

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 AN ACT

2 To amend and reenact R.S. 22:453(B) and (C), 458, and 459(A) and to enact R.S. 22:452(4)

3 and (5), 453(D), 454(C), and 458.1, relative to group self-insurers; to define certain

4 terms; to provide for the amount of insolvency deposit; to provide certain

5 requirements for self-insured trusts; to provide for excess stop-loss coverage; to

6 provide with respect to the requirements to obtain a certificate of authority to operate

7 a self-insured trust plan; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 22:453(B) and (C), 458, and 459(A) are hereby amended and

10 reenacted and R.S. 22:452(4) and (5), 453(D), 454(C), and 458.1 are hereby enacted to read

11 as follows:

12 §452. Definitions

13 For purposes of this Subpart, unless the context clearly indicates otherwise,

14 the following terms shall have the meanings ascribed to them:

15 * * *

16 (4) "Claims liability" means the total of all incurred and unpaid claims

17 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 R.S.
23 22:458.1.

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, this shall include current financial statements dated not less than one**
21 **year prior to the application for the association and, at the discretion of the**
22 **department, as many members as necessary to ensure compliance with the**
23 **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~~ **that complies** with
26 all of the 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.~~) **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 * * *

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

25 * * *

26 §458. Self-insured trusts

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

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

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

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

8 (2) The employers in the self-insurance plan shall be members of an
9 association or group of five or more businesses that are in the same trade or industry,
10 including closely related businesses that provide support, services, or supplies
11 primarily to that trade or industry.

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

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

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

26 **§458.1. Association-sponsored self-insured trust**

27 **A.(1) Any ten or more Louisiana employers who are not public entities,**
28 **each of which has a positive net worth, is financially solvent, and is capable of**
29 **assuming the obligations set forth under this Section, and who are all members**

1 of the same trade or professional association may agree to pool any liabilities to
2 their employees relating to the provision of health care benefits for those
3 employers and their employees via a trust established by the association. This
4 arrangement shall not be an insurer, shall not be deemed to be insurance, and
5 shall not be subject to the Louisiana Insurance Code. The member employers
6 of the arrangement likewise shall not be insurers or be subject to the Louisiana
7 Insurance Code.

8 (2) An agreement to pool liabilities under this Chapter shall be set forth
9 in an indemnity agreement signed by the employer, association representative,
10 and fund representative acknowledging and agreeing to the assumption of the
11 liabilities as set forth in this Subpart.

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

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

20 (5) The association establishing the fund shall be responsible for any
21 unpaid claims liability of the fund. Members of the fund shall be in solido
22 guarantors of liabilities of the fund not satisfied by the association due to the
23 association's insolvency.

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

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

1 (c) All books, records, documents, accounts, and vouchers shall be kept
2 in such a manner that the arrangement's financial condition, affairs, and
3 operations can be ascertained and so that its financial statements filed with the
4 commissioner of insurance can be readily verified and its compliance with the
5 law determined. All books, records, documents, original indemnity agreements,
6 accounts, and vouchers may be photographed or reproduced on film. Any
7 photographs, microphotographs, optical imaging, or film reproductions of any
8 original books, records, documents, original indemnity agreements, accounts,
9 and vouchers shall for all purposes, including but not limited to admission into
10 evidence in any court or adjudicatory proceeding, be considered the same as the
11 originals thereof, and a transcript, exemplification, or certified copy of any such
12 photograph, microphotograph, optical imaging, or film reproduction shall for
13 all purposes be deemed to be a transcript, exemplification, or certified copy of
14 the original. Any original so reproduced may thereafter be disposed of or
15 destroyed, as provided for in Subparagraph (d) of this Paragraph, if provision
16 is made for preserving and examining the reproduction.

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

29 (7) Throughout the existence of the fund, at least one of the following

1 conditions shall be satisfied at any given time:

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

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

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

9 (a) Contribution rates shall equal or exceed the sum of projected claims
10 liability for the year, plus all projected costs of operation of the plan for the
11 year, plus an amount equal to any deficiency in the reserves of the plan for the
12 prior year, minus an amount equal to the reserves of the plan in excess of the
13 minimum required level of reserves.

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

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

18 (1) Meets either of the following criteria:

19 (a) Is a tax exempt organization approved by the Internal Revenue
20 Service under the provisions of 26 U.S.C. §501.

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

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

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

29 (b) Produced a newsletter, on no less than an annual basis, which was

1 mailed, via United States mail or sent by electronic mail, to each member.

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

4 §459. Excess stop-loss coverage

5 A. Each self-insurance plan shall include aggregate excess stop-loss coverage
 6 and specific excess stop-loss coverage provided by an insurer licensed by the state
 7 of Louisiana. Aggregate excess stop-loss coverage shall include provisions to cover
 8 incurred, unpaid claims liability in the event of plan termination. A plan shall submit
 9 its proposed excess or stop-loss insurance contract to the commissioner at least thirty
 10 days prior to the proposed self-insurance plan's effective date and at least thirty days
 11 prior to any subsequent ~~to any~~ renewal date. The commissioner shall review the
 12 contract to determine whether it meets the standards established by this Section and
 13 shall respond within thirty days of its submission to him. Any excess or stop-loss
 14 insurance plan must provide coverage with rates not subject to adjustment by the
 15 insurer during the first twelve months.

16 * * *

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

DIGEST

SB 171 Reengrossed

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), 453(D), 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.

Senate Floor Amendments to engrossed bill

1. Technical amendments.