

## CHAPTER 79A

## WORKERS' COMPENSATION SELF-INSURANCE

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**79A.01 DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of sections 79A.01 to 79A.17 and Laws 1988, chapter 674, section 23, the terms defined in this section have the meaning given them.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of commerce except where specifically stated otherwise.

Subd. 3. **Incurred liabilities for the payment of compensation.** "Incurred liabilities for the payment of compensation" means the sum of both of the following:

(1) an estimate of future workers' compensation benefits, including medical and indemnity; and

(2) an amount determined by the commissioner to be reasonably adequate to assure the administration of claims, including legal costs, but not to exceed ten percent of future workers' compensation benefits.

Subd. 4. **Insolvent self-insurer.** "Insolvent self-insurer" means either a member private self-insurer who has failed to pay compensation as a result of a declaration of bankruptcy or insolvency by a court of competent jurisdiction and whose security deposit has been called by the commissioner pursuant to chapter 176, or a member self-insurer who has failed to pay compensation and who has been issued a certificate of default by the commissioner and whose security deposit has been called by the commissioner pursuant to chapter 176.

Subd. 5. **Member.** "Member" means a private self-insurer which participates in the self-insurers' security fund.

Subd. 6. **Private self-insurer.** "Private self-insurer" means a member private employer which is self-insured or a group which is self-insured against liability for workers' compensation under chapter 176. It does not include the state of Minnesota or its political subdivisions.

Subd. 7. **Security fund.** "Security fund" means the self-insurers' security fund established pursuant to this chapter.

Subd. 8. **Trustees.** "Trustees" means the board of trustees of the self-insurers' security fund.

Subd. 9. **Certificate of default.** "Certificate of default" means a notice issued by the commissioner of commerce based upon information received from the commissioner of labor and industry, that a private self-insurer has failed to pay compensation as required by chapter 176.

**History:** 1988 c 674 s 1

**79A.02 SELF-INSURERS' ADVISORY COMMITTEE.**

Subdivision 1. **Membership.** For the purposes of assisting the commissioner, there

is established a workers' compensation self-insurers' advisory committee of five members that are employers authorized to self-insure in Minnesota. Three of the members shall be elected by the members of the self-insurers' security fund and two shall be appointed by the commissioner.

**Subd. 2. Advice to commissioner.** At the request of the commissioner, the committee shall meet and shall advise the commissioner with respect to whether or not an applicant to become a private self-insurer in the state of Minnesota has met the statutory requirements to self-insure. The committee shall advise the commissioner if it has any information that any private self-insurer may become insolvent.

**History:** 1988 c 674 s 2

### 79A.03 SELF-INSURANCE APPLICATIONS.

**Subdivision 1. Procedure.** Each employer desiring to self-insure individually shall apply to the commissioner on forms available from the commissioner. The commissioner shall grant or deny the application within 60 days after a complete application is filed. The time limit may be extended for another 30 days upon 15 days' prior notice to the applicant. Any grant of authority to self-insure shall continue in effect until revoked by order of the commissioner or until such time as the employer becomes insured.

**Subd. 2. Certified financial statement.** Each application for self-insurance shall be accompanied by a certified financial statement. Certified financial statements for a period ending more than six months prior to the date of the application must be accompanied by an affidavit, signed by a company officer under oath, stating that there has been no material lessening of the net worth nor other adverse changes in its financial condition since the end of the period. The commissioner may require additional financial information necessary to carry out the purpose of this chapter.

**Subd. 3. Net worth.** Each individual self-insurer shall have and maintain a net worth at least equal to the greater of ten times the retention limit selected with the workers' compensation reinsurance association or one-third the amount of the self-insurer's current annual modified premium. The requirements of this subdivision shall be modified if the self-insurer can demonstrate through a reinsurance program, other than coverage provided by the workers' compensation reinsurance association, that it can pay expected losses without endangering the financial stability of the company.

**Subd. 4. Assets, net worth, and liquidity.** Each individual self-insurer shall have and maintain sufficient assets, net worth, and liquidity to promptly and completely meet all of its obligations that may arise under chapter 176 or this chapter. In determining whether a self-insurer meets this requirement, the commissioner shall consider the self-insurer's current ratio; its long-term and short-term debt to equity ratios; its net worth; financial characteristics of the particular industry in which the self-insurer is involved; any recent changes in the management and ownership of the company; any excess insurance purchased by the self-insurer from a licensed company or an authorized surplus line carrier, other than excess insurance from the workers' compensation reinsurance association; any other financial data submitted to the commissioner by the company; and the company's workers' compensation experience for the last four years.

**Subd. 5. Guarantee by affiliates.** Where an employer seeking to self-insure fails to meet the financial requirements set forth in subdivisions 3 and 4, the commissioner shall grant authority to self-insure provided that an affiliated company, whose financial statement is filed with the commissioner and meets the requirements set forth in subdivisions 3 and 4, provides a written guarantee adopted by resolution of its board of directors that it will pay all workers' compensation claims incurred by its affiliate, and that it will not terminate the guarantee under any circumstances without first giving the commissioner and its affiliate 30 days' written notice. If said guarantee is withdrawn or if the guarantor ceases being an affiliate, the affiliate shall give written notice to the commissioner and the self-insured. The self-insured's authority to self-insure shall automatically terminate upon expiration of the 30-day notice period.

**Subd. 6. Applications for group self-insurance.** (a) Two or more employers may apply to the commissioner for the authority to self-insure as a group, using forms available from the commissioner. This initial application shall be accompanied by a copy of the bylaws or plan of operation adopted by the group. Such bylaws or plan of operation shall conform to the conditions prescribed by law or rule. The commissioner shall approve or disapprove the bylaws within 60 days unless a question as to the legality of a specific bylaw or plan provision has been referred to the attorney general's office. The commissioner shall make a determination as to the application within 15 days after receipt of the requested response from the attorney general's office.

(b) After the initial application and the bylaws or plan of operation have been approved by the commissioner or at the time of the initial application, the group shall submit the names of employers that will be members of the group; an indemnity agreement providing for joint and several liability for all group members for any and all workers' compensation claims incurred by any member of the group, as set forth in Minnesota Rules, part 2780.9920, signed by an officer of each member; and an accounting review performed by a certified public accountant. A certified financial audit may be filed in lieu of an accounting review.

**Subd. 7. Financial standards.** A group proposing to self-insure shall have and maintain:

(a) A combined net worth of all of the members of an amount at least equal to the greater of ten times the retention selected with the workers' compensation reinsurance association or one-third of the current annual modified premium of the members. The requirements of this paragraph shall be modified if the self-insurer can demonstrate that through excess insurance, other than coverage provided by the workers' compensation reinsurance association, it can pay expected losses.

(b) Sufficient assets, net worth, and liquidity to promptly and completely meet all obligations of its members under chapter 176 or this chapter. In determining whether a group is in sound financial condition, consideration shall be given to the combined net worth of the member companies; the consolidated long-term and short-term debt to equity ratios of the member companies; any excess insurance other than reinsurance with the workers' compensation reinsurance association, purchased by the group from an insurer licensed in Minnesota or from an authorized surplus line carrier; other financial data requested by the commissioner or submitted by the group; and the combined workers' compensation experience of the group for the last four years.

**Subd. 8. Processing application.** The commissioner shall grant or deny the group's application to self-insure within 60 days after a complete application has been filed, provided that the time may be extended for an additional 30 days upon 15 days' prior notice to the applicant. The commissioner shall grant approval for self-insurance upon a determination that the financial ability of the self-insurer's group is sufficient to fulfill all joint and several obligations of the member companies that may arise under chapter 176 or this chapter; the gross annual premium of the group members is at least \$300,000; the group has established a fund pursuant to Minnesota Rules, parts 2780.4100 to 2780.5000; the group has contracted with a licensed workers' compensation service company to administer its program; and the required securities or surety bond shall be on deposit prior to the effective date of coverage for any member. Approval shall be effective until revoked by order of the commissioner or until the employer members of the group become insured.

**Subd. 9. Filing reports.** (a) Incurred losses, paid and unpaid, specifying indemnity and medical losses by classification, payroll by classification, and current estimated outstanding liability for workers' compensation shall be reported to the commissioner by each self-insurer on a calendar year basis, in a manner and on forms available from the commissioner. Payroll information must be filed by April 1 of the following year, and loss information and total workers' compensation liability must be filed by August 1 of the following year.

(b) Each self-insurer shall, under oath, attest to the accuracy of each report submitted pursuant to paragraph (a). Upon sufficient cause, the commissioner shall require

the self-insurer to submit a certified audit of payroll and claim records conducted by an independent auditor approved by the commissioner, based on generally accepted accounting principles and generally accepted auditing standards, and supported by an actuarial review and opinion of the future contingent liabilities. The basis for sufficient cause shall include the following factors: where the losses reported appear significantly different from similar types of businesses; where major changes in the reports exist from year to year, which are not solely attributable to economic factors; or where the commissioner has reason to believe that the losses and payroll in the report do not accurately reflect the losses and payroll of that employer. If any discrepancy is found, the commissioner shall require changes in the self-insurer's or workers' compensation service company record keeping practices.

(c) With the annual loss report due August 1, each self-insurer shall report to the commissioner any workers' compensation claim from the previous year where the full, undiscounted value is estimated to exceed \$50,000, in a manner and on forms prescribed by the commissioner.

(d) Each individual self-insurer shall, within four months after the end of its fiscal year, annually file with the commissioner its latest 10K report required by the Securities and Exchange Commission. If an individual self-insurer does not prepare a 10K report, it shall file an annual certified financial statement, together with such other financial information as the commissioner may require to substantiate data in the financial statement.

(e) Each group self-insurer shall, within four months after the end of the fiscal year for that group, annually file a statement showing the combined net worth of its members based upon an accounting review performed by a certified public accountant, together with such other financial information the commissioner may require to substantiate data in the group's summary statement.

(f) In addition to the financial statements required by paragraphs (d) and (e), interim financial statements or 10Q reports required by the Securities and Exchange Commission may be required by the commissioner upon an indication that there has been deterioration in the self-insurer's financial condition, including a worsening of current ratio, lessening of net worth, net loss of income, the downgrading of the company's bond rating, or any other significant change that may adversely affect the self-insurer's ability to pay expected losses. Any self-insurer that files an 8K report with the Securities and Exchange Commission shall also file a copy of the report with the commissioner within 30 days of the filing with the Securities and Exchange Commission.

**Subd. 10. Annual audit.** The accounts and records of the group self-insurer's fund shall be audited annually. Audits shall be made by certified public accountants, based on generally accepted accounting principles and generally accepted auditing standards, and supported by actuarial review and opinion of the future contingent liabilities, in order to determine the solvency of the self-insurer's fund. All audits required by this subdivision shall be filed with the commissioner 90 days after the close of the fiscal year for the group self-insurer. The commissioner may require a special audit to be made at other times if the financial stability of the fund or the adequacy of its monetary reserves is in question.

**Subd. 11. Joint and several liability.** All members of a private self-insurer group shall be jointly and severally liable for the obligations incurred by any member of the same group under chapter 176.

**Subd. 12. Commissioner review.** The commissioner shall annually review the documents and reports filed by the private self-insurer.

**History:** 1988 c 674 s 3

#### **79A.04 PRIVATE SELF-INSURING EMPLOYER; ANNUAL RENEWAL OR DEPOSIT OF NEW SECURITY FOR PAYMENT OF COMPENSATION.**

**Subdivision 1. Annual securing of liability.** Each year every private self-insuring employer shall secure incurred liabilities for the payment of compensation and the per-

formance of the obligations of employers imposed under chapter 176 by renewing the prior year's security deposit or by making a new deposit of security. If a new deposit is made, it must be posted within 60 days of the filing of the self-insured employer's annual report with the commissioner, but in no event later than July 1.

**Subd. 2. Minimum deposit.** The minimum deposit is 110 percent of the private self-insurer's estimated future liability. Up to ten percent of that deposit may be used to secure payment of all administrative and legal costs relating to or arising from the employer's self-insuring. As used in this section, "private self-insurers' estimated future liability" means the private self-insurers' total of estimated future liability as determined by a member of the casualty actuarial society every two years for nongroup member private self-insurers, and every year for group member private self-insurers. Estimated future liability is determined by first taking the total amount of the self-insured's future liability of workers' compensation claims and then deducting the total amount which is estimated to be returned to the self-insurer from any specific excess insurance coverage, aggregate excess insurance coverage, and any supplementary benefits or second injury benefits which are estimated to be reimbursed by the special compensation fund. Supplementary benefits or second injury benefits will not be reimbursed by the special compensation fund unless the special compensation fund assessment pursuant to section 176.129 is paid and the reports required thereunder are filed with the special compensation fund. In the case of surety bonds, bonds shall secure administrative and legal costs in addition to the liability for payment of compensation reflected on the face of the bond. In no event shall the security be less than the last retention limit selected by the self-insurer with the workers' compensation reinsurance association. The posting or depositing of security pursuant to this section shall release all previously posted or deposited security from any obligations under the posting or depositing and any surety bond so released shall be returned to the surety. Any other security shall be returned to the depositor or the person posting the bond.

**Subd. 3. Type of acceptable security.** The commissioner may only accept as security, and the employer shall deposit as security, cash, approved government securities, surety bonds, or irrevocable letters of credit in any combination. Interest or dividend income or other income generated by the security shall be paid to the member or, at the member's direction, applied to the member's security requirement. The current deposit shall include within its coverage all amounts covered by terminated surety bonds. As used in this chapter, an irrevocable letter of credit shall be accepted only if it is clean, irrevocable, and contains an evergreen clause.

(a) "Clean" means a letter of credit that is not conditioned on the delivery of any other documents or materials.

(b) "Irrevocable" means a letter of credit that cannot be modified or revoked without the consent of the beneficiary, once the beneficiary is established.

(c) "Evergreen clause" means one which specifically states that expiration of a letter of credit will not take place without a 60-day notice by the insurer and one which allows the issuer to conduct an annual review of the account party's financial condition. If prior notice of expiration is not given by the issuer, the letter of credit is automatically extended for one year.

A clean irrevocable letter of credit shall be accepted only if it is in the form prescribed by statute and is issued by a financial institution that is authorized to engage in banking in any of the 50 states or under the laws of the United States and whose business is substantially confined to banking and supervised by the state commissioner of commerce or banking or similar official, and which has a long-term debt rating by a recognized national rating agency of investment grade or better. If no long-term debt rating is available, the financial institution must have the equivalent investment grade financial characteristics.

**Subd. 4. Deposit of security.** Surety bonds, irrevocable letters of credit, and documents showing issuance of any irrevocable letter of credit shall be deposited with, and, except where specified by statute, in a form approved by the commissioner.

**Subd. 5. Deposit with state treasurer.** Securities shall be deposited on behalf of the

commissioner by the self-insured employer with the state treasurer or a financial institution approved by the commissioner. Securities shall be accepted by the state treasurer for deposit and shall be withdrawn only upon written order of the commissioner.

**Subd. 6. Cash deposits.** Cash shall be deposited in a financial institution approved by the commissioner and in the account assigned to the state treasurer. Cash shall be withdrawn only upon written order of the commissioner.

**Subd. 7. Perfection of security.** Upon the commissioner sending a request to renew, request to post, or request to increase a security deposit, a perfected security interest is created in the private self-insured's assets in favor of the commissioner to the extent of any then unsecured portion of the self-insured's incurred liabilities. That perfected security interest is transferred to any cash or securities thereafter posted by the private self-insured with the state treasurer and is released only upon either of the following:

(1) the acceptance by the commissioner of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for the payment of compensation; or

(2) the return of cash or securities by the commissioner.

The private self-insured employer loses all right, title, and interest in and any right to control all assets or obligations posted or left on deposit as security. In the event of a declaration of bankruptcy or insolvency by a court of competent jurisdiction, or in the event of the issuance of a certificate of default by the commissioner, the commissioner shall liquidate the deposit as provided in this chapter, and transfer it to the self-insurer's security fund for application to the self-insured employer's incurred liability.

**Subd. 8. Return of excess amounts of security to private self-insured employer.** The commissioner shall return on an annual basis to a private self-insured employer all amounts of security determined by the commissioner to be in excess of the statutory requirements to self-insure, including that necessary for administrative costs and legal fees, and the payment of any future workers' compensation claims.

**Subd. 9. Insolvency, bankruptcy, or default; utilization of security deposit.** The commissioner of labor and industry shall notify the commissioner and the security fund if the commissioner of labor and industry has knowledge that any private self-insurer has failed to pay workers' compensation benefits as required by chapter 176. If the commissioner determines that a court of competent jurisdiction has declared the private self-insurer to be bankrupt or insolvent, and the private self-insurer has failed to pay workers' compensation as required by chapter 176 or, if the commissioner issues a certificate of default against a private self-insurer for failure to pay workers' compensation as required by chapter 176, then the security deposit shall be utilized to administer and pay the private self-insurers' workers' compensation obligations.

**Subd. 10. Notice; obligation of fund.** In the event of bankruptcy, insolvency, or certificate of default, the commissioner shall immediately notify by certified mail the state treasurer, the surety, the issuer of an irrevocable letter of credit, and any custodian of the security required in this chapter. At the time of notification, the commissioner shall also call the security and transfer and assign it to the self-insurers' security fund. The commissioner shall also immediately notify by certified mail the self-insurers' security fund, and order the security fund to assume the insolvent self-insurers' obligations for which it is liable under chapter 176. The security fund shall commence payment of these obligations within 14 days of receipt of this notification and order. Payments shall be made to claimants whose entitlement to benefits can be ascertained by the security fund, with or without proceedings before the department of labor and industry, the office of administrative hearings, the workers' compensation court of appeals, or the Minnesota supreme court. Upon the assumption of obligations by the security fund pursuant to the commissioner's notification and order, the security fund has the right to immediate possession of any posted or deposited security and the custodian, surety, or issuer of any irrevocable letter of credit or the commissioner, if in possession of it, shall turn over the security, proceeds of the surety bond, or letter of credit to the security fund together with the interest that has accrued since the date of the self-insured employer's insolvency. The self-insurers' security fund may administer payment of benefits or it may retain a third-party administrator to do so.

Subd. 11. **Priority.** Notwithstanding anything in this chapter to the contrary, any cash, securities, irrevocable letter of credit, specific excess or aggregate excess insurance proceeds, or any other security deposited or posted in accordance with this section shall be used first, when due, to pay workers' compensation claims. After that security has been exhausted, the payment of workers' compensation claims from self-insurers' security fund members' assessments may be made. Where the self-insurers' security fund member assessment account is used to pay workers' compensation claims on an emergency or an interim basis, pending receipt by the self-insurers' security fund of security which is due but not yet received, then the member assessment account shall be reimbursed for payment from the security when it is received, and the priorities stated above shall thereafter apply.

Subd. 12. **Duty to inform.** The commissioner shall be provided with any relevant information by the employer, any excess insurer, any third party administrator, or any issuer of any irrevocable letter of credit, issuer of any surety bond, or custodian of any security necessary for the commissioner to carry out the commissioner's obligations under this chapter. The commissioner shall provide this information to the self-insurers' security fund if necessary for the security fund to carry out its obligations under this chapter.

Subd. 13. **Discharge and release.** The payment of benefits by the self-insurers' security fund from security deposit proceeds shall release and discharge any custodian of the security deposit, surety, any issuer of a letter of credit, and the self-insured employer from liability to fulfill obligations to provide those same benefits as compensation, but does not release any person or entity from any liability to the security fund for full reimbursement. Any decision or determination made or any settlement approved by the commissioner or by an administrative law judge under subdivision 15 shall conclusively be presumed valid and binding as to all known claims arising out of the underlying dispute, unless an appeal is made pursuant to chapter 14. No security shall be exchanged more often than once every 90 days.

Subd. 14. **Notice to security fund.** The commissioner shall advise the self-insurers' security fund promptly after the receipt of information indicating that a private self-insurer may be unable to meet its compensation obligations. The commissioner shall advise the self-insurers' security fund of all determinations and directives and orders made or issued pursuant to this section.

Subd. 15. **Dispute resolution; appeals.** Disputes concerning the posting, renewal, termination, exoneration, or return of all or any portion of the security deposit, or any liability arising out of the posting or failure to post security, or adequacy of the security or reasonableness of administrative costs, including legal fees, and arising between or among a surety, the issuer of an agreement of assumption and guarantee of workers' compensation liabilities, the issuer of a letter of credit, any custodian of the security deposit, a private self-insurer, or the self-insurers' security fund shall be resolved by the commissioner. An appeal from the commissioner's written decision, determination, or order may be instituted pursuant to the contested case procedures of chapter 14. Payment of claims from the security deposit or by the self-insurers' security fund shall not be stayed pending the resolution of the disputes unless and until the administrative law judge issues a determination staying a payment of claims decision or determination of the commissioner or the self-insurers' security fund.

Subd. 16. **Certificate to self-insure; revocation.** If, following a private self-insurer's bankruptcy, insolvency, or certificate of default, the commissioner calls its security and proceeds in accordance with this section, the commissioner shall revoke the certificate to self-insure of the private self-insurer as soon as practicable but no later than 30 days after its security has been called.

**History:** 1988 c 674 s 4

#### **79A.05 REVOCATION OF CERTIFICATE TO SELF-INSURE.**

A certificate to self-insure may be revoked by the commissioner at any time for good cause. After revocation, the self-insurer may request a hearing. Good cause

includes, among other things, failure to maintain a security deposit as required by this chapter, failure to pay assessments of the self-insurers' security fund, or the failure or inability of the employer to fulfill obligations under chapter 176 or this chapter. Good cause also includes failure to provide proof of renewal of the security 15 days before its expiration.

A self-insured employer must comply with section 176.181 and all applicable rules to operate during the pendency of its appeal of a decision under this section.

**History:** 1988 c 674 s 5

#### **79A.06 THIRD-PARTY ADMINISTRATOR.**

**Subdivision 1. Certificate to self-insure.** No person, firm, or corporation, other than an insurer admitted to transact workers' compensation insurance in this state, shall contract to administer claims of self-insured employers as a third-party administrator unless qualified to do so pursuant to section 60A.23, subdivision 8.

**Subd. 2. Local office.** A third-party administrator who contracts to administer claims of a self-insured employer shall maintain an office in the state of Minnesota and shall be subject to regulation under this chapter and chapters 60A and 72A with respect to the adjustment, administration, and management of workers' compensation claims for any self-insured employer.

**Subd. 3. Annual estimate of liability.** A third-party administrator retained by a self-insured employer to administer the employer's workers' compensation claims shall estimate the total accrued liability of the employer for the payment of compensation for the employer's annual report to the commissioner and shall make the estimate both in good faith and with the exercise of a reasonable degree of care. The use of a third-party administrator does not discharge or alter the employer's responsibilities with respect to the report.

**Subd. 4. Failure to submit reports or information; penalty.** Failure to submit reports to the commissioner as required by this chapter may result in the assessment of a penalty which shall not exceed \$3,000 for each month or fraction thereof the report is past due. Failure to submit reports required by statute within 60 days from the due date without written consent of the commissioner shall result in the revocation of the certificate to self-insure. Penalties shall be deposited in the self-insurers' security fund.

**Subd. 5. Private employers who have ceased to be self-insured.** Private employers who have ceased to be private self-insurers shall discharge their continuing obligations to secure the payment of compensation which is accrued during the period of self-insurance, for purposes of Laws 1988, chapter 674, sections 1 to 21, by compliance with all of the following obligations of current certificate holders:

(1) Filing reports with the commissioner to carry out the requirements of this chapter;

(2) Depositing and maintaining a security deposit for accrued liability for the payment of any compensation which may become due, pursuant to chapter 176. However, if a private employer who has ceased to be a private self-insurer purchases an insurance policy from an insurer authorized to transact workers' compensation insurance in this state which provides coverage of all claims for compensation arising out of injuries occurring during the period the employer was self-insured, whether or not reported during that period, the policy will discharge the obligation of the employer to maintain a security deposit for the payment of the claims covered under the policy. The policy may not be issued by an insurer unless it has previously been approved as to form and substance by the commissioner; and

(3) Paying within 30 days all assessments of which notice is sent by the security fund, for a period of seven years from the last day its certificate of self-insurance was in effect. Thereafter, the private employer who has ceased to be a private self-insurer may either: (a) continue to pay within 30 days all assessments of which notice is sent by the security fund until it has no incurred liabilities for the payment of compensation arising out of injuries during the period of self-insurance; or (b) pay the security fund

a cash payment equal to four percent of the net present value of all remaining incurred liabilities for the payment of compensation under sections 176.101 and 176.111 as certified by a member of the casualty actuarial society. Assessments shall be based on the benefits paid by the employer during the last full calendar year of self-insurance on claims incurred during that year.

In addition to proceedings to establish liabilities and penalties otherwise provided, a failure to comply may be the subject of a proceeding before the commissioner. An appeal from the commissioner's determination may be taken pursuant to the contested case procedures of chapter 14 within 30 days of the commissioner's written determination.

Any current or past member of the self-insurers' security fund is subject to service of process on any claim arising out of chapter 176 or this chapter in the manner provided by section 303.13, subdivision 1, clause (3), or as otherwise provided by law. The issuance of a certificate to self-insure to the private self-insured employer shall be deemed to be the agreement that any process which is served in accordance with this section shall be of the same legal force and effect as if served personally within this state.

**History:** 1988 c 674 s 6

#### **79A.07 PREFERRED SUBROGATION RIGHTS OF SELF-INSURERS' SECURITY FUND OR SURETY.**

The self-insurers' security fund by making payment of compensation under this chapter has the same preference over the other debts of the principal or the principal's estate as is given by law to the person directly entitled to the compensation.

**History:** 1988 c 674 s 7

#### **79A.08 LEGISLATIVE INTENT.**

It is the intent of the legislature in enacting sections 79A.08 to 79A.10 to provide for the continuation of workers' compensation benefits delayed due to the failure of a private self-insured employer to meet its compensation obligations, whenever the commissioner of commerce issues a certificate of default or there is a declaration of bankruptcy or insolvency by a court of competent jurisdiction. With respect to the continued liability of a surety for claims that arise under a bond after termination of that bond and to a surety's liability for the cost of administration of claims, it is the intent of the legislature to provide that that liability ceases upon lawful termination of that bond. This applies to all surety bonds which are purchased by the self-insured employer after July 1, 1988. The legislature finds and declares that the establishment of the self-insurers' security fund is a necessary component of a complete system of workers' compensation, required by chapter 176, to have adequate provisions for the comfort, health, safety, and general welfare of any and all workers and their dependents to the extent of relieving the consequences of any industrial injury or death, and full provision for securing the payment of compensation.

**History:** 1988 c 674 s 8

#### **79A.09 SECURITY FUND.**

**Subdivision 1. Creation.** The self-insurers' security fund is established as a non-profit corporation pursuant to the Minnesota nonprofit corporation act, sections 317A.001 to 317A.909. If any provision of the Minnesota nonprofit corporation act conflicts with any provision of this chapter, the provisions of this chapter apply. Each private self-insurer who is self-insured on July 1, 1988, or who becomes self-insured thereafter, shall participate as a member in the security fund. This participation shall be a condition of maintaining its certificate to self-insure.

**Subd. 2. Board of trustees.** The security fund shall be governed by a nine-member board of trustees. Five of the trustees shall be representatives of private self-insurers who shall be elected by the members of the security fund, other than group self-insurers, each member having one vote. One of the trustees shall be a representative of the pri-

vate group self-insurers who shall be elected by the members of the security fund who are group self-insurers, each group having one vote. Three of the trustees, including the group self-insurer trustee, initially elected by the members shall serve two-year terms, and three shall serve four-year terms. Thereafter, trustees shall be elected to four-year terms, and shall serve until their successors are elected and assume office pursuant to the bylaws of the security fund. Three additional trustees shall be appointed by the commissioner. Two of these trustees shall serve four-year terms. One of these trustees shall serve a two-year term. Thereafter, the trustees shall be appointed to four-year terms, and shall serve until their successors are appointed and assume office pursuant to the bylaws of the security fund. In addition to the nine trustees elected by the members or appointed by the commissioner, the commissioner of labor and industry or the commissioner's designee shall be an ex officio, nonvoting member of the board of trustees. A member of the board of trustees may designate another person to act in the member's place as though the member were acting and the designee's actions shall be deemed those of the member.

Subd. 3. **Bylaws.** The security fund shall establish bylaws and a plan of operation, subject to the prior approval of the commissioner, necessary to the purposes of this chapter and to carry out the responsibilities of the security fund. The security fund may carry out its responsibilities directly or by contract, and may purchase services and insurance and borrow funds as it deems necessary for the protection of the members and their employees.

Subd. 4. **Confidential information.** The security fund may receive private data concerning the financial condition of private self-insurers whose liabilities to pay compensation have become its responsibility and shall adopt bylaws to prevent dissemination of that information.

Subd. 5. **Employees.** Security fund employees are not state employees and are not subject to any state civil service regulations.

*History: 1988 c 674 s 9; 1989 c 304 s 131*

#### **79A.10 ASSUMPTION OF WORKERS' COMPENSATION OBLIGATIONS OF INSOLVENT SELF-INSURER.**

Subdivision 1. **Order of commissioner.** Upon order of the commissioner pursuant to section 79A.04, subdivision 10, the security fund shall assume the workers' compensation obligations of an insolvent private self-insurer.

Subd. 2. **Act or omissions; penalties.** Notwithstanding subdivision 1, the security fund shall not be liable for the payment of any penalties assessed for any act or omission on the part of any person other than the security fund or its appointed administrator, including, but not limited to, the penalties provided in chapter 176 unless the security fund or its appointed administrator would be subject to penalties under chapter 176 as the result of the actions of the security fund or its administrator.

Subd. 3. **Party in interest.** The security fund shall be a party in interest in all proceedings involving compensation claims against an insolvent self-insurer whose compensation obligations have been paid or assumed by the security fund. The security fund shall have the same rights and defenses as the insolvent private self-insurer, including, but not limited to, all of the following:

- (1) to appear, defend, and appeal claims;
  - (2) to receive notice of, investigate, adjust, compromise, settle, and pay claims;
- and
- (3) to investigate, handle, and deny claims.

Subd. 4. **Payments to security fund.** Notwithstanding anything in this chapter or chapter 176 to the contrary, in the event that the self-insurers' security fund assumes the obligations of any bankrupt or insolvent private self-insurer pursuant to this section, then the proceeds of any surety bond, workers' compensation reinsurance association, specific excess insurance or aggregate excess insurance policy, and any special compensation fund payment or second injury fund or supplementary benefit reim-

bursements shall be paid to the self-insurers' security fund instead of the bankrupt or insolvent private self-insurer or its successor in interest. No special compensation fund reimbursements shall be made to the security fund unless the special compensation fund assessments pursuant to section 176.129 are paid and the reports required thereunder are made to the special compensation fund.

**History:** 1988 c 674 s 10

#### 79A.11 REIMBURSEMENT FOR OBLIGATIONS PAID AND ASSUMED.

Subdivision 1. **Insolvent insurer.** The security fund shall have the right and obligation to obtain reimbursement from an insolvent private self-insurer up to the amount of the private self-insurer's workers' compensation obligations paid and assumed by the security fund, including reasonable administrative and legal costs. This right includes, but is not limited to, a right to claim for wages and other necessities of life advanced to claimants as subrogee of the claimants in any action to collect against the private self-insurer as debtor.

Subd. 2. **Security deposits.** The security fund shall have the right and obligation to obtain from the security deposit of an insolvent private self-insurer the amount of the private self-insurer's compensation obligations, including reasonable administrative and legal costs, paid or assumed by the security fund. Reimbursement of administrative costs, including legal costs, shall be subject to approval by a majority of the security fund's voting trustees. The security fund shall be a party in interest in any action to obtain the security deposit for the payment of compensation obligations of an insolvent self-insurer.

Subd. 3. **Legal actions.** The security fund shall have the right to bring an action against any person or entity to recover compensation paid and liability assumed by the security fund, including, but not limited to, any excess insurance carrier of the insolvent private self-insurer, and any person or entity whose negligence or breach of any obligation contributed to any underestimation of the private self-insurer's total accrued liability as reported to the commissioner.

Subd. 4. **Party in interest.** The security fund may be a party in interest in any action brought by any other person seeking damages resulting from the failure of an insolvent private self-insurer to pay workers' compensation required pursuant to this subdivision.

**History:** 1988 c 674 s 11

#### 79A.12 MAINTENANCE OF ASSETS OR LINE OF CREDIT TO CONTINUE PAYMENT OF COMPENSATION OBLIGATIONS.

Subdivision 1. **Assets maintained.** The security fund shall maintain cash, readily marketable securities, or other assets, or a line of credit, approved by the commissioner, sufficient to immediately continue the payment of the compensation obligations of an insolvent private self-insurer pending receipt of the security deposit, surety bond proceeds, irrevocable letter of credit, or, if necessary, assessment of the members. The commissioner may establish the minimum amount to be maintained by, or immediately available to, the security fund for this purpose.

Subd. 2. **Assessment.** The security fund may assess each of its members a pro rata share of the funding necessary to carry out its obligation and the purposes of this chapter. Total annual assessments in any calendar year shall not exceed ten percent of the workers' compensation benefits paid under sections 176.101 and 176.111 during the previous calendar year. The annual assessment calculation shall not include supplementary benefits paid which will be reimbursed by the special compensation fund. Funds obtained by assessments pursuant to this subdivision may only be used for the purposes of this chapter. The trustees shall certify to the commissioner the collection and receipt of all money from assessments, noting any delinquencies. The trustees shall take any action deemed appropriate to collect any delinquent assessments.

**History:** 1988 c 674 s 12; 1990 c 450 s 2

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## 79A.13 AUDIT; ANNUAL REPORT.

The trustees shall annually contract for an independent certified audit of the financial activities of the fund. An annual report on the financial status of the fund as of June 30 shall be submitted to the commissioner and to each member.

The security fund shall be established on July 1, 1988, or 90 days after July 1, 1988, whichever occurs later. All applications for private self-insurers which are made after July 1, 1988, prior to the establishment of the security fund, shall comply with all requirements of this chapter. Applications for private self-insurers which are made after January 1, 1988, but prior to July 1, 1988, shall, prior to the establishment of the security fund, comply with the requirements of this chapter. The security fund shall be liable for payment of benefits only for members where there has been a declaration of bankruptcy or insolvency by a court of competent jurisdiction after the date on which the security fund is established, or where the commissioner has issued a certificate of default which has occurred after the date on which the security fund is established.

*History: 1988 c 674 s 13*

## 79A.14 LETTER OF CREDIT FORM.

The form for the letter of credit under this chapter shall be:

Effective Date

State of Minnesota (Beneficiary)  
(Address)

Dear Sirs:

By order of .....(Self-Insurer) we are instructed to open a clean irrevocable Letter of Credit in your favor for United States \$.....(Amount).

We undertake that drawings under this Letter of Credit will be honored upon presentation of your draft drawn on .....(issuing bank), at .....(Address) prior to expiration date.

The Letter of Credit expires on ....., but will automatically extend for an additional one year if you have not received by registered mail notification of intention not to renew 60 days prior to the original expiration date and each subsequent expiration date.

Except as expressly stated herein, this undertaking is not subject to any condition or qualification. The obligation of .....(issuing bank) under this letter of credit shall be the individual obligation of .....(issuing bank), in no way contingent upon reimbursement with respect thereto.

Very truly yours,

.....(Signature)

*History: 1988 c 674 s 14; 1990 c 426 art 1 s 11*

## 79A.15 SURETY BOND FORM.

The form for the surety bond under this chapter shall be:

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

SURETY BOND OF SELF-INSURER OF WORKERS' COMPENSATION

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IN THE MATTER OF THE CERTIFICATE OF )

) ) SURETY BOND
) NO. ....
) PREMIUM: .....

Employer, Certificate No: ..... )
KNOW ALL PERSONS BY THESE PRESENTS:

That .....
(Employer)
whose address is .....
as Principal, and .....
(Surety)

a corporation organized under the laws of ..... and authorized to transact a general surety business in the State of Minnesota, as Surety, are held and firmly bound to the State of Minnesota in the penal sum of .....dollars (\$.....) for which payment we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS in accordance with Minnesota Statutes, chapter 176, the principal elected to self-insure, and made application for, or received from the commissioner of commerce of the state of Minnesota, a certificate to self-insure, upon furnishing of proof satisfactory to the commissioner of commerce of ability to self-insure and to compensate any or all employees of said principal for injury or disability, and their dependents for death incurred or sustained by said employees pursuant to the terms, provisions, and limitations of said statute;

NOW THEREFORE, the conditions of this bond or obligation are such that if principal shall pay and furnish compensation, pursuant to the terms, provisions, and limitations of said statute to its employees for injury or disability, and to the dependents of its employees, then this bond or obligation shall be null and void; otherwise to remain in full force and effect.

FURTHERMORE, it is understood and agreed that:

- 1. This bond may be amended, by agreement between the parties hereto and the commissioner of commerce as to the identity of the principal herein named; and, by agreement of the parties hereto, as to the premium or rate of premium. Such amendment must be by endorsement upon, or rider to, this bond, executed by the surety and delivered to or filed with the commissioner.
2. The surety does, by these presents, undertake and agree that the obligation of this bond shall cover and extend to all past, present, existing, and potential liability of said principal, as a self-insurer, to the extent of the penal sum herein named without regard to specific injuries, date or dates of injuries, happenings or events.
3. The penal sum of this bond may be increased or decreased, by agreement between the parties hereto and the commissioner of commerce, without impairing the obligation incurred under this bond for the overall coverage of the said principal, for all past, present, existing, and potential liability, as a self-insurer, without regard to specific injuries, date or dates of injuries, happenings or events, to the extent, in the aggregate, of the penal sum as increased or decreased. Such amendment must be by endorsement.
4. The aggregate liability of the surety hereunder on all claims whatsoever shall not exceed the penal sum of this bond in any event.
5. This bond shall be continuous in form and shall remain in full force and effect unless terminated as follows:
(a) The obligation of this bond shall terminate upon written notice of cancellation from the surety, given by registered or certified mail to the commissioner of commerce, state of Minnesota, save and except as to all past, present, existing, and potential liability of the principal incurred, including obligations resulting from claims which are

incurred but not yet reported, as a self-insurer prior to effective date of termination. This termination is effective 60 days after receipt of notice of cancellation by the commissioner of commerce, state of Minnesota.

(b) This bond shall also terminate upon the revocation of the certificate to self-insure, save and except as to all past, present, existing, and potential liability of the principal incurred, including obligations resulting from claims which are incurred but not yet reported, as a self-insurer prior to effective date of termination. The principal and the surety, herein named, shall be immediately notified in writing by said commissioner, in the event of such revocation.

6. Where the principal posts with the commissioner of commerce, state of Minnesota, or the state treasurer, state of Minnesota, a replacement security deposit, in the form of a surety bond, irrevocable letter of credit, cash, securities, or any combination thereof, in the full amount as may be required by the commissioner of commerce, state of Minnesota, to secure all incurred liabilities for the payment of compensation of said principal under Minnesota Statutes, chapter 176, the surety is released from obligations under the surety bond upon the date of acceptance by the commissioner of commerce, state of Minnesota, of said replacement security deposit.

7. If the said principal shall suspend payment of workers' compensation benefits or shall become insolvent or a receiver shall be appointed for its business, or the commissioner of commerce, state of Minnesota, issues a certificate of default, the undersigned surety will become liable for the workers' compensation obligations of the principal on the date benefits are suspended. The surety shall begin payments within 14 days under paragraph 8, or 30 days under paragraph 10, after receipt of written notification by certified mail from the commissioner of commerce, state of Minnesota, to begin payments under the terms of this bond.

8. If the surety exercises its option to administer claims, it shall pay benefits due to the principal's injured workers within 14 days of the receipt of the notification by the commissioner of commerce, state of Minnesota, pursuant to paragraph 7, without a formal award of a compensation judge, the commissioner of labor and industry, any intermediate appellate court, or the Minnesota supreme court and such payment will be a charge against the penal sum of the bond. Administrative and legal costs incurred by the surety in discharging its obligations and payment of the principal's obligations for administration and legal expenses under Minnesota Statutes, chapter 176, and sections 79A.01 to 79A.17 and Laws 1988, chapter 674, section 23, shall also be a charge against the penal sum of the bond; however, the total amount of this surety bond set aside for the payment of said administrative and legal expenses shall be limited to a maximum ten percent of the total penal sum of the bond unless otherwise authorized by the security fund.

9. If any part or provision of this bond shall be declared unenforceable or held to be invalid by a court of proper jurisdiction, such determination shall not affect the validity or enforceability of the other provisions or parts of this bond.

10. If the surety does not give notice to the security fund and the commissioner of commerce, state of Minnesota, within two business days of receipt of written notification from the commissioner of commerce, state of Minnesota, pursuant to paragraph 7, to exercise its option to administer claims pursuant to paragraph 8, then the self-insurer's security fund will assume the payments of the workers' compensation obligations of the principal pursuant to Minnesota Statutes, chapter 176. The surety shall pay, within 30 days of the receipt of the notification by the commissioner of commerce, state of Minnesota, pursuant to paragraph 7, to the self-insurer's security fund as an initial deposit an amount equal to ten percent of the penal sum of the bond, and shall thereafter, upon notification from the security fund that the balance of the initial deposit had fallen to one percent of the penal sum of the bond, remit to the security fund an amount equal to the payments made by the security fund in the three calendar months immediately preceding said notification. All such payments will be a charge against the penal sum of the bond.

11. Disputes concerning the posting, renewal, termination, exoneration, or return

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of all or any portion of the principal's security deposit or any liability arising out of the posting or failure to post security, or the adequacy of the security or the reasonableness of administrative costs, including legal costs, arising between or among a surety, the issuer of an agreement of assumption and guarantee of workers' compensation liabilities, the issuer of a letter of credit, any custodian of the security deposit, the principal, or the self-insurers' security fund shall be resolved by the commissioner of commerce pursuant to Minnesota Statutes, chapter 176 and sections 79A.01 to 79A.17 and Laws 1988, chapter 674, section 23.

12. Written notification to the surety required by this bond shall be sent to:

Name of Surety
To the attention of Person or Position
Address
City, State, Zip

Written notification to the principal required by this bond shall be sent to:

Name of Principal
To the attention of Person or Position
Address
City, State, Zip

13. This bond is executed by the surety to comply with Minnesota Statutes, chapter 176, and said bond shall be subject to all terms and provisions thereof.

Name of Surety
Address
City, State, Zip

THIS bond is executed under an unrevoked appointment or power of attorney. I certify (or declare) under penalty of perjury under the laws of the state of Minnesota that the foregoing is true and correct.

Date
Signature of Attorney-In-Fact
Printed or Typed Name of Attorney-In-Fact

A copy of the transcript or record of the unrevoked appointment, power of attorney, bylaws, or other instrument, duly certified by the proper authority and attested by the seal of the insurer entitling or authorizing the person who executed the bond to do so for and in behalf of the insurer, must be filed in the office of the commissioner of commerce or must be included with this bond for such filing.

History: 1988 c 674 s 15

79A.16 OPEN MEETING; ADMINISTRATIVE PROCEDURE ACT.

The security fund and its board of trustees shall not be subject to (1) the open meet-

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ing law, (2) the open appointments law, (3) the data privacy law, and (4) except where specifically set forth, the administrative procedure act.

The self-insurers' advisory committee shall not be subject to clauses (2) and (4).

**History:** 1988 c 674 s 16

## 79A.17 RULES.

The commissioner may adopt, amend, and repeal rules reasonably necessary to carry out the purposes of sections 79A.01 to 79A.17. This authorization includes, but is not limited to, the adoption of rules to do all of the following:

(1) except as otherwise specifically provided by statute, specifying what constitutes ability to self-insure and to pay any compensation which may become due under chapter 176;

(2) specifying what constitutes a failure or inability to fulfill an insolvent self-insurer's obligations under this chapter;

(3) interpreting and defining the terms used in this chapter;

(4) establishing procedures and standards for hearing and determinations and providing for those determinations to be appealed;

(5) except where otherwise specifically provided by statute, specifying the standards, forms, and content of agreements, forms, and reports between parties who have obligations pursuant to this chapter;

(6) providing for the combinations and relative liabilities of security deposits, assumptions, and guarantees used pursuant to this chapter; and

(7) disclosing otherwise private data concerning self-insurers to courts or the self-insurers' security fund and specifying appropriate safeguards for that information.

The self-insurers' advisory committee may make recommendations to the commissioner under this section as it deems appropriate.

**History:** 1988 c 674 s 17

## 79A.18 EXISTING RULES.

If there is any inconsistency among any rule or statute and Laws 1988, chapter 674, Laws 1988, chapter 674, shall govern.

**History:** 1988 c 674 s 21