

SENATE BILL NO. 644

BY SENATOR DONAHUE

1 AN ACT

2 To amend and reenact R.S. 22:453(B), 454(A), 458, 459, 461(B),(C), (D), (E), (F), (G), and
3 (H), and 463, to enact R.S. 22:462(H), and to repeal R.S. 22:454(C) and (D) and
4 461(I), relative to group self-insurers; to provide for application for certificates of
5 authority; to provide for fidelity bonds and insolvency of deposits; to provide for
6 self-insured trusts; to provide for excess stop-loss coverage; to provide for annual
7 audits, examinations by the commissioner, and issuance of annual reports; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 22:453(B), 454(A), 458, 459, 461(B), (C), (D), (E), (F), (G),and (H),
11 and 463 are hereby amended and reenacted and R.S. 22:462(H) is hereby enacted to read as
12 follows:

13 §453. Certificate of authority

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

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

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

26 **(3) Biographical background information, on a form prescribed by the**
27 **commissioner for each person who controls, directly or indirectly, ten percent**

1 or more of the self-insurer and for each director and officer of the self-insurer.

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

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

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

7 (c) The amount and liquidity of its assets relative to the risks to be
 8 assumed by the self-insurer.

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

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

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

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

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

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

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

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

22 ~~(3)~~ (6) A copy of the application for coverage, contract, certificate, or policy
 23 of insurance or schedules of benefits to be issued or provided to persons covered
 24 under the self-insurance plan.

25 ~~(4)~~ (7) A current financial statement verified by the applicant or its
 26 authorized representative showing the applicant's assets, liabilities, and sources of
 27 financial means and support.

28 (8) A copy of a fidelity bond which bond shall comply with all of the
 29 following:

30 (a) Provides protection to the self-insurer against acts of fraud or

1 dishonesty by persons servicing the self-insurer.

2 (b) Provides coverage for each person responsible for servicing the
3 self-insurer.

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

8 ~~(5)~~ (9) A copy of all advertising and marketing materials, including the
9 marketing plan.

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

13 * * *

14 §454. Insolvency deposit

15 A. ~~Prior to the issuance of any~~ All self-insurers shall, before receiving a
16 ~~certificate of authority, under this Subpart, each applicant shall deposit with the~~
17 ~~commissioner safekeeping receipts or trust receipts from insured banking or other~~
18 ~~financial institutions~~ a safekeeping or trust receipt from a bank doing business
19 within the state or from a savings and loan association chartered to do business
20 in this state indicating that the self-insurer has deposited cash, or bonds of the
21 United States, the state of Louisiana, evidencing that the applicant has deposited
22 with said institutions one million dollars, or such other amount as may be authorized
23 by Subsection E of this Section, in cash to guarantee its financial responsibility. No
24 single deposit shall exceed the insured deposit limit of any such banking or financial
25 institution. or any political subdivision of the state, of the par value of not less
26 than the greater of either one of the following items:

27 (1) One hundred thousand dollars.

28 (2) Thirty percent of the self-insurers outstanding Louisiana-related
29 reserve liabilities. For the purposes of this Subsection, reserve liabilities shall
30 be computed with proper regard for the following items:

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- (a) Known claims paid and outstanding.
- (b) A history of incurred but not reported claims.
- (c) Claims handling expenses.
- (d) Unearned premium.
- (e) An estimate for bad debts.
- (f) A trend factor.
- (g) A margin for error.

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

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§458. Self-insured trusts

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

(1) A self-insurer shall maintain at all times unimpaired net assets of not less than one million dollars. The net assets required to be maintained pursuant to this Section shall be in the form of cash, cash equivalents, or bonds or evidences of indebtedness which are direct general obligations or which are secured or guaranteed as to principal and interest by the government of the United States, or any state of the United States.

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

(1) ~~(3)~~ A board of trustees elected by participating employers shall serve as fund managers on behalf of participants. Trustees shall be plan participants. No participating employer may be represented by more than one trustee. A minimum of three and a maximum of seven trustees may be elected. Trustees may not receive compensation but may be reimbursed for actual expenses incurred in connection with

1 duties as trustee.

2 ~~(2)~~ **(4)** Trustees shall be bonded in an amount not less than one hundred fifty
 3 thousand dollars from a licensed surety company.

4 ~~(3)~~ **(5)** Investment of plan funds is subject to the same restrictions which are
 5 applicable to insurers under this Title. ~~All investments shall be managed by a bank
 6 or other financial institution chartered in the state of Louisiana.~~

7 §459. Excess stop-loss coverage

8 **A.** Each self-insurance plan shall include aggregate excess ~~stop-loss~~ **stop-loss**
 9 coverage and specific excess stop-loss coverage provided by an insurer licensed by
 10 the state of Louisiana. Aggregate excess stop-loss coverage shall include provisions
 11 to cover incurred, unpaid claims liability in the event of plan termination. ~~The excess
 12 or stop-loss insurer shall bear the risk of coverage for any employer participating in
 13 the self insurance plan that becomes insolvent with outstanding contributions due.
 14 The plan shall have a participating employer's fund in an amount at least equal to the
 15 point at which the excess or stop-loss insurer shall assume one hundred percent of
 16 additional liability.~~ A plan shall submit its proposed excess or ~~stop-loss~~ **stop-loss**
 17 insurance contract to the commissioner at least thirty days prior to the proposed self-
 18 insurance plan's effective date and at least thirty days subsequent to any renewal
 19 date. The commissioner shall review the contract to determine whether it meets the
 20 standards established by this Section and shall respond within thirty days of its
 21 submission to him. Any excess or ~~stop-loss~~ **stop-loss** insurance plan must provide
 22 coverage with rates not subject to adjustment by the insurer during the first twelve
 23 months.

24 **B. The self-insurer shall possess a written commitment, binder, or policy**
 25 **for stop-loss insurance issued by an insurer authorized to do business in this**
 26 **state and that the commitment, binder, or policy provides all of the following**
 27 **items:**

28 **(1) At least thirty days' notice to the commissioner of any cancellation or**
 29 **nonrenewal of coverage.**

30 **(2) Both specific and aggregate coverage with an aggregate retention of**

1 not more than one-hundred twenty-five percent of the amount of expected
 2 claims for the next plan year and a specific retention amount annually
 3 determined by the actuarial opinion required by R.S. 22:463(B).

4 (3) Both the specific and aggregate coverage required in Paragraph (2)
 5 of this Subsection shall require all claims to be submitted within ninety days
 6 after the claim is incurred and provide a twelve-month claims incurred period
 7 and at least a fifteen-month paid claims period for each policy year.

8 C. On the application of a self-insurer, the commissioner may waive or
 9 reduce the requirement for aggregate stop-loss insurance coverage required by
 10 this Section on a determination that the interests of the participating employers
 11 and employees are adequately protected based on the level of aggregate stop-
 12 loss insurance recommended by the actuary as required by R.S. 22:463(B).

13 * * *

14 §461. Annual audit; rate review

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16 B. This Section shall apply to all self-insurers, ~~however, a self-insurer having~~
 17 ~~direct premiums in this state of less than two hundred fifty thousand dollars in any~~
 18 ~~year and having less than five hundred policyholders in this state at the end of any~~
 19 ~~year shall be exempt from this Section for such year unless the commissioner makes~~
 20 ~~a specific finding that compliance is necessary for the commissioner to carry out~~
 21 ~~statutory responsibilities.~~

22 C. The audit report required in this Section shall be filed with the
 23 commissioner on or before the thirtieth day of the sixth month following the year end
 24 of the self-insurer. Up to two thirty-day extensions may be granted by the
 25 commissioner upon showing by the self-insurer and its independent certified public
 26 accountant of the reasons for requesting such extension and upon determination by
 27 the commissioner of good cause for an extension. The request for extension shall be
 28 submitted in writing not less than ten days prior to the due date in sufficient detail
 29 to permit the commissioner to make an informed decision with respect to the
 30 requested extension.

1 D. The annual audited financial statement shall report the financial condition
2 of the self-insurer as of the end of the most recent fiscal or calendar year and the
3 results of its operations, changes in financial position, and changes in capital and
4 surplus for the year then ended in conformity with ~~statutory~~ **generally accepted**
5 accounting practices prescribed, or otherwise permitted, by the Department of
6 Insurance of the state of domicile of the self-insurer.

7 E. The annual audited financial report shall include the following **items**:

8 (1) ~~Report~~ **The report** of ~~the~~ independent certified public accountant.

9 (2) ~~Balance~~ **A balance** sheet reporting admitted assets, liabilities, ~~capital~~, and
10 ~~surplus~~ **net assets**.

11 (3) ~~Statement~~ **A statement** of gain or loss from operations.

12 (4) ~~State~~ **A statement** of cash flows.

13 (5) ~~Statement~~ **A statement** of changes in ~~capital and surplus~~ **net assets**.

14 (6) Notes to financial statements. These notes shall be those required by
15 generally accepted accounting principles and shall include **the following items**:

16 (a) A reconciliation of difference, if any, between the audited statutory
17 financial statements and the annual statement filed pursuant to this Subpart with a
18 written description of the nature of these differences.

19 (b) A narrative explanation of all significant intercompany transactions and
20 balances.

21 (7) The financial statements included in the audited financial report shall be
22 prepared in a form and using language and groupings substantially the same as the
23 relevant sections of the annual statement of the self-insurer filed with the
24 commissioner, and:

25 (a) The financial statement shall be comparative.

26 (b) Amounts may be rounded to the nearest thousand dollars.

27 (c) Insignificant amounts may be combined.

28 F. Financial statements furnished pursuant to this Section shall be audited by
29 an independent certified public accountant. The audit of the self-insurer's financial
30 statements shall be conducted in accordance with generally accepted auditing

1 standards.

2 G. Every self-insurer required to file an audited financial report pursuant to
 3 this Subpart shall require the accountant to make available for review by the
 4 commissioner, the ~~work papers~~ **workpapers** prepared in the conduct of his audit.
 5 The self-insurer shall require that the accountant retain the audit ~~work papers~~
 6 **workpapers** or a period of not less than five years after the period reported thereon.

7 H. In the conduct of the aforementioned review by the commissioner,
 8 photocopies of pertinent audit ~~work papers~~ **workpapers** may be made and retained
 9 by the department. Such ~~working papers~~ **workpapers** or copies thereof obtained by
 10 the commissioner shall be confidential and shall not constitute a public record. The
 11 ~~work papers~~ **workpapers** of a certified public accountant subject to maintenance and
 12 audit pursuant to this Section shall nonetheless remain the property of the certified
 13 public accountant.

14 * * *

15 §462. Examination by commissioner

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17 **H. In lieu of an examination under this Section of any foreign**
 18 **self-insurer licensed in this state, the commissioner may accept an examination**
 19 **report on the self-insurer as prepared by the department for the self-insurer's**
 20 **state of domicile if the insurance department was, at the time of the**
 21 **examination, accredited under the National Association of Insurance**
 22 **Commissioners' Financial Regulation Standards and Accreditation Program**
 23 **and the examination is performed under the supervision of an accredited state**
 24 **insurance department, or with the participation of one or more examiners who**
 25 **are employed by that accredited state insurance department, and who, after a**
 26 **review of the examination workpapers and report, state under oath that the**
 27 **examination was performed in a manner consistent with the standards and**
 28 **procedures required by their state insurance department.**

29 §463. Annual reports; **actuarial opinions**

30 A. Each self-insurer shall file ~~on or before~~ the first day of March of each year

1 ~~an annual auditor's statement and an annual report signed by the person in charge of~~
 2 ~~the self-insurance plan which shall certify the amount of gross annual premiums or~~
 3 ~~contributions of the participating employers and their employees for the preceding~~
 4 ~~year, the financial condition of the plan, an itemization of plan expenditures, and any~~
 5 ~~other information as may be required by the commissioner.~~

6 ~~B.~~ A. Any plan established or maintained in the state to offer or provide
 7 health care services, indemnification, or payment for health care services, or health
 8 and accident benefits to employees under the provisions of the Employee Retirement
 9 Income Security Act of 1974 (29 U.S.C. §1001 et seq.) shall file, through the
 10 administrator or his designee, within two hundred ten days after the close of such
 11 year a certified copy of the annual report required pursuant to 29 U.S.C. §1023 with
 12 the commissioner. The filing required herein shall in no way purport to regulate or
 13 affect the plan or its benefits.

14 **B.(1) Each self-insurer shall file, within ninety days of the end of the**
 15 **fiscal year, an actuarial opinion prepared and certified by an actuary who meets**
 16 **the following requirements:**

17 **(a) The actuary is not an employee of the self-insurer.**

18 **(b) The actuary is a fellow of the Society of Actuaries, a member of the**
 19 **American Academy of Actuaries, or an enrolled actuary under the Employee**
 20 **Retirement Income Security Act of 1974 (29 U.S.C. §1001 et seq.).**

21 **(2) The actuarial opinion required under this Subsection shall include**
 22 **the following items:**

23 **(a) A description of the actuarial soundness of the self-insurer, including**
 24 **any actions recommended to improve the actuarial soundness of the**
 25 **arrangement.**

26 **(b) The amount of reserves recommended to be maintained by the**
 27 **arrangement.**

28 **(c) The level of specific and aggregate stop-loss insurance recommended**
 29 **to be maintained by the arrangement.**

30 **C. (1) Reserves required by this Section shall be computed with proper**

1 actuarial regard for the following items:

2 (a) Known claims, paid and outstanding.

3 (b) A history of incurred but not reported claims.

4 (c) Claims handling expenses.

5 (d) Unearned premium.

6 (e) An estimate for bad debts.

7 (f) A trend factor.

8 (g) A margin for error.

9 (2) Reserves required by this Section shall be maintained in cash, cash
10 equivalents, or bonds or evidences of indebtedness which are direct general
11 obligations or which are secured or guaranteed as to principal and interest by
12 the government of the United States, or any state of the United States.

13 * * *

14 Section 2. R.S. 22:454(C) and (D) and 461(I) are hereby repealed.

15 Section 3. This Act shall become effective upon signature by the governor or, if not
16 signed by the governor, upon expiration of the time for bills to become law without signature
17 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
18 vetoed by the governor and subsequently approved by the legislature, this Act shall become
19 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____