

---

HOUSE BILL 1451

---

State of Washington

54th Legislature

1995 Regular Session

By Representatives Mielke, Lisk, McMorris, Sheldon, Mastin, Horn, Thompson, Hargrove, Sherstad and Basich

Read first time 01/25/95. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to expansion of employer workers' compensation  
2 group self-insurance; adding a new chapter to Title 51 RCW; and  
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The provisions of this chapter shall apply  
6 to workers' compensation self-insurance groups. This chapter shall not  
7 apply to groups covered under RCW 51.14.150. Groups that are issued a  
8 certificate of approval by the director shall not be deemed to be  
9 insurers or insurance companies and shall not be subject to the  
10 provisions of the insurance laws and rules except as otherwise provided  
11 in this chapter.

12 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
13 otherwise, the definitions in this section apply throughout this  
14 chapter.

15 (1) "Administrator" means an individual, partnership, or  
16 corporation engaged by a workers' compensation self-insurance group's  
17 board of trustees to carry out the policies established by the group's  
18 board of trustees and to provide day-to-day management of the group.

1 (2) "Director" means the director of the department of labor and  
2 industries.

3 (3) "Insolvent" or "insolvency" means the inability of a workers'  
4 compensation self-insurance group to pay its outstanding lawful  
5 obligations as they mature in the regular course of business, as shown  
6 either by an excess of its required reserves and other liabilities over  
7 its assets or by it not having sufficient assets to reinsure all of its  
8 outstanding liabilities after paying all accrued claims owed by it.

9 (4) "Net premium" means premium derived from standard premium  
10 adjusted by any advance premium discounts.

11 (5) "Service company" means any person or entity that provides  
12 services not provided by the administrator, including but not limited  
13 to:

14 (a) Claims adjustment;

15 (b) Safety engineering;

16 (c) Compilation of statistics and the preparation of premium, loss,  
17 and tax reports;

18 (d) Preparation of other required self-insurance reports;

19 (e) Development of members' assessments and fees; and

20 (f) Administration of a claim fund.

21 (6) "Standard premium" means the premium derived from the manual  
22 rates adjusted by experience modification factors but before advance  
23 premium discounts.

24 (7) "Workers' compensation" when used as a modifier of "benefits,"  
25 "liabilities," or "obligations" means both workers' compensation and  
26 employers' liability.

27 (8) "Workers' compensation self-insurance group" or "group" means  
28 a not-for-profit, unincorporated association consisting of five or more  
29 employers who are engaged in the same or similar type of business and  
30 who enter into agreements to pool assets to cover liabilities for  
31 workers' compensation benefits paid to employees of group members and  
32 to provide coverage for employers' liability in this state.

33 NEW SECTION. **Sec. 3.** No person, association, or other entity  
34 shall act as a workers' compensation self-insurance group unless it has  
35 been issued a certificate of approval by the director.

36 NEW SECTION. **Sec. 4.** (1) A proposed workers' compensation self-  
37 insurance group shall file with the director its application for a

1 certificate of approval accompanied by a nonrefundable filing fee in an  
2 amount of one hundred fifty dollars or such larger sum as the director  
3 finds necessary for the administrative costs of evaluating the group's  
4 qualifications. The application shall include the group's name,  
5 location of its principal office, date of organization, name and  
6 address of each member, and such other information as the director may  
7 reasonably require together with the following information:

8 (a) Proof of compliance with the provisions of subsection (2) of  
9 this section;

10 (b) A copy of the articles of association, if any;

11 (c) A copy of agreements with the administrator and with any  
12 service company;

13 (d) A copy of the bylaws of the proposed group;

14 (e) A copy of the group's safety and occupational health plan;

15 (f) A copy of the agreement between the group and each member  
16 securing the payment of workers' compensation benefits, which shall  
17 include provision for payment of assessments as provided for in section  
18 17 of this act;

19 (g) A copy of the indemnity agreement jointly and severally binding  
20 each member for the workers' compensation liability of the group and  
21 other members of the group;

22 (h) Designation of the initial board of trustees and administrator;

23 (i) The address in this state where the books and records of the  
24 group will be maintained at all times;

25 (j) A pro forma financial statement on a form acceptable to the  
26 director showing the financial ability of the group to pay the workers'  
27 compensation obligations of its members; and

28 (k) Proof of payment to the group by each member of not less than  
29 twenty-five percent of that member's first year estimated annual net  
30 premium on a date prescribed by the director. Each payment shall be  
31 considered to be part of the first year premium payment of each member  
32 if the proposed group is granted a certificate of approval.

33 (2) To obtain and maintain its certificate of approval, a workers'  
34 compensation self-insurance group shall comply with the following  
35 requirements as well as any other requirements established by law or  
36 rule:

37 (a) A combined net worth of all members of the group of at least  
38 two million dollars;

1 (b) Security in the form and amount prescribed by the director  
2 which shall be provided by a surety bond, security deposit, letter of  
3 credit, or financial security endorsement, or any combination thereof.  
4 If a surety bond is used to meet the security requirement, it shall be  
5 issued by a corporate surety company authorized to transact business in  
6 this state. If a security deposit is used to meet the security  
7 requirement, securities shall be limited to: Bonds or other evidences  
8 of indebtedness issued, assumed, or guaranteed by the United States, or  
9 by an agency or instrumentality thereof; certificates of deposit in a  
10 federally insured bank; shares or savings deposits in a federally  
11 insured savings and loan association or credit union; or any bond or  
12 security issued by a state of the United States and backed by the full  
13 faith and credit of the state. Any such securities shall be deposited  
14 in an escrow account in a depository designated by the director.  
15 Interest accruing on a negotiable security so deposited shall be  
16 collected and transmitted to the depositor provided the depositor is  
17 not in default. A financial security endorsement issued as part of an  
18 acceptable excess insurance contract may be used to meet all or part of  
19 the security requirement. The bond, security deposit, letter of  
20 credit, or financial security endorsement shall be for the benefit of  
21 the state solely to pay claims and associated expenses and payable on  
22 the failure of the group to pay workers' compensation benefits it is  
23 legally obligated to pay. The director may establish and adjust, from  
24 time to time, requirements for the amount of security based on  
25 differences among groups in their size, types of employment, years in  
26 existence, and other relevant factors;

27 (c) Specific and aggregate excess insurance in a form, in an  
28 amount, and by an insurance company authorized to transact insurance  
29 business in the state of Washington;

30 (d) An estimated annual standard premium of at least one million  
31 dollars during a group's first year of operation. Thereafter, the  
32 annual standard premium shall be at least five hundred dollars;

33 (e) An indemnity agreement jointly and severally binding the group  
34 and each member thereof to meet the workers' compensation obligations  
35 of each member. The indemnity agreement shall be in a form prescribed  
36 by the director and shall include minimum uniform substantive  
37 provisions prescribed by the director. Subject to the director's  
38 approval, a group may add other provisions needed because of its  
39 particular circumstances;

1 (f) A fidelity bond for the administrator in a form and amount  
2 prescribed by the director; and

3 (g) A fidelity bond for the service company in a form and amount  
4 prescribed by the director. The director may also require the service  
5 company providing claim services to furnish a performance bond in a  
6 form and amount prescribed by the director.

7 (3) A group shall notify the director of any change in the  
8 information required to be filed under subsection (1) of this section  
9 or in the manner of its compliance with subsection (2) of this section  
10 no later than thirty days after the change.

11 (4) The director shall evaluate the information provided by the  
12 application required to be filed under subsection (1) of this section  
13 to assure that no gaps in funding exist and that funds necessary to pay  
14 workers' compensation benefits will be available on a timely basis.

15 (5) The director shall act on a completed application for a  
16 certificate of approval within sixty days. If, because of the number  
17 of applications, the director is unable to act on an application within  
18 this period, the director shall have an additional sixty days to so  
19 act.

20 (6) The director shall issue to the group a certificate of approval  
21 on finding that the proposed group has met all requirements, or the  
22 director shall issue an order refusing such certificate setting forth  
23 reasons for such refusal on finding that the proposed group does not  
24 meet all requirements.

25 (7) Each workers' compensation self-insurance group shall be deemed  
26 to have appointed the director as its attorney-in-fact to receive  
27 service of legal process issued against it in this state. The  
28 appointment shall be irrevocable, shall bind any successor in interest,  
29 and shall remain in effect as long as there is in this state any  
30 obligation or liability of the group for workers' compensation  
31 benefits.

32 NEW SECTION. **Sec. 5.** (1) A certificate of approval issued by the  
33 director to a workers' compensation self-insurance group authorizes the  
34 group to provide workers' compensation benefits. The certificate of  
35 approval remains in effect until terminated at the request of the group  
36 or revoked by the director pursuant to section 20 of this act.

37 (2) The director shall not grant the request of any group to  
38 terminate its certificate of approval unless the group has insured or

1 reinsured all incurred workers' compensation obligations with an  
2 authorized insurer under an agreement filed with and approved in  
3 writing by the director. Such obligations shall include both known and  
4 unknown claims and expenses associated therewith and claims incurred  
5 but not reported and expenses associated therewith.

6 (3) Subject to the approval of the director, a group may merge with  
7 another group engaged in the same or similar type of business only if  
8 the resulting group assumes in full all obligations of the merging  
9 groups. The director may hold a hearing on the merger and shall do so  
10 if any party, including a member of either group, so requests.

11 NEW SECTION. **Sec. 6.** Each group shall be operated by a board of  
12 trustees which shall consist of not less than five persons elected by  
13 the members of a group for stated terms of office. At least two-thirds  
14 of the trustees shall be employees, officers, or directors of members  
15 of the group. The group's administrator, service company, or any  
16 owner, officer, or employee of, or any other person affiliated with  
17 such administrator or service company shall not serve on the board of  
18 trustees of the group. All trustees shall be residents of this state  
19 or officers of corporations authorized to do business in this state.  
20 The board of trustees of each group shall ensure that all claims are  
21 paid promptly and shall take all necessary precautions to safeguard the  
22 assets of the group, including all of the following:

23 (1) The board of trustees shall:

24 (a) Maintain responsibility for all moneys collected or disbursed  
25 from the group and segregate all moneys into a claims fund account and  
26 an administrative fund account. At least seventy percent of the net  
27 premium shall be placed into a designated depository for the sole  
28 purpose of paying claims, allocated claims expenses, reinsurance or  
29 excess insurance, and special fund contributions, including second  
30 injury and other loss-related funds. This shall be called the claims  
31 fund account. The remaining net premium shall be placed into a  
32 designated depository for the payment of taxes, general regulatory fees  
33 and assessments, and administrative costs. This shall be called the  
34 administrative fund account. The director may approve an  
35 administrative fund account of more than thirty percent and a claims  
36 fund account of less than seventy percent only if the group shows to  
37 the director's satisfaction that more than thirty percent is needed for

1 an effective safety and loss control program or the group's aggregate  
2 excess insurance attaches at less than seventy percent;

3 (b) Maintain minutes of its meetings and make such minutes  
4 available to the director;

5 (c) Designate an administrator to carry out the policies  
6 established by the board of trustees and to provide day-to-day  
7 management of the group, and delineate in the written minutes of its  
8 meetings the areas of authority it delegates to the administrator; and

9 (d) Retain an independent certified public accountant to prepare  
10 the statement of financial condition required by section 10(1) of this  
11 act.

12 (2) The board of trustees shall not:

13 (a) Extend credit to individual members for payment of a premium,  
14 except pursuant to payment plans approved by the director; or

15 (b) Borrow any moneys from the group or in the name of the group  
16 except in the ordinary course of business without first advising the  
17 director of the nature and purpose of the loan and obtaining prior  
18 approval from the director.

19 NEW SECTION. **Sec. 7.** (1) An employer joining a workers'  
20 compensation self-insurance group after the group has been issued a  
21 certificate of approval shall submit an application for membership to  
22 the board of trustees or its administrator, and enter into the  
23 indemnity agreement required by section 4(2)(e) of this act.  
24 Membership takes effect no earlier than each member's date of approval.  
25 The application for membership and its approval shall be maintained as  
26 permanent records of the board of trustees.

27 (2) Individual members of a group shall be subject to cancellation  
28 by the group pursuant to the bylaws of the group. In addition,  
29 individual members may elect to terminate their participation in the  
30 group. The group shall notify the director of the termination or  
31 cancellation of a member within ten days and shall maintain coverage of  
32 each canceled or terminated member for thirty days after such notice,  
33 at the terminating member's expense, unless the group is notified  
34 sooner by the department of labor and industries that the canceled or  
35 terminated member has procured workers' compensation insurance, has  
36 become an approved self-insurer, or has become a member of another  
37 group.

1 (3) The group shall pay all workers' compensation benefits for  
2 which each member incurs liability during its period of membership. A  
3 member who elects to terminate its membership or is canceled by a group  
4 remains jointly and severally liable for workers' compensation  
5 obligations of the group and its members that were incurred during the  
6 canceled or terminated member's period of membership.

7 (4) A group member is not relieved of its workers' compensation  
8 liabilities incurred during its period of membership except through  
9 payment by the group or the member of required workers' compensation  
10 benefits.

11 (5) The insolvency or bankruptcy of a member does not relieve the  
12 group or any other member of liability for the payment of any workers'  
13 compensation benefits incurred during the insolvent or bankrupt  
14 member's period of membership.

15 NEW SECTION. **Sec. 8.** (1) No service company or its employees,  
16 officers, or directors may be an employee, officer, or director of or  
17 have either a direct or indirect financial interest in an  
18 administrator. No administrator or its employees, officers, or  
19 directors may be an employee, officer, or director of or have either a  
20 direct or indirect financial interest in a service company.

21 (2) The service contract shall state that unless the director  
22 permits otherwise the service company shall handle, to their  
23 conclusion, all claims and other obligations incurred during the  
24 contract period.

25 NEW SECTION. **Sec. 9.** Except for a salaried employee of a group,  
26 its administrator, or its service company, any person soliciting  
27 membership in a workers' compensation self-insurance group must be  
28 licensed as provided in chapter 48.06 RCW.

29 NEW SECTION. **Sec. 10.** (1) Each group shall submit to the director  
30 a statement of financial condition audited by an independent certified  
31 public accountant on or before the last day of the sixth month  
32 following the end of the group's fiscal year. The financial statement  
33 shall be on a form prescribed by the director and shall include, but  
34 not be limited to, actuarially appropriate reserves for known claims  
35 and expenses associated therewith, claims incurred but not reported and  
36 expenses associated therewith, unearned premiums, and bad debts, which



1 reserves shall be shown as liabilities. An actuarial opinion regarding  
2 reserves for known claims and expenses associated therewith and claims  
3 incurred but not reported and expenses associated therewith shall be  
4 included in the audited financial statement. The actuarial opinion  
5 shall be approved by the director of the department of labor and  
6 industries or be given by a member of the American academy of actuaries  
7 or other qualified loss reserve specialist as defined in the annual  
8 statement adopted by the national association of insurance  
9 commissioners.

10 (2) No person may make an untrue statement of a material fact, or  
11 omit a material fact necessary to make the statement made, in light of  
12 the circumstances under which it is made, not misleading, in connection  
13 with the solicitation of membership of a group.

14 (3) The director may prescribe the format and frequency of other  
15 reports which may include, but shall not be limited to, payroll audit  
16 reports, summary loss reports, and quarterly financial statements.

17 NEW SECTION. **Sec. 11.** No person may make a material  
18 misrepresentation or omission of a material fact in connection with the  
19 solicitation of membership of a group.

20 NEW SECTION. **Sec. 12.** Funds not needed for current obligations  
21 may be invested by the board of trustees in accordance with chapter  
22 48.13 RCW.

23 NEW SECTION. **Sec. 13.** (1) Every workers' compensation self-  
24 insurance group shall adhere to the uniform classification system,  
25 uniform experience rating plan, and manual rules filed with the  
26 director by an advisory organization designated by the director.

27 (2) Premium contributions to the group shall be determined by  
28 applying the manual rates and rules to the appropriate classification  
29 of each member which shall be adjusted by each member's experience  
30 credit or debit. Subject to approval by the director, premium  
31 contributions may also be reduced by an advance premium discount  
32 reflecting the group's expense levels and loss experience. A group may  
33 apply to the director for permission to make its own rates. Such rates  
34 shall be based on at least five years of the group's experience.

35 (3) Each group shall be audited at least annually by an auditor  
36 acceptable to the director to verify proper classifications, experience

1 rating, payroll, and rates. A report of the audit shall be filed with  
2 the director in a form acceptable to the director. A group or any  
3 member thereof may request a hearing on any objection to the  
4 classification. If the director determines that as a result of an  
5 improper classification a member's premium contribution is  
6 insufficient, the director shall order the group to assess that member  
7 an amount equal to the deficiency. If the director determines that as  
8 a result of an improper classification a member's premium is excessive,  
9 the director shall order the group to refund to the member the excess  
10 collected. The audit shall be at the expense of the group.

11 NEW SECTION. **Sec. 14.** (1) Any moneys for a fund year in excess of  
12 the amount necessary to fund all obligations for that fund year may be  
13 declared to be refundable by the board of trustees not less than twelve  
14 months after the end of the fund year.

15 (2) Each member shall be given a written description of the refund  
16 plan at the time of application for membership. A refund for any fund  
17 year shall be paid only to those employers who remain participants in  
18 the group for the entire fund year. Payment of a refund based on a  
19 previous fund year shall not be contingent on continued membership in  
20 the group after that fund year.

21 NEW SECTION. **Sec. 15.** (1) Each group shall establish to the  
22 satisfaction of the director a premium payment plan which shall include  
23 an initial payment by each member of at least twenty-five percent of  
24 that member's annual premium before the start of the group's fund year  
25 and payment of the balance of each member's annual premium in monthly  
26 or quarterly installments.

27 (2) Each group shall establish and maintain actuarially appropriate  
28 loss reserves which shall include reserves for known claims and  
29 expenses associated therewith and claims incurred but not reported and  
30 expenses associated therewith.

31 (3) Each group shall establish and maintain bad debt reserves based  
32 on the historical experience of the group or other groups.

33 NEW SECTION. **Sec. 16.** (1) If the assets of a group are at any  
34 time insufficient to enable the group to discharge its legal  
35 liabilities and other obligations and to maintain the reserves required  
36 of it under this chapter, it shall forthwith make up the deficiency or

1 levy an assessment on its members for the amount needed to make up the  
2 deficiency.

3 (2) In the event of a deficiency in any fund year, the deficiency  
4 shall be made up immediately from surplus from a fund year other than  
5 the current fund year, administrative funds, assessment of the  
6 membership if ordered by the group, or such alternative method as the  
7 director approves or directs. The director shall be notified prior to  
8 any transfer of surplus funds from one fund year to another.

9 (3) If the group fails to assess its members or to otherwise make  
10 up such deficit within thirty days, the director shall order it to do  
11 so.

12 (4) If the group fails to make the required assessment of its  
13 members within thirty days after the director orders it to do so, or if  
14 the deficiency is not fully made up within sixty days after the date on  
15 which such assessment is made, or within such longer period of time as  
16 specified by the director, the group shall be deemed to be insolvent.

17 (5) The director shall proceed against an insolvent group in the  
18 same manner as the director would proceed against an insolvent workers'  
19 compensation self-insurer as prescribed in chapter 51.14 RCW. A group  
20 self-insurance insolvency trust shall be established following the  
21 rules pursuant to RCW 51.14.077.

22 (6) In the event of the liquidation of the group, the director  
23 shall levy an assessment on its members for an amount determined by the  
24 director to be necessary to discharge all liabilities of the group,  
25 including the reasonable costs of liquidation.

26 NEW SECTION. **Sec. 17.** In the event of a liquidation pursuant to  
27 section 16 of this act, after exhausting the security required under  
28 section 4(2)(b) of this act, the director shall levy an assessment  
29 against all groups to assure prompt payment of such benefits. The  
30 assessment on each group shall be based on the proportion that the  
31 premium of each group bears to the total premium of all groups. The  
32 director may exempt a group from assessment on finding that the payment  
33 of the assessment would render the group insolvent. Such assessment  
34 shall not relieve any member of an insolvent group of its joint and  
35 several liability. After any such assessment is made, the director  
36 shall take action to enforce the joint and several liability provisions  
37 of the insolvent group's indemnity agreement, and shall recoup all  
38 costs incurred by the director in enforcing such joint and several

1 liability provisions, amounts that the director assessed any other  
2 groups pursuant to this section, and any obligations included within  
3 section 16(6) of this act.

4 NEW SECTION. **Sec. 18.** After notice and opportunity for a hearing,  
5 the director may impose a monetary penalty on any person or group found  
6 to be in violation of any provision of this chapter or of any rules  
7 adopted under this chapter. Such monetary penalty shall not exceed one  
8 thousand dollars for each act or violation and shall not exceed ten  
9 thousand dollars in the aggregate. The amount of any monetary penalty  
10 shall be paid to the director for the use of the state.

11 NEW SECTION. **Sec. 19.** (1) After notice and opportunity for a  
12 hearing, the director may issue an order requiring a person or group to  
13 cease and desist from engaging in an act or practice found to be in  
14 violation of any provision of this chapter or of any rules adopted  
15 under this chapter.

16 (2) On a finding, after notice and opportunity for a hearing, that  
17 any person or group has violated a cease and desist order, the director  
18 may do either or both of the following:

19 (a) Impose a monetary penalty of not more than ten thousand dollars  
20 for each act or violation of such order not to exceed an aggregate  
21 monetary penalty of one hundred thousand dollars; or

22 (b) Revoke the group's certificate of approval.

23 NEW SECTION. **Sec. 20.** After notice and opportunity for a hearing,  
24 the director may revoke a group's certificate of approval if it is  
25 found to be insolvent, fails to pay a regulatory fee, assessment, or  
26 special fund contribution imposed on it, or fails to comply with any of  
27 the provisions of this chapter, with any rules adopted under this  
28 chapter, or with any lawful order of the director, within the time  
29 prescribed. In addition, the director may revoke a group's certificate  
30 of approval if, after notice and opportunity for a hearing, the  
31 director finds that the certificate of approval that was issued to the  
32 group was obtained by fraud, that there was a material  
33 misrepresentation in the application for the certificate of approval,  
34 or that the group or its administrator has misappropriated, converted,  
35 illegally withheld, or refused to pay over on proper demand any moneys  
36 that belong to a member, an employee of a member, or a person otherwise

1 entitled thereto and that have been entrusted to the group or its  
2 administrator in its fiduciary capacities.

3 NEW SECTION. **Sec. 21.** (1) The director shall serve on the group,  
4 personally or by certified mail, a notice of intention to revoke the  
5 group's certificate of approval, which notice shall describe the nature  
6 and location of the plants or operations involved and the specific  
7 nature of the reasons for the decision.

8 (2) The notice shall include: The period of time within which the  
9 grounds for revocation existed or arose; a directive to the group  
10 specifying the manner in which the grounds may be eliminated; and the  
11 date, not less than thirty days after the self-insurer's receipt of the  
12 notice, when the certificate of approval will be withdrawn in the  
13 absence of a satisfactory elimination of the grounds for withdrawal of  
14 the certificate.

15 (3) An appeal of any action by the director under this section may  
16 be taken by the group. Proceedings on the appeal shall be as  
17 prescribed in this title. Appeal by a group of notice of intention to  
18 withdraw a certificate of approval or to take corrective action shall  
19 not act as a stay of the withdrawal or corrective action unless the  
20 board or court, for good cause shown, orders otherwise.

21 NEW SECTION. **Sec. 22.** The director may adopt rules to implement  
22 this chapter.

23 NEW SECTION. **Sec. 23.** If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 24.** Sections 1 through 23 of this act shall  
28 constitute a new chapter in Title 51 RCW.

--- END ---