

Regular Session, 2010

SENATE BILL NO. 607

BY SENATOR LONG

INSURERS. Provides for regulation and operation of certain group self-insurance funds for workers' compensation. (8/15/10)

1 AN ACT  
2 To amend and reenact R.S. 22:46(9)(a) and (10), 47(5), 48(A)(15), 451(A), and 452(1)(b),  
3 R.S. 23:1168(A)(1), 1195(A)(1), 1197(C) and the introductory paragraph of R.S.  
4 23:1197(F), R.S. 23:1200, to enact R.S. 23:1195(D), 1200.6 through 1200.28, and  
5 to repeal R.S. 22:461(J) and 1982, relative to workers' compensation group self-  
6 insurance funds; to provide that such funds are not insurers nor to be deemed  
7 insurance; to provide for compliance examinations of group self-insurance workers'  
8 compensation funds by the commissioner of insurance; to provide for hearings of  
9 matters as a result of such examinations; to provide for appeal of hearing  
10 determinations by the division of administrative law; and to provide for related  
11 matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 22:46(9)(a) and (10), 47(5), 48(A)(15), 451(A) and 452(1)(b) are  
14 hereby amended and reenacted to read as follows:

15 §46. General definitions

16 In this Code, unless the context otherwise requires, the following definitions  
17 shall be applicable:

\* \* \*

(9)(a) "Insurance" is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies. It shall include any trust, plan or agreement, popularly known as employee benefit trusts, not specifically exempted from state regulation under Public Law 93-406, except collectively bargained union welfare plans, single employer plans or plans of the state or political subdivisions. **The term "insurance" shall not include any arrangement or trust formed under Subpart J of Part I of Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950.**

\* \* \*

(10) "Insurer" includes every person engaged in the business of making contracts of insurance, other than a fraternal benefit society. A reciprocal, an inter-insurance exchange, insurance exchange syndicate, or a Lloyds organization is an "insurer". Any person who provides an employee benefit trust as specified in Subparagraph (9)(a) of this Section is an insurer. A health maintenance organization is an insurer but only for the purposes enumerated in R.S. 22:242(7). **The term "insurer" shall not include any arrangement or trust formed under Subpart J of Part I of Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950, nor shall such arrangement or trust be deemed an insurer.**

\* \* \*

§47. Kinds of insurance

Insurance shall be classified as follows:

\* \* \*

(5) Workers' compensation. Insurance of the obligations accepted by, imposed upon, or assumed by employers under law for workers' compensation, which may include employers' liability. **Any arrangement or trust formed under Subpart J of Part I of Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950, is not insurance nor shall such arrangement or trust be deemed to be insurance.**

\* \* \*

§48. Types of insurers and other risk bearing entities

A. The following entities are regulated by specific provisions in the Louisiana Insurance Code:

\* \* \*

(15) Group self insurers, **provided that any arrangement or trust formed under Subpart J of Part I of Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950, shall not be insurance or deemed to be insurance.**

\* \* \*

§451. Scope of provisions

A. This Subpart shall be applicable to and shall regulate self-insurers and self-insurance plans, as defined in this Subpart, which are subject to jurisdiction of the commissioner of insurance under this Title. This Subpart shall not be applicable to any worker's compensation plan, **or any arrangement or trust formed under Subpart J of Part I of Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950.**

\* \* \*

§452. Definitions

For purposes of this Subpart, unless the context clearly indicates otherwise, the following terms shall have the meanings ascribed to them:

(1)(a) \* \* \*

(b) The term "self-insurance plan" shall not include **any arrangement or trust formed under Subpart J of Part I of Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950,** or single employer plans, plans exempt from the state insurance laws under the provisions of the Employee Retirement Income Security Act of 1974 (29 U.S.C. §1001 et seq.), except as provided in R.S. 22:463, the Office of Group Benefits, plans of political subdivisions, health maintenance organizations regulated under the Health Maintenance Organization Act, R.S. 22:241 et seq., plans regulated under R.S. 33:1342, 1343, 1346, or 1349, and plans otherwise

1 regulated as insured plans under this Title. A plan of a fraternal benefit society or a  
 2 labor organization shall not be considered a self-insurance plan for the purposes of  
 3 this Subpart to the extent that such plan provides health and accident benefits to its  
 4 members and any of their dependents that are supplemental to those of an employer-  
 5 provided plan.

6 \* \* \*

7 Section 2. R.S. 23:1168(A)(1), 1195(A)(1), 1197(C) and the introductory paragraph  
 8 of R.S. 23:1197(F), R.S. 23:1200 are hereby amended and reenacted and R.S. 23:1195(D)  
 9 and 1200.6 through 1200.28 are hereby enacted to read as follows:

10 §1168. Ways of securing compensation to employees

11 A. An employer shall secure compensation to his employees in one of the  
 12 following ways:

13 (1) By insuring and keeping insured the payment of such compensation with  
 14 any stock corporation, mutual association, or other concern authorized to transact the  
 15 business of workers' compensation insurance in this state, ~~including group self-~~  
 16 ~~insurance as~~ **or intergovernmental agreement with a group self-insurance fund**  
 17 **for workers' compensation or interlocal risk management agency** authorized in  
 18 R.S. 23:1195 et seq. or R.S. 33:1341 et seq. When an insurer issues a policy to  
 19 provide workers' compensation benefits pursuant to the provisions of the Workers'  
 20 Compensation Act, the insurer shall file, or cause to be filed, with the director a  
 21 notice in such form and detail as the director may prescribe by rule and regulation.  
 22 The notice shall contain the name, address, and principal occupation of the employer,  
 23 the number, effective date, and expiration date of the policy, and such other  
 24 information as may be required by the director. The notice shall be filed by the  
 25 insurer within thirty days after the effective date of the policy.

26 \* \* \*

27 §1195. Authorization; trade or professional association; initial financial requirements

28 A.(1) Any five or more Louisiana employers who are not public entities, each  
 29 of whom has a positive net worth, is financially solvent, and is capable of assuming

1 the obligations set forth under this Chapter, and who are all members of the same  
 2 bona fide trade or professional association may agree to pool their liabilities to their  
 3 employees on account of personal injury and occupational disease arising out of or  
 4 incurred during the course and scope of the employment relationship. This  
 5 arrangement shall not be **an insurer, shall not be** deemed to be insurance and shall  
 6 not be subject to the provisions of Chapter 1 of Title 22 of the Louisiana Revised  
 7 Statutes of 1950 **Louisiana Insurance Code. The member employers of the**  
 8 **arrangement likewise shall not be insurers or be subject to the Louisiana**  
 9 **Insurance Code.**

10 \* \* \*

11 **D. Upon receipt of the application for a certificate of authority, the**  
 12 **commissioner of insurance shall cause an initial examination to be made of the**  
 13 **group self-insurance fund. If, in the opinion of the commissioner of insurance,**  
 14 **the examination shows the group self-insurance fund to be duly organized and**  
 15 **to have complied with all requirements of this Chapter, he shall notify the**  
 16 **applicant and issue a certificate of authority to the group self-insurance fund,**  
 17 **upon payment of a fee of one thousand five hundred dollars.**

18 \* \* \*

19 §1197. Authority of Department of Insurance

20 \* \* \*

21 C.**(1)** The department shall have the authority to examine the affairs, books,  
 22 transactions, workpapers, files, accounts, records, assets, and liabilities of a fund to  
 23 determine compliance with this Subpart and with any rules and regulations  
 24 promulgated by the department or orders and directives issued by the commissioner.  
 25 In addition, to the extent necessary and material to the examination of a fund, the  
 26 department shall have the authority to examine the affairs, books, transactions,  
 27 workpapers, files, accounts, and records of any fund's administrator, service  
 28 company, certified public accountant, and actuary generated in the course of  
 29 transacting business on behalf of the group self-insured fund being examined. ~~Such~~

1 ~~examination work shall be conducted by employees of the department, or~~  
2 ~~independent certified public accounting firms in business for a minimum of five~~  
3 ~~years and contracted with the department for this purpose.~~ **All examinations shall**  
4 **be conducted in accordance with provisions of this Subpart.** The reasonable  
5 expenses of the examinations shall be paid by the fund being examined.

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

12 \* \* \*

13 F. The department shall conduct a hearing ~~pursuant to Part XXIX of the~~  
14 ~~Louisiana Insurance Code~~ **in accordance with the provisions of Subpart J of this**  
15 **Part:**

16 \* \* \*

17 §1200. Review of rate determination

18 Any fund shall provide a reasonable procedure for any member aggrieved by  
19 the fund to request in written form a review of the application of the rating system  
20 for the coverage afforded by the fund. The fund shall have thirty days from receipt  
21 to grant or deny the request in written form. If the fund rejects the request or fails to  
22 grant or reject the request within the thirty-day period, the member may, within thirty  
23 days of the expiration of the thirty-day period, appeal to the department for a hearing.  
24 The hearing before the department shall be **conducted** in accordance with ~~Part XXIX~~  
25 ~~of the Louisiana Insurance Code~~ **the provisions of this Subpart,** and the  
26 department, after the hearing, may affirm, modify, or reverse the action taken by the  
27 fund.

28 \* \* \*

29 **§1200.6. Examination of group self-insurance fund for workers' compensation**

1                    program

2                    A. The commissioner of insurance shall make an examination, not less  
3                    frequently than once every five years, of all group self-insurance funds doing  
4                    business in this state and at any other time when in the opinion of the  
5                    commissioner it is necessary for such an examination to be made.

6                    B. Upon determining that an examination should be conducted, the  
7                    commissioner shall appoint one or more examiners to perform the examination  
8                    and instruct them as to the scope of the examination. In conducting the  
9                    examination, the examiner or examiners shall observe those guidelines and  
10                   procedures as the commissioner may deem appropriate.

11                   C. Nothing contained in this Part shall be construed to limit the  
12                   commissioner's authority to use any final or preliminary examination report,  
13                   any examiner or fund work papers or other documents, or any other  
14                   information discovered or developed during the course of any examination in  
15                   the furtherance of any legal or regulatory action which the commissioner may,  
16                   in his sole discretion, deem appropriate.

17                   D. Nothing contained in this Part shall be construed to limit the authority  
18                   of the commissioner to terminate or suspend any examination in order to  
19                   pursue other legal or regulatory action pursuant to the applicable laws of this  
20                   state. Findings of fact and conclusions made pursuant to any examination shall  
21                   be prima facie evidence in any legal or regulatory action.

22                   §1200.7. Examination reports

23                   A. All examination reports shall be comprised of facts only appearing  
24                   upon the books, records, or other documents of the group self-insurance fund  
25                   or as ascertained from the testimony of its officers or agents or other persons  
26                   examined concerning its affairs, and such conclusions and recommendations as  
27                   the examiners find reasonably warranted from the facts.

28                   B. Not later than sixty days following completion of the examination, the  
29                   examiner in charge shall file with the Department of Insurance a verified

1 written report of examination under oath. Upon receipt of the verified report,  
2 the Department of Insurance shall transmit the report to the fund examined,  
3 together with a notice, which shall afford the fund examined a reasonable  
4 opportunity, of not more than thirty days, to make a written submission or  
5 rebuttal with respect to any matters contained in the examination report.

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

11 (1) Adopt the examination report as filed, or with modification or  
12 corrections. If the examination report reveals that the group self-insurance fund  
13 is operating in violation of any law, rule, regulation, or prior order or directive  
14 of the commissioner, the commissioner may order the fund to take any action  
15 the commissioner considers necessary and appropriate to cure such violation.

16 (2) Reject the examination report with direction to the examiners to  
17 reopen the examination for purposes of obtaining additional documentation,  
18 data, information, and testimony.

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

28 E. Within thirty days of the end of the period allowed for the receipt of  
29 written submissions or rebuttals, as provided for in Subsections B and D of this



1        Section, the commissioner shall fully consider and review the refiled report,  
2        together with any written submissions or rebuttals and any relevant portions  
3        of the work papers of the examiner and enter an order for one of the following:

4            (1) Adopt the examination report as refiled or with modification or  
5        corrections. If the refiled examination report reveals that the group self-  
6        insurance fund is operating in violation of any law, rule, regulation, or prior  
7        order or directive of the commissioner, the commissioner may order the fund  
8        to take any action the commissioner considers necessary and appropriate to  
9        cure such violations.

10          (2) Reject the examination report and ordering a hearing in accordance  
11        with the provisions of this Subpart, for purposes of obtaining additional  
12        documentation, data, information, and testimony.

13          F. All orders entered pursuant to Paragraphs C(1) or E(1) of this  
14        Section shall be accompanied by, findings and conclusions resulting from  
15        consideration by the commissioner and review of the examination report,  
16        relevant examiner work papers, and any written submissions or rebuttals. Any  
17        order shall be served upon the company by certified mail, together with a copy  
18        of the adopted examination report. Within thirty days of the issuance of the  
19        adopted report, the group self-insurance fund shall file affidavits executed by  
20        each of its trustees stating, under oath, that they have received a copy of the  
21        adopted report and related orders.

22          G. Within thirty days of receipt of notification of the order of the  
23        commissioner to the group self-insurance fund made pursuant to Subsection F  
24        of this Section, the fund may make written demand for a hearing in accordance  
25        with the provisions of this Subpart.

26          H.(1) The hearing provided for under Paragraph E(2) or Subsection G  
27        both of this Section shall be a confidential proceeding. At the conclusion of the  
28        hearing, the commissioner shall enter an order adopting the examination report  
29        as filed or refiled, or with modification or corrections, and may order the fund

1 to take any action the commissioner considers necessary and appropriate to  
2 cure any violation of any law, regulation, or prior order of the commissioner.

3 (2) The commissioner shall issue such order within thirty days after the  
4 termination of a hearing and shall, subject to Paragraph (5) of this Subsection,  
5 give a copy of the order to each person to whom notice of the hearing was given  
6 or required to be given.

7 I.(1) Upon the adoption of the examination report under either  
8 Paragraphs C(1), E(1), or Subsection H all of this Section, the commissioner  
9 shall continue to hold the content of the examination report as private and  
10 confidential information for a period not to exceed thirty consecutive days,  
11 except to the extent provided in R.S. 1200.6(E) and Subsection B of this Section.  
12 Thereafter, the commissioner may open the report for public inspection so long  
13 as no court of competent jurisdiction has stayed its publication.

14 (2) Notwithstanding any provision to the contrary, nothing shall  
15 prevent, or be construed as prohibiting, the commissioner from disclosing the  
16 content of an examination report, preliminary examination report or results, or  
17 any matter relating thereto, to the insurance department of this or any other  
18 state or country, or to law enforcement officials of this or any other state or  
19 agency of the federal government at any time, so long as such agency or office  
20 receiving the report or matters relating thereto agrees, in writing, to hold it  
21 confidential and in a manner consistent with this Subpart.

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

25 J. All working papers, recorded information, documents, and copies  
26 thereof produced by, obtained by, or disclosed to the commissioner, or any  
27 other person, in the course of an examination made under this Subpart, or  
28 pursuant to the authority of the commissioner under Subpart J of this Part,  
29 shall be given confidential treatment and are not subject to subpoena and may

1 not be made public by the commissioner or any other person, except to the  
2 extent provided in R.S. 22: 1200.6(E) and Subsection I of this Section. The  
3 parties shall agree, in writing prior to receiving the information, to provide to  
4 it the same confidential treatment as required by this Section, unless the prior  
5 written consent of the fund to which it pertains has been obtained.

6 K.(1) No examiner may be appointed by the commissioner if such  
7 examiner, either directly or indirectly, has a conflict of interest or is affiliated  
8 with the management of or owns a pecuniary interest in any person or entity  
9 subject to examination under this Subpart.

10 (2) Notwithstanding the requirements of this Section, the commissioner  
11 may retain from time to time, on an individual basis, qualified actuaries,  
12 certified public accountants, or other similar individuals who are independently  
13 practicing their professions, even though said persons may from time to time be  
14 similarly employed or retained by persons subject to examination under this  
15 Subpart.

16 L.(1) No cause of action shall arise nor shall any liability be imposed  
17 against the commissioner, the authorized representatives of the commissioner,  
18 or any examiner appointed by the commissioner, for any statements made or  
19 conduct performed in good faith while carrying out the provisions of this  
20 Subpart.

21 (2) No cause of action shall arise, nor shall any liability be imposed,  
22 against any person for the act of communicating or delivering information or  
23 data to the commissioner, or the authorized representative of the commissioner,  
24 or examiner, pursuant to an examination made under this Subpart, if such act  
25 of communication or delivery was performed in good faith and without  
26 fraudulent intent or the intent to deceive.

27 M.(1) In addition to those examinations performed by the commissioner  
28 of insurance pursuant to R.S. 23:1200.6, the commissioner of insurance shall  
29 conduct financial reviews of all group self-insurance funds authorized to do

1 business in this state. Such reviews shall include the audited financial statements  
2 of the group self-insurance fund rendered pursuant to good and acceptable  
3 accounting practices, results of prior examinations and office reviews,  
4 management changes, consumer complaints, and such other relevant  
5 information as from time to time may be required by the commissioner.

6 (2) Failure by a group self-insurance fund to supply information  
7 requested by the Department of Insurance during the course of a financial  
8 review shall subject the group self-insurance fund to revocation or suspension  
9 of its license or, in lieu thereof, a fine not to exceed ten thousand dollars per  
10 occurrence.

11 (3) All working papers, recorded information, documents and copies  
12 thereof produced by, obtained by, or disclosed to the commissioner, or any  
13 other person in the course of conducting a financial review shall be given  
14 confidential treatment and are not subject to subpoena and may not be made  
15 public by the commissioner or any other person, except that any access may be  
16 granted to insurance departments of other states, international, federal or state  
17 law enforcement agencies or international, federal or state regulatory agencies  
18 with statutory oversight over the financial services industry, if the recipient  
19 agrees to maintain the confidentiality of those documents which are confidential  
20 under the laws of this state.

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

24 (5) Nothing contained in this Part shall be construed to limit the  
25 commissioner's authority to use any final or preliminary analysis findings, any  
26 Department of Insurance or fund workpapers or other documents, or any other  
27 information discovered or developed during the course of any analysis in the  
28 furtherance of any legal or regulatory action which the commissioner may, in  
29 his sole discretion, deem appropriate.

1           **(6) Any group self-insurance fund against whom a fine has been levied**  
2           **shall be given ten days notice of such action. Upon receipt of this notice, this**  
3           **aggrieved fund may apply for and shall be entitled to a hearing pursuant to this**  
4           **Subpart.**

5           **§1200.8. Review and examination expense; how paid**

6           **A. Whenever the commissioner of insurance makes an examination or**  
7           **investigation pursuant to this Subpart, all expenses incurred by the**  
8           **commissioner of insurance in conducting such examination or investigation,**  
9           **including the expenses and fees of examiners, auditors, accountants, actuaries,**  
10           **attorneys, or clerical or other assistants who are employed by the commissioner**  
11           **of insurance to make the examination, shall be paid by the group self-insurance**  
12           **fund.**

13           **B. The commissioner of insurance may recover all expenses incurred**  
14           **from the examination or investigation of any person or entity acting as an**  
15           **administrator or third-party administrator in this state for any group self-**  
16           **insurance fund not authorized to transact business in this state.**

17           **§1200.9. Authority to employ examiners and other assistants**

18           **A. The commissioner of insurance shall employ such examiners,**  
19           **auditors, accountants, actuaries, attorneys, and clerical or other assistants as**  
20           **are necessary to conduct the examination and to compile and prepare a report**  
21           **thereon, and the compensation for such examination shall be fixed according to**  
22           **the time actually devoted to the work of conducting the examination and**  
23           **compiling the report thereon as now required by law. Such compensation shall**  
24           **always be reasonable and commensurate with the value of the services**  
25           **performed.**

26           **B. Upon completion of the examination of any group self-insurance fund**  
27           **or at stated periods during such examinations, the commissioner of insurance**  
28           **shall forward to the group self-insurance fund a statement showing the amount**  
29           **of expenses incurred in such examination to the date of such statement.**

1 Whereupon, the group self-insurance fund shall pay the amount so shown to the  
2 commissioner of insurance. Upon receipt of such payment the commissioner of  
3 insurance shall deposit same in an account styled "commissioner of insurance,  
4 revolving fund account," and withdrawals from said account shall be made by  
5 the commissioner of insurance for the purpose of payment to examiners,  
6 auditors, accountants, actuaries, attorneys, and clerical or other assistants of  
7 their salaries and necessary expenses incurred in the conduction of such  
8 examination.

9 §1200.10. Group self-insurance fund's right to contest expense

10 If the group self-insurance fund deems the amount of expenses billed to  
11 it unreasonable or contrary to the provisions of this Subpart, it may within  
12 fifteen days after the receipt of such billing, take a rule in a court of competent  
13 jurisdiction upon the commissioner of insurance to test the reasonableness and  
14 legality under this Subpart of the amount of expenses billed to it by the  
15 commissioner of insurance which rule shall be tried by preference, and upon  
16 appeal, shall be given preference in the appellate court, as provided by the laws  
17 of this state for other state cases.

18 §1200.11. Failure to pay expenses; penalty

19 If any group self-insurance fund fails or refuses to pay the expenses of  
20 examination as billed by the commissioner of insurance after fifteen days upon  
21 receipt of such billing or after final judgment where a rule has been taken as  
22 provided in this Part, then the commissioner of insurance may revoke the  
23 certificate of authority of such group self-insurance fund to do business in this  
24 state until the full amount of the bill is paid.

25 §1200.12. Scope of examination

26 In conducting such an examination, the commissioner of insurance shall  
27 examine the affairs, transactions, accounts, records, documents and assets of  
28 each authorized group self-insurance fund. For the purpose of ascertaining its  
29 condition or compliance with this Chapter, the commissioner of insurance may

1 as often as he deems advisable, examine the accounts, records, documents and  
2 transactions of (a) any insurance agent, solicitor or broker, but only insofar as  
3 such accounts, records, documents and transactions relate to group self-  
4 insurance funds, or of (b) any person having a contract under which he enjoys,  
5 in fact, the exclusive or dominant right to manage or control a group self-  
6 insurance fund.

7 §1200.13. Production of books and records

8 Every group self-insurance fund being examined, its officers, trustees,  
9 employees, administrators and representatives, shall produce and make freely  
10 accessible to the commissioner of insurance the accounts, records, documents  
11 and files in its possession or control relating to the subject of the examination,  
12 and shall otherwise facilitate the examination.

13 §1200.14. Power to examine under oath; subpoena witnesses

14 The commissioner of insurance may take depositions, subpoena witnesses  
15 or documentary evidence, administer oaths and examine under oath any  
16 individual relative to the affairs of any group self-insurance fund being  
17 examined. Any person who testifies falsely or makes any false affidavit during  
18 the course of such an examination shall be guilty of perjury.

19 §1200.15. Commissioner of insurance authorized to employ investigators

20 The commissioner of insurance shall have authority to employ  
21 investigators to investigate complaints received against group self-insurance  
22 funds authorized to do business in this state and against any unauthorized  
23 group self-insurance funds who are reported to be operating in this state.

24 §1200.16. Disclosure

25 A. It shall be unlawful for any person who is an officer, trustee,  
26 employee, administrator, agent, or representative of a group self-insurance  
27 fund; or any person, partnership, corporation, banking corporation, or any  
28 other legal entity which performs any service for a group self-insurance fund,  
29 or prepares any report, audit, financial statement or report for, or makes any

1 representation on behalf of, for, or with regard to a group self-insurance fund,  
2 in connection with any hearing, investigation, or examination authorized by this  
3 Chapter, to act with the specific intent to do any of the following items:

4 (1) Represent falsely, directly or indirectly, to the Department of  
5 Insurance or any employee, trustee or administrator thereof, that an asset of  
6 such group self-insurance fund is unencumbered, or to misrepresent any other  
7 material fact pertaining to the status of any asset or liability of a group self-  
8 insurance fund.

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

17 (3) Fail to disclose to the Department of Insurance the existence of any  
18 liability of a group self-insurance fund, or affiliate, subsidiary, or holding  
19 company associated therewith when such disclosure is properly requested or  
20 required in writing by an examiner or administrator of the Department of  
21 Insurance.

22 (4) Materially misrepresent, withhold, deny access to, or otherwise  
23 preclude the obtainment of any information properly requested in writing and  
24 in accordance with provisions of law affecting dissemination or disclosure of  
25 information by specific institutions by an examiner or administrator of the  
26 Department of Insurance, which is material and relevant to an examination  
27 properly conducted by the Department of Insurance and examiners and  
28 administrators of the Department of Insurance.

29 B. Whoever violates any provision of this Section, upon conviction, shall



1 be fined not more than fifty thousand dollars, or imprisoned with or without  
2 hard labor for not more than five years, or both.

3 §1200.17. Departmental complaint directives; failure to comply; fines; hearing

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

8 B. Any person against whom a fine has been levied shall be given ten  
9 days notice of such action. Upon receipt of this notice, the person aggrieved may  
10 apply for and shall be entitled to a hearing and conducted in accordance with  
11 the provisions of this Subpart.

12 §1200.18. Hearings

13 A. The division of administrative law shall hold a hearing in accordance  
14 with the Administrative Procedure Act, R.S. 49:950 et seq., and shall hold a  
15 hearing under the following conditions:

16 (1) If required by any provision of this Chapter.

17 (2) Upon written demand for a hearing made by any person aggrieved  
18 by any act, order of the commissioner of insurance, or failure of the  
19 commissioner of insurance to act, if such failure is deemed an act under any  
20 provision of this Chapter, or by any report, promulgation, or order of the  
21 commissioner of insurance other than an order on a hearing of which such  
22 person was given actual notice or at which such person appeared as a party, or  
23 order pursuant to the order on such hearing.

24 B.(1) Any such demand for a hearing shall be filed with the division of  
25 administrative law and with the commissioner of insurance within thirty days  
26 after notice of such act or order is mailed, faxed, or delivered to the aggrieved  
27 party at his last known address specifying in what respects such person is so  
28 aggrieved and the grounds to be relied upon as basis for the relief to be  
29 demand at the hearing. The aggrieved person shall reference the particular

1 sections of the statutes and rules involved, shall provide a short and plain  
2 statement of matters asserted for review, and shall attach a copy of any order  
3 or decision of the commissioner of insurance for review.

4 (2) The division of administrative law shall hold such hearing demanded  
5 within thirty days after receipt of the demand, unless postponed by mutual  
6 consent, or upon motion of either party for good cause shown or as ordered by  
7 the division of administrative law. In no circumstance shall this hearing be held  
8 later than sixty days from the date of the original demand for the hearing unless  
9 otherwise agreed upon by all parties.

10 C. This Subpart shall not apply to public hearings held by the  
11 commissioner of insurance unless otherwise provided. The commissioner of  
12 insurance may promulgate procedures, rules, and regulations for the conduct  
13 of any public hearing in accordance with the Administrative Procedure Act,  
14 R.S. 49:950 et seq.

15 §1200.19. Hearing place

16 All division of administrative law hearings shall be held at the place  
17 designated by the division of administrative law and in accordance with the  
18 Administrative Procedure Act, R.S. 49:950 et seq.

19 §1200.20. Notice of hearing

20 Notice of any division of administrative law hearing shall be issued by  
21 the division of administrative law in accordance with the Administrative  
22 Procedure Act, R.S. 49:950 et seq.

23 §1200.21. Show cause notice

24 If any person is entitled to a hearing by any provision of this Subpart  
25 before any proposed action is taken, the notice of the proposed action may be  
26 in the form of a notice to show cause stating that the proposed action may be  
27 taken, unless such person shows cause at a hearing to be held as specified in the  
28 notice why the proposed action should not be taken, and stating the basis of the  
29 proposed action.

1           **§1200.22. Nonattendance**

2                   The validity of any hearing held in accordance with the notice under this  
3           **Subpart shall not be affected by failure of any person to attend or to remain in**  
4           **attendance.**

5           **§1200.23. Procedure and subpoena power of commissioner**

6                   **A. The commissioner of insurance or other employee designated by him**  
7           **for that purpose, shall have power to compel the attendance of any person by**  
8           **subpoena at a hearing or investigation proceeding, to administer oaths and to**  
9           **examine any person under oath concerning the business, conduct, or affairs of**  
10           **any company or persons subject to the provisions of this Chapter, and in**  
11           **connection therewith to require the production of any books, records, or papers**  
12           **relative to a hearing, inquiry, or investigation.**

13                   **B. If a person subpoenaed to attend such hearing, proceeding, or**  
14           **investigation fails to obey the command of the subpoena without reasonable**  
15           **excuse, or if a person in attendance upon such inquiry shall without reasonable**  
16           **cause, refuse to be sworn or to be examined or to answer a question or to**  
17           **produce a book or paper when ordered to do so by the person conducting such**  
18           **hearing, or if any person fails to perform any act required hereunder to be**  
19           **performed, he shall be required to pay a penalty of not less than one hundred**  
20           **dollars nor more than two thousand dollars at the discretion of the court, to be**  
21           **recovered in the name of the people of the state of Louisiana by the district**  
22           **attorney of the parish in which the violation occurs, and the penalty so**  
23           **recovered, less costs of court and expenses of the district attorney to be fixed by**  
24           **the court, shall be paid to the office of the commissioner of insurance.**

25                   **C. When any person neglects or refuses without reasonable cause to obey**  
26           **a subpoena issued by the commissioner of insurance, or refuses without**  
27           **reasonable cause to testify, or to be sworn or to produce any book or paper**  
28           **described in the subpoena, the commissioner of insurance may file a petition**  
29           **against such person in the district court of the parish in which the testimony is**

1 desired to be or has been taken or has been attempted to be taken, briefly  
2 setting forth the fact of such refusal or neglect and attaching a copy of the  
3 subpoena and the return of service thereon and applying for an order requiring  
4 such person to attend, testify, or produce the books or papers before the  
5 commissioner or the employee designated by him to hold a hearing, at such time  
6 or place as may be specified in such order. Such court, either during the term  
7 of court or vacation, upon filing of such petition, either before or after notice to  
8 such person, may, in the judicial discretion of such court, order the attendance  
9 of such person, the production of books and papers, and the giving of testimony  
10 before the commissioner of insurance or the person designated by him to  
11 conduct a hearing. If such person shall fail or refuse to obey the order of the  
12 court and it shall appear to the court that the failure or refusal of such person  
13 to obey its order is willful, and without lawful excuse, the court shall punish  
14 such person by fine or imprisonment in the parish jail, or both, as the nature of  
15 the case may require, as is now, or as may hereafter be lawful for the court to  
16 do in cases of contempt of court.

17 D. The fees of witnesses for attendance and travel shall be the same as  
18 the fees of witnesses before the parish courts of this state. When a witness is  
19 subpoenaed by, or testifies at the instance of the commissioner of insurance or  
20 other person designated by him, such fees shall be paid in the same manner as  
21 other expenses of the Department of Insurance. When a witness is subpoenaed  
22 or testifies at the instance of any other party to such hearing, the cost of the  
23 subpoena, subpoena duces tecum and the fee of the witness shall be borne by the  
24 party at whose instance the witness is summoned.

25 §1200.24. Stay of action on review

26 A. A demand for a hearing or a hearing proceeding shall not stay any  
27 order issued by the commissioner of insurance or stay any action taken or  
28 proposed to be taken by the commissioner of insurance under the act or order  
29 complained of unless a stay is granted by the division of administrative law at

1 a hearing held as part of the proceedings in accordance with the Administrative  
2 Procedure Act, R.S. 49:950 et seq. Any stay must be requested by the party  
3 seeking a hearing.

4 B. A stay shall not be granted by the division of administrative law in any  
5 case where the granting of a stay would tend to injure the public interest. In  
6 granting a stay, the court may require of the person taking the action such  
7 security or other conditions as it deems proper and in accordance with the  
8 Administrative Procedure Act, R.S. 49:950

9 §1200.25. Appeal

10 All appeals from a decision of the division of administrative law shall be  
11 in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

12 §1200.26. Use of injunctive process

13 Notwithstanding any law to the contrary, the commissioner of insurance  
14 is empowered to seek the enforcement of any lawful written order or to secure  
15 the prevention or discontinuance of any violation of a prohibitory or mandatory  
16 provision of this Subpart, by legal action for injunction which may be filed in  
17 the district court in either the parish of East Baton Rouge or the parish in which  
18 the offender is domiciled, and he shall be represented in such actions by the  
19 attorney general or the attorney for his department, if such there is.

20 §1200.27. Writ of mandamus

21 Nothing contained in this Subpart shall deprive a person of his right, or  
22 delay the exercise of such right, to seek a writ of mandamus compelling the  
23 commissioner of insurance to perform a ministerial duty as established by law  
24 where it is alleged that the commissioner of insurance is fraudulently or not  
25 impartially fulfilling his duties, or where the delay involved in obtaining  
26 ordinary relief may cause injustice. No provision of this Subpart shall be a bar  
27 to, or grounds for delay, continuance, or deferral of the prompt adjudication of  
28 a petition for writ of mandamus directing the commissioner of insurance to do  
29 his duty.

**§1200.28. Administrative hearings**

**As provided in Chapter 13-B of Title 49 of the Louisiana Revised Statutes of 1950, the division of administrative law shall conduct any hearings required by any provision of this Chapter.**

Section 3. R.S. 22:461(J) and 1982 are hereby repealed.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Thomas L. Tyler.

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## DIGEST

Present law defines the terms "insurance" and "insurer" for purposes of the Louisiana Insurance Code. Proposed law specifically provides that such terms do not include an arrangement or trust that is a group self-insurance workers' compensation fund.

Present law classifies various types of insurance which includes workers' compensation insurance. Proposed law provides that an arrangement or trust that is a group self-insurance workers' compensation fund is not insurance nor is such arrangement or trust to be deemed to be insurance.

Present law lists certain entities that are regulated by specific provisions of the Louisiana Insurance Code which includes group self-insurers. Proposed law provides that an arrangement or trust that is a group self-insurance workers' compensation fund is not insurance nor is such arrangement or trust to be deemed to be insurance.

Present law regulates self-insurers and self-insurance plans and provides that it does not apply to any workers' compensation plan. Proposed law provides that it also does not apply to, nor does the term "self-insurance plan" include, arrangements or trusts that are group self-insurance workers' compensation funds.

Proposed law specifically provides that one method to secure compensation for employees is by agreements with a group of self-insurance fund for workers' compensation or interlocal risk management agency.

Proposed law clarifies that employers who are members of a trade or professional association and who pool liabilities for injuries arising from the course and scope of the employment relationship are not insurers and are not to be deemed insurance nor subject to the La. Ins. Code nor are member employers of such arrangement insurers nor subject to the Code. Proposed law authorizes the commissioner of insurance to examine a group self-insurance fund and if in compliance with law, to issue a certificate of authority to the group self-insurance fund upon payment of a fee of \$1,500. Requires each group self-insurance fund to have a rate review conducted by a national independent actuarial firm upon request of the commissioner of insurance and prohibits the commissioner from making more than two such requests in any calendar year. Provides that rate review and hearings by the department of insurance be conducted in accordance with provisions regarding group self-insurance funds for workers' compensation.

Proposed law provides for the following as relates to group self-insurance funds for workers' compensation:

1. Commissioner of insurance to examine each fund not less frequently than once every five years and provides for such examinations.

- Nothing in proposed law construed to limit commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action and provides that findings of fact and conclusions of such examination are prima facie evidence in any legal or regulatory action.
2. Examination reports comprised of facts only appearing on books, records, or documents of the group self-insurance fund or as ascertained from testimony of persons examined.
 

Provides for filing a verified written report of the examination with the Department of Insurance with opportunity to the fund to make written submission or rebuttal of information in the report.

Commissioner to consider and review the report and then order either adoption of the examination as filed with modifications or corrections or to reject the report.

Provides for review of the refiled corrected report by the commissioner and orders by the commissioner and for confidential hearings before the commissioner of insurance.

Authorizes the commissioner to initiate proceedings or actions as a result of any examination.

Prohibits appointment of an examiner who, directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person or entity being examined.
  3. Authorizes financial review of group self-insurance funds authorized to do business in the state which shall include audited financial statements, results of prior examination and office reviews, management changes, consumer complaints, and other relevant information as may be required.
 

Failure of a fund to supply information requested by DOT subjects the fund to revocation or suspension of its license or, in lieu of such, then a fine not to exceed \$10,000 per occurrence.
  4. Provides that expenses of review and examinations to be paid by the group self-insurance fund and that the commissioner can employ such examiners, auditors, accounts, actuaries, attorneys, and clerical or other assistants as necessary to conduct the examination and compile his report. Authorizes the group self-insurance fund to contest expenses incurred by the commissioner and provides a penalty for failure of a fund to pay expenses.
  5. Provides for the scope of such examination and the authority of the commissioner to take depositions, subpoena witnesses or documentary evidence, administer oaths and examine under oath any individual relative to the affairs of any group self-insurance fund being examined.
  6. Authorizes commissioner of insurance to employ investigators.
  7. Provides for failure of any person to comply with directives issued by the commissioner in connection with a consumer complaint.
  8. Provides for hearings for aggrieved parties conducted by the division of administrative law pursuant to the Administrative Procedure Act and for public hearings by the commissioner of insurance in accordance with the Administrative Procedure Act.

9. Provides for hearings on proposed actions through a notice to show cause that a proposed action may be taken unless a person shows cause why it should not be taken and stating the basis of the proposed action.
10. Provides for hearing procedure and for subpoena power of the commissioner of insurance.
11. Provides that demand for a hearing shall not stay the action on review unless the stay is granted by the division of administrative law. Prohibits granting a stay if such would tend to injure the public interest.
12. Provides for appeals from a decision of the Division of Administrative Law in accordance with the Administrative Procedure Act.
13. Authorizes the commissioner of insurance to seek the enforcement of any lawful written order or to secure the prevention or discontinuance of any violation of a prohibitory or mandatory provision in proposed law by legal action for injunction which may be filed in the district court in either the parish of East Baton Rouge or the parish in which the offender is domiciled.

Provides for representation in such actions by the attorney general or the attorney for the Department of Insurance.

14. Nothing in proposed law is to deprive a person of his right, or delay the exercise of such right, to seek a writ of mandamus against the commissioner to perform a ministerial duty as established by law where it is alleged that the commissioner is fraudulently or not impartially fulfilling his duties, or where the delay involved in obtaining ordinary relief may cause injustice.

Repeals provisions in the Louisiana Insurance Code regarding examination of group self-insurance funds for workers' compensation which are now placed in Title 23.

Effective August 15, 2010.

(Amends R.S. 22:46(9)(a) and (10), 47(5), 48(A)(15), 451(A), and 452(1)(b), R.S. 23:1168(A)(1), 1195(A)(1), 1197(C), R.S. 23:1197(F)(intro para), 1195(D), 1200; adds R.S. 23:1200.6 - 1200.28; repeals R.S. 22:461(J) and 1982)