

2016 Regular Session

HOUSE BILL NO. 280

BY REPRESENTATIVE BROADWATER

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

1 AN ACT

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

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 23:1197(D) and (E) are hereby amended and reenacted and R.S.  
12 23:1191(3), 1197(H), 1200.5(D) and (E), and 1200.18 are hereby enacted to read as follows:

13 §1191. Definitions

14 For the purposes of this Subpart, the following terms have the following  
15 meaning:

16 \* \* \*

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

1           (a) Meet obligations with respect to known claims and reasonably  
2           anticipated claims.

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

4                                   \*       \*       \*

5       §1197. Authority of Department of Insurance

6                                   \*       \*       \*

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

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

23                                   \*       \*       \*

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

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

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 parameters acceptable to the commissioner. Any corrective action plan that is  
2 submitted to the commissioner by a fund is confidential and not subject to the Public  
3 Records Law, R.S. 44:1 et seq.

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

6 (a) Mandatory training.

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

9 (c) The submission of written progress reports.

10 (d) The institution of measures to conserve or generate additional funding  
11 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 commissioner 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 confidential administrative supervision.

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

20 \* \* \*

21 §1200.5. Insolvencies

22 \* \* \*

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

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

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

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

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

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

16           (2) Any amounts payable to the Louisiana Workers' Compensation Second  
17           Injury Fund, when the commissioner makes a determination that the payment is in  
18           the best interest of the estate of the fund.

19           (3) Payment of claims by injured workers, beneficiaries, and insureds arising  
20           from and within the coverage of agreements or evidences of coverage issued by the  
21           fund, up to the policy limits.

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

24           (5)(a) Payment of compensation owed to employees of the fund, excluding  
25           officers, for services rendered within three months prior to the commencement of a  
26           proceeding against the fund, up to two thousand five hundred dollars for each  
27           employee.

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

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

7 (7) Payment of all other claims.

8 \* \* \*

9 §1200.18. Dissolution

10 A. A fund wishing to dissolve shall apply to the commissioner for authority  
 11 to dissolve. An application to dissolve shall be on a form prescribed by the  
 12 commissioner and shall be approved or disapproved by the commissioner within  
 13 sixty days of receipt.

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

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

20 (1) The fund has no outstanding liabilities including incurred but not  
 21 reported liabilities.

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

27 D. Upon dissolution of any fund and after payment of all outstanding  
 28 liabilities and indebtedness, the assets of the fund shall be distributed to all

1 employers participating in the fund pursuant to a distribution plan submitted by the  
2 fund to the department and approved by the commissioner.

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## DIGEST

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

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HB 280 Reengrossed

2016 Regular Session

Broadwater

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

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

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

Present law provides for admissible investment opportunities.

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

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

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

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

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

Proposed law allows the fund to submit a corrective action plan to the commissioner for his approval which includes standards, time frames, and other parameters acceptable to the commissioner. Proposed law provides that information from the fund is confidential and not subject to the Public Records Law.

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

Proposed law allows the commissioner to impose fines, penalties, or revocation of certificate of authority, placement of the fund into administrative supervision, or placement of the fund into conservation, rehabilitation, or liquidation for noncompliance with the corrective action plan.

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

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

Proposed law gives the 19<sup>th</sup> JDC exclusive jurisdiction to hear any delinquency proceeding against a fund for failure to comply with the corrective action plan.

Proposed law allows the court to issue an injunction to prevent the fund from conducting business, interfering with the ability of the commissioner to conduct business, or to protect any assets in the control of the commissioner.

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

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

Proposed law sets forth an order of priority of receipt of the assets of the fund as follows:

- (1) Costs of administration to the commissioner.
- (2) Amounts payable to the Second Injury Fund.
- (3) Payment of claims of injured workers, beneficiaries, and other insureds to whom the fund owes payment, up to the policy limits.
- (4) Payment of claims by the federal government.
- (5) Payment of compensation owed to employees of the fund, excluding officers.
- (6) Payment of claims for unearned premiums, premium refunds, and claims of creditors.
- (7) Payment of all other claims.

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

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Labor and Industrial Relations to the original bill:

1. Change the provision that authorizes the commission to place a fund on a corrective action plan ~~to~~ the requirement that the fund submit a corrective action plan to the commissioner for his approval.
2. Specify that any information submitted by a fund regarding the corrective action plan is confidential and not subject to public records requests.
3. Provide that in addition to fines, penalties, and the revocation of certification allowed by proposed law when a fund is not in compliance with the corrective action plan, proposed law allows the commissioner to place the fund into confidential administrative supervision or into conservation, rehabilitation, or liquidation.

4. Provide that exclusive jurisdiction to hear any delinquency proceeding against a fund for failure to comply with the corrective action plan lies in the 19<sup>th</sup> JDC. Suits may be brought by the commissioner when a fund fails to comply with the corrective action plan in place. The court may issue an injunction to enjoin the fund from conducting any further business, from interfering with the ability of the commissioner to conduct business, or to protect fund assets that are in the commissioner's control.
5. Outline the priority of the payment of fund assets after dissolution.