

State of Arkansas

76th General Assembly

Regular Session, 1987 AS ENGROSSED 4/7/87

HOUSE BILL 1747

By: Representatives Allen and Capps

"AN ACT TO AMEND SECTION 1 OF ACT 994 OF 1979, AS AMENDED, THE SAME BEING ARK. STAT. ANN. §81-1336, ELIMINATING THE CERTIFIED AUDITED FINANCIAL STATEMENT REQUIREMENT AS A CONDITION OF OBTAINING WORKER'S COMPENSATION COVERAGE BY MEMBERSHIP IN A SELF INSURED GROUP; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Section 1 of Act 994 of 1979, as amended, the same being Arkansas Statute 81-1336, is hereby amended to read as follows:

"(a) Every employer shall secure the payment of compensation under this Act:

(1) By insuring and keeping insured the payment of such compensation with any carrier authorized to write workmen's compensation insurance;

(2) By furnishing satisfactory proof to the Commission of his financial ability to pay such compensation and receiving an authorization from the Commission to pay such compensation directly. The Commission may, as a condition to such authorization, require such employer to deposit in a depository designated by the Commission either an indemnity bond or securities of any kind and in an amount determined by the Commission, and subject to such conditions as the Commission may prescribe, which shall include authorization to the Commission in case of default to sell any such securities sufficient to pay compensation awards or to bring suit on such bonds, to procure prompt payment of compensation under this Act. Any employer securing compensation in accordance with the provisions of this paragraph shall be known as a self-insurer and shall be classed as a carrier of his own insurance. A self-insurer may have the privilege of securing such portions of the payment of compensation under this Act as he shall elect, by insuring such portions with a company approved by the Commission; and the liability of the company shall

be limited to those features and liabilities of the Act as are expressly stated and none other;

(3) the Commission may, under such rules and regulations as it may prescribe, permit two or more employers engaged in a common type of business activity or pursuit to enter into agreements to pool their liabilities under this Section for the purposes of qualifying as self-insurers and each employer member of such approved group shall be classified as a self-insurer.

Provided, in order to initially qualify as a group self-insurer, the group shall furnish to or satisfy the Commission as to the following:

(a) Application on a form prescribed by the Commission by an elected Board of Trustees to establish a self-insurance fund to be administered under the direction of the Trustees. Such application shall be accompanied by (i) an indemnity agreement in form satisfactory to the Commission jointly and severally binding the group and each member thereof to comply with the provisions of the Arkansas Worker's Compensation Act and (ii) individual application of each member of the group applying for coverage in the fund.

(b) Current audited financial statement of each member of the group showing combined net worth of all members applying for coverage of not less than one million dollars (\$1,000,000), a combined ratio of current assets to current liabilities of not less than one-to-one, and working capital of an amount establishing financial ability and liquidity to pay normal compensation claims promptly.

(c) Deposit and maintain with the Commission acceptable securities, or post a surety bond issued by a corporate surety authorized to do business in the State of Arkansas, in an amount determined by the Commission, but not less than two hundred thousand dollars (\$200,000.00). Provided, however, this subsection shall not be applicable to municipalities, counties or the State of Arkansas and its political subdivisions and any securities or surety bond posted by the foregoing entities in compliance with this subsection shall be released within sixty (60) days from and after the effective date of this Act.

(d) Ample facilities and competent personnel of good character within the group, or through an approved service organization, to service its own program with respect to underwriting matters, claims and adjusting, industrial safety engineering, accounting and financial management.

(e) Excess insurance with an insurance company authorized to do business in this State in an amount acceptable to the Commission. Provided, however, this subsection shall not be applicable to municipalities, counties or the State of Arkansas and its political subdivisions.

(f) Each fund shall file such financial statements, payroll records, accident experience and compensation reports and such other reports and statements at such times and in such manner as the Commission shall require. Any fund which fails or refuses to file such reports within the time limits prescribed by the Commission shall be subject to a civil penalty in such amount as the Commission may prescribe not to exceed one hundred dollars (\$100.00) per infraction per day and such failure or refusal may be considered good cause for revocation or suspension of self-insurance privileges.

(4) Each member of the group shall file such financial reports and statements at such times and in such manner as the Commission may require to satisfy itself as to the continued financial stability of such member.

(5) In order to continue to qualify as a group self-insurer fund, the group shall continue to meet the minimum requirements as set forth in subsection 3 hereof or as prescribed by the Commission.

(6) Notwithstanding any provision herein to the contrary, except for the initial qualification of the group, a certified audited financial statement shall not be required of any member of a group either for initial membership or as a condition for continued membership in the group. Provided, however, each financial statement filed with the Commission shall be duly certified by the president and treasurer of the member in the case of a corporation, and by the owner and general partners, respectively, in the case of an individual proprietorship or partnership, to the effect that such financial statement is true and correct to the best of the knowledge and belief of such officer, individual owner or partner and truly reflects the financial condition of the member.

(7) Jurisdiction for the enforcement or any appeal from the provisions of this Act shall be in the Circuit Court of Pulaski County. The underlying purpose of this Act is to assure the payment of benefits due employees and this Act shall be liberally construed to that end.

(8) Any person who knowingly files a false or fraudulent financial statement under the provisions of this Act shall, upon conviction, be fined not more than ten thousand dollars (\$10,000.00), or imprisoned not more

than five (5) years, or both."

SECTION 2. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 3. It is hereby found and determined by the General Assembly that certified audited financial statements of members of self-insured groups are not necessary after initial formation of the group, are burdensome and add unnecessary expense, and that an acceptable quality of financial statements can be obtained through other means. Many members of existing self-insured groups will be forced to withdraw from such groups unless present law which may be deemed to require certified audited statements is changed. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the public peace, health and safety, shall be in force and effect from and after its passage and approval.

/s/ James C. Allen

