

**REPORT OF THE
WORKERS' COMPENSATION COMMISSION
AND THE
STATE CORPORATION COMMISSION'S
BUREAU OF INSURANCE ON**

**METHODS TO MAKE WORKERS'
COMPENSATION INSURANCE
COVERAGE MORE AFFORDABLE
FOR SMALL FARMERS**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 12

**COMMONWEALTH OF VIRGINIA
RICHMOND
2001**



COMMONWEALTH of VIRGINIA

WORKERS' COMPENSATION COMMISSION

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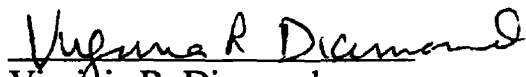
December 6, 2000

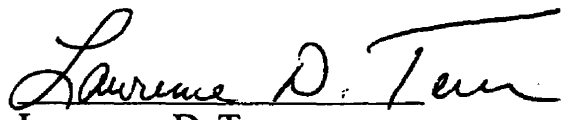
To: The Honorable James S. Gilmore, III
Governor of Virginia
and
The General Assembly of Virginia

We are pleased to transmit this Report of the Workers' Compensation Commission and the State Corporation Commission's Bureau of Insurance on Methods to Make Workers' Compensation Insurance Coverage More Affordable for Small Farmers.

Respectfully submitted,


William L. Dudley, Jr.
Chairman


Virginia R. Diamond
Commissioner

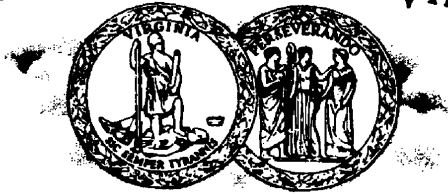

Lawrence D. Tarr
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STATE CORPORATION COMMISSION

December 6, 2000

To: The Honorable James S. Gilmore, III
Governor of Virginia
and
The General Assembly of Virginia

We are pleased to transmit this Report of the Workers' Compensation Commission and the State Corporation Commission's Bureau of Insurance on Methods to Make Workers' Compensation Insurance Coverage More Affordable for Small Farmers.

Respectfully submitted,

Handwritten signature of Hullahen Williams Moore in black ink.

Hullahen Williams Moore
Chairman

Handwritten signature of Theodore V. Morrison, Jr. in black ink.

Theodore V. Morrison, Jr.
Commissioner

Handwritten signature of Clinton Miller in black ink.

Clinton Miller
Commissioner

Table of Contents

EXECUTIVE SUMMARY	1
SENATE JOINT RESOLUTION NO. 223.....	3
LEGISLATIVE REQUEST.....	4
BACKGROUND.....	5
EXEMPTION HISTORY	6
FINDINGS.....	8
CONCLUSION.....	13
APPENDIX	14

Executive Summary

The Workers' Compensation Commission (WCC) and the State Corporation Commission (SCC) were requested by the 2000 General Assembly, pursuant to Senate Joint Resolution No. 223, to study methods to make workers' compensation insurance coverage more affordable for small farmers. The study was requested because (i) small farmers are excluded from the scope of the Workers' Compensation Act if they employ fewer than three full-time employees, and (ii) while small farmers may voluntarily elect to be covered under the Act, many are not able or willing to do so due to the high cost of such insurance. Furthermore, the study resolution noted that lowering the cost of the coverage for small farmers may increase the number of farmers who voluntarily obtain the coverage and that the voluntary procurement of such coverage would benefit both the small farmers and their workers.

The WCC and the SCC were requested to determine the availability and cost of workers' compensation insurance and, to the extent possible, the extent to which small farmers currently voluntarily obtain workers' compensation insurance and the likelihood that reducing the cost of the coverage would materially increase voluntary procurement of the insurance. The Commissions were also asked to determine whether any legislative changes, such as providing subsidies, authorizing purchasing pools, or removing barriers to offering the coverage, would be cost-effective methods of increasing the number of small farmers providing workers' compensation insurance.

In order to comply with the study request, the State Corporation Commission's Bureau of Insurance (Bureau) obtained Virginia-specific information regarding the number of farms, average payrolls, and employment from the Federal Agriculture Census of 1997. Additional information was obtained regarding workers' compensation insurance availability and cost for the average small farmer in each of the major farming classifications. The Bureau attempted to get information from individual farmers but was unable to obtain mailing information due to privacy constraints.

The findings of this study indicate that workers' compensation insurance is available to all employers in Virginia regardless of the size or nature of the employer's operations. This is due to the existence of the Virginia Workers' Compensation Insurance Plan. Small farmers have access to this insurance through their usual insurance agents. Premiums for small farmers generally will not exceed \$750 per year and may be lower, depending on the farming classification.

Relatively few farmers currently purchase the coverage, as evidenced by the low number of minimum premium policies with farm classifications in the residual

market. Authorization for the establishment of purchasing pools for small farmers currently exists under the Workers' Compensation Act. However, the financial requirements necessary to establish such pools may be perceived to be a barrier for small farmers. In addition, any rate subsidies provided to small farmers would result in an increase in workers' compensation rates for other types of employers. In light of the information on the current availability of workers' compensation insurance, and because of the difficulty in determining why farmers are not voluntarily purchasing workers' compensation coverage, neither the WCC nor the SCC is able to recommend making any changes to the current system.

SENATE JOINT RESOLUTION NO. 223

Requesting the Virginia Workers' Compensation Commission and State Corporation Commission to study methods to make workers' compensation insurance coverage more affordable for small farmers.

Agreed to by the Senate, February 11, 2000

Agreed to by the House of Delegates, March 8, 2000

WHEREAS, § 65.2-101 of the Code of Virginia excludes farm and horticultural laborers from the definition of an "employee," unless the employer regularly has in service more than two full-time employees; and

WHEREAS, § 65.2-305 of the Code of Virginia provides that employers not subject to Title 65.2 may voluntarily elect to be bound by it as to accidents or occupational diseases or both, and that every employer taking out a workers' compensation insurance policy shall be subject to all provisions of Title 65.2, regardless of whether he is an employer of farm and horticultural laborers; and

WHEREAS, many small farmers in the Commonwealth who are not required to obtain workers' compensation insurance would like to obtain such covering their laborers, but are not able or willing to do so as a result of the high cost of such insurance; and

HEREAS, voluntarily providing workers' compensation insurance for the laborers of small farmers would benefit both the small farmers and their workers; and

WHEREAS, lowering the cost of such coverage for small farmers may increase the number of farmers who voluntarily obtain such insurance; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia Workers' Compensation Commission and State Corporation Commission be requested to study methods to make workers' compensation insurance coverage more affordable for small farmers. In conducting their study, the Commissions shall determine, to the extent possible, the availability and cost of such insurance for small farmers, the extent to which small farmers currently voluntarily obtain such insurance, and the likelihood that reducing the cost of such coverage would materially increase voluntary procurement of such insurance. The Commissions shall also examine whether any legislative changes, including, but not limited to, providing subsidies for such insurance, removing barriers to the offering of such coverage, or authorizing purchasing pools, would be cost-effective methods of increasing the number of small farmers providing workers' compensation insurance.

All agencies of the Commonwealth shall provide assistance to the Virginia Workers' Compensation Commission and State Corporation Commission for this study, upon request.

The Virginia Workers' Compensation Commission and State Corporation Commission shall complete their work in time to submit their findings and recommendations to the Governor and the 2001 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Legislative Request

The Workers' Compensation Commission (WCC) and the State Corporation Commission (SCC) were requested by the 2000 General Assembly, pursuant to Senate Joint Resolution No. 223, to study methods to make workers' compensation insurance coverage more affordable for small farmers.

As stated in the resolution, this study was requested because:

- (1) § 65.2-101 of the Code of Virginia excludes farm and horticultural laborers from the definition of an "employee," unless the employer has regularly in service more than two full-time employees;
- (2) § 65.2-305 of the Code of Virginia provides that employers not subject to Title 65.2 may voluntarily elect to be bound by it as to accidents or occupational diseases or both, and that every employer taking out a workers' compensation insurance policy shall be subject to all provisions of Title 65.2, regardless of whether he is an employer of farm and horticultural laborers;
- (3) many small farmers in the Commonwealth who are not required to obtain workers' compensation insurance would like to obtain such covering their laborers, but are not able or willing to do so as a result of the high costs of such insurance;
- (4) voluntarily providing workers' compensation insurance for the laborers of small farmers would benefit both the small farmers and their workers; and
- (5) lowering the cost of such coverage for small farmers may increase the number of farmers who voluntarily obtain such coverage.

The resolution requested the WCC and the SCC to determine, to the extent possible, the availability and cost of such insurance for small farmers, the extent to which small farmers currently voluntarily obtain such insurance, and the likelihood that reducing the cost of such coverage would materially increase voluntary procurement of such insurance. The WCC and SCC were also requested to examine whether any legislative changes, including, but not limited to, providing subsidies for such insurance, removing barriers to the offering of such coverage, or authorizing purchasing pools, would be cost-effective methods of increasing the number of small farmers providing workers' compensation insurance.

Background

Workers' compensation insurance is a "no-fault" type of insurance that allows employees to receive cash compensation, medical treatment and other assistance as a result of work-related injuries and illnesses. This insurance represents a compromise between employers and employees by extending an employer's liability to cover all accidental personal injuries arising out of and in the course of employment. By electing to accept workers' compensation benefits, injured employees give up their rights to seek damages through the courts and must accept compensation amounts principally set in statute. At the same time, employers give up their common law defenses and assume responsibility for the work-related injuries and illnesses.

Title 65.2 of the Code of Virginia, also known as the Virginia Workers' Compensation Act (the Act) was first enacted in 1918. The Act sets forth the basic provisions of the workers' compensation system in Virginia and establishes guidelines and limitations for compensating injured employees. It also created the Workers' Compensation Commission, giving it specific powers and responsibilities for the administration of the Act. While the basic provisions of the current Act are similar to the law originally passed, numerous revisions to the Act over the years have broadened its scope.

Injured employees covered by the Act are entitled to medical and indemnity benefits. Medical benefits cover reasonable and necessary medical costs incurred for the employee's injury for as long as necessary and without limitation. Medical benefits include physical and vocational rehabilitation, if necessary. Indemnity benefits, also known as wage-replacement benefits, are generally based on weekly compensation equal to two-thirds of the injured employee's average weekly wage, subject to a minimum and maximum benefit. Currently, the minimum weekly benefit in Virginia is \$151.50 and the maximum weekly benefit is \$606.00. Indemnity benefits include payments for total incapacity, partial incapacity, scheduled disability losses, and death and burial benefits paid to dependents of the employee.

The Act requires most Virginia employers to obtain workers' compensation insurance or to be self-insured. When an employee is injured and the claim is established as a work-related injury, the employer becomes liable for payment of the benefits provided in the Act. When the employer has purchased workers' compensation insurance, the insurance company generally pays the benefits directly to the injured worker. A certified self-insured employer is directly responsible for the payment of benefits to the injured worker.¹

¹ A certified self-insured employer is one who has obtained a certificate from the Workers' Compensation Commission authorizing such employer to be an individual self-insurer. The employer must satisfy the requirements of § 65.2-801 by providing to the WCC satisfactory proof of the solvency of the employer, the financial ability of the employer to meet the obligations under the Act, and the ability of the employer to pay or cause to be paid the compensation in the amount and manner as provided for in the Act.

Exemption History

As enacted by the General Assembly of Virginia on March 21, 1918, the Virginia Workmen's Compensation Act included a list of employment types exempted from the Act. Included on this list were farm laborers and employees of farm laborers.

In 1932, the exemption list was amended to include horticultural laborers and employees of horticultural laborers. An annotation to Michie Code 1942, § 1887 (15) contained a definition of the term "farm laborers:"

The term "farm laborers," exempted by the language of section 15 from the operation of the Act, is interpreted to mean persons engaged in horticultural as well as agricultural and in dairying and stock raising when these are combined with farming.

11 Va. L. Reg., N.S., 11 (1925)

Virginia Code § 1887 (15) was recodified in 1950. Code § 65.25 (1950) read, in pertinent part, as follows:

This Act shall not apply to ...farm and horticultural laborers..., nor to employees of such persons, ...; unless such employees and their employers voluntarily elect to be bound by this Act.

Virginia Code § 65.25 (1950) was recodified in 1968. Code § 65.1-28, read, in pertinent part, as follows:

This Act shall not apply to ... farm and horticultural laborers..., nor to employers of such persons, ... ; unless such employees and their employers voluntarily elect to be bound by the Act.

In March 1973, the General Assembly amended Code § 65.1-28, in pertinent part, as follows:

This act shall not apply to ... *nor to farm and horticultural laborers..., unless the employer during the previous calendar year has developed a payroll of fifteen thousand dollars or more per year or the employer regularly employs more than four full-time employees, ...*; unless such employees and their employers voluntarily elect to be bound by this Act.

1973 Va. Acts 542.

In April 1984, the General Assembly again amended Code § 65.1-28, in pertinent part, as follows:

This Act shall not apply to ... *nor to farm and horticultural laborers, unless the employer during the previous calendar year has developed a payroll*

~~of fifteen thousand dollars or more per year or the employer regularly employs~~
~~regularly has in service more than ~~four~~ two employees,~~
1984 Va. Acts 388.

The legislation is currently codified at Virginia Code Ann. § 65.2.101 2
"Employee" (g) and reads as follows:

"Employee" shall not mean:

- g. Farm and horticultural laborers, unless the employer regularly has in service more than two full-time employees.

Findings

The first task necessary to answer the request proposed by Senate Joint Resolution No. 223 was to determine what constitutes a small farm in Virginia and the number of these farms. Utilizing the definition contained in the Act, small farms, for the purposes of this study, are defined as those that employ two or fewer full time employees. The SCC's Bureau of Insurance (Bureau) obtained information from the Agricultural Census of 1997. The census of agriculture is the leading source of statistics about the nation's agricultural production and is the only source of consistent, comparable data at the state level. This census is performed every five years by the United States Department of Agriculture. The results are available for individual states and provide a great deal of information regarding farming operations in Virginia.

According to the Agricultural Census of 1997 for Virginia, Table 1 (State Summary Highlights) shows that there are 41,905 farms in Virginia. According to Table 5 (Hired Farm Labor – Workers and Payroll), 14,921 Virginia farms report having hired farm labor. Of these 14,921, 4,212 (28%) report one hired worker, and 4,497 (30%) report two hired workers. Additionally, according to Table 5, the average payroll per worker per year is \$3,334.

Senate Joint Resolution No. 223 requires the WCC and the SCC to determine the availability and cost of workers' compensation coverage for small farmers. Accordingly, the Bureau has obtained information regarding the availability and cost of insurance for farms in Virginia.

Workers' compensation insurance policies are available to every eligible applicant from insurance companies licensed to do business in Virginia. These insurance companies determine which insureds are eligible based on their individual selection criteria. Thus, insurance companies compete for risks that they wish to write. If there are no insurance companies interested in writing a specific farm policy, the Virginia Workers' Compensation Insurance Plan (the Plan) is available to provide coverage to all qualified applicants.² Any licensed insurance agent in Virginia is

² As stated in the Plan manual, a "qualified" applicant is one who has been unable to secure any reasonable offer of workers' compensation coverage in the voluntary insurance market from a private insurance company and who is entitled in good faith to coverage. Good faith eligibility is presumed in the absence of clear and convincing evidence to the contrary. An employer is not in good faith entitled to insurance if any of the following circumstances exist at the time of application:

1. At the time of application, a self-insured employer is aware of pending bankruptcy proceedings, insolvency, cessation of operations, or conditions that would probably result in occupational disease or cumulative injury claims from exposure incurred while the employer was self-insured;
2. The employer, while insurance is in force, knowingly refuses to meet reasonable health, safety or loss control requirements; does not allow reasonable access to the insurer for audit or inspection under the policy; or does not comply with other policy obligations;

eligible to submit risks to the Plan, thus making workers' compensation coverage readily available in Virginia. The mere existence of this residual market mechanism guarantees availability of the coverage in Virginia.

As for affordability, the existence of the Plan in Virginia allows an insured to purchase a policy of insurance, especially a minimum premium policy, at a set rate for each classification. The rates are approved by the State Corporation Commission and must be used for all policies written in the Plan. A sampling of 25 of the top 50 workers' compensation competitive market insurers confirms that the minimum premiums will not exceed \$750, regardless of whether the insured purchases a policy through the Plan or from the competitive marketplace. The following table gives the workers' compensation classification description and code for farming classes in Virginia:

Type of Farming	Class Code	Classification Includes:
Farm: Nursery	0005	Propagation of trees, plants, shrubs, etc.
Farm: Gardening – Market or Truck	0008	Perishable Vegetables
Farm: Orchard	0016	Fruits, nuts, etc.
Farm: Poultry or Egg Producer	0034	Poultry, Turkeys, Squab or Eggs
Farm: Florist	0035	Cut Flowers
Farm: Dairy	0036	Milk or Cream Production
Farm: Field Crops	0037	Alfalfa, Barley, Corn, Hay, Wheat, Rye, etc.
Farm: Landscape Gardening	0042	Planning, Clearing, grading and planting necessary for landscape operations
Farm: Berry or Vineyard	0079	Berries, Grapes, or Hops
Farm: Cattle or Livestock Raising	0083	Breeding or Raising of Cattle or Livestock not otherwise classified (hogs, sheep, goats, horses, etc.)
Farm: Fish and Hatchery	0113	
Farm: Animal Raising	0170	Furbearing animals

3. The employer has an outstanding workers' compensation insurance premium obligation or other monetary policy obligation on previous insurance that is not subject to a bona fide dispute as defined in the definition of Premium in Dispute; or
4. The employer, its representative, or the agent knowingly fails to comply with Plan procedures; or knowingly makes a material misrepresentation on the application by omission or otherwise, including, but not limited to, the following: estimated payroll, offers of workers' compensation insurance, nature of business, name or ownership of business, previous insurance history, or an outstanding workers' compensation insurance premium obligation or other monetary policy obligation of the employer.

The following table shows the Plan's policy minimum premium and the rate per \$100 of payroll for each of the farming classifications shown above. Additionally, the total annual payroll necessary to exceed the policy minimum premium is included:

Type of Farming	Policy Minimum Premium	Workers' Compensation Rate per \$100 of Payroll	Payroll Necessary to Exceed Minimum Premium Policy
Farm: Nursery	\$628	\$2.73	\$15,495
Farm: Gardening – Market or Truck	\$475	\$1.74	\$15,517
Farm: Orchard	\$750	\$3.75	\$14,533
Farm: Poultry or Egg Producer	\$569	\$2.35	\$15,489
Farm: Florist	\$569	\$2.48	\$14,677
Farm: Dairy	\$750	\$5.89	\$9,253
Farm: Field Crops	\$750	\$3.58	\$15,223
Farm: Landscape Gardening	\$750	\$6.87	\$7,933
Farm: Berry or Vineyard	\$750	\$3.89	\$14,010
Farm: Cattle or Livestock Raising	\$750	\$6.68	\$8,159
Farm: Fish and Hatchery	\$750	\$3.32	\$16,416
Farm: Animal Raising	\$655	\$2.90	\$15,517

Thus, a hypothetical farm operating as a dairy with an average payroll of \$3,334 would expect to pay a premium of \$196 per year based on payrolls alone. However, because there is a minimum premium requirement for issuance of a policy, the policy would be issued at \$750 (minimum premium) per year for the farm in question. In fact, this hypothetical dairy farm could have up to \$9,253 of annual payroll before the minimum premium requirement would be met. Similarly, a hypothetical truck farm growing Brussels sprouts could have up to \$15,517 of annual payroll before meeting the \$475 minimum premium for the classification. Calculations for other types of farming yield similar outcomes: policies for small farmers as defined in this study, regardless of the type of farming, all appear to fall in the minimum premium category. Thus the maximum cost for a workers' compensation policy for a small farmer in the assigned risk plan should not exceed \$750. Since the residual market will take all qualified applicants regardless of hazard, class, or experience, coverage is always available.

The study resolution also asked that the SCC and WCC determine the extent to which small farmers in Virginia currently voluntarily obtain workers' compensation insurance. Information taken from the Plan expiration list shows that there were only 696 policies for farming classifications issued by the Plan in 1999. Of these, the premium for 440 policies was greater than \$1,000, indicating that the farmers purchasing the policies probably did so because they exceeded the statutory exemption threshold of 2 or fewer employees, assuming an average annual payroll per employee of \$3,334 (as shown in the Agricultural Census of 1997). The remaining 256 policies issued at a premium below \$1,000 could potentially be small farmers as defined in this study. However, because information on the number of employees covered under a workers' compensation policy is not readily available, it is not possible to determine the extent that workers' compensation policies are voluntarily purchased by farmers exempt from the Act. However, by using the limited information available from the Plan, it can be surmised that only a few small farmers are voluntarily purchasing the coverage.

The study resolution also requested the WCC and the SCC to determine whether reducing the cost of workers' compensation policies would materially increase voluntary purchase of the insurance. In order to determine whether a reduction in the minimum premium would result in more farmers purchasing the coverage, the Bureau would have had to conduct surveys of small farmers to determine if interest was present for lower cost policies. However, due to confidentiality laws regarding the maintenance of farmers' names and mailing addresses, the Bureau was unable to obtain mailing lists from the USDA or the Virginia Department of Agricultural and Consumer Services. The Virginia Farm Bureau was unable to assist due to similar concerns. As a result, the Bureau was not able to obtain a population from which to select a survey sample. Due to the inability to survey farmers, the Bureau was not able to ascertain whether cost reductions would materially increase voluntary procurement of workers' compensation coverage by farmers not required by law to provide the coverage.

Senate Joint Resolution No. 223 also requested the WCC and the SCC to examine whether any legislative changes, including, but not limited to, providing subsidies for such insurance, removing barriers to the offering of such coverage, or authorizing purchasing pools, would be cost-effective methods of increasing the number of small farmers providing workers' compensation insurance.

On the issue of subsidizing the cost of coverage, there are a number of methods possible to accomplish this task. Legislation could be passed artificially lowering the premium rates for each of the farming classes. The cost of lowering the premium rates for farmers would have to be spread over the remaining classifications. This would result in an increase in rates for other types of employers. The exact amount of the increase would be difficult to quantify. However, it is estimated that approximately

\$6.5 million³ in premiums would have to be subsidized by all other employers in Virginia if a total subsidy of the cost of workers' compensation insurance for small farmers were legislated.

An alternative to artificially lowering the premium rates would be to lower the minimum policy premium level below the current amounts. The cost of this action can be calculated by dividing the \$6.5 million representing total subsidization by a selected reduction factor. For example, if the minimum premium levels were cut in half, the estimated cost would be half of \$6.5 million, or \$3.75 million. However, any artificial reduction of the minimum premium levels for small farmers would again have to be subsidized by other employers in Virginia.

The study resolution also requested the WCC and the SCC to examine whether removing barriers to offering the coverage would increase the number of small farmers purchasing workers' compensation insurance. Due to the existence of the residual market mechanism (the Plan), coverage is available to all eligible insureds seeking a workers' compensation policy regardless of size or type of operation. Therefore, there are no barriers which prevent insureds from obtaining the coverage.

Virginia currently has procedures for creating purchasing pools for workers' compensation insurance. Virginia Code § 65.2-802 provides that two or more employers having a common interest (i.e., farm operations) may be licensed by the SCC as a group self-insurance association (GSIA). Once licensed, a GSIA may enter into agreements to pool liabilities under the Workers' Compensation Act. However, proof of solvency of each employer, the financial ability of each member to meet its obligations under the pooling arrangement, and the capitalization requirements to operate as a GSIA could be perceived as a barrier to the formation of a GSIA for small farmers as would other requirements under the Rules Governing Group Self-Insurers of Liability Under the Virginia Workers' Compensation Act (see 14 VAC 5-370-40 of the Virginia Administrative Code, contained in the Appendix).

³ This number was derived by multiplying the number of farms with 2 or fewer employees [4,212 with one worker and 4,497 with two workers] by the minimum premium of \$750 [8,709 X \$750 = \$6,531,750]. The minimum premium amount of \$750 was selected because it represents the majority of farming classifications [the actual breakdown of small farms by farming type is not available].

Conclusion

The existence of the Virginia Workers' Compensation Insurance Plan ensures that workers' compensation insurance is available to all employers in Virginia regardless of the size or nature of the employer's operations. Small farmers have access to this insurance through their usual insurance agents. Premiums for small farmers should not exceed \$750 per year and may be lower, depending on the farming classification. Relatively few farmers currently purchase the coverage, as evidenced by the low number of minimum premium policies with farm classifications in the residual market. Authorization for the establishment of purchasing pools for small farmers currently exists under the Workers' Compensation Act. However, the financial requirements necessary to establish such pools may be perceived to be a barrier for small farmers. In addition, any rate subsidies provided to small farmers would result in an increase in workers' compensation rates for other types of employers. In light of the information on the current availability of workers' compensation insurance, and because of the difficulty in determining why farmers are not voluntarily purchasing workers' compensation coverage, neither the WCC nor the SCC is able to recommend making any changes to the current system.

Appendix

14VAC5-370-40. Application for license as group self-insurance association; additional requirements.

A. An application submitted by a group self-insurance association shall be accompanied by the following items. These items shall be subject to the approval of the Commission:

1. A copy of the members' indemnity agreement and power of attorney required by 14VAC5-370-120 of this chapter binding the association and each member of the association, jointly and severally, to comply with the provisions of the Act and copies of any other governing instruments of the proposed group self-insurance association;

2. An executed copy of the application of each employer for membership in the association on the effective date of the license of the association;

3. Financial statements of all applicants for membership showing that the membership of the proposed association has a combined net worth of at least one million dollars. Political subdivisions of this Commonwealth may combine to form associations without complying with this requirement;

4. Proof of payment by each member of at least 25% of its estimated first year's contribution into a designated depository;

5. A confirmation of excess insurance, if excess insurance is required, by a licensed insurer in an amount acceptable to the Commission which complies with the requirements set forth in 14VAC5-370-90 of this chapter. However, the Commission at its discretion may allow this insurance to be placed with an approved surplus lines insurer;

6. Designation of the board and of the administrator of the association, together with properly executed biographical affidavits for each member of the board and for the administrator or the principal officers of a corporation serving as an administrator. Affidavits are to be submitted on a form prescribed by the Commission;

7. Information showing that the association has, within its own organization or by contract with an approved service agent, adequate facilities and competent personnel to service its program with respect to underwriting matters, claims adjusting, and industrial safety engineering. Copies of all executed servicing agreements shall be filed with the Commission;

B. A confirmation of a fidelity bond in a form and amount acceptable to the Commission;

Deposit of securities or a surety bond with the State Treasurer in an amount acceptable to the Commission in accordance with the requirements of 14VAC5-370-60 of this chapter;

10. A projection of administrative expenses for the first year of operation in an amount and as a percentage of the estimated annual contributions;

11. A statement regarding the type of business and guidelines to be used to determine common interest; and

12. A copy of the association's contracts with the service agent and the administrator which sets forth the terms and obligations of the agreement.

B. An application submitted by a group self-insurance association shall be accompanied by all of the following:

1. A composite listing of the estimated annual gross contribution to be developed by each member of the association individually and in the aggregate for the association, which, in the aggregate, shall be not less than \$350,000 for each of the association's first two years and thereafter for subsequent years shall be not less than \$500,000, provided that this latter requirement shall not apply to groups licensed prior to May 1, 1988; and

2. The application shall be accompanied by any other information the Commission requires.

C. Any subsequent revisions to items submitted under the provisions of 14VAC5-370-30 and 14VAC5-370-40 of this chapter will be filed with and subject to approval by the Commission. Any subsequent revisions of the items in subsection B of this section will be filed with the Commission.

