

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/26/2017**

Amendment to: HB 1223

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>				\$232,213		\$243,819
<b>Appropriations</b>				\$232,213		\$243,819

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill aims to privatize worker's compensation coverage and would require the Insurance Department to regulate such coverage.

Please also see the attachment provided by WSI.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

To carry out the functions of this bill, the Insurance Department would need one and a half additional FTEs, a half-time position in the Examinations and Company Licensing Division and a full-time position in the Product Filing Division, along with operating expenditures to support those positions.

Please also see the attachment provided by WSI.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

This bill has no fiscal impact to revenue.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Salaries and benefits for the new positions are estimated at \$221,843 and \$232,935 for the 2017-2019 and 2019-2021 bienniums, respectively. The operating expenditures to support and train these new positions are estimated at \$10,370 for 2017-2019 and \$10,884 for 2019-2021.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

All expenditures highlighted above would need to be appropriated.

**Name:** Melissa Seifert

**Agency:** Insurance Department

**Telephone:** 328-2930

**Date Prepared:** 01/27/2017

**WORKFORCE SAFETY & INSURANCE**  
**2017 LEGISLATION**  
**SUMMARY OF ACTUARIAL INFORMATION**

**BILL NO:** Engrossed HB 1223

**BILL DESCRIPTION:** Private Insurance for Workers' Compensation

**SUMMARY OF ACTUARIAL INFORMATION:** Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation provides employers the ability to obtain private insurance for workers' compensation coverage.

**FISCAL IMPACT:**

This bill opens the workers' compensation market to private insurance and assigns obligations to the Insurance Commissioner including establishing rules and regulations for those employers opting for private insurance.

The current system in North Dakota has resulted in very low costs when compared to private insurance companies. The current system results in lower expense percentage cost because of the efficiencies of size, and it does not pay for expenses normally associated with private insurance, such as, advertising and sales commissions. The bill as written does not specifically address what happens when a private workers' compensation insurer goes into receivership or otherwise defaults on its obligations. It is unclear how the remaining liabilities to injured workers would be handled.

While the administrative cost of this program is substantial, there is no funding mechanism, such as premium tax, to pay for these additional duties assigned to the Insurance Department or the additional duties that would be required of WSI.

**DATE:** January 27, 2017

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/16/2017**

Bill/Resolution No.: HB 1223

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>				\$351,230		\$368,780
<b>Appropriations</b>				\$351,230		\$368,780

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill aims to privatize worker's compensation coverage and would require the Insurance Department to regulate such coverage.

Please also see the attachment provided by WSI.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

To carry out the functions of the bill, the Insurance Department would need two additional FTEs, one in the Examinations Division and the other in the Product Filing Division, along with operating expenditures to support those positions.

Please also see the attachment provided by WSI.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

This bill has no fiscal impact to revenue.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Salaries and benefits for the new positions are estimated at \$334,040 and \$350,740 for the 2017-2019 and 2019-2021 bienniums, respectively. The operating expenditures to support and train these new positions is estimated at \$17,190 for 2017-2019 and \$18,040 for 2019-2021.



- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

All expenditures highlighted above would need to be appropriated.

**Name:** Melissa Seifert

**Agency:** Insurance Department

**Telephone:** 328-2930

**Date Prepared:** 01/18/2017

**WORKFORCE SAFETY & INSURANCE  
2017 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION**

**BILL NO: HB 1223**

**BILL DESCRIPTION: Private Insurance/Self Insurance for Workers' Compensation**

**SUMMARY OF ACTUARIAL INFORMATION:** Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation provides employers the ability to obtain private insurance or self insure for workers' compensation coverage

**FISCAL IMPACT:**

Entities entering into self insurance would have no specific funding requirements subsequent to the initial escrow, i.e. annual certification of unpaid claim liabilities by the self-insured. Considering that workers' compensation is long-tailed insurance coverage this creates a dangerous situation for injured workers. In North Dakota, 50% of the total ultimate claim liabilities arising from a given policy year are not paid until the 12th year subsequent to the beginning of the policy year. Over time, as an entity continues to be self-insured, the unpaid claim liabilities for all self-insured years combined accumulate and often dwarf the amount of the "expected annual claim liabilities". Currently New York, which allows self insurance, has over \$500 million of unfunded liability from terminated or defaulted self insureds.

The current North Dakota system affords all of the benefits of self insurance and none of the dangers. An employer has available programs such as large deductibles, retrospective rating plans and the experience rating program all of which emulate self insurance.

This bill assigns a number of duties / obligations to the Insurance Commissioner including:

- Establishing rules and regulations for those employers opting for private insurance. Monitoring compliance.
- Establishing rules and regulations regarding the qualifications and initial escrow amounts for self-insured entities.
- Establishing rules and regulations and governing the self-insurers insolvency trust fund.
- Requirement to take "Corrective Action" against self-insured entities including determining if the employer is not following proper workers' compensation claims procedures and /or if the accident prevention program is inadequate. Both of these determinations require specialized personnel such as WC claim adjusters and WC safety engineers.

While the administrative cost of this program is substantial, there is no funding mechanism, such as premium tax, to pay for these additional duties assigned to the Insurance Department.

**DATE: January 13, 2017**

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/10/2017**

Bill/Resolution No.: HB 1223

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

see attachment

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

see attachment

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** John Halvorson

**Agency:** WSI

**Telephone:** 328-6016

**Date Prepared:** 01/13/2017

**WORKFORCE SAFETY & INSURANCE  
2017 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION**

**BILL NO: HB 1223**

**BILL DESCRIPTION: Private Insurance/Self Insurance for Workers' Compensation**

**SUMMARY OF ACTUARIAL INFORMATION:** Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation provides employers the ability to obtain private insurance or self insure for workers' compensation coverage

**FISCAL IMPACT:**

Entities entering into self insurance would have no specific funding requirements subsequent to the initial escrow, i.e. annual certification of unpaid claim liabilities by the self-insured. Considering that workers' compensation is long-tailed insurance coverage this creates a dangerous situation for injured workers. In North Dakota, 50% of the total ultimate claim liabilities arising from a given policy year are not paid until the 12th year subsequent to the beginning of the policy year. Over time, as an entity continues to be self-insured, the unpaid claim liabilities for all self-insured years combined accumulate and often dwarf the amount of the "expected annual claim liabilities". Currently New York, which allows self insurance, has over \$500 million of unfunded liability from terminated or defaulted self insureds.

The current North Dakota system affords all of the benefits of self insurance and none of the dangers. An employer has available programs such as large deductibles, retrospective rating plans and the experience rating program all of which emulate self insurance.

This bill assigns a number of duties / obligations to the Insurance Commissioner including:

- Establishing rules and regulations for those employers opting for private insurance. Monitoring compliance.
- Establishing rules and regulations regarding the qualifications and initial escrow amounts for self-insured entities.
- Establishing rules and regulations and governing the self-insurers insolvency trust fund.
- Requirement to take "Corrective Action" against self-insured entities including determining if the employer is not following proper workers' compensation claims procedures and /or if the accident prevention program is inadequate. Both of these determinations require specialized personnel such as WC claim adjusters and WC safety engineers.

While the administrative cost of this program is substantial, there is no funding mechanism, such as premium tax, to pay for these additional duties assigned to the Insurance Department.

**DATE: January 13, 2017**

**2017 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1223**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

HB 1223  
1/16/2017  
26916

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Kathleen Davis*

## Explanation or reason for introduction of bill/resolution:

Allowing employers to purchase private insurance or self-insurer for worker's compensation coverage.

## Minutes:

Attachments 1, 2, 3, 4, 5

Chairman Keiser: Opens the hearing of HB 1223.

**Rep Ruby**~Representative from District 38. Introduces the bill. This bill leaves WSI in place as a possible option for workers' comp coverage for state employers, and out of state employers that work in ND, and also allows for private insurance companies to offer insurance comp products related to workers' comp coverage, is done in every state except 4. The bill deals with the self-insurance option that large employers would be able to do. Large companies, non-profits, other entities do this in other parts of the country.

We have the lowest rates. They won't actuarially run numbers to set rates in ND if they don't have the ability to do so and they have to follow all the benefits in our statute. We set the benefit level. Our injured workers receive the same coverage whether it's a private company or WSI because that's in our statute. People that have businesses in other states and they would love to have just one company to get coverage from no matter what state they're in. If you have a company in SD, operate out of SD, WY, ND, they have to get coverage from 3 separate entities for their employees when they should be able to work with one agent and cover them in whatever state they operate in. It's difficult to compare rates from state to state because of different rates and variables. I believe we are the lowest, is because we average it all out. When you talk about administrative costs being low, you're spreading that out over the whole state. There are some examples where people are paying more than they should. What do we have to worry about with WSI? If it's truly the lowest, nobody is going to leave them. Maybe some companies willing to pay more with their private company they have in another state just so they don't have to go through administrative hoops. If we truly are the lowest, I won't leave them.

The fiscal note was not neutral. It made it fear the unknown, what are we going to do with unfunded liabilities and self-insured policies. If there's such a distrust of what kind of protection there would be, WSI must not have too much faith in our insurance department to



make sure our surety bonds and reserve funds and levels and calculations going into that are done properly. I have trust the insurance department can do that.

**7:00**

**Rep Laning:** Do you know how it would be handled if we did pass this and an insurance company not do further business in ND and left. How would the worker then be covered? Would it automatically revert? If so, they've missed X years of premium income and they'd be liable. How that would be handled?

**Rep Ruby:** I don't think that they can walk away from their liability. I believe they are locked into what they originally agreed to and signed on to.

**Steve Becher**~Executive Director of the Professional Insurance Agents of ND: Attachment 1 in support of HB 1223.

**Chairman Keiser:** Farmers can buy insurance.

**Becher:** They can, they do, but then tend to be told when they call, you're exempt, you don't need it.

**Chairman Keiser:** Which is true.

**Becher:** But I think there's still a need there. What percent say that? It would be conjecture.

**Lacy Anderson**~American Insurance Association: We're strongly in support of this bill.

**Evan MANDIGO**~State Executive of the Independent Insurance Agents of ND: Attachment 2 in favor of HB 1223. Our biggest reason is it allows employers options they do not have now.

**Rep Ruby:** With your experience with other private insurers, do they have more or the same classifications? Do private insurers set up different rate classifications that might benefit other industries differently?

**Mandigo:** Every carrier would establish their own rate classification which is pretty uniform. It would have to be reconciled to each individual state for their unique classifications. There is a universally accepted set of rates and classification descriptions.

**Chairman Keiser:** Anyone else here in support? Opposition?

**19:45**

**Andy Peterson**~Representing the Greater ND Chamber: Attachment 3 urged a do not pass of HB 1223.

**Rep Ruby:** Your testimony is admitting that some people are paying more to the benefit of others?



**Peterson:** Yes.

**Rep Ruby:** Is it common in most states, the state entity, workers comp division, becomes the high risk pool for the bad actors?

**Peterson:** You could assume that.

**22:58**

**Ann Green~Legal Services Director with WSI:** Attachment 4 in opposition to HB 1223.

**29:00**

**Chairman Keiser:** Earlier testimony the statement was made that many states have self-insurance. Is that true?

**Green:** Yes.

**Chairman Keiser:** To my knowledge was TX and OK recently did it and it's in the courts in OK. Do other states have it?

**Green:** That is correct. I will be happy to provide that information.

**Chairman Keiser:** Opt out and self-insurance are 2 different things.

**Green:** Right.

**Chairman Keiser:** I think that's accurate. It's because of the reserves the courts. Exclusive remedy means that if you're injured while working, it's going to be covered, all the benefits. If for whatever reason, whether a company goes out of existence or anything else, ultimately the State of ND will hold the liability if there is a forfeiture.

**Green:** Correct. Our fiscal note references an unpaid liability in the state of NY because they currently allow self-insurance and there is a \$500 million unfunded liability from either terminated, or defaulted self-insurance.

**Rep Ruby:** Some states do allow for private insurance, whether self-insurance or not, they generally have a tax that goes directly to state workers comp. Did you figure that into the fiscal note?

**Green:** No. The bill is silent on where the liability for either a defaulted or absent private insurer or severance would lie.

**Chairman Keiser:** Currently WSI doesn't sell any multi-state coverage? That's all done through agents and brokers in our state?

**Green:** Correct.

**Chairman Keiser:** That underwriting rates are pretty standard for those multinational plans?

**Green:** I do think so.

**Chairman Keiser:** On a national scale, it's molecular in its approach in its underwriting. There are tremendous variables in multi-state plans.

**Green:** Yes.

**Rep Laning:** Do you have any records previously from other states, the impact on rates?

**Green:** I don't have that with me.

**Chairman Keiser:** The state of West Virginia. They had an unfunded liability so great no private carrier would touch it. Ultimately they did privatize and take the whole liability of unpaid claims and still have not been able to fund it.

**Rep Ruby:** Would it be, in that situation, the state fund was insolvency and that's why they privatized? That's what they're trying to recoup. It isn't the self-funded or insurance companies that sold policies were in default.

**Chairman Keiser:** The state fund was in default due to poor management. We're at the cutting edge of management of workers comp. Our state is not in line with that situation.

**Green:** That's correct, the WV state fund was poorly managed.

**36:26**

**Arik Spencer~Executive Vice President of the ND Motor Carriers Association:** Attachment 5 in opposition.

**Marlin Kling~President of Mid Motor Express:** 100 years in business, a ND based company, employee 700 employees in 15 states and pay workers comp premiums for those state including 2 other monopolist states, WY and WA. ND does have the lowest premium. The background is complexed and convoluted. Our concerned is the unintended consequences. One of the advantages of ND is we have a cap on the wages these premiums are computed against. We do participate in safety incentives and get back through the dividend program some of the premiums we pay. Even though our initial core rate is slightly higher, by the time we calculate the benefits of the wage cap, safety discounts and dividends, we come out much further ahead in those other states. A side note, we do self-insure on some areas because we see a benefit for us in the amount we would have to pay. Our concern is that ND is left being the high risk pool for the bad actors.

**Chairman Keiser:** A self-insure and a reinsure are two different things.

**Kling:** The other self-insurance we do in not in the workers' comp arena.



**Chairman Keiser:** That's a different issue entirely.

**Spencer:** Back to Attachment 5.

**Rep Ruby:** You are one of the employers or the industry receiving the benefit of being the lowest in the nation, your fear is that it would increase if the other people, who are now currently paying more, leave the system. Is that your concern?

**Spencer:** If there are new costs introduced, covering the cost and the long term impact of the fund and implication that will have on premiums.

**Rep Ruby:** How many years has your industry had people sitting on the board of WSI and how many board members from your association are on the WSI board at this time?

**Spencer:** To the 1<sup>st</sup> question, I don't know but currently I think there are 4 members that have transportation activity in their business on the WSI board.

**Waylon Hedegaard ~president of ACL-CIO:** Testimony great for employers, businesses and particular employers. I have a concern about how it's going to affect the recipients of the workmen's comp program, the average rank and file worker who is actually covered under it. I find myself in the ironic position of actually being on the same side of the fence as both WSI and the Chamber of Commerce. When those organizations all agree, there's a perfect storm of concern. He reads from the fiscal note. It says "entities entering into self-insurance would have no specific funding requirements subsequent to the initial escrow, i.e. annual certification of unpaid claim liabilities by the self-insured. Considering that workers' compensation is a long-tailed insurance coverage, this creates a dangerous situation for injured workers." And "The current North Dakota system affords all of the benefits of self-insurance and none of the dangers." and at the bottom, "While the administrative costs of this program is substantial, there is no funding mechanism, such as premium tax, to pay for these additional duties assigned to the Insurance Department." I don't want this group to lose track of the fact that the true purpose of workers' comp and WSI is to protect the workers.

**Rep Ruby:** Did you read the surety bonds and trust that must be put in place and the protections that must be put in place for their abilities, especially with the self-funded plan?

**Hedegaard:** The testimony here has been how it's going to benefit the employers and businesses. With my general contractor background, you can only make things so efficient, before you're actually cutting services. That concerns me.

**Russ Hanson~ with the Associated General Contractors:** We stand in opposition to this bill. We feel the current system is working.

Opposition? Neutral?

**Jon Godfread~ND Insurance Commissioner:** We have not submitted a fiscal note and there will be some impacts. In 2009 shows a similar bill sought for the insurance department to take over regulatory oversight and examination of WSI. That's called for 5 additional

employees in the insurance department. There will be product filing, company licensing, things like that.

**Chairman Keiser:** I am requesting a fiscal note.

**Kasper:** In the bill, can you address setting up a trust and the ongoing claims. I'm concerned if the trust should stop, does the bill adequately address the unfunded liability potential?

**Godfread:** I would have to get back on that.

**John Roswick~Chairman of Midwest Motor Express:** We have 12 states where we buy insurance, 3 states we are part of a state operated group fund. One thing of interest, WA involved certain groups to carve out a section of the plan. So in WA, all the people in trucking are on a separate plan, monitored by the WA State Insurance Plans. I've been involved in workers' comp purchasing for 36 years. MT has 2 funds, the old fund due to some discrepancies in the past, and the new fund. I would like to offer myself as a resource for down the line.

**Chairman Keiser:** Closes the hearing.

# 2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

HB 1223  
1/24/2017  
27327

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Ellen Letang*

## Explanation or reason for introduction of bill/resolution:

Allowing employers to purchase private insurance or self-insurer for worker's compensation coverage.

## Minutes:

Attachment 1

**Chairman Keiser:** Reopens the hearing of HB 1223.

**Rep Ruby:** Attachment 1. Talks about the amendment.

**Rep Ruby:** Moves the amendment.

**Rep Boschee:** Second.

**Rep Laning:** Is this the one that will offer option to get private insurance versus WSI?

**Chairman Keiser:** Further discussion.

**Voice vote – motion carried.**

**Rep Kasper:** I would like a marked up bill before final action.

**Rep Ruby:** Will there be a fiscal note from the Insurance Dept.

**Chairman Keiser:** It would still require the Insurance Dept to set up a department.

**Chairman Keiser:** Closes the hearing on HB 1223.



# 2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

HB 1223  
1/25/2017  
27408

- Subcommittee  
 Conference Committee

*Eileen Litang*

## Explanation or reason for introduction of bill/resolution:

Allowing employers to purchase private insurance or self-insurer for worker's compensation coverage.

## Minutes:

Attachment 1

**Chairman Keiser:** Reopens the hearing of HB 1223. Did we adopt the amendment?

**Rep Ruby:** Attachment 1. Yes, Rep Kasper wanted to see the christmas tree markup. The amendment basically removes the self-insurance portion & have it as 2 options. One option would be using WSI or using coverage as a carrier insured employer under this title.

**Chairman Keiser:** Strikes out all of the new stuff for self-insurance but leaves in place the option for an employer's purchase worker's comp either through the premiums that WSI or a private carrier.

**Rep Ruby:** This gives some ability for some companies who are paying more to that benefits to the ones that are paying less. I have a problem with that, I think it should be others should pay more to receive that benefit. Any company that offers their product has to follow what is in state law, we set the statue, we determine what the benefits are.

**Rep Ruby:** Do Pass as Amended.

**Rep Becker:** Second

**Rep Lefor:** This concerns me a lot, right now we have the lowest premiums in the country, 52% lower than the medium of all states. Some of the lowest risk would leave the plan. The problem with that is that it makes premiums higher for other businesses.

If you look back to the 1990's, we had 250 million dollars in unfunded liability. The legislature over many sessions worked very hard to get a program together for this product. It was referred to the voters and it was upheld. We have 4.1 worker out of 5 & employers 4.3 rating out of 5, among highest in the country. Our administrative cost is 12%, country wide is 25%. My concern is that we need to be careful for what we wish for because in 2 years we could

be coming back here because a lot of employers are upset because of higher premiums. I'm going to oppose for those reasons.

**Rep Kasper:** Rates are calculated by the numbers insured & another demographic is the age. I believe that private insurances would be cherry picking the best risk out there & the employer would leave if they can pay lower premium. WSI has the potential to be the last resort to be the insurer & they will be the ones left in the state fund. In the end, it could be the raveling of the state fund. All the advantages & the ranking of our current WSI system, I don't if the employers overall can get a better deal than what we currently have. I'll oppose the motion for a do pass.

**Vice Chairman Sukut:** 25 years ago, I would have been with Rep Ruby, but I have watched in the past years that WSI has turned into insurance organization that's actually the envy of the country. I too, will oppose the motion.

**Rep Ruby:** Somebody that pays between 70 to 90 thousand dollars a year, with very few claims, I'm one who pays. If WSI is as good as all of you say it is, they have nothing to worry about. If there are some paying a little more, they may jump off, so what. I wish we trusted the market more & we do have a good system.

**Rep Becker:** I'm supporting this bill, there is the market & there is a varied aspect when it comes to looking at true competition.

**Chairman Keiser:** In the case in worker's comp that we have risk rated categories. If you are in the construction industry, you are generally going to pay a high premium versus office folks. But within risk created categories, there is underwriting by category & within the category, there is underwriting based on utilization of the plan by yourself. We have a monopolistic system. This is the question; do we want to maintain it or do we want to open it in the market place. There are a lot of concerns, that the open market in other states, their rates are significantly higher than in ND.

I have had constituents that come to me & say I should get some kind of refund on homeowners' insurance because I've never had a claim. Where do they go when they have a mega claim in the private market? Based on your utilization, we are quadrupling your premium. They will come back to the fund they didn't want. We need to look at West Virginia, the last to go, they have an unstainable problem, they got all the losers. There will be a winner or two temporarily, but you go to the private market & you have a big claim. They will come back to us.

**Chairman Keiser:** We have a motion for a Do Pass as Amended, we will take a roll call vote.

**Roll call was taken for a Do Pass as Amended on HB 1223 with 3 yes, 11 no, 0 absent, motion failed.**

**Chairman Keiser:** Do we have an alternative motion?

**Rep Lefor:** Moves a Do Not Pass as Amended.

**Vice Chairman Sukut:** Second.

**Chairman Keiser:** Further discussion.

**Roll call was taken for a Do Not Pass as Amended on HB 1223 with 11 yes, 3 no, 0 absent & Rep Lefor is the carrier.**



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1223

Page 1, line 2, remove "or self-insurer"

Page 1, line 11, after the underscored semicolon insert "or"

Page 1, remove line 12

Page 1, line 13, replace "c." with "b."

Page 1, remove lines 22 and 23

Page 2, remove lines 16 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 30

Page 5, remove lines 1 through 31

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 6

Renumber accordingly

Date: Jan 24, 2017

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1223

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ Committee  
 Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation  
 Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions     Reconsider     \_\_\_\_\_

Motion Made By Rep Ruby    Seconded By Rep Boschee

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep Laning		
Vice Chairman Sukut			Rep Lefor		
Rep Beadle			Rep Louser		
Rep R Becker			Rep O'Brien		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Boschee		
Rep Kasper			Rep Dobervich		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_ Voice vote ~ Motion carried

*Remove the portions that relate to the self insurance.*

Date: Jan 25, 2017

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1223

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation

- Adopt Amendment
- Do Pass     Do Not Pass     Without Committee Recommendation
- As Amended     Rerefer to Appropriations
- Place on Consent Calendar

Other Actions     Reconsider     \_\_\_\_\_

Motion Made By Rep Ruby    Seconded By Rep Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep Laning		X
Vice Chairman Sukut		X	Rep Lefor		X
Rep Beadle		X	Rep Louser	X	
Rep R Becker	X		Rep O'Brien		X
Rep Bosch		X	Rep Ruby	X	
Rep C Johnson		X	Rep Boschee		X
Rep Kasper		X	Rep Dobervich		X

Total (Yes) 3 No 11

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

motion failed

Date: Jan 25, 2017

Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1223

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation

- Adopt Amendment
- Do Pass     Do Not Pass     Without Committee Recommendation
- As Amended     Rerefer to Appropriations
- Place on Consent Calendar

Other Actions     Reconsider     \_\_\_\_\_

Motion Made By Rep Lefor

Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep Laning	X	
Vice Chairman Sukut	X		Rep Lefor	X	
Rep Beadle	X		Rep Louser		X
Rep R Becker		X	Rep O'Brien	X	
Rep Bosch	X		Rep Ruby		X
Rep C Johnson	X		Rep Boschee	X	
Rep Kasper	X		Rep Dobervich	X	

Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep Lefor

**REPORT OF STANDING COMMITTEE**

**HB 1223: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1223 was  
placed on the Sixth order on the calendar.

Page 1, line 2, remove "or self-insurer"

Page 1, line 11, after the underscored semicolon insert "or"

Page 1, remove line 12

Page 1, line 13, replace "c." with "b."

Page 1, remove lines 22 and 23

Page 2, remove lines 16 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 30

Page 5, remove lines 1 through 31

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 6

Renumber accordingly

**2017 TESTIMONY**

**HB 1223**



Jan 16, 2017

①

## Testimony for HB 1223 – ND House IBL Committee

Chairman Keiser and members of the House Industry, Business, and Labor Committee for the record my name is Steve Becher and I am Executive Director of the Professional Insurance Agents of ND. PIA of ND represents over 300 main street insurance agencies with over 1000 independent agents across the state of North Dakota. I am providing testimony today and asking you for a Do Pass recommendation on **House Bill 1223**.

North Dakota is one of only four states in the nation that continue to operate a workers compensation system with a monopolistic state fund and one of only 2 states that do not allow self-insurance for larger employers. There are also 19 states that operate a state-owned work comp fund that competes with private insurance companies to cover the employers in their state. Most of the states that were once monopolistic have failed and have switched to a fully open market system.

There are many reasons that these monopolistic funds have failed in the other states, but like all monopolies there are a couple of common themes – lack of competition resulting in a drop in service standards and insolvency due to inability to choose their own clients as they have to insure everyone. When a business has competition there is a need to provide better service than the competition or your clients will walk out the door. When there is no competition these service standards tend to drop as the customer has no recourse so the attitude becomes “take it or leave it”. Our agents are asked for help with work comp questions on a regular basis by their clients even though the agent has no dealings on the work

comp policy because the client has become frustrated with a perceived lack of service from Workforce Safety. A prime example of this is many of our agents recommend to their farm clients that it would be in their best interests to look into a work comp policy for themselves and their farm employees. When these farmers call into Workforce Safety many of them are told that they don't "need" work comp and basically talked out of buying the protection. The reality is that farmers are not required by law to carry work comp, but that does NOT mean that the need and/or exposure are not there. It seems almost as if the Workforce Safety employee does not want the farmer to purchase the policy as that would result in more work.

On the solvency issue, while Workforce Safety is doing very well at the present time there is always an inherent risk of insolvency when there is no choice in clientele and they must take everyone. We hear quite often that the work comp rates in ND are some of the lowest in the nation and while that is a good thing it can be a double edged sword if claims start to rise in frequency and severity and they have no choice in which clients they insure.

Our agents support the passage of this bill as they already work with their insureds on all of the other exposures facing the business and work comp is just another one of the exposures that we can help them work through. Presently, our agents can identify and show the insured how to manage most of the risks that are a potential threat to their business but when it comes to work comp in North Dakota they have to pass it off to Workforce Safety. In the case of businesses that operate in multiple states our agents will help them write a policy for the other states and then tell them they need to purchase an additional policy



in North Dakota, but not through them. An alternative would be for Workforce Safety to start using the agent force to work with their businesses which would elevate the customer service provided to the client as well as help Workforce Safety receive more accurate information on payrolls, worker classifications, claims reporting, etc.

For these reasons the Professional Insurance Agents of ND would respectfully ask for a Do Pass on HB 1223 and I would be happy to answer any questions that you may have.

Testimony House Bill 1223  
House Industry Business Labor Committee  
January 16, 2017

Chairman Keiser and members of the House Industry Business and Labor Committee, my name is Evan Mandigo, State Executive of the Independent Insurance Agents of ND. I am here today to testify in favor of HB 1223.

Our association supports this bill because we believe employers in North Dakota should have options on how and from whom they purchase statutory Workers Compensation insurance. At present, Workforce Safety and Insurance (WSI) is the only option available. North Dakota is one of 4 states which does not allow insurance companies to offer workers compensation insurance.

This bill allows three options. Employers could choose to meet the requirement to provide workers compensation coverage by purchasing it from WSI, a private insurance company, or qualify as a self-insurer. We believe with three options available, employers can choose which option works for them and our members would be able to provide risk management solutions designed to meet the unique needs of each policyholder.

WSI could still be the best option for a particular employer, but with the additional choices of private insurance or self-insurance for qualified employers the employer could now make that choice.

This bill does not change any of the statutory benefits established by the legislature, only how those benefits are delivered by the employer. The Legislature still establishes the benefit levels.

Private insurers would have to make a business decision on whether they would enter the state to provide coverage. They would need to analyze our benefit structure and establish rates just like they do for other insurance products and seek authority from the Department of Insurance to offer coverage.

Employers could also seek to qualify as a self-insurer provided they meet criteria established for financial responsibility. An employer seeking to become a qualified self-insurer would have to make up any deficiency in their account with WSI. A deficiency happens when the employer has more claim dollars paid or reserved than premium collected.

Prior conversations about allowing private insurers or self-insurance usually included a concern that WSI would be endangered by employers who choose to leave. Our feeling is that market forces should determine who is the best fit for each employer. If WSI is the best option for employers, then they should not lose business and the private carriers and self-insurance options will not be used.

A disadvantage to monopolistic delivery is multi state employers cannot integrate it with their multi state insurance program. The other states extension in private carrier policies does not include monopolistic states. Different payroll reporting rules also make it difficult for a multi-state employer.

In closing, Mr. Chairman and members of the House IBL Committee we urge a do pass recommendation for the following reasons:

- Allowing private carriers or self-insurance provide options for employers where none are available now
- We believe competition and not a monopoly is the best method to determine which delivery method is best for employers. Producers should be able to offer their customers options based on what is best for each situation just like they do for all other coverages.
- Coordination of multi state employer workers compensation programs including ND will be simplified.

Thank you for the opportunity to testify and I would be happy to respond to your questions.



**Testimony of Andy Peterson  
Greater North Dakota Chamber  
IBL  
George Keiser - Chair  
HB 1223  
January 16, 2017**

Mr. Chairman and members of the committee, my name is Andy Peterson and am here today representing the Greater North Dakota Chamber. Members of the media proclaim we are the most prominent business organization in the state. We stand for economic freedom and free enterprise. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, and local chambers of commerce. For purposes of this hearing we are also representing other employer associations. As a group we stand in opposition to HB 1223 and urge a do not pass from the committee on this bill.

The Chamber has had many discussions over the years at both the committee and board level about the benefits and liabilities of self-insurance, which HB 1223 addresses, and privatization, which it does not. Our position has not changed. WSI is at its heart an insurance pool. North Dakota, relatively speaking, is a small state with a very finite number of employers making up that pool. The first and probably only employers to leave the pool will be positive balance employees with low claims history and in categories with low liability. What will be left are negative balance employers with high liability because of the nature of their business or their practices. Their rates will have to increase, most probably increase drastically, as the pool of employers shrinks. The businesses in this class, notably construction, trucking, oil development and other trades, are critical to the continued economic health of a small rural state like ours. Mostly these employers would be classified as small or middle size employers, and North Dakota's employers are predominantly small and middle sized. If we increase costs – substantially, with a change like this - we will pay the bill every time we work on a road or building, public or private, transport goods into or out of our state, or develop our abundant energy resources. We believe this concept is not in the best long term interest of the business community or the state and we urge a do not pass.

Thank you for the opportunity to appear before you today in opposition to HB 1223. As always, I would be happy to answer any questions.

**2017 House Bill No. 1223**  
**Testimony before the House Industry, Business, and Labor Committee**  
**Presented by: Anne Jorgenson Green, Legal Services Director**  
**Workforce Safety & Insurance**  
**January 16, 2017**

Mr. Chairman, Members of the Committee:

My name is Anne Green, Legal Services Director with WSI. I am here today to provide testimony regarding House Bill 1223. The WSI Board of Directors oppose this bill.

HB 1223 proposes to introduce both self-insurance and private workers compensation insurance coverage into the North Dakota system. HB 1223 is virtually identical to 2009 Engrossed HB 1408 that was considered by this body in 2009. 2009 Engrossed HB 1408 failed 7-86.

Since 1919, WSI has been the sole provider of workers compensation coverage and benefits in the state. North Dakota employers enjoy the lowest premium rates in the country. Driven by positive investment results, North Dakota employers received a premium dividend ranging between 30% and 62% in eleven of the previous twelve policy years.

Privatization is the status quo in most other workers compensation jurisdictions, with only four monopolistic jurisdictions remaining: Ohio, Washington, Wyoming and North Dakota. A competitive workers compensation market requires the licensing and regulation of those insurers by the Insurance Department. The introduction of an infrastructure of brokerage fees and marketing costs into the workers compensation system, neither of which are present in the current North Dakota system, will drive costs and ultimately increase premiums.

Self-insurance becomes a viable option when policyholders need to insulate themselves from market cycles. It is during periods of volatility that employers, out of necessity, may consider self-insurance as a means of stabilizing their own workers' compensation environment. These market cycles may cause fluctuations in pricing and the availability of adequate workers' compensation coverage which employers' may find cost prohibitive. These circumstances are not reflective of the current environment in North Dakota.

WSI currently offers two loss sensitive programs comparable to a self-insurance program. The large deductible program permits an employer to assume up to the first \$100,000 or \$250,000 of claims costs in exchange for a significantly reduced premium. The second program, the retrospective rating program, also permits an employer to retain risk up to a predetermined level, usually 2 to 3 times the standard premium, with risk transferred back to the organization if claims costs exceed that level. Each of these programs resemble a self-insurance plan in terms of advantages, however, an insured is not subject to meeting and maintaining the extensive qualification requirements associated with a self-insurance plan. Additionally, a participant in WSI's programs is not responsible for the sometimes lengthy tail of a workers compensation claim once the ceiling of their liability is met. Currently, participation in these programs is at records lows, likely due to the favorable rating environment.

HB 1223 is silent or unclear on a number of issues:

- Self-insured funding requirements appear to be arbitrary or insufficient to cover the ultimate claim liabilities arising from a given policy year.
- As written, WSI would continue to fill the role as ultimate guarantor for defaulting self-insureds.
- Where does responsibility lie for the administration of claims management, the payment of claim benefits and implementation of rehabilitation services?



- May third party claims administrators pay benefits to injured workers under Title 65?
- Can an employer who opts for a program of self-insurance or coverage in the private marketplace adjudicate their own claims?
- Does WSI recoup claims administration expense from the self-insured or privately insured?
- Does WSI continue to operate as regulator ensuring claims are adjudicated in conformance with North Dakota workers compensation law?

As these questions are answered, infrastructure challenges must be addressed. Analyzing the ability of a North Dakota employer to sustain a self-insurance program will require subject matter experts. The management of self-insurance, the maintenance of appropriate security, insolvency, and injured worker appeals in the self-insurance realm will require additional staff resources at both WSI and the Insurance Department.

Privatization will necessitate the creation of a division within WSI to develop relationships with brokers, provide education and market our insurance products in an entirely new business environment. This type of growth is difficult to quantify in dollars.

Self-insurance and privatization become necessary when the cost of workers compensation is prohibitively high or where significant premium increases necessitate the introduction of competition to regulate cost. These circumstances are not reflective of the current workers' compensation environment in North Dakota.

That concludes my testimony. I am happy to answer any questions that you may have.

TESTIMONY HB 1223

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

JANUARY 16, 2017

Mr. Chairman and members of the House Industry, Business and Labor Committee my name is Arik Spencer, executive vice president of the North Dakota Motor Carriers Association (NDMCA). NDMCA represents the trucking and transportation industry in North Dakota and has been in existence since 1937. I am here this morning to testify in opposition to House Bill 1223.

The NDMCA board and members have had many discussions over the years regarding North Dakota's monopolistic worker's compensation system and have been an active participant in lobbying for reforms that have resulted in North Dakota employers, generally speaking, enjoying the lowest premiums in the country.

Looking at North Dakota's trucking industry specifically, NDMCA members tell me that worker's compensation insurance is less in North Dakota than in other states. This is backed up by the Oregon Workers Compensation Premium Rate Ranking Report which lists North Dakota as having the lowest premiums in the nation for the trucking rate class.

Over the past decade, the trucking rate class in North Dakota has been the lowest in the country except for 2014 when Wyoming had the lowest rate. In contrast, in 1990's before a series of reforms, ND was ranked somewhere in the middle nationally and our premium rates were nearly double what they are today. In fact, over the last two years, our premiums have decreased by nearly 8.5%.

As a significant contributor to the WSI Fund, we are concerned that should ND move to a system in which self-insurance is an option, over time we will see negative impacts to the WSI fund as it covers the costs of long-term claims that exceed an employer's self-insurance ability. In addition, the private insurance option may drive premiums up as commissions, profit and marketing costs now must be paid.

While our worker's compensation system is not perfect, North Dakota premium rates are the lowest or among the lowest in the country in most categories. We believe that overall WSI works well for employers and injured workers and ask that you give **HB 1223 a DO NOT PASS recommendation.**

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions.



17.0603.01000

Prepared by Legislative Intern 8  
January 18, 2017

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1223**

Page 1, line 2 remove "or self-insurer"

Page 1, line 11 after ";" insert "or"

Page 1, remove line 12

Page 1, line 13 replace "c." with "b."

Page 1, remove lines 22 and 23

Page 2, remove lines 16 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 30

Page 5, remove lines 1 through 31

Page 6 remove lines 1 through 31

Page 7 remove lines 1 through 31

Page 8 remove lines 1 through 6

Renumber accordingly

remove of the portions that  
relate to the self insurance.

Jan 25, 2017

17.0603.01001

Sixty-fifth  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1223**

Introduced by

Representatives D. Ruby, Rick C. Becker, M. Nelson, Toman

Senator O. Larsen

1 A BILL for an Act to create and enact a new chapter to title 65 of the North Dakota Century  
2 Code, relating to allowing employers to purchase private insurance ~~or self insurer~~ for worker's  
3 compensation coverage.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new chapter to title 65 of the North Dakota Century Code is created and  
6 enacted as follows:

7 **Duty to secure payment of compensation - Options - Definitions.**

8 1. Notwithstanding contrary provisions of law, every employer required to provide  
9 workers' compensation coverage under this title shall secure the coverage under this  
10 title by:

11 a. Paying premiums and providing coverage through the state fund; or

12 ~~b. Providing coverage and qualifying as a self-insured employer under this title; or~~

13 ~~e.b. Providing coverage and qualifying as a carrier-insured employer under this title.~~

14 2. As used in this chapter:

15 a. "Carrier-insured employer" means an employer that provides workers'  
16 compensation coverage through a guaranty contract insurer.

17 b. "Guaranty contract insurer" means an insurer that is authorized under title 26.1  
18 and this title to transact workers' compensation insurance in this state. An insurer  
19 may not be authorized to transact workers' compensation insurance in this state  
20 unless the insurer's policy provides workers' compensation coverage that meets  
21 or exceeds the coverage required under this title.

22 ~~c. "Self insurer" means an employer or group of employers authorized under this~~  
23 ~~chapter to carry its own liability to its employees covered by this title.~~

1       **Carrier-insured employers.**

- 2       1. An employer may qualify as a carrier-insured employer by establishing to the  
3       insurance commissioner's satisfaction that the employer is insured by a guaranty  
4       contract insurer. A carrier-insured employer must have proof of insurance filed with the  
5       insurance department.
- 6       2. The insurance department may suspend or revoke the authorization of an insurer to  
7       issue workers' compensation insurance policies in this state if the insurance  
8       department finds the company failed to comply with the insurer's obligations under this  
9       title or failed to comply with the orders of the insurance department.
- 10      3. The insurance department shall adopt rules addressing:
- 11      a. Proof of insurance requirements;
- 12      b. Guaranty contract expiration, cancellation, and termination requirements for  
13      carrier-insured employers; and
- 14      c. Insurance department revocation of authorization to be a carrier-insured  
15      employer.

16      ~~**Qualification - Self-insurers.**~~

- 17      ~~1. An employer may qualify as a self-insurer by establishing to the insurance~~  
18      ~~commissioner's satisfaction that the employer has sufficient financial ability to make~~  
19      ~~certain the prompt payment of all compensation under this title and all assessments~~  
20      ~~that may become due from such employer. Each application for certification as a self-~~  
21      ~~insurer submitted by an employer must be accompanied by payment of a fee of one~~  
22      ~~hundred fifty dollars or such larger sum as the insurance commissioner finds~~  
23      ~~necessary for the administrative costs of evaluation of the applicant's qualifications. An~~  
24      ~~employer that has formerly been certified as a self-insurer and thereafter ceases to be~~  
25      ~~certified may not apply for certification within three years of ceasing to have been~~  
26      ~~certified.~~
- 27      ~~2. A self-insurer may be required by the insurance commissioner to supplement existing~~  
28      ~~financial ability by depositing in an escrow account in a depository designated by the~~  
29      ~~insurance commissioner, money or corporate or governmental securities approved by~~  
30      ~~the insurance commissioner or a surety bond written by a company admitted to~~  
31      ~~transact surety business in this state, or provide an irrevocable letter of credit issued~~



1 ~~by a federally or state chartered commercial banking institution authorized to conduct~~  
2 ~~business in this state filed with the insurance department. The money, securities,~~  
3 ~~bond, or letter of credit must be in an amount reasonably sufficient in the insurance~~  
4 ~~commissioner's discretion to ensure payment of reasonably foreseeable compensation~~  
5 ~~and assessments, but not less than the employer's normal expected annual claim~~  
6 ~~liabilities and in no event less than one hundred thousand dollars. In arriving at the~~  
7 ~~amount of money, securities, bond, or letter of credit required under this subsection,~~  
8 ~~the insurance commissioner shall take into consideration the financial ability of the~~  
9 ~~employer to pay compensation and assessments and probable continuity of operation~~  
10 ~~of the self insurer. However, a letter of credit is acceptable only if the self insurer has a~~  
11 ~~net worth of not less than five hundred million dollars as evidenced in an annual~~  
12 ~~financial statement prepared by a qualified, independent auditor using generally~~  
13 ~~accepted accounting principles. The money, securities, bond, or letter of credit so~~  
14 ~~deposited must be held by the insurance commissioner solely for the payment of~~  
15 ~~compensation by the self insurer and the self insurer's assessments. In the event of~~  
16 ~~default, the self insurer loses all right and title to, any interest in, and any right to~~  
17 ~~control the surety. The amount of surety may be increased or decreased from time to~~  
18 ~~time by the insurance commissioner. The income from any securities deposited may~~  
19 ~~be distributed currently to the self insurer. The letter of credit option authorized in this~~  
20 ~~subsection does not apply to a self insurer that is a hospital or a political subdivision.~~  
21 ~~3. Securities or money deposited by an employer pursuant to subsection 2 must be~~  
22 ~~returned to the self insurer upon the self insurer's written request if the employer files~~  
23 ~~the bond required by subsection 2.~~  
24 ~~4. If the employer seeking to qualify as a self insurer has previously insured with the~~  
25 ~~state fund, the insurance commissioner shall require the employer to make up the~~  
26 ~~employer's proper share of any deficit or insufficiency in the state fund as a condition~~  
27 ~~to certification as a self insurer.~~  
28 ~~5. A self insurer may insure a portion of the self insurer's liability under this title with any~~  
29 ~~insurer authorized to transact insurance in this state; however, the insurer may not~~  
30 ~~participate in the administration of the responsibilities of the self insurer under this title.~~  
31 ~~The insurance may not exceed eighty percent of the liabilities under this title.~~



1 ~~6. The insurance department may adopt separate rules establishing the security~~  
2 ~~requirements applicable to political subdivisions. In setting the requirements, the~~  
3 ~~insurance department shall take into consideration the ability of the political~~  
4 ~~subdivision to meet its self-insured obligations, such as source of funds, permanency,~~  
5 ~~and right of default.~~

6 ~~7. The insurance commissioner shall adopt rules to carry out the purposes of this~~  
7 ~~section, including rules relating to the terms and conditions of letters of credit and the~~  
8 ~~establishment of the appropriate level of net worth of the self-insurer to qualify for use~~  
9 ~~of the letter of credit. Only letters of credit issued in strict compliance with the rules~~  
10 ~~may be deemed acceptable.~~

11 ~~**Surety liability - Termination.**~~

12 ~~1. The surety on a bond filed by a self-insurer under this chapter may terminate the self-~~  
13 ~~insurer's liability thereon by giving the insurance commissioner written notice stating~~  
14 ~~when, not less than thirty days thereafter, the termination will be effective.~~

15 ~~2. In case of a termination, the surety remains liable, in accordance with the terms of the~~  
16 ~~bond, with respect to future compensation for injuries to employees of the self-insurer~~  
17 ~~occurring before the termination of the surety's liability.~~

18 ~~3. If the bond is terminated for a reason other than the employer terminating the~~  
19 ~~employer's status as a self-insurer, the employer shall, before the date of termination~~  
20 ~~of the surety's liability, otherwise comply with the requirements of this title.~~

21 ~~4. The liability of a surety on any bond filed under this section must be released and~~  
22 ~~extinguished and the bond returned to the employer or surety if either the liability is~~  
23 ~~secured by another bond filed or money or securities deposited as required by this~~  
24 ~~chapter.~~

25 ~~**Termination of status - Notice - Financial requirements.**~~

26 ~~1. An employer may at any time terminate the employer's status as a self-insurer by~~  
27 ~~giving the insurance commissioner written notice stating when, not less than thirty~~  
28 ~~days thereafter, the termination will be effective. The termination may not be effective~~  
29 ~~until the employer either has ceased to be an employer or has filed with the insurance~~  
30 ~~commissioner for state fund coverage under this title.~~



1 ~~2. An employer that ceases to be a self-insurer, and which so files with the insurance~~  
2 ~~commissioner, shall maintain money, securities, or surety bonds deemed sufficient in~~  
3 ~~the insurance commissioner's discretion to cover the entire liability of the employer for~~  
4 ~~injuries or occupational diseases to the employer's employees which occurred during~~  
5 ~~the period of self-insurance; however, the insurance commissioner may agree for the~~  
6 ~~medical aid and accident funds to assume the obligation of the claims, in whole or in~~  
7 ~~part, and shall adjust the employer's premium rate to provide for the payment of the~~  
8 ~~obligations on behalf of the employer.~~

9 ~~**Default by self-insurer - Authority of insurance commissioner - Liability for**~~  
10 ~~**reimbursement.**~~

11 ~~1. The insurance commissioner, in cases of default upon any obligation under this title by~~  
12 ~~the self-insurer, after ten days' notice by certified mail to the defaulting self-insurer of~~  
13 ~~the intention to do so, may bring suit upon the bond or collect the interest and principal~~  
14 ~~of any of the securities as the securities become due, sell the securities as may be~~  
15 ~~required, or apply the money deposited to pay compensation and discharge the~~  
16 ~~obligations of the defaulting self-insurer under this title.~~

17 ~~2. The insurance commissioner may fulfill the defaulting self-insured employer's~~  
18 ~~obligations under this title from the defaulting self-insured employer's deposit or from~~  
19 ~~other funds provided under this title for the satisfaction of claims against the defaulting~~  
20 ~~self-insured employer. The defaulting self-insured employer is liable to and shall~~  
21 ~~reimburse the insurance commissioner for the amounts necessary to fulfill the~~  
22 ~~obligations of the defaulting self-insured employer which are in excess of the amounts~~  
23 ~~received by the insurance commissioner from any bond filed or securities or money~~  
24 ~~deposited by the defaulting self-insured employer. The amounts to be reimbursed~~  
25 ~~must include all amounts paid or payable as compensation under this title together~~  
26 ~~with administrative costs, including attorney's fees, and must be considered taxes due~~  
27 ~~the insurance department.~~

28 ~~**Self-insurers' insolvency trust - Assessments - Rules.**~~

29 ~~1. A self-insurers' insolvency trust is established to provide for the unsecured benefits~~  
30 ~~paid to the injured employees of self-insured employers under this title for insolvent or~~  
31 ~~defaulting self-insured employers and for the associated administrative costs of the~~



1 ~~insurance department, including attorney's fees. The self-insurers' insolvency trust~~  
2 ~~must be funded by an insolvency assessment that must be levied on a post-insolvency~~  
3 ~~basis and after the defaulting self-insured employer's security deposit, assets, and~~  
4 ~~reinsurance, if any, have been exhausted. Insolvency assessments must be imposed~~  
5 ~~on all self-insured employers, except political subdivisions. The manner of imposing~~  
6 ~~and collecting assessments to the insolvency fund must be set forth in rules adopted~~  
7 ~~by the insurance department to ensure that a self-insured employer pays into the fund~~  
8 ~~in proportion to the employer's claim costs. The rules must provide that a self-insured~~  
9 ~~employer that has surrendered the employer's certification must be assessed for a~~  
10 ~~period of not more than three calendar years following the termination date of the~~  
11 ~~certification.~~

12 ~~2. The insurance commissioner shall adopt rules to carry out the purposes of this~~  
13 ~~section, including:~~

14 ~~a. Governing the formation of the self-insurers' insolvency trust for the purpose of~~  
15 ~~this chapter;~~

16 ~~b. Governing the insurance department and operation of the self-insurers'~~  
17 ~~insolvency trust to assure compliance with the requirements of this chapter;~~

18 ~~c. Requiring adequate accountability of the collection and disbursement of funds in~~  
19 ~~the self-insurers' insolvency trust; and~~

20 ~~d. Any other provisions necessary to carry out the requirements of this chapter.~~

21 ~~**Payments upon default.**~~

22 ~~If compensation due under this title is not paid because of an uncorrected default of a self-~~  
23 ~~insurer, compensation must be paid from the workforce safety and insurance fund, and money~~  
24 ~~obtained by the insurance commissioner from the bonds or other security provided under this~~  
25 ~~chapter must be deposited in the fund for the payment of compensation and administrative~~  
26 ~~costs, including attorney's fees.~~

27 ~~**Default lien.**~~

28 ~~1. In cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy,~~  
29 ~~the claim of the state for the amounts necessary to fulfill the obligations of a defaulting~~  
30 ~~self-insured employer together with administrative costs and attorney's fees is a lien~~  
31 ~~prior to all other liens or claims and on a parity with prior tax liens. The existence of a~~

1 default by a self-insured employer is sufficient to create the lien without any prior or  
2 subsequent action by the insurance department. All administrators, receivers, and  
3 assignees for the benefit of creditors shall notify the insurance commissioner of the  
4 administration, receivership, or assignment within thirty days of appointment or  
5 qualification.

6 ~~2. Separate and apart and in addition to the lien established by this section, the~~  
7 ~~insurance commissioner may issue an assessment, for the amount necessary to fulfill~~  
8 ~~the defaulting self-insured employer's obligations, including all amounts paid and~~  
9 ~~payable as compensation under this title and administrative costs, including attorney's~~  
10 ~~fees.~~

11 ~~**Corrective action against employer authorized - Appeal.**~~

12 ~~1. The insurance commissioner shall take corrective action against a self-insured~~  
13 ~~employer if the insurance commissioner determines:~~

14 ~~a. The employer is not following proper workers' compensation insurance claims~~  
15 ~~procedures;~~

16 ~~b. The employer's accident prevention program is inadequate; or~~

17 ~~c. Any condition as established by rule exists.~~

18 ~~2. Corrective actions may be taken upon the insurance commissioner's initiative or in~~  
19 ~~response to a petition filed. Corrective actions that may be taken by the insurance~~  
20 ~~commissioner include:~~

21 ~~a. Probationary certification for a period of time determined by the insurance~~  
22 ~~commissioner;~~

23 ~~b. Mandatory training for employers in areas, including claims management, safety~~  
24 ~~procedures, and administrative reporting requirements; and~~

25 ~~c. Monitoring of the activities of the employer to determine progress toward~~  
26 ~~compliance.~~

27 ~~3. Upon the termination of the corrective action, the insurance commissioner shall review~~  
28 ~~the employer's program for compliance with state laws and rules. A written report~~  
29 ~~regarding the employer's compliance must be provided to the employer and to any~~  
30 ~~party to a petition filed. If the insurance commissioner determines that compliance has~~  
31 ~~been attained, no further action may be taken. If compliance has not been attained,~~



- 1 the insurance commissioner may take additional corrective action or proceed toward  
2 decertification.
- 3 ~~— **Request for claim resolution - Time.**~~
- 4 ~~— The self-insurer shall request allowance or denial of a claim within sixty days from the date~~  
5 ~~the claim is filed. If the self-insurer fails to act within sixty days, the insurance department shall~~  
6 ~~intervene and adjudicate the claim.~~