

2022 Regular Session

SENATE BILL NO. 437

BY SENATOR ROBERT MILLS AND REPRESENTATIVES MCFARLAND AND SEABAUGH

SELF INSURANCE. Authorizes the creation of Louisiana Timber and Agriculture Transportation Group Self-Insurance Funds. (8/1/22)

AN ACT

To enact Part IV-A of Chapter 28 of Title 3 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 3:4345.1 through 3:4345.16, relative to forestry and agriculture; to authorize the creation of the timber and agriculture transportation group self-insurance fund; to provide with respect to group self-insurance funds; to provide for requirements; to provide for definitions; to provide with respect to the qualifications for membership; to provide for regulatory authority; to provide for excess or reinsurance insurance; to provide for the management of assets and investments; to provide for liabilities and the payment of claims; to provide for audits, examinations, and investigations; to provide for licensed insurance producers; to provide for insolvencies; to provide for civil actions for enforcement; to provide for reporting; to provide penalties for noncompliance; to provide for due process rights; to provide for dissolution; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part IV-A of Chapter 28 of Title 3 of the Louisiana Revised Statutes of 1950, comprised of R.S. 3:4345.1 through 3:4345.16, is hereby enacted to read as follows:

PART IV-A. LOUISIANA TIMBER AND AGRICULTURE

1 **TRANSPORTATION GROUP SELF-INSURANCE FUNDS**

2 **§4345.1. Definitions**

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

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

9 **(a) Promotes Louisiana timber or agriculture production.**

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

11 **(c) The primary function of the trade or professional association is for**
12 **purposes other than the sponsorship, operation, or management of a fund or**
13 **primarily for purposes other than to provide a related employee safety program**
14 **or other activity necessary to the operation of the fund.**

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

17 **(2) "Department" means the Department of Insurance.**

18 **(3) "Fund" means the self-insurance fund established pursuant to this**
19 **Part to provide automobile coverage for timber transportation vehicles,**
20 **agriculture transportation vehicles, or a combination of both types of vehicles.**

21 **(4) "Hazardous financial condition" means that, based upon its present**
22 **or reasonably anticipated financial condition, the fund, although not yet**
23 **financially impaired or insolvent, is unlikely to be able to:**

24 **(a) Meet obligations with respect to known claims and reasonably**
25 **anticipated claims.**

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

27 **(5) "Insolvency" means the condition existing when the fund's liabilities**
28 **are greater than the fund's assets as determined in accordance with generally**
29 **accepted accounting principles as delineated in the fund's financial statement**

1 audited by an independent certified public accountant and calculated before a
2 member distribution is payable or before a dividend is declared.

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

6 (7) "Principal" means a person or persons who own a majority interest
7 or the majority of the stock in a corporation, partnership, or limited liability
8 company that is established for the purpose of operating a timber or agriculture
9 business and is a member of the fund.

10 (8) "Timber or agriculture transportation vehicle" means a vehicle or
11 automobile used to collect and transport timber or agriculture products or used
12 in the course and scope of a timber or agriculture business.

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

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

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

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

23 (d) Uninsured motorists coverage as defined in R.S. 22:1295.
24 §4345.2. Authorization; trade or professional association; initial financial
25 requirements

26 A.(1) Any five or more Louisiana timber or agriculture operators that
27 are not public entities, each of which has a positive net worth, is financially
28 solvent, and is capable of assuming the obligations set forth under this Part, and
29 that are all members of one or more bona fide trade or professional

1 associations, may agree to pool their liabilities for timber or agriculture
2 transportation vehicle coverages as provided by this Part. This arrangement
3 shall not be an insurer, shall not be deemed to be insurance, and shall not be
4 subject to the Louisiana Insurance Code, unless specifically referenced in this
5 Part. The members of the arrangement likewise shall not be insurers or be
6 subject to the Louisiana Insurance Code.

7 (2) An agreement to pool liabilities under this Part shall be set forth in
8 an indemnity agreement signed by the members and fund representatives
9 acknowledging and agreeing to the assumption of the liabilities as set forth in
10 this Part.

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

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

20 (5)(a) The arrangement shall be domiciled in the state of Louisiana. All
21 books, records, documents, accounts, and vouchers shall be kept in such a
22 manner that the arrangement's financial condition, affairs, and operations can
23 be ascertained so that its financial statements filed with the department of
24 insurance can be readily verified and its compliance with the law determined.
25 Any or all books, records, documents, original indemnity agreements, accounts,
26 and vouchers may be photographed or reproduced on film. Any photographs,
27 microphotographs, optical imaging, or film reproductions of any original books,
28 records, documents, original indemnity agreements, accounts, and vouchers
29 shall for all purposes, including but not limited to admission into evidence in

1 any court or adjudicatory proceeding, be considered the same as the originals
2 thereof, and a transcript, exemplification, or certified copy of any such
3 photograph, microphotograph, optical imaging, or film reproduction shall for
4 all purposes be deemed to be a transcript, exemplification, or certified original.
5 Any original considered reproduced may thereafter be disposed of or destroyed,
6 as provided for in Subparagraph (b) of this Paragraph, if provision is made for
7 preserving and examining the reproduction.

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

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

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

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

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

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

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

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

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

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

24 (3) Schedules of the entire membership showing:

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

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

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

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

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

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

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

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

17 (ii) Security as required by this Part.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **principles.**

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

5 **§4345.3. Requirements; excess insurance; administrative and service**
6 **companies; status; liability; refunds**

7 **A. The fund established pursuant to R.S. 3:4345.2 shall:**

8 **(1) File rates in accordance with R.S. 3:4345.7 and maintain at least**
9 **seven hundred and fifty thousand dollars in earned premiums in the first fund**
10 **year. For the second and each subsequent year, the fund shall maintain at least**
11 **two million dollars in earned premiums. These amounts maintained shall be**
12 **documented on the fund's audited financial statement prepared in accordance**
13 **with generally accepted accounting principles.**

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

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

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

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

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

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

25 B. For any casualty insurance company to be eligible to write excess
26 coverage for the fund, the company shall at all times have on file with the
27 department its current financial statement showing assets, including surplus to
28 policyholders, at least equal to the current requirements by the department for
29 admission of a new company to do business in the state. Contracts or policies for

1 excess insurance coverage written by active underwriters of Lloyd's of London
2 shall be acceptable upon prior approval by the department.

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

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

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

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

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

28 F. Any monies in excess of the amount necessary to fund all obligations
29 of the fund may be declared as refundable to the members of the fund by the

1 board of trustees. The board of trustees shall be authorized to distribute the
2 refund at its discretion, in accordance with the agreement establishing the fund
3 and the following limitations:

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

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

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

12 §4345.4. Investments

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

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

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

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

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

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

29 (3) Pass-through mortgage-backed securities and collateralized mortgage

1 obligations issued by the Federal National Mortgage Association, the
2 Government National Mortgage Association, the Federal Home Loan Mortgage
3 Corporation, or the Federal Housing Administration, without limitation,
4 provided that the collateralized mortgage obligations have a minimum rating
5 of A by Moody's, Standard & Poor's, or Fitch.

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

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

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

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

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

27 (a) Be in writing.

28 (b) Have a specific maturity date.

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

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

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

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

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

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

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

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

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

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

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

2 **(i) The equity sector shall not exceed fifteen percent of the overall**
3 **investment fund.**

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

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

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

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

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

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

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

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

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

29 **(2) Any item carried as an asset on the fund's balance sheet, the**

1 ownership of which is subject to resolution, rescission, or revocation upon the
2 fund's insolvency, receivership, bankruptcy, statutory supervision,
3 rehabilitation, liquidation, or upon the occurrence of any other contingency.

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

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

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

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

21 §4345.5. Authority of Department of Insurance

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

26 B. The certificate of authority shall be continuous until revoked or
27 suspended 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,
29 books, transactions, workpapers, files, accounts, records, assets, and liabilities

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

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

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

22 (a) Information sought has been provided pursuant to R.S. 3:4345.10(C)
23 or R.S. 3:4345.11(I).

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

26 D. The department shall have authority to issue cease and desist orders
27 and suspend or revoke the certificate of authority of the fund which the
28 department determines is not in compliance with this Part or with any rule
29 promulgated by the department pursuant to the Administrative Procedures Act

1 by the department or order or directive issued by the department. Without
2 limiting the generality of the provisions of this Subsection, a cease and desist
3 order may include a prohibition on writing or incurring any new or renewal
4 business by the fund.

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

14 F. The division of administrative law shall conduct a hearing in
15 accordance with the Administrative Procedure Act and shall have the authority
16 to do all of the following:

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

19 (2) When requested by written demand by the fund aggrieved by any
20 action of the department, if submitted to the department within thirty days
21 after receipt of notice of the action by the department.

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

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

28 (2) The corrective action plan shall be submitted by the fund to the
29 department for his approval and include standards, time frames, and other

1 parameters acceptable to the department. Any corrective action plan that is
2 submitted to the department by the fund shall be kept confidential by the
3 department.

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

6 (a) Mandatory training.

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

10 (c) The submission of written progress reports.

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

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

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

17 (a) The imposition of fines and penalties.

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

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

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

23 §4345.6. Licensing of agents; claims against insurance agents

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

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

7 **§4345.7. Rates; filing; review of rate determination**

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

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

21 **§4345.8. Consecutive net losses**

22 **If the fund has three years of consecutive net losses on the audited**
23 **financial statements of the fund, or two years of consecutive net losses on the**
24 **audited financial statements of the fund in excess of five hundred thousand**
25 **dollars or five percent of the premium of the latest audited financial statement,**
26 **whichever is greater, the fund shall:**

27 **(1) Attend a meeting with the department, the administrator of the fund,**
28 **any third-party administrator contracted or performing services for the fund,**
29 **and the fund's board of trustees to discuss the financial condition of the fund**

1 and to advise the department of the course of action the fund will take to obtain
2 net incomes on subsequent audited financial statements.

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

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

8 **§4345.9. Insolvencies**

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

21 B. Upon determination by the department that a plan submitted by the
22 fund is disapproved or that the fund is not implementing a plan in accordance
23 with the terms of the plan, it shall notify the fund in writing of the
24 determination.

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

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

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

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

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

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

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

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

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

29 (2) Payment of claims to third-parties and insureds arising out of and

1 within the coverage of agreements or evidences of coverage issued by the fund,
2 up to the policy limits.

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

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

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

11 (6) Payment of all other claims.

12 §4345.10. Examination

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

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

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

28 D. Nothing contained in this Part shall be construed to limit the authority
29 of the department to terminate or suspend any examination in order to pursue

1 other legal or regulatory action pursuant to the applicable laws of this state.

2 Findings of fact and conclusions made pursuant to any examination shall be

3 prima facie evidence in any legal or regulatory action.

4 E. In conducting the examination pursuant to this Section, the

5 department shall examine the affairs, transactions, accounts, records,

6 documents, and assets of the authorized group self-insurance fund. For the

7 purpose of ascertaining its condition or compliance with this Part, the

8 department may, as often as he deems advisable, examine the accounts, records,

9 documents and transactions of all of the following:

10 (1) Any insurance agent, solicitor or broker, but only insofar as the

11 accounts, records, documents and transactions relate to group self-insurance

12 funds.

13 (2) Any person having a contract under which he enjoys, in fact, the

14 exclusive or dominant right to manage or control the group self-insurance fund.

15 F. The group self-insurance fund being examined, and its officers,

16 trustees, employees, administrators and representatives, shall produce and

17 make freely accessible to the department the accounts, records, documents, and

18 files in its possession or control relating to the subject of the examination, and

19 shall otherwise facilitate the examination.

20 G. The department may take depositions, subpoena witnesses or

21 documentary evidence, administer oaths, and examine under oath any

22 individual relative to the affairs of the group self-insurance fund being

23 examined. Any person who testifies falsely or makes any false affidavit during

24 the course of such an examination shall be guilty of perjury.

25 H. Whenever the department makes an examination or investigation

26 pursuant to this Part, all expenses incurred by the department of insurance in

27 conducting the examination or investigation, including the expenses and fees of

28 examiners, auditors, accountants, actuaries, attorneys, or clerical or other

29 assistants who are employed by the commissioner to make the examination,

1 shall be paid by the group self-insurance fund.

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

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

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

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

25 M. If the group self-insurance fund fails or refuses to pay the expenses
26 of examination as billed by the department after fifteen days from the receipt
27 of the billing or after final judgment of the court where a rule has been filed as
28 provided in this Part, then the department may suspend or revoke the
29 certificate of authority of such group self-insurance fund to do business in this

1 state until the full amount of the bill is paid.

2 §4345.11. Examination reports

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

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

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

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

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

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

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

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

20 (2) Reject the examination report and refer the matter for hearing before
21 an administrative law judge within the division of administrative law in
22 accordance with the provisions of the Administrative Procedure Act, for
23 purposes of obtaining additional documentation, data, information, and
24 testimony.

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

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

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

8 H.(1) The hearing provided for under Subsection G of this Section shall
9 be conducted as required by the Administrative Procedure Act. At the
10 conclusion of the hearing, the administrative law judge shall enter an order
11 adopting the examination report as filed, or subsequently filed again with
12 modifications or corrections, and may order the fund to take any action that the
13 department considers necessary and appropriate to cure any violation of any
14 law, regulation, or prior order or directive of the department.

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

18 I.(1) Upon the adoption of the examination report under Paragraph
19 (C)(1) or (E)(1) or Subsection H of this Section, the department shall continue
20 to hold the content of the examination report as private and confidential
21 information for a period not to exceed thirty consecutive days, unless the
22 provisions of R.S. 3:4345.10(C) and Subsection B of this Section apply.
23 Thereafter, the department may open the report for public inspection provided
24 no court of competent jurisdiction has stayed its publication.

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

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

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

7 J. All work papers, recorded information, and documents, as well as all
8 copies thereof produced by, obtained by, or disclosed to the department, or any
9 other person, in the course of an examination made under this Part, or pursuant
10 to the authority of the commissioner under this Part, shall be given confidential
11 treatment and are not subject to subpoena and may not be made public by the
12 department or any other person, unless the provisions of R.S. 3:4345.10(C) and
13 Subsection I of this Section apply. The parties shall agree, in writing prior to
14 receiving the information, to provide to it the same confidential treatment as
15 required by this Section, unless the prior written consent of the fund to which
16 it pertains has been obtained.

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

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

27 L.(1) No cause of action shall arise nor shall any liability be imposed
28 against the department, the authorized representative of the department, or any
29 examiner appointed by the department for any statement made or conduct

1 performed in good faith while carrying out the provisions of this Part.

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

8 M.(1) In addition to those examinations performed by the department
9 pursuant to R.S. 3:4345.10, the department shall conduct financial reviews of
10 the group self-insurance fund. The reviews shall include the audited financial
11 statements of the group self-insurance fund rendered pursuant to generally
12 acceptable accounting principles, results of prior examinations and office
13 reviews, management changes, consumer complaints, and any other relevant
14 information as from time to time may be required by the department.

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

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

29 (4) In conducting financial reviews, the examiner or examiners shall

1 observe those guidelines and procedures as the department may deem
2 appropriate.

3 (5) Nothing contained in this Part shall be construed to limit the
4 department'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 department may, in the
8 department's sole determination.

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

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

15 §4345.12. Department of Insurance authorized to employ investigators

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

20 §4345.13. Disclosure

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

29 (1) Represent falsely, directly or indirectly, to the Department of

1 Insurance or any employee, trustee or administrator thereof, that an asset of
2 such group self-insurance fund is unencumbered, or to misrepresent any other
3 material fact pertaining to the status of any asset or liability of the group
4 self-insurance fund.

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

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

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

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

27 **§4345.14. Departmental complaint directives; failure to comply; fines; hearing**

28 A. Any person subject to the regulatory authority of the department who
29 fails to comply with any directive issued by the department in connection with

1 a consumer complaint shall be fined an amount not to exceed two hundred fifty
2 dollars for each occurrence.

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

7 §4345.15. Dissolution

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

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

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

18 (1) The fund has no outstanding liabilities including incurred but not
19 reported liabilities.

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

25 D. Upon the dissolution of the fund and after payment of all outstanding
26 liabilities and indebtedness, the assets of the fund shall be distributed to all
27 employers participating in the fund pursuant to a distribution plan submitted
28 by the fund to the department and approved by the department.

29 §4345.16. Exclusive use of expirations

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

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

20 B. This Section shall not apply:

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

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

28 (3) When the insurance producer is in default for nonpayment of
29 premiums under the insurance agent's or insurance broker's contract or other

1 agreement with the group self-insurer, unless there is a legitimate dispute as to
2 monies owed.

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

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

16 D.(1) The department may adopt rules, in accordance with the
17 Administrative Procedure Act, to enforce the provisions of this Section, and any
18 violation of this Section or the rules adopted hereunder shall be subject to
19 regulation by the department under R.S. 3:4345.5.

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

28 (3) Except as provided in Subsection B of this Section, nothing in this
29 Section shall be interpreted as impairing any rights in law or contract currently

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enjoyed by any party.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

SB 437 Engrossed

2022 Regular Session

Robert Mills

Proposed law authorizes the creation of a self-insurance fund for the purpose of providing auto coverage for vehicles that 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, is chartered and domiciled in Louisiana, has been in existence and conducted regular meetings for at least five years, and is not established for the primary purpose of operating a self-insured fund.

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 insurance producer. Proposed law sets forth requirements for insurance producers 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 Dept. of Insurance is to require two or more 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 department 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 to further the financial stability of the self-insured fund, the members will pay a percentage over and above their premiums to establish a reserve account. Proposed law further provides that the reserve account will be maintained at all times while the self-insured fund is in operation and no payments can be made from the reserve account unless approved by the department.

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 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 a 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 any administrative hearing that is necessary to resolve a dispute related to the regulation of the fund is to be conducted by an administrative law judge with the Division of Administrative Law and in accordance with present law.

Proposed law provides that, if the fund becomes insolvent, the Dept. of Insurance will require the fund to submit a plan to take necessary action to restore solvency and the plan must be approved by the department. Proposed law provides that, if the fund cannot be restored, the Dept. 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 department 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 department at least every five years. Proposed law provides that the examiners are to be appointed by the department, 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 department 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 department. 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. 3:4345.1 - 3:4345.16)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Agriculture, Forestry, Aquaculture, and Rural Development to the original bill

1. Adds requirements to the definition of a bona fide trade or professional association.
2. Adds a requirement for a reserve account.
3. Transfers administrative hearings from the Dept. of Insurance to the Division of Administrative Law.
4. Makes technical changes.