

MEMBERS PRESENT:

Chairman Banner
Vice Chairman Thompson
Mr. Bennett
Mrs. Cafferata
Ms. Foley
Mr. Jeffrey
Mr. Rackley
Mr. Rhoads

MEMBERS ABSENT:

Mr. Hickey

GUESTS PRESENT:

See guest list attached.

WITNESSES TESTIFYING:

Ron Causey, Associated Builders and Contractors
Charles Knaus, Insurance Commission
Richard Staub, Insurance Commission
Joe Nusbaum, NIC
Jim Schofield, Automated Administrative Services

Chairman Banner called the meeting to order at 5:05 P.M. and informed the committee that the hearing would consist of AB-562 and ACR-33.

AB-562: Includes trade associations as employers for purposes of industrial insurance.

Chairman Banner explained to the committee that this bill's intent is to create a type of pooling arrangement for the purpose of smaller groups of people joining together to take advantage of self-insured benefits.

Mr. Ron Causey, Associated Builders and Contractors, spoke in favor of this bill and clarified the purpose of the trade association as being able to qualify to self-fund under workmans' compensation. He said after the last session when AB-84 was passed they approached the Insurance Division and made application for a license to self-fund as a trade association. They first made sure they could qualify under all of the regulations, but the stumbling block was the requirement of \$2.5 million net worth individually. Jointly they can meet that requirement several times over, but not individually, and they feel the intent of this specific amount should not be to exclude everyone except certain large hotels. Therefore they have asked for a clarification of this problem.

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Mr. Charles Knaus, Insurance Commission, spoke with reservations about the bill and explained that in addition to the amount of \$2.5 million; a security deposit of \$100,000 is also required in the form of cash, negotiable securities or a surety bond. The Insurance Commission is concerned about a catastrophic loss. In summary, Mr. Knaus stated that the Commission is not against the idea of an association being allowed to self-insure but they want more restrictive terms such as a higher security deposit and tighter control on excess insurance to guarantee that the members of the association as a group would be liable for any claim that is attributable to any member of the group.

Mr. Richard Staub, Insurance Division Staff Counsel and Hearings Officer; Acting Chief Workers' Compensation Section, presented the committee with written testimony attached hereto as EXHIBIT A. He told the committee that in their opinion, to allow AB-562 to be enacted into law in its present form, would jeopardize certain foundations. Currently, a prospective self-insured applicant must be an employer with a net worth of at least \$2.5 million. If that employer does not have positive earnings in any of the last three years, his security deposit will be increased by 20 percent of that amount originally required under law. The security deposit is in the amount of \$100,000 or 105 percent of the applicant's expected incurred cost of claims for the first twelve months of self-insurance, whichever amount is greater. They also assess the self-insured applicant for the subsequent injury account and insolvency reserve fund. All of these requirements are to insure that the applicant can self-insure his workmens' compensation liabilities. A list of eleven questions and observations concerning this bill are listed on page two of EXHIBIT A.

Mr. Causey told the committee that the question presented by the Insurance Commission were not new ones and had been dealt with previously by the Association of Building Contractors before the drafting of this bill.

Mr. Jim Schofield, Automated Administrative Services, told the committee that they are the company who is prepared to take over the administration of the insurance plan in connection with this bill for the self-insured groups. He indicated that his corporation had met with Jim Wadhams and Don Heath in July of 1980 and at that time had fully discussed Regulation P.C. 25 which was developed by the Insurance Commission.

The general consensus of opinion with both Jim Wadhams and Don Heath was that the main legal problem was that a trade association was not included under the definition of employers under the statute and it was suggested that enabling legislation should be passed to define a trade association of employers within the same industry as an employer group to be included in the self-insured status and that the rest of the details could be worked out. He told the committee that they have put together an insurance program with all of the required insurance benefits equal to or better than the NIC provides.

Mr. Joe Nusbaum, Chairman, NIC, provided the committee with written testimony attached hereto as EXHIBIT B and explained that they initially thought the intent of this bill was to allow members of a trade association to ban together in a rating plan to permit lower premium rates if the association promoted better safety programs. They have provided an amendment that would more precisely carry out this intent, attached hereto as EXHIBIT C.

However, Mr. Nusbaum went on to say, if the intent of this bill is to allow a trade association to qualify its members for self-insurance, then he believes the concept needs very close scrutiny. The main difference between traditional workers' compensation and self-insurance is that under self-insurance the employer does not have to establish reserves to cover the full cost of taking care of injured workers in the years ahead. Other serious problems are addressed in the attached and previously referred to EXHIBIT B.

Mr. Nusbaum suggested a second hearing with adequate notice of the purpose of the bill so that all interested parties might have an opportunity to provide the committee with critical information.

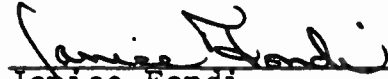
There was no further testimony on AB-562 and Vice Chairman Thompson informed the committee ACR-33 would now be heard.

ACR-33: Directs legislative commission to conduct study of Nevada Occupational Diseases Act.

Mrs. Cafferata moved a DO PASS on ACR-33; seconded by Mr. Jeffreys and carried unanimously by the members present with Mr. Hickey and Mr. Banner absent at the time of the vote. (7-0)

There being no further business, Mr. Thompson adjourned the meeting at 6:30 P.M.

Respectfully submitted,


Janice Fondi
Committee Secretary

61st NEVADA LEGISLATURE

ASSEMBLY COMMITTEE ON LABOR

LEGISLATION ACTION

DATE May 4, 1981

SUBJECT ACR-33 Directs legislative commission to conduct study of Nevada Occupational Diseases Act.

MOTION:

Do Pass X Amend _____ Indefinitely Postpone _____ Reconsider _____

Moved By: CAFFERATA Seconded By: JEFFREY

AMENDMENT:

Moved By: _____ Seconded By: _____

AMENDMENT:

Moved By: _____ Seconded By: _____

MOTION

AMEND

AMEND

VOTE:

	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>
FOLEY	<u>X</u>	_____	_____	_____	_____	_____
RHOADS	<u>X</u>	_____	_____	_____	_____	_____
HICKEY	<u>absent</u>	_____	_____	_____	_____	_____
THOMPSON	<u>X</u>	_____	_____	_____	_____	_____
BANNER	<u>absent</u>	_____	_____	_____	_____	_____
BENNETT	<u>X</u>	_____	_____	_____	_____	_____
JEFFREY	<u>X</u>	_____	_____	_____	_____	_____
CAFFERATA	<u>X</u>	_____	_____	_____	_____	_____
RACKLEY	<u>X</u>	_____	_____	_____	_____	_____

TALLY: 7 0

ORIGINAL MOTION: Passed x Defeated _____ Withdrawn _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

Attached to Minutes May 4, 1981



ROBERT LIST
GOVERNOR

JAMES L. WADHAMS
DIRECTOR

STATE OF NEVADA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION
201 SOUTH FALL STREET
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EXHIBIT A

DONALD W. HEATH, CLU
COMMISSIONER OF INSURANCE

May 4, 1981

TO: James Banner - Assembly Committe on Labor and Management
FROM: Richard Staub- Insurance Division Staff Counsel and Hearings
Officer; Acting Chief Workers' Compensation Section
RE: AB 562

Mr. Chairman:

You have before you Assembly Bill 562. As you know, this bill will bring Trade Associations within the statutory definition of an "employer" for the purposes of industrial insurance in the State of Nevada.

I am not sure what impact this amendment will have on the Nevada Industrial Commission; however, as the regulatory agency for the self-insurance of workmens' compensation program, it will have a substantial impact. It would allow trade associations to become self-insured for the purpose of industrial insurance. I come before your committee to point out some very serious observations you should consider in your deliberations of this bill.

We, in the commissioner's office, predicate our regulation of the self-insurance program on two important foundations. First, the system should be financially sure and sound so as to fully guarantee the prompt, expeditious processing and payment of all valid claims. Second, the program should be structured and administered to guarantee the integrity of Nevada's Workmens' Compensation system.

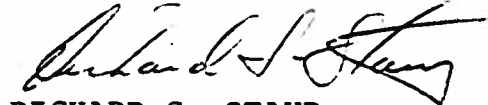
In our opinion, to allow AB 562 to be enacted into law, in its present form, would jeopardize the above foundations. Currently, a prospective self-insured applicant must be an employer with a net worth of at least 2.5 million dollars. If that employer does not have positive earnings in any of the last three years, his security deposit will be increased by 20% of that amount originally required under law. The security deposit is in the amount of \$100,000.00 or 105% of the applicant's expected incurred cost of claims for the first twelve months of self-insurance, which ever amount is greater. We also assess the self-insured applicant for the subsequent injury account and insolvency reserve fund. All of these requirements are to insure that the applicant can self-insure his workmens' compensation liabilities. Therefore, the following observations are offered for your considerations:

1. How will the association meet the above qualifications?
Will the commissioner rely upon an audited financial statement of all association members, or will each association member submit a separate financial statement. How will the association meet the assessment requirement of a self-insured employer?
2. How will the association administer the claims procedure required of a self-insured employer?
3. How will the profitability of the association or any of its members be determined for the purposes of the security deposits stated hereinabove?
4. How will the security deposit be calculated?
5. What will be the minimum self-insured retention of the association?
6. What liability will each member of the association have for the injuries of an employee? Will it be joint and several liability and for what period of time will the association member be liable?
7. What will be the mandates to require an association member to remain a member and what will be the criteria to allow a member to withdraw from the association? How must the commissioner treat this aspect?
8. What will happen if one member of the association becomes insolvent with outstanding workmens' compensation liabilities? How will this insolvency be considered by the commissioner for the purposes of the association's certification. What will happen if one association member suffers a catastrophic loss? What will be the responsibility of other association members for such a catastrophe?
9. What impact will a new member of an association have on the certificate of the association on a whole? What will be the liability of a the new member?
10. What type of system for reserving will the association and each of its members have regarding their industrial accidents and occupational diseases?
11. What authority will the commissioner have to require excess insurance and order an increase in security deposit?

All of the above observations may not have been considered in AB 562. It is the opinion of the Commissioner of Insurance that the above criteria be addressed in this legislation or that the Commissioner be given adequate authority to mandate appropriate criteria by regulation. After a discussion with our Division actuary, it was our opinion that a security deposit in the amount of \$500,000 be mandated for trade associations who wish to be self-insured. Further, the self-insured retention of the association should not be greater than \$100,000.

Lastly, your committee should consider why a particular trade association has band together. There are at least two provisions in the Nevada Insurance Code regarding group life and group life and health insurance which require that a particular group be formed for a purpose other than obtaining insurance. Although this consideration is not of primary concern in AB 562 I do not think it should be overlooked.

Respectfully submitted,



RICHARD S. STAUB

cc: Patsy Redmond
James Wadhams

AB 562

JOE E. NUSBAUM, CHAIRMAN

NEVADA INDUSTRIAL COMMISSION

MAY 4, 1981

When we read AB 562 we initially thought the intent was to allow members of a trade association to ban together in a rating plan to permit lower premium rates if the association promoted better safety programs. NIC favors such efforts that reduce accidents and reduce costs.

We have an amendment that would more precisely carryout this intent.

However, if the intent is to allow a trade association to qualify its members for self insurance, we believe the concept needs very close scrutiny.

The main difference between traditional workers' compensation and self insurance is that under self insurance the employer does not have to establish reserves to cover the full cost of taking care of injured workers in the years ahead. For example if a worker is involved in a very serious accident and is permanently and totally disabled, the self-insured employer does not create a reserve for the \$200,000, \$300,000 or \$400,000 cost of compensation and medical bills of the worker for the rest of his life. The self-insured employer only commits himself to take care of the payments when they come due.

Because of this unfunded liability assumed by the self-insured employer, only large well financed companies are permitted to be self insured.

AB 562 apparently would allow a trade association to stand in the shoes of its members. This raises serious questions. Will the assets of all the members be pledged to cover the workers' compensation liabilities as is the case with a single self-insured employer? Or, are only the limited assets of the trade association pledged? This is significant because one serious incident could create millions of dollars of liability.

How will claims of perhaps dozens of members of a trade association be handled? Who is responsible for complying with the law and regulations to protect the injured worker? The individual employer? The hired claims administrator? The trade association?

There are so many implications to this bill that we believe the Committee needs a great deal more information than you have available now.

NIC's first recommendation is that you accept our recommended amendment which will allow the state to gain some experience with a group plan before considering any self-insurance option for small employers.

If this recommendation is not acceptable, we suggest a second hearing with adequate notice of the purpose of the bill so that all interested parties may have an opportunity to provide you with information.

PROPOSED AMENDMENT TO A.B. 562

Amend Section 1, page 1, line 5, after "voluntary association", by deleting "trade association of" and line 6, by deleting "employers within the same industry."

Amend Section 1, page 1, by adding a new subsection 4 to read as follows:

4. Trade association of employers within the same industry for the limited purpose of qualifying its members for participation in voluntary rating plans.

Following the amendment proposed above, A.B. 562 should read as follows:

Section 1. NRS 616.090 is hereby amended to read as follows:

616.090 "Employer" (shall be construed to mean:) means:

1. The state, and each county, city, school district, and all public and quasi-public corporations therein.
2. Every person, firm, voluntary association, and private corporation, including any public service corporation, which has any natural person in service.
3. The legal representative of any deceased employer.
4. Trade association of employers within the same industry for the limited purpose of qualifying its members for participation in voluntary rating plans.