

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND TOURISM

The meeting was called to order by Sen. Bill Morris at
Chairperson

1:30 ~~am~~/p.m. on January 24, 1983 in room 529-S of the Capitol.

All members were present ~~except~~.

Committee staff present:

Mark Burghart, Research Department
Bruce Kinzie, Revisor
Louise Cunningham, Secretary

Conferees appearing before the committee:

Arnold Berman, Attorney, Department of Human Resources
Wayne Maichel, AFL-CIO
Dan Ramlow, Kansas Contractors Association
Jim Hutton, Associated General Contractors of Kansas, Kansas City
Tom Slattery, Associated General Contractors of Kansas
Glenn Cogswell, Alliance of American Insurers
Larry Magill, Independent Insurance Agents of Kansas
Bill Sneed, Kansas Insurance Department
Larry Smith, Fort Scott, Western Casualty Company
Homer Cowan, Western Insurance Companies

On a motion from Senator Werts and a second from Sen. Arasmith the Minutes of January 17th were approved. Motion carried.

Arnold Berman, Attorney, DHR, requested introduction of a bill for the Department of Human Resources concerning the Wage Payment Act. He said criminal penalties in the Act are currently inappropriate and should be removed from the Act and also, there could be a reduction of costs in the implementation of the Act; one reason being the use of too much certified mail which was unnecessary. A motion was made by Sen. Werts and seconded by Sen. Feleciano to introduce the bill as a committee bill. Motion carried.

S.B. 8 - Providing for group-funded workers' compensation pools by five or more employers.

This bill had been studied during the interim and would allow certain qualified employers to form self-insurance associations to underwrite their own worker's compensation coverage. A copy of the Committee Report on Proposal No. 19 - Worker's Compensation - Self-Insurance Associations, had been supplied to members of the Committee. (Attachment 1). Chairman Morris said that after the Committee Report was filed there were some definitions that needed clarification so the interested parties had been called together last week and the proposed amendment was the result. (Attachment 2). The participants of the meeting were from the Department of Human Resources, independent insurance agents and members of the Associated General Contractors. They all agreed to the amendments.

Wayne Maichel, AFL-CIO, said they had been concerned about safeguards but they supported S.B. 8 as written. He had not seen the amendments.

Dan Ramlow, Kansas Contractors Association, requested the Committee to support S.B. 8. He said they had this in Missouri and since the contractors work across state lines, this would be very helpful. He wanted employers to have a chance to join such a pool and said it was very important and necessary to help hold costs down. He submitted a publication called "Pooling Your Risks" from Business Insurance dated December 7, 1981. (Attachment 3).

(over)

Jim Hutton, Associated General Contractors, urged support of S.B. 8. He said 300 contractors working in Kansas and Missouri were interested in this legislation. They had worked with others during the interim and safeguards had been written into the bill. There would be a big savings to members of the Association and these savings could be passed on to the consumer. He had gone over the amendments and supported them.

Tom Slattery, Associated General Contractors, said currently employers in Kansas could be self-insured if they were big enough and could provide sufficient proof of financial responsibility. S.B. 8 would provide for groups of employers to become self-insured. A copy of his testimony is submitted. (Attachment 4). He said the amendments were acceptable to them. They were non-substantive and do not change the effect of the bill. He was questioned about what would happen if one member goes bankrupt. He said the fund would keep going. The Insurance Commissioner will watch and get financial statements. Anytime there is a problem he has the power to intervene.

Glenn Cogswell, Alliance of American Insurers, said generally they support S.B. 8. He said there were two additional safeguards to consider. He felt there should be a surety bond requirement and there should be annual filing of reports to the Insurance Commissioner.

Larry Magill, Independent Insurance Agents of Kansas, said they opposed H.B. 2789 last year because they felt it would create insurance companies outside the code of Kansas. Their concerns were addressed by S.B. 8 and the bill was now a good compromise in terms of safety and financial integrity.

Bill Sneed, Kansas Insurance Department, said he was representing the Insurance Commissioner, Fletcher Bell. Their office had been involved in this from the beginning. They had been concerned because the administrative duties would be going through their office. Their objective was to make sure that they had a bill that was administratively feasible. S.B. 8 would do that. The pools would also be subject to taxes the same as other insurance companies pay. The cost of administration would be assessed against the pools. He said the Committee looked at the surety bond issue and present statutes would allow the Commissioner to require up to monthly reports if the Department feels it is necessary. Not requiring surety bonds would be a savings to the pool.

Larry Smith, Ft. Scott, Western Casualty Company, said they were involved with the bill this summer and were concerned about financial integrity. They do not oppose the bill in its present form (with amendments).

Homer Cowan, Western Insurance Companies, said this was a well drafted bill. It would be competition but they believe in that. Financial integrity was very important. All of the mechanism would be placed on the Insurance Department. This concept is spreading rapidly and there may be a breakdown in some of the states.

Meeting was adjourned.

SENATE LABOR, INDUSTRY & TOURISM COMMITTEE

Date 1-24-83 Place 529-S Time 1:30

GUEST LIST

NAME

ADDRESS

ORGANIZATION

<i>Harold Lange</i>	724 Kansas Ave.	Ks. Assoc. Broadcasters
DAN MORGAN	200 W. 33rd	AGC of Ks.
B MOORE	5030 W 26th Ave	DIV of WOLVES Comp
Deck Smelser	5513 W. 27th Terr	" " "
<i>Glenn Coulter</i>	316 W. 33rd - Topeka	Kansas Contractors Assn
William W Sneed	420 W 9th	Ks. Ins Dept
DAN RAMLOW	Topeka	Ks. Contractors Assn.
KERRY P LANDIS	"	CHRISTIAN SERVICE SOCIETY ON PUBLIC AFFAIRS IN KANSAS
LARRY MAGILL	TOPEKA	I.I.A.K.
Wayne Maicher	Jop	Kans. AF of CIO
<i>Walter James</i>	Topeka	PIA
Garry Smith	St Scott	Western Cox
Mark Bennett	Jop	AJA
Jim Yemally	Topeka	NFIB - Kansas
Arnold Berner	Topeka	Human Resources
Glenn D. Caswell	Topeka	Alliance of American Insurers
Steve Durham	Topeka	Associated Press
Steve Treaster	"	Gov office
Rob Hagan	Topeka	KACI

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COMMITTEE REPORT

TO: Legislative Coordinating Council
FROM: Special Committee on Labor and Industry
RE: PROPOSAL NO. 19 - WORKER'S
COMPENSATION - SELF-INSURANCE
ASSOCIATIONS

Proposal No. 19 directed the Special Committee on Labor and Industry to determine the desirability of authorizing employers to form self-insurance associations to provide worker's compensation coverage for their employees. The study was requested by the 1982 House Committee on Labor and Industry after it had considered H.B. 2794. That measure would have allowed certain qualified employers to form self-insurance associations to underwrite their own worker's compensation coverage. The bill died in the House Committee.

Background

Worker's compensation statutes in all 50 states require employers to provide certain benefits to employees who are injured on the job or, in most states, who suffer from a work-related occupational disease. To guarantee compliance with the law, employers are required to provide insurance or other security provisions which demonstrate their ability to satisfy their compensation obligations.

In Kansas, employers currently provide for worker's compensation through the purchase of private insurance or through a form of self-insurance. K.S.A. 44-532 requires each employer to purchase insurance through an insurance carrier authorized to offer worker's compensation insurance in Kansas

_____ Senate Bill 8 accompanies this report.

Heh. 1

or to supply proof to the Director of Worker's Compensation of the financial ability to pay worker's compensation by self-insurance. The intentional failure of an employer to comply with these requirements subjects the employer to a criminal penalty of a class C misdemeanor.

Most employers in Kansas purchase private insurance, which then provides the statutorily required benefits to an injured worker in the same manner as any insurance policy, i.e., through the filing of claims against the policy. However, at the present time a total of 209 employers have elected to become self-insured employers. These are usually the larger employers in the state. Self-insurers are required to supply information to the Director of Worker's Compensation as to their ability to pay benefits claims.

The increasing cost of worker's compensation insurance has caused some employers to explore other methods of providing worker's compensation benefits to injured workers. One alternative under consideration is the group self-insurance concept. Under that approach, certain qualified employers would form self-insurance associations to underwrite worker's compensation coverage for participating members. The self-insurance associations would be subject to strict solvency criteria and would be regulated by the appropriate state insurance regulatory authority. Both 1981 H.B. 2502 and 1982 H.B. 2794 would have authorized the formation of such associations in Kansas.

Committee Activity

The Committee received testimony on one full day and devoted another full day to the review of a bill draft authorizing the formation of self-insurance associations in

Kansas. Those addressing the Committee included representatives of the following groups and organizations: Associated General Contractors of Kansas; Western Insurance Companies; Independent Insurance Agents of Kansas; Alliance of American Insurers; American Insurance Association; Farmers Insurance Group; Professional Insurance Agents; Kansas Association of Property and Casualty Insurance Companies; Kansas Department of Human Resources; and Kansas Insurance Department.

Testimony Received by the
Committee

Associated General Contractors of Kansas (AGC). A representative of the Associated General Contractors of Kansas stated that his organization had examined the self-insurance association concept as one method of containing the cost of worker's compensation coverage for employees. It was noted that two years ago only seven states authorized employers to form self-insurance associations to underwrite their own worker's compensation coverage. Today, 22 states and the District of Columbia authorize the formation of such associations.

Under the self-insurance association plan, employers who are members of the same trade or professional association and who are engaged in the same or similar type of business may enter into agreements to pool their liabilities for worker's compensation benefits. Each applicant to a group funded pool must submit a financial statement for examination. If the examination reveals that the applicant is financially responsible, then the application to join the pool will be approved. This is one method of guaranteeing the financial integrity of the pool. Participating members would also be

required to guarantee that should the pool become insolvent, the individual members will be jointly and severally liable for any obligations arising from worker's claims.

According to the AGC, approximately 70 percent of each premium dollar paid into a pool would be deposited into a fund to pay losses. The remaining 30 percent would be used to pay expenses such as administration expenses, gross premium tax, brokerage fees and claims service company fees. The money in the funds would be invested in relatively liquid assets until needed. Once it is determined that an adequate reserve exists for contingent liabilities, any excess premiums at the end of an operating year would be returned to the member employers as a dividend.

The AGC stated that a self-insurance association pool normally would contract with a service company to provide claim examinations, legal defense, informational data, safety programs, rehabilitation services and purchase of reinsurance commitments.

A consultant who presented testimony on behalf of AGC stated that group self-insurance has proven itself to be a sound way of providing worker's compensation coverage if properly structured. He noted that because of the various safeguards built into the existing operating programs, there has never been a worker who has been denied worker's compensation benefits because of the failure of a self-insurance association program. The experience has been that such association members have benefited from reduced premiums and employees have received prompt claim service.

Insurance Industry. Representatives of the major insurance groups shared many concerns about the self-insurance associations. They indicated that they could not

oppose the formation of such associations if the associations were subject to essentially the same regulation as domestic insurance companies. These persons regard self-insurance associations as "mini-insurance companies" and believe therefore, that they should be subject to the same strict solvency criteria as admitted insurance carriers in Kansas. In the opinion of the insurance industry representatives, some of the requirements to which the self-insurance associations should be subject include:

1. fidelity bonds to cover contingent liabilities;
2. gross premium tax;
3. annual assessment for the Worker's Compensation Fund;
4. annual assessment for the payment of administrative expenses of the Director of Worker's Compensation;
5. standards for prompt claim service;
6. Fair Trade Practices Act, K.S.A. 40-2401 et seq.; and
7. basic financial solvency criteria.

The insurance representatives indicated that if the associations were not subject to the same regulation as domestic insurance companies, then the associations would have an unfair competitive advantage. There was also a question raised as to whether such associations would be capable of paying claims arising from a major catastrophe, such as occurred in the case of the asbestos crisis.

Insurance Department. A spokesperson for the Kansas Insurance Department stated that the Department had no formal position on the proposal. However, the Department believes that if a bill were to be recommended by the Committee, the bill should contain provisions for the annual assessment for the Worker's Compensation Fund and an annual assessment to cover the administrative expense associated with the regulation of the self-insurance associations by the Kansas Insurance Department.

Department of Human Resources

Division of Worker's Compensation. A spokesperson for the Division of Worker's Compensation of the Department of Human Resources stated that the Division had no formal position on the proposal. The Division's main concern is that injured workers receive benefits promptly.

Committee Conclusions and Recommendations

The Committee recommends the introduction of Senate Bill 8 which would authorize certain qualified employers to form self-insurance pools to underwrite their own worker's compensation coverage. In order to form such a pool, the participating employers would be required to have a combined net worth of a minimum of \$1 million and an annual gross premium of at least \$250,000. The Committee believes that this legislation would help some employers to contain the escalating cost of providing worker's compensation coverage. Expert testimony presented to the Committee indicated that properly structured self-insured pools can be expected to provide worker's compensation coverage for employees which is comparable to that provided under conventional methods,

but at a substantially reduced cost to the employer. It is hoped that such legislation will provide an alternative that some employers will be able to use and which will help them to reduce the cost of operating their businesses. Savings resulting from the operation of the self-insurance pools could be used to strengthen and expand business operations.

However, the Committee supports the enactment of such legislation only if it contains stringent safeguards designed to protect the financial solvency of each self-insurance pool. The Committee believes that the solvency criteria contained in its proposed legislation coupled with regulation of such pools by the Kansas Insurance Department will insure the financial solvency of any self-insurance pool operating in the state of Kansas.

In conclusion, the Committee believes that its proposal for creation of self-insurance pools will not result in an unfair competitive advantage with regard to domestic insurance companies which offer worker's compensation coverage. This is because the pools would be subject to virtually the same regulations and solvency requirements and the same taxes and assessments as the insurance companies.

Respectfully submitted,

_____, 1982

Sen. Bill Morris,
Chairperson
Special Committee on Labor
and Industry

Rep. Arthur Douville,
Vice-Chairperson
Sen. Norma Daniels
Sen. Roy Ehrlich
Sen. William Mulich
Sen. Ben Vidricksen

Rep. Denny Burgess
Rep. Stephen Cloud
Rep. Herman Dillon
Rep. Anthony Hensley
Rep. Norman Justice

SENATE BILL No. 8

By Special Committee on Labor and Industry

Re Proposal No. 19

12-20

0018 AN ACT relating to workers' compensation; providing for
0019 group-funded workers' compensation pools by five or more
0020 employers; amending K.S.A. 44-505, 44-532, 74-711, 74-712,
0021 74-713, 74-714, 74-716 and 74-719 and K.S.A. 1982 Supp.
0022 44-566a and 44-573 and repealing the existing sections.

0023 *Be it enacted by the Legislature of the State of Kansas:*

0024 New Section 1. Five or more employers, regardless of domi-
0025 cile, who are members of the same bona fide trade or professional
0026 association, regardless of domicile, which has been in existence
0027 for not less than five years and who are engaged in the same or
0028 similar type of business may enter into agreements to pool their
0029 liabilities for Kansas workers' compensation benefits and em-
0030 ployers' liability. Such arrangements shall be known as group-
0031 funded workers' compensation pools, which shall not be deemed
0032 to be insurance or insurance companies and shall not be subject
0033 to the provisions of chapter 40 of the Kansas Statutes Annotated,
0034 except as otherwise provided herein.

0035 New Sec. 2. Application for a certificate of authority to
0036 operate a pool shall be made to the commissioner of insurance not
0037 less than 60 days prior to the proposed inception date of the pool.
0038 The application shall include the following:

0039 (a) A copy of the bylaws of the proposed pool, a copy of the
0040 articles of incorporation, if any, and a copy of all agreements and
0041 rules of the proposed pool. If any of the bylaws, articles of
0042 incorporation, agreements or rules are changed, the pool shall
0043 notify the commissioner within 30 days after such change.

0044 (b) A copy of the trust agreement securing the payment of
0045 workers' compensation benefits. If the trust agreement is

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0046 changed, the pool shall notify the commissioner within 30 days
 0047 after such change.

0048 (c) Designation of the initial board of trustees and adminis-
 0049 trator. When there is a change in the membership of the board of
 0050 trustees or change of administrator, the pool shall notify the
 0051 commissioner within 30 days after such change.

0052 (d) The address where the books and records of the pool will
 0053 be maintained at all times. If this address is changed, the pool
 0054 shall notify the commissioner within 30 days after such change.

0055 (e) An individual application for each initial member of the
 0056 pool. Each individual application shall include a current certified
 0057 ~~audited~~ financial statement on a form approved by the commis-
 0058 sioner.

0059 (f) A current certified ~~audited~~ financial statement on a form
 0060 approved by the commissioner showing that the combined net
 0061 worth of all members applying for coverage on the inception date
 0062 of the pool is in an amount established by the commissioner, but
 0063 ~~which is not less than \$1,000,000, with working capital in an~~
 0064 ~~amount establishing financial strength and liquidity of the pool~~
 0065 ~~members.~~

0066 (g) A current certified ~~audited~~ financial statement on a form
 0067 approved by the commissioner showing the financial ability of
 0068 the pool to meet its obligations under the workmen's compensa-
 0069 tion act.

0070 (h) Evidence that the annual Kansas gross premium of the
 0071 pool will be not less than \$250,000. The annual Kansas gross
 0072 premium shall be based upon the ~~standard~~ rates as filed by the
 0073 national council of compensation insurance.

0074 (i) An indemnity agreement jointly and severally binding the
 0075 group and each member thereof to comply with the provisions of
 0076 the workmen's compensation act. The indemnity agreement shall
 0077 be in a form acceptable to the commissioner.

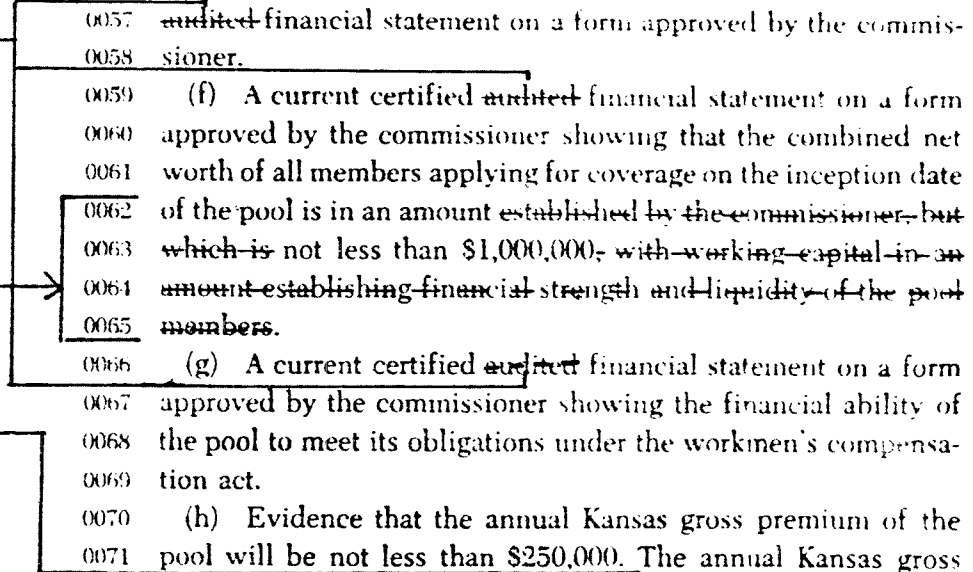
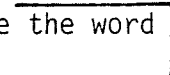
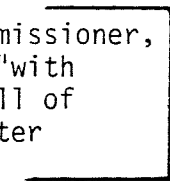
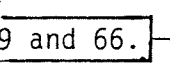
0078 (j) Proof of payment by each member of not less than 25% of
 0079 the estimated annual premium into a designated depository.

0080 (k) A copy of the procedures adopted by the pool to provide
 0081 services with respect to underwriting matters and safety engi-
 0082 neering.

Strike the work "audited" in lines 57, 59 and 66.

Strike the words "established by the Commissioner, but" on line 62, "which is" on line 63, "with working capital in an" on line 63, and all of lines 64 and 65, and strike the comma after \$1,000,000 and insert a period.

Strike the word "standard" and substitute the word "authorized" on line 72.



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.

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.

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.

Insert the sentence "The Commissioner of Insurance may call a hearing under K.S.A. 40-222b, and said provisions shall apply to group workers' compensation pools." at the end of line 147.

Strike the word "standard" and substitute the word "manual" on lines 149 and 152.

Insert the words "rules, classifications and" on line 52.

Strike the word "of" and substitute the word "on" on line 153.

Insert the words "premium and" on line 153.

0120 (c) Whenever the commissioner shall deem it necessary the
 0121 commissioner may make, or direct to be made, an examination of
 0122 the affairs and financial condition of any pool, except that once
 0123 every five years the commissioner shall conduct an examination
 0124 of the affairs and financial condition of each pool. Each pool
 0125 shall submit a certified audited financial statement on or before
 0126 March 31 of each year. The financial statement shall include
 0127 outstanding reserves for claims and for claims incurred but not
 0128 reported. Whenever it appears to the commissioner from such
 0129 examination or other satisfactory evidence that the solvency of
 0130 any such pool is impaired, or that it is doing business in violation
 0131 of any of the laws of this state, or that its affairs are in an unsound
 0132 condition so as to endanger its ability to pay or cause to be paid
 0133 the compensation in the amount, manner and time due as pro-
 0134 vided for in the Kansas workmen's compensation act, the com-
 0135 missioner shall, before filing such report or making the same
 0136 public, grant such pool upon reasonable notice a hearing, and, if
 0137 on such hearing the report be confirmed, the commissioner shall
 0138 suspend the certificate of authority for such pool until its sol-
 0139 vency shall have been fully restored and the laws of the state fully
 0140 complied with. The commissioner may, if there is an unreason-
 0141 able delay in restoring the solvency of such pool and in comply-
 0142 ing with the law, revoke the certificate of authority of such pool to
 0143 do business in this state. Upon revoking any such certificate the
 0144 commissioner shall communicate the fact to the attorney general,
 0145 whose duty it shall be to commence and prosecute an action in
 0146 the proper court to dissolve such pool or to enjoin the same from
 0147 doing or transacting business in this state. ↓
 0148 New Sec. 5. (a) Premium contributions to the pool shall be
 0149 based upon appropriate ~~standard~~ classification and rates, plus or
 0150 minus applicable experience credits or debits, and minus any
 0151 advance discount approved by the trustees, not to exceed 15% of
 0152 ~~standard~~ premium. The pool must use rates as promulgated by
 0153 the national council ~~of~~ compensation insurance and must report
 0154 loss data to a rating organization.
 0155 (b) At least 70% of the annual premium shall be placed into a
 0156 designated depository for the sole purpose of paying claims. This

Insert the following sentences "Any such refund shall be paid only to those employers who remained participants in the pool for an entire year. Payment of previously earned refunds shall not be contingent on continued membership in the pool." at the end of line 169.

0157 shall be called the claims fund account. The remaining annual
0158 premium shall be placed into a designated depository for the
0159 payment of taxes, fees and administrative costs. This shall be
0160 called the administrative fund account.

0161 (c) Any surplus moneys for a fund year in excess of the
0162 amount necessary to fulfill all obligations under the workmen's
0163 compensation act for that fund year may be declared to be
0164 refundable by the trustees not less than 12 months after the end of
0165 the fund year, upon the approval of the commissioner. Such
0166 approval can be obtained only upon satisfactory evidence that
0167 sufficient funds remain on deposit for the payment of all out-
0168 standing claims and expenses, including incurred but not re-
0169 ported claims. ↗

0170 New Sec. 6. The trustees shall not utilize any of the moneys
0171 collected as premiums for any purpose unrelated to Kansas
0172 workers' compensation. Moneys not needed for current obliga-
0173 tions may be invested by the trustees. Such investments shall be
0174 limited to bonds or other evidences of indebtedness issued,
0175 assumed or guaranteed by the United States of America, or by any
0176 agency or instrumentality thereof; in certificates of deposit in a
0177 federally insured bank; or in shares or savings deposits in a
0178 federally insured savings and loan association.

0179 New Sec. 7. The expense of the administration of the group-
0180 funded workers' compensation pools shall be financed in the
0181 following manner:

0182 (a) There is hereby created in the state treasury a fund to be
0183 called the group-funded workers' compensation pools fee fund.
0184 All amounts which are required to be paid from the group
0185 compensation pools fee fund for the operating expenditures in-
0186 cident to the administration of the group-funded workers' com-
0187 pensation pools shall be paid from the group-funded workers'
0188 compensation pools fee fund. The commissioner of insurance
0189 shall be responsible for administering the group-funded workers'
0190 compensation pools fee fund and all payments from the fund
0191 shall be upon warrants of the director of accounts and reports
0192 issued pursuant to vouchers approved by the commissioner of
0193 insurance or a person or persons designated by the commissioner.

0194 (b) The commissioner of insurance shall estimate as soon as
 0195 practical after January 1 of each year the expenses necessary for
 0196 the administration of the group-funded workers' compensation
 0197 pools for the fiscal year beginning on July 1 thereafter. Not later
 0198 than June 1 of each year, the commissioner of insurance shall
 0199 notify all such group-funded workers' compensation pools of the
 0200 amount of each assessment imposed under this subsection on
 0201 such group-funded workers' compensation pools and the same
 0202 shall be due and payable to the commissioner on the July 1
 0203 following.

0204 (c) The commissioner of insurance shall remit all moneys
 0205 received by or for such commissioner under this section to the
 0206 state treasurer. Upon receipt of any such remittance the state
 0207 treasurer shall deposit the entire amount thereof in the state
 0208 treasury to the credit of the group-funded workers' compensation
 0209 pools fee fund.

0210 New Sec. 8. In addition to the fees required to be paid in
 0211 section 7 and as a condition precedent to the continuation of the
 0212 certificate of authority provided in this act, all group-funded
 0213 workers' compensation funds shall pay a tax annually upon the
 0214 annual Kansas gross premium based upon the ~~standard~~ rates in
 0215 effect at the date of renewal pursuant to subsection (b) of section
 0216 4 as filed by the national council of compensation insurance at
 0217 the rate of 1% per annum applied to the collective payroll of the
 0218 pool for the preceding calendar year. In the computation of the
 0219 tax, all pools shall be entitled to deduct any annual Kansas gross
 0220 premiums returned on account of cancellation or dividends re-
 0221 turned to members of such pools. ↓

0222 New Sec. 9. (a) Each licensed pool shall be assessed annually
 0223 as provided by K.S.A. 74-713, K.S.A. 1982 Supp. 44-566a, and
 0224 amendments thereto, and section 8 of this act.

0225 (b) Each licensed pool shall be subject to the provisions of
 0226 article 24 of chapter 40 of the Kansas Statutes Annotated.

0227 New Sec. 10. (a) After the inception date of the group-funded
 0228 workers' compensation pool, prospective new members of the
 0229 pool shall submit an application for membership to the board of
 0230 trustees or its administrator. The trustees may approve the appli-

Delete the word "standard" and insert the word "manual" on line 214.

Insert the following words, "or expenditures used for the purchase of specific and aggregate excess insurance as provided in Sec. 2(m)" at the end of line 221.

Delete the number "60" and insert the number "30" on
line 239.

0231 cation for membership pursuant to the bylaws of the pool. The
0232 application for membership and approval shall then be filed with
0233 the commissioner. Membership takes effect after approval.
0234 (b) Individual members may elect to terminate their partici-
0235 pation in a pool or be subject to cancellation by the pool pursuant
0236 to the bylaws of the pool. On termination or cancellation of a
0237 member, the pool shall notify the commissioner within 10 days
0238 and shall maintain coverage of each cancelled or terminating
0239 member for ~~60~~ days after notice to the commissioner or until the
0240 commissioner gives notice that the cancelled or terminating
0241 member has procured workers' compensation and employer's
0242 liability insurance, whichever occurs first.
0243 New Sec. 11. To ensure the financial stability of the opera-
0244 tions of each group-funded workers' compensation pool, the
0245 board of trustees of each pool is responsible for all operations of
0246 the pool. The board of trustees shall consist of not less than three
0247 nor more than 11 persons whom a pool elects for stated terms of
0248 office to direct the administration of a pool, and whose duties
0249 include approving applications by new members of the pool. The
0250 majority of the trustees must be members of the pool, but a trustee
0251 may not be an owner, officer or employee of any service agent or
0252 representative. All trustees must be residents of this state or
0253 officers of corporations authorized to do business in this state.
0254 The board of trustees of each fund shall take all necessary
0255 precautions to safeguard the assets of the fund, including all of
0256 the following:
0257 (a) Designate an administrator to administer the financial
0258 affairs of the pool who shall furnish a fidelity bond to the pool in
0259 an amount sufficient to protect the pool against the misappropriation or misuse of any moneys or securities. The commissioner shall determine the amount of the bond and the administrator shall file evidence of the bond with the commissioner. The bond is one of the conditions required for approval of the establishment and continued operation of a pool.
0263
0264 (b) Retain control of all moneys collected or disbursed from
0265 the pool and segregate all moneys into a claims fund account and
0266 an administrative fund account. The amount allocated to the
0267

0268 claims fund account shall be sufficient to cover payment of any
 0269 aggregate loss fund as defined in the aggregate excess policy.
 0270 Only disbursements that are credited toward the aggregate loss
 0271 fund are made from the claims fund account. All administrative
 0272 costs and other disbursements are made from the administrative
 0273 fund account. The administrator of the pool shall establish a
 0274 revolving fund for use by the authorized service agent which is
 0275 replenished from time to time from the claims fund account. The
 0276 service agent and its employees shall be covered by a fidelity
 0277 bond, with the pool as obligee, in an amount sufficient to protect
 0278 all moneys placed in the revolving fund.

0279 (c) Audit the accounts and records of the pool annually or at
 0280 any time as required. The commissioner may prescribe the type of
 0281 audits and a uniform accounting system for use by pool and
 0282 service agents to determine the solvency of the pool.

0283 (d) The trustees shall not extend credit to individual members
 0284 for payment of a premium.

0285 (e) The board of trustees shall not borrow any moneys from
 0286 the pool or in the name of the pool without advising the com-
 0287 missioner of the nature and purpose of the loan and obtaining
 0288 approval from the commissioner.

0289 (f) The board of trustees may delegate authority for specific
 0290 functions to the administrator of the pool. The functions which
 0291 the board may delegate include such matters as contracting with a
 0292 service agent, determining the premium chargeable to and re-
 0293 funds payable to members, investing surplus moneys and ap-
 0294 proving applications for membership. The board of trustees shall
 0295 specifically define all authority it delegates in the written min-
 0296 utes of the trustees' meetings. Any delegation of authority is not
 0297 effective without a formal resolution passed by the trustees.

0298 Sec. ~~12~~. K.S.A. 44-505 is hereby amended to read as follows:
 0299 44-505. (a) Subject to the provisions of K.S.A. 44-506, the work-
 0300 men's compensation act shall apply to all employments wherein
 0301 employers employ ~~workmen~~ employees within this state except
 0302 that such act shall not apply to: (1) Agricultural pursuits and
 0303 employments incident thereto, other than those employments in
 0304 which the employer is the state, or any department, agency or

Insert new Section 12 as follows: "Sec. 12. Any person
 soliciting the business of workers' compensation insurance
 for the pool must be licensed as provided by K.S.A. 40-
 240, 40-241, 40-242 and 40-243.

Renumber Sec. 12 on line 298 to Sec. 13 and renumber all
 remaining sections.

Pooling your risks

Group comp funds offer big savings to small firms

By Peter C. Grieves

THROUGH THE YEARS, many large employers have had the opportunity to reduce their workers compensation costs by utilizing self-insurance laws that exist in nearly every state. However, smaller employers have been required to use standard insurance policies.

Group self-insurance funds now offer smaller employees the opportunity to enjoy some of the cost-saving benefits of self-insurance.

A self-insurance fund is a pooling concept. A group of smaller employers is allowed to establish a claims fund, purchase reinsurance and hire a service company for the purpose of operating a self-insurance fund that will pay all the claims in exactly the same way as an individual self-insured or an insurance company does.

The self-insurance fund alternative for workers compensation liabilities is becoming much more common. The state of Florida blazed the way many years ago and is considered one of the veterans in operating this type of program.

The U.S. Chamber of Commerce report, "Analysis of Workers' Compensation Laws," reported seven states allowed group self-insurance workers compensation funds in 1980. Their 1981 report showed 20 states that allowed the group funds.

Since the passage of Public Act 45 of 1974, Michigan has allowed self-insurance funds. The funds are normally organized as a part of a trade association's services to its membership. They do save money. However, because of their fairly recent development, almost no reference material is available for an association that wants to start this type of program.

However, the Michigan Assn. of Timbermen, in its seventh year of operating a self-insurance fund, has prepared a manual and a series of seminars to present some basic information on the dos and don'ts of operating such a fund.

The growth of self-insurance funds in Michigan has been slow but steady since 1974. Five funds were established during the first five years.

However, the success of these programs has resulted in an increased interest and there are now 21 self-insurance workers compensation funds in Michigan. The total premium written by these funds exceeds \$120,000,000.

New funds are often initiated by a service company offering an association a proposed plan for a self-insurance pool. Many fine programs have been developed this way.

However, there are distinct advantages in having the association initiate the establishment of their own program. This becomes possible as more information is

made available to associations on organizing the funds. Associations can now do more independent planning and avoid getting locked into various approaches being promoted by a service company.

Steps a group should take when setting up a fund include:

- Spending time with established group funds. An association starting a self-insuring fund today has the distinct advantage of reviewing existing self-insurance funds and adopting the features that best satisfy their members. In Michigan, the administrators of all group self-insurance funds meet on a regular basis to exchange notes on the best management practices for operating group funds.

Associations wishing to start a group fund should not overlook the lessons that can be learned from existing programs. Most self-insurance funds will provide information and tips on starting new funds.

Do not overlook or avoid borrowing on their experience.

- Surveying the association membership. A questionnaire needs to be prepared that includes an explanation of how a self-insurance fund works. This questionnaire should identify whether the association has enough members to generate \$700,000 to \$1 million in premium, the minimum amount required to start a fund.

- Selecting a qualified service company. Other associations should be contacted to determine their experience with licensed service companies. Qualified service companies should then be interviewed.

The service company that offers the best package of qualified staff, reinsurance packages and reporting procedures can then be selected. Be sure to check the references of a service company with their existing clients.

- Selecting trustees. The trustees establish the basic policies for operating a self-insurance fund and this role is especially critical in the formative years. It is important to select trustees that can meet every four to six weeks. The trustees should represent members in the self-insurance fund. One fund's bylaws allow for automatic cancellation of a trustee's position if they miss two consecutive meetings without a legitimate excuse.

- Defining the group carefully. In Michigan and other states where a self-insurance fund for workers compensation is restricted to employers in the "same industry," this is an especially important point. The purposes of the incorporation and the bylaws of the fund must define all potential members that the association believes qualifies for its group fund.

In future years, this may become a much-debated issue as the state regulator denies membership to applicants because they don't believe they qualify under the "same unit" or "same industry" rule.

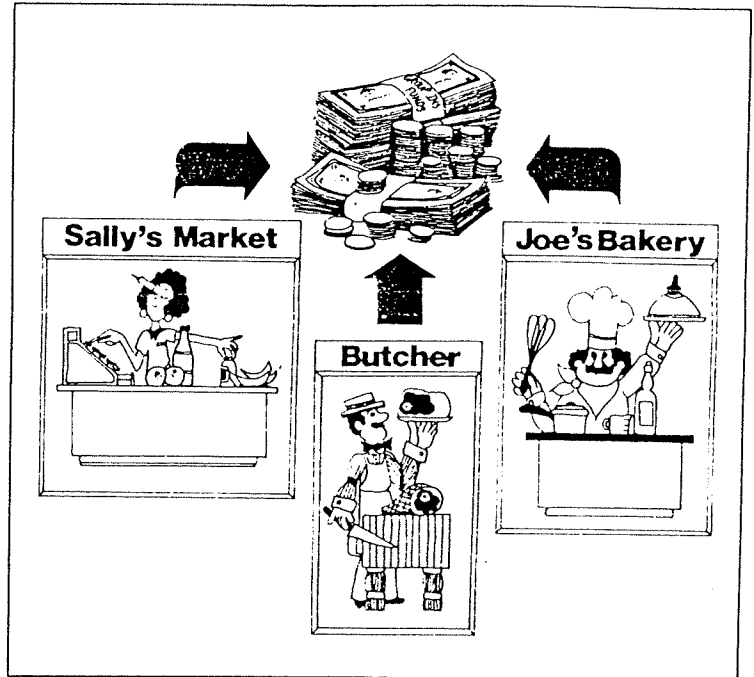


Illustration: Amy Palmer

It is important to have this type of potential conflict resolved at the time the association prepares its original application for a self-insurance fund.

- Selecting a competent administrator. The administrator should serve at the pleasure of the board of trustees and be responsible for administering their policies. This job will quickly become a full-time responsibility if the self-insuring fund enjoys typical growth and development.

The administrator's role in the first two years will involve developing policy recommendations, selling the program to potential members, supervising the work of the service company and their payroll audit, developing a good working relationship with the regulator and other organizational work that will be present with all new self-insurance funds.

A self-insurance fund can get itself into trouble by attempting to operate with a volunteer administrator. This may not be obvious in the first one or two years. However, very large sums of money are expended in the operation of a self-insuring fund for the payment of claims, establishment of reserves, acquisition of reinsurance and the hiring of a service company. A qualified administrator can obtain enough improvement in each of these areas to produce handsome returns to the association.

- Reviewing all options. One of the basic decisions that a self-insurance fund must make is the amount of work that it will assume from its service company. An association will be in a position to identify specific work that it wants if it reviews all available options in existing funds.

- Considering an association operated safety program. The operation of the safety program by association employees is a logical decision for many associations.

Most industries have unique industrial processes and procedures. It is important to have safety inspectors that understand the business of its members. The correct number of members per inspector will depend on the characteristics of each association. It costs between \$30,000 and \$40,000 annually to place an inspector on the road depending upon group size and distance.

Self-insurance funds provide an excellent cost-saving benefit to an association's members. A group fund for workers compensation allows the association to have control of claims administration, expenditure of all fund assets and direct participation in establishing policies for the fund.

These and other factors allow the small businessmen to participate in the cost efficiencies of the self-insuring fund that is not possible with most insurance company coverage programs.

If a fund is operated properly, cost savings of 35% to 45% are not uncommon. The annual refunding of a fund's surplus can be a highlight for any association's annual meeting. It will help build the spirit of an organization and can become a key element of the financial health of a trade association.

The self-insurance fund for workers compensation has been a primary benefit offered to members of the Michigan Assn. of Timbermen. In the first seven years, more than \$16 million has been collected by the fund. To date, the fund's surplus has exceeded \$8 million.

TESTIMONY BEFORE THE SENATE LABOR INDUSTRY AND TOURISM
COMMITTEE ON SENATE BILL 8

1/24/83

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS TOM SLATTERY. I AM EXECUTIVE VICE PRESIDENT OF THE ASSOCIATED GENERAL CONTRACTORS OF KANSAS. THE AGC OF KANSAS REPRESENTS APPROXIMATELY 200 COMPANIES IN THE BUSINESS OF GENERAL COMMERCIAL CONSTRUCTION OR IN RELATED INDUSTRIES. FOR SEVERAL YEARS WE HAVE BEEN INTERESTED IN, AND SUPPORTIVE OF, THE CONCEPT OF GROUPS OF EMPLOYERS HAVING COMMON INTERESTS IN THE SAME INDUSTRY FORMING A TRUST AND POOLING THEIR LIABILITIES UNDER THE WORKER'S COMPENSATION ACT, THUS BECOMING A SELF-INSURED GROUP.

CURRENT KANSAS LAW PROVIDES THAT A SINGLE EMPLOYER MAY FULFILL THE OBLIGATION TO HIS EMPLOYEES UNDER THE KANSAS WORKER'S COMPENSATION ACT BY SELF-INSURING IF THE EMPLOYER IS LARGE ENOUGH AND ABLE TO PROVIDE SUFFICIENT PROOF OF FINANCIAL RESPONSIBILITY ACCEPTABLE TO THE WORKER'S COMP. DIRECTOR.

THERE ARE OVER 200 SUCH SELF-INSURED EMPLOYERS IN THE STATE OF KANSAS AT THIS TIME.

SENATE BILL 8 PROVIDES THAT GROUPS OF EMPLOYERS CAN BECOME SELF-INSURED, PROVIDING THEY ARE ABLE TO MEET STRINGENT

FINANCIAL AND TECHNICAL REQUIREMENTS AS PROVIDED IN THE BILL. THESE GROUPS WILL BE AUTHORIZED AND REGULATED BY THE COMMISSIONER OF INSURANCE. THERE ARE CURRENTLY 22 STATES, PLUS THE DISTRICT OF COLUMBIA, THAT AUTHORIZE SUCH GROUP SELF-INSURANCE POOLS.

THE REQUIREMENTS TO BECOME AUTHORIZED ARE SET FORTH IN LINES 0039 THROUGH LINES 0088 OF THE BILL. WITHOUT GOING INTO DETAIL THESE REQUIREMENTS ADDRESS SUCH CONSIDERATIONS AS THE NEED FOR:

- (1) FINANCIAL STATEMENTS OF MEMBERS OF THE POOL
- (2) A MINIMUM NET WORTH OF THE POOL OF AT LEAST \$1,000,000
- (3) MINIMUM PREMIUM COMMITMENTS OF AT LEAST \$250,000
- (4) PROCEDURES OF HANDLING CLAIMS
- (5) AN INDEMNITY AGREEMENT JOINTLY AND SEVERALLY BINDING EACH MEMBER OF THE GROUP, AND
- (6) PROOF OF SUFFICIENT EXCESS AND SPECIFIC AGGREGATE INSURANCE.

THE BILL ALSO:

- * PROVIDES THAT THE POOL BE LIABLE FOR ACTIONS BROUGHT AGAINST IT
- * PROVIDES FOR RENEWAL OF CERTIFICATE OF OPERATION
- * GIVES POWER TO THE COMMISSIONER TO EXAMINE THE AFFAIRS OF THE POOL AND SUSPEND OR REVOKE THE AUTHORITY FOR A POOL TO OPERATE
- * REGULATES THE TRANSACTION OF BUSINESS OF THE FUND AND

OUTLINES PROVISIONS FOR TAXING AND FINANCING THE POOL

THESE NEW PROVISIONS OF THE LAW ARE CONTAINED IN THE BILL THROUGH PAGE 8. FOLLOWING THAT, PAGES 9 THROUGH 18, ARE CURRENT STATUTORY LANGUAGE WITH THE NECESSARY TECHNICAL AMENDMENTS TO IMPLEMENT THE NEW SECTIONS.

MEMBERS OF THE COMMITTEE, SENATE BILL 8 IS SAFE, SOUND AND WORKABLE AND WILL PROVIDE A MUCH NEEDED AID TO SOME EMPLOYERS IN OUR STATE ENABLING THEM TO:

- (1) PROVIDE A SAVINGS IN THE OPERATION OF THEIR BUSINESS,
- (2) PROVIDE ACCURATE AND TIMELY INFORMATION TO HELP MANAGERS REDUCE JOB RELATED ACCIDENTS.
- (3) PROVIDE FOR PROMPT CLAIMS PAYMENTS,
- (4) PROVIDE FOR CONTROL OF CLAIMS AND ADMINISTRATION WITH THE MEMBERS OF THE POOL.

THE BILL IS THE RESULT OF INTERIM STUDY AND IS BASED ON THE MOST SUCCESSFUL AND COMMONLY USED LEGISLATION IN OTHER STATES, PLUS A TREMENDOUS AMOUNT OF INPUT FROM MEMBERS OF THE INSURANCE INDUSTRY HERE IN KANSAS AND THE KANSAS DEPARTMENT OF INSURANCE. I ASK YOU TO PLEASE GIVE FAVORABLE CONSIDERATION AND RECOMMEND PASSAGE OF SENATE BILL 8.