

HOUSE BILL NO. 198

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE KOTT

Introduced: 4/14/99

Referred: Labor and Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to workers' compensation self-insurance."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 23 is amended by adding a new chapter to read:

4 **Chapter 32. Workers' Compensation Self-insurance Groups.**

5 **Sec. 23.32.010. Scope.** (a) The provisions of this chapter apply to workers'
6 compensation self-insurance groups. This chapter does not apply to public employees
7 or governmental entities.

8 (b) A workers' compensation self-insurance group that is issued a certificate
9 of approval by the director may not be considered to be an insurer or an insurance
10 company and is not subject to AS 21 except as otherwise provided in this chapter.

11 **Sec. 23.32.020. Authority to act as a workers' compensation self-insurance**
12 **group.** A person may not act as a workers' compensation self-insurance group unless
13 the person has been issued a certificate of approval by the director.

14 **Sec. 23.32.030. Required qualifications.** (a) A proposed workers'
15 compensation self-insurance group shall file with the director an application for a

1 certificate of approval accompanied by a nonrefundable filing fee established by the
 2 department. The application must include the group's name, location of its principal
 3 office, date of organization, name and address of each member, and other information
 4 that the director may reasonably require, together with the following:

- 5 (1) proof of compliance with the provisions of (b) of this section;
- 6 (2) a copy of the group's articles of association, if any;
- 7 (3) a copy of agreements with the administrator and with any service
 8 company;
- 9 (4) a copy of the bylaws of the proposed group;
- 10 (5) a copy of the agreement between the group and each member
 11 securing the payment of workers' compensation benefits; the agreement must include
 12 a provision for payment of assessments as provided under AS 23.32.170;
- 13 (6) designation of the initial board of trustees and administrator;
- 14 (7) the address in this state where the books and records of the group
 15 shall be maintained at all times;
- 16 (8) a pro forma financial statement on a form acceptable to the director
 17 showing the financial ability of the group to pay the workers' compensation obligations
 18 of its members;
- 19 (9) proof of the group's qualification under 26 U.S.C.; and
- 20 (10) proof of payment to the group by each member of not less than
 21 25 percent of that member's first year estimated annual net premium on a date
 22 prescribed by the director; payment may be considered to be part of the first year
 23 premium payment of a member if the proposed group is granted a certificate of
 24 approval.

25 (b) To obtain and to maintain its certificate of approval, a workers'
 26 compensation self-insurance group shall meet the following requirements, as well as
 27 other requirements established by law:

- 28 (1) a combined net worth of all members of the group of at least
 29 \$1,000,000, evidenced by financial statements that have been audited by an
 30 independent certified public accountant;
- 31 (2) security in the amount of \$450,000 that shall be provided by cash,

1 a surety bond, security deposit, or financial security endorsement or any combination
 2 of cash, bond, deposit, or endorsement; if a surety bond is used to meet the security
 3 requirement, the surety bond shall be issued by a corporate surety company authorized
 4 to transact business in this state; if a security deposit is used to meet the security
 5 requirement, securities shall be limited to bonds or other evidences of indebtedness
 6 issued, assumed, or guaranteed by the United States of America, or by an agency or
 7 instrumentality of the United States of America; certificates of deposit in a federally
 8 insured bank; shares or savings deposits in a federally insured savings and loan
 9 association or credit union; or any bond or security issued by a state of the United
 10 States of America and backed by the full faith and credit of the state; securities shall
 11 be deposited with the director and assigned to and made negotiable by the
 12 commissioner of labor under a trust document acceptable to the director; interest
 13 accruing on a negotiable security shall be collected and transmitted to the depositor,
 14 provided the depositor is not in default; a financial security endorsement, issued as part
 15 of an acceptable excess insurance contract, may be used to meet all or part of the
 16 security requirement; the cash, bond, security deposit, or financial security endorsement
 17 must be

18 (A) for the benefit of the state solely to pay workers'
 19 compensation claims and associated expenses; and

20 (B) payable upon the insolvency of the group as described
 21 under AS 23.32.170(d);

22 (3) evidence of the availability of specific and aggregate excess
 23 insurance in a form, in an amount, and by an insurance company acceptable to the
 24 director; the director may establish minimum requirements for the amount of specific
 25 and aggregate excess insurance based on size differences among groups, types of
 26 employment, years in existence, and other relevant factors, and may permit a group to
 27 meet this requirement by placing in a designated depository securities of the type
 28 referred to in (2) of this subsection;

29 (4) an annual standard premium of at least \$1,000,000;

30 (5) an indemnity agreement jointly and severally binding the group and
 31 each member of the group to meet the workers' compensation obligations of each

1 member; the indemnity agreement must be in a form prescribed by the director and
 2 must include minimum uniform substantive provisions prescribed by the director;
 3 subject to the director's approval, a group may add other provisions needed because
 4 of its particular circumstances;

5 (6) in a form and amount prescribed by the director, a fidelity bond and
 6 an errors and omissions insurance policy for the administrator and a professional
 7 liability insurance policy for the trustees; and

8 (7) in a form and amount prescribed by the director, a fidelity bond and
 9 an errors and omissions insurance policy for the service company; the director may
 10 also require the service company providing claim services to furnish a performance
 11 bond in a form and amount prescribed by the director.

12 (c) A group shall notify the director of any material change in the information
 13 required to be filed under (a) of this section or in the manner of its compliance with
 14 (b) of this section not later than 30 days after the change.

15 (d) The director shall

16 (1) evaluate the information provided by the application required to be
 17 filed under (a) of this section to assure that gaps in funding do not exist and that funds
 18 necessary to pay workers' compensation benefits will be available on a timely basis;

19 (2) act upon a completed application for a certificate of approval within
 20 60 days; if, because of the number of applications, the director is unable to act upon
 21 an application within this period, the director may have an additional 60 days to act
 22 on an application;

23 (3) issue to the group a certificate of approval upon finding that the
 24 proposed group has met all requirements, or the director shall issue an order refusing
 25 the certificate setting out reasons for refusal upon finding that the proposed group does
 26 not meet all requirements of this chapter.

27 **Sec. 23.32.035. Premium tax.** A workers' compensation self-insurance group
 28 is subject to the premium tax imposed on domestic insurers under AS 21.09.210(b)(1).

29 **Sec. 23.32.040. Certificate of approval; termination.** (a) A certificate of
 30 approval issued by the director to a workers' compensation self-insurance group
 31 authorizes the group to provide workers' compensation benefits as required under

1 AS 23.30. The certificate of approval remains in effect until terminated at the request
2 of the group or revoked by the director under AS 23.32.190.

3 (b) The director may not grant the request of a group to terminate its
4 certificate of approval unless the group has insured or reinsured all incurred workers'
5 compensation obligations with an authorized insurer under an agreement filed with and
6 approved in writing by the director. Workers' compensation obligations must include
7 both known claims and associated expenses and claims incurred but not reported and
8 associated expenses. Subject to the approval of the director, a group may merge with
9 another group engaged in the same or similar type of business only if the resulting
10 group assumes in full all obligations of the merging groups. The director may hold
11 a hearing on the merger and shall hold a hearing if any party, including a member of
12 either group, requests a hearing.

13 **Sec. 23.32.050. Examinations.** The director may examine the affairs,
14 transactions, accounts, records, and assets and liabilities of a group as often as the
15 director requires. The expense of an examination shall be assessed against the group
16 in the same manner that an insurer is assessed for an examination under AS 21.06.160.

17 **Sec. 23.32.060. Board of trustees: membership, powers, duties, and**
18 **prohibitions; accounts.** (a) A group shall be operated by a board of trustees of not
19 less than five persons whom the members of a group elect for stated terms of office.
20 At least two-thirds of the trustees must be employees, officers, or directors of members
21 of the group. The group's administrator, service company, or an owner, officer,
22 employee of, or another person affiliated with the administrator or service company
23 may not serve on the board of trustees of the group. A trustee shall be a resident of
24 this state or an officer of a corporation authorized to do business in this state. The
25 board of trustees of a group shall ensure that all claims are paid promptly and take all
26 necessary precautions to safeguard the assets of the group. A trustee shall observe the
27 standards in dealing with the assets of the group that would be observed by a prudent
28 person dealing with the property of another, and, if the trustee has special skills or is
29 named trustee on the basis of representations of special skills or expertise, the trustee
30 is under a duty to use those skills.

31 (b) The board of trustees shall

1 (1) be responsible for all money collected or disbursed from the group
 2 and segregate all money into a claims fund account and an administrative fund
 3 account, as follows:

4 (A) at least 70 percent of the net premium shall be placed into
 5 a designated depository for the sole purpose of paying claims, allocated claims
 6 expenses, reinsurance or excess insurance, income taxes, and special fund
 7 contributions, including second injury and other loss related funds; this shall
 8 be called the "claims fund account";

9 (B) the remaining net premium shall be placed into a designated
 10 depository for the payment of taxes, general regulatory fees and assessments,
 11 and administrative costs; this shall be called the "administrative fund account";

12 (C) the director may approve an administrative fund account of
 13 more than 30 percent and a claims fund account of less than 70 percent only
 14 if the group shows to the director's satisfaction that

15 (i) more than 30 percent is needed for an effective safety
 16 and loss control program; or

17 (ii) the group's aggregate excess insurance attaches at
 18 less than 70 percent;

19 (2) maintain minutes of its meetings and make the minutes available
 20 to the director;

21 (3) designate an administrator to carry out the policies established by
 22 the board of trustees and delineate in the written minutes of its meetings the areas of
 23 authority the board of trustees delegates to the administrator;

24 (4) retain an independent certified public accountant to prepare the
 25 statement of financial condition required under AS 23.32.100.

26 (c) The board of trustees may not

27 (1) extend credit to individual members for payment of a premium
 28 except under a payment plan approved by the director; or

29 (2) borrow money from the group or in the name of the group, except
 30 in the ordinary course of business, without first advising the director of the nature and
 31 purpose of the loan and obtaining prior approval from the director.

1 **Sec. 23.32.070. Group membership; termination; liability.** (a) An
 2 employer joining a workers' compensation self-insurance group after the group has
 3 been issued a certificate of approval shall (1) submit an application for membership
 4 to the board of trustees or its administrator; and (2) enter into the indemnity agreement
 5 required under AS 23.32.030(b)(5); membership may not take effect earlier than each
 6 member's date of approval. An application for membership and approval of the
 7 application shall be maintained as a permanent record by the board of trustees.

8 (b) Individual membership in a group is subject to cancellation by the group
 9 under the bylaws of the group. In addition, an individual member may elect to
 10 terminate participation in the group. The group shall notify the director regarding the
 11 termination or cancellation of a membership. Notice shall be given within 10 days after
 12 the termination or cancellation.

13 (c) The group shall pay all workers' compensation benefits for which a
 14 member incurs liability during its period of membership. A member who elects to
 15 terminate its membership or whose membership is cancelled by a group remains liable
 16 for any workers' compensation obligations of the group and its members that were
 17 incurred during the cancelled or terminated member's period of membership.

18 (d) A group member is not relieved of its workers' compensation liabilities
 19 incurred during its period of membership except through payment by the group or the
 20 member of workers' compensation benefits required under AS 23.30.

21 (e) The insolvency or bankruptcy of a member does not relieve the group or
 22 another member of liability for the payment of any workers' compensation benefits
 23 incurred during the insolvent or bankrupt member's period of membership.

24 **Sec. 23.32.080. Service companies.** (a) A service company or its employees,
 25 officers, or directors may not be an employee, officer, or director of, or have either a
 26 direct or indirect financial interest in, an administrator. An administrator or its
 27 employees, officers, or directors may not be an employee, officer, or director of, or
 28 have either a direct or indirect financial interest in, a service company.

29 (b) A service contract must state that unless the director permits otherwise, the
 30 service company shall handle, to conclusion, all workers' compensation claims and
 31 other obligations incurred during the contract period.

1 **Sec. 23.32.090. Licensing of agent.** Except for a salaried employee of a
2 group, its administrator, or its service company, a person soliciting membership for a
3 workers' compensation self-insurance group must be licensed as provided under
4 AS 21.27.

5 **Sec. 23.32.100. Financial statements and other reports.** (a) A group shall
6 submit to the director a statement of the financial condition of the group on or before
7 the last day of the sixth month following the end of the group's fiscal year. The
8 statement of financial condition must be annually audited by an independent certified
9 public accountant. Upon request, the director shall allow a 60 day extension of the
10 deadline described in this subsection. The financial statement must be on a form
11 prescribed by the director and must include actuarially appropriate reserves, known as
12 liabilities, for

- 13 (1) known claims and associated expenses;
- 14 (2) claims incurred but not reported and associated expenses;
- 15 (3) unearned premiums; and
- 16 (4) bad debts.

17 (b) The actuarial opinion required under (a) of this section shall be given by
18 a member of the American Academy of Actuaries or other qualified loss reserve
19 specialist as defined in the annual statement adopted by the National Association of
20 Insurance Commissioners.

21 (c) The director may prescribe the format and frequency of other required
22 reports including payroll audit reports, summary loss reports, and quarterly financial
23 statements.

24 **Sec. 23.32.110. Required second injury contribution.** A group is subject to
25 the required contribution provisions of the second injury fund under AS 23.30.040.
26 If an employee of a member of a group suffers a compensable injury, the group shall
27 contribute to the second injury fund as required under AS 23.30.040.

28 **Sec. 23.32.120. Misrepresentation prohibited.** (a) A person may not make
29 a material misrepresentation or omission of a material fact in connection with the
30 solicitation of membership of a group.

31 (b) A person may not make an untrue statement of a material fact, or omit to

1 state a material fact necessary in order to make the statement made, in light of the
2 circumstances under which it is made, not misleading, in connection with the
3 solicitation of membership in a group.

4 **Sec. 23.32.130. Rates and reporting of rates.** (a) A workers' compensation
5 self-insurance group shall adhere to the uniform classification system, uniform
6 experience rating plan, and manual rules designated by the director.

7 (b) Premium contributions to the group shall be determined by applying the
8 manual rates and rules to the appropriate classification of a member. Premium
9 contributions shall be adjusted by a member's experience credit or debit. Subject to
10 approval by the director, the premium contributions may also be reduced by an
11 advance premium discount reflecting the group's expense levels and loss experience.

12 (c) Notwithstanding (b) of this section, a group may apply to the director for
13 permission to make its own rates. Rates established under this subsection shall be
14 based on at least five years of the group's experience. A group may contract with an
15 advisory organization approved by the director for assistance in developing appropriate
16 rates.

17 (d) Unless a group receives permission from the director to make its own rates,
18 a group shall use the premium rates designated by the director.

19 (e) A group shall be audited at least annually by an auditor acceptable to the
20 director to verify proper classifications, experience rating, payroll, and rates. A report
21 of the audit shall be filed with the director in a form acceptable to the director. A
22 group or a member of a group may request a hearing on objections to the
23 classifications. If the director determines that as a result of an improper classification
24 a member's premium contribution is insufficient, the director shall order the group to
25 assess that member an amount equal to the deficiency. If the director determines that
26 as a result of an improper classification a member's premium is excessive, the director
27 shall order the group to refund to the member the excess premium collected. The
28 audit required under this subsection shall be at the expense of the group.

29 **Sec. 23.32.140. Refunds.** (a) If approved by the director, money for a fiscal
30 year in excess of the amount necessary to fund all obligations for that fiscal year may
31 be declared to be refundable by the board of trustees not less than 12 months after the

1 end of the fiscal year.

2 (b) The group shall give a prospective member a written description of the
3 refund plan at the time of application for membership. A refund for any fiscal year
4 shall be paid only to those employers who remain participants in the group for the
5 entire fiscal year.

6 **Sec. 23.32.150. Premium payment; reserves.** (a) A group shall establish to
7 the satisfaction of the director a premium payment plan. The plan must include
8 payment of the balance of each member's annual premium in monthly installments.

9 (b) A group shall establish and maintain actuarially appropriate loss reserves
10 that must include reserves for

11 (1) known claims and associated expenses; and

12 (2) claims incurred but not reported and associated expenses.

13 (c) A group shall establish and maintain bad debt reserves based on the
14 historical experience of the group or other groups.

15 **Sec. 23.32.160. Workers' compensation self-insurance guaranty fund.** A
16 group shall establish a workers' compensation self-insurance guaranty fund. The
17 purpose of the fund is to prevent insolvency and to allow a group to discharge its legal
18 liabilities and other obligations. In addition to any other deposit requirement under
19 this chapter, the group shall make a one time only deposit to the guaranty fund of five
20 percent of the group's estimated annual premium before the start of the group's first
21 fiscal year. A group shall obtain reinsurance for the fund described in this section in
22 a form and amount approved by the director.

23 **Sec. 23.32.170. Deficits and insolvencies.** (a) If the assets of a group are at
24 any time insufficient to enable the group to discharge its legal liabilities and other
25 obligations and to maintain the reserves required of the group under this chapter, the
26 group shall immediately make up the deficiency or levy an assessment upon the group
27 members for the amount needed to make up the deficiency.

28 (b) In the event of a deficiency in any fiscal year, the deficiency shall be made
29 up immediately from

30 (1) surplus from a fiscal year other than the current fiscal year;

31 (2) administrative funds;

1 (3) funds collected under AS 23.32.160;

2 (4) assessment of the membership, if ordered by the group and funds
3 described under (3) of this subsection are exhausted; or

4 (5) an alternate method that the director may approve or direct.

5 (c) The director shall be notified before a transfer of surplus funds from one
6 fiscal year to another. If a group fails to assess its members or to otherwise make up
7 a deficit within 60 days, the director shall order the group to make up the deficit.

8 (d) If a group fails to make the required assessment of its members within 30
9 days after the director orders it to do so, or if the deficiency is not fully made up
10 within 120 days after the date on which the assessment is made, or within a longer
11 period of time that is specified by the director, the group shall be considered to be
12 insolvent.

13 (e) In the event of the liquidation of a group, the director shall levy an
14 assessment upon its members in an amount the director determines to be necessary to
15 discharge all liabilities of the group, including the reasonable cost of liquidation.

16 **Sec. 23.32.180. Penalties.** (a) After notice and opportunity for a hearing, the
17 director may impose a civil penalty on a person or group found to be in violation of
18 any provision of this chapter. The civil penalty may not exceed \$500 for each act or
19 violation and may not exceed \$5,000 in the aggregate.

20 (b) After notice and opportunity for a hearing, the director may issue an order
21 requiring a person or group to cease and desist from engaging in an act or practice
22 found to be in violation of any provision of this chapter.

23 (c) Upon a finding, after notice and opportunity for a hearing, that a person
24 or group has knowingly violated a cease and desist order, the director may

25 (1) impose a civil penalty of not more than \$5,000 for each act or
26 violation of the order not to exceed an aggregate amount of \$25,000; or

27 (2) revoke the group's certificate of approval or any insurance license
28 held by the person.

29 (d) In this section, "knowingly" has the meaning given in AS 11.81.900.

30 **Sec. 23.32.190. Revocation of certificate of approval.** (a) After notice and
31 opportunity for a hearing, the director may revoke a group's certificate of approval if

1 the group

2 (1) is found to be insolvent;

3 (2) fails to pay any premium tax, regulatory fee or assessment, or
4 special fund contribution imposed upon the group; or

5 (3) fails to comply with any of the provisions of this chapter or with
6 any lawful order of the director within the time prescribed.

7 (b) In addition to (a) of this section, the director may revoke a group's
8 certificate of approval if, after notice and opportunity for hearing, the director finds
9 that

10 (1) a certificate of approval that was issued to the group was obtained
11 by fraud;

12 (2) there was a material misrepresentation in the application for the
13 certificate of approval; or

14 (3) the group or its administrator has misappropriated, converted,
15 illegally withheld, or refused to pay over upon proper demand any money that belongs
16 to a member, an employee of a member, or a person otherwise entitled to it, and that
17 has been entrusted to the group or its administrator in its fiduciary capacities.

18 **Sec. 23.32.200. Other provisions applicable.** The following provisions of law
19 are applicable to a workers' compensation self-insurance group as if the group were
20 an insurer:

21 (1) authority granted to the director of the division of insurance under
22 AS 21.06.120, 21.06.140 - 21.06.160, and 21.06.180 - 21.06.230;

23 (2) service of process provisions under AS 21.09.180 and 21.09.190;

24 (3) requirements imposed under AS 21.12.010 - 21.12.090;

25 (4) investment practices required under AS 21.21;

26 (5) administration of deposit requirements under AS 21.24;

27 (6) provisions applicable to producers, agents, administrators, brokers,
28 adjusters, and managers under AS 21.27.405, 21.27.410, 21.27.420, 21.27.440, and
29 21.27.460;

30 (7) unfair trade practice provisions under AS 21.36;

31 (8) provisions applicable to reciprocal and cooperative insurers under

1 AS 21.75.130, 21.75.135, and 21.75.270;

2 (9) provisions applicable to rehabilitation and liquidation under
3 AS 21.78.

4 **Sec. 23.32.499. Definitions.** In this chapter,

5 (1) "administrator" means an individual, partnership, or corporation
6 engaged by a workers' compensation self-insurance group's board of trustees to carry
7 out the policies established by the group's board of trustees and to provide day-to-day
8 management of the group;

9 (2) "director" means the director of the subunit of the Department of
10 Labor responsible for the administration of AS 23.30;

11 (3) "insolvent" or "insolvency" means the inability of a workers'
12 compensation self-insurance group to pay its outstanding lawful obligations as the
13 obligations mature in the regular course of business, as may be shown either by an
14 excess of its required reserves and other liabilities over its assets or by its not having
15 sufficient assets to reinsure all of its outstanding liabilities after paying all accrued
16 claims owed by the group;

17 (4) "net premium" means premium derived from standard premium
18 adjusted by an advance premium discount;

19 (5) "service company" means a person that provides services not
20 provided by the administrator, including

21 (A) claims adjustment;

22 (B) safety engineering;

23 (C) compilation of statistics and the preparation of premium,
24 loss, and tax reports;

25 (D) preparation of required self-insurance reports;

26 (E) development of members' assessments and fees; and

27 (F) administration of a claim fund;

28 (6) "standard premium" means the premium derived from the manual
29 rates adjusted by experience modification factors but before advance premium
30 discounts;

31 (7) "workers' compensation self-insurance group" or "group" means 10

1 or more employers who are engaged in the same or similar type of business, who are
2 members of the same bona fide trade or professional association that has been in
3 existence for not less than five years, and who enter into agreements to pool their
4 liabilities for workers' compensation benefits in this state.