

SENATE BILL NO. 171

BY SENATOR MORRISH

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

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AN ACT

To amend and reenact R.S. 22:459(A) and to enact R.S. 22:452(4) and (5) 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 association-sponsored 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. 22:459(A) is hereby amended and reenacted and R.S. 22:452(4) and (5) 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 employer welfare arrangement, that are not reimbursed or reimbursable by excess of loss insurance, subrogation, or other sources.**

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

\* \* \*

1           **§458.1. Association-sponsored self-insured trust**

2                   **A. A trade or professional association that effects, maintains, and**  
3                   **operates a self-insured trust for the benefit of its members and their employees,**  
4                   **meets all the requirements of this Section, and complies with all other**  
5                   **provisions of this Subpart except R.S. 22:454 and 458 shall be deemed exempt**  
6                   **from the provisions of R.S. 22:454 and 458. A self-insured trust operated under**  
7                   **the provisions of this Section shall be designated an association-sponsored**  
8                   **self-insured trust.**

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

11                           **(1) Meets either of the following criteria:**

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

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

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

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

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

24                                   **(3) Is chartered and domiciled in the state of Louisiana and has been in**  
25                                   **existence since January of 1950.**

26                                   **(4) Is comprised of professionals that possess licenses issued by an**  
27                                   **authority of the state in order to conduct the business of the profession. An**  
28                                   **association whose membership includes members of the profession who no**  
29                                   **longer possess licenses because they have retired shall be deemed to have**  
30                                   **satisfied this requirement if the total number of retired members comprises no**

1 more than twenty percent of the association's overall membership.

2 C. An association-sponsored self-insured trust shall deposit with the  
3 commissioner a safekeeping or trust receipt from a bank doing business within  
4 the state or from a savings and loan association chartered to do business in this  
5 state indicating that the self-insurer has deposited cash or bonds of the United  
6 States, the state of Louisiana, or any political subdivision of the state, of the par  
7 value of not less than the greater of either one of the following items:

8 (1) One hundred thousand dollars.

9 (2)(a) Thirty percent of the self-insurer's outstanding Louisiana-related  
10 reserve liabilities. For the purposes of this Subsection, reserve liabilities shall  
11 be computed with proper regard for the following items:

12 (i) Known claims paid and outstanding.

13 (ii) A history of incurred but not reported claims.

14 (iii) Claims handling expenses.

15 (iv) Unearned premium.

16 (v) An estimate for bad debts.

17 (vi) A trend factor.

18 (vii) A margin for error.

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

22 D. An association-sponsored self-insured trust shall:

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

29 (2) Have applications from not less than two employers and plan to  
30 provide similar benefits for not less than one hundred participating employees.

1                   **(3) Maintain contribution rates for participation under the arrangement**  
2                   **that equal or exceed a funding level established by a report prepared by an**  
3                   **actuarial firm.**

4                   **E.(1) The employers in the self-insurance plan shall be members of an**  
5                   **association as defined in this Section.**

6                   **(2) Each employer member participating in the association-sponsored**  
7                   **self-insurance plan shall sign an indemnity agreement that is also signed by**  
8                   **representatives of the association and the trust. The agreement shall contain**  
9                   **acknowledgment by all parties of their assumption of liabilities as set forth in**  
10                   **this Section.**

11                   **(3) The association sponsoring the trust shall be responsible for unpaid**  
12                   **claims liability of the trust. Employer members participating in the**  
13                   **self-insurance plan shall be in solido guarantors of liabilities of the trust not**  
14                   **satisfied by the association.**

15                   **(4) A board of trustees shall serve as fund managers on behalf of**  
16                   **participants. Trustees shall be plan participants. Trustees shall be elected by**  
17                   **participating employers or by association members who are plan participants.**  
18                   **No participating employer may be represented by more than one trustee. A**  
19                   **minimum of three and a maximum of ten trustees may be elected. Trustees may**  
20                   **not receive compensation but may be reimbursed for actual expenses incurred**  
21                   **in connection with duties as trustee.**

22                   **(5) Trustees shall be bonded in an amount not less than one hundred**  
23                   **thousand dollars from a licensed surety company.**

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

26                   **F.(1) In the event that an association-sponsored self-insured trust is**  
27                   **insolvent, then in addition to any other provision of law or regulation, the**  
28                   **department shall require that the trust file in writing within sixty days a plan**  
29                   **signed by the board of trustees. For purposes of this Subpart, an insolvency**  
30                   **shall be defined as the condition existing when the trust's liabilities before**

1 member distribution payable or dividend payable are greater than the trust's  
2 assets determined in accordance with generally accepted accounting principles  
3 as delineated in the trust's financial statement audited by an independent  
4 certified public accountant. For the purpose of determining insolvency, assets  
5 shall not include intangible property, such as patents, trade names, or goodwill.  
6 The plan submitted by the trust to eliminate the insolvency shall set forth in  
7 detail the means by which the trust intends to eliminate the insolvency which  
8 may include payments by the association, assessments of the members  
9 participating in the trust's self-insurance plan, or a combination thereof. The  
10 trust shall also include the timetable for the implementation of the plan and  
11 requirements for reporting to the department. The department shall review the  
12 plan submitted by the trust and notify the trust of the plan's approval or  
13 disapproval within thirty days of the department's receipt of the plan.

14 (2) Upon determination by the department that a plan submitted by the  
15 trust is disapproved or that a trust is not implementing a plan in accordance  
16 with the terms of the plan, it shall so notify the trust in writing of such  
17 determination.

18 (3) Should a trust fail to file a plan to eliminate an insolvency as  
19 required pursuant to this Section, or should the department notify a trust that  
20 such plan has been disapproved or that the trust is not implementing the plan  
21 according to the plan, the department shall have the following powers and  
22 authority in addition to any other powers and authority granted under law:

23 (a) The department may order the trust to immediately levy an  
24 assessment upon the association, the members of the trust, or both, sufficient to  
25 eliminate the insolvency.

26 (b) Should the trust fail or refuse to levy the assessment, the department  
27 may, in the name of the trust, levy such assessment upon the association, the  
28 members of the trust, or both, sufficient to eliminate the insolvency.

29 G. Association-sponsored self-insured trusts are not members of either  
30 the Louisiana Insurance Guaranty Association or the Louisiana Life and Health

