QUESTIONS AND ANSWERS ABOUT WORKERS’ COMPENSATION, SAIF, AND BALLOT MEASURE 38

What is workers’ compensation?

Under Oregon law, workers are entitled to be compensated if they are injured on the job. Benefits are set by law and regulation, and can include payments for medical care, time lost from work, and compensation for temporary or permanent disabilities. The workers’ compensation system also provides injured workers with help in getting back to work. Workers’ compensation benefits are paid without regard to who was at fault. In exchange, the law provides that injured workers cannot sue their employers for their injuries through the court system.

ORS 656.012, http://www.leg.state.or.us/ors/656.html

How does the workers’ compensation system affect Oregon’s economy?

In 1986, Oregon had the 6th highest workers’ compensation rates in the country, and the workers’ compensation system was one of the state’s biggest barriers to attracting and retaining businesses. Following a series of changes in 1990 known as the “Mahonia Hall” reforms, Oregon experienced a national record of fourteen years of declining or flat workers’ compensation premium rates, resulting in a cumulative 57.4 percent decrease in rates that has saved Oregon employers a total of $8.8 billion in direct costs since 1990. By 2002, Oregon went from having the 6th highest premium rates in the country to the 35th highest, while at the same time improving benefits to workers and reducing injury and illness rates. Oregon’s workers’ compensation system is now used by economic development staff as a recruiting tool to attract businesses from California and other states.


How is workers’ compensation coverage provided?

Oregon employers are required to provide workers’ compensation coverage for their employees. Employers have a choice of three ways to provide this coverage (and thus Oregon is sometimes called a “three-way” system):

- Employers can buy workers’ compensation insurance from a private insurance company.
- Employers can buy workers’ compensation insurance from SAIF Corporation, the state-owned workers’ compensation insurance fund.
Individual employers and groups of employers meeting certain financial standards can self-insure for workers’ compensation coverage.

ORS 656.005(14), ORS 656.017, http://www.leg.state.or.us/ors/656.html

What is SAIF?

SAIF is a public corporation established by Oregon law for the purpose of providing workers’ compensation insurance to Oregon employers. It is governed by a five-member board of directors appointed by the Governor and confirmed by the state Senate. SAIF receives no tax funds; it is self-supporting through the premiums paid by employers who buy their workers’ compensation coverage from SAIF.

SAIF was formerly known as the State Accident Insurance Fund. Its formal name today is SAIF Corporation.

ORS 656.751, ORS 656.752, http://www.leg.state.or.us/ors/656.html

Is Oregon’s “three-way” system unique?

No. Twenty-six states also have state funds providing workers’ compensation insurance. Most of these states have “three-way” systems like Oregon’s. Ohio, Washington and West Virginia have a “two-way” system in which employers must either buy insurance from the state fund or self-insure. In Wyoming and North Dakota, employers must buy insurance only through the state fund. Many other states have no state fund, and employers in those states must self-insure or buy insurance from a private insurance company. State systems vary widely, and no single model works best everywhere. In addition, states can change their systems over time. Prior to 1966, Oregon workers’ compensation law did not allow a private insurance option. Michigan and Nevada have recently privatized their state funds.


How many insurance carriers provide this coverage in Oregon, and what are their market shares?

In 2003, 421 private insurance companies were authorized to sell workers’ compensation insurance in Oregon, and 187 of those companies were actively providing coverage to Oregon employers. Although many of these companies provide insurance to only a few Oregon businesses, there were 39 private insurance companies that earned more than $1 million in workers’ compensation premiums in Oregon in 2003.

SAIF Corporation provided coverage to 41.9 percent of the market in 2003 (based on direct earned premium). Private insurance companies provided coverage to 43.2 percent of the market, and the remaining 14.9 percent of the market was self-insurance. Among the private insurance
companies providing workers’ compensation insurance in Oregon, Liberty Northwest has the largest market share, at 16.1 percent of the market.

Another measure of coverage provided is the number of employers insured. The table below shows counts of employers by workers’ compensation insurer type as of June 2004.

<table>
<thead>
<tr>
<th>Count of employers by workers’ compensation insurer type (includes assigned risks)</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>SAIF</td>
<td>46,873</td>
<td>53.0%</td>
</tr>
<tr>
<td>Private</td>
<td>39,983</td>
<td>45.2%</td>
</tr>
<tr>
<td>Self</td>
<td>1,609</td>
<td>2.1%</td>
</tr>
<tr>
<td>Total</td>
<td>88,465</td>
<td>100%</td>
</tr>
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Has SAIF’s market share changed over time?

Yes. Over the past 25 years, SAIF’s market share has gone up and down based on overall trends in the insurance markets. During what are called “hard market” cycles, when private insurance companies are generally less willing or able to provide coverage, SAIF’s market share has tended to increase. During “soft market” cycles, when private insurance companies tend to lower their premiums and expand their business, SAIF’s market share has tended to decrease. Nationally and in Oregon, workers’ compensation insurance has been going through a “hard market” cycle for the past several years.


Does SAIF have to provide workers’ compensation coverage to any employer who wants to buy it?

No. Under state law, SAIF and private insurance carriers can set underwriting standards to determine which employers they will cover on a voluntary basis. These underwriting standards can exclude some employers that are very small or new, or have bad loss experiences.

In some other states, the state fund is the “insurer of last resort,” and is required to provide workers’ compensation insurance to any employer.

HB 2033 Report to the Sixty-Ninth Legislative Assembly Regarding SAIF, DCBS, page 4-5.
What happens to employers that can’t buy workers’ compensation insurance in the voluntary market?

Any employer who cannot buy workers’ compensation insurance through the voluntary market is entitled to buy coverage through an “assigned risk pool” administered through the National Council on Compensation Insurance, or NCCI. Both SAIF and Liberty Northwest provide service to these employers through the assigned risk pool, although at higher rates. No employer is left without access to workers’ compensation coverage.

As many as 18,000 Oregon employers were in the assigned risk pool in the early 1990s (peaking at over 11 percent of the market based on premium). This number declined to a low of about 7,000 employers (3 percent of premium) in 2000. Since 2000, twelve workers’ compensation companies serving Oregon have gone out of business due to financial difficulties in other states, and the assigned risk pool has since grown to cover approximately 12,000 employers (9.4 percent of premium). Nationally, in states with assigned risk pools, about 12 percent of the market premium is covered by such pools.


Who provides workers’ compensation coverage to small employers in Oregon?

As of June 2004, there were 88,465 insured and self-insured Oregon employers. Approximately 58,000 of these employers have less than $2,500 in standard premium. These employers are considered to be small since they are not eligible to be rated on their own experience. Of these employers, approximately 10,000 had coverage through the assigned risk pool. Most small employers had coverage from the voluntary market. The two largest insurers in the voluntary market are SAIF and Liberty Northwest. As of June 2004, SAIF insured approximately 27,500 small employers and Liberty Northwest insured approximately 1,200 small employers. The remaining small employers obtained coverage from other private insurance companies or through membership in a self-insurance group.

DCBS Employer Data System; National Council on Compensation Insurance

How are workers’ compensation premium rates set? How does SAIF affect them?

The National Council on Compensation Insurance (NCCI) is the rating bureau for workers' compensation insurance in Oregon and 32 other states plus the District of Columbia. NCCI develops “pure premium” rates, subject to approval by DCBS. Pure premium is the amount of premium necessary to pay expected losses. In calculating the pure premium rate, NCCI looks at the combined claim costs of SAIF and private insurance companies and performs the necessary actuarial calculation under the supervision of DCBS. The pure premium reflects NCCI’s prediction of the actual cost of all workplace injury and illness claims in Oregon.
SAIF, like other major Oregon workers’ compensation insurers, has played a significant role in the reduction of pure premium by providing loss prevention and claims management services to its insureds.

Under Oregon's competitive system, each insurer develops an expense loading factor, subject to DCBS approval, to cover operating expenses, taxes, profit, and contingencies. This factor is multiplied by the pure premium rate to arrive at the rate to be applied to the employer's payroll.

The premium differences between insurers are caused mainly by the individual insurer expense loadings. Actual rates paid by individual employers may also vary based on their loss experience and other factors. Since 1990, SAIF’s average expense loading factor has been lower than the average expense loading factors of private insurance companies. In 2003, the average expense loading factors for the top 30 private workers’ compensation insurers in Oregon were 20.5 percent higher than that of SAIF.

http://www.cbs.state.or.us/external/imd/report_delivery/fig8textfull/124_915.htm

What has caused the decline in Oregon’s rates over the past fourteen years?

The most important factor causing Oregon’s rates to decline has been the reduction in the number and severity of on-the-job injuries to Oregon workers. Other factors have included legislative changes to standards for what types of injuries are compensated; control of indemnity and medical costs; reduced litigation; and programs to help injured workers get back on the job quickly.

Between 1987 and 2002, the lost-workday-case-incidence rate dropped 43 percent, and the total case incidence rate dropped 45 percent. The number of accepted disabling claims dropped 43 percent, and the number of compensable fatalities dropped 33 percent. Permanent partial disability claims decreased 46 percent, and the permanent disability rate per employee dropped 63 percent, which tells us that, in addition to the reduction in injuries, those that do occur are less disabling. And over the same period, employment grew 44 percent. This means that even with a large growth in the Oregon workforce, we have seen a steady decline in injuries.

SAIF and private workers’ compensation insurers sponsor safety, cost control, and return-to-work programs that contribute substantially to many of these factors.

Monitoring Key Components of Legislative Reform  http://www.cbs.state.or.us/imd/rasums/2362/03web/03_2362.pdf, pages 1-3, and 6.

What are SAIF’s reserves? Are they too high?

All insurance companies are required to maintain reserves sufficient to pay their claims. Because injured workers may be entitled to receive benefits for their entire lives (and their dependents may receive benefits after their deaths), the reserves need to be sufficient to pay the claims over time. Benefit payments lasting 30 to 40 years are not unusual. SAIF’s board of
directors oversees SAIF’s policies on reserving, based upon advice from an independent actuarial firm. In addition, SAIF’s reserve amounts are audited by the Secretary of State and the Insurance Division of the Department of Consumer and Business Services.

As of December 31, 2002, SAIF’s net reserves were $2.275 billion. The Insurance Division retained an independent actuarial firm to audit these reserves. In its financial examination report, issued in June 2004, the independent actuarial firm estimated net reserves at $2.136 billion but did not recommend that SAIF reduce its reserves to this amount. The actuary noted the “high level of uncertainty inherent in estimating workers’ compensation reserves,” and said that the difference was “within the range of variability around [its] best estimate.”

In addition to reserves, SAIF and all insurance companies are required by law and by insurance accounting standards to maintain certain amounts of working capital called “surplus,” which also provides protection against unanticipated contingencies and catastrophic losses. The phrase “excess surplus” is sometimes used to refer to funds that SAIF may have (if any) in excess of the reserves and required surplus needed to comply with actuarial and accounting standards and assure its continued fiscal soundness.

SAIF’s funds – its reserves and surplus – are held in the Industrial Accident Fund in the State Treasury.

Surplus in excess of reserves and surplus, ORS 656.634, \text{http://www.leg.state.or.us/ors/656.html};

How does SAIF’s acceptance and denial of worker claims compare to private insurers?

When a worker files a claim, the insurance carrier makes an initial decision whether to accept or deny the claim. If the claim is denied, the worker may choose to appeal. The appeal may then be settled, or if not settled, it is then resolved by an administrative hearing at the state Workers’ Compensation Board.

Historically, SAIF has denied claims at a higher rate than private insurers and self-insured employers. However, fewer of SAIF’s denials are appealed and, when they are appealed, SAIF’s denials are affirmed at a slightly higher rate than the rest of the industry. The data for the most recent periods available are:

<table>
<thead>
<tr>
<th></th>
<th>SAIF Corporation</th>
<th>Private Insurers</th>
<th>Self-Insurers</th>
<th>Total for Industry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claims denied (2003)</td>
<td>19.5%</td>
<td>14.7%</td>
<td>17.1%</td>
<td>17.3%</td>
</tr>
<tr>
<td>Denials appealed (2003)</td>
<td>43.4%</td>
<td>48.9%</td>
<td>48.2%</td>
<td>46.1%</td>
</tr>
<tr>
<td>Denials affirmed on appeal (2002; does not include settled cases)</td>
<td>61.7%</td>
<td>60.1%</td>
<td>59.8%</td>
<td>n/a</td>
</tr>
</tbody>
</table>

Denied Disabling Claims, \text{http://www4.cbs.state.or.us/ex/imd/reports/rpt/index.cfm?fuseaction=version_view&version_tk=101447&ProgID=CC8025}.
Hearings Division Statistical Report Calendar Year 2002, \text{http://www.cbs.state.or.us/external/imd/rasums/2145/02web/02_2145.pdf}. 

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What would Measure 38 do?

The ballot title for Measure 38 reads as follows:

ABOLISHES SAIF; STATE MUST REINSURE, SATISFY SAIF’S OBLIGATIONS; DEDICATES PROCEEDS, POTENTIAL SURPLUS TO PUBLIC PURPOSES

RESULT OF “YES” VOTE: “Yes” vote abolishes SAIF; state must reinsurance, satisfy SAIF’s current obligations (including pending policyholder claims against SAIF); dedicates proceeds, potential surplus to specified public purposes.
RESULT OF “NO” VOTE: “No” vote retains law authorizing SAIF, a public corporation, to sell and administer workers compensation insurance and to administer an accident fund for that purpose.

SUMMARY: State Accident Insurance Fund (SAIF) is a public corporation selling, administering workers compensation insurance, and administering accident fund for that purpose. Measure abolishes SAIF. Requires state to assume SAIF’s authority over accident fund; reinsurance fund; satisfy SAIF’s obligations under its existing policies; use fifty percent of any excess surplus (meaning any funds exceeding reserves and surplus necessary to satisfy future liabilities) to satisfy policyholder claims in litigation before October 2003; transfer forty percent of any excess surplus to new fund; sell SAIF’s assets; transfer proceeds to same fund; and reinsurance, otherwise resolve SAIF’s remaining liabilities. Dedicates new fund to supporting schools, local law enforcement; providing medications to seniors, medically needy; promoting job growth. Requires certain reports to legislature regarding rates for insurance premiums. Other provisions.

Would Measure 38 allow SAIF to be mutualized or privatized?

The measure states that on January 1, 2005, SAIF must cease selling new policies of insurance. On January 1, 2006, SAIF must cease renewing policies of insurance. On January 1, 2007, SAIF would be abolished and the director of the Department of Administrative Services must sell all of SAIF’s real and personal property to a private entity.

The measure requires the directors of the Department of Administrative Services and the Department of Consumer and Business Services to develop a plan for the orderly exit of the state from the retail insurance business consistent with the terms of the measure. The plan must include reinsurance of SAIF Corporation and the Industrial Accident Fund in a manner that enables SAIF’s obligations to be met with a goal of increasing its excess surplus as much as possible consistent with that purpose.

Any implementation of Measure 38 must be consistent with these terms, including the requirements that SAIF stop selling new policies of insurance and stop renewing policies on the specified dates.
What is the fiscal impact of Measure 38?

The state has estimated that Measure 38 would have the following impact on revenues and expenditures:

The measure would reduce state revenue by approximately $405 million per year and would reduce state expenditures by approximately $301 million per year due to the elimination of SAIF.

The measure would require additional state government expenditures of $1.8 million to $5.5 million per year on a recurring basis with an additional one-time expenditure of $2.2 billion to $2.4 billion.

There will be a one time increase of state revenues of $32.6 million from sale of real property.

The measure would require local government expenditures of $2.6 million to $10.5 million per year on a recurring basis. There is no financial effect on local government revenues.

The estimated reduction in revenues and expenditures is based on a three-year average of SAIF’s annual revenues (primarily premiums and investment earnings) and SAIF’s annual expenditures (primarily operating expenses and payment of benefits to injured workers). If SAIF were eliminated, these revenues and expenditures would be eliminated. SAIF’s annual revenues and expenditures vary from year to year, and affect the Industrial Accident Fund in the State Treasury, not the general fund.

The largest portion of the fiscal impact is the estimated one-time cost of reinsuring SAIF’s liabilities. The funds to pay for this reinsurance would be expected to come from the Industrial Accident Fund, not from the general fund.

The fiscal impact statement also incorporates estimates of the annual increased costs to state and local governments to buy workers’ compensation insurance if the insurance could no longer be purchased from SAIF; the one-time increase in revenue which would come from the sale of SAIF’s real property; and various one-time costs which would be associated with elimination of SAIF.

Ballot Measure 38, Fiscal Impact Statement, http://www.sos.state.or.us/elections/nov22004/m38 bt.pdf

If Measure 38 passes, what would happen to Oregon employers who currently get their workers’ compensation coverage from SAIF?

SAIF would be prohibited from renewing policies after January 1, 2006, and would be abolished on January 1, 2007. Employers who currently get their insurance from SAIF would have to buy workers’ compensation insurance from a private carrier, or self-insure if they qualify financially. It is possible more private carriers would enter the Oregon market if SAIF is abolished, giving Oregon employers more choices, but it is unknown whether this would happen. If an employer is
unable to find workers’ compensation coverage from a private carrier, coverage would be provided through the assigned risk pool.


**What would happen to injured workers who are currently receiving benefits from SAIF?**

Injured workers who are currently receiving benefits from SAIF would remain entitled to the same benefits, but they would no longer receive those benefits from SAIF. The state would be responsible for reinsuring or otherwise resolving SAIF’s existing liabilities, including its existing obligations to pay benefits to injured workers, under a plan to be developed by the directors of the Department of Administrative Services and the Department of Consumer and Business Services. This plan would include the details of how these injured workers’ benefits would be paid in the future.

**Does SAIF administer any programs other than workers compensation?**

Yes. The 2003 legislature charged SAIF with administering a program to help reduce the cost of professional liability (malpractice) insurance premiums for rural doctors. Through this program, enacted by House Bill 3630, over 1000 rural doctors are currently receiving reductions in their malpractice insurance premiums – an 80 percent reduction for obstetricians, 60 percent for family practitioners whose practice includes obstetrics, and 40 percent for other rural doctors. SAIF is reimbursed for the cost of the program through a credit against the assessment it pays to the Department of Consumer and Business Services. The program is presently authorized to continue for four years, 2004 through 2007. If Measure 38 passes, SAIF would be abolished on January 1, 2007, and the fourth year of this program would therefore be eliminated.

House Bill 3630; http://pub.das.state.or.us/LEG_BILLS/PDFs/EHB3630.pdf

For further information, please contact Steve Corson, DCBS public information and communications director, (503) 947-7868, or send e-mail to Steven.J.Corson@state.or.us.