

ALASKA LEGISLATURE COMMISSIONER, 2005-2006

11917 SENATE LABOR & COMMERCE

**SB**

**241**

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 1/18/06

FURTHER: Finance

Date of 5-Day Notice: \_\_\_\_\_  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: \_\_\_\_\_

Labor and Commerce Committee considered SENATE BILL NO. 241

**SB 241 JOINT INSURANCE ARRANGEMENTS**

"An Act relating to modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

<b>CS Senate Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>SCS House Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Alphonse Velazquez</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Bar Stevens</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CHAIR: <i>W. B. ...</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>



## Alaska Independent Insurance Agents & Brokers, Inc.

### **Alaska Independent Insurance Agents & Broker Position Paper on SB 241**

The Alaska Independent Insurance Agents & Brokers is a professional trade association representing business people throughout Alaska. We work with our insurance company partners while representing the interests of our clients. Because we deal with the Alaskan consumer on a daily basis, we are particularly sensitive to their needs and concerns. We believe the best consumer protection is a healthy, competitive insurance marketplace.

SB241 - "An Act relating to modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage, and providing for an effective date."

#### **The Alaska Independent Insurance Agents & Brokers Oppose SB241.**

##### **Concerns that we have with this bill include but are not limited to:**

- There is no safety net for employees – they will not be protected by the Alaska Insurance Guarantee Act therefore the general fund could become the source of claim payments
- There are already current statutes that allow for the formation of a reciprocal insurer which is a viable option already available to these groups. An example is the Alaska Timber Exchange.
- Workers' Compensation Reform legislation in 2005 hasn't had any time to make an impact on workers' compensation costs.
- The bill calls for joint and several liability but should include personal indemnity. There is also concern in the wording in how joint and several liability ties the membership to the association.

We respectfully request that you consider these issues when reviewing the bill. We welcome the opportunity to discuss the issues with you in more detail.

Sincerely,  
Mike Combs, CIC, CRM  
President



DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

Division of Insurance

*Frank H. Murkowski, Governor*  
*William C. Noll, Commissioner*  
*Linda S. Hall, Director*

**APR 12 2006**

April 10, 2006

Representative Rokeberg  
State Capitol  
Juneau, AK 99801

RE: HB 51

Dear Representative Rokeberg:

I am writing to express serious concerns about HB 51 as a matter of public policy. In the following paragraphs, I will discuss several issues that need to be again stated as deliberations take place with this bill:

1. The bill has few financial safeguards. This undercuts one of the primary purposes of insurance regulation – ensuring that claims get paid. This is why we require sufficient reserves to pay claims, and a guaranty fund in the event of insolvency. The bill rejects this time-proven approach and instead relies upon net worth and joint and several liability among the employers to pay claims. This is unacceptably risky. One or more unexpectedly large claims among the minimum 100 employees could send the HB 51 entity into insolvency. If the entity becomes insolvent, employers without a high level of liquidity will have to sell off their capital assets in order to pay claims. In other words, the first level of defense against the insolvency of the HB 51 entity is the liquidation of the employers' assets. Obviously, this threatens the employers with bankruptcy, healthy workers with unemployment, and injured workers with a complete loss of benefits once the employers' assets are insufficient to pay claims. The consequences of the bill's lack of liquidity requirement or a guaranty fund could spell disaster for those affected by the insolvency of an HB 51 entity.
2. The bill is unnecessary. Alaska law (AS 21.75) already provides for a regulated entity that serves the same purpose as the proposed self-insured groups. Reciprocal is subject to the same oversight as insurance companies but have lower capital and surplus requirements. The \$1.5 million capital requirement is affordable and sufficient to pay workers' compensation benefits for injured workers. Alaska's has two reciprocals (Alaska Timber Insurance Exchange and Alaska Insurance

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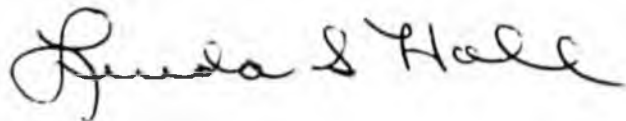
Email: [insurance@commerce.state.ak.us](mailto:insurance@commerce.state.ak.us) Website: <http://www.commerce.state.ak.us/insurance/>

Exchange) successfully providing workers' compensation coverage for their industry groups. Indeed, the primary distinction between reciprocals and HB 51 entities is the reserve requirement. Instead of meeting the financial responsibility required of reciprocals, HB 51 entities are permitted to avoid solvency safeguards. This subjects their members and workers to an unacceptably high risk of financial disaster.

3. AS 21.36.010 *et seq.* proscribes misrepresentation, false advertising, unfair discrimination and unfair claims settlement practices. The proposed legislation specifically prohibits the application of title 21 to the self-insured groups. In addition, the adjusters used by such entities would not be licensed by the Division of Insurance. No one would be able to bring the entity or its adjusters into account for bad conduct. As the Director of the Division of Insurance, I can tell you that I do not want to merely stand by and watch if an HB 51 entity commits actions that could result in fines and penalties if they were committed by a workers' compensation insurer or its agent.
4. HB 51 fails to address the issue of costs, the primary factor in the growth of worker's compensation expenses. The state has taken steps to address costs, which has slowed the rate of premium growth. But there is more work to be done. Costs have to be paid, and they are paid through premiums. Changing the entity paying for these costs will have little or no effect on premiums. I should note that California, which has addressed medical costs, has seen a premium reduction of 46% from July 1, 2003 until January 1, 2006. Indeed, the primary reforms in California addressed cost reduction. If Alaska addresses the issue of costs, it will also see a reduction in premiums. But if we think that merely changing the company that writes the worker's compensation claims check will bring costs down, we are deluding ourselves.
5. The bill has the potential to damage our already fragile marketplace. As you are aware, the Alaska market is very small compared to most states. As we have implemented several reforms over the past two years, I have seen companies increase their interest and presence in Alaska. We have begun to move to a more competitive marketplace. But, if we allow entities to form self-insured groups, we will see the best risks selected for these groups and the less desirable risks will left for the traditional marketplace. Those insurers will either raise premiums to cover their soaring costs, or they will leave the state altogether.

For these reasons, I urge you to reconsider HB 51. It puts Alaska's employers and workers at risk because HB 51 groups can be under funded and not subject to regulatory oversight. It is ultimately consumer and business unfriendly. In simple terms, the Division of Insurance is strongly opposed to this proposal. I will be pleased to discuss any questions or issues that arise on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Linda S. Hall".

Linda S. Hall  
Director

cc: Representatives of the House of Representatives  
Kevin Jardell

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR BUNDE

TO: CSSB 241( ), Draft Version "G"

# 1

1 Page 15, following line 22:

2 Insert a new subsection to read:

3 "(d) The state is not liable for, and does not guarantee or insure, the  
4 obligations of an association of employers or its members, or an association of self-  
5 insured employers or its members, under this chapter."

# 2

~~Self-insured:~~

"An association of employers authorized to self-insure shall provide claims facilities through independent, licensed, resident adjusters with power to effect settlement within the state."

p. 6 line 31-32

6/6/55



## Alaska Independent Insurance Agents & Brokers, Inc.

### Alaska Independent Insurance Agents & Brokers

#### Position Paper on SB241

The Alaska Independent Insurance Agents & Brokers is a professional trade association representing business people throughout Alaska. We work with our insurance company partners while representing the interests of our clients. Because we deal with the Alaskan consumer on a daily basis, we are particularly sensitive to their needs and concerns. We believe the best consumer protection is a healthy, competitive insurance marketplace.

**SB241** - "An Act relating to modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage, and providing for an effective date."

#### The Alaska Independent Insurance Agents & Brokers Oppose HB51/SB241

Concerns that we have with this bill include but are not limited to:

- There is no safety net for employees – they will not be protected by the Alaska Insurance Guarantee Act therefore the general fund could become the source of claim payments.
- There are already current statutes that allow for the formation of a reciprocal insurer which is a viable option to these groups. An example is the Alaska Timber Exchange.
- Workers' Compensation Reform legislation in 2005 hasn't had any time to make an impact on workers' compensation costs.
- The bill calls for joint and several liability but should include personal indemnity. There is also concern in the wording in how joint and several liability ties the membership to the association.

We respectfully request that you consider these issues when reviewing the bill. We welcome the opportunity to discuss the issues with you in more detail.

Sincerely,  
Mike Combs, CIC, CRM  
President

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★ STATE ★  
CHAMBER  
OF COMMERCE

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March 27, 2006

Senator Con Bunde, Chair  
& Members of the Senate Labor & Commerce Committee  
State Capitol  
Juneau, Alaska 99801

The Honorable Chairman and Members of the Senate Labor & Commerce Committee,

The Alaska State Chamber of Commerce strongly supports Senate Bill 241. SB 241 simply allows for the formation of same trade joint-insurance arrangements; the State Chamber of Commerce supports this additional option, which will hopefully, create advantages to those trade groups in lowering their worker's compensation insurance. SB 241 also provides another option for coverage, which will likely help those trades or industries that currently have little or no options for worker's compensation insurance coverage.

As you know, the Alaska State Chamber of Commerce has worked hard in the past few years to lower the high costs associated with worker's compensation insurance. Through passage of SB 241, we feel that Alaska's businesses will likely gain additional flexibility, while creating new options for worker's compensation insurance coverage. The chamber encourages your constructive work and we are hopeful that the bill will move through the legislative process.

Yours in economic prosperity,

Wayne A. Stevens  
President/CEO



## **Alaska Legislators: HB 51 (CS) and SB 241 pose a risk to injured workers, employers, insurers and the state.**

The current drafts of proposed workers compensation self-insurance legislation (HB 51 CS and SB 241) have been represented as reworked or compromise measures that address Insurance Division and insurance industry concerns. But workers compensation insurers in Alaska do **NOT** support these bills, as we believe they put the physical health of injured workers – and the financial health of insurers and Alaska's economy – at risk.

Importantly, these measures are widely thought of as "homebuilder's" bills – designed to assist building contractors and their subcontractors find an additional option for workers comp coverage. But the bills **are not limited to homebuilding** or construction of any sort – they allow any employer group with 100 or more workers in the aggregate to form an inadequately regulated insurance pool for workers comp coverage.

Also important is that current law allows the formation of reciprocals, which are insurance entities formed in a similar fashion to what is proposed in both HB 51 and SB 241, but which are subject to state regulations as are other workers' compensation insurers, and we believe are a safer alternative than this legislation.

These measures are an understandable effort to provide a lower-cost alternative for employers seeking workers compensation coverage in a difficult insurance market. But it must be said that simply "charging less" without addressing the current system's cost drivers – like provider reimbursement levels, utilization issues, fraud and abuse, and prescription drug costs – will result in artificial savings among these pools. Combined with a lack of regulatory oversight and undercapitalization, it is recipe for insolvency.

We believe the best approach is to use current statutes to pursue alternatives that are regulated by the Insurance Division, and to continue the reform process and the efforts of the Workers Compensation Task Force, chaired by Sen. Seekins. We urge you to consider addressing the costs inherent in the current system before eroding the financial base of that system.

Attached here is a thorough analysis of the proposed legislation, which points out the many areas in which **even the most recent versions** of HB 51 and SB 241 continue to allow the formation of inadequately regulated, under-funded, poorly organized insurance entities that will operate with insufficient state regulatory and enforcement oversight.

### **Even at a glance, the problems with these measures are clear:**

- **Problems for employers:** The proposals provide inadequate net worth requirements for self-insured employer pools. A single worksite accident could easily endanger the financial viability of these groups. The funding requirements for the groups are simply inadequate to cover losses. And under joint and several

liability provisions, if one member suffers a substantial loss, one or more employers in the group can declare bankruptcy and seek protection under federal bankruptcy law, leaving the rest of the pool members to pay claims.

- **Problems for insurance regulators:** The proposals allow any variety of under funded self-insurance pools to form. Funding requirements are similar whether the group stocks grocery shelves or sets dynamite charges, and the Director has little ability to prevent the failure of such under funded groups.
- **Problems for injured workers:** The Alaska insurance code includes statutes designed to protect insurers and consumers – to make sure insurers compete fairly, and to make sure insurers have set aside sufficient reserves to pay claims. If those statutes and regulations are necessary for insurance companies, why are they not necessary for self-insurance pools? More specifically, how well can an injured worker expect to be treated by a self-insured group's third party administrator when that worker's injury threatens the very existence of the entire group? For example, one Alaska insurer presently has a reserve of \$7.7 million for **one claim**. This single claim would exceed the entire \$5 million minimum net worth requirement under HB 51 for an entire group.
- **Problems for insured employers:** If dozens of Alaska companies choose to cancel the workers compensation policies they have today and join a self-insurance pool, rates for those companies that remain with established, regulated, secure insurers are likely to see premiums rise, as the market for traditional workers compensation coverage shrinks.
- **Problems for the state budget:** Under the proposed bills, any group of employers with a total of 100 or more employees in the aggregate can form a self-insurance pool, without regard to risk or claims experience, and with limited funding requirements. But system costs do not change simply because members of the self-insured pool are charged less in premiums. Therefore, a failure of one or more of these pools is virtually inevitable. Who will step in to pay the claim of a married 22-year old father of three who has suffered a workplace injury that leaves him unable to work for the rest of his life? There is no backstop anticipated in this legislation. Recourse will likely be state government.

**PCI urges you to oppose CS HB 51 and SB 241.**



## PCI Comments on proposed Alaska HB 51 (CS) and SB 24; March 28, 2006

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1. Self-insurance is a viable alternative to traditional risk financing options but only if necessary checks and balances are included in statute to protect workers, employers and the state budget.
2. A group self-insurance program can provide its members a number of both advantages and disadvantages when compared to traditional insurance programs.
3. The inherent nature of self-insured group programs require specific controls in law to protect the public, injured workers, employers, and the state. The inherent differences between industries means a "one size fits all" approach is dangerous. Review and approval of each program by the Director is essential to success.
4. Specific and detailed controls must exist in the areas of:
  - a. Minimum financial requirements to establish and maintain a viable group program;
  - b. Selection, screening and evaluation of initial membership, establishment of group standards, and ongoing evaluation of member compliance;
  - c. Group structure formation, bylaws, procedures and standards, including the determination of the program administrator, delivery of professional services such as accounting, actuarial, claims administration, risk management, and premium audit services;
  - d. Financial responsibilities of the group for the establishment of adequate funds for the payment of claims and services.

Following are comments to the key provisions of the current version of HB 51:

### **Sec. 21.77.010 – Self Insurance Certificates**

1. The proposed legislation requires 100 employees in the aggregate but fails to require specific minimums established by member, number of employees, premium size, years in business, or loss experience. These criteria, established by rule, are essential.
2. A net worth of at least \$5,000,000 in the aggregate will be grossly inadequate for some groups based on the size of the group or the business classifications to be included.
  - a. The initial minimum net worth requirements and subsequent levels should be established by and be subject to the approval of the director;
  - b. The net worth requirements should be adjusted to vary by the size of the group – as the group grows, a provision should be included that would require the net worth of the group to grow accordingly;
3. How are individual members screened and evaluated to assure that they have sufficient net worth given the jointly and severally liable provisions?
4. How are individual members screened and evaluated to assure that they have adequate safety programs in place?

### **Sec. 21.77.020 – Excess insurance, reinsurance contracts, surety and solvency bonds**

1. The tangible net worth of all members in the association of at least \$5,000,000 may not be adequate based on the group membership and type of business.

- a. The current language provides only the statement of "at least \$5,000,000" but makes no provision for increasing the minimum amount based on the size of the group or any other factors that the director believes to be relevant;
  - b. The language also states that the group members may provide a solvency bond in a form prescribed by the director, but does not provide the means for the director to:
    - set minimum financial rating requirements of the insurance carrier providing the surety bond, nor
    - specify the amount of the surety bond if the director determines the amount should be greater than \$5,000,000 to protect the public interest including employees, injured workers, employers, and the state of Alaska.
2. Section (e) provides the authority for the director to increase or decrease the amount of the bond, but only in accordance with requirements for loss reserves in casualty insurance.
    - a. The director should not be limited by such restrictive language;
    - b. The director should be required to increase or decrease the amount of the bond or monetary deposit based on all relevant factors affecting the financial ability and stability of the group to pay compensation claims and group expenses.

**Sec. 21.77.070 - Financial responsibilities**

1. The use of 65 percent of the annual assessment for the claim account may not be adequate for some groups. The amount to be set aside should be determined by an actuarial review of members' experience, and should be subject to review and approval by the director.
2. The 65 percent is insufficient to cover the cost of claim payments, **AND** expenses related to claims, **AND** costs of excess insurance, **AND** assessments and penalties to the Subsequent Injury Account and the Uninsured Employers' Claim Account for all groups. These amounts must be subject to review and approval by the director.
3. The minimum amount in the claim account should be established by the director and should be available to cover claim and specific claim related expenses, and should not be tapped to cover other operating costs.
4. If the 35 percent set aside in the administration account is not sufficient to cover the expenses of its programs for loss control and occupational safety, the group should not be allowed to access the claim fund, and the additional amounts required should be assessed its members.
5. The claim account should be maintained at actuarially sound levels to protect the injured workers, insuring that funds will be available to pay for lost wages, injuries, and medical expenses. An annual certification of the claim accounts' adequacy of each group by an actuary approved by the director is a necessary requirement.
6. Section (d) allows the board of directors to invest without restrictions. Investments should be of a type acceptable to the director and specified by rule.

**Sec. 21.77.090 - Termination and cancellation of membership**

1. Stability of the group should be encouraged. There are no requirements that employers maintain membership for a specified minimum period of time.
2. There are no specified cancellation/non-renewal policies relating to the ongoing financial strength, commitment to safety, or loss experience of individual members.
3. There are no detailed policies or procedures relating to penalties that may apply for early exit by a member from the program.

**Sec. 21.77.110 – Liability for compensation obligations of members**

1. An important feature required for group self-insurance is what happens in the case of insolvency or bankruptcy. Although this section confirms the joint and several liability binding each member, other requirements must be addressed for the following contingencies:
  - a. The remaining members of the group have insufficient net worth to meet the minimum net worth requirements established by the director, and/or
  - b. The insolvency or bankruptcy of one or more members of the group results in the inability of the remaining members to meet the group's financial obligations.
2. What financial protections exist for the injured worker to assure that compensation claims will be paid in full?
  - a. Will the state of Alaska be required to pay?
  - b. Or, will the injured worker be left without any recourse?
3. Due to the joint and several liability provisions, the financial strength of each member needs to be thoroughly screened and evaluated initially and ongoing by the director according to requirements specified by rule.

**Sec. 21.77.150 – Statement of financial condition**

1. The provisions provide for an audited statement prepared in accordance with generally accepted accounting principles. To assure adequacy of the separate accounts and in particular the adequacy of the claim account, statutory accounting principles must be applied.

**CONCLUSION**

Group self-insurance is a viable option to traditional insurance coverage, but only when necessary elements are in place to protect employees, employers, and the citizens of Alaska. Current regulations allow for the formation of reciprocal insurance carriers that allow for the creation of self-insured groups while at the same providing necessary controls. The CS for HB 51 (L&C) creates a statutory "one size fits all" program with minimal input from the Director. It does not provide even a bare minimum level of financial or operational control required for a successful group self-insurance program and would needlessly endanger the welfare of workers and put the financial health of insurers and the state's economy at risk.

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: **SB241-DOLWD-WC-03-23-06**  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_  
Title: **Joint Insurance Arrangements**

Department: **Labor & Workforce Development**  
RDU: **Workers' Compensation**  
Component: **Workers' Compensation**

Sponsor: **Senator Cowdery**  
Requester: **Senate L&C**

Component Number: **344**

## Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	89.7	89.7	89.7	89.7	89.7	89.7
Travel	9.7	9.7	9.7	9.7	9.7	9.7
Contractual	32.1	32.1	32.1	32.1	32.1	32.1
Supplies	14.0	2.0	2.0	2.0	2.0	2.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>145.5</b>	<b>133.5</b>	<b>133.5</b>	<b>133.5</b>	<b>133.5</b>	<b>133.5</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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## FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1157 Workers' Safety Account	145.5	133.5	133.5	133.5	133.5	133.5
<b>TOTAL</b>	<b>145.5</b>	<b>133.5</b>	<b>133.5</b>	<b>133.5</b>	<b>133.5</b>	<b>133.5</b>

Estimate of any current year (FY2006) cost: None

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

### POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

(Please See Attached)

Prepared by: **Paul F. Lisankie, Director**

Phone: **465-6059**

Division: **Workers' Compensation**

Date/Time: **3/23/06 3:00 PM**

Approved by: **Greg O'Claray, Commissioner**

Date: **3/23/2006**

Agency: **Department of Labor and Workforce Development**

## FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

BILL VERSION: SB241-DOLWD-WC-03-23-06

### ANALYSIS: (continued)

This legislation would open the workers' compensation self-insurance program to an indeterminate number of trade associations. Any association in existence for at least five years, composed of at least five member employers engaging in a similar trade or industry and belonging to an Alaskan trade association, could seek to self-insure their workers' compensation liabilities. This expansion of the program (currently comprised of a limited number of large employers and governmental entities) would require an increased level of regulatory oversight. The Division would need to employ an Insurance Financial Examiner to develop and oversee the new regulatory system.

**Personal Services:** Insurance Financial Examiner II will be responsible for developing a program and monitoring self insured employers and entities. (\$89.7)

**Travel:** Funding of \$7.7 is necessary for the travel, per diem and hotel costs to enable the Insurance Financial Examiner to go on-site to verify the financial status of self-insured entities. In addition, travel funds of \$2.0 is requested to attend necessary training.

**Contractual:** Contractual services for the new position include lease costs (\$6.7); mail (\$3.0); departmental administrative support costs (\$11.1); interdepartment chargeback costs (\$5.3); copies, printing, etc (\$4.0) and training (\$2.0).

**Commodities:** Funding of \$14.0 for supplies for the new positions is required. (\$12.0 for one-time set-up costs and \$2.0 for ongoing costs)

**Not an insurance entity** - Less administrative expense burden

Regulated as a self insured entity by  
director of workers comp division/or Insurance Commissioner

**Rates**

Develops own rates based upon actuarial information of members  
Rates are based upon own experience and not subsidizing poorer performing class codes

Reports financials utilizing GAAP which is how business report and members understand and utilize in their daily business

Are subject to self insured rules for being self insured

Members have joint and several liability

Self insured regulation results in lower operation costs

Requires 5 employers with 100 employees to start

Average administrative overhead expenses 25-30% - More funds set aside to pay claims

**Solvency**

- Must agree to Joint & Several Liability (JSL) agreement - pledging assets of corporation constituting a minimum of \$5 million of Tangible Net Worth (TNW) calculated in accordance with NAIC standards. Over 3X Reciprocal requirements.

Requires excess and aggregate insurance

**Investments**

Must comply with insurance company statutes regarding investments.  
Need not report to NAIC SVU

**Risk Based Capital (RBC)**

Not subject to RBC as a SIG is not an insurance entity. Capital Surplus is by and through JSL where employers pledge the value of their entire company. The solvency of a SIG is determined by its ability to pay expenses and claims as they come due plus the combined TNW of member entities.

**Is and insurance entity** - increased administrative expense burden

Regulated as a insured entity by Insurance Commissioner

-Subject to NCCI rating - better performance class codes subsidize other class codes

- Must file "statutory" (SAP) financials a very complex and insurance specific accounting method utilized by National Association of Insurance Commissioners. A method to standardize evaluation across state and product lines.

- Subject to increased capital and surplus requirements for a casualty insurer

Subscribers guarantee contingent liability for 10 times premium

Insurance regulation increases operation costs

Requires at least 10 subscribers

Average administrative overhead expenses 35-45% - Less funds set aside to pay claims.

- Must have \$1.5 million of cash as required by AK statute

Must comply with insurance company statutes regarding investments.  
Has to report to SVU for approval

Is subject to increased regulation since only the assets of the entity are considered for RBC valuation. It provides a method for Insurance commissioners in all states to compare the performance criteria for like kind insurance companies. If a company falls below certain thresholds determined by NAIC and state regulatory agencies, then certain actions may be taken.

**Regulatory Audits**

Provides for state regulatory audits to ensure compliance with Regulations established for self insured entities

Provides for state regulatory audits to ensure compliance with Regulations established for insurance entities

**Financial Audits**

Requires independent CPA audits of group financials presented on GAAP basis with statements as to group calculation of TNW of members

Requires independent CPA audits of group financials presented on SAP basis with increase administration expense burden.

**Actuarial Analysis**

Requires independent actuary audits of group reserves

Does not require independent actuary audits of insurance company reserves, may be done internally

**Guarantee Fund**

Is not covered by any Guarantee fund, does not rely on the public sector for protections, rely on JSL of members equity. Contribute a % to guarantee fund to protect them (public) in case of insolvency.

**Regulatory oversight**

Deceptive Practices subject to regulatory oversight

Requires hiring of licensed TPA for administering claims - subject to identical oversight for payment of claims

Deceptive Practices subject to regulatory oversight

Subject to oversight of administration of claims

**Other States/other lines**

Only authorized to provide coverage in Alaska

Only authorized to provide workers compensation coverage

May register and provide coverage in other states

May provide other lines of coverage other than workers compensation

SENATOR  
JOHN J. COWDERY

Anchorage

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Chair: World Trade &  
State/Federal Relations  
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## Sponsor Statement

### Senate Bill 241

**"An Act relating to modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage; and providing for an effective date."**

The workers compensation system was developed as a compromise between employees and employers to ensure that employees received compensation for injuries received on the job. Employers provide compensation for medical expenses and lost wages, and in exchange employees agree not to sue employers for damages.

Traditionally, employers have transferred the risk of compensation liability to insurance companies, who, for a premium, agree to cover the costs of an employee's claim under the worker's compensation system. Several states, including Alaska, allow an employer to self-insure providing that they meet financial requirements set in statute and regulation.

House Bill 51 allows a group of five or more employers to form an association to self-insure the employers' workers compensation obligations. The members of the association must be engaged in the same or similar employment classifications, be members of a qualified trade association, and receive a certificate to self-insure under Alaska's existing rules and regulations.

Workers compensation insurance premiums are a significant cost for employers. While the prospect of reducing costs attracts employers to self-insurance associations, employers and employees in states with similar statutes have seen other benefits. Directly assuming the risks for workers compensation obligations aligns employers and employees in managing workers compensation claims and costs. HB 51 is a tool for Alaska's trade associations and employers

24-LS1465G  
Bailey  
3/9/06

CS FOR SENATE BILL NO. 241( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATOR COWDERY

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to associations of self-insured employers for purposes of providing  
2 workers' compensation coverage and allowing employers who are members of the same  
3 trade to form associations for providing self-insurance for workers' compensation  
4 coverage; and providing for an effective date."

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

6 \* Section 1. AS 21 is amended by adding a new chapter to read:

7 Chapter 77. Associations of Self-insured Employers for Providing Workers'  
8 Compensation Coverage.

9 Sec. 21.77.010. Self-insurance certificates. (a) The director may issue a self-  
10 insurance certificate to an association of employers if the association files an  
11 application for a certificate and demonstrates that

12 (1) the members of the association of employers have at least 100  
13 employees in the aggregate;

14 (2) the members of the association of employers have a tangible net

1           worth of at least \$5,000,000 in the aggregate;

2                   (3) the association of employers has paid the annual service fee  
3 assessed under AS 23.05.067;

4                   (4) each member of the association of employers has a workplace  
5 safety risk reduction program in effect under AS 21.89.015;

6                   (5) the association of employers has obtained excess insurance  
7 coverage in amounts and with coverage required by the director; and

8                   (6) the association of employers has filed with the director an  
9 indemnity agreement in a form approved by the director jointly and severally binding  
10 each member of the association of employers to secure the payment of all  
11 compensation due to the members' employees under AS 23.30.

12           (b) An application for a self-insurance certificate must include

13                   (1) the name of the association of employers;

14                   (2) the address of the principal office of the association of employers  
15 and the location where the books and records of the association will be maintained;

16                   (3) the date the association of employers was organized;

17                   (4) the name and address of each member of the association of  
18 employers;

19                   (5) the names of the initial members of the board of directors of the  
20 association of employers and the name of the association's initial administrator;

21                   (6) a copy of agreements entered into with the administrator of the  
22 association of employers and a third-party administrator;

23                   (7) a copy of the bylaws of the association of employers;

24                   (8) a pro forma financial statement prepared by an independent  
25 certified public accountant in accordance with generally accepted accounting  
26 principles that shows the financial ability of the association of employers to pay all  
27 compensation due to its members' employees and their beneficiaries under AS 23.30;

28                   (9) a compiled, reviewed, or audited financial statement prepared by an  
29 independent certified public accountant for each member of the association of  
30 employers or internal financial statements with at least three years of tax returns or  
31 evidence of the ability of the association or its members to provide a solvency bond

1 under AS 21.77.020(c);

2 (10) proof that each member of the association of employers will make  
3 the initial payment to the association required under AS 21.77.160 on a date specified  
4 by the director.

5 (c) Financial information relating to a member of an association of employers  
6 received by the director under this section is confidential and is not a public record

7 (d) For purposes of this section, "association of employers" means a group of  
8 five or more employers who are

9 (1) merchants, craftsmen, or businesses in a similar trade or industry;  
10 and

11 (2) members of an Alaska trade association for that trade or industry;  
12 the Alaska trade association shall be organized under the laws of this state to promote  
13 the common interests of the trade or industry and shall have been in existence for at  
14 least five years.

15 **Sec. 21.77.020. Excess insurance, reinsurance contracts, surety, and**  
16 **solvency bonds.** (a) Except as otherwise provided in this section, an association of  
17 self-insured employers shall

18 (1) maintain a policy of specific and aggregate excess insurance or a  
19 reinsurance contract in a form and amount required by the director; excess insurance  
20 or a reinsurance contract must be written by an insurer approved by the director;  
21 nothing in this paragraph prohibits an association from purchasing secondary excess  
22 insurance or reinsurance contracts in addition to the excess insurance or reinsurance  
23 contract required under this paragraph;

24 (2) collect an annual assessment from each member of the association  
25 in an amount necessary to maintain the solvency of the association;

26 (3) except as provided in (4) of this subsection, deposit as security with  
27 the director a bond executed by the association as principal and issued by a licensed  
28 surety, payable to the State of Alaska, and conditioned on the payment of  
29 compensation due to the members' employees under AS 23.30;

30 (4) in lieu of a bond, deposit with the director a like amount of lawful  
31 money of the United States or other form of security authorized by the director; if

1 security is provided in the form of a savings certificate, certificate of deposit, or  
2 investment certificate. the certificate must state that the amount is unavailable for  
3 withdrawal except on order of the director.

4 (b) In addition to complying with the requirements of (a) of this section, an  
5 association of self-insured employers shall maintain a combined tangible net worth of  
6 all members in the association of at least \$5,000,000 or deposit with the director a  
7 solvency bond, in a form prescribed by the director, in an aggregate amount of at least  
8 \$5,000,000.

9 (c) The administrator of the association of self-insured employers shall deposit  
10 with the director a bond, in an amount determined by the director, executed by the  
11 association's administrator as principal, issued by a licensed surety, payable to the  
12 State of Alaska, and conditioned on the faithful performance of the administrator's  
13 duties.

14 (d) A third-party administrator providing claims services for the association of  
15 self-insured employers shall deposit with the director a bond, in an amount determined  
16 by the director, executed by the third-party administrator as principal, issued by a  
17 licensed surety, payable to the State of Alaska, and conditioned on the faithful  
18 performance of the third-party administrator's duties.

19 (e) The director may increase or decrease the amount of a bond or money  
20 required to be deposited under this section in accordance with statutory and regulatory  
21 requirements for loss reserves in casualty insurance. If the director requires an  
22 association of self-insured employers, the association's administrator, or the third-  
23 party administrator to increase its deposit, the director may specify the form of the  
24 additional security. The association, association's administrator, or third-party  
25 administrator shall provide the additional security within 60 days after receiving notice  
26 from the director.

27 (f) The security deposited under this section does not relieve an association of  
28 self-insured employers from responsibility for the administration of claims and  
29 payment of compensation under AS 23.30.

30 **Sec. 21.77.030. Surety and solvency bonds.** A surety or bonding company  
31 may not furnish a bond or other form of security required under this chapter for an

1 association of self-insured employers or the association's members unless the surety or  
2 bonding company is authorized to do business in the state.

3 **Sec. 21.77.040. Issuance of certificate of self-insurance.** (a) On determining  
4 that an association is qualified as an association of self-insured employers, the director  
5 may issue a certificate of self-insurance to the association and the association's  
6 administrator.

7 (b) A certificate of self-insurance must include, without limitation, the name  
8 of the association of self-insured employers, the name of each employer who the  
9 director determines is a member of the association at the time the certificate is issued,  
10 an identification number assigned to the association by the director, and the date the  
11 certificate was issued.

12 (c) A certificate of self-insurance is valid until it is withdrawn by the director  
13 or voluntarily terminated by the association.

14 (d) The director may not issue a certificate of self-insurance to an association  
15 that has had its certification as an association of self-insured employers involuntarily  
16 withdrawn by the director within two years immediately preceding the association's  
17 application.

18 (e) The director may not grant a request to cancel a certificate of self-  
19 insurance unless the association has insured or reinsured all incurred obligations with  
20 an insurer authorized to do business in the state under an agreement filed with and  
21 approved by the director. The agreement must include coverage for actual claims,  
22 claims incurred but not reported, and expenses associated with those claims.

23 **Sec. 21.77.050. Effect of certificate.** (a) An association of self-insured  
24 employers directly assumes the responsibility for providing compensation due the  
25 employees of the members of the association and the employers' beneficiaries under  
26 AS 23.30.

27 (b) An association of self-insured employers is not required to pay premiums  
28 required of other employers under AS 23.30, but is relieved from other liability for  
29 personal injury to the same extent as other employers.

30 (c) An association of self-insured employers may act on behalf of or for the  
31 benefit of its members to provide for its members' workers' compensation obligations

1 under AS 23.30. An association of self-insured employers shall have the rights and  
2 obligations of an employer under AS 23.30.

3 (d) The claims of employees and their beneficiaries resulting from injuries  
4 while in the employment of a member of an association of self-insured employers  
5 must be handled in the manner provided under AS 23.30, and the association is subject  
6 to regulations adopted by the Alaska Workers' Compensation Board.

7 **Sec. 21.77.060. Board of directors; members; duties; prohibited acts. (a)**

8 An association of self-insured employers shall be operated by a board of directors  
9 consisting of at least five members elected by the members of the association for terms  
10 as set out in the bylaws of the association. At least two-thirds of the members of the  
11 board of directors shall be employees, officers, or directors of the members of the  
12 association. An association's administrator, third-party administrator, or an owner,  
13 officer, employee or other person affiliated with the association's administrator or  
14 third-party administrator may not serve as a member of the board of directors. A  
15 member of the board of directors must be a resident of this state or an officer of a  
16 corporation authorized to do business in this state.

17 (b) The board of directors of an association of self-insured employers shall

18 (1) ensure the prompt payment of compensation due under AS 23.30;

19 (2) take all actions necessary to protect the assets of the association;

20 (3) employ full time an administrator to carry out the policies of the  
21 board of directors and perform the duties the board delegates to the administrator; an  
22 association's administrator may not perform the duties assigned to a third-party  
23 administrator;

24 (4) employ a third-party administrator to administer the claims or other  
25 obligations of the association during the period of the contract;

26 (5) engage the services of an independent certified public accountant to  
27 prepare the statement of financial condition required under AS 21.77.150; and

28 (6) maintain minutes of the meetings of the board and make the  
29 minutes available for inspection by the director.

30 (c) The board of directors of an association of self-insured employers may not

31 (1) extend credit to any member of the association for the payment of

1 that member's annual assessment, except under a payment plan approved by the  
2 director:

3 (2) borrow money from the association or in the name of the  
4 association, except in the ordinary course of its business, without prior approval from  
5 the director.

6 **Sec. 21.77.070. Fiscal responsibilities.** (a) The board of directors of an  
7 association of self-insured employers is responsible for the money collected and  
8 disbursed by the association.

9 (b) The board of directors shall establish

10 (1) a claims account in a financial institution in this state that is  
11 approved by the director and that is federally insured; except as provided in (c) of this  
12 section, at least 65 percent of the annual assessments collected by the association from  
13 its members must be deposited in the claims account to pay claims, expenses related to  
14 those claims, costs associated with the association's policy of excess insurance or  
15 reinsurance contract, and assessments, payments, and penalties related to the  
16 subsequent injury account and the uninsured employers' claim account;

17 (2) an administrative account in a financial institution in this state that  
18 is approved by the director and that is federally insured; the amount of annual  
19 assessments collected by the association not deposited in the claims account must be  
20 deposited in the administrative account to pay the administrative expenses of the  
21 association.

22 (c) The director may authorize an association of self-insured employers to  
23 deposit less than 65 percent of the associations annual assessments in a claims account  
24 if the association presents evidence satisfactory to the director that more than 35  
25 percent of the association's annual assessments are needed to maintain programs for  
26 loss control and occupational safety.

27 (d) The board of directors may invest the money of the association of self-  
28 insured employers not needed to pay the obligations of the association under  
29 AS 23.30.

30 (e) The director shall review the accounts of an association of self-insured  
31 employers established under this section at the times necessary to ensure compliance

1 with the provisions of this section.

2 **Sec. 21.77.080. Prohibited relationships.** (a) An administrator of an  
3 association of self-insured employers or an employee, officer, or director of an  
4 association's administrator may not be an employee, officer, or director of a third-party  
5 administrator employed by the association or have a direct or indirect financial interest  
6 in the third-party administrator.

7 (b) A third-party administrator or an employee, officer, or director of a third-  
8 party administrator may not be an employee, officer, or director of the association's  
9 administrator or have a direct or indirect financial interest in the association's  
10 administrator.

11 **Sec. 21.77.090. Termination and cancellation of membership in**  
12 **association; coverage following termination or cancellation.** (a) A member of an  
13 association of self-insured employers may terminate its membership at any time by  
14 submitting to the association's administrator a notice of intent to withdraw from the  
15 association at least 120 days before the effective date of withdrawal. The notice of  
16 intent to withdraw must include a statement indicating that the member has

17 (1) been certified as a self-insured employer under AS 23.30.090;

18 (2) become a member of another association of self-insured employers;

19 or

20 (3) become insured for liability under AS 23.30 by a private carrier  
21 authorized to do business in this state.

22 (b) The board of directors of an association of self-insured employers may  
23 cancel the membership of a member of the association in accordance with the bylaws  
24 of the association.

25 (c) At the expense of the member whose membership is terminated or  
26 cancelled, the association of self-insured employers shall maintain coverage for that  
27 member for 30 days after the notice is given under (a) of this section unless the  
28 association first receives notice from the association's administrator that the member  
29 has

30 (1) been certified as a self-insured employer under AS 23.30.090;

31 (2) become a member of another association of self-insured employers;

1 or

2 (3) become insured for liability under AS 23.30 by a private carrier  
3 authorized to do business in this state.

4 **Sec. 21.77.100. Notification of additional members, termination or**  
5 **cancellation of membership, or change in information.** (a) An association of self-  
6 insured employers shall notify the director in writing within 30 days after a member  
7 withdraws from the association, a new member joins the association, or the board of  
8 directors of the association cancels a membership. In the case of a new member, the  
9 notice must include information that the new member is qualified under AS 21.77.010  
10 and the financial information for the new member required under AS 21.77.010(b)(9).

11 (b) An association of self-insured employers shall notify the director of any  
12 change in the information submitted in its application for a certificate of self-insurance  
13 or in the manner of its compliance with AS 21.77.020 within 30 days after the change.

14 **Sec. 21.77.110. Liability for compensation obligations of members.** An  
15 association of self-insured employers is liable for the payment of any compensation  
16 required to be paid by a member of the association under AS 23.30 during the period  
17 of membership. Insolvency or bankruptcy of a member does not relieve the association  
18 of liability for the payment of compensation.

19 **Sec. 21.77.120. Examination of books, records, accounts, and assets;**  
20 **payment of fees.** The director may examine the books, records, accounts, and assets  
21 of an association of self-insured employers as necessary to carry out the provisions of  
22 this chapter. The director may charge the association a reasonable fee for conducting  
23 the examination.

24 **Sec. 21.77.130. Director as resident agent of association.** The director is  
25 considered the resident agent to receive initial legal process authorized by law or court  
26 rule to be served on the association of self-insured employers for as long as the  
27 association is obligated to pay compensation under AS 23.30.

28 **Sec. 21.77.140. Merger of associations.** An association of self-insured  
29 employers may merge with another association of self-insured employers if the  
30 members of the merging associations are members of the same trade association, the  
31 resulting association assumes in full all obligations of the merging associations, and

1 the merger is approved by the director. The director may hold a hearing on a proposed  
2 merger on the motion of the director or at the request of a member of the merging  
3 associations.

4 **Sec. 21.77.150. Statement of financial condition.** (a) An association of self-  
5 insured employers shall file with the director an audited statement of financial  
6 condition prepared by an independent certified public accountant. The statement must  
7 be filed within 120 days after the conclusion of the association's fiscal year and must  
8 contain information for the previous fiscal year.

9 (b) The statement required in (a) of this section must be prepared in  
10 accordance with generally accepted accounting principles and must include

11 (1) a statement of reserves for actual claims and expenses, claims  
12 incurred but not reported and expenses associated with those claims, assessments that  
13 are due but not paid, and unpaid debts; unpaid debts must be shown as liabilities;

14 (2) an actuarial opinion regarding reserves, prepared by a member of  
15 the American Academy of Actuaries or another specialist in loss reserves identified in  
16 the annual statement adopted by the National Association of Insurance  
17 Commissioners, including a statement of actual claims and the expenses associated  
18 with those claims and a statement of claims incurred but not reported, and the  
19 expenses associated with those claims.

20 (c) The director may require the filing of other reports necessary to carry out  
21 the provisions of this section, including

22 (1) audits of the payrolls of the members of an association of self-  
23 insured employers;

24 (2) reports of losses; and

25 (3) quarterly financial statements.

26 **Sec. 21.77.160. Calculation of annual assessments.** (a) Except as provided in  
27 (b) of this section, the annual assessment required to be paid by each member of an  
28 association of self-insured employers must be

29 (1) calculated by a rate service organization that is a member of the  
30 American Academy of Actuaries or another specialist approved by the director; and

31 (2) based on the assessment rate for the industrial classification of that

1 member, adjusted by the member's individual experience.

2 (b) The director may approve a reduction in the annual assessment based on  
3 the association's level of expenses and loss experience.

4 (c) If approved by the director, an association of self-insured employers may  
5 calculate the annual assessment required to be paid by each member of the association.  
6 An assessment calculated by the association must be based on at least three years of  
7 the member's individual experience.

8 **Sec. 21.77.170. Annual audits.** An association of self-insured employers shall  
9 cause to be conducted at least annually an audit of each member to verify the  
10 individual experience of each member of the association, the payroll of each member  
11 of the association, and the assessment required to be paid by each member of the  
12 association. The audit required under this section must be conducted by a payroll  
13 auditor approved by the director. An association shall pay the expenses of an audit  
14 required under this section.

15 **Sec. 21.77.180. Objections to industrial classification.** An association of  
16 self-insured employers or a member of the association may request a hearing before  
17 the director to object to an industrial classification assigned to a member of the  
18 association as a result of an audit conducted under AS 21.77.170. If the director  
19 determines that the assessment required to be paid by a member of the association is  
20 insufficient because of the industrial classification assigned to the employer, the  
21 director shall order the association to collect from that member any amount required to  
22 recover the deficiency. If the director determines that the assessment is excessive  
23 because of the industrial classification assigned to the employer, the director shall  
24 order the association to pay the member the excess amount collected.

25 **Sec. 21.77.190. Payment of dividends to members.** The board of directors of  
26 an association of self-insured employers may, with the approval of the director,  
27 declare and distribute dividends to the members of the association if the assets of the  
28 association exceed the amount necessary to pay its obligations and administrative  
29 expenses, carry reasonable reserves, and provide for contingencies. A dividend  
30 declared under this section must be distributed not less than 12 months after the date  
31 of declaration. A dividend may be paid only to an employer who was a member for at

1 least 12 months before to the date of declaration, and payment of a dividend may not  
2 be conditioned on a member's continuing membership in the association.

3 **Sec. 21.77.200. Plan for payment of annual assessment.** An association of  
4 self-insured employers shall adopt a plan for the payment of annual assessments by the  
5 members of the association. The plan must be approved by the director and must  
6 include a requirement for an initial payment, in advance, of a portion of the annual  
7 assessment due from each member of the association and for the balance of the annual  
8 installment to be paid in quarterly or monthly installments. The advance payment must  
9 be in an amount equal to at least 15 percent of the member's annual assessment.

10 **Sec. 21.77.210. Required reserves.** An association of self-insured employers  
11 shall maintain actuarially appropriate loss reserves. Loss reserves must include  
12 reserves for

- 13 (1) actual claims and the expenses associated with those claims;  
14 (2) claims incurred but not reported and the expenses associated with  
15 those claims; and  
16 (3) reserves for uncollected debts based on the experience of the  
17 association or other associations.

18 **Sec. 21.77.220. Regulation by division of insurance.** Self-insurance provided  
19 under a certificate issued to an association of self-insured employers may not be  
20 considered insurance for the purpose of any other law of the state and is subject only  
21 to regulations adopted by the director to implement this chapter.

22 **Sec. 21.77.230. Insufficient assets to pay compensation and maintain**  
23 **reserves.** (a) If the assets of an association of self-insured employers are insufficient  
24 to pay all compensation under AS 23.30 and to maintain the reserves required under  
25 AS 21.77.210, the association shall immediately notify the director and

- 26 (1) transfer surplus funds acquired from a previous year to the current  
27 year to make up the deficiency;  
28 (2) transfer money from the administrative account of the association  
29 to the claims account of the association;  
30 (3) collect an additional assessment from the members of the  
31 association in an amount required to make up the deficiency; or

1 (4) take any other action, approved by the director, to make up the  
2 deficiency.

3 (b) If an association of self-insured employers wishes to transfer surplus funds  
4 from one year to another, the association shall first notify the director of the transfer.

5 (c) The director shall order the association of self-insured employers to make  
6 up any deficiency in accordance with (a) of this section if the association fails to do so  
7 within 30 days after notifying the director of the deficiency.

8 (d) An association of self-insured employers is considered to be insolvent if it  
9 fails to collect an additional assessment from its members within 30 days after being  
10 ordered to do so by the director or fails to make up the deficiency in any other manner  
11 within 60 days after being ordered to do so by the director

12 **Sec. 21.77.240. Order to cease and desist; penalties.** (a) The director may  
13 issue an order requiring an association of self-insured employers or a member of an  
14 association to cease and desist from engaging in an act or practice found to be in  
15 violation of this chapter or a regulation adopted under AS 21.77.300.

16 (b) If the director determines that an association of self-insured employers or  
17 member of an association has violated an order to cease and desist, the director may  
18 impose an administrative fine of not more than \$10,000 for each violation of the order,  
19 not to exceed an aggregate amount of \$100,000, and may, in addition, withdraw the  
20 association's certificate of self-insurance.

21 **Sec. 21.77.250. Administrative fines.** The director may impose an  
22 administrative fine for each violation of a provision of this chapter or regulation  
23 adopted under AS 21.77.300. Except as provided in AS 21.77.240, the amount of the  
24 fine may not exceed \$1,000 for each violation or an aggregate amount of \$10,000.

25 **Sec. 21.77.260. Withdrawal of certificate; effect of withdrawal.** (a) The  
26 director may withdraw the certificate of an association of self-insured employers if

- 27 (1) the association's certificate was obtained by fraud;  
28 (2) the application for the certificate contained a material  
29 misrepresentation;  
30 (3) the association is found to be insolvent;  
31 (4) the association fails to have five or more members;

1 (5) the association fails to pay the costs of an examination or a penalty,  
2 fee, or assessment required under this chapter;

3 (6) the association fails to comply with a provision of this chapter or  
4 regulation adopted under AS 21.77.300;

5 (7) the association fails to comply with an order of the director within  
6 the time prescribed by law or in the director's order; or

7 (8) the association or its third-party administrator misappropriates,  
8 converts, illegally withholds, or refuses to pay any money to which a person is entitled  
9 and that was entrusted to the association in its fiduciary capacity.

10 (b) If the director withdraws a certificate of self-insurance, each employer who  
11 is a member of the association of self-insured employers remains liable for the  
12 employer's obligations incurred before and after the order of withdrawal.

13 (c) Before withdrawing a certificate under this section, the director shall give  
14 written notice to the association of self-insured employers by certified mail that the  
15 certificate of the association will be withdrawn 10 days after receipt of the notice  
16 unless, within that time, the association corrects the conduct set out in the notice as the  
17 reason for the withdrawal or submits a written request for a hearing to the director.  
18 The director may grant additional time, not to exceed an additional 120 days, before  
19 the withdrawal of the certificate if the grounds for withdrawal are based on (a)(4) of  
20 this section and the association is financially sound and capable of fulfilling its  
21 commitments.

22 (d) The director may not take action under this section unless the director has  
23 provided the association of self-insured employers with an opportunity for an informal  
24 meeting to discuss and seek correction of conduct that would be grounds for  
25 withdrawal of the association's certificate of self-insurance.

26 **Sec. 21.77.270. Retention of security deposit in event of termination.** If the  
27 certificate of an association of self-insured employers is terminated or withdrawn for  
28 any reason, the security deposited under AS 21.77.020 must remain on deposit for at  
29 least 36 months in an amount necessary to secure the outstanding and contingent  
30 liability for compensation payable under AS 23.30. At the expiration of the 36-month  
31 period, or another period the director may prescribe, the director may accept a paid-up

1 policy of insurance in a form approved by the director in lieu of the previously  
2 deposited security.

3 **Sec. 21.77.280. Insolvency; termination of liability on surety bond; effect**  
4 **of termination of surety bond.** (a) For purposes of this chapter, an association of  
5 self-insured employers is insolvent if it is unable to pay its outstanding obligations as  
6 they mature in the regular course of business.

7 (b) If an association of self-insured employers becomes insolvent, institutes  
8 any voluntary proceeding under the bankruptcy laws of the United States or is named  
9 in any involuntary proceeding under those laws, makes a general or special assignment  
10 for the benefit of creditors, or fails to pay compensation due under AS 23.30, after an  
11 order for the payment of a claim becomes final, the director may, after giving at least  
12 10 days' notice to the association and its insurer or guarantor, use money or interest on  
13 securities, sell securities, or institute legal proceedings on a surety bond deposited with  
14 the director to the extent necessary to make the payment.

15 (c) A surety providing a surety bond under AS 21.77.020 may terminate  
16 liability on its surety bond by giving the director and the association of self-insured  
17 employers, the association's administrator, or the third-party administrator 90 days'  
18 written notice. Termination does not limit liability that was incurred under the surety  
19 bond before the termination. If the association fails to requalify as an association of  
20 self-insured employers on or before the termination date, the director shall withdraw  
21 the association's certificate of self-insurance, effective on the date the termination  
22 becomes effective.

23 **Sec. 21.77.290. Judicial review.** A party aggrieved by a decision of the  
24 director under this chapter may seek judicial review in accordance with applicable  
25 court rules.

26 **Sec. 21.77.300. Regulations.** The director may adopt regulations to implement  
27 the provisions of this chapter.

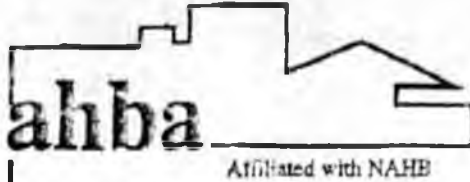
28 **Sec. 21.77.399. Definitions.** In this chapter,

29 (1) "association of self-insured employers" means an association of  
30 employers that has been granted a certificate of self-insurance under AS 21.77.010;

31 (2) "third-party administrator" means a person under contract with an

1 association of self-insured employers to administer, from one or more offices in this  
2 state, all claims for the association arising under AS 23.30 and maintain records  
3 concerning those claims.

4 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).



March 2, 2006

Rep. Tom Anderson, chair Labor & Commerce  
FAX 465-2418

Dear Rep. Tom Anderson,

I am writing as President of the Anchorage Home Builders Association, representing over 300 members in Anchorage and Eagle River. We support HB 51 "An act relating to modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage."

State law currently requires a business to have 100 employees and net assets of \$5 Million to be able to self insure for workers comp. The goal of HB51 is to allow associations to collectively pool employees and assets to achieve the same requirements. ASHBA supports the concept of controlling safety in the work place, and rewarding with lower premiums those businesses who go the extra mile. We also support the concept of finding ways to provide more options in the marketplace for contractors who face burdensome and growing work comp premiums.

Thank you for all your previous help and support of our industry. Please evaluate HB51 based on these concepts, and work with our local associations to develop a bill that you and your committee can support and pass. Your efforts to help us address worker's compensation insurance costs are greatly appreciated.

I am available to answer any questions you might have by calling me at 907-830-2052.

Sincerely,

President  
Anchorage Home Builders Association

**"Building Better Places to Live, Work and Play"**

**ANCHORAGE HOME BUILDERS ASSOCIATION, INC.**  
8301 Schoon Street, Suite 200 • Anchorage, AK 99518 • (907) 522-3605 • Fax (907) 522-3757





**Alaska State  
Home Building Association**

February 23, 2006

**Rep. Tom Anderson, Chair Labor & Commerce  
FAX 465-2418**

Dear Rep. Tom Anderson,

I am writing as President of the Alaska State Home Building Association, representing over 900 members across the state. We support HB 51 "An act relating to modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage."

State law currently requires a business to have 100 employees and net assets of \$5 Million to be able to self insure for workers comp. The goal of HB51 is to allow associations to collectively pool employees and assets to achieve the same requirements. ASHBA supports the concept of controlling safety in the work place, and rewarding with lower premiums those businesses who go the extra mile. We also support the concept of finding ways to provide more options in the marketplace for contractors who face burdensome and growing work comp premiums.

Thank you for all your previous help and support of our industry. Please evaluate HB51 based on these concepts, and work with our local building associations to develop a bill that you and your committee can support and pass. Your efforts to help us address worker's compensation insurance costs are greatly appreciated.

I am available to answer any questions you might have by calling me at 907-232-3751

Sincerely,

**Tom Smith  
President  
Alaska State Home Building Association**



**8301 Schoon, Ste 200 • Anchorage, Alaska 99518  
Phone (907) 644-4190 • FAX (907) 522-3757  
Website: [www.buildersofalaska.com](http://www.buildersofalaska.com) • E-mail: [info@buildersofalaska.com](mailto:info@buildersofalaska.com)**



## ASSOCIATED GENERAL CONTRACTORS of ALASKA

5025 SCHOON STREET • ANCHORAGE, ALASKA 99518  
TELEPHONE (907) 561-5354 • FAX (907) 562-6315

February 24, 2006

Representative Tom Anderson  
Chairman, House Labor & Commerce Committee  
Alaska State Legislator  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

Re: HB 51

Dear Representative Anderson:

The Associated General Contractors of Alaska supports the concept of group self-insurance for workers compensation as one means by which Alaskan businesses can deal with the high cost of such insurance.

The bill, as drafted, provides protection for injured workers by making all employers within the group jointly and severally liable for claims, requires a safety rate reduction program, and basically requires all interested members of such groups to make a long term commitment to the program. The fear that a faulty business plan may cause some groups to fail thereby leaving injured workers without their benefits is minimized in this legislation. While this risk cannot be totally eliminated, it should be recognized that the problem also exists under the current insurance structure.

The proposed legislation gives businesses another opportunity to control the costs of doing business in Alaska. The safeguards incorporated in the bills seem sufficient to protect injured workers and allow the state to exercise sufficient oversight of participating groups. AGC urges your support of the proposed legislation.

Sincerely,

Richard Cattanach

**ALASKA TRUCKING ASSOCIATION**

3443 Minnesota Drive • Anchorage, Alaska 99503 • Phone: (907) 276-1149 • Fax: (907) 274-1946

[www.aktrucks.org](http://www.aktrucks.org)February 15<sup>th</sup> 2005

Representative Tom Anderson  
State Capital  
Juneau, AK 99801

RE: HB 51

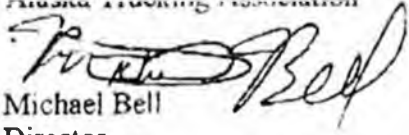
Dear Representative Anderson,

Workers compensation continues to be one of the largest concerns and problems for trucking in Alaska. Companies large and small are faced with increasing rates that can only be attributed to market increases. These companies are faced with extremely limited choices of providers and little alternative to combat the rates continue to increase. These circumstances force small business to operate without or even close their doors.

HB 51 creates the ability for like minded companies to come together to diversify and control risk. The Alaska Trucking Association supports this provision to allow a group or association members to combined to carry the workman's compensation insurance. This will allow for a greater safety presence, ability to control there own pool members resulting in a reduction of the risk of the program. It should provide for long term cost savings and better control of programs fait.

We hope you are able to move this bill forth. this bill provides the new ability of a choice in Alaska where there are so few. It also provides the opportunity for a company to have a fighting chance to determine their own outcome.

Sincerely,  
Alaska Trucking Association

  
Michael Bell  
Director





**Alaska Chapter**

TO: Tom Anderson  
Chairman  
House Labor and Commerce Committee

FROM: Rebecca Logan  
President  
ABC Alaska

CC: House Labor and Commerce Committee Members

DATE: February 9, 2006

Chairman Anderson:

Please accept this letter as an endorsement from ABC Alaska for House Bill 51.

As you know the Workers Comp situation for employers in Alaska is not good. HB 51 provides employers in the same industry with the opportunity to pool together for workers comp insurance to lower their premiums without jeopardizing coverage for their workers or putting the state at risk.

Any opportunity to provide Alaska employer's with more options for workers comp insurance without letting the state bear the risk should be encouraged.



1500 W. 33rd Avenue  
Suite #220  
Anchorage, Alaska 99503  
(907) 561-2338  
(907) 563-8478 Fax

March 3, 2006

**Rep. Tom Anderson, chair Labor & Commerce**  
**FAX 465-2418**

Dear Rep. Tom Anderson,

I am writing as the Executive Officer representing the Anchorage Board of REALTORS. We support HB 51 "An act relating to modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage."

State law currently requires a business to have 100 employees and net assets of \$5 Million to be able to self insure for workers comp. The goal of HB51 is to allow associations to collectively pool employees and assets to achieve the same requirements. The Anchorage Board of REALTORS supports the concept of controlling safety in the work place, and rewarding with lower premiums those businesses who go the extra mile. We also support the concept of finding ways to provide more options in the marketplace for contractors who face burdensome and growing work comp premiums.

Thank you for all your previous help and support of our industry. Please evaluate HB51 based on these concepts, and work with our local and state associations to develop a bill that you and your committee can support and pass. Your efforts to help us address worker's compensation insurance costs are greatly appreciated.

Should further information be required, please call Cody Gibson, President of the Board of Directors (907) 273-7272

Sincerely,

Kay DuBois  
Executive Officer  
Anchorage Board of REALTORS





February 23, 2006

Dear Representative Tom Anderson,

We would appreciate your support on passing HB-51.

Workman's Comp Insurance as it is now structured is a prohibitive drain on small business. Our company has been in business for the last 25 years. In that period of time we have had one small claim, which was approximately 6 years ago. Over the years our premium has gone up from approximately \$6,000 per annum to over \$27,000 per annum.

Please support HB-51 to enable us to have another source of Workman's Compensation Insurance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alfred J. Romaszewski'.

Alfred J. Romaszewski  
Broker

**RE/MAX** of Eagle River, Inc.  
16600 Centerfield Dr., Suite 201  
Eagle River, Alaska 99577  
Office: (907) 694-4200  
Fax: (907) 696-0214

*Spinell*  
HOMES, Inc.

February 9, 2006

Rep. Tom Anderson  
Chair, Labor & Commerce

Via Fax No. 465-2418

RE: HB 51

Dear Mr. Anderson;

As a member of the Anchorage Home Builders Association and as a local home builder I am urging your support for House Bill 51.

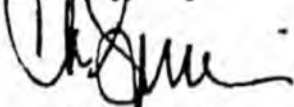
State law currently requires a business to have 100 employees and net assets of \$5 Million to be able to self insure for workers compensation. This is impossible for many businesses, and our goal is to allow associations to collectively pool employees and assets to achieve these requirements.

Currently we are at the mercy of regional workers compensation rates. By working together in a self insurance program, not only do we have the best probability of controlling safety in the work place, but we will have the ability to reward those businesses who go the extra mile in safety with lower premiums.

Not only is this bill good for our communities, it will also benefit our economy. Lower premiums for businesses means employers will be able to provide better benefits and pay to their employees.

If you would like to discuss this further please feel free to contact me at 344-5678. Again, I would greatly appreciate your support of HB 51.

Sincerely,



Charles Spinelli



**WORKERS COMP RATES**

CLASS	2002 RATES	2006 RATES
5610	\$ 8.11	\$10.66
5645	\$13.45	\$27.93
6217	\$ 9.53	\$19.52
8742	\$ .61	\$ 1.44
8810	\$ .56	\$ 1.23

YEAR	EMPLOYEES	TOTAL AMOUNT
2002	60	\$ 77,512.00
2003	70	\$199,011.00
2004	85	\$294,287.00
2005	85	\$323,738.00

## SECTIONAL ANALYSIS

Workdraft "G" 3/3/06

### Associations of Self-insured Employers for Providing Workers' Compensation Coverage

#### OVERVIEW:

CSSB 241 differs from SB 241 in two significant ways. First, while both versions allow employers who are in the same trade or business to form associations for the purpose of self-insuring their workers' compensation obligations, SB 241 placed regulatory authority for the self-insurance program with the Workers' Compensation Board. The CS places regulatory authority in the Division of Insurance. Second, SB 241 included only the most basic requirements for the self-insurance program, leaving many details to be established by regulation. The CS contains a much more detailed set of statutory requirements for the program.

#### SECTION BY SECTION ANALYSIS OF CSSHB 51:

**Section 1** adds Chapter 77 to the Alaska Insurance Code (AS 21). The provisions of the new Chapter 77 are as follows:

**Sec. 21.77.010.** Subsection (a) sets out the requirements that an association of employers must meet in order to qualify for a certificate of self-insurance. Members of the association must have at least 100 employees in the aggregate and must have a net worth of at least \$5 million in the aggregate. The association must have paid the annual service fee assessed under AS 23.05.067; each member of the association must have a workplace safety rate reduction program in effect, and the association must file an indemnity agreement with the director that makes each member jointly and severally liable to secure the payment of all workers' compensation obligations of all members of the association. Subsection (b) sets out the information and supporting documentation that must accompany an application for a certificate of self-insurance, including financial statements. Subsection (c) provides that financial information filed with the director is confidential and not a public record (that is, it is not available to the public for inspection or copying). Subsection (d) specifies that the membership in the association must include at least five employers who are members of the same Alaska trade association and that the trade association must have been in existence for at least five years.

**Sec. 21.77.020.** Subsection (a) requires an association of self-insured employers to maintain excess coverage in an amount and in a form required by the Director of the Division of Insurance, to collect an annual assessment from its members to cover their workers' compensation obligations and associated administrative expenses, and to provide security for the payment of the workers' compensation obligations of it:

members. Subsection (b) requires the association to maintain an aggregate tangible net worth of at least \$5 million or provide a solvency bond in an aggregate amount of at least \$5 million. Subsections (c) and (d) require the association's administrator and third-party administrator each to deposit bonds with the director to secure performance of their respective duties. Subsection (e) allows the director to increase or decrease the amount of bonds required under the section in accordance with reserves requirements for casualty insurance. Subsection (f) makes it clear that depositing a bond does not relieve an association from the responsibility of administering claims and making workers' compensation payments.

**Sec. 21.77.030.** This section provides that only a surety or bonding company authorized to business in Alaska may furnish a bond or other form or security under the chapter.

**Sec. 21.77.040.** This section requires the director to issue a certificate of self-insurance if the director determines that the association meets the qualifications set out in Sec. 21.77.020. A certificate remains valid until it is withdrawn by the director or voluntarily terminated by the association. An association is not entitled to receive a new certificate if it has had a previous certificate involuntarily withdrawn within the previous two years. The director may not grant a request to cancel a certificate unless the association has insured or reinsured all incurred obligations.

**Sec. 21.77.050.** If a certificate is issued, the association directly assumes responsibility for providing workers' compensation to the members' employees and beneficiaries under the workers' compensation statutes (AS 23.30). In addition, except for the requirement to pay workers' compensation insurance premiums, the association is treated the same as any other employer under AS 23.30 for purposes of liability to the members' employees for injury. The association also acts on behalf of or for the benefit of its members and has the same rights and obligations under AS 23.30 as an employer. Claims must be handled in accordance with the requirements of AS 23.30, and the association is subject to regulations adopted by the Alaska Workers' Compensation Board.

**Sec. 21.77.060.** Subsection (a) provides that an association of self-insured employers shall be governed by a board of directors and imposes restrictions on who may serve on the board. Subsection (b) imposes a number of duties on the board of directors, including prompt payment of compensation due under AS 23.30, protection of association assets, the employment of a full time administrator, the employment of a third-party administrator to administer claims, engagement of an independent certified public accountant to prepare statements of financial condition; and maintenance of minutes of board meetings. Subsection (c) sets out certain prohibited acts, including extension of credit to a member of the association for payment of workers' compensation, unless under a payment plan approved by the director, and borrowing money from the association, except in the ordinary courts of its business.

**Sec. 21.77.070.** Under subsection (a), the association's board of directors is responsible for the funds of the association. Subsection (b) requires the association to establish a claims account in a financial institution approved by the director and to deposit in the claims account at least 65 percent of the annual assessments received from its members. The director, under subsection (c), is authorized to allow a deposit of less than 65 percent if more than 35 percent of the annual assessments are needed to maintain loss control and occupational safety programs. Subsection (d) authorizes the association's board of directors to invest funds not needed to pay compensation payments. Subsection (e) authorizes the director to review the association's accounts to assure compliance with this section.

**Sec. 21.77.080.** This section prohibits an association's administrator and third-party administrator from having a direct or indirect financial relationship with one another.

**Sec. 21.77.090.** This section governs the relationship between the association and its members. Subsection (a) allows a member to withdraw from an association if the member has either become a self-insured individual employer under AS 23.30.090, has become a member of another association, or has obtained workers' compensation insurance. Subsection (b) allows the association to provide for cancellation of membership in accordance with the association's bylaws. Subsection (c) requires the association to maintain coverage for a cancelled or terminated member for 30 days after notice of cancellation or termination unless the member has been certified as a self-insured employer under AS 23.30.090, has become a member of another association of self-insured employers, or has obtained workers' compensation insurance.

**Sec. 21.77.100.** This section requires the association to notify the director in writing if a member withdraws from the association, a new member is added, or the board of directors cancels a membership. It also requires the association to notify the director of any changes in the information submitted with the application for a certificate of self-insurance.

**Sec. 21.77.110.** This section provides that the association is liable for payment of compensation required to be paid by a member under AS 23.30 and further provides that insolvency or bankruptcy of a member does not relieve the association of liability for payment of compensation due that member's employees.

**Sec. 21.77.120.** This section allows the director to examine the books, records, accounts and assets of an association of self-insured employers as necessary to carry out the provisions of Chapter 77 and allows the director to charge the association for the costs of the examination.

**Sec. 21.77.130.** This section provides that the director is considered to be the resident agent to receive service of initial legal process that may be served on the association of self-insured employers so long as the association is obligated to pay compensation under AS 23.30.

**Sec. 21.77.140.** This section authorizes an existing association of self-insured employers to merge with another association of self-insured employers if the members of both associations are members of the same trade association and if the merger is approved by the director. The section further provides that the resulting association assumes all of the obligations of the merging associations.

**Sec. 21.77.150.** Subsection (a) requires an association of self-insured employers to file an annual audited statement of financial condition with the director. Subsection (b) requires the statement to be prepared in accordance with generally accepted accounting principles and to include a statement of reserves for actual claims and expenses, claims incurred but not yet reported, the expenses associated with those claims, and unpaid debts, which must be shown as liabilities. The statement must also include an actuarial opinion regarding reserves prepared by a member of the American Academy of Actuaries or another specialist in loss reserves identified in the annual statement adopted by the National Association of Insurance Commissioners. Subsection (c) allows the director to require the filing of other reports, including payroll audits, reports of losses and quarterly financial statements.

**Sec. 21.77.160.** This section provides two alternative methods for calculating the annual assessments that must be paid by the association's members. One method is for the assessment to be calculated by a rate service organization that is a member of the American Academy of Actuaries or another specialist approved by the director and based on the assessment rate for the industrial classification of each member. The other method, which must be approved by the director, is for the association itself to calculate the assessment, based on three years of the member's actual experience. Under subsection (b), the director may approve a reduction in the annual assessment based on the association's expenses and loss experience.

**Sec. 21.77.170.** This section requires the association to conduct an annual audit of each of its members to verify the individual experience of each member, each member's payroll, and the assessment required to be paid by each member. The audit must be conducted by a payroll auditor approved by the director.

**Sec. 21.77.180.** This section allows an association to object to the industrial classification assigned to a member and to request a hearing on the objection before the director. The director may increase or decrease the amount of a member's annual assessment based on the industrial classification.

**Sec. 21.77.190.** This section allows the board of directors of an association, with the approval of the director, to declare and distribute dividends to its members if the assets of the association exceed the amount needed to pay its obligations and expenses, maintain reasonable reserves, and provide for contingencies.

**Sec. 21.77.200.** This section requires the association of self-insured employers to adopt a plan for payment of annual assessments by its members. The plan must be

approved by the director and must require an initial advance payment of a portion of the annual assessment and provide for the balance to be paid quarterly or in monthly installments. The advance payment must be at least 15 percent of the total.

**Sec. 21.77.210.** This section requires an association to maintain actuarially appropriate loss reserves necessary to for actual claims and expenses, claims incurred but not reported and the expenses associated with those claims, and reserves for unpaid debts based on the experience of the association or other associations.

**Sec. 21.77.220.** This section provides that self-insurance is not to be considered insurance for purposes of the director's general statutory and regulatory authority over insurance companies. Associations of self-insured employers are subject only to the statutory provisions of Chapter 77 and regulations adopted by the director to implement these provisions.

**Sec. 21.77.230.** Subsection (a) requires an association to notify the director immediately if the assets of the association become insufficient to pay compensation under AS 23.30 and to maintain the reserves required under Sec. 21.77.210. Subsection (a) also requires the association under such circumstances to take actions to make up the deficiency. Subsection (b) requires the association to notify the director before making any transfers of surplus funds from one year to another. Subsection (c) requires the director to order the association to make up any deficiencies within 30 days after the association notifies the director of the deficiency. Under subsection (d), the director may find the association to be insolvent if the association fails to collect additional assessments from its members within 30 days of being ordered to do so by the director.

**Sec. 21.77.240.** This section authorizes the director to order an association or a member of an association to cease and desist from engaging in an act or practice in violation of Chapter 77 or regulations adopted under the chapter. The director may impose administrative fines for violation of an order to cease and desist of not more than \$10,000 for each violation of the order, not to exceed \$100,000 in the aggregate.

**Sec. 21.77.250.** This section authorizes the director to impose an administrative fine for violation of a provision of Chapter 77 or a regulation adopted under the chapter. The maximum fine under this section is \$1,000 for each violation, not to exceed an aggregate amount of \$10,000.

**Sec. 21.77.260.** Subsection (a) allows the director to withdraw a certification of self-insurance if the association obtained its certificate through fraud or material misrepresentation, becomes insolvent, fails to maintain a minimum of five members, fails to pay the costs of an examination or a penalty imposed under the chapter, fails to comply with a provision of Chapter 77 or a regulation adopted under the chapter, fails to comply with an order of the director, or misappropriates funds or fails to pay money to which a person is entitled and that was entrusted to the association in its fiduciary capacity. Subsection (b) provides that if a certificate is withdrawn, the

members remain liable for their workers' compensation obligations. Subsection (c) provides that before withdrawing a certificate, the director shall notify the association in writing and provide 10 days within which to correct the conduct set out in the notice as the reason for the withdrawal. An association may request a hearing prior to withdrawal. Subsection (d) requires the director to provide an opportunity for an informal conference before taking any action to withdraw a certificate of self-insurance.

**Sec. 21.77.270.** This section provides that in the event a certificate is terminated or withdrawn, the security deposited under Sec. 21.77.020 must remain on deposit for at least 36 months. The director may release the security if the director receives evidence of a policy of insurance in lieu of the previously deposited security.

**Sec. 21.77.280.** Subsection (a) provides that an association is insolvent if it is unable to pay its outstanding obligations as they mature in the ordinary course of business. Under subsection (b), if an association becomes insolvent, files for bankruptcy, makes an assignment for the benefit of creditors, or fails to pay compensation due under AS 23.30 after an order for payment of a claim becomes final, the director may take action against any security filed with the director. Subsection (c) allows a surety providing a surety bond to terminate the bond by giving the director and the association notice of termination. Termination does not limit liability on the bond incurred before the termination. The director may withdraw the association's certificate of insurance if the association fails to requalify as an association of self-insured employers before the termination date.

**Sec. 21.77.290.** This section allows a party aggrieved by a decision of the director to seek judicial review in accordance with applicable court rules.

**Sec. 21.77.300.** This section gives the director authority to adopt regulations to implement the provisions of Chapter 77.

**Sec. 21.77.399.** This section defines "association of self-insured employers" as an association of employers that has been granted a certificate of self-insurance under Sec. 21.77.010. It defines "third-party administrator" as a person under contract with an association of self-insured employers to administer, from one or more offices in Alaska, all claims for the association arising under AS 23.30 and to maintain records concerning the claims.

**Section 2** of the Act provides for an immediate effective date.

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## *Self-Insured Groups*

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### What is a Self-Insured Group

- First and foremost, a Self-Insured Group (SIG) is **SELF INSURANCE** not insurance.
- A SIG is an unincorporated non profit association “owned” by it’s members to collectively to self insure workers’ compensation liability. Obtaining the same self insured status as singly self insured employers, but in a group format. The SIG is a separate and distinct legal organization and is not part of the common trade association.
- SIG’s are a viable alternative for employers to self insure their own risk, improve risk management procedures and improve worker safety and care.
- SIG’s have been authorized in over 39 states (most recently passed in Texas) for over 40 years utilizing the tenets outlined in this bill stressing solvency and owner accountability and responsibility.



## *Self-Insured Groups*

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- Overview
- Sec. 21.77.010 defines the requirements to qualify for a certificate to be issued to become a SIG. These requirements are the same as a single self insured, but for a minimum of 5 employers to meet the same requirements. Members of a SIG must be a members of a separate trade association verifying commonality of purpose.
  - One of these requirements is the the group must have a minimum of \$5,000,000 of “tangible net worth”.
    - \$5,000,000 is the same that is required for a single self insured in the state of Alaska.
    - “Tangible Net Worth” aka tangible net assets is defined as a company’s Net Worth less “intangible” assets. Intangible assets are something of value that cannot be physically touched, such as a brand, franchise, trademark, goodwill, or a patent.
  - Each member who joins a SIG binds themselves by signing a joint and several liability agreement between each member and the SIG. The SIG is the agency through which the coverage is provided. Sec 21.77.050



## *Self-Insured Groups*

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- Excess Insurance - A SIG is required to purchase excess insurance protecting it from catastrophic injuries protecting the solvency of the SIG. The SIG will retain the first layer of risk (\$350,000 to \$750,000 negotiated with excess carrier) and purchase excess insurance to cover the required statutory workers' compensation limits.
- The SIG, as a separate legal entity is the vehicle for paying all benefits. If a member is terminated or leaves the SIG, the SIG retains all liability for any claims incurred during that members tenure. A SIG has all of the rights and obligations provided under AS 23.30 and is subject to regulations adopted by the Alaska Workers Comp Board.
- SIG must set aside at least 65% of funds to pay claims and claims related expenses



## *Self-Insured Groups*

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- The financial stability is secured by:
  - SIG report financials according to Generally Accepted Accounting Principles (GAAP).
  - Annual independent CPA audits.
  - Annual actuarial audit and rate adequacy audit by independent Actuary.
  - Joint and Several Liability agreement of members remains in place.
  - Annual payroll audits of each member to assure correct reporting and collections. Sec 21.77.170
  - The commissioner may audit the records and accounts as necessary to ensure compliance and solvency Sec 21.77.120. The commissioner may also require other reports uner 21.77.150(c)



## *Self-Insured Groups*

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- Concerns or risks with Self Insured Groups:
  - Bankruptcy of one of the members – The group is considered the insurer and the SIG (and remaining members) remains liable for all claims. The members must report financials to SIG administrator annually to ensure qualifications of the group are maintained.
    - Over time, it would be the intent of a group to develop a membership sufficient to ensure that one members demise does not unduly compromise the solvency of the group.
  - Catastrophic claims – What would be the impact. With excess insurance in place, the SIG's liability is mitigated. Additionally with the long tail nature of larger claims and actuarial projections, the group can adjust.
  - What if SIG does become “insolvent” and unable to pay bills as they are due. The SIG would have to assess their members (Joint and Several Liability) to make up any deficit.
  - What if a member has left the SIG. That member remains liable for the time period that they belonged to the SIG. If an assessment was required for the period they belonged, then they would be liable and be assessed (Joint and Several Liability)



## *Self-Insured Groups*

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- Concerns or risks with Self Insured Groups (continued):
  - What is the history of SIG's around the nation. Some have gone insolvent.
    - SIG's have been in existence around the nation for over 40 years in over 35 states. Most recently Texas enacted enabling legislation authorizing SIG's. In the early 1980's some SIG's in Florida and Oklahoma experienced problems. More recently a group in Kentucky and a group in Tennessee have been taken over by regulators and assessments have been invoiced to members. In all of these cases, while the facts and situations are different, there was generally weak regulatory oversight. Regulators were not seeing financials, actuary reports, audits etc. Subsequently those states have strengthened their regulatory roles.
    - Contrast these several problems over a 40 year time span to the admitted carrier market with all of the "regulations" in place. Literally hundreds of carriers are deemed insolvent each year.



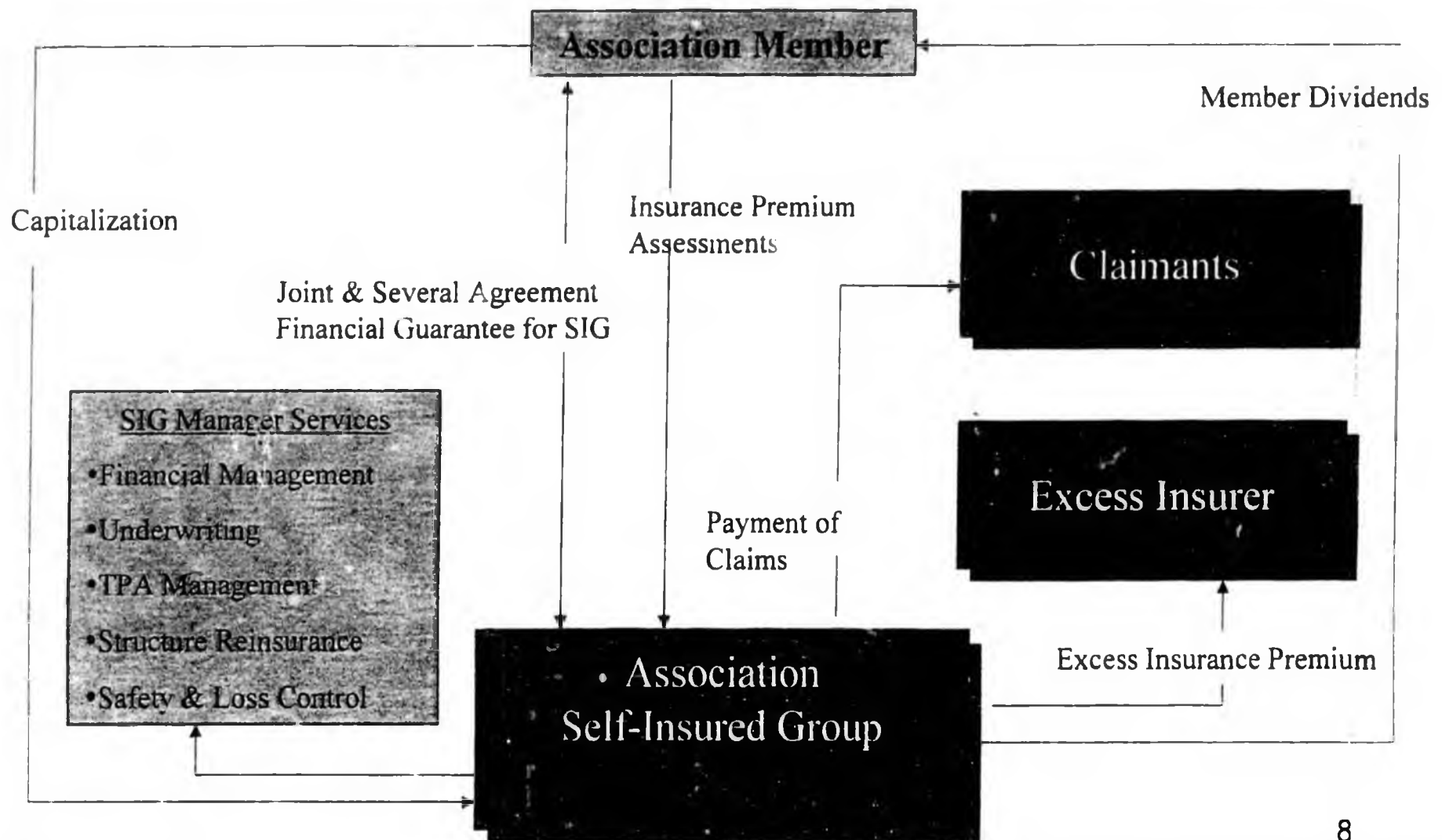
# *Self-Insured Groups*

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- Concerns or risks with Self Insured Groups (continued):
  - Regulatory concerns – In previous comments certain questions were raised about the commissioner's ability to regulate under Chapter 36 of the Insurance Title. Remember this is *self insurance* not insurance.
  - The commissioner will still have the authority and oversight of the delivery of claims benefits by the third party claims administrator that the commissioner will have licensing authority.
  - The commissioner will be able to review financials and actuarial reports, GAAP financials and has the authority to establish regulations governing the operation of SIGS.
  - GAAP vs. Statutory Accounting – GAAP is the basis of accounting for most businesses in the US except for insurance companies. This is what our business owners understand. Statutory accounting is a method of reporting for Insurance companies and those Insurance Companies must report to National Association of Insurance Commissioners (NAIC)
  - The SIG is required to follow all existing claims practices and benefit delivery and complaint process over claims.
  - Comments were made about this law being modeled after another state laws. While that is so, the governing laws of Alaska and other states for self insurance are different for qualifying purposes.
  - Why doesn't the industry consider some other alternative – a reciprocal for example.
    - The industry wants the same benefits of singly self insured rather than another type of insurance product.
    - A reciprocal is arguably another type of alternative solution, but is generally regulated the same as an insurance company regarding reserves, financials and rates and taxes.



# How a Self-Insured Group Operates



HB 51

House Labor and Commerce

February 10, 2006

I INTRODUCTION

Studied this concept for some time now – Decision is a public policy call and I would like to offer that the discussion of such an important issue, reflect various potential ramifications of the bill. My comments will reflect the potential shortfalls of such legislation.

II. FINANCIAL OVERSIGHT

1. One of the basic principles of insurance regulation is financial oversight to ensure that claims get paid

a. Examinations – Alaska statutes require a statutory financial examination of all domestic companies every 3 years. This examination involves not only the financial statements but also review of the quality of investments (the types of investments of insurance companies are limited), the risk based capital ratios, and the actuarial analysis of loss reserves. Every state performs these tests on the companies domiciled in their state.

b. Standardized annual statements (which range from 110 to 120 pages) are filed and reviewed for every company doing business in the state along with less extensive quarterly reports

c. Regulatory authority to penalize for violations. Today in the Anchorage Daily News was an article regarding the settlement of 1.6 Billion to resolve allegations of deceptive accounting practices at American International Group – last year the Alaska Division of Insurance fined a domestic subsidiary of AIG \$400,000 for accounting practices that did not reflect statutory accounting principles. This year we have fined over \$65,000 for late filing of financial reports.

2. HB 51 does not provide for any type of financial oversight and in fact, does not even provide for audited financial reports. While there is a \$5,000,000 aggregate net worth requirement for consideration as a self insured, there is no monitoring of the financial condition of members of an association. Will they have liquid assets to pay claims?

### III. GUARANTY FUNDS

Even with this considerable oversight, insurance companies have become insolvent. Many of you were here during the 2004 legislative session when I came to hearings to seek a solution to the insolvency of a major workers' compensation carrier which had created a deficiency in funds to pay claims in the Alaska Insurance Guaranty Association. There were approximately 600 open claims for 4 insolvent insurance companies which represented an unanticipated financial burden for 380 Alaskan employers.

There is no safety net provided for a potential failure of one of these association plans. It would not be appropriate to include an unregulated group within the current guaranty fund system. The number of groups likely to form these self-insured associations are not likely to have the ability to form self-insured guaranty funds such as are found in other states. What will happen if one association plan should fail? What safety net would be available to assure the continued payment of workers' compensation benefits to injured workers.

While there have certainly been successful group self-insured workers compensation plans, there have also been some major failures. I am aware of such a plan in Kentucky which resulted in a special tax on all employers to bail out a multi million dollar obligation of an insolvent self-insured plan.

#### IV. REGULATORY OVERSIGHT

An additional function of the Division of Insurance is to have oversight of the practices of any person or entity transacting insurance in Alaska.

1. Chapter 36 of the Insurance Title provides the statutes controlling Trade Practices and Frauds. This includes such things as oversight of marketing insurance including misrepresentation and false advertising, unfair discrimination, unfair claims settlement practices
2. The Division also has the authority to examine producers and independent adjusters. Last year we began to get complaints from injured workers who were having difficulty with the handling of workers compensation claims. Our standard practice is to require the party against which the claim is filed to provide copies of claims files and correspondence with the log notes and other information as may be necessary to evaluate if there have been violations of statutes or regulations. A local adjusting firm was contacted by our office and did not provide the requested responses. During a meeting about the lack of responsiveness, I requested that we be given the required claim information for our evaluation within two weeks. Within that deadline, we received a very incomplete response that did not comply with the required reports.

About the same time, we received a report from the Division of Workers' Compensation, that the same firm had not been present for a pre-hearing conference and was asked to give reasons either why they were not at the conference or why they should not be reported to the Division of Insurance. We are now engaged in a market conduct of this firm, reviewing claim files to determine compliance with statutes regarding claims adjusting.

HB 51 does not include any oversight of practices for these small associations. There is no complaint process and no authority to require accountability for the handling of claims.

What do injured workers do if claims are not paid promptly?

## V. OTHER STATES

I have been asked over the past 18 months to look at other states which do, in fact, allow self-insured associations to provide workers' compensation. One of those states which I have reviewed in detail is Nevada. Nevada has some extensive requirements which require financial oversight and have other regulatory provisions. However, I do not feel that the Alaska environment in any way compares to many of the states who do allow these systems. Alaska has a small population and consequently a relatively small number of employers. We do not have sufficient numbers of any one type of business to make a viable group. Small construction in Alaska is not comparable to a state such as Nevada, which has a population growth reaching several hundred people a day. Florida also allows association plans but just this week at a meeting, I heard that their population is growing at a rate of 1,000 people a day. We do not have the critical mass necessary to take advantage of these plans.

## VI. RECIPROCAL

Alaska statute (AS 21.75) provides for the formation of reciprocal insurers, which allow the formation of a regulated entity to provide various lines of insurance for the members of the reciprocals. Today we have two successfully operating under these statutes. The reciprocal statutes provide for a lesser level of capital and surplus – the overall start up would require \$1.5 million with maintenance of \$1,375,000. These amounts are not overly stringent. If ability to pay claims of injured workers is our goal, we need to guarantee that there are liquid monies available to achieve this goal. The reciprocal insurers are regulated in much the same way as a traditional insurer which is intended to protect the public.

There does not seem to be good reason not to utilize the current statutory provisions for the formation of reciprocals.

## VII. CONCLUSION

It is not my intent to come before you today to be negative. But, I take the regulatory responsibilities of our Division very seriously as do the division staff. The insurance statutes were crafted to protect the public. To see the potential for numbers of employers to adjust claims on their own without accountability to ensure claims are paid properly and timely, to not have accountability for their financial solvency and to have no regulation of marketing and claims handling practices is disturbing. I would urge you to carefully consider the possible effects of this legislation.

**SB**

**244**

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

1/19/06

FURTHER: Health, Education and  
 Social Services

5-Day Notice: \_\_\_\_\_  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: \_\_\_\_\_

Health and Commerce Committee considered SENATE BILL NO. 244

**SB 244 NO DISCRIMINATION AGAINST ACUPUNCTURIST**

Prohibiting unfair discrimination against an acupuncturist; amending the definition of 'provider' as it  
 applies to authorized collective negotiations by physicians affecting the rights of providers under health  
 insurance laws; and providing for an effective date."

Recommends:

Replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

Identical to previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

Proposed amendment(s)

Request Letter of Intent by \_\_\_\_\_ Committee

Request referral to \_\_\_\_\_ Committee

<b>CS Senate Bill:</b>
<input type="checkbox"/> Same Title
<input type="checkbox"/> New Title
<b>SCS House Bill:</b>
<input type="checkbox"/> Same Title
<input type="checkbox"/> Technical Title Change
<input type="checkbox"/> New Title w/ SCR # _____

**FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

NATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>George Davis</i>			<input checked="" type="checkbox"/>	
<i>Bob Steyer</i>	<input checked="" type="checkbox"/>			
<i>Alvin J. Perkins</i>			<input checked="" type="checkbox"/>	
<i>Steve</i>	<input checked="" type="checkbox"/>			
<b>CR:</b> <i>Carl Bunker</i>	<input checked="" type="checkbox"/>			

SB 244



## Alaska State Legislature

Senate Majority Web: [www.akrepublicans.org](http://www.akrepublicans.org)

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Sponsor: Senator Thomas Wagoner  
Current Version: SB 244  
Contact: Amy Scitz, 465-2828

### Fact Sheet for: Senate Bill 244

**Short Title:** NO DISCRIMINATION AGAINST ACUPUNCTURIST

**Summary:**

- Adds licensed acupuncturists to the state list of medical providers that cannot be discriminated against by insurance companies providing group health insurance policies.

**Benefits:**

- Reduces overall medical costs for patients.
- Improves health care by extending insurance coverage to an established form of medical treatment.

**Background:**

- The World Health Organization reports that acupuncture is a safe, effective treatment for more than 43 medical conditions, ranging from allergies to heart problems. Acupuncture also reduces medical costs when used alone, or with other types of treatment. For example, in workers' compensation cases, a greater percentage of employees with lower back pain returned to work when receiving acupuncture treatment than with traditional medical care. SB 244 gives Alaskans the opportunity to make this ancient form of medical care a part of their treatment.

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 244  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title: An Act prohibiting unfair discrimination against an acupuncturist; amending definition of 'provider'... RDU: Centralized Administrative Services  
 Component: Group Health Insurance  
 Sponsor: Senator Wagoner  
 Requester: Senate Labor and Commerce Committee Component No. 2152

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS.** (Attach a separate page if necessary)

SB 244 would not create a fiscal impact to Alaska's group health insurance plans (active and retiree).

Acupuncturists are already covered under the plans when acupuncture is used in lieu of anesthesia at surgery. Adding this provider type to the list of covered providers under AS 21.26.090(d) would not expand additional coverage for their services without plan modifications.

Prepared by: Melanie Millhorn, Director Phone 465-4408  
 Division: Retirement and Benefits Date/Time 2/7/06 7:19 AM  
 Approved by: Mike Tibbles, Deputy Commissioner Date 2/7/2006  
 Agency: Department of Administration

Background & Relevant Data

## QUICK FACTS ABOUT ACUPUNCTURE AND ORIENTAL MEDICINE IN THE U.S.

### Acceptance of Acupuncture in the United States

Acupuncture and Oriental medicine is one of the fastest growing forms of health care in the United States. This explosion is due to the recognition by consumers and regulators of the safety, effectiveness and low cost of this form of health care.

- Over 40 states and the District of Columbia have recognized the practice of acupuncture and Oriental medicine. Legislation has been introduced in an additional four states.
- The FDA estimated in May 1993 that there were 9 to 12 million patient visits each year for acupuncture.
- Acupuncture has been cited by the World Health Organization to treat over forty-three conditions including allergies, asthma, back pain, carpal tunnel, colds and flu, constipation, depression, gynecological disorders, headache, heart problems, infertility, insomnia, pre-menstrual syndrome, sciatica, sports injuries, tendonitis and stress.
- The Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) is recognized by the United States Department of Education. Acupuncture is a three-year masters level program. Oriental medicine is a four-year masters level program.
- Acupuncture is used across the country in more than 20 states in over 800 drug dependency programs. Patients who go through these programs have lower re-arrest rates on drug-related charges than those not treated with acupuncture.
- The 1997 National Institutes of Health Consensus Conference on Acupuncture stated, *"The data in support of acupuncture are as strong as those for many accepted Western medical therapies."*
- The National Institutes of Health Consensus Conference on Acupuncture recognized the effectiveness of acupuncture in the treatment of several diseases and stated that *"One of the advantages of acupuncture is that the incidence of adverse effect is substantially lower than that of many drugs or other accepted medical procedures used for the same conditions."*
- A study in six clinics in five states showed efficacy and cost savings of acupuncture. Of the patients treated with acupuncture, 91.5% reported disappearance or improvement of symptoms; 84% said they see their MDs less; 79% said they use fewer prescription drugs and 70% of those to whom surgery had been recommended said they avoided it.

- The number of licensed acupuncturists in the U.S. has nearly tripled between 1992 and 2000, rising from 5,525 in the fall of 1992 to 14,228 in the fall of 2000.
- Controlled clinical trials in the United States have evaluated the use of acupuncture combined with standard stroke protocol for the treatment of paralysis due to stroke. Effective or markedly effective results were found for over 80% of the patients receiving acupuncture with a cost savings of \$26,000 per patient.
- The National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) offers three independent certification programs: Acupuncture, Chinese Herbology, and Asian Bodywork Therapy.
- In Miami-Dade County drug offenders have a choice of acupuncture or jail.
- Clinical studies indicate that acupuncture is effective in treating headache, dysmenorrhea, fibromyalgia, stroke, substance abuse, menopause, depression, female infertility, neck pain, low back pain, osteoarthritis, morning sickness, respiratory disease, urinary dysfunction, tennis elbow and facial pain.
- A study by the New York advocacy group, Patients Have Rights, showed that 90% of the respondents had heard of Chinese medicine and acupuncture and 13% had used acupuncture. 80% of the respondents described their experience as "favorable" and 100% thought it was important to have a choice in the type of medicine they use.

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Return to Home Page

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## Conditions Treated

By addressing the underlying imbalances that eventually cause pain, illness or other symptoms, acupuncture improves one's health from the inside out. After treatment, feel better in ways never expected - in addition to noticing improvement in the original condition.

While acupuncture is used to treat many conditions, enhance overall health, and improve immune functioning, it has also been endorsed by the World Health Organization as for treating the following:

### Infections

- Colds and Flu
- Bronchitis
- Hepatitis

### Internal

- Hypoglycemia
- Asthma
- High Blood Pressure
- Ulcers
- Colitis
- Indigestion
- Hemorrhoids
- Diarrhea
- Constipation
- Diabetes

### Eyes-Ears-Nose-Throat

- Deafness
- Ringling in the Ears
- Earaches
- Poor Eyesight
- Dizziness
- Sinus Infection
- Sore Throat
- Hay Fever

### Musculo-skeletal & Neurologic

- Arthritis
- Neuralgia
- Sciatica
- Back Pain
- Bursitis
- Tendonitis
- Stiff Neck
- Bell's Palsy
- Trigeminal Neuralgia
- Headache
- Stroke
- Cerebral Palsy
- Polio
- Sprains

### Genito-Urinary & Reproductive

- Impotence
- Infertility
- Pre-menstrual Syndrome (PMS)
- Pelvic Inflammatory Disease (PID)
- Vaginitis
- Irregular Period/Cramps
- Morning Sickness

### **Mental-Emotional**

Anxiety  
Depression  
Stress  
Insomnia

### **Dermatological**

Eczema  
Acne  
Herpes

### **Acupuncture for pain conditions**

Arthritis  
Low Back Pain  
Sciatica  
Bursitis  
Tendonitis  
Neck/Shoulder Pain  
Carpal Tunnel  
Headaches  
Muscle Strain

See also, [About Our Medicine](#) and [Find a Practitioner](#).

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News and Upcoming Activities

## **107. Acupuncture**

### **National Institutes of Health Consensus Development Conference Statement November 3-5, 1997**

This statement was originally published as:

Acupuncture. NIH Consensus Statement 1997 Nov 3-5; 15(5):1-34.

For making bibliographic reference to consensus statement no. 107 in the electronic form displayed here, it is recommended that the following format be used:

Acupuncture. NIH Consensus Statement Online 1997 Nov 3-5; month, day]; 15(5):1-34.

**NIH Consensus Statements are prepared by a nonadvocate, non-Federal panel of experts, based on (1) presentations by investigators working in areas relevant to the consensus questions during a 2-day public session; (2) questions and statements from conference attendees during open discussion periods that are part of the public session; and (3) closed deliberations by the panel during the remainder of the second day and morning of the third. This statement is an independent report of the panel and is not a policy statement of the NIH or the Federal Government.**

**The statement reflects the panel's assessment of medical knowledge available at the time the statement was written. Thus, it provides a "snapshot in time" of the state of knowledge on the conference topic. When reading the statement, keep in mind that new knowledge is inevitably accumulating through medical research.**

- [Abstract](#)
- [Introduction](#)
- [1. What Is the Efficacy of Acupuncture, Compared With Placebo or Sham Acupuncture, in the Conditions for Which Sufficient Data Are Available to Evaluate?](#)
- [2. What Is the Place of Acupuncture in the Treatment of Various Conditions for Which Sufficient Data Are Available, in Comparison or in Combination](#)

With Other Interventions (Including No Intervention)?

- 3. What Is Known About the Biological Effects of Acupuncture That Helps Us Understand How It Works?
- 4. What Issues Need To Be Addressed So That Acupuncture Can Be Appropriately Incorporated Into Today's Health Care System?
- 5. What Are the Directions for Future Research?
- Conclusions
- Consensus Development Panel
- Speakers
- Planning Committee
- Lead Organizations
- Supporting Organizations
- Bibliography

## **Abstract**

### **Objective.**

To provide health care providers, patients, and the general public with a responsible assessment of the use and effectiveness of acupuncture for a variety of conditions

### **Participants.**

A non-Federal, nonadvocate, 12-member panel representing the fields of acupuncture, pain, psychology, psychiatry, physical medicine and rehabilitation, drug abuse, family practice, internal medicine, health policy, epidemiology, statistics, physiology, biophysics, and the public. In addition, 25 experts from these same fields presented data to the panel and a conference audience of 1,200.

### **Evidence.**

The literature was searched through Medline, and an extensive bibliography of references was provided to the panel and the conference audience. Experts prepared abstracts with relevant citations from the literature. Scientific evidence was given precedence over clinical anecdotal experience.

### **Consensus Process.**

The panel, answering predefined questions, developed their conclusions based on the scientific evidence presented in open forum and the scientific literature. The panel composed a draft statement, which was read in its entirety and circulated to the experts and the audience for comment. Thereafter, the panel resolved conflicting recommendations and released a revised statement at the end of the conference. The panel finalized the revisions within a few weeks

after the conference. The draft statement was made available on the World Wide Web immediately following its release at the conference and was updated with the panel's final revisions.

### **Conclusions.**

Acupuncture as a therapeutic intervention is widely practiced in the United States. While there have been many studies of its potential usefulness, many of these studies provide equivocal results because of design, sample size, and other factors. The issue is further complicated by inherent difficulties in the use of appropriate controls, such as placebos and sham acupuncture groups. However, promising results have emerged, for example, showing efficacy of acupuncture in adult postoperative and chemotherapy nausea and vomiting and in postoperative dental pain. There are other situations such as addiction, stroke rehabilitation, headache, menstrual cramps, tennis elbow, fibromyalgia, myofascial pain, osteoarthritis, low back pain, carpal tunnel syndrome, and asthma, in which acupuncture may be useful as an adjunct treatment or an acceptable alternative or be included in a comprehensive management program. Further research is likely to uncover additional areas where acupuncture interventions will be useful.

### **Introduction**

Acupuncture is a component of the health care system of China that can be traced back for at least 2,500 years. The general theory of acupuncture is based on the premise that there are patterns of energy flow (Qi) through the body that are essential for health. Disruptions of this flow are believed to be responsible for disease. Acupuncture may correct imbalances of flow at identifiable points close to the skin. The practice of acupuncture to treat identifiable pathophysiological conditions in American medicine was rare until the visit of President Nixon to China in 1972. Since that time, there has been an explosion of interest in the United States and Europe in the application of the technique of acupuncture to Western medicine.

Acupuncture describes a family of procedures involving stimulation of anatomical locations on the skin by a variety of techniques. There are a variety of approaches to diagnosis and treatment in American acupuncture that incorporate medical traditions from China, Japan, Korea, and other countries. The most studied mechanism of stimulation of acupuncture points employs penetration of the skin by thin, solid, metallic needles, which are manipulated manually or by electrical stimulation. The majority of comments in this report are based on data that came from such studies. Stimulation of these areas by moxibustion, pressure, heat, and lasers is used in acupuncture practice, but because of the paucity of studies, these techniques are more difficult to evaluate.

Acupuncture has been used by millions of American patients and performed by