

UPDATES FROM THE LEGISLATURE

Matthew Block
Senator W. Jay Luneau
Representative Jeremy S. LaCombe
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LAJ Fall Conference 9/23/2022

- I. **Civil Justice Reform Act of 2020** - 2020 First Extraordinary Session; HB 57, Act 37 – 1/1/2021 effective date
(<https://www.legis.la.gov/Legis/BillInfo.aspx?i=239218>)
- A. *Jury Trial Threshold* = 10K. 15K (minimum policy) is a jury trial; provides for transfer from City Court to JDC; if stipulation that case is worth between \$10K & \$50K, requesting party must post a \$5K cash bond within 60 days of jury request or waive jury trial; court may increase \$5K amount when case set for trial.
- B. *Direct Action (liability insurance)*. Amends CE art. 411; allows for evidence re insurance policy as per CE art. 607 (attacking credibility); if coverage is at issue; cannot tell jury identity of insurer; however, “In all cases brought against an insurer pursuant to R.S. 22:1269 [our current DA statute] or 1973 [22:1973 our main “bad faith” statute], at the opening and closing of trial, the court shall read instructions to the jury that there is insurance coverage for the damages claimed by plaintiff.”
- C. *Collateral source – Past Medicals Only*. “Cost of procurement” defined to include “cost of procurement of the award of medical expenses, including but not limited to contracted attorney fees and health insurance premiums paid.”; in cases where private insurance or Medicare (not WC or Medicaid) has paid medical expenses o/b/o plaintiff in an amount that is less than billed amount, plaintiff may only recover the “amount actually paid” + “cost sharing amounts.” PLUS the “court **shall** award” to plaintiff an amount equal to 40% of the spread (difference b/t paid amount and billed amount) unless award is “unreasonable.”; in Medicaid cases, only get “paid amount” + “cost sharing amount”; out-of-network providers who

issue liens, etc. are not subject to reduction off of “amounts remaining owed” to medical provider; WC is current law—no CS; all of the specified reductions / calculations are done post-trial by court (except in Medicaid cases) and “jury shall be informed only of the amount billed by a medical provider for medical treatment”; does NOT change a health care provider’s statutory lien rights or contractual agreements with a patient/plaintiff; does NOT apply to med mal cases (both private and state suits) or “Louisiana Governmental Claim Act” suits.

D. *Seatbelt inadmissibility is repealed.* Therefore, evidence of non-use of seatbelts is potentially admissible.

E. *1/1/2021 effective date.* Prospective only; applies to causes of action after 1/1/2021.

II. Autonomous Commercial Motor Vehicles – 2019 Regular Session; HB 455, Act 232 – 8/1/2019 effective date
(<https://www.legis.la.gov/legis/BillInfo.aspx?s=19RS&b=HB455&sbi=y>)

Defines pertinent terms and information associated with autonomous commercial motor vehicles. Establishes the Department of Transportation and Development as the exclusive agency over automated driving systems. Requires motor vehicle liability coverage of two million dollars. The automated driving system *and* the person required to submit a certification statement to the DOTD shall be the vehicle’s operators. The vehicle operation is subject to the laws of Louisiana.

III. Platooning – 2018 Regular Session; HB 308, Act 310 – 1/1/2019 effective date
(<https://www.legis.la.gov/Legis/BillInfo.aspx?i=233634>)

“Platoon” or “platooning” means a group of individual motor vehicles, including any truck, truck-tractor, trailer, semitrailer, or any combination of these vehicles, utilizing vehicle-to-vehicle communication technology to travel in a unified manner at close following distances. A platoon operator must have an operational plan approved by state transportation agencies. A platoon may not operate on two-lane highways.

The National Highway Traffic Safety Administration (NHTSA) has explained vehicle-to-vehicle communication in a recent fact sheet.

Vehicle-to-vehicle (V2V) communication enables vehicles to wirelessly exchange information about their speed, location, and heading. The technology behind V2V communication allows vehicles to broadcast and receive omnidirectional messages (up to 10 times per second), creating a 360-degree “awareness” of other vehicles in proximity. Vehicles equipped with appropriate software (or safety applications) can use the messages from surrounding vehicles to determine potential crash threats as they develop. The technology can then employ visual, tactile, and audible alerts—or, a combination of these alerts—to warn drivers. These alerts allow drivers the ability to take action to avoid crashes.

These V2V communication messages have a range of more than 300 meters and can detect dangers obscured by traffic, terrain, or weather. V2V communication extends and enhances currently available crash avoidance systems that use radars and cameras to detect collision threats. This new technology doesn’t just help drivers survive a crash—it helps them avoid the crash altogether.

Vehicles that could use V2V communication technology range from cars and trucks to buses and motorcycles. Even bicycles and pedestrians may one day leverage V2V communication technology to enhance their visibility to motorists. Additionally, vehicle information communicated does not identify the driver or vehicle, and technical controls are available to deter vehicle tracking and tampering with the system.

V2V communication technology can increase the performance of vehicle safety systems and help save lives. There were an estimated 6.8 million police-reported crashes in 2019, resulting in 36,096 fatalities and an estimated 2.7 million people injured. Connected vehicle technologies will provide drivers with the tools they need to anticipate potential crashes and significantly reduce the number of lives lost each year.

IV. Autonomous Vehicles – Equipment Law Exemption – 2022 Regular Session; SB 453, Act 268 – effective 8/1/2022
(<https://www.legis.la.gov/Legis/BillInfo.aspx?i=243071>)

Exempts autonomous vehicles designed to be operated exclusively by an automated driving system for all trips from vehicle equipment laws or equipment regulations related to operation by a human driver and not relevant for an automated driving system. (Adds R.S. 32:378.4)

V. Personal Delivery Devices - 2021 Regular Session; SB 147, Act 214 – effective 6/11/2021
(<https://www.legis.la.gov/Legis/BillInfo.aspx?i=240280>)

Personal delivery device. Regulates and defines personal delivery devices as powered devices that travel at 20 mph or less for transporting cargo and goods and equipped with automated driving technology that enables operation with remote support and supervision of a human being. Specifies that device operated in compliance with law is not considered a vehicle. Requires business entity that operates device to maintain no less than \$100,000 of general liability insurance on the personal delivery device. (Adds R.S. 32:210 - 210.7)

VI. Commercial Policies Waiver – Eroding Policies – 2022 Regular Session; SB 428, Act 675 – effective 6/18/2022
(<https://www.legis.la.gov/Legis/BillInfo.aspx?i=242962>)

Authorizes the Commissioner of Insurance to waive the prohibition to reduce liability limits contained in certain policies and contracts due to expenses of defense in a suit under a policy or contract. Prohibits waiving the prohibition for all personal lines and medical malpractice. Allows erosion of a policy by application for waiver in commercial vehicle and commercial general liability. The Act returns the insurance commissioner’s discretion - which existed for over forty years – to allow waivers in specified areas. (Amends R.S. 22:1272)

VII. Louisiana Timber and Agriculture Transportation Group Self-Insurance Funds – 2022 Regular Session; SB 437, Act 598 – 6/18/2022
(<https://www.legis.la.gov/Legis/BillInfo.aspx?i=243025>)

A complicated law which aligns closely with another session bill, HB 1078, that became Act 586 in the same legislative session. A predecessor bill in the 2020 Regular Session on the same topic was returned to the calendar – that bill had a general damages cap, and it limited attorney fees and special damages. A Senate Concurrent Resolution in the 2020 First Extraordinary Session created a Task Force on Log Truck and Agriculture Vehicle Liability Insurance to study the issue.

The Act provides for the creation of Louisiana timber and agriculture transportation group self-insurance funds. Oversight is provided by the Louisiana Department of Insurance but the “arrangement shall not be deemed to be an insurer or insurance and shall not be subject to the Louisiana Insurance Code” except for the limited purpose to purchase reinsurance. The fund is not a member of the Louisiana

Insurance Guaranty Association, and it shall be domiciled in Louisiana where its books and records will be kept. Certain oversight requirements may be waived after three years if the fund has a three-million-dollar surplus.

VIII. Failed Legislation - 2022 Regular Session

- A. A pre-filed bill seeking to amend Louisiana Code of Civil Procedure Article 1464 failed to pass by a 41/49 House vote. The bill initially removed the requirement for a court order on good cause shown and the article's time, place, manner, conditions, and scope requirements. It allowed multiple AMOs as deemed reasonably necessary by the requesting party if more than one mental or physical condition is in controversy. Good cause was only necessary for multiple examinations by duly qualified medical practitioners in the same field.
- B. Two bills filed on behalf of Transportation Network Companies (TNCs) were pre-filed, HB 694 and SB 372. The bills sought to remove any liability of a TNC "for being the company affiliated with a driver" along with ensuring other reduced obligations. Basically, the TNCs aimed to deny vicarious liability for the acts of a TNC driver.

IX. Appendix

- A. 2020 First Extraordinary Session; HB 57, Act 37 – 1/1/2021 effective date
- B. Autonomous Commercial Motor Vehicles – 2019 Regular Session; HB 455, Act 232 – 8/1/2019 effective date
- C. 2018 Regular Session; HB 308, Act 310 – 1/1/2019 effective date
- D. 2022 Regular Session; SB 453, Act 268 – effective 8/1/2022
- E. 2021 Regular Session; SB 147, Act 214 – effective 6/11/2021
- F. 2022 Regular Session; SB 428, Act 675 – effective 6/18/2022
- G. 2022 Regular Session; SB 437, Act 598 – 6/18/2022

ACT No. 37

HOUSE BILL NO. 57

BY REPRESENTATIVE SCHEXNAYDER AND SENATOR CORTEZ AND REPRESENTATIVES ADAMS, AMEDEE, BACALA, BAGLEY, BEAULLIEU, BISHOP, BUTLER, CARRIER, CORMIER, CREWS, DAVIS, DEVILLIER, DESHOTEL, DUBUISSON, ECHOLS, EDMONDS, EMERSON, FARNUM, FIRMENT, FONTENOT, FREEMAN, FREIBERG, FRIEMAN, GADBERRY, GAROFALO, GOUDEAU, HARRIS, HENRY, HODGES, HORTON, HUVAL, ILLG, IVEY, MIKE JOHNSON, TRAVIS JOHNSON, KERNER, MACK, MCCORMICK, MCFARLAND, MCKNIGHT, MCMAHEN, MIGUEZ, GREGORY MILLER, MOORE, NELSON, CHARLES OWEN, ROBERT OWEN, PRESSLY, ROMERO, SCHAMERHORN, SEABAUGH, SELDERS, ST. BLANC, STEFANSKI, THOMAS, THOMPSON, TURNER, WHEAT, WHITE, WRIGHT, ZERINGUE, AND RISER

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 1732, 1733(A), and 4873(1) and
3 Code of Evidence Article 411, to enact R.S. 9:2800.27, and to repeal R.S.
4 32:295.1(E), relative to civil actions; to lower the jury trial threshold; to provide for
5 a jury cash deposit; to limit the transfer of cases from courts of limited jurisdiction
6 to district courts; to provide relative to the admissibility of evidence of liability
7 insurance; to limit the recovery of medical expenses; to provide for definitions; to
8 provide for calculating and adjusting the award of medical expenses; to provide for
9 evidence of recoverable medical expenses; to repeal provisions prohibiting certain
10 evidence regarding the failure to wear safety belts; to provide for an effective date;
11 and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. The provisions of this Act shall be known as the "Civil Justice Reform
14 Act of 2020".

15 Section 2. Code of Civil Procedure Articles 1732, 1733(A), and 4873(1) are hereby
16 amended and reenacted to read as follows:

1 Art. 1732. Limitation upon jury trials

2 A trial by jury shall not be available in:

3 (1) A suit where the amount of no individual petitioner's cause of action
4 exceeds ~~ffty~~ ten thousand dollars exclusive of interest and costs, except as follows:

5 (a) If an individual petitioner stipulates or otherwise judicially admits sixty
6 days or more prior to trial that the amount of the individual petitioner's cause of
7 action does not exceed ~~ffty~~ ten thousand dollars exclusive of interest and costs, a
8 defendant shall not be entitled to a trial by jury.

9 (b) If an individual petitioner stipulates or otherwise judicially admits for the
10 first time less than sixty days prior to trial that the amount of the individual
11 petitioner's cause of action does not exceed ~~ffty~~ ten thousand dollars exclusive of
12 interest and costs, any other party may retain the right to a trial by jury if that party
13 is entitled to a trial by jury pursuant to this Article and has otherwise complied with
14 the procedural requirements for obtaining a trial by jury.

15 (c) Notwithstanding Subsubparagraphs (a) and (b) of this Subparagraph, if,
16 as a result of a compromise or dismissal of one or more claims or parties which
17 occurs less than sixty days prior to trial, an individual petitioner stipulates or
18 otherwise judicially admits that the amount of the individual petitioner's cause of
19 action does not exceed ~~ffty~~ ten thousand dollars exclusive of interest and costs, a
20 defendant shall not be entitled to a trial by jury.

21 (2)(a) A suit commenced in a parish or city court, wherein the individual
22 petitioner stipulates or otherwise judicially admits that the amount of the individual
23 petitioner's cause of action does not exceed the amount in dispute to which the
24 jurisdiction of the court is limited by Articles 4842 and 4843, exclusive of interest,
25 penalties, attorney fees, and costs.

26 (b) The provisions of this Paragraph shall not apply to delictual or quasi-
27 delictual actions, which shall be governed by the provisions of Paragraph (1) of this
28 Article.

29 (3) A suit on an unconditional obligation to pay a specific sum of money,
30 unless the defense thereto is forgery, fraud, error, want, or failure of consideration.

1 ~~(3)~~ (4) A summary, executory, probate, partition, mandamus, habeas corpus,
2 quo warranto, injunction, concursus, workers' compensation, emancipation,
3 tutorship, interdiction, curatorship, filiation, annulment of marriage, or divorce
4 proceeding.

5 ~~(4)~~ (5) A proceeding to determine custody, visitation, alimony, or child
6 support.

7 ~~(5)~~ (6) A proceeding to review an action by an administrative or municipal
8 body.

9 ~~(6)~~ (7) All cases where a jury trial is specifically denied by law.

10 Art. 1733. Demand for jury trial; bond for costs

11 A.(1) Except as provided in Subparagraph (2) of this Paragraph, a ~~A~~ party
12 may obtain a trial by jury by filing a pleading demanding a trial by jury and a bond
13 in the amount and within the time set by the court pursuant to Article 1734.

14 (2)(a) In a suit for damages arising from a delictual or quasi-delictual action
15 where an individual petitioner stipulates or otherwise judicially admits that his cause
16 of action exceeds ten thousand dollars and is less than fifty thousand dollars, a party
17 may obtain a trial by jury by filing a pleading demanding a trial by jury and
18 providing a cash deposit of five thousand dollars no later than sixty days after filing
19 the request for a trial by jury. Failure to post the cash deposit as required by this
20 Subparagraph shall constitute a waiver of the trial by jury. This cash deposit shall be
21 subject to Article 1734.1(E).

22 (b) When the case is set for trial, the court may additionally provide for a
23 supplemental bond or cash deposit in accordance with Article 1734 or 1734.1.

24 * * *

25 Art. 4873. Transfer to district court; procedure; contest; effect

26 A party entitled thereto under the provisions of Article 4872 may transfer the
27 action to the district court in the following manner:

28 (1) Within the delay allowed for answer in the trial court of the limited
29 jurisdiction, or within ten days after answer has been filed, he shall file a motion to
30 transfer with the clerk of the court in which the suit is pending. The motion shall

1 include a declaration that the matter is one to which defendant would have been
 2 entitled to trial by jury if commenced in district court, and that defendant desires
 3 trialby jury. If a party fails to file a motion to transfer within the delays required by
 4 this Paragraph, the matter shall not be transferred.

5 * * *

6 Section 3. Code of Evidence Article 411 is hereby amended and reenacted to read
 7 as follows:

8 Art. 411. Liability insurance

9 A. Although a policy of insurance may be admissible, the amount of coverage
 10 under the policy shall not be communicated to the jury unless the amount of
 11 coverage is a disputed issue which the jury will decide.

12 B. The existence of insurance coverage shall not be communicated to the
 13 jury unless any of the following apply:

14 (1) A factual dispute related to an issue of coverage is an issue which the jury
 15 will decide.

16 (2) The existence of insurance coverage would be admissible to attack the
 17 credibility of a witness pursuant to Article 607.

18 (3) The cause of action is brought against the insurer pursuant to R.S.
 19 22:1973 or against the insurer alone pursuant to R.S. 22:1269(B)(1)(a) through (f).

20 C. The identity of the insurer shall not be communicated to the jury unless
 21 the identity of the insurer would be admissible to attack the credibility of a witness
 22 pursuant to Article 607.

23 D. In all cases brought against an insurer pursuant to R.S. 22:1269 or 1973,
 24 at the opening and closing of the trial, the court shall read instructions to the jury that
 25 there is insurance coverage for the damages claimed by the plaintiff.

26 Section 4. R.S. 9:2800.27 is hereby enacted to read as follows:

1 §2800.27. Recoverable past medical expenses; collateral sources; limitations;
2 evidence

3 A. For the purpose of this Section:

4 (1) "Health insurance issuer" means any health insurance coverage through
5 a policy or certificate of insurance subject to regulation of insurance under state law,
6 a health maintenance organization, an employer-sponsored health plan, the Office
7 of Group Benefits, or an equivalent federal or state health plan.

8 (2) "Medical provider" means any healthcare provider, hospital, ambulance
9 service, or their heirs or assignees.

10 (3) "Cost sharing" means copayments, coinsurance, deductibles, and any
11 other amounts which have been paid or are owed by the claimant to a medical
12 provider.

13 (4) "Contracted medical provider" means any in-network medical provider
14 that has entered into a contract or agreement directly with a health insurance issuer
15 or with a health insurance issuer through a network of providers for the provision of
16 covered healthcare services at a pre-negotiated rate, or any medical provider that has
17 billed and received payment for covered healthcare services from Medicare when the
18 provider is a participating provider in those programs.

19 (5) "Cost of procurement" means the cost paid by or on behalf of the claimant
20 to procure the benefit paid by a health insurance issuer or Medicare and the cost of
21 procurement of the award of medical expenses, including but not limited to
22 contracted attorney fees and health insurance premiums paid.

23 B. In cases where a claimant's medical expenses have been paid, in whole
24 or in part, by a health insurance issuer or Medicare to a contracted medical provider,
25 the claimant's recovery of medical expenses is limited to the amount actually paid
26 to the contracted medical provider by the health insurance issuer or Medicare, and
27 any applicable cost sharing amounts paid or owed by the claimant, and not the
28 amount billed. The court shall award to the claimant forty percent of the difference
29 between the amount billed and the amount actually paid to the contracted medical
30 provider by a health insurance issuer or Medicare in consideration of the claimant's

1 cost of procurement, provided that this amount shall be reduced if the defendant
2 proves that the recovery of the cost of procurement would make the award
3 unreasonable. The determination of this award shall be made only in accordance with
4 the provisions of Subsection F of this Section.

5 C. In cases where a claimant's medical expenses have been paid, in whole
6 or in part, by Medicaid to a medical provider, the claimant's recovery of medical
7 expenses actually paid by Medicaid is limited to the amount actually paid to the
8 medical provider by Medicaid, and any applicable cost sharing amounts paid or
9 owed by the claimant, and not the amount billed.

10 D. The recovery of past medical expenses other than those provided by
11 Subsection B or C of this Section shall be limited to amounts paid to a medical
12 provider by or on behalf of the claimant, and amounts remaining owed to a medical
13 provider, including medical expenses secured by a contractual or statutory privilege,
14 lien, or guarantee. The determination of this award shall be made only in accordance
15 with Subsection F of this Section.

16 E. In cases where a claimant's medical expenses are paid pursuant to the
17 Louisiana Workers' Compensation Law as provided in R.S. 23:1020.1 et seq., a
18 claimant's recovery of medical expenses is limited to the amount paid under the
19 medical payment fee schedule of the Louisiana Workers' Compensation Law.

20 F. In a jury trial, only after a jury verdict is rendered may the court receive
21 evidence related to the limitations of recoverable past medical expenses provided by
22 Subsection B or D of this Section. The jury shall be informed only of the amount
23 billed by a medical provider for medical treatment. Whether any person, health
24 insurance issuer, or Medicare has paid or has agreed to pay, in whole or in part, any
25 of a claimant's medical expenses, shall not be disclosed to the jury. In trial to the
26 court alone, the court may consider such evidence.

27 G. This Section shall not apply in cases brought pursuant to R.S. 40:1231.1
28 et seq., R.S. 40:1237.1 et seq., or R.S. 13:5101 et seq.

29 Section 5. R.S. 32:295.1(E) is hereby repealed in its entirety.

1 Section 6. This Act shall become effective on January 1, 2021, and shall have
2 prospective application only and shall not apply to a cause of action arising or action
3 pending prior to January 1, 2021.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 232

2019 Regular Session

HOUSE BILL NO. 455

BY REPRESENTATIVES TERRY LANDRY, ADAMS, BAGNERIS, BILLIOT, CARMODY, CARPENTER, GARY CARTER, CREWS, DUPLESSIS, GLOVER, HORTON, JACKSON, JEFFERSON, JORDAN, LARVADAIN, MARINO, MOORE, NORTON, PIERRE, THOMAS, WHITE, AND WRIGHT

1 AN ACT

2 To enact Part IX of Chapter 1 of Title 32 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 32:400.1 through 400.8, relative to autonomous commercial motor
4 vehicles; to provide for definitions; to establish the controlling authority for
5 autonomous commercial motor vehicles; to provide relative to applications to
6 operate an autonomous commercial motor vehicle; to provide relative to
7 requirements of operators; to establish the reporting requirements following an
8 accident; to provide relative to remote drivers and teleoperation systems; to provide
9 relative to liability and jurisdiction; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Part IX of Chapter 1 of Title 32 of the Louisiana Revised Statutes of 1950,
12 comprised of R.S. 32:400.1 through 400.8, is hereby enacted to read as follows:

13 PART IX. AUTONOMOUS COMMERCIAL MOTOR VEHICLES

14 §400.1. Definitions

15 When used in this Part, the following words and phrases have the meanings
16 ascribed to them, unless the context clearly indicates a different meaning:

17 (1) "Automated driving system" means the hardware and software that are
18 collectively capable of performing the entire dynamic driving task on a sustained
19 basis, regardless of whether it is limited to a specific operational design domain.

20 (2) "Autonomous commercial motor vehicle" means a motor vehicle used
21 in commerce and equipped with an automated driving system, including those
22 designed to function without a driver.

1 (3) "Commerce" means transportation for the purpose of compensation,
2 remuneration, employment, trade, or payment of any thing of value.

3 (4) "Commercial motor vehicle" means a motor vehicle or combination of
4 motor vehicles used in commerce to transport passengers or property if the motor
5 vehicle has a gross combination weight rating of twenty-six thousand one or more
6 pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten
7 thousand pounds.

8 (5) "Conventional human driver" means a driver who manually exercises in-
9 vehicle braking, accelerating, steering, and transmission gear selection input devices
10 in order to operate a vehicle.

11 (6) "Dynamic driving task" means all of the real-time operational and tactical
12 functions required to operate a vehicle in on-road traffic excluding strategic
13 functions such as trip scheduling and selection of destinations and waypoints.

14 (7) "Minimal risk condition" means a condition to which a user or an
15 automated driving system may bring a vehicle in order to reduce the risk of a crash
16 upon experiencing a failure of the vehicle's automated driving system that renders
17 the vehicle unable to perform the entire dynamic driving task.

18 (8) "Operational design domain" means a description of the specific
19 operating domain in which an autonomous commercial motor vehicle is designed to
20 properly operate including but not limited to roadway types, speed, environmental
21 conditions, and other domain constraints.

22 (9) "Remote driver" means a natural person who is not seated in a
23 autonomous commercial motor vehicle, but is able to perform the entire dynamic
24 driving task.

25 (10) "Teleoperation system" means hardware and software installed on a
26 motor vehicle that allow a remote driver to operate the vehicle.

27 §400.2. Controlling authority; compliance

28 A. Notwithstanding any provision of law to the contrary, autonomous
29 commercial motor vehicles including any commercial use or operations, and
30 automated driving systems shall be governed exclusively by this Part.

1 B. Notwithstanding any provision of law to the contrary, the Department of
 2 Transportation and Development shall be the sole and exclusive agency with
 3 jurisdiction over autonomous commercial motor vehicles and automated driving
 4 systems and shall implement the provisions of this Part.

5 C. The provisions of this Section shall not be construed to limit the
 6 applicability of state dealer franchise laws under the provisions of R.S. 32:1251
 7 through 1269.

8 §400.3. Operation; criteria

9 A. Notwithstanding any other provision of law to the contrary, an
 10 autonomous commercial motor vehicle may operate in this state without a
 11 conventional driver physically present in the vehicle if the autonomous commercial
 12 motor vehicle meets all of the following criteria:

13 (1) Is capable of operating in compliance with applicable federal law and the
 14 traffic and motor vehicle laws of this state including but not limited to applicable
 15 laws concerning the capability to safely navigate and negotiate railroad crossings.

16 (2) Is properly registered and titled in accordance with R.S. 32:701 et seq.,
 17 and R.S. 47:463.

18 (3) Is certified in accordance with 49 CFR Part 567 as being in compliance
 19 with federal motor vehicle safety standards and bears the required certification label
 20 or labels including reference to any exemption granted under applicable federal law.

21 (4) Is capable of achieving a minimal risk condition if a failure occurs
 22 rendering the vehicle unable to perform the dynamic driving task relevant to its
 23 intended operational design domain or if the vehicle exits its operational design
 24 domain.

25 (5) Is covered by motor vehicle liability coverage in an amount not less than
 26 two million dollars.

27 B. The registration of an autonomous commercial motor vehicle shall not be
 28 interpreted to abrogate or amend any statutory or regulatory provisions or any
 29 aspects of law pertaining to liability for any harm or injury caused.

1 C. Prior to commencing the operation of an autonomous commercial motor
2 vehicle without a conventional driver present in the cab, a person or entity shall
3 submit a written statement to the Department of Transportation and Development
4 certifying that the vehicle meets the requirements of this Section.

5 §400.4. Owners and operators of an autonomous commercial motor vehicle

6 The automated driving system of an autonomous commercial motor vehicle
7 and the person or entity required to submit a statement to the Department of
8 Transportation and Development pursuant to the provisions of R.S. 32:400.3(C) shall
9 be subject to all applicable laws, rules, ordinances, and statutes of this state and will
10 be considered to be licensed to operate the vehicle. The person or entity operating
11 the autonomous commercial motor vehicle may be issued a traffic citation or other
12 applicable penalty if the vehicle fails to comply with any traffic or motor vehicle
13 laws of this state.

14 §400.5. Reporting an accident

15 If an accident occurs involving an autonomous commercial motor vehicle
16 while the automated driving system is engaged, the autonomous commercial motor
17 vehicle shall remain at the scene of the accident and the operator or any person on
18 behalf of the operator of the autonomous commercial motor vehicle shall comply
19 with the provisions of R.S. 32:398 relative to contacting the appropriate law
20 enforcement agency and furnishing all relevant information.

21 §400.6. Remote drivers; teleoperations; compliance

22 A. When a remote driver is operating a commercial motor vehicle equipped
23 with a teleoperation system, the remote driver shall be considered to be the operator
24 of the vehicle for the purpose of assessing compliance with applicable traffic or
25 motor vehicle laws including the rules of the road.

26 B. The remote driver shall hold the proper class of license required for a
27 conventional driver to operate the vehicle.

28 C. If an accident occurs involving a commercial motor vehicle equipped with
29 a teleoperation system while the teleoperation system is engaged, the vehicle shall
30 remain at the scene of the accident and the owner or remote driver shall comply with

1 the provisions of R.S. 32:398 relative to contacting the appropriate law enforcement
 2 agency and furnishing all relevant information.

3 §400.7. Teleoperations; operation; criteria

4 A. Notwithstanding any other provision of law to the contrary, a commercial
 5 motor vehicle equipped with a teleoperation system may operate in this state without
 6 a conventional driver physically present in the vehicle if a remote driver is operating
 7 the vehicle and the commercial motor vehicle meets all of the following criteria:

8 (1) Is properly registered.

9 (2) Is in compliance with applicable federal law.

10 (3) Is certified in accordance with 49 CFR Part 567 as being in compliance
 11 with federal motor vehicle safety standards and bears the required certification label
 12 or labels, including reference to any exemption granted under applicable federal law.

13 (4) Is capable of being operated in compliance with the applicable traffic and
 14 motor vehicle laws of this state, regardless of whether the vehicle is operated by a
 15 remote driver including but not limited to applicable laws concerning the capability
 16 to safely navigate and negotiate railroad crossings.

17 (5) Is covered by motor vehicle liability coverage in an amount not less than
 18 two million dollars.

19 (6) Is capable of achieving a reasonably safe state, such as bringing the
 20 vehicle to a stop if a failure of the teleoperation system occurs that renders the
 21 remote driver unable to perform the entire dynamic driving task for the vehicle.

22 B. Prior to commencing the operation of a commercial motor vehicle
 23 equipped with a teleoperation system without a conventional driver present in the
 24 cab, an owner, a remote driver, or the remote driver's employer shall submit a written
 25 statement to the Department of Transportation and Development certifying that the
 26 vehicle meets the requirements of this Section.

27 §400.8. Liability; jurisdiction

28 The provisions of this Part shall not be construed to repeal, modify, or
 29 preempt any liability that may be incurred pursuant to existing law applicable to a
 30 vehicle owner, operator, manufacturer, component part supplier, or retailer including

1 any law that may apply to jurisdiction for any bodily injury or property damage
2 claims arising out of this Part. All choice of law conflicts with respect to bodily
3 injury or property damage claims shall be resolved in accordance with Louisiana
4 law.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 310

2018 Regular Session

HOUSE BILL NO. 308

BY REPRESENTATIVE HAVARD AND SENATOR CORTEZ

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AN ACT

To amend and reenact R.S. 32:81(B) and (C) and to enact R.S. 32:1(95) and 81(D), (E), and (F), relative to vehicle platooning; to authorize non-lead motor vehicles in a platoon to follow other motor vehicles in a platoon closely; to exempt non-lead motor vehicles in a platoon from operating such vehicle in a manner that allows sufficient space to enable any other vehicle to enter and occupy the space between any motor vehicle in a platoon; to authorize platoon operation upon approval of an operational plan by the Department of Public Safety and Corrections and the Department of Transportation and Development; to provide for rulemaking authority; to provide for a prohibition against platoon operation; to provide for definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 32:81(B) and (C) are hereby amended and reenacted and R.S. 32:1(95) and 81(D), (E), and (F) are hereby enacted to read as follows:

§1. Definitions

When used in this Chapter, the following words and phrases have the meanings ascribed to them in this Section, unless the context clearly indicates a different meaning:

* * *

(95) "Platoon" or "platooning" means a group of individual motor vehicles, including any truck, truck-tractor, trailer, semitrailer, or any combination of these vehicles, utilizing vehicle-to-vehicle communication technology to travel in a unified manner at close following distances.

* * *

1 §81. Following vehicles; exceptions

2 * * *

3 B. The driver of a motor truck, when traveling upon a highway outside a
4 business or residential ~~district~~ area, shall not follow another motor truck within four
5 hundred feet, but this shall not be so construed as to prevent one motor truck from
6 overtaking and passing another.

7 C. Motor vehicles being driven upon any roadway outside of a business or
8 ~~residence district~~ residential area in a caravan or motorcade, whether or not towing
9 other vehicles, shall be so operated as to allow sufficient space between each such
10 vehicle or combination of vehicles so as to enable any other vehicle to enter and
11 occupy such space without danger. This provision shall not apply to a funeral
12 procession.

13 D. A platoon may be operated pursuant to this Section if the platoon operator
14 has an operational plan approved by the Department of Public Safety and
15 Corrections, office of state police, and the Department of Transportation and
16 Development. The Department of Public Safety and Corrections, office of state
17 police, and the Department of Transportation and Development may promulgate
18 rules as necessary to implement the provisions of this Subsection.

19 E. The provisions of this Section shall not apply to the operation of a non-
20 lead motor vehicle in a platoon.

21 F. The operation of a platoon shall not be authorized on a two-lane highway.

22 Section 2. This Act shall become effective on January 1, 2019.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

SENATE BILL NO. 453

BY SENATOR MCMATH AND REPRESENTATIVES BRASS, FREIBERG,
GADBERRY, CHARLES OWEN, SCHAMERHORN, SELDERS AND
WRIGHT

AN ACT

To enact R.S. 32:378.4, relative to low-speed autonomous motor vehicles; to provide for regulatory exceptions for automated vehicles; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 32:378.4 is hereby enacted to read as follows:

§378.4. Autonomous vehicle equipment requirements

A motor vehicle with autonomous technology that is designed to be operated exclusively by an automated driving system for all trips shall not be subject to motor vehicle equipment laws or equipment regulations of this state that relate to or support motor vehicle operation by a human driver and are not relevant for an automated driving system.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

SENATE BILL NO. 147

BY SENATOR WARD

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

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AN ACT

To enact Subpart G-2 of Chapter 1 of Title 32 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 32:210 through 210.7, relative to the operation of personal delivery devices; to provide for the applicability of motor vehicles and traffic regulations; to provide for definitions and terms; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Subpart G-2 of Chapter 1 of Title 32 of the Louisiana Revised Statutes of 1950, comprised of R.S. 32:210 through 210.7, is hereby enacted to read as follows:

SUBPART G-2. PERSONAL DELIVERY DEVICES

§210. Definitions

(1) "Agent" means a director, officer, employee, or other person authorized to act on behalf of a business entity.

(2) "Business entity" means a legal entity, including a corporation, association, partnership, or sole proprietorship, that is formed for the purpose of making a profit.

(3) "Nonpedestrian area" shall consist of any divided highway, highway, roadway, or street where the posted speed limit is thirty-five miles per hour or less.

(4) "Pedestrian area" means a sidewalk, crosswalk, school crosswalk, school crossing zone, or safety zone.

(5) "Personal delivery device" means a powered device that travels at the speed of twenty miles per hour or less, is less than five hundred pounds, excluding cargo, is manufactured for transporting cargo and goods in a pedestrian area or supplementary areas, and is equipped with automated

1 driving technology, including software and hardware, that enables the operation
2 of the device with the remote support and supervision of a human being.

3 §210.1. Applicable law

4 A. The operation of a personal delivery device is governed by the
5 provisions of this Subpart and Federal Aviation Administration airport
6 regulations.

7 B. For the purpose of this Subpart, a personal delivery device operated
8 in compliance with this Subpart shall not be considered a vehicle.

9 §210.2. Operator of personal delivery device

10 A. A person may operate a personal delivery device under this Subpart
11 only if the person is a business entity, and an agent of the business entity is
12 trained and capable to monitor or exercise physical control over the navigation
13 and operation of the device.

14 B. Except as provided by Subsection C of this Section, when a personal
15 delivery device operated by a business entity is engaged, the business entity is
16 considered to be the operator of the device solely for the purpose of assessing
17 compliance with applicable traffic laws.

18 C. When a personal delivery device operated by a business entity is
19 engaged and an agent of the entity controls the device in a manner that is
20 outside the scope of the agent's scope of employment, the agent is considered to
21 be the operator of the device.

22 D. A person is not considered to be the operator of a personal delivery
23 device solely because the person requests a delivery or service provided by the
24 device, or dispatches the device.

25 §210.3. Device operation

26 A personal delivery device operated under this Subpart shall:

27 (1) Operate in a manner that complies with any provision under this
28 Chapter that is applicable to pedestrians, unless the provision cannot apply to
29 the device.

30 (2) Yield to or not obstruct the right-of-way to all other lawful traffic,

1 including pedestrian traffic.

2 (3) Not unreasonably interfere with other traffic, including pedestrian
3 traffic.

4 (4) Display the lights required by R.S. 32:301 et seq., if the personal
5 delivery device is operated at night.

6 (5) Comply with any applicable regulations adopted by local authority.

7 (6) Not transport hazardous materials regulated under the Hazardous
8 Materials Transportation Act, pursuant to 49 U.S.C. 5103 and required to be
9 placarded under 49 CFR Part 172, Subpart F.

10 (7) Be monitored or controlled by an agent of the business entity meeting
11 the requirements of R.S. 32:210.2 (A).

12 §210.4. Areas of operation

13 A personal delivery device operated under this Subpart may be operated
14 either:

15 (1) In a pedestrian area at speeds up to twelve miles per hour.

16 (2) At a speed not to exceed twenty miles per hour in a nonpedestrian
17 area, provided that the personal delivery device shall not cross any divided
18 highway, highway, roadway, or street with a posted speed limit in excess of
19 thirty-five miles per hour at an intersection.

20 §210.5. Personal delivery device equipment

21 A. A personal delivery device operated under this Subpart shall:

22 (1) Be equipped with a marker that clearly states the name and contact
23 information of the owner and a unique identification number that is specific to
24 each individual personal delivery device.

25 (2) Be equipped with a braking system that enables the device to come
26 to a controlled stop.

27 B. A personal delivery device operated under this Subpart at night shall
28 be equipped with lights on the front and rear of the device. The lights affixed to
29 the personal delivery device shall be visible under normal atmospheric
30 conditions for up to five hundred feet away from the device.

1 **§210.6. Local authority regulation**

2 **A.(1) Personal delivery devices may be prohibited by local resolutions or**
3 **ordinances if the local government determines that the prohibition is in the**
4 **interest of public safety.**

5 **(2) Personal delivery devices may also be prohibited by airport**
6 **authorities by resolution or ordinance in the interest of public safety.**

7 **B. Nothing in this Subpart shall affect the authority of a peace officer to**
8 **enforce the laws of this state relating to the operation of a personal delivery**
9 **device.**

10 **§210.7. Insurance**

11 **A business entity that operates a personal delivery device under this**
12 **Subpart shall maintain an insurance policy that includes general liability**
13 **coverage of not less than one hundred thousand dollars, for damages arising**
14 **from the operation of the personal delivery device.**

15 Section 2. This Act shall become effective upon signature by the governor or, if not
16 signed by the governor, upon expiration of the time for bills to become law without signature
17 of the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
18 vetoed by the governor and subsequently approved by the legislature, this Act shall become
19 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

SENATE BILL NO. 428

BY SENATOR ROBERT MILLS

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AN ACT

To amend and reenact R.S. 22:1272, relative to liability limits; to prohibit the reduction of policy limits based on expenses of defense; to provide for waivers; to provide for which expenses qualify as expenses of defense; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1272 is hereby amended and reenacted to read as follows:

§1272. Defense costs; prohibition; waiver

A. The liability limits contained in a policy or contract of insurance issued by an authorized insurer shall not be reduced by the expenses of defense in a suit under the policy unless **waived by** the commissioner ~~executes a written waiver~~, as provided in Paragraph (B)(2) or (3) of this Section, ~~to authorize the policy liability limits to be reduced by the defense expenses.~~

B.(1) The **commissioner shall not waive the** prohibition contained in Subsection A of this Section ~~shall apply to~~ **for any of** the following types of insurance coverage:

(a) All personal lines.

(b) Medical malpractice.

~~(c) Commercial vehicle.~~

~~(d) Commercial general liability.~~

(2) The prohibition contained in Subsection A of this Section shall be waived by the commissioner for the following types of insurance coverage:

(a) Professional liability other than medical malpractice.

(b) Directors' and officers' liability.

(c) Errors and omissions liability.

- 1 (d) Pollution liability.
- 2 (e) Employment practices liability.
- 3 (f) Cyber risk liability.
- 4 (g) Information security and privacy liability.
- 5 (h) Patent defense or other intellectual property infringement liability.
- 6 (i) Commercial liability coverages sold in combination.

7 (3) The commissioner may waive the prohibition contained in Subsection
 8 A of this Section ~~may be waived by the commissioner for other~~ types of insurance
 9 coverage, except those not listed in Paragraph (1) of this Subsection; upon
 10 consideration by the commissioner of the customs of the industry and the interests
 11 of the particular insured level of market competition, the nature and design of the
 12 ~~product, the availability of insurance coverage, and other relevant factors.~~

13 C. ~~Every policy or contract for which a waiver is executed by the~~
 14 ~~commissioner pursuant to this Section shall be subject to the following requirements:~~

15 (1) ~~Defense expenses used to reduce the liability limits on the policy or~~
 16 ~~contract shall not include overhead costs, adjusting expenses, or other expenses~~
 17 ~~incurred by the insurer in the ordinary course of business.~~

18 (2) ~~Defense expenses used to reduce the liability limits shall~~ **Expenses of**
 19 **defense may** include only reasonable attorney fees and expenses directly connected
 20 to the insurer's defense of a specific liability claim on behalf of an insured and any
 21 other litigation expenses directly arising from the defense of a specific liability
 22 claim. **Expenses of defense shall not include overhead, unallocated loss**
 23 **adjustment expenses, or other unallocated expenses incurred by the insurer in**
 24 **the ordinary course of business.**

25 (3) ~~The inclusion of defense expenses shall not exhaust the entire amount of~~
 26 ~~liability coverage.~~

27 D. ~~The commissioner is authorized to do any of the following:~~

28 (1) ~~Limit the amount of defense expenses used to reduce the liability limits~~
 29 ~~or establish a minimum amount of liability coverage from which defense expenses~~
 30 ~~shall not be deducted.~~

1 ~~(2) Limit or define the amount of expenses that reduce the liability limits for~~
2 ~~all or specific type of insurance coverage.~~

3 E. Any policy or contract of insurance containing terms that require a waiver
4 pursuant to this Section shall include a separate notice or inclusion on the declaration
5 page stating that the insurance policy or contract includes defense expenses which
6 may be deducted from the liability limits of the policy. This notice shall be
7 prominently printed or stamped in bold on the policy or contract and shall not be less
8 than a ten-point type.

9 Section 2. This Act shall become effective upon signature by the governor or, if not
10 signed by the governor, upon expiration of the time for bills to become law without signature
11 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
12 vetoed by the governor and subsequently approved by the legislature, this Act shall become
13 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

SENATE BILL NO. 437

BY SENATOR ROBERT MILLS AND REPRESENTATIVES GAROFALO,
MCFARLAND AND SEABAUGH

1 AN ACT

2 To enact Part IV-A of Chapter 28 of Title 3 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 3:4351.1 through 4351.16, relative to forestry and agriculture; to
4 authorize the creation of the timber and agriculture transportation group self-
5 insurance fund; to provide with respect to group self-insurance funds; to provide for
6 requirements; to provide for definitions; to provide with respect to the qualifications
7 for membership; to provide for regulatory authority; to provide for excess or
8 reinsurance insurance; to provide for the management of assets and investments; to
9 provide for liabilities and the payment of claims; to provide for audits, examinations,
10 and investigations; to provide for licensed insurance producers; to provide for
11 insolvencies; to provide for civil actions for enforcement; to provide for reporting;
12 to provide penalties for noncompliance; to provide for due process rights; to provide
13 for dissolution; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. Part IV-A of Chapter 28 of Title 3 of the Louisiana Revised Statutes of
16 1950, comprised of R.S. 3:4351.1 through 4351.16, is hereby enacted to read as follows:

17 **PART IV-A. LOUISIANA TIMBER AND AGRICULTURE**

18 **TRANSPORTATION GROUP SELF-INSURANCE FUNDS**

19 **§4351.1. Definitions**

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

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

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

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

2 **(c) Is organized or created for purposes other than the sponsorship,**
3 **operation, or management of a fund or to provide a related employee safety**
4 **program or other activity necessary to the operation of the fund.**

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

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

8 **(3) "Fund" means the self-insurance fund established pursuant to this**
9 **Part to provide automobile coverage for timber transportation vehicles,**
10 **agriculture transportation vehicles, or a combination of both types of vehicles**
11 **and shall be known as the Louisiana Agriculture Transportation Group Self-**
12 **Insured Fund.**

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

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

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

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

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

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

1 **(8) "Timber or agriculture transportation vehicle" means a vehicle or**
2 **automobile used to collect and transport timber or agriculture products, or used**
3 **in the course and scope of a timber or agriculture business, or used by an**
4 **operator or principal.**

5 **(9) "Timber or agriculture transportation vehicle coverage" means**
6 **automobile coverage for a timber or agriculture transportation vehicle that**
7 **includes any of the following:**

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

10 **(b) Collision coverage to provide payment for repairs or replacement of**
11 **a timber or agriculture transportation vehicle.**

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

15 **(d) Uninsured motorist coverage as defined in R.S. 22:1295.**

16 **§4351.2. Authorization; trade or professional association; initial financial**
17 **requirements**

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

28 **(2) An agreement to pool liabilities under this Part shall be set forth in**
29 **an indemnity agreement signed by the members and fund representatives**
30 **acknowledging and agreeing to the assumption of the liabilities as set forth in**

1 this Part.

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

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

11 (5)(a) The arrangement shall be domiciled in the state of Louisiana. All
12 books, records, documents, accounts, and vouchers shall be kept in such a
13 manner that the arrangement's financial condition, affairs, and operations can
14 be ascertained so that its financial statements filed with the department of
15 insurance can be readily verified and its compliance with the law determined.
16 Any or all books, records, documents, original indemnity agreements, accounts,
17 and vouchers may be photographed or reproduced on film. Any photographs,
18 microphotographs, optical imaging, or film reproductions of any original books,
19 records, documents, original indemnity agreements, accounts, and vouchers
20 shall for all purposes, including but not limited to admission into evidence in
21 any court or adjudicatory proceeding, be considered the same as the originals
22 thereof, and a transcript, exemplification, or certified copy of any such
23 photograph, microphotograph, optical imaging, or film reproduction shall for
24 all purposes be deemed to be a transcript, exemplification, or certified original.
25 Any original considered reproduced may thereafter be disposed of or destroyed,
26 as provided for in Subparagraph (b) of this Paragraph, if provision is made for
27 preserving and examining the reproduction.

28 (b) Except as otherwise provided in Subparagraph (a) of this Paragraph,
29 original books, records, documents, accounts, and vouchers, or such
30 reproductions thereof, shall be preserved and kept in this state for the purpose

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

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

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

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

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

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

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

29 B. The fund shall submit to the department an application, on an
30 application form prescribed and furnished by the department, for authority to

1 act as a group self-insurance fund for timber and agriculture transportation
2 vehicle coverage. The application shall include evidence of the fund's inception,
3 which establishes financial strength and liquidity of the members to pay timber
4 and agriculture transportation vehicle claims promptly and support the
5 financial ability of the fund to satisfy its obligations upon the establishment of
6 the fund, including:

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

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

13 (3) Schedules of the entire membership showing:

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

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

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

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

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

25 (a) Applications shall be submitted to the department at least ninety days
26 prior to the effective date of the establishment of a fund. Any application
27 submitted with fewer than ninety days remaining before the desired effective
28 date, or which does not contain answers to all questions, or which is not sworn
29 to and subscribed before a notary public, or which does not contain all required
30 documents, statements, reports, and required information, may be returned

1 without review by the department.

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

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

5 (ii) Security as required by this Part.

6 (iii) Copies of acceptable excess insurance or reinsurance, as required by
7 this Part. All excess insurance or reinsurance shall be approved by the
8 department prior to use.

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

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

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

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

21 (viii) Evidence of financial strength and liquidity of the members dated
22 as of the date of the filing of the application to satisfy the financial strength and
23 liquidity requirements of this Part.

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

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

30 (xi) The name, address, and telephone number of each attorney

1 representing the fund, each qualified actuary for the fund and each certified
 2 public accountant who will be auditing the annual financial statements of the
 3 fund, as well as evidence of appointment of each by the fund.

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

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

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

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

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

21 §4351.3. Requirements; excess insurance; administrative and service
 22 companies; status; liability; refunds

23 A. The fund established pursuant to R.S. 3:4351.2 shall:

24 (1) File rates in accordance with R.S. 3:4351.7 and maintain at least
 25 seven hundred and fifty thousand dollars in earned premiums in the first fund
 26 year. For the second and each subsequent year, the fund shall maintain at least
 27 two million dollars in earned premiums. The amounts maintained shall be
 28 documented on the fund's audited financial statement prepared in accordance
 29 with generally accepted accounting principles.

30 (2)(a) During the first fund year, deposit with the department a

1 safekeeping receipt or trust receipt from a bank doing business in this state or
2 from a savings and loan association chartered to do business in the state
3 indicating that the fund has deposited and has pledged one hundred thousand
4 dollars in money or bonds of the United States, the state of Louisiana, or any
5 political subdivision thereof, of the par value of one hundred thousand dollars,
6 or post a surety bond issued by a corporate surety authorized to do business
7 within the state, in the amount of one hundred thousand dollars, to secure the
8 obligations of the fund under this Part.

9 (b) During the second and subsequent fund years, deposit with the
10 department a safekeeping receipt or trust receipt from a bank doing business
11 in this state or from a savings and loan association chartered to do business in
12 this state indicating that the fund has deposited and has pledged two hundred
13 fifty thousand dollars in money or bonds of the United States, the state of
14 Louisiana, or any political subdivision thereof, of the par value of two hundred
15 fifty thousand dollars, or post a surety bond issued by a corporate surety
16 authorized to do business within the state, in the amount of two hundred fifty
17 thousand dollars, to secure the obligations of the fund under this Part.

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

20 (4) Maintain at all times, on a fund-year basis, a contract or contracts of
21 specific excess insurance or reinsurance of not less than two million dollars per
22 occurrence and aggregate excess insurance or reinsurance of not less than two
23 million dollars. The maximum retention under the excess insurance or
24 reinsurance contracts shall not exceed amounts as may be provided by the
25 department by regulation. Solely for the purposes of authorizing the purchase
26 of reinsurance permitted under this Subsection, the fund shall be deemed an
27 insurer. The excess insurance or reinsurance shall be purchased only from a
28 company having a rating of A- by A.M. Best Company, A- by Fitch Ratings, A
29 by Weiss Ratings, A- by Standard & Poor's, or A3 by Moody's Investors
30 Services, or better, and this reinsurance may be purchased from admitted or

1 nonadmitted companies, provided that the provisions of R.S. 22:651 through
2 661, and Financial Accounting Standard Number 113 as promulgated and
3 updated by the Financial Accounting Standards Board, shall apply to all such
4 reinsurance. All excess insurance policies or reinsurance agreements shall be
5 approved by the department prior to use by the fund.

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

10 B. For any casualty insurance company to be eligible to write excess
11 coverage for the fund, the company shall at all times have on file with the
12 department its current financial statement showing assets, including surplus to
13 policyholders, at least equal to the current requirements by the department for
14 admission of a new company to do business in the state. Contracts or policies for
15 excess insurance coverage written by active underwriters of Lloyd's of London
16 shall be acceptable upon prior approval by the department.

17 C. Any fund administrator contracted by the fund and whose acts are
18 not covered by the fund's bond, errors-and-omissions insurance,
19 directors-and-officers' insurance, or other security approved by the
20 department, and any person, which shall include an individual, partnership,
21 corporation, and other entity contracting, either directly or indirectly, with a
22 fund to provide claims adjusting, underwriting, safety engineering, loss control,
23 marketing, investment advisory, or administrative services to the fund or its
24 membership, other than bookkeeping, or auditing, or claims investigation
25 services to the fund shall:

26 (1) Post with the department a surety bond issued by a corporate surety
27 authorized to do business in the state of not less than fifty thousand dollars or
28 deposit with the department a safekeeping receipt or trust receipt from a bank
29 doing business in this state or from a savings and loan association chartered to
30 do business in the state indicating that the person has deposited fifty thousand

1 dollars in money or bonds of the United States, the state of Louisiana, or any
2 political subdivision thereof, of the par value of fifty thousand dollars, to secure
3 the performance of its obligations under the contract and under this Part.

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

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

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

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

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

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

22 G. Any funds which are not guaranteed by a guaranty fund shall give
23 written notice of the lack of a guaranty to the department and the members of
24 the fund.

25 **§4351.4. Investments**

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

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

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

5 **(a) The deposits are insured by the Federal Deposit Insurance**
6 **Corporation.**

7 **(b) The deposits are collateralized by direct obligations of the United**
8 **States government.**

9 **(2) Bonds or securities not in default as to principal or interest, which are**
10 **obligations of the United States government or of any agency of the United**
11 **States government, without limitation.**

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

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

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

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

1 assets in the aggregate.

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

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

9 (a) Be in writing.

10 (b) Have a specific maturity date.

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

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

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

17 (a) The bonds shall have a minimum rating of Baa by Moody's, BBB by
18 Standard and Poor's, or BBB by Fitch.

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

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

25 (d) The five percent and fifty percent limitations specified in
26 Subparagraphs (b) and (c) of this Paragraph, respectively, may be exceeded up
27 to an additional ten percent of the fund's assets in the event, and only in the
28 event, of financial circumstances acceptable to the department, such as an
29 increase in market value after initial purchase of a corporate bond, provided
30 that:

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

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

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

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

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

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

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

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

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

21 (vi) Except as provided in Subparagraph (b) of this Paragraph, equity
22 holdings shall be restricted to high quality, readily marketable securities
23 corporations that are domiciled in the United States and that are actively traded
24 on the major United States exchanges, including the New York Stock Exchange
25 and the National Association of Securities Dealers Automated Quotation Stock
26 Market, LLC.

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

29 (c) In lieu of individual securities, investment in a mutual fund or
30 exchange traded fund which pays a dividend and consists of securities which

1 have an average market capitalization of at least one billion dollars shall be
2 permitted. The same general quality constraints shall be met and the aggregate
3 total of the funds, plus any individual securities, may not exceed fifteen percent
4 of the overall investment fund.

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

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

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

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

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

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

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

30 §4351.5. Authority of Department of Insurance

1 A. The fund shall not become operative until issued a certificate of
2 authority by the department. Except for the certificate of authority, the
3 department shall keep confidential all documents and records associated with
4 the provision of this Section.

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

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

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

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

30 (a) Information sought has been provided pursuant to R.S. 3:4351.10(C)

1 or R.S. 3:4351.11(I).

2 (b) Documents sought are audited financial statements which have been
3 filed with the department.

4 D. The department shall have authority to issue cease and desist orders
5 and suspend or revoke the certificate of authority of the fund which the
6 department determines is not in compliance with this Part or with any rule
7 promulgated by the department pursuant to the Administrative Procedure Act
8 or order or directive issued by the department. Without limiting the generality
9 of the provisions of this Subsection, a cease and desist order may include a
10 prohibition on writing or incurring any new or renewal business by the fund.

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

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

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 its 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 its approval and include standards, time frames, and other
30 parameters acceptable to the department. Any corrective action plan that is

1 submitted to the department by the fund shall be kept confidential by the
 2 department.

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

5 (a) Mandatory training.

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

9 (c) The submission of written progress reports.

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

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

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

16 (a) The imposition of fines and penalties.

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

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

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

22 §4351.6. Licensing of agents; claims against insurance agents

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

29 B. No action shall lie against an insurance producer or other person
 30 involved in the marketing, selling, or solicitation of participation in the fund

1 authorized by this Part for any claims arising out of the insolvency of the fund
2 or the inability of the fund to pay claims as the claims become due unless and
3 until any claimant shall have first exhausted all remedies available to him
4 against the members of the fund as provided by this Part.

5 §4351.7. Rates; filing; review of rate determination

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

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

19 §4351.8. Consecutive net losses

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

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

30 (2) File with the department a written and signed plan from the fund's

1 board of trustees describing the actions the fund will take to generate net
2 incomes on subsequent audited financial statements.

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

5 §4351.9. Insolvencies

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

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

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

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

29 (2) To levy an assessment, in the name of the fund, upon the members of
30 the fund sufficient to eliminate the insolvency if the fund fails or refuses to levy

1 the assessment.

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

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

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

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

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

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

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

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

30 (4) Payment of compensation owed to employees of the fund shall be paid

1 in accordance with the applicable provisions of administrative supervision,
2 pursuant to R.S. 22:731, et seq. or receivership, pursuant to R.S. 22:2001, et seq.

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

6 (6) Payment of all other claims.

7 §4351.10. Examination

8 A. The department shall make an examination, at least once every five
9 years, of the group self-insurance fund established pursuant to this Part doing
10 business in this state, and at any other time when in the opinion of the
11 department it is necessary for such an examination to be made.

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

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

23 D. Nothing contained in this Part shall be construed to limit the authority
24 of the department to terminate or suspend any examination in order to pursue
25 other legal or regulatory action pursuant to the applicable laws of this state.
26 Findings of fact and conclusions made pursuant to any examination shall be
27 prima facie evidence in any legal or regulatory action.

28 E. In conducting the examination pursuant to this Section, the
29 department shall examine the affairs, transactions, accounts, records,
30 documents, and assets of the authorized group self-insurance fund. For the

1 purpose of ascertaining its condition or compliance with this Part, the
2 department may, as often as it deems advisable, examine the accounts, records,
3 documents and transactions of all of the following:

4 (1) Any insurance agent, solicitor or broker, but only insofar as the
5 accounts, records, documents and transactions relate to group self-insurance
6 funds.

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

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

14 G. The department may take depositions, subpoena witnesses or
15 documentary evidence, administer oaths, and examine under oath any
16 individual relative to the affairs of the 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 H. Whenever the department makes an examination or investigation
20 pursuant to this Part, all expenses incurred by the department in conducting the
21 examination or investigation, including the expenses and fees of examiners,
22 auditors, accountants, actuaries, attorneys, or clerical or other assistants who
23 are employed by the department to make the examination, shall be paid by the
24 group self-insurance fund.

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

28 J. The department shall employ the examiners, auditors, accountants,
29 actuaries, attorneys, and clerical or other assistants as are necessary to conduct
30 the examination and to compile and prepare a report thereon, and the

1 compensation for such examination shall be fixed according to the time actually
2 devoted to the work, including conducting the examination and compiling the
3 report thereon, as required by law. The compensation shall be reasonable and
4 commensurate with the value of the services performed.

5 K. Upon completion of the examination of the group self-insurance fund
6 or at stated periods during an examination, the department shall forward to the
7 group self-insurance fund a statement showing the amount of expenses incurred
8 in the examination to the date of the statement. Upon receipt, the group self-
9 insurance fund shall pay the amount of expenses to the department.

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

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

24 §4351.11. Examination reports

25 A. All examination reports shall be comprised only of facts appearing
26 upon the books, records, or other documents of the group self-insurance fund
27 or as ascertained from the testimony of its officers or agents or other persons
28 examined concerning its affairs, and any conclusions and recommendations the
29 examiners find reasonably warranted from the facts. The department shall keep
30 confidential all documents and records associated with the provision of this

1 **Section.**

2 **B. Not later than sixty days following completion of the examination, the**
3 **examiner in charge shall file with the department a verified written report of**
4 **examination under oath. Upon receipt of the verified report, the department**
5 **shall transmit the report to the fund examined, together with a notice which**
6 **shall afford the fund examined a reasonable opportunity, of not more than**
7 **thirty days, to make a written submission or rebuttal with respect to any**
8 **matters contained in the examination report.**

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

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

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

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

30 **E. Within thirty days of the end of the period allowed for the receipt of**

1 written submissions or rebuttals, as provided for in Subsections B and D of this
2 Section, the department shall fully consider and review the refiled report,
3 together with any written submissions or rebuttals and any relevant portions
4 of the work papers of the examiner, and enter an order for one of the following:

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

11 (2) Rejection of the examination report and referral of the matter for
12 hearing before an administrative law judge within the division of administrative
13 law in accordance with the provisions of the Administrative Procedure Act, for
14 purposes of obtaining additional documentation, data, information, and
15 testimony.

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

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

28 H.(1) The hearing provided for under Subsection G of this Section shall
29 be conducted as required by the Administrative Procedure Act. At the
30 conclusion of the hearing, the administrative law judge shall enter an order

1 adopting the examination report as filed, or subsequently filed again with
2 modifications or corrections, and may order the fund to take any action that the
3 department considers necessary and appropriate to cure any violation of any
4 law, regulation, or prior order or directive of the department.

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

8 I.(1) Upon the adoption of the examination report under Paragraph
9 (C)(1) or (E)(1) or Subsection H of this Section, the department shall continue
10 to hold the content of the examination report as private and confidential
11 information for a period not to exceed thirty consecutive days, unless the
12 provisions of R.S. 3:4351.10(C) and Subsection B of this Section apply.
13 Thereafter, the department may open the report for public inspection provided
14 no court of competent jurisdiction has stayed its publication.

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

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

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

1 department or any other person, unless the provisions of R.S. 3:4351.10(C) and
2 Subsection I of this Section apply. The parties shall agree, in writing prior to
3 receiving the information, to provide to it the same confidential treatment as
4 required by this Section, unless the prior written consent of the fund to which
5 it pertains has been obtained.

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

10 (2) Notwithstanding the requirements of this Section, the department
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 those persons may from time to time
14 be similarly employed or retained by persons subject to examination under this
15 Part.

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

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

26 M.(1) In addition to those examinations performed by the department
27 pursuant to R.S. 3:4351.10, the department shall conduct financial reviews of
28 the group self-insurance fund. The reviews shall include the audited financial
29 statements of the group self-insurance fund rendered pursuant to generally
30 acceptable accounting principles, results of prior examinations and office

1 reviews, management changes, consumer complaints, and any other relevant
2 information as from time to time may be required by the department.

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

7 (3) 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 conducting a financial review shall be given
10 confidential treatment and are not subject to subpoena and may not be made
11 public by the department or any other person, except that any access may be
12 granted to insurance departments of other states, international, federal or state
13 law enforcement agencies or international, federal, or state regulatory agencies
14 with statutory oversight over the financial services industry, if the recipient
15 agrees to maintain the confidentiality of those documents which are confidential
16 under the laws of this state.

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

20 (5) Nothing contained in this Part shall be construed to limit the
21 department's authority to use any final or preliminary analysis findings, any
22 department or fund work papers or other documents, or any other information
23 discovered or developed during the course of any analysis in the furtherance of
24 any legal or regulatory action.

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

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

1 §4351.12. Authorization of the Department of Insurance to employ
2 investigators

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

7 §4351.13. Disclosure

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

16 (1) Represent falsely, directly or indirectly, to the department or any
17 employee, trustee or administrator thereof, that an asset of such group self-
18 insurance fund is unencumbered, or to misrepresent any other material fact
19 pertaining to the status of any asset or liability of the group self-insurance fund.

20 (2) Materially misrepresent to the department, or any employee, trustee
21 or administrator of the department, the value of any asset or the amount of any
22 liability of the group self-insurance fund, or any affiliate, subsidiary, or holding
23 fund associated therewith, provided that with regard to a material
24 misrepresentation of the value of any asset or liability, any deviation from the
25 actual value of such assets or liability which results from utilization of and
26 compliance with generally accepted insurance accounting and reporting
27 procedures shall not be deemed a violation of this Section.

28 (3) Fail to disclose to the department the existence of any liability of the
29 group self-insurance fund, or affiliate, subsidiary, or holding company
30 associated therewith when such disclosure is properly requested or required in

1 writing by an examiner or administrator of the department.

2 (4) Materially misrepresent, withhold, deny access to, or otherwise
3 preclude the obtainment of any information properly requested in writing and
4 in accordance with provisions of law affecting dissemination or disclosure of
5 information by specific institutions by an examiner or administrator of the
6 department, which is material and relevant to an examination properly
7 conducted by the department and examiners and administrators of the
8 department.

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

12 §4351.14. Departmental complaint directives; failure to comply; fines; hearing

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

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

21 §4351.15. Dissolution

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

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

30 C. An application to dissolve shall be granted if either of the following

1 conditions is met:

2 (1) The fund has no outstanding liabilities including incurred but not
 3 reported liabilities.

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

9 D. Upon the dissolution of the fund and after payment of all outstanding
 10 liabilities and indebtedness, the assets of the fund shall be distributed to all
 11 employers participating in the fund pursuant to a distribution plan submitted
 12 by the fund to the department and approved by the department.

13 §4351.16. Exclusive use of expirations

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

26 (2) The expirations, records, or other written or electronic information
 27 may be used to review the group self-insurance application, to issue a policy, or
 28 for any other purpose necessary for placing such business through the insurance
 29 producer. The expirations, records, or other written or electronic information
 30 may also be used for any other purpose which does not involve the soliciting,

1 selling, or negotiating the renewal or sale of group self-insurance coverage,
2 products, or services.

3 **B. This Section shall not apply:**

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

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

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

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

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

28 **D.(1) The department may adopt rules, in accordance with the**
29 **Administrative Procedure Act, to enforce the provisions of this Section, and any**
30 **violation of this Section or the rules adopted pursuant to this Section shall be**

1 subject to regulation by the department under R.S. 3:4351.5.

2 (2) In addition, the insurance producer shall have a right to a claim for
3 lost commissions. The claim shall be resolved in accordance with the dispute
4 resolution terms in the applicable contract or agreement. In the absence of any
5 dispute resolution terms, the parties shall attempt to resolve their dispute
6 through mediation. If the claim is not resolved through mediation, the claim
7 may be resolved through binding arbitration if the parties agree. In the absence
8 of an agreement to resolve the claim through binding arbitration, the insurance
9 producer may maintain an action for lost commissions.

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

13 Section 2. This Act shall become effective upon signature by the governor or, if not
14 signed by the governor, upon expiration of the time for bills to become law without signature
15 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
16 vetoed by the governor and subsequently approved by the legislature, this Act shall become
17 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____