

## CHAPTER 79A

## WORKERS' COMPENSATION SELF-INSURANCE

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**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 and three alternates shall be elected by the self-insurers' security fund board of trustees and two members and two alternates shall be appointed by the commissioner. Notwithstanding section 15.059, the advisory committee does not expire.

*[For text of subs 2 to 4, see M.S.2002]*

**History:** 2003 c 2 art 1 s 12

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

*[For text of subs 1 to 4, see M.S.2002]*

Subd. 5. **Deposit with commissioner of finance.** Securities shall be deposited on behalf of the commissioner by the self-insured employer with the commissioner of finance or a financial institution approved by the commissioner. Securities shall be accepted by the commissioner of finance for deposit and shall be withdrawn only upon written order of the commissioner.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 commissioner of finance. Cash shall be withdrawn only upon written order of the commissioner.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 commissioner of finance 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 that a private self-insurer is the subject of a voluntary or involuntary petition under the United States Bankruptcy Code, title 11, or a court of competent jurisdiction has declared the private self-insurer to be bankrupt or insolvent, 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 and other current or future obligations of the self-insurers' security fund. In the event that a private self-insurer is the subject of a voluntary or involuntary petition under the United States Bankruptcy Code, title 11, or a court of competent jurisdiction has declared the private self-insurer to be bankrupt or insolvent, or in the event of the

issuance of a certificate of default by the commissioner, all right, title, and interest in and any right to control all assets or obligations which have been posted or deposited as security must be transferred to the self-insurers' security fund.

*[For text of subd 9, see M.S.2002]*

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 commissioner of finance, 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.

*[For text of subs 11 to 16, see M.S.2002]*

**History:** 2003 c 112 art 2 s 50

#### 79A.071 CUSTODIAL ACCOUNTS.

Subdivision 1. **Deposit.** All securities shall be deposited with the commissioner of finance or in a custodial account with a depository institution acceptable to the commissioner of finance. Surety bonds shall be filed with the commissioner. The commissioner and the commissioner of finance may sell or collect, in the case of default of the employer or fund, the amount that yields sufficient funds to pay compensation due under the Workers' Compensation Act.

Subd. 2. **Assignment.** Securities in physical form deposited with the commissioner of finance must bear the following assignment, which shall be signed by an officer, partner, or owner: "Assigned to the state of Minnesota for the benefit of injured employees of the self-insured employer under the Minnesota Workers' Compensation Act." Any securities held in a custodial account, whether in physical form, book entry, or other form, need not bear the assignment language. The instrument or contract creating and governing any custodial account must contain the following assignment language: "This account is assigned to the commissioner of finance by the Company to pay compensation and perform the obligations of employers imposed under Minnesota Statutes, chapter 176. A depositor or other party has no right, title, or interest in the security deposited in the account until released by the state."

Subd. 3. **Custody.** All securities in physical form on deposit with the commissioner of finance and surety bonds on deposit shall remain in the custody of the commissioner of finance or the commissioner for a period of time dictated by the applicable statute of limitations provided in the Workers' Compensation Act. All original instruments and contracts creating and governing custodial accounts shall remain with the commissioner of finance or the commissioner for a period of time dictated by the applicable statute of limitations provided in the Workers' Compensation Act.

Subd. 4. **Release.** No securities in physical form on deposit with the commissioner of finance or custodial accounts assigned to the state shall be released without an order from the commissioner.

Subd. 5. **Exchanging or replacing.** Any securities deposited with the commissioner of finance or with a custodial account assigned to the commissioner of finance or surety bonds held by the commissioner may be exchanged or replaced by the depositor with other acceptable securities or surety bonds of like amount so long as the market value of the securities or amount of the surety bond equals or exceeds the amount of deposit required. If securities are replaced by a surety bond, the self-insurer must maintain securities on deposit in an amount sufficient to meet all outstanding workers' compensation liability arising during the period covered by the deposit of the replaced securities, subject to the limitations on maximum security deposits established in Minnesota Rules.

**History:** 2003 c 112 art 2 s 50

**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

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 commissioner of finance, 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 and payment of assessments incurred by the surety in discharging its obligations and payment of the principal's obligations for administration and legal expenses and payment of assessments under Minnesota Statutes, chapters 79A and 176, shall also be a charge against the penal sum of the bond.

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 (self-insurer's security fund) (commercial self-insurance group security fund) and the commissioner of commerce, state of Minnesota, within five 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) (commercial self-insurance security fund) will assume the payments of the workers' compensation obligations of the principal pursuant to Minnesota Statutes, chapter 176. Administrative, legal, actuarial, and other direct costs attributed to the principal shall also be a charge against the penal sum of the bond. 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) (commercial self-insurance group security fund) as an initial deposit an amount equal to 50 percent of the penal sum of the bond, and shall thereafter, upon notification from the (self-insurer's security fund) (commercial self-insurance group security fund) that the balance of the initial deposit, including interest earned as provided below with respect to the segregated account, had fallen to ten percent of the penal sum of the bond, remit to the (self-insurer's security fund) (commercial self-insurance group security fund) an amount equal to an additional ten percent of the penal sum of the bond. All such payments will be a charge against the penal sum of the bond. The initial deposit and all subsequent deposits shall be deposited by the (self-insurer's security fund) (commercial self-insurance group security fund) into a segregated, interest-bearing account. These deposits, together with any interest earned thereon, shall be used to satisfy all obligations of the surety hereunder. Upon determination that there are no remaining reserves for any known claims covered under the bond, the balance of the account, including any interest earned thereon, shall be paid to the surety.

Said repayment of the funds to the surety will not discharge the bond, which shall remain in full force and effect 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 the effective date of termination of the bond.

11. Disputes concerning the posting, renewal, termination, exoneration, or return 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-insurer's security fund) (commercial self-insurance group security fund) shall be resolved by the commissioner of commerce pursuant to Minnesota Statutes, chapters 79A and 176.

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:** 2003 c 112 art 2 s 50

**79A.24 COMMERCIAL SELF-INSURANCE GROUP SECURITY DEPOSIT.**

*[For text of subs 1 to 3, see M.S.2002]*

Subd. 4. **Custodial accounts.** (a) All surety bonds, irrevocable letters of credit, and documents showing issuance of any irrevocable letter of credit shall be deposited in accordance with the provisions of section 79A.071.

(b) 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 commercial self-insurance group's and member's assets in favor of the commissioner to the extent of any then unsecured portion of the commercial self-insurance group's incurred liabilities. The perfected security interest is transferred to any cash or securities thereafter posted by the commercial self-insurance group with the commissioner of finance 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 commercial self-insurance group 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 commercial self-insurance group security fund for application to the commercial self-insurance group's incurred liability.

(c) No securities in physical form on deposit with the commissioner of finance or the commissioner or custodial accounts assigned to the state shall be released or exchanged without an order from the commissioner. No security can be exchanged more than once every 90 days.

(d) Any securities deposited with the commissioner of finance or with a custodial account assigned to the commissioner of finance or letters of credit or surety bonds held by the commissioner may be exchanged or replaced by the depositor with any other acceptable securities or letters of credit or surety bond of like amount so long as the market value of the securities or amount of the surety bonds or letter of credit equals or exceeds the amount of the deposit required. If securities are replaced by surety bond, the commercial self-insurance group must maintain securities on deposit in an amount sufficient to meet all outstanding workers' compensation liability arising during the period covered by the deposit of the replaced securities.

**History:** 2003 c 112 art 2 s 50

#### 79A.25 DEFAULT OF A COMMERCIAL SELF-INSURANCE GROUP.

*[For text of subds 1 and 2, see M.S.2002]*

Subd. 3. **Notice by commissioner.** In the event of bankruptcy, insolvency, or certificate of default, the commissioner shall immediately notify by certified mail the commissioner of finance, the surety, the issuer of an irrevocable letter of credit, and any custodian of the security. At the time of notification, the commissioner shall also call the security and transfer and assign it to the commercial self-insurance group security fund. The commissioner shall also notify by certified mail the commercial self-insurance group's security fund and order the commercial security fund to assume the insolvent commercial self-insurance group's obligations for which it is liable under chapter 176.

**History:** 2003 c 112 art 2 s 50