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LABOR AND INDUSTRIAL RELATIONS

Workers' Compensation: Provide for Payment by Group Self-Insurers for Examinations by Commissioner to Verify the Solvency of Group Self-Insurance Workers' Compensation Funds

CODE SECTION:	O.C.G.A. § 34-9-172 (amended)
BILL NUMBER:	SB 656
ACT NUMBER:	672
GEORGIA LAWS:	1998 Ga. Laws 267
SUMMARY:	The Act provides that the State Commissioner of Insurance can choose either to contract with private examiners or use the Commissioner's own staff to examine group self-insurance workers' compensation funds. The Act further provides that the workers' compensation fund will pay for the examination.
EFFECTIVE DATE:	July 1, 1998

History

The Georgia Insurance Commissioner's (Commissioner) office previously hired large public accounting firms to perform its periodic audits of group self-insurance funds.[1] While these accounting firms do an acceptable job for large, traditional insurers, the insurance examiners sent by the certified public accounting (CPA) firms are often less familiar with the specific laws pertaining to group self-insurance funds.[2] As a result, employees of the funds frequently had

1. *See* Fax Interview with Sen. Steve Langford, Senate District No. 29 (June 15, 1998) [hereinafter Langford Interview]; Telephone Interview with Susan Thrumston, Chairman of the Board of Directors of Group Funds Association (May 27, 1998) [hereinafter Thrumston Interview]. Group self-insurance funds are formed when a group of companies that are homogenous in the type of work in which they are engaged band together to provide workers' compensation insurance coverage to their employees instead of seeking out a commercial insurer. *See id.* These funds are audited by the Georgia Insurance Commissioner's Office. *See id.* That office performs a financial audit and a compliance audit, which determines whether the insurance fund is in compliance with the Georgia Code and state regulations. *See id.*

2. *See* Langford Interview, *supra* note 1; Telephone Interview with Joe Cregan, Attorney from Morris, Manning & Martin (May 28, 1998) [hereinafter Cregan Interview] (Mr. Cregan was hired to assist the Group Funds Association in drafting HB 656 and lobbying for its passage); Telephone Interview with Ron Fennel, Vice Chairman of the

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to expend time educating the examiners about the applicable law.[3] Additionally, because the accounting firms charged an hourly rate, group self-insurance funds paid more money for longer examinations conducted by accounting firms than those conducted by the insurance department.[4] Group self-insurers realized that the examinations conducted by the Insurance Commissioner's own staff members, who are generally more knowledgeable about Georgia's group self-insurance law, were less costly and consumed less time than those conducted by commercial accounting firms.[5] However, the Commissioner did not have enough internal staff members to dedicate to the group self-insurance fund audits.[6] In response to this problem, Senator Steve Langford sponsored SB 656, which was both written and supported by the Group Funds Association.[7] The bill's purpose is to encourage the use of the Commissioner's own staff to conduct examinations.[8] Similarly, the Act assesses the self-insurers for the costs of the Commissioner's use of the additional staff members, which ultimately saves the group self-insurers money over higher outside CPA charges.[9] SB 656 passed with very little opposition.[10] The bill passed as it was introduced; no amendments were made by Georgia lawmakers during the legislative process.[11]

SB 656

The Act amends Code section 34-9-172 by providing additional authority for the Insurance Commissioner to choose, at the Commissioner's discretion, either to hire an outside accounting firm

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Board of Directors of the Group Funds Association (May 28, 1998) [hereinafter Fennel Interview].

3. *See* Fennel Interview, *supra* note 2.
4. *See id.;* Langford Interview, *supra* note 1.
5. *See* Thrumston Interview, *supra* note 1; Fennel Interview, *supra* note 2.
6. *See* Langford Interview, *supra* note 1; Cregan Interview, *supra* note 2.
7. *See* Langford Interview, *supra* note 1; Cregan Interview, *supra* note 2; Fennel Interview, *supra* note 2. "The Group Funds Association, Inc. is an association of group workers' compensation self-insurance funds whose mission is to provide a vehicle for its members to cooperate and work collectively on matters of common concern and interest." Group Funds Association, Inc., Mission Statement (available in Georgia State University College of Law Library).
8. *See* Langford Interview, *supra* note 1.
9. *See id.*; Cregan Interview, *supra* note 2; Fennel Interview, *supra* note 2.
10. *See* Georgia Senate Voting Record, SB 656 (Mar. 5, 1998).
11. *Compare* SB 656, as introduced, 1998 Ga. Gen. Assem., *with* O.C.G.A. § 34-9-172 (1998).

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to verify the solvency of group self-insurance workers' compensation funds or to hire additional internal staff members who would investigate the insurance funds.[12] The Act, in subsection (b), further provides that "[i]f employees of the department conduct the examinations, the fund being examined shall pay to the department the reasonable expense of conducting the examination."[13] This provision authorizes the Commissioner to choose members of his or her internal staff to conduct the examinations for group self-insurance funds.[14] This language also allows the Commissioner to assess the group insurance funds for the reasonable cost of examinations conducted by the Commissioner's staff members.[15] According to Senator Steve Langford, the Commissioner's office will be reimbursed for the market rate cost of the examination.[16] Joe Cregan, an Atlanta attorney who helped draft SB 656 and lobbied the General Assembly for its passage on behalf of the Group Funds Association, defined reasonable expenses as "the rate set by or authorized by the Commissioner's office."[17] The language is intended to give flexibility to the Commissioner and to protect group self-insurers from unreasonable costs.[18]

The Act further amends subsection (b) of Code section 34-9-172 by providing that "[i]f contract examiners conduct the examination, the fund being examined shall, at the discretion of the Commissioner, pay the costs so incurred either to the department or to the contracting party."[19] The purpose of this subsection is to give the Commissioner

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12. *See* O.C.G.A. § 34-9-172 (1998); Cregan Interview, *supra* note 2; *see also* Supplemental Telephone Interview with Ron Fennel, Vice Chairman of the Board of Directors of the Group Funds Association (June 19, 1998). The Commissioner already had the authority under previously existing legislation to use his own staff to conduct examinations of the Workers' Compensation Group Funds. *See id.* However, the Commissioner did not have enough staff members to utilize them in these examinations. *See id.* Therefore, the legislation was adopted to make clear that the Commissioner had this authority, to encourage him to use this authority, and to aid him in receiving funding for additional departmental employees who will examine group self-insurance funds by alerting the legislators involved in the appropriations process of the need for additional funding. *See id.*

13. O.C.G.A. § 34-9-172(b) (1998).

14. *See* Cregan Interview, *supra* note 2; Fennel Interview, *supra* note 2.

15. *See* Cregan Interview, *supra* note 2.

16. *See* Langford Interview, *supra* note 1; *see also* Fennel Interview, *supra* note 2 (explaining that Insurance Commissioner can assess group self-insurance funds for market rate costs of using his or her staff to conduct investigations).

17. Cregan Interview, *supra* note 2.

18. *See id.*

19. O.C.G.A. § 34-9-172(b) (1998).

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the authority to have the insurance funds pay contractors directly or to have the Commissioner's office coordinate the payment of the contractors and subsequently assess the self-insurance funds for reimbursement of the costs incurred by the department's contract examiners.[20]

Finally, subsection (b) also provides that "[t]he Commissioner may use appropriated funds to conduct the examinations."[21] The Group Funds Association plans to lobby the 1999 Georgia General Assembly for an additional appropriation of funds for the purpose of hiring more staff members in the Commissioner's office who are familiar with group self-insurance funds law.[22] In the event legislators make this appropriation, this Code section gives the Commissioner the authority to use these funds for the purpose of hiring more examiners.[23] The General Assembly will only have to appropriate initial funding for these staff positions.[24] Thereafter, the Insurance Commissioner's office will recover its costs for the additional staff members through the individual assessments to the group health insurance funds for the costs of examinations.[25]

The end result is that the insurance department examinations would be more cost effective. The Commissioner could continue to use CPA firms for larger, traditional Georgia insurance companies, like AFLAC, Cotton States, and Georgia Farm Bureau. But for the smaller group workers' compensation funds, the Commissioner would use in-house, department examiners, who will work cheaper and who, most likely, will be more well versed in the particular laws and rules applying to group workers' compensation funds.[26]

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20. *See* Cregan Interview, *supra* note 2.
21. O.C.G.A. § 34-9-172(b) (1998).
22. *See* Cregan Interview, *supra* note 2; Fennel Interview, *supra* note 2.
23. *See* Cregan Interview, *supra* note 2; Fennel Interview, *supra* note 2.
24. *See* Cregan Interview, *supra* note 2; *see also* Langford Interview, *supra* note 1 (explaining that "[t]he cost of these examiners would be borne entirely by the group funds themselves and would not cost the taxpayers anything").
25. *See* Cregan Interview, *supra* note 2.
26. *See* Langford Interview, *supra* note 1.

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