

New Jersey Department of Labor – Title 34:15-120.15 to 120.30 Creation and Operation of the New Jersey Self-Insurers Guaranty Association

34:15-120.15 Definitions

1. As used in this act:

"Association" means the New Jersey Self-Insurers Guaranty Association created in subsection a. of section 2 of this act.

"Board of directors" or "board" means the board of directors of the association established under section 3 of this act.

"Commissioner" means the Commissioner of Insurance.

"Department" means the Department of Insurance.

"Fund" means the Insolvency Fund created pursuant to section 5 of this act.

"Injured worker" or "employee" means an employee of an employer or a dependent of the employee to whom the employer is obligated to pay compensation pursuant to chapter 15 of Title 34 of the Revised Statutes.

"Insolvent member" means a member employer: (1) (a) which files for relief in bankruptcy under Title 11 of the United States Code, 11 U.S.C. s.101 et seq.; (b) against which involuntary bankruptcy proceedings are filed under that title; or (c) for which a receiver has been appointed by a court of competent jurisdiction; and (2) which is determined to be insolvent by the board as provided in its plan of operation, based upon the member employer's ability to pay compensation pursuant to R.S.34:15-77.

"Member employer" or "member" means a self-insurer which is a member of the association.

"Self-insurer" means an employer, other than a governmental entity, which self-insures for the purposes of workers' compensation as permitted by R.S.34:15-77.

L.1993,c.107,s.1.

34:15-120.16. "New Jersey Self-Insurers Guaranty Association"

2. a. There is created a nonprofit entity to be known as the "New Jersey Self-Insurers Guaranty Association." All self-insurers shall be members of the association as a condition of their authority to self-insure in this State. The association shall perform its functions under a plan of operation as established and approved under section 6 of this act and shall exercise its powers and duties through a board of directors as established under section 3 of this act.

b. A member may voluntarily withdraw from the association when the member voluntarily terminates the self-insurance privilege and pays all assessments due to the date of that termination. However, the withdrawing member shall continue to be bound by the provisions of this act relating to the period of its membership and any claims charged pursuant thereto. A withdrawing member shall also be required to provide to the department upon withdrawal, and at 12-month intervals thereafter, satisfactory proof that it continues to meet the standards of R.S.34:15-77 in relation to claims incurred while the withdrawing member exercised the privilege of self-insurance. Such reporting shall continue until the withdrawing member satisfies the department that there is no remaining value to claims incurred while the withdrawing member was self-insured. If during this reporting period the withdrawing member fails to meet the standards of R.S.34:15-77, the withdrawing member shall thereupon, and at six-month intervals thereafter, provide to the department and the association the certified opinion of an independent actuary who is a member of the American Society of Actuaries of the actuarial present value of the determined and estimated future compensation payments of the withdrawing member for claims incurred while it was a self-insurer, using a discount rate of four percent. With each such opinion, the withdrawing member shall deposit with the

department security in an amount equal to the value certified by the actuary and of a type that is acceptable for the purposes of R.S.34:15-77. The withdrawing member shall continue to provide such opinions and to provide such security until such time as the latest opinion shows no remaining value of claims. The association has a cause of action against a withdrawing member, and against any successor of a withdrawing member, who fails to timely provide the required opinion or who fails to maintain the required deposit with the department. The association shall be entitled to recover a judgment in the amount of the actuarial present value of the determined and estimated future compensation payments of the withdrawing member for claims incurred during the time that the withdrawing member exercised the privilege of self-insurance, together with reasonable attorney's fees. For purposes of this section, the "successor of a withdrawing member" means any person, business entity, or group of persons or business entities, which holds or acquires legal or beneficial title to the majority of the assets or the majority of the shares of the withdrawing member.

L.1993,c.107,s.2.

34:15-120.17. Board of directors

3. The board of directors of the association shall consist of five persons and shall be organized as established in the plan of operation. With respect to initial appointments, the commissioner shall, within 180 days of the effective date of this act, approve and appoint to the board persons who are employed or who have been employed by a self-insurer in this State required to become a member of the association pursuant to the provisions of section 2 of this act and are, or were, as the case may be, responsible for the administration of workers' compensation for that self-insurer for at least five years and who are recommended by the self-insurers in this State required to become members of the association pursuant to the provisions of section 2 of this act. If the commissioner finds that any person so recommended does not have the necessary qualifications for service on the board and a majority of the board has been appointed, the commissioner shall request the directors thus far approved and appointed to recommend another person for appointment to the board. Each director shall serve for a four-year term and may be reappointed. Appointments other than initial appointments shall be made by the commissioner upon recommendation of members of the association. Any vacancy on the board shall be filled for the remaining period of the term in the same manner as appointments other than initial appointments are made. Each director may be reimbursed from assets of the association for expenses incurred in carrying out the duties of the board on behalf of the association.

L.1993,c.107,s.3.

34:15-120.18. Association obligated for payment of compensation; powers; assessments

4. a. Upon creation of the Insolvency Fund pursuant to the provisions of section 5 of this act, the association is obligated for payment of compensation under chapter 15 of Title 34 of the Revised Statutes to insolvent members' employees resulting from: (1) incidents and injuries existing prior to the member becoming an insolvent member; and (2) incidents and injuries occurring after the member has become an insolvent member, if the employee makes timely claim for those payments according to procedures set forth by a court of competent jurisdiction over the delinquency or bankruptcy proceedings of the insolvent member. Such obligation includes only that amount due the injured worker or workers of the insolvent member under chapter 15 of Title 34 of the Revised Statutes. In no event is the association obligated to a claimant in an amount in excess of the obligation of the insolvent member. The association shall be deemed the insolvent member for purposes of chapter 15 of Title 34 of the Revised Statutes to the extent of its obligation on the covered claims and, to that extent, shall have all rights, duties and obligations of the insolvent member as if the member had not become insolvent. However, in no event shall the association be liable for any penalties or interest or for compensation payments which were due before the member became an insolvent member.

b. The association may:

- (1) Employ or retain those persons necessary to handle claims and perform other duties of the association.
- (2) Borrow funds necessary to effect the purposes of this act in accordance with the plan of operation.

(3) Sue or be sued.

(4) Negotiate and become a party to those contracts as are necessary to carry out the purposes of this act.

(5) Purchase reinsurance as it determines necessary pursuant to the plan of operation.

(6) Review all applicants for membership in the association. Prior to a final determination by the department as to whether or not to approve any applicant for membership in the association, the association may issue opinions to the department concerning any applicant, which opinions shall be considered by the department prior to any final determination.

(7) Charge fees to any member of the association to cover the actual costs of examining the financial condition of that member.

(8) Charge an applicant for membership in the association a fee sufficient to cover the actual costs of examining the financial condition of the applicant.

c. (1) To the extent necessary to secure funds for the payment of covered claims and also to pay the reasonable costs to administer them, the association shall levy assessments on its members. The assessment charged to each member shall be in the proportion that the member's compensation payments during the 12-month period ending on the June 30th immediately preceding the date of the assessment bear to the total compensation payments made by all members during that period. The assessment levied against any member in any one year shall be in an amount not exceeding 1.5 percent of the total compensation paid by the member during the 12-month period ending on the June 30th immediately preceding the date of the assessment, except that the association shall increase the assessment to not more than two percent each year as needed to establish and sustain a prefunded reserve of \$1,000,000. Assessments shall be administered by the board of directors in the manner specified by the plan of operation. Each member so assessed shall have at least 30 days' written notice as to the date the assessment is due and payable. The association shall levy assessments against any newly admitted member of the association so that the basis of contribution of any newly admitted member is the same as previously admitted members, provision for which shall be contained in the plan of operation.

(2) If, in any one year, funds available from such assessments, together with funds previously raised, are not sufficient to make all the payments or reimbursements then owing, the funds available shall be prorated, and the unpaid portion shall be paid as soon thereafter as sufficient additional funds become available.

(3) No State funds of any kind shall be allocated or paid to the association or any of its accounts.

d. The association shall make every reasonable effort and undertake all appropriate actions to obtain from an insolvent member whatever funds are needed to pay compensation due to employees of the insolvent member.

L.1993,c.107,s.4.

34:15-120.19. Insolvency Fund

5. Upon the adoption of a plan of operation or the adoption of rules by the commissioner pursuant to subsection a. of section 6 of this act, there shall be created an Insolvency Fund to be managed by the association.

a. The Insolvency Fund is created for purposes of meeting the obligations of insolvent members incurred while members of the association and other insolvent self-insurers as provided in section 15 of this act and after the exhaustion of any bond, as required under chapter 15 of Title 34 of the Revised Statutes. However, if the bond, surety, or reinsurance policy is payable to the association, the association shall commence to provide benefits out of the fund and be reimbursed from the bond, surety, or reinsurance policy. The method of operation of the fund shall be defined in the plan of operation pursuant to section 6 of this act.

b. The department shall have the authority to audit the financial soundness of the fund annually.

c. The commissioner may offer certain amendments to the plan of operation to the board of directors for purposes of assuring the ongoing financial soundness of the fund and its ability to meet the obligations of this act.

d. The department actuary may make recommendations to improve the orderly payment of claims.

L.1993,c.107,s.5.

34:15-120.20. Plan of operation

6. a. (1) Within one year of the effective date of this act, the board of directors shall submit to the commissioner a proposed plan of operation for the fair, reasonable and equitable administration of the association and the fund. The plan of operation, and any amendments thereto, shall take effect upon approval in writing by the commissioner.

(2) If the board of directors fails to submit a plan within one year of the effective date of this act, or thereafter fails to submit any acceptable amendments to the plan, the commissioner shall promulgate the rules necessary to effectuate the provisions of this section. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the board of directors and approved by the commissioner.

b. The plan of operation shall establish the programs necessary to protect against the insolvency of a member of the association and shall provide that the members of the association shall be responsible for maintaining an adequate fund to meet the obligations of insolvent members and other insolvent self-insurers provided for under this act and the board of directors is authorized to contract and employ those persons with the necessary expertise to carry out these stated purposes.

c. All member employers shall comply with the plan of operation.

d. The plan of operation shall:

(1) Establish the procedures whereby all the powers and duties of the association under sections 4 and 15 of this act will be performed.

(2) Establish procedures for handling assets of the association.

(3) Establish the amount and method of reimbursing members of the board of directors under section 3 of this act.

(4) Establish procedures and standards for determining the insolvency of member employers pursuant to the provisions of this act.

(5) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent member shall be deemed notice to the association or its agent, and a list of those claims shall be submitted periodically to the association or similar organization in another state by the receiver or liquidator.

(6) Establish regular places and times for meetings of the board of directors.

(7) Establish procedures for records to be kept of all financial transactions of the association and its agents and the board of directors.

(8) Provide that any member employer aggrieved by any final action or decision of the association may appeal to the department within 30 days after the action or decision.

(9) Establish the procedures whereby recommendations of candidates for the board of directors shall be submitted to the commissioner.

(10) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

e. The plan of operation may provide that any or all of the powers and duties of the association, except those specified under paragraphs (1), (2) and (4) of subsection d. of this section, be delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association or its equivalent in two or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation of powers or duties under this subsection shall take effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization which extends protection which is not substantially less favorable and effective than the protection provided by this act.

L.1993,c.107,s.6.

34:15-120.21 Written notice of bankruptcy proceedings, determination of insolvency

7. a. A member employer which files for relief in bankruptcy under Title 11 of the United States Code, 11 U.S.C. s.101 et seq.; or against which involuntary bankruptcy proceedings are filed under that title; or for which a receiver is appointed by a court of competent jurisdiction, shall file written notice of that fact with the commissioner and the board of directors of the association within 30 days of the occurrence of such an event.

b. Upon receipt of the notice required by subsection a. of this section, the board shall review the member employer's ability to pay compensation pursuant to R.S.34:15-77 and make a determination as to insolvency. If the board determines at any time that the member employer is insolvent, it shall notify the commissioner and the members of the association not later than three business days after the determination of insolvency.

L.1993,c.107,s.7.

34:15-120.22. Powers of department

8. The department may:

a. Require that the association notify other interested parties of the determination of insolvency and of their rights under this act. Notification shall be by mail at the last known address thereof when available; but, if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

b. Suspend or revoke the authority of any member employer failing to pay an assessment when due or failing to comply with the plan of operation to self-insure in this State. As an alternative, the department may levy a fine on any member employer failing to pay an assessment when due. Such fine shall not exceed five percent of the unpaid assessment per month, except that no fine shall be less than \$100 per month.

L.1993,c.107,s.8.

34:15-120.23. Assignment of rights to association

9. a. Any person who recovers from the association under this act shall be deemed to have assigned his rights to the association to the extent of that recovery. Every claimant seeking the protection of this act shall cooperate with the association to the same extent as that person would have been required to cooperate with the insolvent member. The association shall have no cause of action against the employee of the insolvent member for any sums the association has paid out, except those causes of action which the insolvent member would have had if the sums had been paid by the insolvent member. In the case of an insolvent member operating with assessment liability, payments of claims by the association shall not operate to reduce the liability of the insolvent member to the receiver, liquidator, or statutory successor for unpaid assessments.

b. The receiver, liquidator, or statutory successor of an insolvent member shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant those claims priority against the assets of the insolvent member equal to that to which the claimant would have been

entitled in the absence of this act. The expense of the association or similar organization in handling claims shall be accorded the same priority as the expenses of the liquidator.

c. The association shall file periodically with the receiver or liquidator of the insolvent member statements of the covered claims paid by the association and estimates of anticipated claims on the association, which shall preserve the rights of the association against the assets of the insolvent member.

L.1993,c.107,s.9.

34:15-120.24. Detection, prevention of employer insolvencies

10. To aid in the detection and prevention of employer insolvencies:

a. Upon determination by majority vote of the membership of the board that any member employer may be insolvent or in a financial condition hazardous to the employees thereof or to the public, it shall be the duty of the board of directors to notify the department of any information indicating that condition.

b. The board of directors may, upon majority vote of the membership of the board, request that the department determine the condition of any member employer which the board in good faith believes may no longer be qualified to be a member of the association. Within 30 days of the receipt of that request or, for good cause shown, within a reasonable time thereafter, the department shall make such determination and shall forthwith advise the board of its findings. Each request for a determination shall be kept on file by the department, but the request shall not be open to public inspection prior to the release of the determination to the public.

c. It shall also be the duty of the department to report to the board of directors when it has reasonable cause to believe that a member employer may be in such a financial condition as to be no longer qualified to be a member of the association.

d. The board of directors may, upon majority vote of the membership of the board, make reports and recommendations to the department upon any matter which is germane to the solvency, liquidation, rehabilitation, or conservation of any member employer. Such reports and recommendations shall not be considered public documents.

e. The board of directors may, upon majority vote of the membership of the board, make recommendations to the department for the detection and prevention of employer insolvencies.

f. The board of directors shall, at the conclusion of any member's insolvency in which the association was obligated to pay covered claims, prepare a report on the history and cause of that insolvency, based on the information available to the association, and shall submit that report to the department.

L.1993,c.107,s.10.

34:15-120.25. Examination, regulation of association

11. The association shall be subject to examination and regulation by the department. No later than March 30 of each year, the board of directors shall submit a financial report for the preceding calendar year in a form approved by the department.

L.1993,c.107,s.11.

34:15-120.26. Immunity from liability

12. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member employer, the association or its agents or employees, the board of directors, or the department or its representatives for any action or omission by them in the performance of their powers and duties under this act.

L.1993,c.107,s.12.

34:15-120.27. Stay of proceedings

13. a. All proceedings in which an insolvent member is a party, or is obligated to defend a party, in any court or before any quasi-judicial body or administrative board in this State shall be stayed for up to six months, or for such additional period from the date the member becomes insolvent, as is deemed necessary by a court of competent jurisdiction to permit proper defense by the association of all pending causes of action as to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent member. The association, either on its own behalf or on behalf of the insolvent member, may apply to have that judgment, order, decision, verdict or finding set aside by the same court or administrator that made that judgment, order, decision, verdict or finding and shall be permitted to defend against that claim on the merits. If requested by the association, the stay of proceedings may be shortened or waived.

b. In any proceeding in bankruptcy in which the payment of benefits has been stayed, the association shall appear and move to lift the stay so that the orderly administration of claims can proceed.

L.1993,c.107,s.13.

34:15-120.28. Deadline for filing claims

14. Notwithstanding any other provision of chapter 15 of Title 34 of the Revised Statutes, a covered claim, as defined therein, with respect to which settlement is not effected and pursuant to which suit is not instituted against the insured of an insolvent member or the association within one year after the deadline for filing claims with the receiver of the insolvent member, or any extension of the deadline, shall thenceforth be barred as a claim against the association.

L.1993,c.107,s.14.

34:15-120.29. Additional obligations of association

15. In addition to its obligation to pay compensation to the employees of insolvent members pursuant to section 4 of this act, the association shall be obligated for payment of compensation under chapter 15 of Title 34 of the Revised Statutes to the employees of any self-insurer declared to be insolvent by a court of competent jurisdiction on or after October 1, 1990, but prior to the effective date of this act, as if that self-insurer were an insolvent member subject to the provisions of this act.

L.1993,c.107,s.15.

34:15-120.30 Construction of act

16. This act shall not be construed as reducing, to any degree or in any way, the responsibility of the commissioner to exercise caution in authorizing any employer to become a self-insured employer, or the commissioner's responsibility to require guarantees, reserve funds, surety bonds or partial insurance as needed to provide adequate assurance of the employer's ability to pay compensation pursuant to R.S.34:15-77. The purpose of the association is to provide an assurance of the payment of workers' compensation to the employees of insolvent members, not to exempt any employer, even an insolvent employer, from the responsibility to provide workers' compensation to victims of workplace injury or illness, or to reduce, to any degree or in any way, the responsibility of a self-insured employer to provide appropriate guarantees, funds, bonds or other assurances that compensation will be available pursuant to R.S.34:15-77.

L.1993,c.107,s.16.