

FILED MAR 2 1974

SENATE FILE 442
BY COMMITTEE ON BUSINESS AND
LABOR RELATIONS

(SUCCESSOR TO SSB 313)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act establishing a guaranty fund for individual employers
2 which self-insure for their workers' compensation liability
3 and providing for assessments.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 442

1 Section 1. NEW SECTION. 87A.1 PURPOSE.

2 1. This chapter provides a mechanism for the payment of
3 covered workers' compensation claims in order to avoid
4 excessive delay in payment and to avoid financial loss to
5 claimants because of the insolvency or other inability to pay
6 of a self-insured employer, to assist in the detection and
7 prevention of self-insured employer insolvencies, and to
8 provide an administrative mechanism and source for funding
9 administrative expenses.

10 2. This chapter shall be liberally construed to effect its
11 purpose.

12 Sec. 2. NEW SECTION. 87A.2 DEFINITIONS.

13 As used in this chapter, unless the context requires
14 otherwise:

15 1. "Association" means the workers' compensation self-
16 insured employers guaranty association created in section
17 87A.5.

18 2. "Commissioner" means the commissioner of insurance.

19 3. "Self-insured employer" means an employer which is
20 exempted by the commissioner of insurance under section 87.11,
21 except those exempted under section 87A.5.

22 Sec. 3. NEW SECTION. 87A.3 GUARANTY FUND ESTABLISHED.

23 1. A workers' compensation self-insurance guaranty fund is
24 established in the state treasury under the control of the
25 commissioner which shall consist of moneys paid into the fund
26 under this chapter plus accrued interest. Any moneys
27 remaining in the fund at the end of each fiscal year shall not
28 revert to the general fund of the state, but shall remain in
29 the guaranty fund.

30 2. Upon an initial order by the commissioner, self-insured
31 employers shall pay into the guaranty fund an assessment of a
32 sum determined by the commissioner sufficient to fund the
33 annual anticipated administrative expenses of the state in
34 connection with workers' compensation self-insurance,
35 including a reasonable reserve to administer any self-insurer

1 insolvency prior to the next annual assessment.

2 3. An annual assessment shall be imposed as necessary by
3 order of the commissioner to maintain or restore a reserve
4 against claims and administrative expenses deemed adequate in
5 the sole discretion of the commissioner.

6 4. An ordered assessment shall be paid by each self-
7 insured employer based on the proportion of that self-insured
8 employer's total workers' compensation liability incurred in
9 the prior three years compared to the total workers'
10 compensation liability incurred by all self-insured employers
11 in the prior three years.

12 5. Assessments shall be paid to the insurance division
13 within thirty days of the date of the assessment order. If
14 payment of an assessment is not made within thirty days of the
15 assessment order, the attorney general may appear on behalf of
16 the state to collect the assessment. In addition, the
17 commissioner, following notice and hearing, may revoke the
18 employer's certificate of release from insurance.

19 6. All expenses and costs incurred by the state under
20 section 87.11 and this chapter, shall be reimbursed to the
21 agency incurring the expense or cost from the guaranty fund.
22 Expenses or costs of the state include those incurred by the
23 insurance division, attorney general, treasurer of state, or
24 other state agency, in connection with the administration of
25 workers' compensation self-insurance or the guaranty fund.
26 Allowed expenses include, but are not limited to, the costs of
27 processing, investigating, and paying claims from the guaranty
28 fund and the costs of supervising self-insured employers.

29 Sec. 4. NEW SECTION. 87A.4 INSOLVENT SELF-INSURED
30 EMPLOYERS -- PAYMENT OF WORKERS' COMPENSATION LIABILITY.

31 1. Payment by the commissioner to a workers' compensation
32 claimant from the fund created in section 87A.3 may be made in
33 each of the following circumstances:

34 a. If a self-insured employer fails to pay a workers'
35 compensation award or judgment rendered against the employer

1 and execution is levied and returned unsatisfied in whole or
2 in part.

3 b. If a self-insured employer files for relief under the
4 bankruptcy law and the commissioner has reason to believe that
5 workers' compensation payments due are not being paid.

6 c. If a self-insured employer against whom bankruptcy
7 proceedings are filed and the commissioner has reason to
8 believe that workers' compensation payments due are not being
9 paid.

10 d. If a self-insured employer is declared to be insolvent
11 or for whom a receiver is appointed in a court of this state.

12 2. The treasurer of state shall proceed to recover fund
13 payments from the employer or the employer's receiver or
14 trustee in bankruptcy, and may commence an action or
15 proceeding or file a claim for the payments made from the fund
16 for the employer's liability. The attorney general shall
17 appear on behalf of the treasurer of state in any such action
18 or proceeding. All moneys recovered in the action or
19 proceeding shall be paid into the fund established under
20 section 87A.3.

21 Sec. 5. NEW SECTION. 87A.5 SELF-INSURED EMPLOYERS
22 GUARANTY ASSOCIATION ESTABLISHED.

23 1. A workers' compensation self-insured employers guaranty
24 association is created as a nonprofit unincorporated legal
25 entity. All self-insured employers shall be members of the
26 association. The association shall perform its function under
27 a plan of operation approved by the commissioner and shall
28 exercise its powers and duties through a board of directors
29 selected by the members. The board membership, the board
30 size, the term of service, and the method of filling vacancies
31 shall all be subject to the approval of the commissioner.

32 2. Powers of the association under the plan of operation
33 shall include, but are not limited to, the following:

34 a. The board of directors may, upon majority vote, request
35 the commissioner to order an examination of any member which

1 the board in good faith believes may be in a financial
2 condition hazardous to potential claimants or the public.
3 Within thirty days of the receipt of an examination request
4 from the board of directors, the commissioner shall begin the
5 examination. The board of directors and its members are
6 exempt from liability in connection with any request for
7 examination.

8 b. The board of directors, upon majority vote, may make
9 reports and recommendations to the commissioner upon any
10 matter germane to the solvency, liquidation, rehabilitation,
11 or conservation of any member. Such a report or
12 recommendation, if it relates to a particular member or
13 insolvency, shall not be a public record, and shall not be
14 subject to disclosure under chapter 22.

15 c. The board of directors, upon majority vote, may make
16 recommendations to the commissioner for the detection and
17 prevention of self-insured employer insolvencies.

18 3. Obligations of the commissioner to the association
19 under the plan of operation shall include, but are not limited
20 to, the following:

21 a. The commissioner shall report to the board of directors
22 when the commissioner has reasonable cause to believe that any
23 member may be insolvent or in a financial condition hazardous
24 to potential claimants or the public.

25 b. The commissioner shall submit any proposed changes to
26 the terms and conditions of exemptions issued under section
27 87.11 to the board of directors for review and
28 recommendations. Recommendations of the association are not
29 binding upon the commissioner.

30 4. The reasonable and necessary expenses of the
31 association are compensable from the guaranty fund, subject to
32 an annual budget approved by the commissioner. Reimbursable
33 expenses shall not include any expenses incurred in connection
34 with attempting to influence legislative action or policy.

35 5. The association shall be subject to examination and

1 regulation by the commissioner. The board of directors shall
2 submit, not later than March 30, of each year, a financial
3 report for the preceding calendar year in a form approved by
4 the commissioner. The commissioner shall upon request furnish
5 to the board of directors any public records of the
6 commissioner which would aid in the preparation of the annual
7 financial report.

8 Sec. 6. NEW SECTION. 87A.6 EXEMPTIONS FROM GUARANTY FUND
9 LIABILITY AND GUARANTY ASSOCIATION.

10 1. The state, a county, city, school district, or other
11 political subdivision, is exempt from participation in or
12 assessment under the guaranty association.

13 2. A public utility or telecommunications company subject
14 to rate base or price regulation by the utilities division of
15 the department of commerce, is exempt from participation in or
16 assessment under the guaranty association.

17 Sec. 7. NEW SECTION. 87A.7 RECOVERY UNDER ANOTHER
18 GUARANTY ASSOCIATION.

19 A person having a claim which may be recovered under more
20 than one state's guaranty fund or its functional equivalent
21 shall seek recovery first from that person's state of
22 residence. Any recovery under this chapter shall be reduced
23 by the amount of recovery from any other guaranty fund or its
24 functional equivalent.

25 Sec. 8. NEW SECTION. 87A.8 EXAMINATION REQUIRED.

26 The commissioner may examine or inquire at any time into
27 the affairs of a self-insured employer. A domestic self-
28 insured employer, or a self-insured employer not subject to
29 periodic examination in its state of origin, shall be examined
30 at least once during each three-year period.

31 Sec. 9. NEW SECTION. 87A.9 OBLIGATION TO ASSIST AN
32 EXAMINATION -- OATHS.

33 When a self-insured employer is being examined, the
34 officers, employees, or agents of the employer, shall produce
35 for inspection all books, documents, papers, or other

1 information concerning the affairs of the employer and shall
2 otherwise assist in such examination so far as they can do so.
3 The commissioner, or the commissioner's legally authorized
4 representative in charge of the examination, may administer
5 oaths and take testimony bearing upon the affairs of the
6 employer under examination.

7 Sec. 10. NEW SECTION. 87A.10 SELF-INSURANCE EXAMINERS.

8 The commissioner shall appoint one or more self-insurance
9 examiners. An examiner while conducting an examination,
10 possesses all the powers conferred upon the commissioner for
11 such purposes. A self-insurance examiner is subject to the
12 same powers and conditions as imposed under sections 507.4
13 through 507.7.

14 Sec. 11. NEW SECTION. 87A.11 PAYMENT OF EXAMINATION
15 EXPENSES BY THE SELF-INSURED EMPLOYER.

16 The commissioner, upon the completion of an examination, or
17 at such regular intervals prior to completion as the
18 commissioner determines, shall prepare an account of the costs
19 incurred in performing and preparing the report of such
20 examination which shall be charged to and paid by the self-
21 insured employer examined, and upon failure or refusal of the
22 self-insured employer to pay such charges, the charges may be
23 recovered in an action brought in the name of this state, and
24 the commissioner may also revoke the employer's exemption
25 under section 87.11. All fees collected in connection with an
26 examination shall be paid into the insurance division
27 revolving fund.

28 EXPLANATION

29 This bill creates a workers' compensation self-insurance
30 guaranty fund to secure the workers' compensation liability of
31 self-insured employers which become insolvent or otherwise
32 unable to pay workers' compensation claims. The guaranty fund
33 would be funded by assessments against all self-insured
34 employers based upon their proportional share of the total
35 workers' compensation liability over the prior three years for

1 all self-insured employers. Currently the only security
2 mechanism for employees of self-insured employers is a surety
3 bond.

4 The costs incurred by state agencies, including the
5 insurance division, attorney general, and treasurer of state
6 in connection with the administration of the fund and
7 supervision of workers' compensation self-insured employers
8 are payable from the fund.

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PETERSON, CH.
RUNNING
CHAIRMAN

SSB 313
BUSINESS + LABOR RELATIONS

SENATE FILE 442
BY (PROPOSED COMMITTEE ON
BUSINESS AND LABOR RELATIONS
BILL BY CHAIRPERSON RUNNING)

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2 3. An annual assessment shall be imposed as necessary by
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28 EXPLANATION

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30 guaranty fund to secure the workers' compensation liability of
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35 workers' compensation liability over the prior three years for

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2 mechanism for employees of self-insured employers is a surety
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