

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 1938

03/17/2015 Authored by Hoppe

The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to insurance; modifying the workers' compensation self-insurance
1.3 program; requiring reports; amending Minnesota Statutes 2014, sections 79A.01,
1.4 by adding subdivisions; 79A.02, subdivisions 1, 2, 3; 79A.04, subdivisions 1, 3a;
1.5 79A.09, subdivisions 1, 4; 79A.12, subdivision 2; proposing coding for new law
1.6 in Minnesota Statutes, chapter 79A.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2014, section 79A.01, is amended by adding a
1.9 subdivision to read:

1.10 Subd. 12. **Alternative security program.** "Alternative security program" means
1.11 the program authorized under section 79A.041.

1.12 Sec. 2. Minnesota Statutes 2014, section 79A.01, is amended by adding a subdivision
1.13 to read:

1.14 Subd. 13. **Financial advisor.** "Financial advisor" means an entity that provides risk
1.15 and investment analysis.

1.16 Sec. 3. Minnesota Statutes 2014, section 79A.02, subdivision 1, is amended to read:

1.17 Subdivision 1. **Membership.** For the purposes of assisting the commissioner
1.18 and the security fund, there is established a Workers' Compensation Self-insurers'
1.19 Advisory Committee of five members that are representatives of employers authorized to
1.20 self-insure in Minnesota. Three of the members and three alternates shall be elected by the
1.21 self-insurers' security fund board of trustees and two members and two alternates shall
1.22 be appointed by the commissioner. The commissioner or the commissioner's designee
1.23 shall be an ex officio, nonvoting member.

2.1 Sec. 4. Minnesota Statutes 2014, section 79A.02, subdivision 2, is amended to read:

2.2 Subd. 2. **Advice to commissioner or security fund.** At the request of the
2.3 commissioner or the security fund, the committee shall meet and shall advise the
2.4 commissioner and the security fund with respect to whether or not an applicant to become
2.5 a private self-insurer in the state of Minnesota has met the statutory requirements to
2.6 self-insure, or to participate in the alternative security program under section 79A.041.
2.7 The Department of Commerce may furnish the committee with any financial data which
2.8 it has, but a member of the advisory committee who may have a conflict of interest
2.9 in reviewing the financial data shall not have access to the data nor participate in the
2.10 discussions concerning the applicant. Financial data received from the commissioner is
2.11 nonpublic data. The committee shall advise the commissioner and the security fund if it
2.12 has any information that any private self-insurer may become insolvent.

2.13 Sec. 5. Minnesota Statutes 2014, section 79A.02, subdivision 3, is amended to read:

2.14 Subd. 3. **Audit of self-insurance application.** (a) The self-insurers' security fund
2.15 may retain a certified public accountant or financial advisor to perform services for, and
2.16 report directly to, the commissioner of commerce or the security fund. When requested
2.17 by the Workers' Compensation Self-Insurers' Advisory Committee, the certified public
2.18 accountant or financial advisor shall review an application to self-insure, including the
2.19 applicant's financial data and creditworthiness established under the alternative security
2.20 program. The certified public accountant or financial advisor shall provide a report to
2.21 the commissioner of commerce and the security fund indicating whether that applicant
2.22 has met the requirements of section 79A.03, subdivisions 2 and 3, or the alternative
2.23 security program. Additionally, the certified public accountant or financial advisor shall
2.24 provide advice and counsel to the commissioner and the security fund about relevant facts
2.25 regarding that applicant's financial condition.

2.26 (b) If the report of the certified public accountant or financial advisor is used by the
2.27 commissioner as the basis for the commissioner's determination regarding the applicant's
2.28 self-insurance status or the security fund's determination of eligibility to participate in the
2.29 alternative security program, the certified public accountant or financial advisor shall be
2.30 made available to the commissioner for any hearings or other proceedings arising from
2.31 that determination.

2.32 (c) The commissioner shall provide the advisory committee with the summary report
2.33 by the certified public accountant or financial advisor and any financial data in possession
2.34 of the Department of Commerce that is otherwise available to the public.

2.35 The cost of the review shall be the obligation of the self-insurer's security fund.

Sec. 6. Minnesota Statutes 2014, section 79A.04, subdivision 1, is amended to read:

Subdivision 1. **Annual securing of liability.** Each year every private self-insuring employer shall secure incurred liabilities for the payment of compensation and the performance of its obligations and the obligations of all self-insuring employers imposed under chapter 176 by participating in the alternative security program, if it is established by the security fund under section 79A.041, or renewing the prior year's security deposit or by making a new deposit of security. If a new deposit is made, it must be posted in the following manner: within 60 days of the filing of the annual report, the security posting for all prior years plus one-third of the posting for the current year; by July 31, one-third of the posting for the current year; by October 31, the final one-third of the posting for the current year.

Sec. 7. Minnesota Statutes 2014, section 79A.04, subdivision 3a, is amended to read:

Subd. 3a. **Acceptable securities.** The following are acceptable securities and surety bonds for the purpose of funding self-insurance plans and group self-insurance plans:

(1) direct obligations of the United States government except mortgage-backed securities of ~~the Government National Mortgage Association~~ any kind;

(2) bonds, notes, debentures, and other instruments which are obligations of agencies and instrumentalities of the United States ~~including, but not limited to, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank, the Student Loan Marketing Association, and the Farm Credit System, and their successors,~~ but not including collateralized mortgage obligations or mortgage pass-through instruments;

(3) bonds or securities that are issued by the state of Minnesota and that are secured by the full faith and credit of the state;

(4) certificates of deposit which are insured by the Federal Deposit Insurance Corporation and ~~are issued by a Minnesota depository institution~~ approved by the commissioner of commerce;

(5) obligations of, or instruments unconditionally guaranteed by, ~~Minnesota depository~~ financial institutions whose long-term debt rating is at least AA-, Aa3, or their equivalent, by at least two nationally recognized rating agencies;

(6) surety bonds issued by a corporate surety authorized by the commissioner of commerce to transact such business in the state;

(7) obligations of or instruments unconditionally guaranteed by Minnesota insurance companies, whose long-term debt rating is at least AA-, Aa3, or their equivalent, by at least two nationally recognized rating agencies and whose rating is A+ by A. M. Best, Inc.; and

(8) ~~any guarantee from the United States government whereby the payment of the workers' compensation liability of a self-insurer is guaranteed; and bonds which are the general obligation of the Minnesota Housing Finance Agency~~ time deposits that are fully insured by a federal agency.

Sec. 8. **[79A.041] ALTERNATIVE SECURITY PROGRAM.**

Subdivision 1. **Creation.** Notwithstanding any other provision of this chapter, the security fund may establish an alternative security program for the purpose of acquiring a pool of funds to meet its obligations under this chapter, and as an alternative or supplement to the requirement that members deposit security under section 79A.04, subdivision 1.

Subd. 2. **Member participation.** If an alternative security program is established, all members must participate in the program. The security deposited under section 79A.04, subdivision 1, by members participating in the program shall be released by the commissioner upon payment of the members' alternative security program assessments. Except for the obligation to make or renew a deposit of security under section 79A.04, all other provisions of chapter 79A shall apply with respect to any private self-insurer that qualifies for and is required to participate in the alternative security program under this section.

Subd. 3. **Member assessments.** (a) The security fund shall assess each member participating in the alternative security program. The amount of the assessment charged to each member participating in the program shall be based on the security fund's reasonable consideration of the following factors:

(1) total amount of assessments necessary to provide security for all participating members;

(2) individual member's total workers' compensation liabilities under chapter 176;

(3) financial strength and creditworthiness of the individual member; and

(4) any other relevant factors as determined by the security fund.

(b) In order to enable the security fund to determine the workers' compensation liabilities, financial strength, and creditworthiness of each member, all members participating in the program are required to file with the security fund the same financial statements, documents, and reports required to be filed with the commissioner under section 79A.03. If a member fails to file the required financial statements, documents, and reports with the security fund, the security fund may establish an assessment rate for the member that is equal to the highest rate established for any other member. Any financial statements, documents, or reports provided by the member may not be publicly disclosed by the security fund and shall be used only for the purpose of implementing the program.

5.1 (c) All assessments paid by members to the security fund pursuant to the alternative
5.2 security program will be the property of the security fund. Members shall have no right,
5.3 claim, or interest in such assessments paid to the security fund. Assessments paid by any
5.4 member pursuant to the alternative security program are not a deposit of security and shall
5.5 not satisfy any obligation of a member to provide a deposit of security.

5.6 (d) The security fund may purchase the financial instruments it determines necessary
5.7 to reduce risk in the security fund's financial portfolio, including the purchase of credit
5.8 insurance.

5.9 Subd. 4. **Annual report to commissioner.** If the security fund establishes an
5.10 alternative security program, the security fund shall report annually to the commissioner
5.11 on the operation of the program. The report must include:

5.12 (1) the methodology used to determine the financial strength and creditworthiness of
5.13 individual and group private self-insurers participating in the alternative security program;

5.14 (2) the standards used to determine which members are excluded from the program;

5.15 (3) the capital target range for the program;

5.16 (4) the risk management strategies used by the security fund to reduce risk in its
5.17 financial portfolio and protect the members from loss;

5.18 (5) the investment policy used to govern the investment of the program's financial
5.19 assets; and

5.20 (6) information about any other provisions the security fund determined were
5.21 necessary to implement the program.

5.22 Subd. 5. **Termination.** The security fund may choose to terminate the alternative
5.23 security program. Prior to termination of the alternative security program, the security fund
5.24 shall create a plan for termination. The plan is subject to approval by the commissioner.
5.25 The security fund shall provide written notice to the members and commissioner at least
5.26 six months prior to termination.

5.27 Sec. 9. Minnesota Statutes 2014, section 79A.09, subdivision 1, is amended to read:

5.28 Subdivision 1. **Creation.** The self-insurers' security fund is established as a
5.29 nonprofit corporation pursuant to the Minnesota Nonprofit Corporation Act, sections
5.30 317A.001 to 317A.909. If any provision of the Minnesota Nonprofit Corporation Act
5.31 conflicts with any provision of this chapter, the provisions of this chapter apply. Each
5.32 private self-insurer who is self-insured on July 1, 1988, or who becomes self-insured
5.33 thereafter, shall participate as a member in the security fund. This participation shall be a
5.34 condition of maintaining its certificate to self-insure. The members of the security fund
5.35 are jointly and severally liable for the compensation obligations of the security fund.

6.1 Sec. 10. Minnesota Statutes 2014, section 79A.09, subdivision 4, is amended to read:

6.2 Subd. 4. **Confidential information.** The security fund may receive private
6.3 data concerning the financial condition of private self-insurers whose liabilities to pay
6.4 compensation have become its responsibility. ~~The data shall become public data upon~~
6.5 ~~its receipt by the security fund.~~

6.6 Sec. 11. Minnesota Statutes 2014, section 79A.12, subdivision 2, is amended to read:

6.7 Subd. 2. **Assessment.** The security fund may assess each of its members a pro
6.8 rata share of the funding necessary to carry out its obligation and the purposes of this
6.9 chapter. ~~Total annual assessments in any calendar year shall not exceed ten percent of~~
6.10 ~~paid indemnity losses, as defined in section 176.129, made by the self-insured employer~~
6.11 ~~during the preceding calendar year. The annual assessment calculation shall not include~~
6.12 ~~supplementary benefits paid which will be reimbursed by the special compensation fund.~~
6.13 Funds obtained by assessments pursuant to this subdivision may only be used for the
6.14 purposes of this chapter. The trustees shall certify to the commissioner the collection and
6.15 receipt of all money from assessments, noting any delinquencies. The trustees shall take
6.16 any action deemed appropriate to collect any delinquent assessments.

6.17 Sec. 12. **EFFECTIVE DATE.**

6.18 Sections 1 to 11 are effective the day following final enactment.