

Council Substitute for
Committee Substitute for House Bill No. 319

An act relating to self-insurers; amending s. 440.24, F.S.; providing for the sale of securities on deposit to satisfy a compensation order; amending s. 440.38, F.S.; transferring operation of provisions requiring the securing of payment of compensation by employers from the Division of Workers' Compensation of the Department of Labor and Employment Security to the Florida Self-Insurers Guaranty Association, Incorporated, and the Department of Insurance; revising and clarifying requirements and procedures; providing powers and duties of the association and the department; providing for allocation or payment of state funds to the association for certain purposes; providing rulemaking authority; amending s. 440.385, F.S.; revising and clarifying provisions relating to the association's creation, board of directors, powers and duties, insolvency fund, and plan of operation; providing additional powers of the association; transferring the powers and duties of the Department of Labor and Employment Security relating to the association to the Department of Insurance and revising such powers and duties; providing additional powers and duties of the Department of Insurance; providing for oversight of the association by the department; deleting certain provisions relating to detection and prevention of employer insolvencies; amending s. 440.386, F.S.; providing parity for the association with the Department of Insurance relating to proceedings for delinquency, liquidation, and conservation of assets; amending s. 440.51, F.S.; eliminating provisions authorizing the Department of Insurance to require that self-insurers make certain reports; eliminating provisions authorizing certain audits; transferring the powers, duties, functions, rules, records, and property relating to the regulation of individual, self-insured employers by the Department of Labor and Employment Security to the Department of Insurance; providing an appropriation; eliminating specified positions; providing an effective date.

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

Section 1. Subsection (3) of section 440.24, Florida Statutes, is amended to read:

440.24 Enforcement of compensation orders; penalties.—

(3) In any case where the employer is a self-insurer and fails to comply with any compensation order of a judge of compensation claims or court within 10 days after such order becomes final, the Department of Insurance ~~division~~ may suspend or revoke any authorization previously given to the employer to be become a self-insurer, and the Florida Self-Insurers Guaranty Association, Incorporated, division ~~division~~ may call or sue upon the surety bond or exercise its rights under the letter of credit sell such of the securities

deposited by ~~the such~~ self-insurer with the association as a qualifying security deposit division as may be necessary to satisfy the such order.

Section 2. Subsections (1), (2), and (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 Florida Self-Insurers Guaranty Association, Incorporated, created in s. 440.385, that it has the financial strength necessary to ensure timely payment of all current and future claims division of its financial ability to pay such compensation individually and on behalf of its subsidiary and affiliated companies with employees in this state and receiving an authorization from the Department of Insurance division to pay such compensation directly. The association shall review the financial strength of applicants for membership, current members, and former members and make recommendations to the Department of Insurance regarding their qualifications to self-insure in accordance with this section and ss. 440.385 and 440.386. The department shall act in accordance with the recommendations unless it finds by clear and convincing evidence that the recommendations are erroneous. the following provisions:

1. As a condition of authorization under paragraph (a), the association division may recommend that the Department of Insurance require an employer to deposit with the association division a qualifying security deposit. The association division shall recommend determine the type and amount of the qualifying security deposit and shall prescribe conditions for the qualifying security deposit, which shall include authorization for the association division to call the qualifying security deposit in the case of default to pay compensation awards and related expenses of the association. In addition, the division shall require, As a condition to authorization to self-insure, the employer shall provide proof that the employer has provided for competent personnel with whom to deliver benefits and to provide a safe working environment. Further, The employer division shall also provide evidence that it carries require such employer to carry reinsurance at levels that will ensure the financial strength and actuarial soundness of such employer in accordance with rules adopted ~~promulgated~~ by the Department of Insurance division. The Department of Insurance division may by rule require that, in the event of an individual self-insurer's insolvency, such qualifying security deposits and reinsurance policies are 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. The employer shall, if requested, provide the

association an actuarial report signed by a member of the American Academy of Actuaries providing an opinion of the appropriate present value of the reserves, using a 4-percent discount rate, for current and future compensation claims. If any member or former member of the association refuses to timely provide such a report, the association may obtain an order from a circuit court requiring the member to produce such a report and ordering any other relief that the court determines is appropriate. The association may recover all reasonable costs and attorney's fees in such proceedings.

2. If the employer fails to maintain the foregoing requirements, the association division shall recommend to the Department of Insurance that the department revoke the employer's authority to self-insure, unless the employer provides to the association division the certified opinion of an independent actuary who is a member of the American Academy 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 association shall provide that information to the Department of Insurance along with a recommendation, and the Department of Insurance division shall then revoke such employer's authorization to self-insure, ~~and such Failure to comply with this subparagraph constitutes 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 Academy 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 association 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 association 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 ~~association 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. Irrevocable letters of credit in favor of the ~~association division~~ issued by financial institutions located within this state, the deposits of which are insured through the Federal Deposit Insurance Corporation.

5. The qualifying security deposit shall be held by the ~~association 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 letter of credit may be allowed to expire, without 90 days' prior written notice to the ~~association division~~ and deposit by the self-insuring employer of some other qualifying security deposit of equal value within 10 business days after such notice. Failure to provide such written notice or failure to timely provide qualifying replacement security after such notice shall constitute grounds for the ~~association division~~ to call or sue upon the surety bond or to exercise its rights under a letter of credit. Current self-insured employers must comply with this section on or before December 31, 2001, or upon the maturity of existing security deposits, whichever occurs later. The ~~Department of Insurance 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. 624.46225 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. 624.4622;

(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. 624.46225. The division may adopt rules to administer this subsection.

(2)(a) The Department of Insurance ~~division~~ shall adopt rules by which businesses may become qualified to provide underwriting claims-adjusting, loss control, and safety engineering services to self-insurers.

(b) The Department of Insurance ~~division~~ shall adopt rules requiring self-insurers to file any reports necessary to fulfill the requirements of this chapter. Any self-insurer who fails to file any report as prescribed by the

rules adopted by the Department of Insurance division shall be subject to a civil penalty ~~not to exceed \$100 for each such failure~~.

(3)(a) The license of any stock company or mutual company or association or exchange authorized to do insurance business in the state shall for good cause, upon recommendation of the division, be suspended or revoked by the Department of Insurance. No suspension or revocation shall affect the liability of any carrier already incurred.

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

(c) Violation of s. 440.381 by a self-insurance fund shall result in the imposition of a fine not to exceed \$1,000 per audit if the self-insurance fund fails to act on said audits by correcting errors in employee classification or accepted applications for coverage where it knew employee classifications were incorrect. Such fines shall be levied by the division and deposited into the Workers' Compensation Administration Trust Fund.

Section 3. Section 440.385, Florida Statutes, is amended to read:

440.385 Florida Self-Insurers Guaranty Association, Incorporated.—

(1) CREATION OF ASSOCIATION.—

(a) There is created a nonprofit corporation to be known as the “Florida Self-Insurers Guaranty Association, Incorporated,” hereinafter referred to as “the association.” Upon incorporation of the association, all individual self-insurers as defined in ss. 440.02(23)(a) and 440.38(1)(b), other than individual self-insurers which are public utilities or governmental entities, shall be members of the association as a condition of their authority to individually self-insure in this state. The association shall perform its functions under a plan of operation as established and approved under subsection (5) and shall exercise its powers and duties through a board of directors as established under subsection (2). The association corporation shall have those powers granted or permitted corporations not for profit, as provide in chapter 617. The activities of the association shall be subject to review by the Department of Insurance. The Department of Insurance shall have oversight responsibility as set forth in this section. The association is specifically authorized to enter into agreements with this state to perform specified services.

(b) A member may voluntarily withdraw from the association when the member voluntarily terminates the self-insurance privilege and pays all assessments due to the date of such termination. However, the withdrawing member shall continue to be bound by the provisions of this section relating to the period of his or her membership and any claims charged pursuant thereto. The withdrawing member who is a member on or after January 1, 1991, shall also be required to provide to the association division upon

withdrawal, and at 12-month intervals thereafter, satisfactory proof, including, if requested by the association, a report of known and potential claims certified by a member of the American Academy of Actuaries, that it continues to meet the standards of s. 440.38(1)(b)1. in relation to claims incurred while the withdrawing member exercised the privilege of self-insurance. Such reporting shall continue until the withdrawing member demonstrates to satisfies the association division that there is no remaining value to claims incurred while the withdrawing member was self-insured. If a withdrawing member fails or refuses to timely provide an actuarial report to the association, the association may obtain an order from a circuit court requiring the member to produce such a report and ordering any other relief that the court determines appropriate. The association is entitled to recover all reasonable costs and attorney's fees expended in such proceedings. If during this reporting period the withdrawing member fails to meet the standards of s. 440.38(1)(b)1., the withdrawing member who is a member on or after January 1, 1991, shall thereupon, and at 6-month intervals thereafter, provide to the ~~division and the~~ association the certified opinion of an independent actuary who is a member of the American Academy Society of Actuaries of the actuarial present value of the determined and estimated future compensation payments of the member for claims incurred while the member was a self-insurer, using a discount rate of 4 percent. With each such opinion, the withdrawing member shall deposit with the association division security in an amount equal to the value certified by the actuary and of a type that is acceptable for qualifying security deposits under s. 440.38(1)(b). The withdrawing member shall continue to provide such opinions and to provide such security until such time as the latest opinion shows no remaining value of claims. The association has a cause of action against a withdrawing member, and against any successor of a withdrawing member, who fails to timely provide the required opinion or who fails to maintain the required deposit with the association division. The association shall be entitled to recover a judgment in the amount of the actuarial present value of the determined and estimated future compensation payments of the withdrawing member for claims incurred during the time that the withdrawing member exercised the privilege of self-insurance, together with reasonable attorney's fees. The association is also entitled to recover reasonable attorney's fees in any action to compel production of any actuarial report required by this section. For purposes of this section, the successor of a withdrawing member means any person, business entity, or group of persons or business entities, which holds or acquires legal or beneficial title to the majority of the assets or the majority of the shares of the withdrawing member.

(2) BOARD OF DIRECTORS.—The board of directors of the association shall consist of nine persons and shall be organized as established in the plan of operation. All board members shall be experienced in self-insurance in this state. With respect to initial appointments, the Secretary of Labor and Employment Security shall, by July 15, 1982, approve and appoint to the board persons who are experienced with self-insurance in this state and who are recommended by the individual self-insurers in this state required to become members of the association pursuant to the provisions of paragraph (1)(a). In the event the secretary finds that any person so recommended does not have the necessary qualifications for service on the board and a majority of the board has been appointed, the secretary shall request

~~the directors thus far approved and appointed to recommend another person for appointment to the board. Each director shall serve for a 4-year term and may be reappointed. Appointments after January 1, 2002, other than initial appointments shall be made by the Department of Insurance Secretary of Labor and Employment Security upon recommendation of members of the association. Any vacancy on the board shall be filled for the remaining period of the term in the same manner as appointments other than initial appointments are made. Each director shall be reimbursed for expenses incurred in carrying out the duties of the board on behalf of the association.~~

(3) POWERS AND DUTIES.—

(a) Upon creation of the Insolvency Fund pursuant to the provisions of subsection (4), the association is obligated for payment of compensation under this chapter to insolvent members' employees resulting from incidents and injuries existing prior to the member becoming an insolvent member and from incidents and injuries occurring within 30 days after the member has become an insolvent member, provided the incidents giving rise to claims for compensation under this chapter occur during the year in which such insolvent member is a member of the guaranty fund and was assessable pursuant to the plan of operation, and provided the employee makes timely claim for such payments according to procedures set forth by a court of competent jurisdiction over the delinquency or bankruptcy proceedings of the insolvent member. Such obligation includes only that amount due the injured worker or workers of the insolvent member under this chapter. In no event is the association obligated to a claimant in an amount in excess of the obligation of the insolvent member. The association shall be deemed the insolvent employer for purposes of this chapter to the extent of its obligation on the covered claims and, to such extent, shall have all rights, duties, and obligations of the insolvent employer as if the employer had not become insolvent. However, in no event shall the association be liable for any penalties or interest.

(b) The association may:

1. Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

2. Borrow funds necessary to effect the purposes of this section in accord with the plan of operation.

3. Sue or be sued.

4. Negotiate and become a party to such contracts as are necessary to carry out the purposes of this section.

5. Purchase such reinsurance as is determined necessary pursuant to the plan of operation.

6. Review all applicants for membership in the association to determine whether the applicant is qualified for membership under the law. The association shall recommend to the Department of Insurance that the application be accepted or rejected based on the criteria set forth in s. 440.38(1)(b).

~~The Department of Insurance shall approve or disapprove the application as provided in paragraph (6)(a). Prior to a final determination by the Division of Workers' Compensation as to whether or not to approve any applicant for membership in the association, the association may issue opinions to the division concerning any applicant, which opinions shall be considered by the division prior to any final determination.~~

7. Collect and review financial information from employers and make recommendations to the Department of Insurance regarding the appropriate security deposit and reinsurance amounts necessary for an employer to demonstrate that it has the financial strength necessary to ensure the timely payment of all current and future claims. The association may audit and examine an employer to verify the financial strength of its current and former members. If the association determines that a current or former self-insured employer does not have the financial strength necessary to ensure the timely payment of all current and estimated future claims, the association may recommend to the Department of Insurance that the department:

a. Revoke the employer's self-insurance privilege.

b. Require the employer to provide a certified opinion of an independent actuary who is a member of the American Academy of Actuaries as to the actuarial present value of the employer's estimated current and future compensation payments, using a 4-percent discount rate.

c. Require an increase in the employer's security deposit in an amount determined by the association to be necessary to ensure payment of compensation claims. The Department of Insurance shall act on such recommendations as provided in paragraph (6)(a). The association has a cause of action against an employer, and against any successor of an employer, who fails to provide an additional security deposit required by the Department of Insurance. The association shall file an action in circuit court to recover a judgment in the amount of the requested additional security deposit together with reasonable attorney's fees. For the purposes of this section, the successor of an employer is 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.

8.7. Charge fees to any member of the association to cover the actual costs of examining the financial and safety conditions of that member.

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

10. Implement any procedures necessary to ensure compliance with regulatory actions taken by the Department of Insurance.

(c)1. To the extent necessary to secure funds for the payment of covered claims and also to pay the reasonable costs to administer them, the association, subject to approval by the Department of Insurance Labor and Employment Security, upon certification of the board of directors, shall levy assessments based on the annual written normal premium each employer would

have paid had the employer not been self-insured. Every assessment shall be made as a uniform percentage of the figure applicable to all individual self-insurers, provided that the assessment levied against any self-insurer in any one year shall not exceed 1 percent of the annual written normal premium during the calendar year preceding the date of the assessment. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan. Each employer so assessed shall have at least 30 days' written notice as to the date the assessment is due and payable. The association shall levy assessments against any newly admitted member of the association so that the basis of contribution of any newly admitted member is the same as previously admitted members, provision for which shall be contained in the plan of operation.

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

3. Funds may be allocated or paid from the Workers' Compensation Administration Trust Fund to contract with the association to perform services required by law. However, no state funds of any kind shall be allocated or paid to the association or any of its accounts for payment of covered claims or related expenses except those state funds accruing to the association by and through the assignment of rights of an insolvent employer. The Department of Insurance may not levy any assessment on the association.

(4) ~~INSOLVENCY FUND.—Upon the adoption of a plan of operation or the adoption of rules by the Department of Labor and Employment Security pursuant to subsection (5), there shall be created an Insolvency Fund to be managed by the association.~~

(a) ~~The Insolvency Fund is created for purposes of meeting the obligations of insolvent members incurred while members of the association and after the exhaustion of any security deposit bond, as required under this chapter. However, if such security deposit bond, surety, or reinsurance policy is payable to the Florida Self-Insurers Guaranty association, the association shall commence to provide benefits out of the Insolvency Fund and be reimbursed from the security deposit bond, surety, or reinsurance policy. The method of operation of the Insolvency Fund shall be defined in the plan of operation as provided in subsection (5).~~

(b) ~~The Department of Insurance shall have the authority to audit the financial soundness of the Insolvency Fund annually.~~

(c) ~~The Department of Insurance may offer certain amendments to the plan of operation to the board of directors of the association for purposes of assuring the ongoing financial soundness of the Insolvency Fund and its ability to meet the obligations of this section.~~

(d) ~~The department actuary may make certain recommendations to improve the orderly payment of claims.~~

(5) PLAN OF OPERATION.—The association shall operate pursuant to a plan of operation approved by the board of directors. The plan of operation in effect on January 1, 2002, and approved by the Department of Labor and Employment Security shall remain in effect. However, any amendments to the plan shall not become effective until approved by the Department of Insurance. By September 15, 1982, the board of directors shall submit to the Department of Labor and Employment Security a proposed plan of operation for the administration of the association and the Insolvency Fund.

(a) The purpose of the plan of operation shall be to provide the association and the board of directors with the authority and responsibility to establish the necessary programs and to take the necessary actions to protect against the insolvency of a member of the association. In addition, the plan shall provide that the members of the association shall be responsible for maintaining an adequate Insolvency Fund to meet the obligations of insolvent members provided for under this act and shall authorize the board of directors to contract and employ those persons with the necessary expertise to carry out this stated purpose. By January 1, 2003, the board of directors shall submit to the Department of Insurance a proposed plan of operation for the administration of the association. The Department of Insurance shall approve the plan by order, consistent with this section. The Department of Insurance shall approve any amendments to the plan, consistent with this section, which are determined appropriate to carry out the duties and responsibilities of the association.

~~(b) The plan of operation, and any amendments thereto, shall take effect upon approval in writing by the department. If the board of directors fails to submit a plan by September 15, 1982, or fails to make required amendments to the plan within 30 days thereafter, the department shall promulgate such rules as are necessary to effectuate the provisions of this subsection. Such rules shall continue in force until modified by the department or superseded by a plan submitted by the board of directors and approved by the department.~~

(b)(e) All member employers shall comply with the plan of operation.

(c)(d) The plan of operation shall:

1. Establish the procedures whereby all the powers and duties of the association under subsection (3) will be performed.

2. Establish procedures for handling assets of the association.

3. Establish the amount and method of reimbursing members of the board of directors under subsection (2).

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

5. Establish regular places and times for meetings of the board of directors.

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

7. Provide that any member employer aggrieved by any final action or decision of the association may appeal to the Department of Insurance within 30 days after the action or decision.

8. Establish the procedures whereby recommendations of candidates for the board of directors shall be submitted to the Department of Insurance.

9. Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

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

(6) POWERS AND DUTIES OF DEPARTMENT OF INSURANCE
~~LABOR AND EMPLOYMENT SECURITY.—~~

(a) The Department of Insurance shall:

(a) Review recommendations of the association concerning whether current or former self-insured employers or members of the association have the financial strength necessary to ensure the timely payment of all current and estimated future claims. If the association determines an employer does not have the financial strength necessary to ensure the timely payment of all current and future claims and recommends action pursuant to paragraph (3)(b), the department shall take such action as necessary to order the employer to comply with the recommendation, unless the department finds by clear and convincing evidence that the recommendation is erroneous.

(b) Contract with the association for services, which may include, but are not limited to:

1. Processing applications for self-insurance.

2. Collecting and reviewing financial statements and loss reserve information from individual self-insurers.

3. Collecting and maintaining files for original security deposit documents and reinsurance policies from individual self-insurers and, if necessary, perfecting security interests in security deposits.

4. Processing compliance documentation for individual self-insurers and providing copies of such documentation to the department.

5. Collecting all data necessary to calculate annual premium for all individual self-insurers, including individual self-insurers that are public utilities or governmental entities, and providing such calculated annual premium to the division for assessment purposes.

6. Inspecting and auditing annually, if necessary, the payroll and other records of each individual self-insurer, including individual self-insurers that are public utilities or governmental entities, in order to determine the wages paid by each individual self-insurer, the premium such individual self-insurer would have to pay if insured, and all payments of compensation made by such individual self-insurer during each prior period with the results of such audit provided to the division. For purposes of this section, the payroll records of each individual self-insurer shall be open to inspection and audit by the association and the department, or their authorized representatives, during regular business hours.

7. Processing applications and making recommendations with respect to the qualification of a business to be approved to provide or continue to provide services to individual self-insurers in the areas of underwriting, claims adjusting, loss control, and safety engineering.

8. Providing legal representation to implement the administration and audit of individual self-insurers and making recommendations regarding prosecution of any administrative or legal proceedings necessitated by the regulation of the individual self-insurers by the department.

(c) Contract with an attorney or attorneys recommended by the association for representation of the department in any administrative or legal proceedings necessitated by the recommended regulation of the individual self-insurers.

(d) Direct the association to require from each individual self-insurer, at such time and in accordance with such regulations as the department prescribes, reports relating to wages paid, the amount of premiums such individual self-insurer would have to pay if insured, and all payments of compensation made by such individual self-insurer during each prior period and to determine the amounts paid by each individual self-insurer and the amounts paid by all individual self-insurers during such period. For purposes of this section, the payroll records of each individual self-insurer shall be open to annual inspection and audit by the association and the department, or their authorized representative, during regular business hours, and if any audit of such records of an individual self-insurer discloses a deficiency in the amount reported to the association or in the amounts paid to the division by an individual self-insurer for its assessment for the Workers' Compensation Administration Trust Fund, the department or the association may assess the cost of such audit against the individual self-insurer.

1. Notify the association of the existence of an insolvent employer not later than 3 days after it receives notice of the determination of insolvency.

2.— Upon request of the board of directors, provide the association with a statement of the annual normal premiums of each member employer.

(b) ~~The department may:~~

(e)1. Require that the association notify the member employers and any other interested parties of the determination of insolvency and of their rights under this section. Such notification shall be by mail at the last known address thereof when available; but, if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(f)2. Suspend or revoke the authority of any member employer failing to pay an assessment when due or failing to comply with the plan of operation to self-insure in this state. As an alternative, the department may levy a fine on any member employer failing to pay an assessment when due. Such fine shall not exceed 5 percent of the unpaid assessment per month, except that no fine shall be less than \$100 per month.

(g)3. Revoke the designation of any servicing facility if the department finds that claims are being handled unsatisfactorily.

(7) EFFECT OF PAID CLAIMS.—

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

(b) The receiver, liquidator, or statutory successor of an insolvent member shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority against the assets of the insolvent member equal to that to which the claimant would have been entitled in the absence of this section. The expense of the association or similar organization in handling claims shall be accorded the same priority as the expenses of the liquidator.

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

(8) NOTIFICATION PREVENTION OF INSOLVENCIES.—To aid in the detection and prevention of employer insolvencies:

(a) Upon determination by majority vote that any member employer may be insolvent or in a financial condition hazardous to the employees thereof or to the public, it shall be the duty of the board of directors to notify the Department of Insurance Labor and Employment Security of any information indicating such condition.

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

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

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

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

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

(9) EXAMINATION OF THE ASSOCIATION.—The association shall be subject to examination and regulation by the Department of Insurance Labor and Employment Security. No later than March 30 of each year, the board of directors shall submit an audited a financial statement report for the preceding calendar year in a form approved by the department.

(10) IMMUNITY.—There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member employer, the association or its agents or employees, the board of directors, or the Department of Insurance Labor and Employment Security or its representatives for any action taken by them in the performance of their powers and duties under this section.

(11) STAY OF PROCEEDINGS; REOPENING OF DEFAULT JUDGMENTS.—All proceedings in which an insolvent employer is a party, or is obligated to defend a party, in any court or before any quasi-judicial body

or administrative board in this state shall be stayed for up to 6 months, or for such additional period from the date the employer becomes an insolvent member, as is deemed necessary by a court of competent jurisdiction to permit proper defense by the association of all pending causes of action as to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent member. The association, either on its own behalf or on behalf of the insolvent member, may apply to have such judgment, order, decision, verdict, or finding set aside by the same court or administrator that made such judgment, order, decision, verdict, or finding and shall be permitted to defend against such claim on the merits. If requested by the association, the stay of proceedings may be shortened or waived.

(12) **LIMITATION ON CERTAIN ACTIONS.**—Notwithstanding any other provision of this chapter, a covered claim, as defined herein, with respect to which settlement is not effected and pursuant to which suit is not instituted against the insured of an insolvent member or the association within 1 year after the deadline for filing claims with the receiver of the insolvent member, or any extension of the deadline, shall thenceforth be barred as a claim against the association.

(13) **CORPORATE INCOME TAX CREDIT.**—Any sums acquired by a member by refund, dividend, or otherwise from the association shall be payable within 30 days of receipt to the Department of Revenue for deposit with the Treasurer to the credit of the General Revenue Fund. All provisions of chapter 220 relating to penalties and interest on delinquent corporate income tax payments apply to payments due under this subsection.

Section 4. Subsections (2), (3), and (4) of section 440.386, Florida Statutes, are amended to read:

440.386 Individual self-insurers' insolvency; conservation; liquidation.—

(2) **COMMENCEMENT OF DELINQUENCY PROCEEDING.**—~~The Department of Insurance or the Florida Self-Insurers Guaranty Association, Incorporated, may commence a delinquency~~ any such proceeding by application to the court for an order directing the individual self-insurer to show cause why the department or association should not have the relief sought prayed for. ~~The Florida Self-Insurers Guaranty Association, Incorporated, may petition the department to commence such proceedings, and upon receipt of such petition, the department shall commence such proceeding.~~ On the return of such order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the claimants, creditors, stockholders, members, subscribers, or public may require. ~~The department and the Florida Self-Insurers Guaranty association, Incorporated,~~ shall give be given reasonable written notice to each other by the ~~department~~ of all hearings which pertain to an adjudication of insolvency of a member individual self-insurer.

(3) **GROUND FOR LIQUIDATION.**—The Department of Insurance or the association may apply to the court for an order appointing a receiver and

directing the receiver to liquidate the business of a domestic individual self-insurer if such individual self-insurer is insolvent. ~~Florida Self-Insurers Guaranty Association, Incorporated, may petition the department to apply to the court for such order. Upon receipt of such petition, the department shall apply to the court for such order.~~

(4) GROUND FOR CONSERVATION; FOREIGN INDIVIDUAL SELF-INSURERS.—

(a) The Department of Insurance or the association may apply to the court for an order appointing a receiver or ancillary receiver, and directing the receiver to conserve the assets within this state, of a foreign individual self-insurer if such individual self-insurer is insolvent. ~~Florida Self-Insurers Guaranty Association, Incorporated, may petition the department to apply for such order, and, upon receipt of such petition, the department shall apply to the court for such order.~~

(b) An order to conserve the assets of an individual self-insurer shall require the receiver forthwith to take possession of the property of the receiver within the state and to conserve it, subject to the further direction of the court.

Section 5. Subsection (6) of section 440.51, Florida Statutes, is amended to read:

440.51 Expenses of administration.—

(6)(a) The division may require from each carrier, at such time and in accordance with such regulations as the division may prescribe, reports in respect to all gross earned premiums and of all payments of compensation made by such carrier during each prior period, and may determine the amounts paid by each carrier and the amounts paid by all carriers during such period.

~~(b) The Department of Insurance may require from each self-insurer, at such time and in accordance with such regulations as the Department of Insurance prescribes, reports in respect to wages paid, the amount of premiums such self-insurer would have to pay if insured, and all payments of compensation made by such self-insurer during each prior period, and may determine the amounts paid by each self-insurer and the amounts paid by all self-insurers during such period. For the purposes of this section, the payroll records of each self-insurer shall be open to annual inspection and audit by the Department of Insurance or its authorized representative, during regular business hours; and if any audit of such records of a self-insurer discloses a deficiency in the amounts reported to the Department of Insurance or in the amounts paid to the Department of Insurance by a self-insurer pursuant to this section, the Department of Insurance may assess the cost of such audit against the self-insurer.~~

Section 6. All powers, duties, functions, rules, records, and property of the Division of Workers' Compensation of the Department of Labor and Employment Security related to the regulation of individual, self-insured

employers under chapter 440, Florida Statutes, are transferred to the Department of Insurance.

Section 7. The sum of \$183,750 is appropriated from the Workers' Compensation Administration Trust Fund of the Department of Labor and Employment Security to the Department of Insurance for the purpose of contracting with the Florida Self-Insurers Guaranty Association, Incorporated, to carry out the provisions of this act during the 2002-2003 fiscal year.

Section 8. Six full-time equivalent positions within the Division of Workers' Compensation of the Department of Labor and Employment Security responsible for the regulation and oversight of self-insured employers are eliminated.

Section 9. This act shall take effect October 1, 2002.

Approved by the Governor May 15, 2002.

Filed in Office Secretary of State May 15, 2002.