

1-1 By: Cook of Colorado (Senate Sponsor - Staples) H.B. No. 2095  
1-2 (In the Senate - Received from the House May 19, 2003;  
1-3 May 20, 2003, read first time and referred to Committee on State  
1-4 Affairs; May 23, 2003, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;  
1-6 May 23, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2095 By: Staples

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to provision of workers' compensation insurance coverage  
1-11 through a certified self-insurance group; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle A, Title 5, Labor Code, is amended by  
1-14 adding Chapter 407A to read as follows:

1-15 CHAPTER 407A. GROUP SELF-INSURANCE COVERAGE

1-16 SUBCHAPTER A. GENERAL PROVISIONS

1-17 Sec. 407A.001. DEFINITIONS. (a) In this chapter:

1-18 (1) "Administrator" means an individual, partnership,  
1-19 or corporation engaged by the board of trustees of a group to  
1-20 implement the policies established by the board of trustees and to  
1-21 provide day-to-day management of the group.

1-22 (2) "Commissioner" means the commissioner of  
1-23 insurance.

1-24 (3) "Department" means the Texas Department of  
1-25 Insurance.

1-26 (4) "Estimated premium subject to experience  
1-27 modifier" means the premium derived from applying the filed rates  
1-28 to estimated payrolls and before the adjustment of the premium by  
1-29 experience modifiers, schedule rating plan factors, deductible  
1-30 credits, minimum premiums, and premium discounts.

1-31 (5) "Group" means a workers' compensation  
1-32 self-insurance group that holds a certificate of approval under  
1-33 this chapter.

1-34 (6) "Modified schedule rating premium" means premium  
1-35 derived from applying filed rates to estimated payrolls and then  
1-36 adjusted by the experience modifier and any schedule rating plan  
1-37 factors.

1-38 (7) "Same or similar" means, with regard to members of  
1-39 a group, that:

1-40 (A) the governing classification code of the  
1-41 members of the group is the same; or

1-42 (B) the members of the group are engaged in  
1-43 similar operations.

1-44 (8) "Service company" means a person that provides  
1-45 services to the group other than services provided by the  
1-46 administrator, including:

1-47 (A) claims adjustment;

1-48 (B) safety engineering;

1-49 (C) compilation of statistics and the  
1-50 preparation of premium, loss, and tax reports;

1-51 (D) preparation of other required self-insurance  
1-52 reports;

1-53 (E) development of members' assessments and  
1-54 fees; and

1-55 (F) administration of a claim fund.

1-56 (b) For purposes of this chapter, when used as a modifier of  
1-57 "benefits," "liabilities," or "obligations," the term "workers'  
1-58 compensation" includes both workers' compensation and employers'  
1-59 liability.

1-60 Sec. 407A.002. APPLICATION OF CHAPTER; ESTABLISHMENT OF  
1-61 PRIVATE GROUP. (a) An unincorporated association or business  
1-62 trust composed of five or more private employers may establish a  
1-63 workers' compensation self-insurance group under this chapter if

2-1 the employers:

2-2 (1) are engaged in the same or a similar type of  
2-3 business;

2-4 (2) are members of a bona fide trade or professional  
2-5 association that has been in existence in this state for purposes  
2-6 other than insurance for at least five years before the  
2-7 establishment of the group; and

2-8 (3) enter into agreements to pool their liabilities  
2-9 for workers' compensation benefits and employers' liability in this  
2-10 state.

2-11 (b) This chapter does not apply to public employees or  
2-12 governmental entities.

2-13 Sec. 407A.003. MERGER OF GROUPS. (a) Subject to the  
2-14 approval of the commissioner, a group may merge with another group  
2-15 engaged in the same or a similar type of business if the resulting  
2-16 group assumes in full all obligations of the merging groups.

2-17 (b) The commissioner may conduct a hearing on a proposed  
2-18 merger and shall conduct a hearing if any party, including a member  
2-19 of either group, requests a hearing.

2-20 Sec. 407A.004. GROUP NOT INSURER. A group issued a  
2-21 certificate of approval by the commissioner under this chapter is  
2-22 not:

2-23 (1) an insurer based on that certificate; and

2-24 (2) subject to the insurance laws and rules of this  
2-25 state except as otherwise provided by this chapter.

2-26 Sec. 407A.005. CERTIFICATE OF APPROVAL REQUIRED. An  
2-27 association of employers may not act as a workers' compensation  
2-28 self-insurance group unless it has been issued a certificate of  
2-29 approval by the commissioner under this chapter.

2-30 Sec. 407A.006. SERVICE OF PROCESS. (a) Each group shall be  
2-31 deemed to have appointed the commissioner as its attorney to  
2-32 receive service of legal process issued against the group in this  
2-33 state.

2-34 (b) The appointment of the commissioner is irrevocable,  
2-35 binds any successor in interest, and remains in effect as long as  
2-36 any obligation or liability of the group for workers' compensation  
2-37 benefits exists in this state.

2-38 Sec. 407A.007. HEARINGS. A hearing required under this  
2-39 chapter shall be conducted by the State Office of Administrative  
2-40 Hearings in the manner provided for a contested case under Chapter  
2-41 2001, Government Code.

2-42 Sec. 407A.008. RULES. The commissioner shall adopt rules  
2-43 as necessary to implement this chapter.

2-44 [Sections 407A.009-407A.050 reserved for expansion]

2-45 SUBCHAPTER B. APPLICATION REQUIREMENTS FOR  
2-46 CERTIFICATE OF APPROVAL FOR SELF-INSURANCE GROUP

2-47 Sec. 407A.051. APPLICATION FOR INITIAL CERTIFICATE OF  
2-48 APPROVAL; APPROVAL REQUIREMENTS. (a) An association of employers  
2-49 that proposes to organize as a workers' compensation self-insurance  
2-50 group shall file with the department an application for a  
2-51 certificate of approval.

2-52 (b) The application must be in the form prescribed by the  
2-53 commissioner and must include:

2-54 (1) the name of the group;

2-55 (2) the location of the group's principal office;

2-56 (3) the date of organization of the group;

2-57 (4) the name and address of each employer that is a  
2-58 member of the group;

2-59 (5) the name, mailing address, and telephone number of  
2-60 the trade or professional association to which each group member  
2-61 belongs as required by Section 407A.002(a)(2);

2-62 (6) the governing classification code of the group or  
2-63 a description of the operations of each member of the group showing  
2-64 that the members of the group are engaged in similar operations;  
2-65 and

2-66 (7) any other information reasonably required by the  
2-67 commissioner.

2-68 (c) The application must be accompanied by:

2-69 (1) a nonrefundable \$1,000 filing fee;

3-1                   (2) proof of compliance with the financial  
3-2 requirements under Section 407A.053;  
3-3                   (3) proof of compliance with the excess insurance  
3-4 requirements under Section 407A.054;  
3-5                   (4) a copy of the articles of association or  
3-6 declaration of trust of the group, if any;  
3-7                   (5) a copy of any agreements entered into with an  
3-8 administrator or a service company;  
3-9                   (6) a copy of the bylaws of the proposed group;  
3-10                  (7) a copy of the agreement between the group and each  
3-11 employer who is a member of the group that:  
3-12                   (A) secures the payment of workers' compensation  
3-13 benefits; and  
3-14                   (B) includes provisions for payment of  
3-15 assessments as provided by Section 407A.355;  
3-16                   (8) designation of the initial board of trustees and  
3-17 administrator of the group;  
3-18                   (9) the address in this state where the books and  
3-19 records of the group will be maintained at all times;  
3-20                   (10) a pro forma financial statement, in a form  
3-21 acceptable to the commissioner, that shows the financial ability of  
3-22 the group to pay the workers' compensation obligations of the  
3-23 employers who are members of the group;  
3-24                   (11) proof of one of the following:  
3-25                   (A) payment to the group, or a bona fide promise  
3-26 to pay on approval of the group, by each employer who is a member of  
3-27 the group of not less than 25 percent of that member's first year  
3-28 estimated modified schedule rating premium on a date prescribed by  
3-29 the commissioner, which shall be considered part of the first year  
3-30 premium payment of each member; or  
3-31                   (B) if the group is formed from a trust existing  
3-32 on September 1, 2003, that the assets of the trust are sufficient to  
3-33 cover the workers' compensation obligations of the trust;  
3-34                   (12) a \$250,000 performance bond for the administrator  
3-35 in the form prescribed by the commissioner;  
3-36                   (13) a \$250,000 performance bond for the service  
3-37 company in the form prescribed by the commissioner; and  
3-38                   (14) an indemnity agreement that meets the  
3-39 requirements of Section 407A.056.  
3-40                  (d) Not later than the 30th day after the effective date of  
3-41 the change, a group shall notify the commissioner of any change in:  
3-42                   (1) the information required to be filed under  
3-43 Subsection (c); or  
3-44                   (2) the manner of the group's compliance with  
3-45 Subsection (c).  
3-46                  (e) The commissioner shall evaluate the financial  
3-47 information provided with the application as necessary to ensure  
3-48 that:  
3-49                   (1) the funding is sufficient to cover expected losses  
3-50 and expenses; and  
3-51                   (2) the funds necessary to pay workers' compensation  
3-52 benefits will be available on a timely basis.  
3-53                  (f) Except as otherwise provided by this subsection, the  
3-54 commissioner shall act on a complete application for a certificate  
3-55 of approval not later than the 90th day after the date on which the  
3-56 application is filed with the department. If, because of the number  
3-57 of applications, the commissioner is unable to act on an  
3-58 application in a timely manner, the commissioner may extend the  
3-59 period for an additional 30 days.  
3-60                  (g) Fees collected under this section shall be deposited in  
3-61 the department's operating account.  
3-62                  Sec. 407A.052. ISSUANCE OF CERTIFICATE OF APPROVAL;  
3-63 REFUSAL. (a) The commissioner shall issue a certificate of  
3-64 approval to a proposed group on finding that the group has met the  
3-65 requirements of this subchapter.  
3-66                  (b) If the commissioner determines that a proposed group  
3-67 has not satisfied the requirements under this subchapter for a  
3-68 certificate of approval, the commissioner shall issue an order  
3-69 refusing the certificate. The order must set forth the reasons for

4-1 the refusal.

4-2 (c) On issuance of the certificate of approval, the group is  
 4-3 authorized to provide workers' compensation benefits.

4-4 Sec. 407A.053. FINANCIAL REQUIREMENTS. (a) To obtain a  
 4-5 certificate of approval, each group shall comply with the financial  
 4-6 requirements adopted under this section.

4-7 (b) The combined net worth of all employers who are members  
 4-8 of the group must be at least \$2 million. A member of the group may  
 4-9 not be required to submit an audited financial statement to  
 4-10 establish the \$2 million combined net worth, but the group must file  
 4-11 a report compiled by a certified public accountant and based on  
 4-12 financial statements or tax returns to support the existence of a  
 4-13 combined net worth of at least \$2 million for the initial group. In  
 4-14 the case of a group composed of a trust existing on September 1,  
 4-15 2003, the trust may satisfy the financial requirements of this  
 4-16 section by showing that the trust has participant surplus,  
 4-17 including accrued participant dividends of at least \$2 million, in  
 4-18 lieu of the requirement of the \$2 million combined net worth of its  
 4-19 members. Discounted reserves may not be considered in determining  
 4-20 whether a trust existing on September 1, 2003, has a surplus of at  
 4-21 least \$2 million.

4-22 (c) The group must post security in the form and amount  
 4-23 prescribed by the commissioner, not to exceed \$300,000. The  
 4-24 security may be provided by a surety bond, security deposit, or any  
 4-25 combination of those securities. If a surety bond is used to meet  
 4-26 the security requirement, the surety bond must be issued by a  
 4-27 corporate surety company authorized to transact business in this  
 4-28 state. If a security deposit is used to meet the security  
 4-29 requirement, the following are acceptable securities:

4-30 (1) a bond or other evidences of indebtedness issued,  
 4-31 assumed, or guaranteed by the United States of America or by an  
 4-32 agency or instrumentality of the United States of America;

4-33 (2) certificates of deposit in a federally insured  
 4-34 bank;

4-35 (3) shares or savings deposits in a federally insured  
 4-36 savings and loan association or credit union;

4-37 (4) a bond or security issued by a state and backed by  
 4-38 the full faith and credit of that state;

4-39 (5) public securities described by Subsection (f); and

4-40 (6) commercial paper payable in United States currency  
 4-41 that is rated in one of the two highest credit rating categories by  
 4-42 each rating agency.

4-43 (d) Any securities posted must be deposited in the state  
 4-44 treasury and must be assigned to and made negotiable by the  
 4-45 executive director of the commission under a trust document  
 4-46 acceptable to the commissioner. Interest accruing on a negotiable  
 4-47 security deposited under this subsection shall be collected and  
 4-48 transmitted to the depositor if the depositor is not in default.

4-49 (e) A bond or security deposit must be:

4-50 (1) made for the benefit of the state, to be used  
 4-51 solely to pay claims and associated expenses; and

4-52 (2) payable on the failure of the group to pay workers'  
 4-53 compensation benefits that it is legally obligated to pay.

4-54 (f) Public securities may be used as security under this  
 4-55 section if the public securities bear interest or are sold at a  
 4-56 discount and are issued by any corporation, denominated in United  
 4-57 States dollars.

4-58 Sec. 407A.054. EXCESS INSURANCE REQUIREMENTS. (a) To  
 4-59 obtain an initial certificate of approval and to be eligible to  
 4-60 renew its certificate of approval, each group must comply with the  
 4-61 excess insurance requirements adopted under this section.

4-62 (b) Each group shall obtain specific excess insurance for  
 4-63 losses that exceed the group's retention in a form prescribed by the  
 4-64 commissioner. The commissioner may establish minimum requirements  
 4-65 for the amount of specific excess insurance based on differences  
 4-66 among groups in size, types of employment, years in existence, and  
 4-67 other relevant factors.

4-68 Sec. 407A.055. PREMIUM REQUIREMENTS. Each group must have  
 4-69 an estimated premium subject to experience modifier of at least

5-1 \$250,000 during the group's first year of operation. Thereafter,  
5-2 the annual standard premium must be at least \$500,000.

5-3 Sec. 407A.056. INDEMNITY AGREEMENT REQUIREMENTS. (a) An  
5-4 indemnity agreement filed under Section 407A.051 must jointly and  
5-5 severally bind the group and each employer who is a member of the  
5-6 group to meet the workers' compensation obligations of each member.

5-7 (b) The indemnity agreement must be in the form prescribed  
5-8 by the commissioner and must include minimum uniform substantive  
5-9 provisions as prescribed by the commissioner. Subject to the  
5-10 commissioner's approval, a group may add other provisions necessary  
5-11 because of that group's particular circumstances.

5-12 Sec. 407A.057. ADDITIONAL PERFORMANCE BOND REQUIREMENTS.  
5-13 In addition to the requirements under Section 407A.051, the  
5-14 commissioner may require a service company providing claim services  
5-15 to furnish a performance bond of \$250,000 in the form prescribed by  
5-16 the commissioner.

5-17 [Sections 407A.058-407A.100 reserved for expansion]

5-18 SUBCHAPTER C. TERMINATION OF CERTIFICATE OF APPROVAL

5-19 Sec. 407A.101. CERTIFICATE OF APPROVAL; TERMINATION. (a)  
5-20 A certificate of approval remains in effect until terminated at the  
5-21 request of the group or revoked by the commissioner.

5-22 (b) The commissioner may not grant the request of any group  
5-23 to terminate its certificate of approval unless the group has  
5-24 insured or reinsured all incurred workers' compensation  
5-25 obligations with an authorized insurer under an agreement filed  
5-26 with and approved in writing by the commissioner. For purposes of  
5-27 this subsection, those obligations include:

- 5-28 (1) known claims and expenses associated with those  
5-29 claims; and
- 5-30 (2) incurred but not reported claims and expenses  
5-31 associated with those claims.

5-32 [Sections 407A.102-407A.150 reserved for expansion]

5-33 SUBCHAPTER D. BOARD OF TRUSTEES

5-34 Sec. 407A.151. BOARD MEMBERSHIP. (a) Each group shall be  
5-35 operated by a board of trustees composed of at least five persons  
5-36 whom the members of the group elect for stated terms of office. The  
5-37 trustees must be employees, officers, or directors of employers who  
5-38 are members of the group. Each board member shall be a resident of  
5-39 this state or an officer of a corporation authorized to do business  
5-40 in this state.

5-41 (b) An administrator or service company of the group, or  
5-42 owner, officer, employee of, or any other person affiliated with  
5-43 the administrator or service company, may not serve on the board of  
5-44 trustees.

5-45 Sec. 407A.152. BOARD GENERAL POWERS AND DUTIES. The board  
5-46 of trustees shall:

- 5-47 (1) maintain minutes of its meetings and make the  
5-48 minutes available to the commissioner;
- 5-49 (2) designate an administrator and delineate in the  
5-50 written minutes of its meetings the areas of authority it delegates  
5-51 to the administrator; and
- 5-52 (3) retain an independent certified public accountant  
5-53 to audit the financial statements required by Section 407A.251.

5-54 Sec. 407A.153. PROHIBITED ACTIVITIES. The board of  
5-55 trustees may not:

- 5-56 (1) extend credit to individual members for payment of  
5-57 a premium, except under payment plans approved by the commissioner;  
5-58 or
- 5-59 (2) without first advising the commissioner of the  
5-60 nature and purpose of the loan and obtaining prior approval from the  
5-61 commissioner, borrow any money from the group or in the name of the  
5-62 group except in the ordinary course of business.

5-63 Sec. 407A.154. GROUP FUNDS. The board of trustees shall  
5-64 maintain responsibility for all money collected or disbursed from  
5-65 the group.

5-66 [Sections 407A.155-407A.200 reserved for expansion]

5-67 SUBCHAPTER E. GROUP MEMBERSHIP; TERMINATION; LIABILITY

5-68 Sec. 407A.201. ADMISSION OF EMPLOYER AS MEMBER. (a) An  
5-69 employer who joins an approved workers' compensation

6-1 self-insurance group shall:

6-2 (1) submit an application for membership to the board  
6-3 of trustees or its administrator; and

6-4 (2) enter into the indemnity agreement as required by  
6-5 Section 407A.056.

6-6 (b) The board of trustees shall maintain as a permanent  
6-7 record the employer's application for membership and the approval  
6-8 of the application.

6-9 (c) The membership of an individual member of a group is  
6-10 subject to cancellation by the group as provided by the bylaws of  
6-11 the group. An individual member may also elect to terminate  
6-12 participation in the group. The group shall notify the  
6-13 commissioner and the commission of the cancellation or termination  
6-14 of a membership not later than the 10th day after the date on which  
6-15 the cancellation or termination takes effect and shall maintain  
6-16 coverage of each canceled or terminated member until the 30th day  
6-17 after the date of the notice, at the terminating member's expense,  
6-18 unless before that date the commission notifies the group that the  
6-19 canceled or terminated member has:

6-20 (1) obtained workers' compensation insurance  
6-21 coverage;

6-22 (2) become a certified self-insurer; or

6-23 (3) become a member of another group.

6-24 (d) The group shall pay each workers' compensation claim for  
6-25 which a member of the group incurs liability during the period of  
6-26 membership. A member who elects to terminate membership or whose  
6-27 membership is canceled by the group remains jointly and severally  
6-28 liable for the workers' compensation obligations of the group and  
6-29 its members incurred during the canceled or terminated member's  
6-30 period of membership.

6-31 (e) A member of a group is not relieved of workers'  
6-32 compensation liabilities incurred during its period of membership  
6-33 except through payment by the group or the member of required  
6-34 workers' compensation benefits.

6-35 (f) The insolvency or bankruptcy of a member does not  
6-36 relieve a group or any other member of the group of liability for  
6-37 the payment of any workers' compensation benefits incurred during  
6-38 the insolvent or bankrupt member's period of membership.

6-39 [Sections 407A.202-407A.250 reserved for expansion]

6-40 SUBCHAPTER F. EXAMINATIONS, FINANCIAL STATEMENTS, AND OTHER  
6-41 REPORTS

6-42 Sec. 407A.251. FINANCIAL STATEMENT. (a) Each group shall  
6-43 submit to the commissioner financial statements audited by an  
6-44 independent certified public accountant on or before the last day  
6-45 of the sixth month following the end of the group's fiscal year.

6-46 (b) The financial statement must include a balance sheet,  
6-47 income statement, and statement of cash flow and must be prepared on  
6-48 the basis of accounting principles generally accepted in the United  
6-49 States.

6-50 (c) Loss reserves may be discounted subject to generally  
6-51 accepted accounting principles. The discounting must be documented  
6-52 in the notes accompanying the financial statement. Notwithstanding  
6-53 this subsection, dividends paid to members of the group must be  
6-54 based on undiscounted loss reserves.

6-55 (d) The actuarial opinion required by this section must be  
6-56 given by a member in good standing of the American Academy of  
6-57 Actuaries and Casualty Actuarial Society.

6-58 Sec. 407A.252. EXAMINATION. (a) The commissioner shall  
6-59 examine the financial condition of each group to determine the  
6-60 group's ability to meet the group's obligations under this  
6-61 subtitle. An examination under this section is subject to Article  
6-62 1.15, Insurance Code, except that, to the extent of a conflict  
6-63 between this chapter and that article, this chapter prevails. The  
6-64 commissioner may examine a group annually for the first three years  
6-65 of the group's operation. Beginning with the fourth year of  
6-66 operation, the commissioner may not examine a group more frequently  
6-67 than once every three years unless the commissioner determines that  
6-68 the group:

6-69 (1) is in an impaired financial condition; or

7-1 (2) otherwise may not be able to continue to meet the  
7-2 group's obligations under this subtitle.

7-3 (b) The commissioner has full access to the records,  
7-4 officers, agents, and employees of a group as necessary to complete  
7-5 an examination under this section. The commissioner may recover  
7-6 the expenses of the examination under Article 1.16, Insurance Code,  
7-7 to the extent the maintenance tax under Section 407A.302 does not  
7-8 cover those expenses.

7-9 [Sections 407A.253-407A.300 reserved for expansion]

7-10 SUBCHAPTER G. TAXES, FEES, AND ASSESSMENTS

7-11 Sec. 407A.301. MAINTENANCE TAX FOR COMMISSION AND RESEARCH  
7-12 AND OVERSIGHT COUNCIL. (a) Each group shall pay a self-insurance  
7-13 group maintenance tax under this section for:

7-14 (1) the administration of the commission;  
7-15 (2) the prosecution of workers' compensation insurance  
7-16 fraud in this state; and

7-17 (3) the Research and Oversight Council on Workers'  
7-18 Compensation.

7-19 (b) The tax liability of a group under Subsections (a)(1)  
7-20 and (2) is based on gross premium for the group's retention  
7-21 multiplied by the rate assessed insurance carriers under Sections  
7-22 403.002 and 403.003.

7-23 (c) The tax liability of a group under Subsection (a)(3) is  
7-24 based on gross premium for the group's retention multiplied by the  
7-25 rate assessed insurance carriers under Section 404.003.

7-26 (d) The tax under this section does not apply to premium  
7-27 collected by the group for excess insurance.

7-28 (e) The tax under this section shall be collected by the  
7-29 comptroller as provided by Article 5.68, Insurance Code.

7-30 Sec. 407A.302. MAINTENANCE TAX FOR DEPARTMENT. (a) Subject  
7-31 to Subsection (b), each group shall pay the maintenance tax imposed  
7-32 under Article 5.68, Insurance Code, for the administrative costs  
7-33 incurred by the department in implementing this chapter.

7-34 (b) The tax liability of a group under this section is based  
7-35 on gross premium for the group's retention and does not include  
7-36 premium collected by the group for excess insurance.

7-37 (c) The maintenance tax assessed under this section is  
7-38 subject to Article 5.68, Insurance Code, and shall be collected by  
7-39 the comptroller in the manner provided by that article.

7-40 Sec. 407A.303. COLLECTION AND PAYMENT OF TAXES. (a) The  
7-41 group shall remit the taxes for deposit in the state treasury to the  
7-42 credit of the commission.

7-43 (b) A group commits a violation if the group does not pay the  
7-44 taxes imposed under Sections 407A.301 and 407A.302 in a timely  
7-45 manner. A violation under this subsection is a Class B  
7-46 administrative violation. Each day of noncompliance constitutes a  
7-47 separate violation.

7-48 (c) If the certificate of approval of a group is terminated,  
7-49 the commissioner or the executive director of the commission shall  
7-50 immediately notify the comptroller to collect taxes as directed  
7-51 under Sections 407A.301 and 407A.302.

7-52 Sec. 407A.304. PREMIUM TAX. (a) Each group shall pay to the  
7-53 comptroller a premium tax on gross premiums for the group's  
7-54 retention. The premium tax assessed under this subsection does not  
7-55 apply to premium collected for excess insurance.

7-56 (b) The rate for the premium tax under this section is the  
7-57 rate assessed under Article 4.10, Insurance Code.

7-58 [Sections 407A.305-407A.350 reserved for expansion]

7-59 SUBCHAPTER H. RATES; REFUNDS; PREMIUM PAYMENTS; RESERVES; DEFICITS

7-60 Sec. 407A.351. RATES. (a) Except as provided by  
7-61 subsection (b), each group shall use the uniform classification  
7-62 system, experience rating plan, and rate relativities of the  
7-63 department.

7-64 (b) A group may:  
7-65 (1) use the relativities promulgated by the department  
7-66 modified to produce rates in accordance with the group's historical  
7-67 experience; or

7-68 (2) file its own rates with the department, including  
7-69 any reasonable and supporting information required by the

8-1 commissioner.

8-2 (c) As approved by the commissioner, a group may use rating  
8-3 debits or credits and optional rating plans.

8-4 (d) Rates of the group may not be excessive, inadequate, or  
8-5 unfairly discriminatory.

8-6 Sec. 407A.352. AUDITS. Each member of a group shall be  
8-7 audited annually by the administrator or by an auditor acceptable  
8-8 to the commissioner to verify proper classifications, experience  
8-9 rating, payroll, and rates. The group shall maintain a record of  
8-10 the audit as part of the group's records that are available to the  
8-11 commissioner during an examination conducted under Section  
8-12 407A.252. The audit shall be performed at the expense of the group.

8-13 Sec. 407A.353. REFUNDS. (a) The board of trustees may  
8-14 declare refundable any money for a fund year in excess of the amount  
8-15 necessary to fund all obligations.

8-16 (b) The board of trustees shall give each member a written  
8-17 description of the group's refund plan at the time of application  
8-18 for membership.

8-19 Sec. 407A.354. PREMIUM PAYMENT PLAN; RESERVES. (a) Until  
8-20 the assets of a group reach a level sufficient to cover the group's  
8-21 liabilities, each group shall establish to the satisfaction of the  
8-22 commissioner a premium payment plan.

8-23 (b) As long as the assets of the group remain sufficient to  
8-24 cover the group's liabilities, the group may determine its own  
8-25 premium plan if the premium plan is disclosed to each member at the  
8-26 time of application and is filed with the commissioner.

8-27 (c) Each group shall establish and maintain actuarially  
8-28 appropriate loss reserves, which must include reserves for:

8-29 (1) known claims and expenses associated with those  
8-30 claims; and

8-31 (2) claims incurred but not reported and expenses  
8-32 associated with those claims.

8-33 (d) Each group shall establish and maintain bad debt  
8-34 reserves based on the historical experience of the group or of other  
8-35 groups composed of similar employer members.

8-36 Sec. 407A.355. DEFICITS; INSOLVENCIES. (a) For purposes  
8-37 of this section, "insolvent" means:

8-38 (1) the inability of a group to pay the group's  
8-39 outstanding lawful obligations as they mature in the regular course  
8-40 of business; or

8-41 (2) that the group's liabilities exceed the group's  
8-42 assets, determined without reducing liabilities by any reserve  
8-43 discount.

8-44 (b) If the assets of a group are at any time insufficient to  
8-45 enable the group to discharge its legal liabilities and other  
8-46 obligations and to maintain the reserves required under this  
8-47 chapter, the group shall make up the deficiency or levy an  
8-48 assessment on its members for the amount needed to make up the  
8-49 deficiency.

8-50 (c) In the event of a deficiency in any fund year, the  
8-51 deficiency shall be made up immediately from:

8-52 (1) surplus from a fund year other than the current  
8-53 fund year;

8-54 (2) administrative funds;

8-55 (3) assessments of the membership, if ordered by the  
8-56 group; or

8-57 (4) any alternate method that the commissioner  
8-58 approves or directs.

8-59 (d) The commissioner shall be notified before any transfer  
8-60 of surplus funds from one fund year to another under Subsection (c).

8-61 (e) If the group fails to assess its members or to otherwise  
8-62 make up a deficit, the commissioner shall order the group to do so.  
8-63 If the commissioner determines that the group is in a hazardous  
8-64 financial condition, the commissioner may take action as provided  
8-65 by Article 21.28-A, Insurance Code, and may order the group to  
8-66 rectify the condition through an alternate method under Subsection  
8-67 (c)(4). The group is considered an insurer only for purposes of  
8-68 Article 21.28-A, Insurance Code. Otherwise, to the extent of a  
8-69 conflict between this chapter and that article, this chapter



9-1 prevails.

9-2 (f) If the group fails to make the required assessment of  
 9-3 its members after the commissioner's order under Subsection (e), or  
 9-4 if the deficiency is not fully made up, the group shall be deemed to  
 9-5 be insolvent.

9-6 (g) If a group is liquidated, the commissioner shall secure  
 9-7 release of the security deposit and levy an assessment on the  
 9-8 members of the group in an amount determined necessary by the  
 9-9 commissioner to discharge all liabilities of the group, including  
 9-10 the reasonable cost of liquidation.

9-11 [Sections 407A.356-407A.400 reserved for expansion]

9-12 SUBCHAPTER I. DISCIPLINARY ACTIONS; PENALTIES

9-13 Sec. 407A.401. PROHIBITED SOLICITATION. In connection  
 9-14 with the solicitation of membership in a group, a person may not  
 9-15 make an untrue statement of a material fact, or omit to state a  
 9-16 material fact necessary to make the statement made, in light of the  
 9-17 circumstances under which it is made, not misleading.

9-18 Sec. 407A.402. FINES. After notice and an opportunity for  
 9-19 a hearing, the commissioner may impose a fine on any person or group  
 9-20 found to be in violation of this chapter or a rule adopted under  
 9-21 this chapter. A fine assessed under this section may not exceed  
 9-22 \$1,000 for each act or violation and may not exceed \$10,000 in the  
 9-23 aggregate. The amount of any fine assessed under this section shall  
 9-24 be paid to the commissioner and deposited in the state treasury.

9-25 Sec. 407A.403. CEASE AND DESIST ORDERS. (a) After notice  
 9-26 and an opportunity for a hearing, the commissioner may issue an  
 9-27 order requiring a person or group to cease and desist from engaging  
 9-28 in an act or practice found to be in violation of this chapter or a  
 9-29 rule adopted under this chapter.

9-30 (b) On a finding, after notice and opportunity for a  
 9-31 hearing, that a person or group has violated a cease and desist  
 9-32 order issued under this section, the commissioner may:

9-33 (1) impose a fine not to exceed \$1,000 for each  
 9-34 violation of the order, not to exceed an aggregate fine of \$100,000;

9-35 (2) revoke the group's certificate of approval or any  
 9-36 license held by the person issued under the Insurance Code; or

9-37 (3) impose the fine and revoke the certificate or  
 9-38 license.

9-39 Sec. 407A.404. REVOCATION OF CERTIFICATE OF APPROVAL. (a)  
 9-40 After notice and an opportunity for a hearing, the commissioner may  
 9-41 revoke a group's certificate of approval if the group:

9-42 (1) is found to be insolvent;

9-43 (2) fails to pay a tax, assessment, or special fund  
 9-44 contribution imposed on the group; or

9-45 (3) fails to comply in a timely manner with this  
 9-46 chapter, a rule adopted under this chapter, or an order of the  
 9-47 commissioner.

9-48 (b) In addition, the commissioner may revoke a group's  
 9-49 certificate of approval if, after notice and an opportunity for  
 9-50 hearing, the commissioner determines that:

9-51 (1) a certificate of approval issued to the group was  
 9-52 obtained by fraud;

9-53 (2) there was a material misrepresentation in the  
 9-54 application for the certificate of approval; or

9-55 (3) the group or its administrator has  
 9-56 misappropriated, converted, illegally withheld, or refused to pay  
 9-57 on proper demand any money that belongs to a member, an employee of  
 9-58 a member, or a person otherwise entitled to the money and that has  
 9-59 been entrusted to the group or its administrator in their fiduciary  
 9-60 capacities.

9-61 SECTION 2. Section 401.011(27), Labor Code, is amended to  
 9-62 read as follows:

9-63 (27) "Insurance carrier" means:

9-64 (A) an insurance company;

9-65 (B) a certified self-insurer for workers'  
 9-66 compensation insurance; ~~or~~

9-67 (C) a certified self-insurance group under  
 9-68 Chapter 407A; or

9-69 (D) a governmental entity that self-insures,

10-1 either individually or collectively.

10-2 SECTION 3. (a) Except as provided by Subsection (b) of  
10-3 this section, this Act takes effect September 1, 2003.

10-4 (b) A workers' compensation self-insurance group created  
10-5 under Chapter 407A, Labor Code, as added by this Act, that is issued  
10-6 a certificate of approval by the commissioner of insurance under  
10-7 that chapter, may offer workers' compensation insurance coverage  
10-8 beginning January 1, 2004. Chapter 407A, Labor Code, as added by  
10-9 this Act, applies only to a claim for workers' compensation  
10-10 benefits based on a compensable injury that occurs on or after  
10-11 January 1, 2004. A claim based on a compensable injury that occurs  
10-12 before that date is governed by the law in effect on the date that  
10-13 the compensable injury occurred, and the former law is continued in  
10-14 effect for that purpose.

10-15 \* \* \* \* \*