

## BILL ANALYSIS

C.S.H.B. 2095  
By: Cook, Robby  
Business & Industry  
Committee Report (Substituted)

### BACKGROUND AND PURPOSE

Currently, an employer who chooses to obtain workers' compensation insurance coverage for its employees has three options for such coverage:

1. purchase traditional insurance from a workers' compensation commercial insurance carrier;
2. join a group of employers to purchase insurance from a carrier; or
3. become a certified self-insurer under the comp law (applies only to large employers).

A fourth option, self-insurance by a group of employers, is available to some degree in all but six states. This option is considered valuable in other states because:

- it puts small and mid-size employers on a more level playing field with large employers who can already self-insure, thus providing an affordable option for these smaller employers;
- it reduces claims and enhances safety through active loss prevention and rehabilitation programs; and
- it reduces administrative expenses.

This bill allows for employers in the same type of business and belonging to a bona fide trade association in Texas to join together to self-insure for workers' compensation. This legislation is based on the model act for group self-insurance adopted by the National Association of Insurance Commissioners and draws from provisions in the Texas Insurance Code applicable to commercial insurance companies and the Texas Workers' Compensation Act applicable to individual certified self-insured employers.

This bill does not amend the provisions of the Texas Workers' Compensation Act that provide for the amount, type, or procedures to deliver workers' compensation benefits or the Texas Workers' Compensation Commission's jurisdiction over the provisions of the workers' compensation law. All provisions of the workers' compensation law will apply to a self-insurance group.

This bill will allow for a more targeted approach to loss prevention, rehabilitation, and other preventive and corrective measures to reduce workers' compensation injuries and costs. The requirement that members are in the same business and in a bona fide trade association means that the self-insurance group will be more familiar with the industry, the types of safety and return-to-work issues common to the industry, and other needs of these particular employers. This in-depth understanding of the industry involved in the group allows better control of injuries and costs.

Another important goal of this legislation is to ensure that more Texas employers participate in the workers' compensation system. Texas is the only state that does not require a private employer to provide workers' compensation to its employees. Texas has a significant number of employers who do not provide workers' compensation because the employer simply cannot afford it. Group self-insurance will provide an affordable option for small and mid-size employers to provide these benefits to their employees.

## **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Insurance in SECTION 1 of this bill.

## **ANALYSIS**

SECTION 1. Adds a new Chapter 407A to the Texas Workers' Compensation Act (Subtitle A, Title 5, Texas Labor Code) providing for group self-insurance coverage.

### Subchapter A. General Provisions

Sec. 407A.001: Provides definitions.

Sec. 407A.002: Provides that five or more employers may establish a group if the employers are in the same or similar business and are members of an existing bona fide Texas trade association in existence for purposes other than insurance; the members must enter into agreements to pool their liabilities for workers' compensation benefits and employers' liability; provides that this chapter does not apply to governmental entities.

Sec. 407A.003: Allows merger of groups with members in the same or similar business on approval of the commissioner of insurance.

Sec. 407A.004: Provides that a group under this chapter is not an insurer and is subject to insurance laws and regulations only as provided in this chapter.

Sec. 407A.005: Requires issuance of a certificate of approval from the commissioner of insurance before the group may act as a self-insured group.

Sec. 407A.006: Requires that the commissioner of insurance be appointed as attorney for service of legal process for the group.

Sec. 407A.007: Requires that hearings under this chapter be conducted by the State Office of Administrative Hearings.

Sec. 407A.008: Allows the commissioner of insurance to promulgate rules as required under this chapter.

### Subchapter B. Application Requirements for Certificate of Approval for Self-Insurance Group

Sec. 407A.051: Provides the form and content of an application for a certificate of approval; requires that the application be submitted to the commissioner of insurance and provides for requirements of a financial statement, a \$1000 nonrefundable filing fee, performance bonds, and initial asset requirements; requires the group to notify the commissioner of insurance of any changes in the information contained in the application; requires the commissioner to act on the application within 90 days unless the number of applications requires an additional 30 days.

Sec. 407A.052: Provides for approval or denial of an application for group self-insurance to provide workers' compensation benefits.

Sec. 407A.053: Provides financial requirements for the group, including combined net worth of the members of at least \$1 million or, in the case of an existing trust, a surplus of at least \$2 million; provides the amount and form of security that will be negotiable by the executive director of the Texas Workers' Compensation Commission and will be deposited in the state treasury.

Sec. 407A.054: Requires excess insurance for losses that exceed the group's retention and allows the commissioner of insurance to establish minimum requirements for the excess insurance.

Sec. 407A.055: Requires an initial annual premium of \$250,000 and \$500,000 in subsequent years.

Sec. 407A.056: Requires an indemnity agreement to jointly and severally bind the members of the group to cover the workers' compensation obligations of the group.

Sec. 407A.057: Authorizes the commissioner of insurance to require an additional performance bond of \$250,000 for the claims administrator.

#### Subchapter C. Termination of Certificate of Approval

Sec. 407A.101: Provides that the certificate remains in effect until terminated by the group or the commissioner of insurance; requires the commissioner of insurance determine that the group has insured or reinsured all obligations with an authorized insurer prior to allowing a termination on request of the group.

#### Subchapter D. Board of Trustees

Sec. 407A.151: Requires a board of at least five members of the group and prohibits anyone associated with an administrator or service company from being a member of the board.

Sec. 407A.152: Provides that the board shall maintain minutes of its meetings, designate an administrator and delineate the administrator's duties, and retain a certified public accountant.

Sec. 407A.153: Prohibits the board from extending credit to a member except for a payment plan approved by the commissioner or otherwise on approval of the commissioner; prohibits the board from borrowing money from the group or in the name of the group except in the ordinary course of business.

Sec. 407A.154: Provides that the board is responsible for all monies collected or disbursed by the group.

#### Subchapter E. Group Membership; Termination; Liability

Sec. 407A.201: Requires an employer to submit an application for membership and sign the required indemnity agreement; requires notification to the commissioner of insurance and the Texas Workers' Compensation Commission of the termination; requires continuance of coverage for 30 days or until the employer obtains other coverage; provides that the group remains liable for the terminated member's claims incurred during the period of the terminated member's membership in the group and that the terminated member remains jointly and severally liable for the obligations of the group incurred during membership in the group; provides that insolvency or bankruptcy of the member does not relieve the group of its liability for workers' compensation benefits.

#### Subchapter F. Examinations, Financial Statements, and Other Reports

Sec. 407A.251: Requires audited financial statements to be filed with the commissioner of insurance and provides the content of the statements.

Sec. 407A.252: Authorizes the commissioner of insurance to examine the financial condition of a group once every three years unless the commissioner determines that the group may not be able to meet its obligations.

## Subchapter G. Taxes, Fees, and Assessments

Sec. 407A.301: Requires the group to pay a maintenance tax for the administration of the Texas Workers' Compensation Commission and the prosecution of workers' compensation insurance fraud; provides that the tax will be based on gross premium for the group's retention and multiplied by the rate assessed against insurance carriers; provides that the tax does not apply to the group's premium for excess insurance.

Sec. 407A.302: Requires the group to pay a maintenance tax for the administrative costs of the department of insurance to administer this chapter; provides that the tax is based on gross premium for the group's retention and does not apply to premium collected by the group for excess insurance.

Sec. 407A.303: Requires the maintenance tax be deposited in the state treasury; provides an administrative penalty for failure to timely pay the taxes.

Sec. 407A.304: Requires the group to pay premium tax on gross premium's for the group's retention; provides that the premium tax does not apply to premium collected for excess insurance.

## Subchapter H. Rates; Refunds; Premium Payments; Reserves; Deficits

Sec. 407A.351: Requires the group to use the Texas Department of Insurance uniform classification system, experience rating plan, and rate relativities, except that the group may modify the rate relativities to produce rates based on the group's historical experience or the group may file its own rates; allows the group to use rating debits or credits or optional rating plans; provides that the rates may not be excessive, inadequate, or unfairly discriminatory.

Sec. 407A.352: Requires an annual audit to verify classifications, experience rating, payroll, and rates and requires the audit be available to the commissioner of insurance.

Sec. 407A.353: Authorizes the board to declare refundable any monies not necessary to meet the group's obligations in a fund year and requires the group to provide each member a description of the group's refund plan.

Sec. 407A.354: Requires the group to establish a premium payment plan acceptable to the commissioner of insurance until the group's assets are adequate to cover liabilities; authorizes a group to establish its own premium plan if the assets of the group are sufficient to cover its liabilities; requires the group to maintain actuarially appropriate reserves for claims and expenses; requires the group to maintain bad debt reserves.

Sec. 407A.355: Requires the group to make up any deficiency from surplus or administrative funds or levy an assessment on its members to make up a deficiency; requires the commissioner of insurance to order the group to make up a deficiency and the group is deemed insolvent if it fails to do so; requires the commissioner of insurance, in the event the group is liquidated, to secure release of the security deposit and levy the members of the group to cover the group's obligations including the cost of the liquidation.

## Subchapter I. Disciplinary Actions; Penalties

Sec. 407A.401: Prohibits untrue or misleading statements or omissions in solicitation of membership in the group.

Sec. 407A.402: Provides for fines up to \$10,000 for violation of this chapter or rules promulgated under this chapter.

Sec. 407A.403: Authorizes the commissioner of insurance to issue a cease and desist order for

violation of this chapter or rules promulgated under this chapter and provides for penalties up to \$100,000 and revocation of certificate of approval for violation of a cease and desist order.

Sec. 407A.404: Authorizes the commissioner of insurance to revoke the certificate of approval if the group is insolvent or fails to pay required taxes or assessments, or fails to timely comply with this chapter, rules, or orders of the commissioner of insurance; authorizes revocation of the certificate of approval for fraud, misrepresentation, or improper use or failure to pay money belonging to any member of the group.

SECTION 2. Amends Sec. 401.011(27), Labor Code, to include "a certified self-insurance group certified under Chapter 407A" in the definition of "insurance carrier".

SECTION 3. Provides for an effective date of September 1, 2003 and allows a group to provide coverage on or after January 1, 2004.

### **EFFECTIVE DATE**

September 1, 2003. Allows a group to provide coverage on or after January 1, 2004

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

#### SECTION 1.

Sec. 407A.001: Substitute changed definition of "net premium" (defining "modified annual premium" instead) and "standard premium" to be consistent with the Texas Department of Insurance workers' compensation manual.

Sec. 407A.002: Substitute added a requirement that the trade association be a Texas association in business for purposes other than insurance.

Sec. 407A.051, subsec. (c)(1): Substitute doubled the filing fee, going from \$500 to \$1000.

Sec. 407A.051, subsec. (c)(11): Substitute provides for a promise to pay premium in lieu of collection of actual premium prior to approval of the group.

Sec. 407A.051(e): Substitute clarifies "gaps in funding" by requiring sufficient funds to cover expected losses and expenses.

Sec. 407A.053, subsec. (b): Substitute requires the group to provide a combined report certified by a certified public accountant to show that the group meets the requirement of \$1 million combined net worth; substitute requires an existing trust to have surplus of at least \$2 million rather than assets of \$5 million.

Sec. 407A.054, subsec. (b): Substitute provides that the group have specific excess insurance to cover losses that exceed the group's retention and deletes the option for the group to deposit security in lieu of purchasing excess insurance.

Sec. 407A.252: Substitute adds this new section to allow the commissioner of insurance to exam the records of the group.

Sec. 407A.301: Substitute clarifies that this tax is for the Texas Workers' Compensation Commission and adds language to make this section consistent with other tax provisions.

Sec. 407A.302: Substitute provides a maintenance tax for administrative costs of the Texas Department of Insurance in lieu of an annual fee.

Sec. 407A.303: Substitute clarifies language to be consistent with other tax provisions.

Sec. 407A.304: Substitute adds a requirement that the group pay premium tax.

Sec. 407A.352: Substitute requires the group to make its member audits available to the commissioner rather than providing a copy of all audits; substitute deletes the hearing provisions because the workers' compensation manual already addresses procedures to handle classification issues.

Sec. 407A.354: Substitute deletes subsection (b) because the workers' compensation manual does not prescribe specific premium payment plans but the substitute maintains the requirement that the group's payment plan be satisfactory to the commissioner.

Sec. 407A.355, subsec. (e): Substitute provides additional authority to the commissioner to order any deficiency to be made up by any method if the commissioner finds that the group is in a hazardous financial condition.

Sec. 407A.355, subsec. (g): Substitute clarifies that the commissioner shall use the security deposit to pay the group's obligations if the group is insolvent.

Sec. 407A.404, subsec. (a)(2): Substitute makes conforming changes.