

2022 Regular Session

HOUSE BILL NO. 1049

BY REPRESENTATIVES SEABAUGH AND MCFARLAND AND SENATOR ROBERT MILLS

INSURANCE/SELF: Authorizes the creation of Louisiana timber and agriculture transportation group self-insurance funds

1 AN ACT

2 To enact Part IV-B of Chapter 28 of Title 3 of the Louisiana Revised Statutes of 1950, to be

3 comprised of R.S. 3:4341.1 through 3:4341.16, relative to forestry and agriculture;

4 to authorize the creation of timber and agriculture transportation group self-insurance

5 funds; 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 agents and brokers; to provide

11 for insolvencies; to provide for civil actions for enforcement; to provide for

12 reporting; to provide penalties for noncompliance; to provide for due process rights;

13 to provide for dissolution; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. Part IV-B of Chapter 28 of Title 3 of the Louisiana Revised Statutes of  
16 1950, comprised of R.S. 3:4341.1 through 3:4341.16, is hereby enacted to read as follows:

17 PART IV-B. LOUISIANA TIMBER AND AGRICULTURE

18 TRANSPORTATION GROUP SELF-INSURANCE FUNDS

1        §4341.1. Definitions

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

5                (1) "Bona fide trade or professional association" means an active trade or  
6        professional association, or a successor organization thereof, that promotes Louisiana  
7        timber or agriculture production and has been in existence and conducted regular  
8        meetings for a period of not less than five years.

9                (2) "Commissioner" means the commissioner of insurance.

10              (3) "Department" means the Department of Insurance.

11              (4) "Fund" means a self-insurance fund established pursuant to this Part to  
12        provide automobile insurance coverage for timber transportation vehicles, agriculture  
13        transportation vehicles, or a combination of both types of vehicles.

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

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

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

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

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

27              (8) "Principal" means a sole proprietor or a person or persons who own a  
28        majority interest or the stock in a corporation, partnership, or limited liability

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

3 (9) "Timber or agriculture transportation vehicle" means a vehicle or  
4 automobile used to collect and transport timber or agriculture products or used in the  
5 course and scope of a timber or agriculture business.

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

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

11 (b) Collision coverage to provide payment for repairs or replacement of a  
12 timber or agriculture transportation vehicle if the operator is at fault in an accident.

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

16 (d) Uninsured motorist coverage as defined in R.S. 22:1295.  
17 §4341.2. Authorization; trade or professional association; initial financial  
18 requirements

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

28 (2) An agreement to pool liabilities under this Part shall be set forth in an  
29 indemnity agreement signed by the employers 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 a 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 commissioner of insurance can be  
16 readily verified and its compliance with the law determined. Any or all books,  
17 records, 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 of  
26 or destroyed, as provided for in Subparagraph (b) of this Paragraph, if provision is  
27 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

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

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

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

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

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

20 B. Each fund shall submit to the department an application, on an application  
21 form prescribed and furnished by the department, for authority to act as a group self-  
22 insurance fund for timber and agriculture transportation vehicle coverage including  
23 evidence of the fund's inception, which establishes financial strength and liquidity  
24 of the members to pay timber and agriculture transportation vehicle claims promptly  
25 and support the financial ability of the fund to satisfy its obligations upon the  
26 establishment of the fund, including:

27 (1) Financial statements, dated not less than one year prior to the application,  
28 audited by an independent certified public accountant, showing at the inception of

1        the fund a combined net worth of those members or principals of not less than the  
2        amount required by Subsection A of this Section.

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

5                (3) Schedules of the entire membership showing:

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

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

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

13               (4) Other financial information and documents as required by the  
14       department.

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

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

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

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

27               (ii) Security as required by this Part.

1           (iii) Copies of acceptable excess insurance or reinsurance, as required by this  
2           Part. All excess insurance or reinsurance must be approved by the department prior  
3           to use.

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

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

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

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

15          (viii) Evidence of financial strength and liquidity of the members dated as  
16          of the date of the filing of the application to satisfy the financial strength and  
17          liquidity requirements of this Part.

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

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

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

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

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

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

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

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

14          §4341.3. Requirements; excess insurance; administrative and service companies;  
15          status; liability; refunds

16          A. Each fund established pursuant to R.S. 3:4341.2 shall:

17           (1) File rates in accordance with R.S. 3:4341.7 and maintain at least seven  
18           hundred and fifty thousand dollars in earned premiums in the first fund year. For the  
19           second and each subsequent year, the fund shall maintain at least two million dollars  
20           in earned premiums. These amounts maintained shall be documented on the fund's  
21           audited financial statement prepared in accordance with generally accepted  
22           accounting principles.

23           (2)(a) During the first fund year, deposit with the department a safekeeping  
24           receipt or trust receipt from a bank doing business in this state or from a savings and  
25           loan association chartered to do business in the state indicating that the fund has  
26           deposited and has pledged one hundred thousand dollars in money or bonds of the  
27           United States, the state of Louisiana, or any political subdivision thereof, of the par  
28           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 insurance as required by this Part.

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

28 (5) File with the department financial statements and reports, including  
29 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 a 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 a 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.

1           D. Any funds under this Part shall not be considered a partnership under the  
2           laws of the state.

3           E. The provisions of this Part shall not be construed to reduce or limit the  
4           rights or obligations of a member with respect to the employees of the member under  
5           the other provisions of this Part.

6           F. A fund member shall be solidarily liable for liabilities of the fund incurred  
7           by the fund after the inception of the fund year in which the employer becomes a  
8           member of the fund.

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

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

17           (2) No later than ten days after the payment of a distribution, the fund shall  
18           provide written notification to the department.

19           H. Any funds which are not guaranteed by a guaranty fund shall give written  
20           notice of the lack of a guaranty to the department and the members of the fund.

21           §4341.4. Investments

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

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

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

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

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

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

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

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

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

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

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

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

4           (a) Be in writing.

5           (b) Have a specific maturity date.

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

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

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

11          (a) The bonds must have a minimum rating of Baa by Moody's, BBB by  
12          Standard and Poor's, or BBB by Fitch.

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

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

18          (d) The five percent and fifty percent limitations specified in Subparagraphs  
19          (b) and (c) of this Paragraph, respectively, may be exceeded up to an additional ten  
20          percent of a fund's assets in the event, and only in the event, of financial  
21          circumstances acceptable to the Department of Insurance, such as an increase in  
22          market value after initial purchase of a corporate bond, provided that:

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

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

28          (10) Mutual or trust fund institutions registered with the Securities and  
29          Exchange Commission under the Securities Act of 1933 and the Investment

1 Company Act of 1940 which have underlying investments consisting solely of  
2 securities approved for investment as set forth in this Subsection. This type of  
3 investment shall not exceed fifty percent of the fund's assets in the aggregate.

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

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

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

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

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

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

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

19 (b) Foreign domiciled corporations are eligible if they trade American  
20 depository receipts on the major United States exchanges.

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

26 C. A fund may not invest in rental assets, which for the purposes of this  
27 Section shall include but not be limited to any of the following:

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

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

5           (3) Any item carried as an asset on the fund's balance sheet for which the  
6           fund pays a regular or periodic fee for the right to carry the item as an asset, whether  
7           the fee is characterized as a rental, a management fee, or a dividend not previously  
8           approved by the department, or other periodic payment for such right. This provision  
9           is not intended to apply to leases capitalized under generally accepted accounting  
10           principles.

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

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

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

22           §4341.5. Authority of the Department of Insurance

23           A. No fund shall become operative until issued a certificate of authority by  
24           the department. The department shall keep confidential all documents and records  
25           associated with the provision of this Section.

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

28           C.(1) The department shall have the authority to examine the affairs, books,  
29           transactions, workpapers, files, accounts, records, assets, and liabilities of a fund to

1 determine compliance with this Part and with any rules and regulations promulgated  
2 by the department or orders and directives issued by the commissioner. In addition,  
3 to the extent necessary and material to the examination of a fund, the department  
4 shall have the authority to examine the affairs, books, transactions, workpapers, files,  
5 accounts, and records of any fund's administrator, service company, certified public  
6 accountant, or actuary generated in the course of transacting business on behalf of  
7 the group self-insurance fund being examined. All examinations shall be conducted  
8 in accordance with the provisions of this Part. The reasonable expenses of the  
9 examinations shall be paid by the fund being examined.

10 (2) Upon the request of the commissioner, each group self-insurance fund  
11 established pursuant to this Part shall cause a rate review to be conducted by a  
12 national independent actuarial firm, provided that the commissioner shall not make  
13 more than two requests in any calendar year for a rate review under the provisions  
14 of this Subsection. The firm shall report its findings to the commissioner of  
15 insurance.

16 (3) All work papers, recorded information, documents, information, and  
17 copies thereof produced by, obtained by, or disclosed to the commissioner or any  
18 other person, pursuant to the authority of the commissioner under this Part, shall be  
19 given confidential treatment and shall not be subject to subpoena, except in the  
20 following circumstances:

21 (a) Information sought has been provided pursuant to R.S. 3:4341.10(C) or  
22 R.S. 3:4341.11(I).

23 (b) Documents sought are audited financial statements which have been filed  
24 with the Department of Insurance.

25 D. The department shall have authority to issue cease and desist orders and  
26 suspend or revoke the certificate of authority of any fund which the department  
27 determines is not in compliance with this Part or with any rule promulgated by the  
28 department pursuant to the Administrative Procedures Act by the department or  
29 order or directive issued by the commissioner. Without limiting the generality of the



1 provisions of this Subsection, a cease and desist order may include a prohibition on  
2 writing or incurring any new or renewal business by the fund.

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

12 F. The department shall conduct a hearing in accordance with all of the  
13 following provisions:

14 (1) Within sixty days of the revocation or suspension by the department of  
15 a certificate of authority held by a fund.

16 (2) When requested by written demand by a fund aggrieved by any action of  
17 the department, if submitted to the department within thirty days after receipt of  
18 notice of the action by the department.

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

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

25 (2) The corrective action plan shall be submitted by the fund to the  
26 commissioner for his approval and include standards, time frames, and other  
27 parameters acceptable to the commissioner. Any corrective action plan that is  
28 submitted to the commissioner by a fund shall be kept confidential by the  
29 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-site or off-site monitoring and supervision of the activities of the fund  
5           for a specified period of time to determine progress regarding correction of  
6           deficiencies.

7           (c) The submission of written progress reports.

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

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

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

14          (a) The imposition of fines and penalties.

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

16          (c) Placement of the fund into confidential administrative supervision.

17          (d) Placement of the fund into conservation, rehabilitation, or liquidation.

18          §4341.6. Licensing of agents; claims against insurance agents

19          A. Any person soliciting membership for a fund shall be licensed by the  
20          department as a property and casualty agent. No employee of a bona fide trade or  
21          professional association which has established a fund or employee of a fund shall be  
22          required to be so licensed if the solicitation of membership for the fund is not the  
23          primary duty of the employee.

24          B. No action shall lie against an insurance agent, insurance broker, or other  
25          person involved in the marketing, selling, or solicitation of participation in a fund  
26          authorized by this Part for any claims arising out of the insolvency of any fund or the  
27          inability of a fund to pay claims as the claims become due unless and until any  
28          claimant shall have first exhausted all remedies available to him against the members  
29          of the fund as provided by this Part.

1        §4341.7. Rates; filing; review of rate determination

2                A. Each fund shall file rates on an actuarially justified class code basis with  
3        the department and may use the rates ninety days after filing, unless the department  
4        disapproves the use of rates within the ninety-day period.

5                B. Each fund shall provide a reasonable procedure for any member aggrieved  
6        by the fund to request in written form a review of the application of the rating system  
7        for the coverage afforded by the fund. The fund shall have thirty days from receipt  
8        to grant or deny the request in written form. If the fund rejects the request or fails  
9        to grant or reject the request within the thirty-day period, the member may, within  
10       thirty days of the expiration of the thirty-day period, appeal to the department for a  
11       hearing. The hearing before the department shall be conducted in accordance with  
12       the provisions of this Part, and the department, after the hearing, may affirm, modify,  
13       or reverse the action taken by the fund.

14       §4341.8. Consecutive net losses

15                A fund with three years of consecutive net losses on the audited financial  
16        statements of the fund, or two years of consecutive net losses on the audited financial  
17        statements of the fund in excess of five hundred thousand dollars or five percent of  
18        the premium of the latest audited financial statement, whichever is greater, shall:

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

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

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

3           §4341.9. Insolvencies

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

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

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

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

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

1           D.(1) In addition to any other powers of the commissioner, in the event that  
2           a group self-insurance fund is insolvent, operating in a hazardous financial condition,  
3           or operating in violation of the requirements of this Part, the commissioner is hereby  
4           expressly authorized to institute delinquency proceedings against the fund, including  
5           entering an order for injunctive relief or placing the fund into confidential  
6           administrative supervision, conservation, rehabilitation, or liquidation.

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

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

16           (3) The commissioner shall promulgate rules and regulations in accordance  
17           with the Administrative Procedure Act providing for the grounds, conduct, and  
18           procedures applicable to the delinquency proceedings.

19           E. The distribution of general assets from the estate of a fund shall be  
20           prioritized as follows:

21           (1) The commissioner's costs and expenses of administration.

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

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

27           (4)(a) Payment of compensation owed to employees of the fund, excluding  
28           officers, for services rendered within three months prior to the commencement of a

1 proceeding against the fund, up to two thousand five hundred dollars for each  
2 employee.

3 (b) Payment to employees shall occur as soon as practicable after the  
4 proceeding has commenced provided that the commissioner has reserved the funds  
5 sufficient for the payment of claims as prioritized pursuant to this Subsection.

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

9 (6) Payment of all other claims.

10 §4341.10. Examination

11 A. The commissioner shall make an examination, not less frequently than  
12 once every five years, of each group self-insurance fund established pursuant to this  
13 Part doing business in this state, and at any other time when in the opinion of the  
14 commissioner it is necessary for such an examination to be made.

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

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

26 D. Nothing contained in this Part shall be construed to limit the authority of  
27 the commissioner to terminate or suspend any examination in order to pursue other  
28 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 commissioner  
4 shall examine the affairs, transactions, accounts, records, documents, and assets of  
5 each authorized group self-insurance fund. For the purpose of ascertaining its  
6 condition or compliance with this Part, the commissioner may, as often as he 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 a group self-insurance fund.

13 F. Every group self-insurance fund being examined, and its officers, trustees,  
14 employees, administrators and representatives, shall produce and make freely  
15 accessible to the commissioner 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 commissioner may take depositions, subpoena witnesses or  
19 documentary evidence, administer oaths, and examine under oath any individual  
20 relative to the affairs of any 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 commissioner makes an examination or investigation  
24 pursuant to this Part, all expenses incurred by the commissioner of insurance in  
25 conducting the examination or investigation, including the expenses and fees of  
26 examiners, auditors, accountants, actuaries, attorneys, or clerical or other assistants  
27 who are employed by the commissioner to make the examination, shall be paid by  
28 the group self-insurance fund.

1           I. The commissioner may recover all expenses incurred from the examination  
2           or investigation of any person or entity acting as an administrator or third-party  
3           administrator in this state for any group self-insurance fund not authorized to transact  
4           business in this state.

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

12          K. Upon completion of the examination of any group self-insurance fund or  
13          at stated periods during an examination, the commissioner shall forward to the group  
14          self-insurance fund a statement showing the amount of expenses incurred in the  
15          examination to the date of the statement. Upon receipt, the group self-insurance fund  
16          shall pay the amount of expenses to the commissioner. Upon receipt of the payment  
17          from the group self-insurance fund, the commissioner shall deposit the payment in  
18          an account styled "commissioner of insurance, revolving fund account", and  
19          withdrawals from the account shall be made by the commissioner for the purpose of  
20          payment to examiners, auditors, accountants, actuaries, attorneys, and clerical or  
21          other assistants of their salaries and necessary expenses incurred in the conduction  
22          of the examination.

23          L. If the group self-insurance fund considers the amount of expenses billed  
24          to it unreasonable or contrary to the provisions of this Part, it may within fifteen days  
25          after the receipt of the billing file a rule to show cause in a court of competent  
26          jurisdiction upon the commissioner as to the reasonableness and legality under this  
27          Part of the amount of expenses billed to it by the commissioner, and the rule shall be  
28          tried by preference, and upon appeal, shall be given preference in the appellate court,  
29          as provided by the laws of this state for other state cases.



1           M. If any group self-insurance fund fails or refuses to pay the expenses of  
2           examination as billed by the commissioner after fifteen days from the receipt of the  
3           billing or after final judgment of the court where a rule has been filed as provided in  
4           this Part, then the commissioner may suspend or revoke the certificate of authority  
5           of such group self-insurance fund to do business in this state until the full amount of  
6           the bill is paid.

7           §4341.11. Examination reports

8           A. All examination reports shall be comprised only of facts appearing upon  
9           the books, records, or other documents of the group self-insurance fund or as  
10           ascertained from the testimony of its officers or agents or other persons examined  
11           concerning its affairs, and any conclusions and recommendations the examiners find  
12           reasonably warranted from the facts. The commissioner shall keep confidential all  
13           documents and records associated with the provision of this Section.

14           B. Not later than sixty days following completion of the examination, the  
15           examiner in charge shall file with the department a verified written report of  
16           examination under oath. Upon receipt of the verified report, the Department of  
17           Insurance shall transmit the report to the fund examined, together with a notice  
18           which shall afford the fund examined a reasonable opportunity, of not more than  
19           thirty days, to make a written submission or rebuttal with respect to any matters  
20           contained in the examination report.

21           C. Within thirty days of the end of the period allowed for the receipt of  
22           written submissions or rebuttals, the commissioner shall fully consider and review  
23           the report, together with any written submissions or rebuttals and any relevant  
24           portions of the examiner's work papers, and enter an order for one of the following:

25           (1) Adoption of the examination report as filed, or with modifications or  
26           corrections. If the examination report reveals that the group self-insurance fund is  
27           operating in violation of any law, rule, regulation, or prior order or directive of the  
28           commissioner, the commissioner may order the fund to take any action the  
29           commissioner considers necessary and appropriate to cure the violation.

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

4           D. Within thirty days of rejection by the commissioner of an examination  
5           report in accordance with Paragraph (C)(2) of this Section, unless the commissioner  
6           extends the time for reasonable cause, the examiner in charge shall refile with the  
7           department a verified written report of examination, as may be modified or  
8           corrected, under oath. Upon receipt of the refiled verified report, the department  
9           shall transmit the refiled report to the fund examined, together with a notice similar  
10          to the notice provided for in Subsection B of this Section, except that the notice shall  
11          indicate that the report is a refiled report.

12          E. Within thirty days of the end of the period allowed for the receipt of  
13          written submissions or rebuttals, as provided for in Subsections B and D of this  
14          Section, the commissioner shall fully consider and review the refiled report, together  
15          with any written submissions or rebuttals and any relevant portions of the work  
16          papers of the examiner, and enter an order for one of the following:

17               (1) Adoption of the examination report as refiled or with modification or  
18               corrections. If the refiled examination report reveals that the group self-insurance  
19               fund is operating in violation of any law, rule, regulation, or prior order or directive  
20               of the commissioner, the commissioner may order the fund to take any action the  
21               commissioner considers necessary and appropriate to cure the violation.

22               (2) Reject the examination report and order a hearing in accordance with the  
23               provisions of this Part, for purposes of obtaining additional documentation, data,  
24               information, and testimony.

25               F. All orders entered pursuant to Paragraph (C)(1) or (E)(1) of this Section  
26               shall be accompanied by findings and conclusions resulting from consideration by  
27               the commissioner and review of the examination report, relevant examiner work  
28               papers, and any written submissions or rebuttals. Any order shall be served upon the  
29               fund by certified mail, together with a copy of the adopted examination report.

1 Within thirty days of the issuance of the adopted report, the group self-insurance  
2 fund of its trustees stating, under oath, that they have received a copy of the adopted  
3 report and related orders.

4 G. Within thirty days of receipt of notification of the order of the  
5 commissioner to the group self-insurance fund made pursuant to Subsection F of this  
6 Section, the fund may make written demand for a hearing in accordance with the  
7 provisions of this Part.

8 H.(1) The hearing provided for under Paragraph (E)(2) of this Section or  
9 Subsection G of this Section shall be conducted as a confidential proceeding. At the  
10 conclusion of the hearing, the commissioner shall enter an order adopting the  
11 examination report as filed or refiled, or with modifications or corrections, and may  
12 order the fund to take any action the commissioner considers necessary and  
13 appropriate to cure any violation of any law, regulation, or prior order or directive  
14 of the commissioner.

15 (2) The commissioner shall issue the order within thirty days after the  
16 termination of a hearing and shall, subject to Subsection E of this Section, give a  
17 copy of the order to each person to whom notice of the hearing was given or required  
18 to be given.

19 I.(1) Upon the adoption of the examination report under Paragraph (C)(1) or  
20 (E)(1) of this Section or Subsection H of this Section, the commissioner shall  
21 continue to hold the content of the examination report as private and confidential  
22 information for a period not to exceed thirty consecutive days, unless the provisions  
23 of R.S. 3:4341.10(C) and Subsection B of this Section apply. Thereafter, the  
24 commissioner may open the report for public inspection provided no court of  
25 competent jurisdiction has stayed its publication.

26 (2) Notwithstanding any provision of law to the contrary, nothing shall  
27 prevent, or be construed as prohibiting, the commissioner from disclosing the content  
28 of an examination report, preliminary examination report or results, or any matter  
29 relating thereto, to the insurance department of this or any other state or country, or

1 to law enforcement officials of this or any other state or agency of the federal  
2 government at any time, provided the agency or office receiving the report or matters  
3 relating thereto agrees, in writing, to hold it confidential and in a manner consistent  
4 with this Part.

5 (3) If the commissioner determines that regulatory action is appropriate as a  
6 result of any examination, he may initiate any proceedings or actions as provided by  
7 law.

8 J. All work papers, recorded information, and documents, as well as all  
9 copies thereof produced by, obtained by, or disclosed to the commissioner, or any  
10 other person, in the course of an examination made under this Part, or pursuant to the  
11 authority of the commissioner under this Part, shall be given confidential treatment  
12 and are not subject to subpoena and may not be made public by the commissioner  
13 or any other person, unless the provisions of R.S. 3:4341.10(C) and Subsection I of  
14 this Section apply. The parties shall agree, in writing prior to receiving the  
15 information, to provide to it the same confidential treatment as required by this  
16 Section, unless the prior written consent of the fund to which it pertains has been  
17 obtained.

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

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

27 L.(1) No cause of action shall arise nor shall any liability be imposed against  
28 the commissioner, the authorized representative of the commissioner, or any

1 examiner appointed by the commissioner for any statement made or conduct  
2 performed in good faith while carrying out the provisions of this Part.

3 (2) No cause of action shall arise, nor shall any liability be imposed, against  
4 any person for the act of communicating or delivering information or data to the  
5 commissioner, or the authorized representative of the commissioner, or an examiner,  
6 pursuant to an examination made under this Part, if that act of communication or  
7 delivery was performed in good faith and without fraudulent intent or the intent to  
8 deceive.

9 M.(1) In addition to those examinations performed by the commissioner  
10 pursuant to R.S. 3:4341.10, the commissioner shall conduct financial reviews of all  
11 group self-insurance funds authorized to do business in this state. The reviews shall  
12 include the audited financial statements of the group self-insurance fund rendered  
13 pursuant to generally acceptable accounting principles, results of prior examinations  
14 and office reviews, management changes, consumer complaints, and any other  
15 relevant information as from time to time may be required by the commissioner.

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

20 (3) All work papers, recorded information, and documents as well as all  
21 copies thereof produced by, obtained by, or disclosed to the commissioner, or any  
22 other person in the course of conducting a financial review shall be given  
23 confidential treatment and are not subject to subpoena and may not be made public  
24 by the commissioner or any other person, except that any access may be granted to  
25 insurance departments of other states, international, federal or state law enforcement  
26 agencies or international, federal, or state regulatory agencies with statutory  
27 oversight over the financial services industry, if the recipient agrees to maintain the  
28 confidentiality of those documents which are confidential under the laws of this  
29 state.

1           (4) In conducting financial reviews, the examiner or examiners shall observe  
2           those guidelines and procedures as the commissioner may deem appropriate.

3           (5) Nothing contained in this Part shall be construed to limit the  
4           commissioner's authority to use any final or preliminary analysis findings, any  
5           Department of Insurance or fund work papers or other documents, or any other  
6           information discovered or developed during the course of any analysis in the  
7           furtherance of any legal or regulatory action which the commissioner may, in his sole  
8           discretion, deem appropriate.

9           (6) Any group self-insurance fund against whom a fine has been levied shall  
10          be given ten days notice of such action. Upon receipt of this notice, the aggrieved  
11          party may apply for and shall be entitled to a hearing pursuant to this Part.

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

14          §4341.12. Commissioner of insurance; authorization to employ investigators

15          The commissioner shall have authority to employ investigators to investigate  
16          complaints received against any group self-insurance fund authorized to do business  
17          in this state and against any unauthorized group self-insurance fund that is reported  
18          to be operating in this state.

19          §4341.13. Disclosure

20          A. It shall be unlawful for any person who is an officer, trustee, employee,  
21          administrator, agent, or representative of a group self-insurance fund, as well as any  
22          person, partnership, corporation, banking corporation, or any other legal entity which  
23          performs any service for a group self-insurance fund, or prepares any report, audit,  
24          financial statement or report for, or makes any representation on behalf of, for, or  
25          with regard to a group self-insurance fund, in connection with any hearing,  
26          investigation, or examination authorized by this Part, to act with the specific intent  
27          to do any of the following:

28                 (1) Represent falsely, directly or indirectly, to the Department of Insurance  
29                 or any employee, trustee or administrator thereof, that an asset of such group self-

1 insurance fund is unencumbered, or to misrepresent any other material fact  
2 pertaining to the status of any asset or liability of a group self-insurance fund.

3 (2) Materially misrepresent to the department, or any employee, trustee or  
4 administrator thereof, the value of any asset or the amount of any liability of the  
5 group self-insurance fund, or any affiliate, subsidiary, or holding fund associated  
6 therewith, provided that with regard to a material misrepresentation of the value of  
7 any asset or liability, any deviation from the actual value of such assets or liability  
8 which results from utilization of and compliance with generally accepted insurance  
9 accounting and reporting procedures shall not be deemed a violation of this Section.

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

14 (4) Materially misrepresent, withhold, deny access to, or otherwise preclude  
15 the obtainment of any information properly requested in writing and in accordance  
16 with provisions of law affecting dissemination or disclosure of information by  
17 specific institutions by an examiner or administrator of the department, which is  
18 material and relevant to an examination properly conducted by the department and  
19 examiners and administrators of the department.

20 B. Whoever violates any provision of this Section, upon conviction, shall be  
21 fined not more than fifty thousand dollars, or imprisoned with or without hard labor  
22 for not more than five years, or both.

23 §4341.14. Departmental complaint directives; failure to comply; fines; hearing

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

28 B. Any person against whom a fine has been levied shall be given ten days  
29 notice of the action. Upon receipt of this notice, the person aggrieved may apply for

1 and shall be entitled to a hearing conducted in accordance with the provisions of this  
2 Part.

3 §4341.15. Dissolution

4 A. A fund wishing to dissolve shall apply to the commissioner for authority  
5 to dissolve. An application to dissolve shall be on a form prescribed by the  
6 commissioner and shall be approved or disapproved by the commissioner within  
7 sixty days of receipt.

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

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

14 (1) The fund has no outstanding liabilities including incurred but not  
15 reported liabilities.

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

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

25 §4341.16. Exclusive use of expirations

26 A.(1) Except as otherwise provided in this Section, for purposes of soliciting,  
27 selling, or negotiating the renewal or sale of group self-insurance coverage, products,  
28 or insurance services, an insurance agent or insurance broker shall have the exclusive  
29 use of expirations, records, or other written or electronic information directly related



1        to a group self-insurance application submitted by or a group self-insurance policy  
2        written through an insurance agent or insurance broker. No group self-insurance  
3        fund shall use expirations, records, or other written or electronic information to  
4        solicit, sell, or negotiate the renewal or sale of insurance coverage, insurance  
5        products, or insurance services to the insured, either directly or by providing such  
6        information to others, without the express written consent of the insurance agent or  
7        insurance broker.

8                (2) The expirations, records, or other written or electronic information may  
9        be used to review a group self-insurance application, to issue a policy, or for any  
10       other purpose necessary for placing such business through the insurance agent or  
11       insurance broker. The expirations, records, or other written or electronic information  
12       may also be used for any other purpose which does not involve the soliciting, selling,  
13       or negotiating the renewal or sale of group self-insurance coverage, products, or  
14       services.

15                B. This Section shall not apply:

16                (1) When the insured requests, individually or through another agent, that the  
17       group self-insurance company renew the policy or write other insurance business.

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

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

26                (4) When the agency contract is terminated and the insurance company is  
27       required by law to continue coverage for the insured, in which event the insurance  
28       company shall continue to pay the insurance agent or the insurance broker  
29       commissions on such policies that the company is required to renew during the

1 thirty-six-month period following the effective date of the termination. The  
2 commission shall be at the insurer's prevailing commission rates in effect on the date  
3 of renewal for that class or line of business in effect on the date of renewal for  
4 brokers or agents whose contracts are not terminated.

5 C. The insurance agent or insurance broker and insurer may in a written  
6 agreement separate from the agency contract, mutually agree to terms different from  
7 the provisions set forth in this Section. The terms of any such agreement shall be  
8 negotiated in good faith between the parties.

9 D.(1) The commissioner may adopt rules, in accordance with the  
10 Administrative Procedure Act, to enforce the provisions of this Section, and any  
11 violation of this Section or the rules adopted hereunder shall be subject to regulation  
12 by the commissioner under R.S. 3:4341.5.

13 (2) In addition, the insurance agent or insurance broker shall have a right to  
14 a claim for lost commissions. The claim shall be resolved in accordance with the  
15 dispute resolution terms in the applicable contract or agreement. In the absence of  
16 any dispute resolution terms, the parties shall attempt to resolve their dispute through  
17 mediation. If the claim is not resolved through mediation, the claim may be resolved  
18 through binding arbitration if the parties agree. In the absence of an agreement to  
19 resolve the claim through binding arbitration, the agent or broker may maintain an  
20 action for lost commissions.

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

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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 1049 Original

2022 Regular Session

Seabaugh

**Abstract:** Authorizes the creation of self-insurance funds for the purpose of providing auto insurance for vehicles which transport timber and agriculture products.

Proposed law provides that any five or more Louisiana timber or agriculture companies, who are not public entities, each of whom has a positive net worth and is financially solvent, may pool their liabilities and self-insure for the purposes of maintaining automobile coverage for timber and agriculture transportation vehicles. Proposed law provides that members of the fund must also be members of one or more bona fide trade or professional associations. Proposed law defines "bona fide trade or professional association" as an active trade or professional association that promotes La. timber or agriculture production and has been in existence and conducted regular meetings for a period of not less than five years.

Proposed law provides that no fund can become operative until the fund is issued a certificate of authority by the Dept. of Insurance after the department has approved the application for the fund and the documents required to establish solvency and the ability to properly manage and pay claims.

Proposed law provides that no person may solicit membership for a fund unless they are licensed by the department as a licensed property and casualty insurance agent. Proposed law sets forth requirements for insurance agents and brokers who solicit membership for the fund and for the payment of commissions.

Proposed law provides that the rates for coverage, or the costs of premiums, that may be charged to the members must be in an amount that is actuarially justified. Proposed law further provides that once the rate filing is made to the department, the premium rates may be charged to the members of the fund for automobile coverage within 90 days after the rate filing is made.

Proposed law provides that, in order to maintain financial stability of the fund, the commissioner of insurance is to require two or more member timber or agriculture companies to maintain a combined net worth of \$1,000,000 or five or more principals of the member companies to maintain a combined net worth of \$1,000,000. Proposed law further provides that financial statements must not be more than one year old when submitted to the commissioner of insurance for approval of the self-insurance fund. Proposed law requires further security in the form of excess insurance or reinsurance in an amount and in form that is approved by the Dept. of Insurance to insure the ability to properly manage and pay claims.

Proposed law provides that, if the fund employs one or more third-party administrators, each third-party administrator of the fund must post a bond. Proposed law provides that, if the fund employs its own administrator, the fund is required to purchase a bond, errors and omission's insurance, or other security that is approved by the Dept. of Insurance.

Proposed law provides that a self-insurer's fund must obtain a minimum of \$750,000 in premiums in the fund for the first year and \$2,000,000 in premiums for each year thereafter.

Proposed law provides for agreements to pool liabilities to be set forth in the indemnity agreement or other instruments. Proposed law provides for annual premium audits to be conducted by an independent audit firm that is approved by the department.

Proposed law provides for proper audits by the fund in a form that is acceptable to the department. Proposed law provides proposed law does not prohibit the legislative auditor from also reviewing the records and conducting an audit of the fund.

Proposed law provides that each member must sign mutual indemnity agreements to cover the risk of liability covered by the fund and copies of the agreements will be presented to the Dept. of Insurance when the application is made for approval of the fund. Proposed law provides that proof of advanced payments to the fund of at least 25% of each member's first year estimated annual earned premiums must be provided with the application.

Proposed law provides that moneys deposited into the fund may be invested in certain interest-bearing or interest-accruing investments and in certain bonds and securities that are publically traded or have certain minimum rating with Moody's, Standard and Poor's, or Fitch.

Proposed law further provides that the department may impose fines and penalties for failure to comply with requirements to operate the fund as required by proposed law. Proposed law further provides that the department may revoke the authority to operate the fund or issue cease and desist orders if the requirements of proposed law are not maintained by the fund and its members.

Proposed law provides for standards to which self-insurers must adhere and provides for authority for the department to take action when a self-insurer is in hazardous financial condition.

Proposed law provides that, if a fund becomes insolvent, the Dept. of Insurance will require the fund to submit a plan to take necessary action to restore solvency and plan must be approved by the department. Proposed law provides that, if a fund cannot be restored, the commissioner of insurance is authorized by proposed law to execute delinquency proceedings and place the fund into confidential administrative supervision, conservation, rehabilitation, or liquidation. Proposed law further provides that the 19th Judicial District Court has exclusive jurisdiction to hear any delinquency proceeding instituted by the commissioner for the failure of a fund to comply with the approved corrective action plan and the court may issue an injunction to restrain the fund and its officers, agents, directors, or employees from transacting any insurance business or disposing of property until further action by the court.

Proposed law provides that an examination of the fund is to be made by the commissioner at least every five years. Proposed law provides that the examiners are to be appointed by the commissioner, who is to instruct them on the scope of the examination in order to determine if the fund is operating in compliance with proposed law, and the examiners expenses are to be paid by the fund.

Proposed law provides that the commissioner may employ investigators to investigate complaints received against a fund that is approved to operate under proposed law or against any unauthorized group self-insurance fund that is reported to be operating in this state.

Proposed law provides that a fund wishing to dissolve may apply to the commissioner. Proposed law further provides the requirements for the dissolution of the fund, including the requirements for payment of future claims and the methods to secure future obligations of the fund.

Effective August 1, 2022.

(Adds R.S. 3:4341.1 - 3:4341.16)