. Dissolution

28           A. A fund wishing to dissolve shall apply to the commissioner for authority  
29 to dissolve. An application to dissolve shall be on a form prescribed by the

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

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

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

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

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

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

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DIGEST

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

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HB 280 Original

2016 Regular Session

Broadwater

**Abstract:** Provides for the authority of the commissioner of insurance to establish and institute plans relative to certain workers' compensation group self-insurance funds.

Present law provides for the establishment and necessary requirements to form a workers' compensation group self-insurance fund.

Present law requires a minimum net-worth and asset-to-liability ratio at all times to maintain a solvent fund.

Present law provides for admissible investment opportunities.

Proposed law defines "hazardous financial condition" to mean that although a fund is not yet insolvent, it is unable to meet obligations in the normal course of business or for existing or reasonably anticipated claims.

Present law provides that although workers' compensation group self-insurance funds are not insurance and not subject to the La. Insurance Code, that the Dept. of Insurance has the authority to examine the affairs, books, transactions, work papers, files, accounts, records, assets, and liabilities to confirm compliance with present law.

Present law further gives the dept. the authority to issue cease and desist orders or suspend or revoke the certificate of authority of any fund not in compliance. Proposed law retains present law and also allows the cease and desist order to include a prohibition on the fund from writing or incurring any new business or renewing prior business.

Proposed law retains present law and further allows the dept. to levy a fine of up to \$4,000 for issues for which a fine was previously levied.

Present law provides that the procedure for noncompliance will be addressed in accordance with the Administrative Procedure Act.

Proposed law retains present law and further gives the dept. the authority to place a group self-insurance fund on a corrective action plan to deal with any compliance or financial issues.

Proposed law allows the commissioner of the dept. to establish protocol for the corrective action plan and provides that he may include mandatory training, monitoring and supervision, submission of written progress reports, or require measures to generate funding for the fund.

Proposed law allows the commissioner to impose fines, penalties, or revocation of certification for noncompliance with the corrective action plan.

Present law provides for procedures in the instance of the insolvency of a fund.

Proposed law provides procedures for delinquency proceedings in instances in which a fund is insolvent, operating in a hazardous financial condition, or is in violation of present law. Proposed law further provides for penalties for noncompliance and insolvency including supervision, conservation, rehabilitation, or liquidation.

Proposed law provides for the procedure and requirements for dissolution of a fund. In order to dissolve, a fund must apply for the authority to do so and have no outstanding liabilities or be covered by an irrevocable commitment from a licensed insurer that will provide payment of outstanding liabilities.

Proposed law provides that after the dissolution of the fund and the payment of any liability and indebtedness, the assets shall be distributed to the participants.

(Amends R.S. 23:1197(D) and (E); Adds R.S. 23:1191(3), 1197(H), 1200.5(D), and 1200.18)