

1 AN ACT  
2 RELATING TO WORKERS' COMPENSATION; REVISING REPORTING  
3 REQUIREMENTS FOR SELF-INSURED GROUPS; AMENDING THE GROUP  
4 SELF-INSURANCE ACT.

5  
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

7 Section 1. Section 52-6-5 NMSA 1978 (being Laws 1986,  
8 Chapter 22, Section 79, as amended) is amended to read:

9 "52-6-5. INITIAL APPROVAL AND CONTINUED APPROVAL TO ACT  
10 AS A GROUP--QUALIFICATIONS.--

11 A. A proposed group shall file with the director  
12 an application for a certificate of approval accompanied by a  
13 nonrefundable filing fee in an amount established by the  
14 director. The application shall include the group's name,  
15 the location of its principal office, the date of  
16 organization, the name and address of each member and such  
17 other information as the director may reasonably require,  
18 together with the following:

19 (1) proof of compliance with the provisions  
20 of Subsection B of this section;

21 (2) a copy of the articles of association,  
22 if any;

23 (3) a copy of agreements with the  
24 administrator and with any service company;

25 (4) a copy of the bylaws of the proposed

1 group;

2 (5) a copy of the agreement between the  
3 group and each member securing the payment of workers'  
4 compensation and occupational disease disablement benefits,  
5 which shall include provision for payment of assessments as  
6 provided for in Section 52-6-20 NMSA 1978;

7 (6) designation of the initial board of  
8 trustees and administrator;

9 (7) the address in this state where the  
10 books and records of the group will be maintained at all  
11 times;

12 (8) a pro-forma financial statement on a form  
13 acceptable to the director showing the financial ability of  
14 the group to pay the workers' compensation and occupational  
15 disease disablement obligations of its members; and

16 (9) proof of payment to the group by each  
17 member of not less than twenty-five percent of that member's  
18 first-year estimated annual net premium on a date approved by  
19 the director. Each payment shall be considered to be part of  
20 the first-year premium payment of each member if the proposed  
21 group is granted a certificate of approval.

22 B. To obtain and to maintain its certificate of  
23 approval, a group shall comply with the following  
24 requirements as well as any other requirements established by  
25 law or regulation not inconsistent with the following:

1                   (1) a combined net worth of all members of a  
2 group of private employers of three million dollars  
3 (\$3,000,000) or greater, as determined by the director;  
4 provided that if a group's annual financial statement for the  
5 prior calendar year shows that at the end of that year the  
6 group had a surplus of at least one-third of its claim  
7 reserves and not less than five million dollars (\$5,000,000),  
8 then for the current calendar year, the group shall not be  
9 required to provide the director with evidence of the net  
10 worth of all of the group's members;

11                   (2) security in a form and amount prescribed  
12 by the director, which shall be provided by either a surety  
13 bond, security deposit or financial security endorsement or  
14 any combination thereof. If a surety bond is used to meet  
15 the security requirement, it shall be issued by a corporate  
16 surety company authorized to transact business in this state.  
17 If a security deposit is used to meet the security  
18 requirement, securities shall be limited to bonds or other  
19 evidences of indebtedness issued, assumed or guaranteed by  
20 the United States or by an agency or instrumentality thereof;  
21 certificates of deposit in a federally insured bank; shares  
22 or savings deposits in a federally insured savings and loan  
23 association or credit union; or any bond or security issued  
24 by a state of the United States and backed by the full faith  
25 and credit of the state. Any such securities shall be

1 deposited with the director and assigned to and made  
2 negotiable by the director pursuant to a trust document  
3 acceptable to the director. Interest accruing on a  
4 negotiable security so deposited shall be collected and  
5 transmitted to the depositor, provided the depositor is not  
6 in default. A financial security endorsement, issued as part  
7 of an acceptable excess insurance contract, may be used to  
8 meet all or part of the security requirement. The bond,  
9 security deposit or financial security endorsement shall be  
10 for the benefit of the state solely to pay claims and  
11 associated expenses and payable upon the failure of the group  
12 to pay workers' compensation or occupational disease  
13 disablement benefits it is legally obligated to pay. The  
14 director may establish and adjust requirements of the amount  
15 of security based on differences among groups in their size,  
16 types of local government services provided by members of the  
17 group, years in existence and other relevant factors;  
18 provided that the director shall not require an amount lower  
19 than one hundred thousand dollars (\$100,000) for any group  
20 during its first year of operation. Subsequent to the first  
21 year of operation, the director may waive the requirements of  
22 this paragraph;

23 (3) specific and aggregate excess insurance  
24 in a form, in an amount and by an insurance company  
25 acceptable to the director. The director may establish

1 minimum requirements for the amount of specific and aggregate  
2 excess insurance based on differences among groups in their  
3 size, types of employment, years in existence and other  
4 relevant factors and may permit a group to meet this  
5 requirement by placing in a designated depository securities  
6 of the type referred to in Paragraph (2) of this subsection;

7 (4) an estimated annual standard premium of  
8 at least two hundred fifty thousand dollars (\$250,000) during  
9 a group's first year of operation. Thereafter, the annual  
10 standard premium shall be at least five hundred thousand  
11 dollars (\$500,000);

12 (5) an indemnity agreement jointly and  
13 severally binding the group and each member of the group to  
14 meet the workers' compensation and occupational disease  
15 disablement obligations of each member. The indemnity  
16 agreement shall be in a form prescribed by the director and  
17 shall include minimum uniform substantive provisions  
18 prescribed by the director. Subject to the director's  
19 approval, a group may add other provisions needed because of  
20 its particular circumstances. The requirements of this  
21 paragraph shall only apply to private employers;

22 (6) a fidelity bond for the administrator in  
23 a form and amount prescribed by the director; and

24 (7) a fidelity bond for the service company  
25 in a form and amount prescribed by the director. The

1 director may also require the service company providing claim  
2 services to furnish a performance bond in a form and amount  
3 prescribed by the director.

4 C. A group shall notify the director of any change  
5 in the information required to be filed under Subsection A of  
6 this section or in the manner of its compliance with  
7 Subsection B of this section no later than thirty days after  
8 that change.

9 D. The director shall evaluate the information  
10 provided by the application required to be filed under  
11 Subsection A of this section to assure that no gaps in  
12 funding exist and that funds necessary to pay workers'  
13 compensation and occupational disease disablement benefits  
14 will be available on a timely basis.

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

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

1 G. Each group shall be deemed to have appointed  
2 the director as its attorney to receive service of legal  
3 process issued against it in this state. The appointment  
4 shall be irrevocable, shall bind any successor in interest  
5 and shall remain in effect as long as there is in this state  
6 any obligation or liability of the group for workers'  
7 compensation or occupational disease disablement benefits."

8 Section 2. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is July 1, 2007.