

**TITLE 34.LABOR AND INDUSTRIAL RELATIONS
CHAPTER 9.WORKERS' COMPENSATION
ARTICLE 10.SELF-INSURERS GUARANTY TRUST FUND**

§ 34-9-380. Purpose of article

It is the purpose of this article through the establishment of a guaranty trust fund to provide for the continuation of workers' compensation benefits due and unpaid, excluding penalties, fines, and attorneys' fees assessed against a participant, when a self-insured employer becomes insolvent.

HISTORY: Code 1981, § 34-9-380, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 2010, p. 126, § 4/ HB 1101.

§ 34-9-381. Definitions

As used in this article, the term:

- (1) "Applicant" means an employee entitled to workers' compensation benefits.
- (2) "Board" means the State Board of Workers' Compensation.
- (3) "Board of trustees" means the board of trustees of the fund.
- (4) "Fund" means the Self-insurers Guaranty Trust Fund established by this article.
- (5) "Insolvent self-insurer" means a self-insurer who files for relief under the federal Bankruptcy Act, a self-insurer against whom involuntary bankruptcy proceedings are filed, a self-insurer for whom a receiver is appointed in a federal or state court of this or any other jurisdiction, or a self-insurer who is determined by the board to be in default of its workers' compensation obligations or requirements according to rules and regulations promulgated by the board of trustees and approved by the board.
- (6) "Participant" means a self-insurer who is a member of the fund and exclusive of those entities described in Article 5 of this chapter.
- (7) "Self-insurer" means a private employer, including any hospital authority created pursuant to the provisions of Article 4 of Chapter 7 of Title 31, the "Hospital Authorities Law," that has been authorized to self-insure its payment of workers' compensation benefits pursuant to this chapter, except any governmental self-insurer or other employer who elects to group self-insure pursuant to Code Section 34-9-152, captive insurers as provided for in Chapter 41 of Title 33, or employers who, pursuant to any reciprocal agreements or contracts of indemnity executed prior to March 8, 1960, created funds for the purpose of satisfying the obligations of self-insured employers under this chapter.
- (8) "Trustee" means a member of the Self-insurers Guaranty Trust Fund board of trustees.

HISTORY: Code 1981, § 34-9-381, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 1995, p. 638, § 1; Ga. L. 2010, p. 126, § 4/ HB 1101.

§ 34-9-382. Establishment of Self-insurers Guaranty Trust Fund; use of fund; application to be accepted in fund

- (a) There is established a Self-insurers Guaranty Trust Fund for the sole purpose of making

payments in accordance with this article. The fund shall be administered by an administrator appointed by the chairperson of the board of trustees with the approval of the board of trustees. All moneys in the fund shall be held in trust and shall not be money or property of the state or the participants and shall be exempt from levy, attachment, garnishment, or civil judgment for any claim or cause of action other than for not making payments in accordance with this article. The board of trustees shall be authorized to invest the moneys of the fund in the same manner as provided by law for investments in government backed securities.

(b) All returns on investments shall be retained by the fund. The funds of the Self-insurers Guaranty Trust Fund shall be for the purposes of compensating employees or their dependents who are eligible to receive workers' compensation benefits from their employers pursuant to the provisions of this chapter when, pursuant to this Code section, the board has determined that compensation benefits due are unpaid or interrupted due to the insolvency or default of a participant. Moneys in the fund may be used to compensate an employee or his or her dependents for any type of injury or occupational disease or death, including medical or rehabilitation expenses which are compensable under this chapter against a participant, and all claims for related administrative fees, operating costs of the fund, attorneys' fees incurred by the board of trustees or at its direction, and other costs reasonably incurred by the board of trustees. Payment from the Self-insurers Guaranty Trust Fund shall be made in accordance with this chapter.

(c) As a condition of self-insurance, all private employers, except any governmental self-insurer or other employer who elects to group self-insure pursuant to Code Section 34-9-152, captive insurers as provided for in Chapter 41 of Title 33, or employers who, pursuant to any reciprocal agreements or contracts of indemnity executed prior to March 8, 1960, created funds for the purpose of satisfying the obligations of self-insured employers under this chapter, must make application to and be accepted in the Self-insurers Guaranty Trust Fund.

HISTORY: Code 1981, § 34-9-382, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 2010, p. 126, § 4/ HB 1101.

§ 34-9-383. Membership of board of trustees of fund

(a) Each member of the board of trustees shall be an employee of a participant. The board of trustees shall consist of a chairperson and six trustees elected by the participants. The board of trustees shall initially be appointed by the Governor not later than August 1, 1990. Three of the initial trustees shall be appointed for terms of office which shall end on January 1, 1993, and the chairperson and the three other initial trustees shall be appointed for terms of office which shall end on January 1, 1995. Thereafter, each trustee shall be elected to a four-year term and shall continue to serve unless otherwise ineligible under subsection (b) of this Code section. No later than 90 days prior to the end of any member's term of office, the chairperson shall select a nominating committee from among the participants to select candidates for election by the participants for the following term. In the event the chairperson fails to complete his or her term of office, a successor shall be elected by the board of trustees to fill the unexpired term of office.

(b) A vacancy in the office of any elected member of the board of trustees shall occur upon the member's resignation, death, or conviction of a felony or when the trustee's employer no longer qualifies as a self-insured participant or the trustee is no longer an employee of a participant. The board of trustees may remove any trustee from office on a formal finding of incompetence, neglect of duty, or malfeasance in office. Within 30 days after the office of any elected member becomes vacant for any reason, the board of trustees shall elect a successor to fill that office for the unexpired term. Failure to fill the vacant office shall not invalidate any action taken by the board of trustees provided

that said action is taken pursuant to an affirmative vote of not less than four trustees.

HISTORY: Code 1981, § 34-9-383, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 1995, p. 638, § 2; Ga. L. 2010, p. 126, § 4/HB 1101.

§ 34-9-384. General powers of board of trustees

The board of trustees shall possess all powers necessary and convenient to accomplish the objectives prescribed by this article, including, but not limited to, the following:

(1) Not later than 90 days from its appointment, the board of trustees must make and submit to the board for approval such bylaws, rules, regulations, and resolutions as are necessary to carry out its responsibilities, including, but not limited to, the establishment of an application fee. The board of trustees may carry out its responsibilities directly or by contract or other instrument and may purchase such services, borrow money, purchase excess or liability insurance, levy penalties, fines, and assessments and collect such funds as it deems necessary to effectuate its activities and protect the members of the board of trustees and its administrator, agents, and employees. The board of trustees shall appoint, retain, and employ such persons as it deems necessary to achieve the purposes of the board of trustees. All expenses incurred pursuant to this provision shall be paid from the fund;

(2) The board of trustees shall meet not less than quarterly and shall meet at other times upon the call of the chairperson, issued to the trustees in writing not less than 48 hours prior to the day and hour of the meeting, or upon a request for a meeting presented in writing to the chairperson not less than 72 hours prior to the proposed day and hour of the meeting and signed by at least a majority of the trustees, whereupon the chairperson shall provide notice issued in writing to the trustees not less than 48 hours prior to the meeting and shall convene the meeting at the time and place stated in the request;

(3) Four trustees shall constitute a quorum to transact business at any meeting, and the affirmative vote of four trustees shall be necessary for any action taken by the board of trustees. No vacancy shall otherwise impair the rights of the remaining trustees to exercise all of the powers of the board of trustees;

(4) The board of trustees shall serve without compensation, but each member shall be entitled to be reimbursed for necessary and actual expenses incurred in the discharge of his or her official duties; and

(5) The board of trustees shall have the right to bring and defend actions only in the name of the fund. The administrator, the trustees, and the trustees' employers, agents, and employees shall not be liable jointly or individually for matters arising from or out of their conduct of the affairs of the fund while acting in the scope of their employment.

HISTORY: Code 1981, § 34-9-384, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 1998, p. 128, § 34; Ga. L. 1998, p. 227, § 1; Ga. L. 2010, p. 126, § 4/HB 1101.

§ 34-9-385. Bankruptcy of participants

(a) Any participant who files for relief under the federal Bankruptcy Act or against whom bankruptcy proceedings are filed or for whom a receiver is appointed shall file written notice of such fact with the board and the board of trustees within 30 days of the occurrence of such event.

(b) Any person who files an application for adjustment of a claim against a participant who is in

default or has filed for relief under the federal Bankruptcy Act or against whom bankruptcy proceedings have been filed or for whom a receiver has been appointed must file a written notice of such fact with the board and the board of trustees within 30 days of such person's knowledge of the event.

(c) Upon receipt of any notice as provided in subsection (a) or (b) of this Code section, the board shall determine whether the participant is insolvent or in default according to procedures established by the board of trustees and approved by the board. Such determination shall be made within a reasonable time after the date the board and board of trustees receive notification as provided in subsection (a) or (b) of this Code section.

(d) When a participant is determined to be in default or an insolvent self-insurer, the board of trustees is empowered to and shall assume on behalf of the participant its outstanding workers' compensation obligations excluding penalties, fines, and claimant's attorneys' fees assessed against the participant pursuant to subsection (b) of Code Section 34-9-108 and shall take all steps necessary to collect, recover, and enforce all outstanding security, indemnity, insurance, or bonds furnished by such participant guaranteeing the payment of compensation provided in this chapter for the purpose of paying outstanding obligations of the participant. The board of trustees shall convert and deposit into the fund such security and any amounts received under agreements of surety, guaranty, insurance, or otherwise on behalf of the participant. Any amounts remaining from such security, indemnity, insurance, bonds, guaranties, and sureties, following payment of all compensation costs and related administrative expenses and fees of the board of trustees including attorneys' fees, and following collection of all amounts assessed and received pursuant to subsections (a) and (d) of Code Section 34-9-121 and any applicable rule of the board may be refunded by the fund as directed by the board of trustees, subject to the approval of the board, to the appropriate party one year from the date of final payment and closure of all claims, provided no outstanding self-insured liabilities remain against the fund and the applicable statute of limitations has run.

(e) The fund shall be a party in interest in all proceedings involving workers' compensation claims against a participant whose workers' compensation obligations are to be paid or assumed by the fund and shall be subrogated to the rights of the participant. In such proceedings the fund shall assume and may exercise all rights and defenses of the participant, including, but not limited to:

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

(f) In any proceeding in bankruptcy in which the payment of benefits has been stayed, the board of trustees, through a designated representative, may appear and move to lift the stay so that the orderly administration of claims can proceed. The fund shall be subrogated to the rights and claims of any claimant against a participant to the extent of the payments made by the fund to the claimant and may pursue recovery against the participant to the extent of the claims paid or to be paid.

(g) The board of trustees shall notify all employees who have pending claims against a participant for workers' compensation benefits which are subject to the provisions of this article of the name, address, and telephone number of the party administering and defending their claim.

(h) The board may, in its discretion, direct that the Self-insurers Guaranty Trust Fund honor and pay, in whole or in part, the contractual fee arrangement between an attorney and a claimant pursuant to

subsection (a) of Code Section 34-9-108, provided that application to honor the fee arrangement is made after notice pursuant to subsection (g) of this Code section and subject to consideration of objections by any party.

(i) No provision of this Code section shall impair any claims in the insolvent self-insurer's bankruptcy by the board of trustees, any employee, or any provider of services related to the insolvent self-insurer's workers' compensation obligations, to the extent those claims remain unpaid, including but not limited to medical providers or attorneys representing either the insolvent self-insurer or claimants.

HISTORY: Code 1981, § 34-9-385, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 1998, p. 128, § 34; Ga. L. 1998, p. 1508, § 10; Ga. L. 2009, p. 118, § 6/HB 330; Ga. L. 2010, p. 126, § 4/HB 1101.

§ 34-9-386. Assessment of participants; liability of fund and participants for claims; revocation of participant's authority to be self-insured

(a) (1) The board of trustees shall, commencing January 1, 1991, assess each participant in accordance with paragraph (2) of this subsection. Upon reaching a funded level of \$10 million net of all liabilities, all annual assessments against participants who have paid at least three prior assessments shall cease except as specifically provided in paragraph (4) of this subsection.

(2) Assessment for each new participant in the first calendar year of participation shall be \$8,000.00. Thereafter, assessments shall be in accordance with paragraphs (3) and (4) of this subsection.

(3) After the first calendar year of participation, the annual assessment of each participant shall be made on the basis of a percentage of the total of indemnity and medical benefits paid by, or on behalf of, the participant during the previous calendar year. Except as provided in paragraph (2) of this subsection for the first calendar year of participation and paragraph (4) of this subsection, a participant will be assessed 1.5 percent of the medical and indemnity benefits paid by that participant during the previous calendar year or \$2,000.00, whichever is greater. The maximum amount of annual assessments under this paragraph, not including those special assessments provided for in paragraph (4) of this subsection, in any calendar year against a participant shall be \$8,000.00.

(4) If the fund is reduced to an amount below \$5 million net of all liabilities as the result of the payment of claims, the administration of claims, or the costs of administration of the fund, the board of trustees may levy a special assessment against participants upon approval by the board, according to the same procedure for assessment set forth in paragraph (3) of this subsection, in an amount sufficient to increase the funded level to \$5 million net of all liabilities; provided, however, that such special assessment in any calendar year against any one participant shall not exceed \$8,000.00.

(5) Funds obtained by such assessments shall be used only for the purposes set forth in this article and shall be deposited upon receipt by the board of trustees into the fund. If payment of any assessment made under this article is not made within 30 days of the sending of the notice to the participant, the board of trustees is authorized to do any or all of the following:

(A) Levy fines or penalties;

(B) Proceed in court for judgment against the participant, including the amount of the assessment, fines, penalties, the costs of suit, interest, and reasonable attorneys' fees;

(C) Proceed directly against the security pledged by the participant for the collection of same; or

(D) Seek revocation of the participant's insured status.

(b) (1) The fund shall be liable for claims arising out of injuries occurring after January 1, 1991; provided, however, no claim may be asserted against the fund until the funding level has reached \$1.5 million.

(2) All active participants shall be required to maintain surety bonds or the board of trustees may, in its discretion, accept any irrevocable letter of credit or other acceptable forms of security in the amount of no less than \$250,000.00. In addition, each active participant shall be required to purchase excess insurance for statutory limits with a self-insured retention specified by the board, and the excess policy shall include the bankruptcy endorsement required by the board and board of trustees. For participants who are no longer active, security in an amount commensurate with their remaining exposure, as determined by the board, shall be required until all self-insured claims have been closed and all applicable statutes of limitation have run.

(c) A participant who ceases to be a self-insurer shall be liable for any and all assessments made pursuant to this Code section for so long as indemnity or medical benefits are paid for claims which originated when the participant was a self-insurer. Assessments of such a participant shall be based on the indemnity and medical benefits paid by the participant during the previous calendar year.

(d) Upon refusal to pay assessments, penalties, or fines to the fund or upon refusal to comply with a board order increasing security, the fund may treat the self-insurer as being in default with this chapter and the self-insurer shall be subject to revocation of its board authorization to self-insure and forfeiture of its security.

HISTORY: Code 1981, § 34-9-386, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 1991, p. 94, § 34; Ga. L. 1995, p. 638, § 3; Ga. L. 2010, p. 126, § 4/HB 1101.

§ 34-9-387. Reimbursement and security deposit from participant for compensation obligations

(a) The board of trustees shall have the right and duty to obtain reimbursement from any participant for payment of compensation obligations in the amount of the participant's compensation obligations assumed by the board of trustees and paid from the fund by the board of trustees as directed by the board, including, but not limited to, claims for all benefits and reasonable administrative and legal costs. The amount of the claims for reimbursement of reasonable administrative and legal costs shall be subject to the approval of the board of trustees.

(b) The board of trustees shall have the right and obligation to use the security deposit of any participant, its excess insurance coverage, and of any other guarantee to pay the participant's workers' compensation obligation assumed by the board of trustees, including reasonable administrative and legal costs. The amount of the claims for reimbursement of reasonable administrative and legal costs shall be subject to the approval of the board of trustees.

(c) The board of trustees shall be a party in interest in any action or proceeding to obtain the security deposit of a participant for the payment of the participant's compensation obligations, in any action or proceeding under the participant's excess insurance policy, and in any other action or proceeding to enforce an agreement of any security deposit or captive or excess insurance carrier and from any other guarantee to satisfy such obligations. The fund is authorized to file a claim against a bankrupt

participant or the participant's agents and seek reimbursement for any payments made by the fund on behalf of the participant pursuant to this chapter. The fund is subrogated to the claim of any employee whose benefits are paid by the fund. Further, the fund shall have a lien against any reimbursement payments the participant is entitled to from the Subsequent Injury Trust Fund in an amount equal to the payments made by the fund to satisfy the participant's liability for workers' compensation benefits.

HISTORY: Code 1981, § 34-9-387, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 1998, p. 227, § 2; Ga. L. 2010, p. 126, § 4/ HB 1101.

§ 34-9-388. Reports of participant's insolvency; participant's audits; review of applications for self-insurance and recommendations thereon

(a) It shall be the duty of the board to report to the board of trustees when the board has reasonable cause to believe that any participant examined or being examined may be in danger of insolvency.

(b) The board shall, at the inception of a participant's self-insured status and at least annually thereafter, so long as the participant remains self-insured, furnish the board of trustees with a complete, original bound copy of each participant's audit performed in accordance with generally accepted accounting standards by an independent certified public accounting firm, three to five years of loss history, name of the person or company to administer claims, and any other pertinent information submitted to the board to authenticate the participant's self-insured status. The board of trustees may contract for the services of a qualified certified public accountant or firm to review, analyze, and make recommendations on these documents. All financial information submitted by a participant shall be considered confidential and not public information.

(c) The board of trustees shall make reports and recommendations to the board upon any matter germane to the solvency, liquidation, or rehabilitation of any participant. The board of trustees shall examine the same documents as required in subsection (b) of this Code section. Such reports and recommendations shall not be considered public documents.

(d) The board of trustees shall have the authority to review all applications for self-insurance and shall make recommendations to the board concerning the acceptance of the prospective self-insurer. If the board rejects in part or in whole the recommendations of the board of trustees, the board shall give written notice to the board of trustees ten days prior to accepting the application for self-insurance.

HISTORY: Code 1981, § 34-9-388, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 1995, p. 638, § 4; Ga. L. 1998, p. 227, § 3; Ga. L. 2010, p. 126, § 4/ HB 1101.

§ 34-9-389. State absolved of responsibility for debts incurred under fund

The State of Georgia shall not be responsible for any debts incurred as a result of the operation or administration of this fund.

HISTORY: Code 1981, § 34-9-389, enacted by Ga. L. 1990, p. 770, § 1; Ga. L. 2010, p. 126, § 4/ HB 1101.