

2015 Regular Session

SENATE BILL NO. 171

BY SENATOR MORRISH

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

HEALTH/ACC INSURANCE. Provides for self-insured trust health insurance plans.  
(8/1/15)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

AN ACT

To amend and reenact R.S. 22:453(B) and (C), 458, and 459(A) and to enact R.S. 22:452(4) and (5), 454(C), and 458.1, relative to group self-insurers; to define certain terms; to provide for the amount of insolvency deposit; to provide certain requirements for self-insured trusts; to provide for excess stop-loss coverage; to provide with respect to the requirements to obtain a certificate of authority to operate a self-insured trust plan; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:453(B) and (C), 458, and 459(A) are hereby amended and reenacted and R.S. 22:452(4) and (5), 454(C), and 458.1 are hereby enacted to read as follows:

§452. Definitions

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

\* \* \*

(4) "Claims liability" means the total of all incurred and unpaid claims for allowable benefits under a self-insurance plan, including a multiple

1 employer welfare arrangement, that are not reimbursed or reimbursable by  
 2 excess of loss insurance, subrogation, or other sources.

3 (5) "Reserves" means the excess of the assets of a self-insurance plan,  
 4 including a multiple employer welfare arrangement, minus the liabilities of the  
 5 plan. The liabilities of a self-insurance plan include the claims liability of the  
 6 plan.

7 §453. Certificate of authority

8 \* \* \*

9 B. Each application for a certificate of authority shall be made on forms  
 10 prescribed by the commissioner, shall be verified by the self-insurer or its authorized  
 11 representative, and shall set forth or be accompanied by all of the following items:

12 (1) A copy of the self-insurer's bylaws and all management, administration,  
 13 or trust agreements which the plan has made or proposes to make for the conduct of  
 14 its business and affairs. Any proposed change or amendment to the foregoing shall  
 15 also be filed with the commissioner within sixty days of its implementation.

16 (2) A list of names, permanent addresses, and official positions, if any, of the  
 17 persons responsible for the formation of the self-insurer and for the organization,  
 18 establishment, administration, and maintenance of the self-insurance plan.

19 (3) Biographical background information, on a form prescribed by the  
 20 commissioner for each person who controls, directly or indirectly, ten percent or  
 21 more of the self-insurer and for each director and officer of the self-insurer, unless  
 22 the self-insurer is an association-sponsored trust formed pursuant to Section  
 23 458.1 of this Subpart.

24 (4) A plan of operation which clearly indicates the method of operation of the  
 25 self-insurer including all of the following items:

26 (a) The types and limits of insurance to be provided.

27 (b) Pro forma financial statements for a period covering three years, which  
 28 shall include a balance sheet, income statement, and cash flow statement.

29 (c) The amount and liquidity of its assets relative to the risks to be assumed

1 by the self-insurer.

2 (d) The expertise, experience, and character of the persons or entities which  
3 will manage the self-insurer.

4 (e) A description of the self-insurer's stop-loss or excess program.

5 (f) A description of the self-insurer's underwriting policy, including the  
6 person or entity which will perform these functions.

7 (g) A description of the self-insurer's claims handling procedures, including  
8 the person or entity that will perform these functions.

9 (h) A description of the self-insurer's investment policy.

10 (i) The overall soundness of the plan of operation of the self-insurer.

11 (j) A description of the self-insurer's rate-making policies and procedures.

12 (5) A feasibility study or other analysis involving the self-insurance plan  
13 prepared by a qualified actuary.

14 (6) A copy of the application for coverage, contract, certificate, or policy of  
15 insurance or schedules of benefits to be issued or provided to persons covered under  
16 the self-insurance plan.

17 (7) A current financial statement verified by the applicant or its authorized  
18 representative showing the applicant's assets, liabilities, and sources of financial  
19 means and support. **For an association-sponsored trust formed pursuant to R.S.**  
20 **22:458.1 of this Subpart, this shall include current financial statements dated**  
21 **not less than one year prior to the application for the association and, at the**  
22 **discretion of the Department, as many members as necessary to ensure**  
23 **compliance with the financial strength requirements of R.S. 22:458.1.**

24 (8) **Either of the following:**

25 **(a)** A copy of a fidelity bond which bond shall comply with all of the  
26 following:

27 ~~(a)~~**(i)** Provides protection to the self-insurer against acts of fraud or  
28 dishonesty by persons servicing the self-insurer.

29 ~~(b)~~**(ii)** Provides coverage for each person responsible for servicing the self-

1 insurer.

2 ~~(e)(iii)~~ Is in an amount equal to the greater of ten percent of the premiums  
3 and contributions received by the self-insurer or ten percent of the benefits paid,  
4 during the preceding calendar year, with a minimum amount of ten thousand dollars  
5 and a maximum amount of five hundred thousand dollars.

6 **(b) If the self-insurer is an association-sponsored trust formed pursuant**  
7 **to R.S. 22:458.1 a bond covering each third party administrator. Funds which**  
8 **employ their own administrators shall be required to submit proof of purchase**  
9 **of a bond, errors and omission insurance, directors and officers insurance, or**  
10 **other security approved by the department for the administration of the fund.**

11 (9) A copy of all advertising and marketing materials, including the  
12 marketing plan, **unless the self-insurer is an association-sponsored trust formed**  
13 **pursuant to R.S. 22:458.1.**

14 (10) A statement by the self-insurer certifying that the self-insurance plan is  
15 in compliance with all applicable provisions of the Employee Retirement Income  
16 Security Act of 1974 (29 U.S.C. §1001 et seq.).

17 **C. All applications from an association-sponsored trust being formed**  
18 **pursuant to R.S. 22:458.1 shall be accompanied by the following items:**

19 **(1) Individual application of each member of the fund applying for**  
20 **membership in the fund on the effective date of the fund, and copies of their**  
21 **executed indemnity agreements.**

22 **(2) Proof that the fund shall have the minimum annual earned normal**  
23 **premium required by R.S. 22:458.1.**

24 **(3) The current annual report or financial statement of any insurance**  
25 **company providing excess or reinsurance coverage for the fund if such**  
26 **statement is not already on file with the department.**

27 **(4) The name, address, and telephone number of the attorney**  
28 **representing the fund; the name, address, and telephone number of the**  
29 **qualified actuary for the fund; and the name, address, and telephone number**

1 of the certified public accountant who will be auditing the annual financial  
2 statements of the fund, as well as evidence of appointment of each by the fund.

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

5 (6) Proof of advance payment to the fund by each initial member of the  
6 fund of not less than one-twelfth of that member's first year estimated annual  
7 earned normal premium.

8 (7) A copy of the fund's premium billing policy indicating whether the  
9 premium payments to the fund will be paid by members annually, monthly,  
10 quarterly, or any combination thereof.

11 ED. Within ninety days of receipt of a completed application, the  
12 commissioner of insurance shall issue a certificate of authority to do business in the  
13 state to an applicant if the commissioner determines that the following conditions are  
14 met:

15 (1) The persons responsible for the administration of the self-insurance plan  
16 are competent, trustworthy, and of good reputation.

17 (2) The applicant is financially sound and responsible.

18 (3) The applicant has deposited cash or securities and has otherwise complied  
19 with all of the requirements of this Subpart.

20 §454. Insolvency deposit

21 A. All self-insurers shall, before receiving a certificate of authority, deposit  
22 with the commissioner a safekeeping or trust receipt from a bank doing business  
23 within the state or from a savings and loan association chartered to do business in  
24 this state indicating that the self-insurer has deposited cash, or bonds of the United  
25 States, the state of Louisiana, or any political subdivision of the state, of the par  
26 value of not less than the greater of either one of the following items:

27 (1) One hundred thousand dollars.

28 (2)(a) Thirty percent of the self-insurer's outstanding Louisiana-related  
29 reserve liabilities. For the purposes of this Subsection, reserve liabilities shall be

1 computed with proper regard for the following items:

- 2 (i) Known claims paid and outstanding.
- 3 (ii) A history of incurred but not reported claims.
- 4 (iii) Claims handling expenses.
- 5 (iv) Unearned premium.
- 6 (v) An estimate for bad debts.
- 7 (vi) A trend factor.
- 8 (vii) A margin for error.

9 (b) All securities deposited pursuant to this Subsection shall be held in trust  
10 for the benefit and protection of and as security for all policyholders of the  
11 self-insurer making such deposit.

12 \* \* \*

13 **C. Notwithstanding the provisions of Subsections A and B of this Section,**  
14 **a self-insurer who satisfies all the criteria of R.S. 22:458.1 shall be deemed in**  
15 **compliance with this Section.**

16 \* \* \*

17 §458. Self-insured trusts

18 The following requirements shall be met in addition to all other provisions  
19 of this Subpart where any self-insurance plan is effected, maintained, and operated  
20 under a trust agreement:

21 (1) A self-insurer shall ~~maintain~~ **comply with one of the following:**

22 **(a) Maintain** at all times unimpaired net assets of not less than one million  
23 dollars. The net assets required to be maintained pursuant to this Section shall be in  
24 the form of cash, cash equivalents, or bonds or evidences of indebtedness which are  
25 direct general obligations or which are secured or guaranteed as to principal and  
26 interest by the government of the United States, or any state of the United States.

27 **(b) Satisfy the requirements of R.S. 22:458.1.**

28 (2) The employers in the self-insurance plan shall be members of an  
29 association or group of five or more businesses that are in the same trade or industry,

1 including closely related businesses that provide support, services, or supplies  
2 primarily to that trade or industry.

3 (3) A board of trustees ~~elected by participating employers~~ shall serve as fund  
4 managers on behalf of participants. Trustees shall be plan participants. **Trustees**  
5 **shall be elected by participating employers or, if the self-insurance plan**  
6 **operates for the benefit of employers who are all part of the same association,**  
7 **then the trustees may be elected by association members who are plan**  
8 **participants.** No participating employer may be represented by more than one  
9 trustee. A minimum of three and a maximum of seven trustees may be elected.  
10 Trustees may not receive compensation but may be reimbursed for actual expenses  
11 incurred in connection with duties as trustee.

12 (4) Trustees shall be bonded in an amount not less than one hundred fifty  
13 thousand dollars from a licensed surety company **unless the trust is formed**  
14 **pursuant to R.S. 22:458.1.**

15 (5) Investment of plan funds is subject to the same restrictions which are  
16 applicable to insurers under this Title.

17 **§458.1. Association-sponsored self-insured trust**

18 **A.(1) Any ten or more Louisiana employers who are not public entities,**  
19 **each of which has a positive net worth, is financially solvent, and is capable of**  
20 **assuming the obligations set forth under this Section, and who are all members**  
21 **of the same trade or professional association may agree to pool any liabilities to**  
22 **their employees relating to the provision of health care benefits for those**  
23 **employers and their employees via a trust established by the association. This**  
24 **arrangement shall not be an insurer, shall not be deemed to be insurance, and**  
25 **shall not be subject to the Louisiana Insurance Code. The member employers**  
26 **of the arrangement likewise shall not be insurers or be subject to the Louisiana**  
27 **Insurance Code.**

28 **(2) An agreement to pool liabilities under this Chapter shall be set forth**  
29 **in an indemnity agreement signed by the employer, association representative,**

1 and fund representative acknowledging and agreeing to the assumption of the  
2 liabilities as set forth in this Subpart.

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

7 (4) The arrangement shall include the establishment of a trust fund by  
8 a trade or professional association for its members, and the arrangement shall  
9 be known as a group self-insurance fund for health care benefits and shall be  
10 governed by a board of trustees.

11 (5) The association establishing the fund shall be responsible for any  
12 unpaid claims liability of the fund. Members of the fund shall be in solido  
13 guarantors of liabilities of the fund not satisfied by the association due to the  
14 association's insolvency.

15 (6)(a) The arrangement shall be domiciled in the state of Louisiana.

16 (b) The arrangement shall be authorized to contract with such vendors,  
17 including but not limited to administrators, agents and re-insurers, as may be  
18 necessary to ensure appropriate provision of health care benefits for members  
19 and their eligible employees. It shall not be required that said vendors be  
20 domiciled in the state of Louisiana.

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



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

8 (d) Except as otherwise provided in Subparagraph (c) of this Paragraph,  
9 original books, records, documents, accounts, and vouchers, or such  
10 reproductions thereof, shall be preserved and kept in this state for the purpose  
11 of examination and until the authority to destroy or otherwise dispose of the  
12 records is secured from the commissioner of insurance. All original records, or  
13 certified reproductions thereof, shall be maintained for the period commencing  
14 on the first day following the last period examined by the commissioner of  
15 insurance through the subsequent examination period, or three years,  
16 whichever is greater, except that any original, or certified reproduction thereof,  
17 whereby the member agrees to or acknowledges such member is an in solido  
18 guarantor of liabilities of the fund not satisfied by the association shall be  
19 permanently maintained.

20 (7) Throughout the existence of the fund, at least one of the following  
21 conditions shall be satisfied at any given time:

22 (a) The association and two or more members of the arrangement shall  
23 maintain a minimum combined net worth of one million dollars and a ratio of  
24 current assets to current liabilities of at least one-to-one.

25 (b) The balance of unencumbered reserves in the fund shall be equal to  
26 at least thirty percent of the unpaid claims liability of the fund.

27 (8) The fund shall maintain contribution rates for participation under  
28 the arrangement that satisfy either of the following requirements:

29 (a) Contribution rates shall equal or exceed the sum of projected claims

1 liability for the year, plus all projected costs of operation of the plan for the  
2 year, plus an amount equal to any deficiency in the reserves of the plan for the  
3 prior year, minus an amount equal to the reserves of the plan in excess of the  
4 minimum required level of reserves.

5 (b) Contribution rates shall equal or exceed a funding level established  
6 by a report prepared by an actuarial firm.

7 B. For the purposes of this Section, "association" means an active trade  
8 or professional association which satisfies all of the following:

9 (1) Meets either of the following criteria:

10 (a) Is a tax exempt organization approved by the Internal Revenue  
11 Service under the provisions of 26 United States Code Section 501.

12 (b) Is a nonprofit corporation organized under Chapter 2 of Title 12 of  
13 the Louisiana Revised Statutes of 1950.

14 (2) Provides services to its membership so that the primary function of  
15 the trade or professional association is not the sponsorship, operation, or  
16 management of a fund, or related employee safety program, or other related  
17 activities. The association shall have, for a period of at least ten years prior to  
18 the date of application, satisfied all of the following requirements:

19 (a) Held regular meetings of the board on no less than an annual basis.

20 (b) Produced a newsletter, on no less than an annual basis, which was  
21 mailed, via United States mail or sent by electronic mail, to each member.

22 (3) Is chartered and domiciled in the state of Louisiana and has been in  
23 existence for a period of twenty-five years or more.

24 §459. Excess stop-loss coverage

25 A. Each self-insurance plan shall include aggregate excess stop-loss coverage  
26 and specific excess stop-loss coverage provided by an insurer licensed by the state  
27 of Louisiana. Aggregate excess stop-loss coverage shall include provisions to cover  
28 incurred, unpaid claims liability in the event of plan termination. A plan shall submit  
29 its proposed excess or stop-loss insurance contract to the commissioner at least thirty

1 days prior to the proposed self-insurance plan's effective date and at least thirty days  
 2 **prior to any** subsequent ~~to any~~ renewal date. The commissioner shall review the  
 3 contract to determine whether it meets the standards established by this Section and  
 4 shall respond within thirty days of its submission to him. Any excess or stop-loss  
 5 insurance plan must provide coverage with rates not subject to adjustment by the  
 6 insurer during the first twelve months.

7 \* \* \*

---

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

---

DIGEST

SB 171 Engrossed 2015 Regular Session Morrish

Present law defines a self-insurance plan as any contract, plan, trust, arrangement, or other agreement which is established or maintained to offer or provide health care services, indemnification, or payment for health care services, or health and accident benefits to employees of two or more employers, but which is not fully insured. Provides that these contracts, plans, trusts, arrangements, or agreements shall be deemed "fully insured" only if the services, indemnification, payment, or benefits are guaranteed under a contract or policy of health insurance issued by an insurer authorized to transact business in this state.

Proposed law provides for an association-sponsored self-insured trust, under which any ten or more La. employers who are not public entities, each of which has a specified level of financial health, operating in the same trade or professional association may agree to pool any liabilities for employee health care benefits by establishing a trust through an association, as that term is defined in proposed law. The entity created by this agreement is referred to as an "arrangement".

Provides that an arrangement shall not be an insurer, shall not be deemed to be insurance, and shall not be subject to the La. Insurance Code. Further provides that the member employers of an arrangement are also not insurers or subject to the La. Insurance Code. Provides for additional terms, conditions, and requirements that must be met by the arrangement for proposed law to apply.

Effective August 1, 2015.

(Amends R.S. 22:453(B) and (C), 458, and 459(A); adds R.S. 22:452(4) and (5), 454(C), and 458.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Insurance to the original bill

1. Provides for an association-sponsored self-insured trust, allowing groups of certain La. employers to pool liabilities for employee health care benefits by establishing a trust through an association.