

Regular Session, 2010

SENATE BILL NO. 607

BY SENATOR LONG

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

1 AN ACT

2 To amend and reenact R.S. 22:46(9)(a) and (10), 47(5), 48(A)(15), 451(A), and 452(1)(b),
3 R.S. 23:1168(A), 1195(A)(1), 1197(C) and the introductory paragraph of R.S.
4 23:1197(F), R.S. 23:1200 and to enact R.S. 23:1200.6 through 1200.17, and to repeal
5 R.S. 22:461(J) and 1982, relative to workers' compensation group self-insurance
6 funds; to provide that such funds are not insurers nor to be deemed insurance; to
7 provide for compliance examinations of group self-insurance workers' compensation
8 funds by the commissioner of insurance; to provide for hearings of matters as a result
9 of such examinations; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

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

13 §46. General definitions

14 In this Code, unless the context otherwise requires, the following definitions
15 shall be applicable:

16 * * *

17 (9)(a) "Insurance" is a contract whereby one undertakes to indemnify another

1 or pay a specified amount upon determinable contingencies. It shall include any trust,
 2 plan or agreement, popularly known as employee benefit trusts, not specifically
 3 exempted from state regulation under Public Law 93-406, except collectively
 4 bargained union welfare plans, single employer plans or plans of the state or political
 5 subdivisions. **The term "insurance" shall not include any arrangement or trust**
 6 **formed under Subpart J of Part I of Chapter 10 of Title 23 of the Louisiana**
 7 **Revised Statutes of 1950.**

* * *

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

* * *

19 §47. Kinds of insurance

20 Insurance shall be classified as follows:

21 * * *

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

28 * * *

29 §48. Types of insurers and other risk bearing entities

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

3 * * *

4 (15) Group self insurers, **provided that any arrangement or trust formed**
5 **under Subpart J of Part I of Chapter 10 of Title 23 of the Louisiana Revised**
6 **Statutes of 1950, shall not be regulated under the Louisiana Insurance Code.**

7 * * *

8 §451. Scope of provisions

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

15 * * *

16 §452. Definitions

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

19 (1)(a) * * *

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

1 this Subpart to the extent that such plan provides health and accident benefits to its
 2 members and any of their dependents that are supplemental to those of an employer-
 3 provided plan.

4 * * *

5 Section 2. R.S. 23:1168(A), 1195(A)(1), 1197(C) and the introductory paragraph of
 6 R.S. 23:1197(F), R.S. 23:1200 are hereby amended and reenacted and R.S. 23:1200.6
 7 through 1200.17 are hereby enacted to read as follows:

8 §1168. Ways of securing compensation to employees

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

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

22 **(2) By entering into an agreement with a group self-insurance fund as**
 23 **provided for in R.S. 23:1191 et seq.**

24 **(3) By entering into an agreement with an interlocal risk management**
 25 **agency as provided for in R.S. 33:1341 et seq.**

26 ~~(2)(a)~~**(4)** By using any combination of life, accident, health, property,
 27 casualty or other insurance policies offered:

28 ~~(i)~~**(a)** By any stock corporation, mutual association or other concern
 29 authorized to transact the business of insurance in this state;

1 ~~(ii)~~(b) By any group of individual, unincorporated alien insurers with assets
 2 held in trust for the benefit of its United States policyholders in a sum not less than
 3 one hundred million dollars and which is authorized to transact insurance in at least
 4 one state; or

5 ~~(iii)~~(c) By any other insurer which has been approved by the commissioner
 6 of insurance, and has capital and surplus, or the equivalent thereof, of at least ten
 7 million dollars and its financial condition, as evidenced by its most recent annual
 8 statement, conforms substantially to the same standards of solvency which would be
 9 required if such insurer were licensed in this state.

10 ~~(3)~~(5) By furnishing satisfactory proof to the director of the employer's
 11 financial ability to pay such compensation. The director, pursuant to rules adopted
 12 by the office for an individual self-insured or own risk carrier, including but not
 13 limited to rules relative to security and excess coverage, shall require that an
 14 employer:

15 (a) Deposit with the director securities or a surety bond in an amount
 16 determined by the director which would be at least an average of the yearly claims
 17 for the last three years.

18 (b) Provide proof of excess coverage with such terms and conditions as is
 19 commensurate with their ability to pay the benefits required by the provisions of the
 20 Workers' Compensation Act.

21 * * *

22 §1195. Authorization; trade or professional association; initial financial
 23 requirements

24 A.(1) Any five or more Louisiana employers who are not public entities, each
 25 of whom has a positive net worth, is financially solvent, and is capable of assuming
 26 the obligations set forth under this Chapter, and who are all members of the same
 27 bona fide trade or professional association may agree to pool their liabilities to their
 28 employees on account of personal injury and occupational disease arising out of or
 29 incurred during the course and scope of the employment relationship. This

1 arrangement shall not be **an insurer, shall not be** deemed to be insurance and shall
 2 not be subject to the provisions of Chapter 1 of Title 22 of the Louisiana Revised
 3 Statutes of 1950 **Louisiana Insurance Code. The member employers of the**
 4 **arrangement likewise shall not be insurers or be subject to the Louisiana**
 5 **Insurance Code.**

6 * * *

7 §1197. Authority of Department of Insurance

8 * * *

9 C.(1) The department shall have the authority to examine the affairs, books,
 10 transactions, workpapers, files, accounts, records, assets, and liabilities of a fund to
 11 determine compliance with this Subpart and with any rules and regulations
 12 promulgated by the department or orders and directives issued by the commissioner.
 13 In addition, to the extent necessary and material to the examination of a fund, the
 14 department shall have the authority to examine the affairs, books, transactions,
 15 workpapers, files, accounts, and records of any fund's administrator, service
 16 company, certified public accountant, and actuary generated in the course of
 17 transacting business on behalf of the group self-insured fund being examined. ~~Such~~
 18 ~~examination work shall be conducted by employees of the department, or~~
 19 ~~independent certified public accounting firms in business for a minimum of five~~
 20 ~~years and contracted with the department for this purpose.~~ **All examinations shall**
 21 **be conducted in accordance with provisions of this Subpart.** The reasonable
 22 expenses of the examinations shall be paid by the fund being examined.

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

29 **(3) All working papers, recorded information, documents, information,**

1 **and copies thereof produced by, obtained by, or disclosed to the commissioner**
 2 **or any other person, pursuant to the authority of the commissioner under**
 3 **Subpart J of this Part, shall be given confidential treatment and shall not be**
 4 **subject to subpoena and may not be made a part of the response to any public**
 5 **records request, except in the following circumstances:**

6 **(a) Information has been provided pursuant to R.S. 23:1200.6(C) or R.S.**
 7 **23:1200.7(I).**

8 **(b) Documents are audited financial statements which have been filed**
 9 **with the Department of Insurance.**

10 * * *

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

13 * * *

14 §1200. Review of rate determination

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

25 * * *

26 **§1200.6. Examination of group self-insurance fund for workers' compensation**
 27 **program**

28 **A. The commissioner of insurance shall make an examination, not less**
 29 **frequently than once every five years, of all group self-insurance funds**

1 established pursuant to this Subpart doing business in this state and at any
2 other time when in the opinion of the commissioner it is necessary for such an
3 examination to be made.

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

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

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

20 §1200.7. Examination reports

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

26 B. Not later than sixty days following completion of the examination, the
27 examiner in charge shall file with the Department of Insurance a verified
28 written report of examination under oath. Upon receipt of the verified report,
29 the Department of Insurance shall transmit the report to the fund examined,

1 together with a notice, which shall afford the fund examined a reasonable
2 opportunity, of not more than thirty days, to make a written submission or
3 rebuttal with respect to any matters contained in the examination report.

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

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

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

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

26 E. Within thirty days of the end of the period allowed for the receipt of
27 written submissions or rebuttals, as provided for in Subsections B and D of this
28 Section, the commissioner shall fully consider and review the refiled report,
29 together with any written submissions or rebuttals and any relevant portions

1 of the work papers of the examiner and enter an order for one of the following:

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

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

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

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

24 H.(1) The hearing provided for under Paragraph (E)(2) or Subsection G
25 both of this Section shall be a confidential proceeding. At the conclusion of the
26 hearing, the commissioner shall enter an order adopting the examination report
27 as filed or refiled, or with modification or corrections, and may order the fund
28 to take any action the commissioner considers necessary and appropriate to
29 cure any violation of any law, regulation, or prior order of the commissioner.

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

5 **I.(1) Upon the adoption of the examination report under either**
6 **Paragraphs (C)(1), (E)(1), or Subsection H all of this Section, the commissioner**
7 **shall continue to hold the content of the examination report as private and**
8 **confidential information for a period not to exceed thirty consecutive days,**
9 **except to the extent provided in R.S. 23:1200.6(C) and Subsection B of this**
10 **Section. Thereafter, the commissioner may open the report for public inspection**
11 **so long as no court of competent jurisdiction has stayed its publication.**

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

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

23 **J. All working papers, recorded information, documents, and copies**
24 **thereof produced by, obtained by, or disclosed to the commissioner, or any**
25 **other person, in the course of an examination made under this Subpart, or**
26 **pursuant to the authority of the commissioner under this Subpart, shall be given**
27 **confidential treatment and are not subject to subpoena and may not be made**
28 **public by the commissioner or any other person, except to the extent provided**
29 **in R.S. 22:1200.6(C) and Subsection I of this Section. The parties shall agree, in**

1 writing prior to receiving the information, to provide to it the same confidential
2 treatment as required by this Section, unless the prior written consent of the
3 fund to which it pertains has been obtained.

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

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

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

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

25 M.(1) In addition to those examinations performed by the commissioner
26 of insurance pursuant to R.S. 23:1200.6, the commissioner of insurance shall
27 conduct financial reviews of all group self-insurance funds authorized to do
28 business in this state. Such reviews shall include the audited financial statements
29 of the group self-insurance fund rendered pursuant to good and acceptable

1 accounting practices, results of prior examinations and office reviews,
2 management changes, consumer complaints, and such other relevant
3 information as from time to time may be required by the commissioner.

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

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

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

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

28 (6) Any group self-insurance fund against whom a fine has been levied
29 shall be given ten days notice of such action. Upon receipt of this notice, this

1 aggrieved party may apply for and shall be entitled to a hearing pursuant to this
2 Subpart.

3 §1200.8. Review and examination expense; how paid

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

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

15 §1200.9. Authority to employ examiners and other assistants

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

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

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

7 §1200.10. Group self-insurance fund's right to contest expense

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

16 §1200.11. Failure to pay expenses; penalty

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

23 §1200.12. Scope of examination

24 In conducting such an examination, the commissioner of insurance shall
25 examine the affairs, transactions, accounts, records, documents and assets of
26 each authorized group self-insurance fund. For the purpose of ascertaining its
27 condition or compliance with this Subpart, the commissioner of insurance may
28 as often as he deems advisable, examine the accounts, records, documents and
29 transactions of (a) any insurance agent, solicitor or broker, but only insofar as

1 such accounts, records, documents and transactions relate to group self-
2 insurance funds, or of (b) any person having a contract under which he enjoys,
3 in fact, the exclusive or dominant right to manage or control a group self-
4 insurance fund.

5 §1200.13. Production of books and records

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

11 §1200.14. Power to examine under oath; subpoena witnesses

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

17 §1200.15. Commissioner of insurance authorized to employ investigators

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

22 §1200.16. Disclosure

23 A. It shall be unlawful for any person who is an officer, trustee,
24 employee, administrator, agent, or representative of a group self-insurance
25 fund; or any person, partnership, corporation, banking corporation, or any
26 other legal entity which performs any service for a group self-insurance fund,
27 or prepares any report, audit, financial statement or report for, or makes any
28 representation on behalf of, for, or with regard to a group self-insurance fund,
29 in connection with any hearing, investigation, or examination authorized by this

1 **Subpart, to act with the specific intent to do any of the following items:**

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

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

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

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

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

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

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

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

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

The original instrument was prepared by Thomas L. Tyler. The following digest, which does not constitute a part of the legislative instrument, was prepared by Laura Gail Sullivan.

DIGEST

Long (SB 607)

Present law (R.S. 23:1191-1200.5) provides generally for agreements to pool workers' compensation liabilities through group self-insurance funds. Present law provides that such an arrangement shall not be deemed to be insurance and shall not be subject to the provisions of the La. Insurance Code.

Present law (R.S. 22:46(9)(a) and (10)) defines the terms "insurance" and "insurer" for purposes of the La. Ins. Code.

Proposed law specifies that such terms do not include an arrangement or trust established pursuant to present law provisions regarding workers' compensation group self-insurance funds.

Present law (R.S. 22:47) classifies various types of insurance, including workers' compensation insurance.

Proposed law specifies that an arrangement or trust formed pursuant to present law provisions authorizing workers' compensation group self-insurance funds is not insurance nor is such arrangement or trust to be deemed to be insurance.

Present law (R.S. 22:48) lists certain entities that are regulated by specific provisions of the La. Ins. Code, including group self-insurers.

Proposed law specifies that an arrangement or trust that is a workers' compensation group self-insurance fund is not insurance nor is such arrangement or trust to be deemed to be insurance.

Present law (R.S. 22:451-469) generally regulates group self-insurers and self-insurance plans. Present law (R.S. 22:451) specifies that these provisions of the La. Ins. Code do not apply to any workers' compensation plan.

Proposed law specifies that these provisions do not apply to any arrangement or trust formed pursuant to present law group self-insurance funds formed under present law workers' compensation provisions. Further specifies that, for purposes of present law Insurance Code group self-insurance provisions, the term "self-insurance plan" shall not include arrangements or trusts that are workers' compensation group self-insurance funds.

Present law (R.S. 23:1168) provides various methods for securing compensation for employees. Provides specifically that compensation may be secured with group self-insurance authorized by present law provisions (R.S. 23:1195 et seq. or R.S. 33:1341 et seq.) for workers' compensation group self-insurance funds or interlocal risk management agencies.

Proposed law makes technical corrections to present law.

Proposed law generally clarifies that employers who are members of a trade or professional association and who pool liabilities for injuries arising from the course and scope of the employment relationship pursuant to provisions of present law are not insurers and are not to be deemed insurance nor subject to the La. Ins. Code nor are member employers of any such arrangement insurers nor subject to the Code.

Proposed law provides for confidentiality of certain documents produced by, obtained by, or disclosed to the commissioner or any other person pursuant to the authority of the commissioner under present or proposed law. Provides for exceptions for reports or information discovered or developed in furtherance of any legal or regulatory action, for disclosures to regulatory or law enforcement entities agreeing to hold the report or information confidential, and for audited financial statements which have been filed with the Dept. of Ins.

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

1. Upon request of the commissioner of insurance, a workers' compensation group self-insurance fund established pursuant to present law shall cause a rate review to be conducted by a national independent actuarial firm with findings to be reported to the commissioner; however, the commissioner shall not make more than two requests in a calendar year.
2. The commissioner shall examine each fund not less frequently than once every five years. Provides for such examinations.

Nothing in proposed law shall be construed to limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action. Provides that findings of fact and conclusions of such examination are prima facie evidence in any legal or regulatory action.

3. Examination reports shall be comprised of facts only appearing on books, records, or documents of the group self-insurance fund or as ascertained from testimony of persons examined.

Provides for filing a verified written report of the examination with the Dept. of Ins. with an opportunity for the fund to make written submissions or rebuttal of information in the report.

The commissioner shall consider and review the report and order adoption of the examination as filed, or with modifications or corrections, or rejection of the report.

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

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

Prohibits appointment of an examiner who, directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person or entity being examined.

Provides for limitation of liability of the commissioner or his authorized representative or appointee for good faith performance of the duties required pursuant to present or proposed law.

4. Requires financial review of group self-insurance funds authorized to do business in the state which shall include audited financial statements, results of prior examination and office reviews, management changes, consumer complaints, and other relevant information as may be required.

Failure of a fund to supply information requested by the Dept. of Ins. subjects the fund to revocation or suspension of its license or, in lieu of a suspension, a fine not to exceed \$10,000 per occurrence.

5. Provides that expenses of reviews and examinations are to be paid by the group self-insurance fund and that the commissioner may employ such examiners, auditors, accountants, actuaries, attorneys, and clerical or other assistants as necessary to conduct an examination and compile his report. Authorizes the group self-insurance fund to contest expenses incurred by the commissioner and provides a penalty for failure of a fund to pay expenses.
6. Provides for the scope of examination and the authority of the commissioner to take depositions, subpoena witnesses or documentary evidence, and to administer oaths and examine under oath any individual relative to the affairs of any group self-insurance fund being examined.
7. Authorizes the commissioner to employ investigators.
8. Provides for criminal penalties for certain intentional misrepresentations. Provides for failure of any person to comply with directives issued by the commissioner in connection with a consumer complaint.

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

Effective August 15, 2010.

(Amends R.S. 22:46(9)(a) and (10), 47(5), 48(A)(15), 451(A), and 452(1)(b), R.S. 23:1168(A), 1195(A)(1), 1197(C), R.S. 23:1197(F)(intro para), 1200; adds R.S. 23:1200.6-1200.17; repeals R.S. 22:461(J) and 1982)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill.

1. Removes provisions related to administrative hearings.
2. Removes references to fees.
3. Provides for confidentiality of certain documents produced by, obtained by, or disclosed to the commissioner or any other person, pursuant to the authority of the commissioner under present or proposed law and for exceptions.