

Senate Bill No. 2084

An act relating to rulemaking authority of the Division of Workers' Compensation of the Department of Labor and Employment Security (RAB); amending s. 440.38, F.S.; authorizing the division to specify by rule the amount of the security deposit and net worth required for an employer to obtain authorization to self-insure; requiring that the division provide by rule for suspending or revoking an employer's authorization to self-insure; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) and paragraph (b) of subsection (3) of section 440.38, Florida Statutes, are amended to read:

440.38 Security for compensation; insurance carriers and self-insurers.—

(1) Every employer shall secure the payment of compensation under this chapter:

(a) By insuring and keeping insured the payment of such compensation with any stock company or mutual company or association or exchange, authorized to do business in the state;

(b) By furnishing satisfactory proof to the division of her or his financial ability to pay such compensation and receiving an authorization from the division to pay such compensation directly in accordance with the following provisions:

1. The division may, as a condition to such authorization, require such employer to deposit in a depository designated by the division either an indemnity bond or securities, at the option of the employer, of a kind and in an amount determined by the division and subject to such conditions as the division may prescribe, which shall include authorization to the division in the case of default to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this chapter. In addition, the division shall require, as a condition to authorization to self-insure, proof that the employer has provided for competent personnel with whom to deliver benefits and to provide a safe working environment. Further, the division shall require such employer to carry reinsurance at levels that will ensure the actuarial soundness of such employer in accordance with rules promulgated by the division. The division may by rule require that, in the event of an individual self-insurer's insolvency, such indemnity bonds, securities, and reinsurance policies shall be payable to the Florida Self-Insurers Guaranty Association, Incorporated, created pursuant to s. 440.385. Any employer securing compensation in accordance with the provisions of this paragraph shall be known as a self-insurer and shall be classed as a carrier of her or his own insurance.

2. If the employer fails to maintain the foregoing requirements, the division shall revoke the employer's authority to self-insure, unless the employer provides to the division the certified opinion of an independent actuary who is a member of the American Society of Actuaries as to the actuarial present value of the employer's determined and estimated future compensation payments based on cash reserves, using a 4-percent discount rate, and a qualifying security deposit equal to 1.5 times the value so certified. The employer shall thereafter annually provide such a certified opinion until such time as the employer meets the requirements of subparagraph 1. The qualifying security deposit shall be adjusted at the time of each such annual report. Upon the failure of the employer to timely provide such opinion or to timely provide a security deposit in an amount equal to 1.5 times the value certified in the latest opinion, the division shall then revoke such employer's authorization to self-insure, and such failure shall be deemed to constitute an immediate serious danger to the public health, safety, or welfare sufficient to justify the summary suspension of the employer's authorization to self-insure pursuant to s. 120.68.

3. Upon the suspension or revocation of the employer's authorization to self-insure, the employer shall provide to the division and to the Florida Self-Insurers Guaranty Association, Incorporated, created pursuant to s. 440.385 the certified opinion of an independent actuary who is a member of the American Society of Actuaries of the actuarial present value of the determined and estimated future compensation payments of the employer for claims incurred while the member exercised the privilege of self-insurance, using a discount rate of 4 percent. The employer shall provide such an opinion at 6-month intervals thereafter until such time as the latest opinion shows no remaining value of claims. With each such opinion, the employer shall deposit with the division a qualifying security deposit in an amount equal to the value certified by the actuary. The association has a cause of action against an employer, and against any successor of the employer, who fails to timely provide such opinion or who fails to timely maintain the required security deposit with the division. The association shall recover a judgment in the amount of the actuarial present value of the determined and estimated future compensation payments of the employer for claims incurred while the employer exercised the privilege of self-insurance, together with attorney's fees. For purposes of this section, the successor of an employer means any person, business entity, or group of persons or business entities, which holds or acquires legal or beneficial title to the majority of the assets or the majority of the shares of the employer.

4. A qualifying security deposit shall consist, at the option of the employer, of:

a. Surety bonds, in a form and containing such terms as prescribed by the division, issued by a corporation surety authorized to transact surety business by the Department of Insurance, and whose policyholders' and financial ratings, as reported in A.M. Best's Insurance Reports, Property-Liability, are not less than "A" and "V", respectively.

b. Certificates of deposit with financial institutions, the deposits of which are insured through the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

c. Irrevocable letters of credit in favor of the division issued by financial institutions described in sub-subparagraph b.

d. Direct obligations of the United States Treasury backed by the full faith and credit of the United States.

e. Securities issued by this state and backed by the full faith and credit of this state.

5. The qualifying security deposit shall be held by the division, or by a depository authorized by the division, exclusively for the benefit of workers' compensation claimants. The security shall not be subject to assignment, execution, attachment, or any legal process whatsoever, except as necessary to guarantee the payment of compensation under this chapter. No surety bond may be terminated, and no other qualifying security may be allowed to lapse, without 90 days' prior notice to the division and deposit by the self-insuring employer of other qualifying security of equal value within 10 business days after such notice. Failure to provide such notice or failure to timely provide qualifying replacement security after such notice shall constitute grounds for the division to call or sue upon the surety bond, or to act with respect to other pledged security in any manner necessary to preserve its value for the purposes intended by this section, including the exercise of rights under a letter of credit, the sale of any security at then prevailing market rates, or the withdrawal of any funds represented by any certificate of deposit forming part of the qualifying security deposit. The division may specify by rule the amount of the qualifying security deposit required prior to authorizing an employer to self-insure and the amount of net worth required for an employer to qualify for authorization to self-insure;

(c) By entering into a contract with a public utility under an approved utility-provided self-insurance program as set forth in s. 440.571 in effect as of July 1, 1983. The division shall adopt rules to implement this paragraph;

(d) By entering into an interlocal agreement with other local governmental entities to create a local government pool pursuant to s. 440.575;

(e) In accordance with s. 440.135, an employer, other than a local government unit, may elect coverage under the Workers' Compensation Law and retain the benefit of the exclusiveness of liability provided in s. 440.11 by obtaining a 24-hour health insurance policy from an authorized property and casualty insurance carrier or an authorized life and health insurance carrier, or by participating in a fully or partially self-insured 24-hour health plan that is established or maintained by or for two or more employers, so long as the law of this state is not preempted by the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, or any amendment to that law, which policy or plan must provide, for at least occupational injuries and illnesses, medical benefits that are comparable to those required by this chapter. A local government unit, as a single employer, in accordance with s. 440.135, may participate in the 24-hour health insurance coverage plan referenced in this paragraph. Disputes and remedies arising under policies issued under this section are governed by the terms and conditions of the policies and under the applicable provisions of the Florida Insurance Code and rules adopted under the insurance code and other applicable laws of this

state. The 24-hour health insurance policy may provide for health care by a health maintenance organization or a preferred provider organization. The premium for such 24-hour health insurance policy shall be paid entirely by the employer. The 24-hour health insurance policy may use deductibles and coinsurance provisions that require the employee to pay a portion of the actual medical care received by the employee. If an employer obtains a 24-hour health insurance policy or self-insured plan to secure payment of compensation as to medical benefits, the employer must also obtain an insurance policy or policies that provide indemnity benefits as follows:

1. If indemnity benefits are provided only for occupational-related disability, such benefits must be comparable to those required by this chapter.

2. If indemnity benefits are provided for both occupational-related and nonoccupational-related disability, such benefits must be comparable to those required by this chapter, except that they must be based on 60 percent of the average weekly wages.

3. The employer shall provide for each of its employees life insurance with a death benefit of \$100,000.

4. Policies providing coverage under this subsection must use prescribed and acceptable underwriting standards, forms, and policies approved by the Department of Insurance. If any insurance policy that provides coverage under this section is canceled, terminated, or nonrenewed for any reason, the cancellation, termination, or nonrenewal is ineffective until the self-insured employer or insurance carrier or carriers notify the division and the Department of Insurance of the cancellation, termination, or nonrenewal, and until the division has actually received the notification. The division must be notified of replacement coverage under a workers' compensation and employer's liability insurance policy or plan by the employer prior to the effective date of the cancellation, termination, or nonrenewal; or

(f) By entering into a contract with an individual self-insurer under an approved individual self-insurer-provided self-insurance program as set forth in s. 440.571. The division may adopt rules to implement this subsection.

(3)

(b) The division shall suspend or revoke any authorization to a self-insurer for good cause, as defined by rule of the division. No suspension or revocation shall affect the liability of any self-insurer already incurred.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor June 26, 2000.

Filed in Office Secretary of State June 26, 2000.