

MINUTES OF THE House COMMITTEE ON Labor and Industry

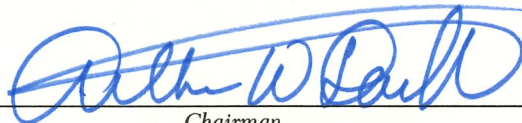
Held in Room 521-S, at the Statehouse at 9:30 a. m./~~p.m.~~,
on February 16, 1983, 19 .

All members were present except:

Representatives Dorothy Nichols, Edgar Moore, Anthony Hensley
All excused.

The next meeting of the Committee will be held at 9:30 a. m./~~p.m.~~,
on February 17, 1983.

These minutes of the meeting held on _____, 19____ were
considered, corrected and approved.



Chairman

The conferees appearing before the Committee were:

Mr. Bryce Moore, Director of the Kansas Division of Workman's Compensation
Mr. Dick Smelzer, Administrative Officer for the KS Div. of Workman's Comp
Mr. Michael Francis, American Insurance Association
Mr. Ron Todd, Commissioner of Insurance
Mr. Glenn Cogswell, Alliance of American Insurors

Chairman Douville called the meeting to order at 9:30 a.m.

Chairman Douville called Mr. Bryce Moore to the speakers stand to explain Self Insurance for Individuals. Mr. Moore stated that the basic philosophy of the Division of Workman's Compensation is to only allow self insurance permits to employers that have the financial ability to meet the requirements of the Kansas Workman's Compensation Act. A self insurance permit is good for one year only.

Mr. Moore then introduced Mr. Dick Smelzer to the committee to speak on what he does in determining whether self insured should be issued a permit or a permit renewed.

Mr. Smelzer said that what he does is look at financial conditions of the applicant. They analyze several ratios, such as the current ration, which includes a review of the cash, accounts receivable and the inventory. They look at these in relationship to the accounts payable and also other debts that they might have. Another key item they review is the relationship to the long term debt to the stock holders equity. Once they decide if they are financially stable they then look to find out what the letter of credit should be. Accounts must be certified by a public accountant. Excess and aggregate insurance is also required.

A discussion followed.

Chairman Douville then called Mr. Michael Francis to the speakers stand. Mr. Francis said that the American Insurance Association is generally opposed to group self insurance. But, it is not from a stand point of additional competition to the insurance industry. It's more of a matter of proceeding with caution. Mr. Francis stated that insurance is based upon an experience of loss. It's a calculated risk thats taken. Group insurance programs have not been around that long that you can gage what their experience is going to be. The longest has been in existance for 9 years. That's not a very long time. In that regard, many of the requirements that are found in S.B. 8 on solvency are a result of an A.I.A. guideline on group self insurance. From that standpoint A.I.A. is not totally opposed to S.B. 8. On behalf of the Association Mr. Francis asked that the committee closely question and proceed cautiously.

A short discussion followed.

CONTINUATION SHEET

Minutes of the House Committee on Labor and Industry, ~~XX~~
February 16, 1983.

Chairman Douville then called Commissioner Ron Todd to the speakers stand. Mr. Todd answered the committee's questions pertaining to S.B. 8.

Mr. Glenn Cogswell then took the speakers stand. Mr. Cogswell stated that the Alliance takes the position that if various measures and regulations are required to protect the workers and protect the people involved in workman's compensation, that if these requirements are necessary for insurance companies, that surely some of them are also necessary for groups such as this. Mr. Cogswell further stated that in the Senate Committee his group proposed two amendments, one of which was adopted and is in the amended version of the bill. The other was not adopted and his group would like to propose consideration by this committee of that proposed amendment which is simply to require that the group deposit and maintain with the commissioner either acceptable assurities or post assurity bond issued by the Department of Assurity authorized to do business in Kansas, in an amount not less than 75% of the normal annual premium of the pool. Mr. Cogswell passed out attachment #3 to the committee, and asked that the committee consider this.

A short discussion followed.

The committee was given attachments #'s 1 and 2. Chairman Douville requested the members of the committee to go over attachment #1 tonight. Attachment #1 is a memorandum dated Feb. 15, 1983, regarding S.B. 8. Attachment #2 is a Declaration Of Trust.

Chairman Douville adjourned the meeting at 10:05 a.m.

2-16-83 Guest List

Michael [unclear]	Topoka	DIA
DAN MORGAN	Topoka	AGC of KS
Jim Hutton	Olathe, Kan.	Builder's Assn.
Tom [unclear]	Topoka	AGC of KS
Ed [unclear]	"	Kan Assn of P & S Co.
Harry D. Nelson	Wichita	AFL-CIO
LARRY MAGILL	Topoka	I.I.A.K.
DAN RAMLOW	Topoka	Ks. Contractors Assn.
Ralph McGee	Topoka	RS AFL-CIO

2-16-83 #1

MEMORANDUM

February 15, 1983

TO: Representative Arthur Douville, Chairman, House
Committee on Labor and Industry

FROM: Kansas Legislative Research Department

RE: Summary of S.B. 8 (Worker's Compensation
Self-Insurance Pools)

Due to the length and complexity of S.B. 8, a section-by-section summary of the bill has been prepared.

New Section 1

Section 1 authorizes five or more employers, regardless of domicile, to form a self-insurance pool to underwrite their own worker's compensation for their employees as long as the employers are members of the same trade or professional association (which has been in existence for five years) and are engaged in the same or similar type of business. Such pools shall not be deemed to be insurance companies and therefore, are not subject to the statutes regulating insurance companies, except in certain areas as noted in the bill.

New Section 2

An application to operate as a pool must be filed with the Insurance Commissioner at least 60 days prior to the proposed inception date of the pool. The application shall include:

1. a copy of the bylaws or articles of incorporation;
2. a copy of the trust agreement;
3. a designation of the members of the board of trustees and the administrator;
4. the address where the books and records of the pool are maintained;
5. an individual application for each initial member of the pool accompanied by a current certified financial statement;
6. a certified financial statement showing the combined net worth of the members of the pool to be at least \$1,000,000;

Handwritten initials/signature

7. a certified financial statement showing that the pool can meet its financial obligations;
8. evidence that the annual gross premiums will be at least \$250,000;
9. an indemnity agreement which jointly and severally binds the pool and each member to comply with the provisions of the Worker's Compensation Act;
10. proof that not less than 25 percent of the annual premiums will be paid into a depository;
11. a copy of the procedures adopted by the pool to provide underwriting services;
12. a copy of the procedures used to provide claims adjusting and reporting of loss data;
13. a confirmation of specific and aggregate excess insurance; and
14. any other information required by the Insurance Commissioner.

The pools have a continuing obligation to keep the Commissioner apprised of changes in any of this data.

New Section 3

This section provides that each pool shall execute an irrevocable consent which provides that service on the Insurance Commissioner shall be sufficient service for any cause of action against the pool in any court of this state.

New Section 4

This section establishes requirements for a renewal of a certificate to operate as a self-insurance pool in Kansas. An application for renewal must contain certain information specified in New Section 2, namely items 6 through 14. If the application is denied by the Insurance Commissioner, the applicant is afforded a hearing on the denial. The costs of such a hearing are assessed against the applicant.

All certificates shall expire on April 30 unless sooner suspended/revoked by the Commissioner.

The Insurance Commissioner is given the authority to examine the pools if he considers it necessary. An examination must be conducted once every five years. Each pool shall submit a certified independent audited financial statement on or before March 31 of each year. If the Commissioner determines that the pool does not meet solvency criteria, he may order the pool to take corrective action. If the pool fails to do so, the Commissioner may revoke the certificate to operate as a pool. The Attorney General shall commence the appropriate action to dissolve the pool or to enjoin the pool from doing/transacting business in Kansas.

New Section 5

This section clarifies that contributions to the pools shall be based on manual rates as determined by the National Council on Compensation Insurance. At least 70 percent of the premium must be placed into a designated depository for the payment of claims. The remainder of the premium dollar is placed in a fund to pay taxes, fees and administrative costs.

Any surplus moneys shall be refunded to the participating members after it is apparent that adequate reserves exist to cover contingent claims.

New Section 6

This section provides that any funds not immediately needed may be invested in certain liquid assets including: bonds guaranteed by the United States; certificates of deposit in a federally insured bank; or in shares or savings deposits in a federally insured savings and loan association.

New Section 7

This section specifies how the administration of the self-insurance pools is to be funded. A fund is created in the state treasury denominated as the Group-Funded Workers' Compensation Pools Fee Fund which is to be administered by the Insurance Commissioner.

Each pool shall be assessed an amount determined by the Commissioner to fund the administration of the pools by the Insurance Department. The assessment is payable by July 1, of each year.

New Section 8

This section subjects the self-insurance pools to the gross premium tax (1 percent). The tax is determined in the same manner as the gross premium tax paid by domestic insurance companies.

New Section 9

This section provides that each pool shall be subject to:

1. The annual assessment to fund the Worker's Compensation Fund (K.S.A. 1982 Supp. 44-566a);
2. the annual assessment to fund the administration of the Workmen's Compensation Law (K.S.A. 74-713); and

3. the provisions of the Fair Claim Practices Act.

New Section 10

This section provides that new prospective members of a pool must submit an application to the board of trustees or the administrator of the pool. Any such application is accepted only if approved by the Commissioner.

A participating member may elect to terminate their participation or be terminated by the pool. If this occurs, the Commissioner must be notified within ten days. The pool must continue coverage for the terminated member for 30 days or until notified by the Commissioner that the former member has acquired coverage elsewhere.

New Section 11

This section provides that the operation of the pool shall be the responsibility of the board of trustees. The board shall consist of 3-11 members who are elected by the pool. The majority of the trustees must be actual members of the pool. Trustees must be residents of the state or officers of corporations authorized to do business in the state. Trustees have the following responsibilities:

1. designating an administrator for the fund who shall furnish a fidelity bond;
2. retaining control of all money paid into the pool and insuring that the funds are deposited into the appropriate accounts;
3. insuring that appropriate audits of the various accounts and records of the pool are conducted;
4. not extending credit for the payment of premiums;
5. not borrowing money on behalf of the pool without the approval of the Commissioner; and
6. delegating authority for specific functions including investing surplus moneys and approving applications for membership.

New Section 12

This section provides that any person soliciting the business of worker's compensation for a self-insurance pool must be licensed in the state of Kansas to perform such a function.

Section 13

This section provides that an employer, who would otherwise be excepted from the provisions of the Workmen's Compensation Act, agrees to be subject to the act by becoming a member of a qualified group funded worker's compensation pool.

Section 14

This section contains conformity changes to existing statutes which provide that membership in a self-insurance pool is an acceptable method of providing worker's compensation coverage for employees.

Section 15

This section basically provides that the self-insurance pools shall be required to pay assessments to fund the Worker's Compensation Fund.

Section 16

This section grants authority to the Commissioner of Insurance to promulgate regulations governing the administration of the self-insurance pools.

Section 17

This section exempts the records of the self-insured pool members which are maintained by the Secretary of Human Resources from examination by the Division of Worker's Compensation because the Division already has access to that information.

Section 18

This section provides that the self-insurance pools shall be required to pay assessments to fund the expenses of administering the Worker's Compensation Law.

Section 19

This section limits the amount of the assessment provided in Section 18 to 3 percent of the worker's compensation benefits paid by a pool.

Section 20

This section provides that if a pool fails to pay the assessment provided by Section 18, the Commissioner may revoke the certificate to operate as a self-insurance pool.

Section 21

This section allows the Director of Worker's Compensation to acquire data from a self-insurance pool as to the payment of workers' compensation benefits.

Section 22

This section provides that a self-insurance pool may appeal from an assessment to the district court of Shawnee County.

Section 23

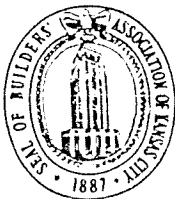
Repeals appropriate sections.

Section 24

Makes the act effective July 1, 1983.

If I can be of any further assistance to you in this matter, please do not hesitate to contact me.

MAB/jsf



Builders' Association Self-Insurers' Fund

632 WEST 39th STREET • KANSAS CITY, MO. 64111 • PHONE 816/531-4741



BUILDERS' ASSOCIATION SELF-INSURER'S FUND

DECLARATION OF TRUST

THIS AGREEMENT, made and entered into as of this 25th day of October, 1982, by and between the BUILDERS' ASSOCIATION OF KANSAS CITY, a Missouri corporation (hereinafter referred to as the "Association") and the undersigned TRUSTEES appointed to serve as provided herein and their successors.

W I T N E S S E T H :

WHEREAS, the Association desires to create the Builders' Association Self-Insurer's Fund (hereinafter referred to as the "Fund") as a trust to administer a program of workers' compensation for its members desiring to participate therein and qualifying therefor in the State of Missouri;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the Fund shall be and is hereby established as follows:

ARTICLE I

Definitions

Participant:

A company, firm, corporation, individual, partnership or other legal entity which is engaged in the building construction industry in the State of Missouri and which is a participant in the Fund and a member in good standing in the Association.

Service Agent:

An individual, co-partnership, corporation, firm or other legal entity engaged in the business of providing the types of insurance services required or desired by the Fund and which has been approved by the Division of Workers' Compensation, State of Missouri.

Trustees:

The trustees appointed or elected to serve on the Board of Trustees of the Fund as provided herein and/or in the bylaws of the Fund.

Atch. 2

ARTICLE II

Creation of the Trust

There is hereby established and created a trust which shall be known as the Builders' Association Self-Insurance Fund, and the trustees thereof may hold property, invest and reinvest its funds, enter into contracts and in all matters act in behalf of the Fund and in its name. This Fund shall be used for the purpose as hereinafter set forth.

ARTICLE III

Purpose

The fund is created and this Declaration of Trust is executed for the express purpose of establishing a group self-insurers' fund to provide Workers' Compensation coverage for the members.

ARTICLE IV

Designation of Trustees

Section 1. Number of Trustees. The operation and administration of the Fund shall be the responsibility of a Board of Trustees consisting initially of five (5) individual trustees.

Section 2. Appointment of Trustees. The initial trustees are hereby appointed by the Association for terms expiring as follows:

One-year term expiring
September 30, 1983

Two-year term expiring
September 30, 1984

Three-year term expiring
September 30, 1985

Each trustee heretofore named and each successor trustee shall acknowledge and consent to their appointment as trustees by giving written notice of acceptance to such appointment to the Chairman of the Board of Trustees of the Fund. Successor trustees shall be elected and appointed as provided in the bylaws of the Fund.

Section 3. Resignation of a Trustee. A trustee may resign and become and remain fully discharged from all further duties or responsibility hereunder, by giving at least sixty (60) days' prior notice in writing to the Chairman of the Board of Trustees of the Fund. Such notice shall state the date said resignation shall take effect and such resignation shall take effect on such date unless a successor trustee shall have been appointed at an earlier date, in which event the resignation shall take effect immediately upon the appointment and acceptance of such successor trustee.

Except as provided in section 2 above, any trustee, and each successor trustee, shall serve, and shall continue to serve, a three (3) year term, subject to the provisions of the sections in this Article and the bylaws regarding resignation, removal, death, incapacity or refusal of a trustee to act.

A trustee may be removed by a majority vote of all trustees.

Section 4. Appointment of a Successor Trustee. In the event any trustee duly appointed or elected to serve on the Board of Trustees of the Fund shall die, resign, become incapacitated, be removed or refuse to act, a successor trustee shall be appointed forthwith. Each appointment shall be in accordance with Article IV, Section 2.

Section 5. Trustees' Title. In case of death, resignation, removal, refusal or inability to act by any one or more of the trustees, the remaining trustees shall have all of the powers, rights, estates and interest of the Fund and shall be fully empowered to carry out its purposes.

ARTICLE V

Powers and Duties of the Trustees

Section 1. Authority of Trustees. The trustees shall have the power and authority and shall be charged with the duty of general supervision and operation of the Fund and

shall conduct the business activities of the Fund in accordance with this Declaration of Trust and the laws of the State of Missouri and the rules and regulations of the Missouri Division of Workers' Compensation.

Section 2. Bylaws. The trustees may adopt and from time to time amend bylaws for the regulation and management of the Fund as may, in their discretion, be proper and necessary, provided the bylaws shall not be inconsistent with the provisions of this Declaration of Trust, the laws of the State of Missouri, or the rules and regulations of the Missouri Division of Workers' Compensation.

Section 3. Trustees' Liabilities. No trustee shall be liable for any action taken pursuant to this Declaration of Trust in good faith or for an omission, except gross negligence, or for any act of omission or commission by any other trustee or by any employee or any other trustee.

Section 4. Reliance on Counsel's Opinion. The trustees may consult with legal counsel concerning any questions which may arise with reference to their duties and powers or with reference to any other matter pertaining to this Declaration of Trust or the Fund created hereby; and the opinion of such counsel shall be full and complete authorization and protection in respect to any action taken or suffered by the trustee hereunder in good faith in accordance with the opinion of such counsel, and the trustees shall not be liable therefor.

Section 5. The Association. Neither the Association nor any officers, directors, employees or members thereof shall have any liability under this Declaration of Trust, except to the extent that such liability may otherwise arise by virtue of membership in the Fund.

ARTICLE VI

Miscellaneous

Section 1. Amendments. This Declaration of Trust may be amended in writing at any time by agreement between the Association and the trustees upon approval of a majority of the then acting trustees.

Section 2. Termination of Trust. The Fund may be terminated at any time by written agreement between the Association and the trustees, approved by a majority of the then acting trustees.

This Declaration of Trust shall continue in full force and effect as it may be amended and supplemented from time to time, subject, however, to the above termination provision.

In the event of termination, the remaining funds available in the Fund after providing for all outstanding obligations shall be distributed to the current participants and/or used for their further benefit consistent with the purposes of the Fund.

Section 3. Situs of the Fund. This Declaration of Trust is executed by the parties hereto and accepted by the trustees in the State of Missouri, and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of said state.

IN WITNESS WHEREOF, this Declaration of Trust has been executed, and, by their signatures hereto, the initial trustees accept their appointment as such and agree to serve in such capacity.

BUILDERS ASSOCIATION OF KANSAS CITY

By James L. Hartley

Title Secretary Oct 25, 1982

J. R. Smith
Trustee

Bartlett Brady
Trustee

Carl L. Morris
Trustee

T. E. Lewis
Trustee

[Signature]
Trustee

2-16-83
#3

0083 (l) A copy of the procedures adopted by the pool to provide
0084 claims adjusting and reporting of loss data.
0085 (m) A confirmation of specific and aggregate excess insur-
0086 ance.
0087 (n) Any other relevant factors the commissioner may deem
0088 necessary.

the following:
(a)

0089 New Sec. 3. Every group-funded workers' compensation
0090 pool applying for authority to operate a pool in this state, as a
0091 condition precedent to obtaining such authority, shall file in the
0092 insurance department) A written irrevocable consent, that any
0093 action may be commenced against such pool in the proper court
0094 of any county in this state in which the cause of action shall arise
0095 or in which the plaintiff may reside by the service of process on
0096 the commissioner of insurance of this state, and stipulating and
0097 agreeing that such service shall be taken and held in all courts to
0098 be as valid and binding as if due service had been made upon the
0099 trustees or the administrator of such pool. The consent shall be
0100 executed by the board of trustees and shall be accompanied by a
0101 duly certified copy of the resolution passed by the trustees to
0102 execute such consent.)

(b) Deposit and maintain with the Commissioner acceptable securities, or post a surety bond issued by a corporate surety authorized to do business in the State of Kansas, in an amount not less than seventy-five percent (75%) of the normal annual premium of the pool, but not less than \$200,000.

0103 New Sec. 4. (a) The application for a new certificate or a
0104 renewal of an existing certificate shall be signed by the trustees of
0105 the trust fund created by the pool. Any application for a renewal
0106 of an existing certificate shall meet at least the standards estab-
0107 lished in subsections (f), (g), (h), (i), (j), (k), (l), (m) and (n) of
0108 section 2. After evaluating the application the commissioner shall
0109 notify the applicant that the plan submitted is approved or
0110 conversely, if the plan submitted is inadequate, the commissioner
0111 shall then fully explain to the applicant what additional require-
0112 ments must be met. If the application is denied, the applicant
0113 shall have 10 days to make an application for hearing by the
0114 commissioner after the denial notice is received. A record shall be
0115 made of such hearing and the cost thereof shall be assessed
0116 against the applicant requesting the hearing.

0117 (b) All certificates granted hereunder shall expire on April 30
0118 of each year unless sooner suspended or revoked by the commis-
0119 sioner.

Att. 3