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BULLETIN

ON WORKERS' COMP ISSUES

League staff will monitor the workers' compensation discussion through the legislative session. Beginning with this issue, special TRL BULLETINS will analyze various aspects of the subject. This bulletin presents an overview of the Select Committee's report to the 71st Legislature. Subsequent bulletins in this special series will examine in more depth specific elements of the committee's report as well as other developments relative to the workers' comp issue as they arise.

WORKERS' COMP SERIES NO. 1

DECEMBER 19, 1988

SELECT COMMITTEE ADOPTS FINAL REPORT

On Friday, December 9, 1988, with virtually no substantive discussion, the Joint Select Committee on Workers' Compensation Insurance voted 9-0 to adopt and to send to the 71st Legislature the committee's staff report and recommendations. The committee's action culminated an intensive year-long research and education effort.

In September 1988, the committee issued its 900 page volume, *Research Papers of the Joint Select Committee on Workers' Compensation Insurance*, and the League released its report, *An Examination of Selected Insurance Issues in the Texas Workers' Compensation System: A Report to the Joint Select Committee on Workers' Compensation*. In addition, the committee staff recently completed three additional studies.

In other words, the final report is supported by a prodigious research effort. To quote the final report:

Altogether over 1500 pages of original research material was [sic] prepared under the direction of the Joint Select Committee ... The Joint Select Committee takes pride in the fact that in less than a year a body of research has been created which equals or exceeds that of the previous 75 years.

The 27-page committee report is a result of this comprehensive research. The final report is basically a blueprint for legislative action. The report lays out the staff and consultant recommendations. In addition, the report presents several alternatives to the recommendations and a few options where no specific recommendations are made.

The committee report proposes possible actions in seven broad categories:

- I. The Agency, Advisory Council, and Research Institute
(Structure and functions of the Industrial Accident Board.)
- II. Benefits (Frequency, size, and type of benefit payments.)
- III. Adjudication of Disputes (Trial *de novo*.)
- IV. Safety (Workplace safety, safety consultation programs, and data collection.)

- V. Insurance (Self-insurance, Assigned Risk Pool, and insurance company obligations to policyholder.)
- VI. Coverage (Mandatory coverage and alternatives.)
- VII. Miscellaneous Provisions (Attorney fees, fraud, and penalties and sanctions related to participants in the system.)

Within these seven basic groupings, 45 recommendations and 12 alternatives are proposed. Twenty-four of the recommendations are considered critical, and the report presents six additional options. The agency and benefits categories contain the majority of recommendations -- 24 (17 of which are marked critical); in addition, two alternatives and two options are found in the first two categories.

Even a brief glance at the topical categories reveals a striking interdependence among them. The report notes this interrelationship is especially evident among categories I, II, and III. For example, one of the recommendations in Category I proposes an appeals structure within the Industrial Accident Board. This recommendation affects proposals changing benefit procedures and structure and vice versa. Similarly, any action on a recommendation modifying trial *de novo* would affect an appeals structure in some fashion.

In short, some of the more controversial recommendations in one category can have a consequential effect on recommendations in other categories. The committee is aware of this cross-association and says in the report that the recommendations are formatted as discrete topics only for ease of presentation.

In this bulletin, League staff will examine the committee's proposal in the insurance category because recommendations relative to self-insurance and the Assigned Risk Pool, two focal points in the League's workers' comp report, are found here. Subsequent bulletins will analyze specific topics or groups of recommendations that the staff believes will be of interest to League supporters.

SELF-INSURANCE

The committee did not make a specific recommendation regarding self-insurance. Instead, it offered an option which, according to the report, is used for "those issues for which a remedy is suggested but on which no affirmative recommendation is made." The committee's option suggests that the legislature:

1. (Option) Provide self-insurance for individual employers, with stringent requirements for eligibility and financial integrity. Require security mechanisms (bonds, excess coverage, guaranty fund, etc.) at least as good as those required of insurance companies. Allow for future expansion of self-insurance to additional classes of individual employers and to groups of employers.

The absence of a specific recommendation does not mean that self-insurance is not a viable choice available to the legislature. On the contrary, the report says that self-insurance can be an accountable and attractive method of delivering benefits. However, the committee is concerned that the authorization of self-insurance could increase further the rates charged to those employers unable to self-insure.

Findings in the League study indicate that less than one percent of all employers currently purchasing policies would have assets sufficient to finance a self-insurance program. Moreover, the removal of these employers from the market could reduce the premium income available to insurance companies by as much as 45 percent -- but probably in the range of 25-

30 percent. Consequently, the carriers might require higher rates to be profitable, and such an increase could have a marked effect on small businesses.

So, since self-insurance would give larger businesses control over their workers' comp programs and probably would reduce their costs, the committee is telling the legislature that self-insurance is a viable option, but that the legislature "must weigh the potential benefits and risks" before rushing to judgment.

ASSIGNED RISK POOL

The Texas Workers' Compensation Assigned Risk Pool (ARP), established in 1953, has been under increasing criticism since the early 1980s for:

- * The size of the pool;
- * The composition and tenure of the ARP governing committee;
- * The selection and tenure of the ARP servicing companies; and
- * The amount of the servicing fee.

The ARP currently serves more than 69,000 policyholders, most of whom are small businesses with annual premium payments of \$10,000 or less (mostly much less). The committee would limit the ARP to businesses with annual premiums of \$10,000 or more. Any business with a smaller premium that was rejected in the open market would be assigned to an individual carrier by the State Board of Insurance (SBI) on a nondiscriminatory basis.

The committee would require ARP servicing carriers to be selected by competitive bid, thus eliminating the current fixed servicing fee. The committee would require the representation of business, labor, and the SBI on the ARP governing committee. In addition, the committee recommends bringing the ARP under the provisions of the Open Meetings Act and the Open Records Act.

Finally, the committee would create an office within the SBI to review assignments to the ARP and to help place policyholders with companies in the open market. In addition, insurance companies would be required to give specific reasons for rejecting any prospective clients.

In sum, the committee would reestablish the ARP as a servicing organization for bad insurance risks. At the same time, less risky small employers would be removed from the pool and assigned to individual carriers in the open market. It is difficult to assign a dollar value to these recommendations. For example, servicing a small policyholder might result in a higher premium, but a reduction in the size of the pool probably would result in a smaller assessment charged to individual carriers to finance the ARP which in turn might offset any premium increases.

OTHER ISSUES

The committee recommends that insurance companies, at least 60 days before a policy expires and upon request, provide each policyholder with a list of claims assessed against his policy which specifies the payments and reserves for each claim. Insurance companies would be required to notify a policyholder of any claims and hearings related to his policy, and the policyholder would be permitted to present relevant information at board hearings.

Also the committee recommends allowing the policyholder to contest the liability of claims charged against him. If the policyholder were to prevail, the loss would not be charged against his record, and he would be reimbursed for any costs incurred in the process.

