

CHAPTER 79A

WORKERS' COMPENSATION SELF-INSURANCE

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79A.01 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of this chapter, the terms defined in this section have the meaning given them.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of commerce except where specifically stated otherwise.

Subd. 3. **Incurred liabilities for the payment of compensation.** "Incurred liabilities for the payment of compensation" means the sum of both of the following:

(1) an estimate of future workers' compensation benefits, including medical and indemnity; and

(2) an amount determined by the commissioner to be reasonably adequate to assure the administration of claims, including legal costs, but not to exceed ten percent of future workers' compensation benefits.

Subd. 4. **Insolvent self-insurer.** "Insolvent self-insurer" means: (1) a member private self-insurer who has failed to pay compensation as a result of a declaration of bankruptcy or insolvency by a court of competent jurisdiction and whose security deposit has been called by the commissioner pursuant to chapter 176; (2) a member self-insurer who has failed to pay compensation and who has been issued a certificate of default by the commissioner and whose security deposit has been called by the commissioner pursuant to chapter 176; or (3) a member or former member private self-insurer who has failed to pay an assessment required by section 79A.12, subdivision 2, and who has been issued a certificate of default by the commissioner and whose security deposit has been called by the commissioner.

Subd. 5. **Member.** "Member" means a private self-insurer which participates in the self-insurers' security fund.

Subd. 6. **Private self-insurer.** "Private self-insurer" means a member private employer which is self-insured or a group which is self-insured against liability for workers' compensation under chapter 176. It does not include the state of Minnesota or its political subdivisions.

Subd. 7. **Security fund.** "Security fund" means the self-insurers' security fund established pursuant to this chapter.

Subd. 8. **Trustees.** "Trustees" means the board of trustees of the self-insurers' security fund.

Subd. 9. **Certificate of default.** "Certificate of default" means a notice issued by the commissioner of commerce based upon information received from the commissioner of labor and industry, that a private self-insurer has failed to pay compensation as required by chapter 176.

Subd. 10. **Common claims fund.** "Common claims fund," with respect to group self-insurers, means the cash, cash equivalents, or investment accounts maintained by the mutual self-insurance group to pay its workers' compensation liabilities.

History: 1988 c 674 s 1; 1993 c 13 art 1 s 20; 1995 c 231 art 2 s 17-19, 1995 c 258 s 59

79A.02. SELF-INSURERS' ADVISORY COMMITTEE.

Subdivision 1. **Membership.** For the purposes of assisting the commissioner, there is established a workers' compensation self-insurers' advisory committee of five members that are employers authorized to self-insure in Minnesota. Three of the members and three alternates shall be elected by the self-insurers' security fund board of trustees and two alternates shall be appointed by the commissioner.

Subd. 2. **Advice to commissioner.** At the request of the commissioner, the committee shall meet and shall advise the commissioner with respect to whether or not an applicant to become a private self-insurer in the state of Minnesota has met the statutory requirements to self-insure. The department of commerce may furnish the committee with any financial data which it has, but a member of the advisory committee who may have a conflict of interest in reviewing the financial data shall not have access to the data nor participate in the discussions concerning the applicant. Financial data received from the commissioner is nonpublic data. The committee shall advise the commissioner if it has any information that any private self-insurer may become insolvent.

Subd. 3. **Audit of self-insurance application.** (a) The self-insurer's security fund shall retain a certified public accountant who shall perform services for, and report directly to, the commissioner of commerce. The certified public accountant shall review each application to self-insure, including the applicant's financial data. The certified public accountant shall provide a report to the commissioner of commerce indicating whether the applicant has met the requirements of section 79A.03, subdivisions 2 and 3. Additionally, the certified public accountant shall provide advice and counsel to the commissioner about relevant facts regarding the applicant's financial condition.

(b) If the report of the certified public accountant is used by the commissioner as the basis for the commissioner's determination regarding the applicant's self-insurance status, the certified public accountant shall be made available to the commissioner for any hearings or other proceedings arising from that determination.

(c) The commissioner shall provide the advisory committee with the summary report by the certified public accountant and any financial data in possession of the department of commerce that is otherwise available to the public.

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

Subd. 4. **Recommendations to commissioner regarding revocation.** After each fifth anniversary from the date each individual and group self-insurer becomes certified to self-insure, the committee shall review all relevant financial data filed with the department of commerce that is otherwise available to the public and make a recommendation to the commissioner about whether each self-insurer's certificate should be revoked. For group self-insurers who have been in existence for five years or more and have been granted renewal authority, a level of funding in the common claims fund must be maintained at not less than the greater of either: (1) one year's claim losses paid in the most recent year; or (2) one-third of the security deposit posted with the department of commerce according to section 79A.04, subdivision 2.

History: 1988 c 674 s 2; 1992 c 510 art 5 s 1,2; 1995 c 231 art 2 s 20-22, 1995 c 258 s 60

NOTE See section 15 059, subdivision 5a, for expiration of self-insurers' advisory committee

79A.03 SELF-INSURANCE APPLICATIONS.

Subdivision 1. **Procedure.** Each employer desiring to self-insure individually shall apply to the commissioner on forms available from the commissioner. The commissioner shall grant or deny the application within 60 days after a complete application is filed. The time limit may be extended for another 30 days upon 15 days' prior notice to the applicant. Any grant of authority to self-insure shall continue in effect until revoked by order of the commissioner or until such time as the employer becomes insured.

Subd. 2. **Certified financial statement.** Each application for self-insurance shall be accompanied by a certified financial statement. Certified financial statements for a period ending more than six months prior to the date of the application must be accompanied by an affidavit, signed by a company officer under oath, stating that there has been no material lessening of the net worth nor other adverse changes in its financial condition since the end of the period. The commissioner may require additional financial information necessary to carry out the purpose of this chapter.

Subd. 3. **Net worth.** Each individual self-insurer's net worth, as presented on its audited balance sheet filed with the department of commerce, shall equal at least ten percent of the entity's total assets and shall equal at least ten times the retention level selected with the workers' compensation reinsurance association.

Subd. 4. **Assets, net worth, and liquidity.** (a) Each individual self-insurer shall have and maintain sufficient assets, net worth, and liquidity to promptly and completely meet all of its obligations that may arise under chapter 176 or this chapter. In determining whether a self-insurer meets this requirement, the commissioner shall consider the self-insurer's current ratio; its long-term and short-term debt to equity ratios; its net worth; financial characteristics of the particular industry in which the self-insurer is involved; any recent changes in the management and ownership of the self-insurer; any excess insurance purchased by the self-insurer from a licensed company or an authorized surplus line carrier, other than excess insurance from the workers' compensation reinsurance association; any other financial data submitted to the commissioner by the self-insurer; and the self-insurer's workers' compensation experience for the last four years. Notwithstanding any other provision of this chapter, the commissioner may deny an application for self-insurance authority or terminate existing self-insurance authority if the applicant or self-insurer does not have sufficient assets, net worth, and liquidity to promptly and completely meet all of its self-insurance obligations.

(b) An individual self-insurer must have had positive net income as shown on audited income statements filed with the department of commerce during three of the last five years and cumulatively over the five-year period. If the self-insurer has been in existence less than five years, it must have had cumulative net income during the period of existence and in the most recent year.

(c) An individual self-insurer must have had cash generated from operations as shown on the audited statements of cash flows filed with the department of commerce during three of the last five years and cumulatively over the five-year period. If the self-insurer has been in existence less than five years, it shall have had cumulative cash generated from operations during the period of existence and in the most recent year.

(d) No entity shall be admitted as an individual self-insurer, or be allowed to continue its self-insurance authority, if the audit report for the most recent year includes an explanatory paragraph stating that the auditor has concluded that there is substantial doubt about the entity's ability to continue as a going concern.

Subd. 4a. **Exceptions.** Notwithstanding the requirements of subdivisions 3 and 4, the commissioner, pursuant to a review of an existing self-insurer's financial data, may continue a self-insurer's authority to self-insure for one year if, in the commissioner's judgment based on all factors relevant to the self-insurer's financial status, the self-insurer will be able to meet its obligations under this chapter for the following year. The relevant factors to be considered must include, but must not be limited to, the liquidity ratios, leverage ratios, and profitability ratios of the self-insurer. Where a self-insurer's authority to self-insure is continued under this subdivision, the self-insurer may be required to post security in the amount equal to two times the amount of security required under section 79A.04, subdivision 2.

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Subd. 5. **Guarantee by affiliates.** Where an employer seeking to self-insure fails to meet the financial requirements set forth in subdivisions 3 and 4, the commissioner shall grant authority to self-insure provided that an affiliated company, whose financial statement is filed with the commissioner and meets the requirements set forth in subdivisions 3 and 4, provides a written guarantee adopted by resolution of its board of directors that it will pay all workers' compensation claims incurred by its affiliate, and that it will not terminate the guarantee under any circumstances without first giving the commissioner and its affiliate 30 days' written notice. If said guarantee is withdrawn or if the guarantor ceases being an affiliate, the affiliate shall give written notice to the commissioner and the self-insured. The self-insured's authority to self-insure shall automatically terminate upon expiration of the 30-day notice period.

Subd. 6. **Applications for group self-insurance.** (a) Two or more employers may apply to the commissioner for the authority to self-insure as a group, using forms available from the commissioner. This initial application shall be accompanied by a copy of the bylaws or plan of operation adopted by the group. Such bylaws or plan of operation shall conform to the conditions prescribed by law or rule. The commissioner shall approve or disapprove the bylaws within 60 days unless a question as to the legality of a specific bylaw or plan provision has been referred to the attorney general's office. The commissioner shall make a determination as to the application within 15 days after receipt of the requested response from the attorney general's office.

(b) After the initial application and the bylaws or plan of operation have been approved by the commissioner or at the time of the initial application, the group shall submit the names of employers that will be members of the group; an indemnity agreement providing for joint and several liability for all group members for any and all workers' compensation claims incurred by any member of the group, as set forth in Minnesota Rules, part 2780.9920, signed by an officer of each member; and an accounting review performed by a certified public accountant. A certified financial audit may be filed in lieu of an accounting review.

Subd. 7. **Financial standards.** A group proposing to self-insure shall have and maintain:

(a) A combined net worth of all of the members of an amount at least equal to the greater of ten times the retention selected with the workers' compensation reinsurance association or one-third of the current annual modified premium of the members.

(b) Sufficient assets, net worth, and liquidity to promptly and completely meet all obligations of its members under chapter 176 or this chapter. In determining whether a group is in sound financial condition, consideration shall be given to the combined net worth of the member companies; the consolidated long-term and short-term debt to equity ratios of the member companies; any excess insurance other than reinsurance with the workers' compensation reinsurance association, purchased by the group from an insurer licensed in Minnesota or from an authorized surplus line carrier; other financial data requested by the commissioner or submitted by the group; and the combined workers' compensation experience of the group for the last four years.

Subd. 8. **Processing application.** The commissioner shall grant or deny the group's application to self-insure within 60 days after a complete application has been filed, provided that the time may be extended for an additional 30 days upon 15 days' prior notice to the applicant. The commissioner shall grant approval for self-insurance upon a determination that the financial ability of the self-insurer's group is sufficient to fulfill all joint and several obligations of the member companies that may arise under chapter 176 or this chapter; the gross annual premium of the group members is at least \$300,000; the group has established a fund pursuant to Minnesota Rules, parts 2780.4100 to 2780.5000; the group has contracted with a licensed workers' compensation service company to administer its program; and the required securities or surety bond shall be on deposit prior to the effective date of coverage for any member. Approval shall be effective until revoked by order of the commissioner or until the employer members of the group become insured.

Subd. 9. **Filing reports.** (a) Incurred losses, paid and unpaid, specifying indemnity and medical losses by classification, payroll by classification, and current estimated outstanding liability for workers' compensation shall be reported to the commissioner by each self-insurer on a calendar year basis, in a manner and on forms available from the commissioner. Payroll information must be filed by April 1 of the following year, and loss information and total workers' compensation liability must be filed by August 1 of the following year.

(b) Each self-insurer shall, under oath, attest to the accuracy of each report submitted pursuant to paragraph (a). Upon sufficient cause, the commissioner shall require the self-insurer to submit a certified audit of payroll and claim records conducted by an independent auditor approved by the commissioner, based on generally accepted accounting principles and generally accepted auditing standards, and supported by an actuarial review and opinion of the future contingent liabilities. The basis for sufficient cause shall include the following factors: where the losses reported appear significantly different from similar types of businesses; where major changes in the reports exist from year to year, which are not solely attributable to economic factors; or where the commissioner has reason to believe that the losses and payroll in the report do not accurately reflect the losses and payroll of that employer. If any discrepancy is found, the commissioner shall require changes in the self-insurer's or workers' compensation service company record keeping practices.

(c) With the annual loss report due August 1 each self-insurer shall report to the commissioner any workers' compensation claim from the previous year where the full, undiscounted value is estimated to exceed \$50,000, in a manner and on forms prescribed by the commissioner.

(d) Each individual self-insurer shall, within four months after the end of its fiscal year, annually file with the commissioner its latest 10K report required by the Securities and Exchange Commission. If an individual self-insurer does not prepare a 10K report, it shall file an annual certified financial statement, together with such other financial information as the commissioner may require to substantiate data in the financial statement.

(e) Each member of the group shall, within four months after the end of each fiscal year for that group, file the most recent annual financial statement, reviewed by a certified public accountant in accordance with the Statements on Standards for Accounting and Review Services, Volume 2, the American Institute of Certified Public Accountants Professional Standards, or audited in accordance with generally accepted auditing standards, together with such other financial information the commissioner may require. In addition, the group shall file, within four months after the end of each fiscal year for that group, combining financial statements of the group members, compiled by a certified public accountant in accordance with the Statements on Standards for Accounting and Review Services, Volume 2, the American Institute of Certified Public Accountants Professional Standards. The combining financial statements shall include, but not be limited to, a balance sheet, income statement, statement of changes in net worth, and statement of cash flow. Each combining financial statement shall include a column for each individual group member along with a total column.

Where a group has 50 or more members, the group shall file, in lieu of the combining financial statements, a combined financial statement showing only the total column for the entire group's balance sheet, income statement, statement of changes in net worth, and statement of cash flow. Additionally, the group shall disclose, for each member, the total assets, net worth, revenue, and income for the most recent fiscal year. The combining and combined financial statements may omit all footnote disclosures.

(f) In addition to the financial statements required by paragraphs (d) and (e), interim financial statements or 10Q reports required by the Securities and Exchange Commission may be required by the commissioner upon an indication that there has been deterioration in the self-insurer's financial condition, including a worsening of current ratio, lessening of net worth, net loss of income, the downgrading of the company's bond rating, or any other significant change that may adversely affect the self-insurer's ability to pay expected losses. Any self-insurer that files an 8K report with the Securities and Exchange Commission shall also file a copy of the report with the commissioner within 30 days of the filing with the Securities and Exchange Commission.

Subd. 10. **Annual audit.** The accounts and records of the group self-insurer's fund shall be audited annually. Audits shall be made by certified public accountants, based on generally accepted accounting principles and generally accepted auditing standards, and supported by actuarial review and opinion of the future contingent liabilities, in order to determine the solvency of the self-insurer's fund. All audits required by this subdivision shall be filed with the commissioner 90 days after the close of the fiscal year for the group self-insurer. The commissioner may require a special audit to be made at other times if the financial stability of the fund or the adequacy of its monetary reserves is in question.

Subd. 11. **Joint and several liability.** All members of a private self-insurer group shall be jointly and severally liable for the obligations incurred by any member of the same group under chapter 176.

Subd. 12. **Commissioner review.** The commissioner shall annually review the documents and reports filed by the private self-insurer.

History: 1988 c 674 s 3; 1992 c 510 art 5 s 3-6; 1995 c 231 art 2 s 23; 1995 c 258 s 61

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

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 the obligations of employers imposed under chapter 176 by 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 within 60 days of the filing of the self-insured employer's annual report with the commissioner, but in no event later than July 1.

Subd. 2. **Minimum deposit.** The minimum deposit is 110 percent of the private self-insurer's estimated future liability. Up to ten percent of that deposit may be used to secure payment of all administrative and legal costs, and unpaid assessments required by section 79A.12, subdivision 2, relating to or arising from the employer's self-insuring. As used in this section, "private self-insurer" includes both current and former members of the self-insurers' security fund; and "private self-insurers' estimated future liability" means the private self-insurers' total of estimated future liability as determined by an Associate or Fellow of the Casualty Actuarial Society every year for group member private self-insurers and, for a nongroup member private self-insurer's authority to self-insure, every year for the first five years. After the first five years, the nongroup member's total shall be as determined by an Associate or Fellow of the Casualty Actuarial Society at least every two years, and each such actuarial study shall include a projection of future losses during the period until the next scheduled actuarial study, less payments anticipated to be made during that time.

All data and information furnished by a private self-insurer to an Associate or Fellow of the Casualty Actuarial Society for purposes of determining private self-insurers' estimated future liability must be certified by an officer of the private self-insurer to be true and correct with respect to payroll and paid losses, and must be certified, upon information and belief, to be true and correct with respect to reserves. The certification must be made by sworn affidavit. In addition to any other remedies provided by law, the certification of false data or information pursuant to this subdivision may result in a fine imposed by the commissioner of commerce on the private self-insurer up to the amount of \$5,000, and termination of the private self-insurers' authority to self-insure. The determination of private self-insurers' estimated future liability by an Associate or Fellow of the Casualty Actuarial Society shall be conducted in accordance with standards and principles for establishing loss and loss adjustment expense reserves by the Actuarial Standards Board, an affiliate of the American Academy of Actuaries. The commissioner may reject an actuarial report that does not meet the standards and principles of the Actuarial Standards Board, and may further disqualify the actuary who prepared the report from submitting any future actuarial reports pursuant to this chapter. Within 30 days after the actuary has been served by the commissioner with a notice of disqualification, an actuary who is aggrieved by the disqualification may request a hearing to be conducted in accordance with chapter 14. Based on a review of the actuarial report, the commissioner of commerce may require an increase in the minimum security deposit in an amount the commissioner considers sufficient.

Estimated future liability is determined by first taking the total amount of the self-insured's future liability of workers' compensation claims and then deducting the total amount which is estimated to be returned to the self-insurer from any specific excess insurance coverage, aggregate excess insurance coverage, and any supplementary benefits or second injury benefits which are estimated to be reimbursed by the special compensation fund. Supplementary benefits or second injury benefits will not be reimbursed by the special compensation fund unless the special compensation fund assessment pursuant to section 176.129 is paid and the reports required thereunder are filed with the special compensation fund. In the case of surety bonds, bonds shall secure administrative and legal costs in addition to the liability for payment of compensation reflected on the face of the bond. In no event shall the security be less than the last retention limit selected by the self-insurer with the workers' compensation reinsurance association. The posting or depositing of security pursuant to this section shall release all previously posted or deposited security from any obligations under the posting or depositing and any surety bond so released shall be returned to the surety. Any other security shall be returned to the depositor or the person posting the bond.

As a condition for the granting or renewing of a certificate to self-insure, the commissioner may require a private self-insurer to furnish any additional security the commissioner considers sufficient to insure payment of all claims under chapter 176.

Subd. 3. **Type of acceptable security.** The commissioner may only accept as security, and the employer shall deposit as security, cash, approved government securities, surety bonds, or irrevocable letters of credit in any combination. Interest or dividend income or other income generated by the security shall be paid to the member or, at the member's direction, applied to the member's security requirement. The current deposit shall include within its coverage all amounts covered by terminated surety bonds. As used in this chapter, an irrevocable letter of credit shall be accepted only if it is clean, irrevocable, and contains an evergreen clause.

(a) "Clean" means a letter of credit that is not conditioned on the delivery of any other documents or materials.

(b) "Irrevocable" means a letter of credit that cannot be modified or revoked without the consent of the beneficiary, once the beneficiary is established.

(c) "Evergreen clause" means one which specifically states that expiration of a letter of credit will not take place without a 60-day notice by the insurer and one which allows the issuer to conduct an annual review of the account party's financial condition. If prior notice of expiration is not given by the issuer, the letter of credit is automatically extended for one year.

A clean irrevocable letter of credit shall be accepted only if it is in the form prescribed by statute and is issued by a financial institution that is authorized to engage in banking in any of the 50 states or under the laws of the United States and whose business is substantially confined to banking and supervised by the state commissioner of commerce or banking or similar official, and which has a long-term debt rating by a recognized national rating agency of investment grade or better. If no long-term debt rating is available, the financial institution must have the equivalent investment grade financial characteristics.

Subd. 4. **Deposit of security.** Surety bonds, irrevocable letters of credit, and documents showing issuance of any irrevocable letter of credit shall be deposited with, and, except where specified by statute, in a form approved by the commissioner.

Subd. 5. **Deposit with state treasurer.** Securities shall be deposited on behalf of the commissioner by the self-insured employer with the state treasurer or a financial institution approved by the commissioner. Securities shall be accepted by the state treasurer for deposit and shall be withdrawn only upon written order of the commissioner.

Subd. 6. **Cash deposits.** Cash shall be deposited in a financial institution approved by the commissioner and in the account assigned to the state treasurer. Cash shall be withdrawn only upon written order of the commissioner.

Subd. 7. **Perfection of security.** Upon the commissioner sending a request to renew, request to post, or request to increase a security deposit, a perfected security interest is created in the private self-insured's assets in favor of the commissioner to the extent of any then unsecured portion of the self-insured's incurred liabilities. That perfected security in-

terest is transferred to any cash or securities thereafter posted by the private self-insured with the state treasurer and is released only upon either of the following:

- (1) the acceptance by the commissioner of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for the payment of compensation; or
- (2) the return of cash or securities by the commissioner.

The private self-insured employer loses all right, title, and interest in and any right to control all assets or obligations posted or left on deposit as security. In the event of a declaration of bankruptcy or insolvency by a court of competent jurisdiction, or in the event of the issuance of a certificate of default by the commissioner, the commissioner shall liquidate the deposit as provided in this chapter, and transfer it to the self-insurer's security fund for application to the self-insured employer's incurred liability.

Subd. 8. Return of excess amounts of security to private self-insured employer. The commissioner shall return on an annual basis to a private self-insured employer all amounts of security determined by the commissioner to be in excess of the statutory requirements to self-insure, including that necessary for administrative costs and legal fees, and the payment of any future workers' compensation claims.

Subd. 9. Insolvency, bankruptcy, or default; utilization of security deposit. The commissioner of labor and industry shall notify the commissioner and the security fund if the commissioner of labor and industry has knowledge that any private self-insurer has failed to pay workers' compensation benefits as required by chapter 176. If the commissioner determines that a court of competent jurisdiction has declared the private self-insurer to be bankrupt or insolvent, and the private self-insurer has failed to pay workers' compensation as required by chapter 176 or, if the commissioner issues a certificate of default against a private self-insurer for failure to pay workers' compensation as required by chapter 176, or failure to pay an assessment to the self-insurers' security fund when due, then the security deposit shall be utilized to administer and pay the private self-insurers' workers' compensation or assessment obligations.

Subd. 10. Notice; obligation of fund. In the event of bankruptcy, insolvency, or certificate of default, the commissioner shall immediately notify by certified mail the state treasurer, the surety, the issuer of an irrevocable letter of credit, and any custodian of the security required in this chapter. At the time of notification, the commissioner shall also call the security and transfer and assign it to the self-insurers' security fund. The commissioner shall also immediately notify by certified mail the self-insurers' security fund, and order the security fund to assume the insolvent self-insurers' obligations for which it is liable under chapter 176. The security fund shall commence payment of these obligations within 14 days of receipt of this notification and order. Payments shall be made to claimants whose entitlement to benefits can be ascertained by the security fund, with or without proceedings before the department of labor and industry, the office of administrative hearings, the workers' compensation court of appeals, or the Minnesota supreme court. Upon the assumption of obligations by the security fund pursuant to the commissioner's notification and order, the security fund has the right to immediate possession of any posted or deposited security and the custodian, surety, or issuer of any irrevocable letter of credit or the commissioner, if in possession of it, shall turn over the security, proceeds of the surety bond, or letter of credit to the security fund together with the interest that has accrued since the date of the self-insured employer's insolvency. The self-insurers' security fund may administer payment of benefits or it may retain a third-party administrator to do so.

Subd. 11. Priority. Notwithstanding anything in this chapter to the contrary, any cash, securities, irrevocable letter of credit, specific excess or aggregate excess insurance proceeds, or any other security deposited or posted in accordance with this section shall be used first, when due, to pay workers' compensation claims. After that security has been exhausted, the payment of workers' compensation claims from self-insurers' security fund members' assessments may be made. Where the self-insurers' security fund member assessment account is used to pay workers' compensation claims on an emergency or an interim basis, pending receipt by the self-insurers' security fund of security which is due but not yet received, then the member assessment account shall be reimbursed for payment from the security when it is received, and the priorities stated above shall thereafter apply.

Subd. 12. **Duty to inform.** The commissioner shall be provided with any relevant information by the employer, any excess insurer, any third party administrator, or any issuer of any irrevocable letter of credit, issuer of any surety bond, or custodian of any security necessary for the commissioner to carry out the commissioner's obligations under this chapter. The commissioner shall provide this information to the self-insurers' security fund if necessary for the security fund to carry out its obligations under this chapter.

Subd. 13. **Discharge and release.** The payment of benefits by the self-insurers' security fund from security deposit proceeds shall release and discharge any custodian of the security deposit, surety, any issuer of a letter of credit, and the self-insured employer from liability to fulfill obligations to provide those same benefits as compensation, but does not release any person or entity from any liability to the security fund for full reimbursement. Any decision or determination made or any settlement approved by the commissioner or by an administrative law judge under subdivision 15 shall conclusively be presumed valid and binding as to all known claims arising out of the underlying dispute, unless an appeal is made pursuant to chapter 14. No security shall be exchanged more often than once every 90 days.

Subd. 14. **Notice to security fund.** The commissioner shall advise the self-insurers' security fund promptly after the receipt of information indicating that a private self-insurer may be unable to meet its compensation obligations. The commissioner shall advise the self-insurers' security fund of all determinations and directives and orders made or issued pursuant to this section.

Subd. 15. **Dispute resolution; appeals.** Disputes concerning the posting, renewal, termination, exoneration, or return of all or any portion of the security deposit, or any liability arising out of the posting or failure to post security, or adequacy of the security or reasonableness of administrative costs, including legal fees, and arising between or among a surety, the issuer of an agreement of assumption and guarantee of workers' compensation liabilities, the issuer of a letter of credit, any custodian of the security deposit, a private self-insurer, or the self-insurers' security fund shall be resolved by the commissioner. An appeal from the commissioner's written decision, determination, or order may be instituted pursuant to the contested case procedures of chapter 14. Payment of claims from the security deposit or by the self-insurers' security fund shall not be stayed pending the resolution of the disputes unless and until the administrative law judge issues a determination staying a payment of claims decision or determination of the commissioner or the self-insurers' security fund.

Subd. 16. **Certificate to self-insure; revocation.** If, following a private self-insurer's bankruptcy, insolvency, or certificate of default, the commissioner calls its security and proceeds in accordance with this section, the commissioner shall revoke the certificate to self-insure of the private self-insurer as soon as practicable but no later than 30 days after its security has been called.

History: 1988 c 674 s 4; 1992 c 510 art 5 s 7; 1993 c 210 s 1; 1995 c 231 art 2 s 24,25

79A.05 REVOCATION OF CERTIFICATE TO SELF-INSURE.

A certificate to self-insure may be revoked by the commissioner at any time for good cause. After revocation, the self-insurer may request a hearing. Good cause includes, among other things, failure to maintain a security deposit as required by this chapter, failure to pay assessments of the self-insurers' security fund, or the failure or inability of the employer to fulfill obligations under chapter 176 or this chapter. Good cause also includes failure to provide proof of renewal of the security 15 days before its expiration.

A self-insured employer must comply with section 176.181 and all applicable rules to operate during the pendency of its appeal of a decision under this section.

History: 1988 c 674 s 5

79A.06 THIRD-PARTY ADMINISTRATOR.

Subdivision 1. **Certificate to self-insure.** No person, firm, or corporation, other than an insurer admitted to transact workers' compensation insurance in this state, shall contract to administer claims of self-insured employers as a third-party administrator unless qualified to do so pursuant to section 60A.23, subdivision 8.

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Subd. 2. **Local office.** A third-party administrator who contracts to administer claims of a self-insured employer shall maintain an office in the state of Minnesota and shall be subject to regulation under this chapter and chapters 60A and 72A with respect to the adjustment, administration, and management of workers' compensation claims for any self-insured employer.

Subd. 3. **Annual estimate of liability.** A third-party administrator retained by a self-insured employer to administer the employer's workers' compensation claims shall estimate the total accrued liability of the employer for the payment of compensation for the employer's annual report to the commissioner and shall make the estimate both in good faith and with the exercise of a reasonable degree of care. The use of a third-party administrator does not discharge or alter the employer's responsibilities with respect to the report.

Subd. 4. **Failure to submit reports or information; penalty.** Failure to submit reports to the commissioner as required by this chapter may result in the assessment of a penalty which shall not exceed \$3,000 for each month or fraction thereof the report is past due. Failure to submit reports required by statute within 60 days from the due date without written consent of the commissioner shall result in the revocation of the certificate to self-insure. Penalties shall be deposited in the self-insurers' security fund.

Subd. 5. **Private employers who have ceased to be self-insured.** (a) Private employers who have ceased to be private self-insurers shall discharge their continuing obligations to secure the payment of compensation which is accrued during the period of self-insurance, for purposes of Laws 1988, chapter 674, sections 1 to 21, by compliance with all of the following obligations of current certificate holders:

- (1) Filing reports with the commissioner to carry out the requirements of this chapter;
- (2) Depositing and maintaining a security deposit for accrued liability for the payment of any compensation which may become due, pursuant to chapter 176. However, if a private employer who has ceased to be a private self-insurer purchases an insurance policy from an insurer authorized to transact workers' compensation insurance in this state which provides coverage of all claims for compensation arising out of injuries occurring during the period the employer was self-insured, whether or not reported during that period, the policy will discharge the obligation of the employer to maintain a security deposit for the payment of the claims covered under the policy. The policy may not be issued by an insurer unless it has previously been approved as to form and substance by the commissioner; and
- (3) Paying within 30 days all assessments of which notice is sent by the security fund, for a period of seven years from the last day its certificate of self-insurance was in effect. Thereafter, the private employer who has ceased to be a private self-insurer may either: (i) continue to pay within 30 days all assessments of which notice is sent by the security fund until it has no incurred liabilities for the payment of compensation arising out of injuries during the period of self-insurance; or (ii) pay the security fund a cash payment equal to four percent of the net present value of all remaining incurred liabilities for the payment of compensation under sections 176.101 and 176.111 as certified by a member of the casualty actuarial society. Assessments shall be based on the benefits paid by the employer during the calendar year immediately preceding the calendar year in which the employer's right to self-insure is terminated or withdrawn.

(b) With respect to a self-insurer who terminates its self-insurance authority after April 1, 1998, that member shall obtain and file with the commissioner an actuarial opinion of its outstanding liabilities as determined by an associate or fellow of the Casualty Actuarial Society. The opinion must separate liability for indemnity benefits from liability from medical benefits, and must discount each up to four percent per annum to net present value. Within 30 days after notification of approval of the actuarial opinion by the commissioner, the member shall pay to the security fund an amount equal to 120 percent of that discounted outstanding indemnity liability, multiplied by the greater of the average annualized assessment rate since inception of the security fund or the annual rate at the time of the most recent assessment before termination.

(c) A former member who terminated its self-insurance authority before April 1, 1998, who has paid assessments to the self-insurers' security fund for seven years, and whose annualized assessment is \$500 or less, may buy out of its outstanding liabilities to the self-in-

surers' security fund by an amount calculated as follows: 1.35 multiplied by the indemnity case reserves at the time of the calculation, multiplied by the then current self-insurers' security fund annualized assessment rate.

(d) A former member who terminated its self-insurance authority before April 1, 1998, and who is paying assessments within the first seven years after ceasing to be self-insured under paragraph (a), clause (3), may elect to buy out its outstanding liabilities to the self-insurers' security fund by obtaining and filing with the commissioner an actuarial opinion of its outstanding liabilities as determined by an associate or fellow of the Casualty Actuarial Society. The opinion must separate liability for indemnity benefits from liability from medical benefits, and must discount each up to four percent per annum to net present value. Within 30 days after notification of approval of the actuarial opinion by the commissioner, the member shall pay to the security fund an amount equal to 120 percent of that discounted outstanding indemnity liability, multiplied by the greater of the average annualized assessment rate since inception of the security fund or the annual rate at the time of the most recent assessment.

(e) A former member who has paid the security fund according to paragraphs (b) to (d) and subsequently receives authority from the commissioner to again self-insure shall be assessed under section 79A.12, subdivision 2, only on indemnity benefits paid on injuries that occurred after the former member received authority to self-insure again; provided that the member furnishes verified data regarding those benefits to the security fund

(f) In addition to proceedings to establish liabilities and penalties otherwise provided, a failure to comply may be the subject of a proceeding before the commissioner. An appeal from the commissioner's determination may be taken pursuant to the contested case procedures of chapter 14 within 30 days of the commissioner's written determination.

Any current or past member of the self-insurers' security fund is subject to service of process on any claim arising out of chapter 176 or this chapter in the manner provided by section 5.25, or as otherwise provided by law. The issuance of a certificate to self-insure to the private self-insured employer shall be deemed to be the agreement that any process which is served in accordance with this section shall be of the same legal force and effect as if served personally within this state.

History: 1988 c 674 s 6; 1992 c 510 art 5 s 8; 1995 c 128 art 1 s 3; 1998 c 339 s 2

79A.07 PREFERRED SUBROGATION RIGHTS OF SELF-INSURERS' SECURITY FUND OR SURETY.

The self-insurers' security fund by making payment of compensation under this chapter has the same preference over the other debts of the principal or the principal's estate as is given by law to the person directly entitled to the compensation

History: 1988 c 674 s 7

79A.071 CUSTODIAL ACCOUNTS.

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

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

Subd. 3. **Custody.** All securities in physical form on deposit with the state treasurer and surety bonds on deposit shall remain in the custody of the state treasurer or the commissioner

for a period of time dictated by the applicable statute of limitations provided in the Workers' Compensation Act. All original instruments and contracts creating and governing custodial accounts shall remain with the state treasurer or the commissioner for a period of time dictated by the applicable statute of limitations provided in the Workers' Compensation Act.

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

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

History: 1992 c 510 art 5 s 9

79A.08 LEGISLATIVE INTENT.

It is the intent of the legislature in enacting sections 79A.08 to 79A.10 to provide for the continuation of workers' compensation benefits delayed due to the failure of a private self-insured employer to meet its compensation obligations, whenever the commissioner of commerce issues a certificate of default or there is a declaration of bankruptcy or insolvency by a court of competent jurisdiction. With respect to the continued liability of a surety for claims that arise under a bond after termination of that bond and to a surety's liability for the cost of administration of claims, it is the intent of the legislature to provide that that liability ceases upon lawful termination of that bond. This applies to all surety bonds which are purchased by the self-insured employer after July 1, 1988. The legislature finds and declares that the establishment of the self-insurers' security fund is a necessary component of a complete system of workers' compensation, required by chapter 176, to have adequate provisions for the comfort, health, safety, and general welfare of any and all workers and their dependents to the extent of relieving the consequences of any industrial injury or death, and full provision for securing the payment of compensation.

History: 1988 c 674 s 8

79A.09 SECURITY FUND.

Subdivision 1. **Creation.** The self-insurers' security fund is established as a nonprofit corporation pursuant to the Minnesota Nonprofit Corporation Act, sections 317A.001 to 317A.909. If any provision of the Minnesota Nonprofit Corporation Act conflicts with any provision of this chapter, the provisions of this chapter apply. Each private self-insurer who is self-insured on July 1, 1988, or who becomes self-insured thereafter, shall participate as a member in the security fund. This participation shall be a condition of maintaining its certificate to self-insure.

Subd. 2. **Board of trustees.** The security fund shall be governed by a nine-member board of trustees. Five of the trustees shall be representatives of private self-insurers who shall be elected by the members of the security fund, other than group self-insurers, each member having one vote. One of the trustees shall be a representative of the private group self-insurers who shall be elected by the members of the security fund who are group self-insurers, each group having one vote. Three of the trustees, including the group self-insurer trustee, initially elected by the members shall serve two-year terms, and three shall serve four-year terms. Thereafter, trustees shall be elected to four-year terms, and shall serve until their successors are elected and assume office pursuant to the bylaws of the security fund. Three additional trustees shall be appointed by the commissioner. Two of these trustees shall serve four-year terms. One of these trustees shall serve a two-year term. Thereafter, the trustees shall be appointed to four-year terms, and shall serve until their successors are appointed and assume office pursuant to the bylaws of the security fund. In addition to the nine

trustees elected by the members or appointed by the commissioner; the commissioner of labor and industry or the commissioner's designee shall be an ex officio, nonvoting member of the board of trustees. A member of the board of trustees may designate another person to act in the member's place as though the member were acting and the designee's actions shall be deemed those of the member.

Subd. 3. Bylaws. The security fund shall establish bylaws and a plan of operation, subject to the prior approval of the commissioner, necessary to the purposes of this chapter and to carry out the responsibilities of the security fund. The security fund may carry out its responsibilities directly or by contract, and may purchase services and insurance and borrow funds as it deems necessary for the protection of the members and their employees.

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

Subd. 5. Employees. Security fund employees are not state employees and are not subject to any state civil service regulations.

History: 1988 c 674 s 9; 1989 c 304 s 131; 1995 c 231 art 2 s 26

79A.10 ASSUMPTION OF WORKERS' COMPENSATION OBLIGATIONS OF INSOLVENT SELF-INSURER.

Subdivision 1. Order of commissioner. Upon order of the commissioner pursuant to section 79A.04, subdivision 10, the security fund shall assume the workers' compensation obligations of an insolvent private self-insurer.

Subd. 2. Act or omissions; penalties. Notwithstanding subdivision 1, the security fund shall not be liable for the payment of any penalties assessed for any act or omission on the part of any person other than the security fund or its appointed administrator, including, but not limited to, the penalties provided in chapter 176 unless the security fund or its appointed administrator would be subject to penalties under chapter 176 as the result of the actions of the security fund or its administrator.

Subd. 3. Party in interest. The security fund shall be a party in interest in all proceedings involving compensation claims against an insolvent self-insurer whose compensation obligations have been paid or assumed by the security fund. The security fund shall have the same rights and defenses as the insolvent private self-insurer, including, but not limited to, all of the following:

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

Subd. 4. Payments to security fund. Notwithstanding anything in this chapter or chapter 176 to the contrary, in the event that the self-insurers' security fund assumes the obligations of any bankrupt or insolvent private self-insurer pursuant to this section, then the proceeds of any surety bond, workers' compensation reinsurance association, specific excess insurance or aggregate excess insurance policy, and any special compensation fund payment or second injury fund or supplementary benefit reimbursements shall be paid to the self-insurers' security fund instead of the bankrupt or insolvent private self-insurer or its successor in interest. No special compensation fund reimbursements shall be made to the security fund unless the special compensation fund assessments pursuant to section 176.129 are paid and the reports required thereunder are made to the special compensation fund.

History: 1988 c 674 s 10

79A.11 REIMBURSEMENT FOR OBLIGATIONS PAID AND ASSUMED.

Subdivision 1. Insolvent insurer. The security fund shall have the right and obligation to obtain reimbursement from an insolvent private self-insurer up to the amount of the private self-insurer's workers' compensation obligations paid and assumed by the security fund, including reasonable administrative and legal costs. This right includes, but is not limited to, a right to claim for wages and other necessities of life advanced to claimants as subrogee of the claimants in any action to collect against the private self-insurer as debtor.

Subd. 2. **Security deposits.** The security fund shall have the right and obligation to obtain from the security deposit of an insolvent private self-insurer the amount of the private self-insurer's compensation obligations, including reasonable administrative and legal costs, paid or assumed by the security fund. Reimbursement of administrative costs, including legal costs, shall be subject to approval by a majority of the security fund's voting trustees. The security fund shall be a party in interest in any action to obtain the security deposit for the payment of compensation obligations of an insolvent self-insurer.

Subd. 3. **Legal actions.** The security fund shall have the right to bring an action against any person or entity to recover compensation paid and liability assumed by the security fund, including, but not limited to, any excess insurance carrier of the insolvent private self-insurer, and any person or entity whose negligence or breach of any obligation contributed to any underestimation of the private self-insurer's total accrued liability as reported to the commissioner.

Subd. 4. **Party in interest.** The security fund may be a party in interest in any action brought by any other person seeking damages resulting from the failure of an insolvent private self-insurer to pay workers' compensation required pursuant to this subdivision.

History: 1988 c 674 s 11

79A.12 MAINTENANCE OF ASSETS OR LINE OF CREDIT TO CONTINUE PAYMENT OF COMPENSATION OBLIGATIONS.

Subdivision 1. **Assets maintained.** The security fund shall maintain cash, readily marketable securities, or other assets, or a line of credit, approved by the commissioner, sufficient to immediately continue the payment of the compensation obligations of an insolvent private self-insurer pending receipt of the security deposit, surety bond proceeds, irrevocable letter of credit, or, if necessary, assessment of the members. The commissioner may establish the minimum amount to be maintained by, or immediately available to, the security fund for this purpose.

Subd. 2. **Assessment.** The security fund may assess each of its members a pro rata share of the funding necessary to carry out its obligation and the purposes of this chapter. Total annual assessments in any calendar year shall not exceed ten percent of the workers' compensation benefits paid under sections 176.101 and 176.111 during the previous calendar year. The annual assessment calculation shall not include supplementary benefits paid which will be reimbursed by the special compensation fund. Funds obtained by assessments pursuant to this subdivision may only be used for the purposes of this chapter. The trustees shall certify to the commissioner the collection and receipt of all money from assessments, noting any delinquencies. The trustees shall take any action deemed appropriate to collect any delinquent assessments.

History: 1988 c 674 s 12; 1990 c 450 s 2

79A.13 AUDIT; ANNUAL REPORT.

The trustees shall annually contract for an independent certified audit of the financial activities of the fund. An annual report on the financial status of the fund as of June 30 shall be submitted to the commissioner and to each member.

The security fund shall be established on July 1, 1988, or 90 days after July 1, 1988, whichever occurs later. All applications for private self-insurers which are made after July 1, 1988, prior to the establishment of the security fund, shall comply with all requirements of this chapter. Applications for private self-insurers which are made after January 1, 1988, but prior to July 1, 1988, shall, prior to the establishment of the security fund, comply with the requirements of this chapter. The security fund shall be liable for payment of benefits only for members where there has been a declaration of bankruptcy or insolvency by a court of competent jurisdiction after the date on which the security fund is established, or where the commissioner has issued a certificate of default which has occurred after the date on which the security fund is established.

History: 1988 c 674 s 13

79A.14 LETTER OF CREDIT FORM.

The form for the letter of credit under this chapter shall be:

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Effective Date

State of Minnesota (Beneficiary)
(Address)

Dear Sirs:

By order of(Self-Insurer) we are instructed to open a clean irrevocable Letter of Credit in your favor for United States \$......(Amount)

We undertake that drawings under this Letter of Credit will be honored upon presentation of your draft drawn on(issuing bank), at(Address) prior to expiration date.

The Letter of Credit expires on, but will automatically extend for an additional one year if you have not received by registered mail notification of intention not to renew 60 days prior to the original expiration date and each subsequent expiration date.

Except as expressly stated herein, this undertaking is not subject to any condition or qualification. The obligation of(issuing bank) under this letter of credit shall be the individual obligation of(issuing bank), in no way contingent upon reimbursement with respect thereto.

Very truly yours,

..... (Signature)

History: 1988 c 674 s 14; 1990 c 426 art 1 s 11

79A.15 SURETY BOND FORM.

The form for the surety bond under this chapter shall be:

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SURETY BOND OF SELF-INSURER OF WORKERS' COMPENSATION

IN THE MATTER OF THE CERTIFICATE OF)

) SURETY BOND
) NO.
) PREMIUM:

Employer, Certificate No:)

KNOW ALL PERSONS BY THESE PRESENTS:

That
(Employer)

whose address is
as Principal, and
(Surety)

a corporation organized under the laws of and authorized to transact a general surety business in the State of Minnesota, as Surety, are held and firmly bound to the State of Minnesota in the penal sum ofdollars (\$.. ..) for which payment we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS in accordance with Minnesota Statutes, chapter 176, the principal elected to self-insure, and made application for, or received from the commissioner of commerce of the state of Minnesota, a certificate to self-insure, upon furnishing of proof satisfactory to the commissioner of commerce of ability to self-insure and to compensate any or all employees of said principal for injury or disability, and their dependents for death incurred or sustained by said employees pursuant to the terms, provisions, and limitations of said statute;

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NOW THEREFORE, the conditions of this bond or obligation are such that if principal shall pay and furnish compensation, pursuant to the terms, provisions, and limitations of said statute to its employees for injury or disability, and to the dependents of its employees, then this bond or obligation shall be null and void; otherwise to remain in full force and effect.

FURTHERMORE, it is understood and agreed that:

1. This bond may be amended, by agreement between the parties hereto and the commissioner of commerce as to the identity of the principal herein named; and, by agreement of the parties hereto, as to the premium or rate of premium. Such amendment must be by endorsement upon, or rider to, this bond, executed by the surety and delivered to or filed with the commissioner.

2. The surety does, by these presents, undertake and agree that the obligation of this bond shall cover and extend to all past, present, existing, and potential liability of said principal, as a self-insurer, to the extent of the penal sum herein named without regard to specific injuries, date or dates of injuries, happenings or events.

3. The penal sum of this bond may be increased or decreased, by agreement between the parties hereto and the commissioner of commerce, without impairing the obligation incurred under this bond for the overall coverage of the said principal, for all past, present, existing, and potential liability, as a self-insurer, without regard to specific injuries, date or dates of injuries, happenings or events, to the extent, in the aggregate, of the penal sum as increased or decreased. Such amendment must be by endorsement.

4. The aggregate liability of the surety hereunder on all claims whatsoever shall not exceed the penal sum of this bond in any event.

5. This bond shall be continuous in form and shall remain in full force and effect unless terminated as follows:

(a) The obligation of this bond shall terminate upon written notice of cancellation from the surety, given by registered or certified mail to the commissioner of commerce, state of Minnesota, save and except as to all past, present, existing, and potential liability of the principal incurred, including obligations resulting from claims which are incurred but not yet reported, as a self-insurer prior to effective date of termination. This termination is effective 60 days after receipt of notice of cancellation by the commissioner of commerce, state of Minnesota.

(b) This bond shall also terminate upon the revocation of the certificate to self-insure, save and except as to all past, present, existing, and potential liability of the principal incurred, including obligations resulting from claims which are incurred but not yet reported, as a self-insurer prior to effective date of termination. The principal and the surety, herein named, shall be immediately notified in writing by said commissioner, in the event of such revocation.

6. Where the principal posts with the commissioner of commerce, state of Minnesota, or the state treasurer, state of Minnesota, a replacement security deposit, in the form of a surety bond, irrevocable letter of credit, cash, securities, or any combination thereof, in the full amount as may be required by the commissioner of commerce, state of Minnesota, to secure all incurred liabilities for the payment of compensation of said principal under Minnesota Statutes, chapter 176, the surety is released from obligations under the surety bond upon the date of acceptance by the commissioner of commerce, state of Minnesota, of said replacement security deposit.

7. If the said principal shall suspend payment of workers' compensation benefits or shall become insolvent or a receiver shall be appointed for its business, or the commissioner of commerce, state of Minnesota, issues a certificate of default, the undersigned surety will become liable for the workers' compensation obligations of the principal on the date benefits are suspended. The surety shall begin payments within 14 days under paragraph 8, or 30 days under paragraph 10, after receipt of written notification by certified mail from the commissioner of commerce, state of Minnesota; to begin payments under the terms of this bond.

8. If the surety exercises its option to administer claims, it shall pay benefits due to the principal's injured workers within 14 days of the receipt of the notification by the commissioner of commerce, state of Minnesota, pursuant to paragraph 7, without a formal award of a compensation judge, the commissioner of labor and industry, any intermediate appellate

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court, or the Minnesota supreme court and such payment will be a charge against the penal sum of the bond. Administrative and legal costs and payment of assessments incurred by the surety in discharging its obligations and payment of the principal's obligations for administration and legal expenses and payment of assessments under Minnesota Statutes, chapters 79A and 176, shall also be a charge against the penal sum of the bond; however, the total amount of this surety bond set aside for the payment of said administrative and legal expenses and payment of assessments shall be limited to a maximum ten percent of the total penal sum of the bond unless otherwise authorized by the security fund.

9. If any part or provision of this bond shall be declared unenforceable or held to be invalid by a court of proper jurisdiction, such determination shall not affect the validity or enforceability of the other provisions or parts of this bond.

10. If the surety does not give notice to the (self-insurer's security fund) (commercial self-insurance group security fund) and the commissioner of commerce, state of Minnesota, within two business days of receipt of written notification from the commissioner of commerce, state of Minnesota, pursuant to paragraph 7, to exercise its option to administer claims pursuant to paragraph 8, then the (self-insurer's security fund) (commercial self-insurance security fund) will assume the payments of the workers' compensation obligations of the principal pursuant to Minnesota Statutes, chapter 176. The surety shall pay, within 30 days of the receipt of the notification by the commissioner of commerce, state of Minnesota, pursuant to paragraph 7, to the (self-insurer's security fund) (commercial self-insurance group security fund) as an initial deposit an amount equal to ten percent of the penal sum of the bond, and shall thereafter, upon notification from the (self-insurer's security fund) (commercial self-insurance group security fund) that the balance of the initial deposit had fallen to one percent of the penal sum of the bond, remit to the (self-insurer's security fund) (commercial self-insurance group security fund) an amount equal to the payments made by the (self-insurer's security fund) (commercial self-insurance group security fund) in the three calendar months immediately preceding said notification. All such payments will be a charge against the penal sum of the bond.

11. Disputes concerning the posting, renewal, termination, exoneration, or return of all or any portion of the principal's security deposit or any liability arising out of the posting or failure to post security, or the adequacy of the security or the reasonableness of administrative costs, including legal costs, arising between or among a surety, the issuer of an agreement of assumption and guarantee of workers' compensation liabilities, the issuer of a letter of credit, any custodian of the security deposit, the principal, or the (self-insurer's security fund) (commercial self-insurance group security fund) shall be resolved by the commissioner of commerce pursuant to Minnesota Statutes, chapters 79A and 176.

12. Written notification to the surety required by this bond shall be sent to:

.....
Name of Surety

.....
To the attention of Person or
Position

.....
Address

.....
City, State, Zip

Written notification to the principal required by this bond shall be sent to:

.....
Name of Principal

.....
To the attention of Person or
Position

.....
Address

.....
City, State, Zip

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13. This bond is executed by the surety to comply with Minnesota Statutes, chapter 176, and said bond shall be subject to all terms and provisions thereof.

.....
Name of Surety
.....
Address
.....
City, State, Zip

THIS bond is executed under an unrevoked appointment or power of attorney.

I certify (or declare) under penalty of perjury under the laws of the state of Minnesota that the foregoing is true and correct.

.....
Date
.....
Signature of Attorney-In-Fact
.....
Printed or Typed Name of
Attorney-In-Fact

A copy of the transcript or record of the unrevoked appointment, power of attorney, by-laws, or other instrument, duly certified by the proper authority and attested by the seal of the insurer entitling or authorizing the person who executed the bond to do so for and in behalf of the insurer, must be filed in the office of the commissioner of commerce or must be included with this bond for such filing.

History: 1988 c 674 s 15; 1995 c 231 art 2 s 27

79A.16 OPEN MEETING; ADMINISTRATIVE PROCEDURE ACT.

The security fund and its board of trustees shall not be subject to (1) the Open Meeting Law, (2) the Open Appointments Law, (3) the Data Privacy Law, and (4) except where specifically set forth, the Administrative Procedure Act.

The self-insurers' advisory committee shall not be subject to clauses (2) and (4).

History: 1988 c 674 s 16

79A.17 RULES.

The commissioner may adopt, amend, and repeal rules reasonably necessary to carry out the purposes of sections 79A.01 to 79A.17. This authorization includes, but is not limited to, the adoption of rules to do all of the following:

- (1) except as otherwise specifically provided by statute, specifying what constitutes ability to self-insure and to pay any compensation which may become due under chapter 176;
- (2) specifying what constitutes a failure or inability to fulfill an insolvent self-insurer's obligations under this chapter;
- (3) interpreting and defining the terms used in this chapter;
- (4) establishing procedures and standards for hearing and determinations and providing for those determinations to be appealed;
- (5) except where otherwise specifically provided by statute, specifying the standards, forms, and content of agreements, forms, and reports between parties who have obligations pursuant to this chapter;
- (6) providing for the combinations and relative liabilities of security deposits, assumptions, and guarantees used pursuant to this chapter; and
- (7) disclosing otherwise private data concerning self-insurers to courts or the self-insurers' security fund and specifying appropriate safeguards for that information.

The self-insurers' advisory committee may make recommendations to the commissioner under this section as it deems appropriate.

History: 1988 c 674 s 17

79A.18 EXISTING RULES.

If there is any inconsistency among any rule or statute and Laws 1988, chapter 674, Laws 1988, chapter 674, shall govern.

History: 1988 c 674 s 21

COMMERCIAL SELF-INSURANCE GROUPS**79A.19 COMMERCIAL SELF-INSURANCE GROUPS; DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of sections 79A.19 to 79A.32, the terms defined in this section have the meanings given them. If there is any inconsistency between this section and section 79A.01, the provisions of this section shall govern.

Subd. 2. **Accountant.** "Accountant" means a certified public accountant who is not an employee of any member of the commercial self-insurance group and is not affiliated with any individual or organization providing services other than accounting services to the group.

Subd. 3. **Actuary.** "Actuary" means an individual who has attained the status of associate or fellow of the casualty actuarial society who is not an employee of any member of the commercial self-insurance group and is not affiliated with any individual or organization providing services other than actuarial services to the group.

Subd. 4. **Common claims fund.** "Common claims fund" means the cash, cash equivalents, or investment accounts maintained by the commercial self-insurance group to pay its workers' compensation liabilities.

Subd. 5. **Member.** "Member" means an employer that participates in a commercial self-insurance group.

Subd. 6. **Commercial self-insurance group.** "Commercial self-insurance group" means a group of employers that are self-insured for workers' compensation under chapter 176 and elects to operate under sections 79A.19 to 79A.32 rather than sections 79A.01 to 79A.18.

Subd. 7. **Commercial self-insurance group security fund.** "Commercial self-insurance group security fund" means the commercial self-insurance group security fund established pursuant to this chapter

Subd. 8. **Trustees.** "Trustees" means the board of trustees of the commercial self-insurance group security fund.

History: 1995 c 231 art 2 s 28

79A.20 ELIGIBILITY REQUIREMENTS FOR COMMERCIAL SELF-INSURANCE GROUPS.

Subdivision 1 **Group eligibility.** A commercial self-insurance group consists of two or more employers in similar industries. The commercial self-insurance group shall not incorporate or form a business trust pursuant to chapter 318.

Subd. 2. **Membership eligibility.** A commercial self-insurance group may only admit employers who meet the eligibility requirements established by the group including financial criteria, underwriting guidelines, risk profile, and any other requirements stated in the commercial self-insurance group's bylaws or plan of operation.

History: 1995 c 231 art 2 s 29

79A.21 COMMERCIAL SELF-INSURANCE GROUP APPLICATION.

Subdivision 1. **Procedure.** (a) Groups proposing to become licensed as commercial self-insurance groups must complete and submit an application on a form or forms prescribed by the commissioner.

(b) The commissioner shall grant or deny the group's application to self-insure within 60 days after a complete application has been filed, provided that the time may be extended for an additional 30 days upon 15 days' prior notice to the applicant.

Subd. 2. **Required documents.** All applications must be accompanied by the following:

(a) A detailed business plan including the risk profile of the proposed membership, underwriting guidelines, marketing plan, minimum financial criteria for each member, and financial projections for the first year of operation.

(b) A plan describing the method in which premiums are to be charged to the employer members. The plan shall be accompanied by copies of the member's workers' compensation insurance policies in force at the time of application. In developing the premium for the group, the commercial self-insurance group shall base its premium on the Minnesota workers' compensation insurers association's manual of rules, loss costs, and classifications approved for use in Minnesota by the commissioner. Each member applicant shall, on a form approved by the commissioner, complete estimated payrolls for the first 12-month period that the applicant will be self-insured. Premium volume discounts per the plan will be permitted if they can be shown to be consistent with actuarial standards.

(c) A schedule indicating actual or anticipated operational expenses of the commercial self-insurance group. No authority to self-insure will be granted unless, over the term of the policy year, at least 65 percent of total revenues from all sources for the year are available for the payment of its claim and assessment obligations. For purposes of this calculation, claim and assessment obligations include the cost of allocated loss expenses as well as special compensation fund and commercial self-insurance group security fund assessments but exclude the cost of unallocated loss expenses.

(d) An indemnity agreement from each member who will participate in the commercial self-insurance group, signed by an officer of each member, providing for joint and several liability for all claims and expenses of all of the members of the commercial self-insurance group arising in any fund year in which the member was a participant on a form approved by the commissioner. The indemnity agreement shall provide for assessments according to the group's bylaws on an individual and proportionate basis.

(e) A copy of the commercial self-insurance group bylaws.

(f) Evidence of the security deposit required under section 79A.24, accompanied by the actuarial certification study for the minimum security deposit as required under section 79A.24.

(g) Each initial member of the commercial self-insurance group shall submit to the commercial self-insurance group accountant its most recent annual financial statement. Financial statements for a period ending more than six months prior to the date of the application must be accompanied by an affidavit, signed by a company officer under oath, stating that there has been no material lessening of the net worth nor other adverse changes in its financial condition since the end of the period. Individual group members constituting at least 75 percent of the group's annual premium shall submit reviewed or audited financial statements. The remaining members may submit compilation level statements. Statements for a period ending more than 12 months prior to the date of application cannot be accepted.

(h) A compiled combined financial statement of all group members prepared by the commercial self-insurance group's accountant and a list of members included in such statements.

(i) A copy of each member's accountant's report letter from the reports used in compiling the combined financial statements.

(j) A list of all members and the percentage of premium each represents to the total group's annual premium for the policy year.

Subd. 3. **Approval.** The commissioner shall approve an application for self-insurance upon a determination that all of the following conditions are met:

(1) a completed application and all required documents have been submitted to the commissioner;

(2) the financial ability of the commercial self-insurance group is sufficient to fulfill all obligations that may arise under this chapter or chapter 176;

(3) the annual premium of the commercial self-insurance group to be charged to initial members is at least \$500,000;

(4) the commercial self-insurance group has contracted with a service company to administer its program; and

(5) the required securities or surety bond shall be on deposit prior to the effective date of coverage for the commercial self-insurance group.

History: 1995 c 231 art 2 s 30

79A.22 COMMERCIAL SELF-INSURANCE GROUP OPERATING REQUIREMENTS.

Subdivision 1. **Board of directors.** (a) A commercial self-insurance group shall elect a board of directors who shall have complete authority over and control of the assets of the commercial self-insurance group. The board of directors will also be responsible for all of the operations of the commercial self-insurance group.

(b) The majority of the board of directors shall be owners, officers, directors, partners, or employees of members of the commercial self-insurance group. No third-party administrator or vendor of risk management services shall serve as a director of the commercial self-insurance group.

(c) The directors shall approve applications for membership in the commercial self-insurance group.

Subd. 2. **Financial standards.** Commercial self-insurance groups shall have and maintain:

(1) combined net worth of all of the members in an amount at least equal to 15 times the group's selected retention level of the workers' compensation reinsurance association;

(2) sufficient assets and liquidity in the group's common claims fund to promptly and completely meet all obligations of its members under this chapter and chapter 176.

Subd. 3. **New membership.** The commercial self-insurance group shall file with the commissioner the name of any new employer that has been accepted in the group prior to the initiation date of membership along with the member's signed indemnity agreement and evidence the member has deposited sufficient premiums with the group as required by the commercial self-insurance group's bylaws or plan of operation. The security deposit of the group will be increased to an amount equal to 50 percent of the new member's premium. The department of commerce may, at its option, review the financial statement of any applicant whose premium equals 25 percent or more of the group's total premium.

Subd. 4. **Commercial self-insurance group common claims fund.** (a) Each commercial self-insurance group shall establish a common claims fund.

(b) Each commercial self-insurance group shall, not less than ten days prior to the proposed effective date of the group, collect cash premiums from each member equal to not less than 20 percent of the member's annual workers' compensation premium to be paid into a common claims fund, maintained by the group in a designated depository. The remaining balance of the member's premium shall be paid to the group in a reasonable manner over the remainder of the year. Payments in subsequent years shall be made according to the business plan.

(c) Each commercial self-insurance group shall initiate proceedings against a member when that member becomes more than 15 days delinquent in any payment of premium to the fund.

(d) There shall be no commingling of any assets of the common claims fund with the assets of any individual member or with any other account of the service company or fiscal agent unrelated to the payment of workers' compensation liabilities incurred by the group.

Subd. 5. **Joint and several liability.** Each member of a commercial self-insurance group shall be jointly and severally liable for the obligations incurred by any member of the same group under chapter 176 for any fund year in which the member was a participant of the commercial self-insurance group.

Subd. 6. **Annual audit.** The accounts and records of the common claims fund shall be audited in the manner required under section 79A.03, subdivision 10.

Subd. 7. **Investments.** (a) Any securities purchased by the common claims fund shall be in such denominations and with dates of maturity to ensure securities may be redeemable at sufficient time and in sufficient amounts to meet the fund's current and long-term liabilities.

(b) Cash assets of the self-insurers' fund may be invested as provided in section 60A.11 for a casualty insurance company, provided that investment in real estate of or indebtedness from a member company or affiliates is prohibited. In addition, investment in the following is allowed:

(1) savings accounts or certificates of deposit in a duly chartered commercial bank located within the state of Minnesota and insured through the Federal Deposit Insurance Corporation;

(2) share accounts or savings certificates in a duly chartered savings association or savings bank located within the state of Minnesota and insured through the Federal Deposit Insurance Corporation;

(3) direct obligations of the United States Treasury, such as notes, bonds, or bills;

(4) a bond or security issued by the state of Minnesota and backed by the full faith and credit of the state;

(5) a credit union where the employees of the self-insurer are members if the credit union is located in Minnesota and insured through the National Credit Union Administration; or

(6) real estate, common stock, preferred stock, or corporate bonds listed on the New York, American Stock Exchange or NASDAQ Stock Market, so long as these investments are not issued by any member company or affiliate and the total in all other allowable categories make up at least 75 percent of the total required in the common claims fund.

Subd. 8. Administration. (a) The commercial self-insurance group shall be required to secure administrative services through a service company which maintains an office in the state of Minnesota. Services provided by the service company or its subcontractor should at a minimum include claim handling, safety and loss control, and submission of all required regulatory reports.

(b) The service company must demonstrate it has the capability to provide, through its employees or by contract, services which are necessary to administer the self-insurance group and it must employ or have under contract a claims adjuster with at least three years of Minnesota specific workers' compensation claim handling experience.

(c) The service company retained by a commercial self-insurance group to administer workers' compensation claims shall estimate the total accrued liability of the group for the payment of compensation for the commercial self-insurance group's annual report to the commissioner and shall make the estimate both in good faith and with the exercise of a reasonable degree of care.

Subd. 9. Marketing and communications. A commercial self-insurance group's applications, coverage documents, quotations, and all marketing materials must prominently display information indicating that the commercial self-insurance group is a self-insured program, that members are jointly and severally liable for the obligations of the commercial self-insurance group, and that members will be assessed on an individual and proportionate basis for any deficits created by the commercial self-insurance group.

Subd. 10. Reinsurance. (a) A commercial self-insurance group shall be required to purchase specific excess coverage with the workers' compensation reinsurance association at the lower retention level for its first three years of operation. After that time it may select the higher or super retention level with prior notice given to and approval of the commissioner.

(b) The commissioner may require a commercial self-insurance group to purchase aggregate excess coverage. Any reinsurance or excess coverage purchased other than that of the workers' compensation reinsurance association must be secured with an insurance company or reinsurer licensed to underwrite such coverage in Minnesota and maintains at least an "A" rating with the A.M. Best rating organization.

Subd. 11. Disbursement of fund surplus. (a) One hundred percent of any surplus money for a fund year in excess of 125 percent of the amount necessary to fulfill all obligations under the Workers' Compensation Act, chapter 176, for that fund year may be declared refundable to a member at any time. The date shall be no earlier than 18 months following the end of such fund year. The first disbursement of fund surplus may not be made prior to the completion of an operational audit by the commissioner. There can be no more than one re-

fund made in any 12-month period. When all the claims of any one fund year have been fully paid, as certified by an actuary, all surplus money from that fund year may be declared refundable.

(b) The commercial self-insurance group shall give notice to the commissioner of any refund. Said notice shall be accompanied by a statement from the commercial self-insurer group's certified public accountant certifying that the proposed refund is in compliance with paragraph (a).

Subd. 12. **Satisfaction of fund deficit.** In the event of a deficit in any fund year, such deficit shall be paid up immediately, either from surplus from a fund year other than the current fund year, or by assessment of the membership. The commissioner shall be notified within ten days of any transfer of surplus funds. The commissioner, upon finding that a deficit in a fund year has not been satisfied by a transfer of surplus from another fund year, shall order an assessment to be levied on a proportionate basis against the members of the commercial self-insurance group during that fund year sufficient to make up any deficit.

Subd. 13. **Common claims fund; five-year exception.** For commercial group self-insurers who have been in existence for five years or more, a level of funding in the common claims fund must be maintained at not less than the greater of either:

- (1) one year's claim losses paid in the most recent year; or
- (2) one-third of the security deposit posted with the department of commerce according to section 79A.24, subdivision 2.

This provision supersedes any requirements under subdivisions 11 and 12 and Minnesota Rules, part 2780.5000.

History: 1995 c 231 art 2 s 31; 1998 c 339 s 3,4

79A.23 COMMERCIAL SELF-INSURANCE GROUP REPORTING REQUIREMENTS.

Subdivision 1: **Required reports to commissioner.** Each commercial self-insurance group shall submit the following documents to the commissioner.

(a) An annual report shall be submitted by April 1 showing the incurred losses, paid and unpaid, specifying indemnity and medical losses by classification, payroll by classification, and current estimated outstanding liability for workers' compensation on a calendar year basis, in a manner and on forms available from the commissioner. In addition each group will submit a quarterly interim loss report showing incurred losses for all its membership.

(b) Each commercial self-insurance group shall submit within 45 days of the end of each quarter:

- (1) a schedule showing all the members who participate in the group, their date of inception, and date of withdrawal, if applicable;
- (2) a separate section identifying which members were added or withdrawn during that quarter; and

(3) an internal financial statement and copies of the fiscal agent's statements supporting the balances in the common claims fund.

(c) The commercial self-insurance group shall submit an annual certified financial audit report of the commercial self-insurance group fund by April 1 of the following year. The report must be accompanied by an expense schedule showing the commercial self-insurance group's operational costs for the same year including service company charges, accounting and actuarial fees, fund administration charges, reinsurance premiums, commissions, and any other costs associated with the administration of the group program.

(d) An officer of the commercial self-insurance group shall, under oath, attest to the accuracy of each report submitted under paragraphs (a), (b), and (c). Upon sufficient cause, the commissioner shall require the commercial self-insurance group to submit a certified audit of payroll and claim records conducted by an independent auditor approved by the commissioner, based on generally accepted accounting principles and generally accepted auditing standards, and supported by an actuarial review and opinion of the future contingent liabilities. The basis for sufficient cause shall include the following factors:

- (1) where the losses reported appear significantly different from similar types of groups;

(2) where major changes in the reports exist from year to year, which are not solely attributable to economic factors; or

(3) where the commissioner has reason to believe that the losses and payroll in the report do not accurately reflect the losses and payroll of the commercial self-insurance group. If any discrepancy is found, the commissioner shall require changes in the commercial self-insurance group's business plan or service company recordkeeping practices:

(e) Each commercial self-insurance group shall submit by September 15 a copy of the group's annual federal and state income tax returns or provide proof that it has received an exemption from these filings.

(f) With the annual loss report each commercial self-insurance group shall report to the commissioner any worker's compensation claim where the full, undiscounted value is estimated to exceed \$50,000, in a manner and on forms prescribed by the commissioner.

(g) Each commercial self-insurance group shall submit by May 1 a list of all members and the percentage of premium each represents to the total group's premium for the previous calendar year.

(h) Each commercial self-insurance group shall submit by May 1 the following documents prepared by the group's certified public accountant:

(1) a compiled combined financial statement of group members and a list of members included in this statement; and

(2) a report that the statements which were combined have met the requirements of subdivision 2.

(i) If any group member comprises over 25 percent of total group premium, that member's financial statement must be reviewed or audited, and, at the commissioner's option, must be filed with the department of commerce by May 1 of the following year.

(j) Each commercial self-insurance group shall submit a copy of each member's accountant's report letter from the reports used in compiling the combined financial statements.

Subd. 2. Required reports from members to group. Each member of the commercial self-insurance group shall, by April 1, submit to the group its most recent annual financial statement, together with other financial information the group may require. These financial statements submitted must not have a fiscal year end date older than January 15 of the group's calendar year end. Individual group members constituting at least 50 percent of the group's annual premium shall submit to the group reviewed or audited financial statements. The remaining members may submit compilation level statements.

Subd. 3. Operational audit. (a) The commissioner, prior to authorizing surplus distribution of a commercial self-insurance group's first fund year or no later than after the third anniversary of the group's authority to self-insure, shall conduct an operational audit of the commercial self-insurance group's claim handling and reserve practices as well as its underwriting procedures to determine if they adhere to the group's business plan. The commissioner may select outside consultants to assist in conducting the audit. After completion of the audit, the commissioner shall either renew or revoke the commercial self-insurance group's authority to self-insure. The commissioner may also order any changes deemed necessary in the claims handling, reserving practices, or underwriting procedures of the group.

(b) The cost of the operational audit shall be borne by the commercial self-insurance group.

Subd. 4. Unit statistical report. Each commercial self-insurance group will annually file a unit statistical report to the Minnesota workers' compensation insurers association.

History: 1995 c 231 art 2 s 32; 1998 c 339 s 5,6

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

Subdivision 1. Annual securing of liability. Each year every commercial self-insurance group shall secure its estimated future liability for the payment of compensation and the performance of the obligations of its membership imposed under chapter 176. A new deposit must be posted within 30 days of the filing of the commercial self-insurance group's annual actuarial report with the commissioner.

Subd. 2. **Minimum deposit.** The minimum deposit is 150 percent of the commercial self-insurance group's estimated future liability for the payment of compensation as determined by an actuary. If all the members of the commercial self-insurance group have submitted reviewed or audited financial statements to the group's accountant, this minimum deposit shall be 110 percent of the commercial self-insurance group's estimated future liability for the payment of workers' compensation as determined by an actuary. The group must file a letter with the commissioner from the group's accountant which confirms that the compiled combined financial statements were prepared from members reviewed or audited financial statements only before the lower security deposit is allowed. Each actuarial study shall include a projection of future losses during a one-year period until the next scheduled actuarial study, less payments anticipated to be made during that time. Deduction should be made for the total amount which is estimated to be returned to the commercial self-insurance group from any specific excess insurance coverage, aggregate excess insurance coverage, and any supplementary benefits which are estimated to be reimbursed by the special compensation fund. Supplementary benefits will not be reimbursed by the special compensation fund unless the special compensation fund assessment pursuant to section 176.129 is paid and the required reports are filed with the special compensation fund. In the case of surety bonds, bonds shall secure administrative and legal costs in addition to the liability for payment of compensation reflected on the face of the bond. In no event shall the security be less than the group's selected retention limit of the workers' compensation reinsurance association. The posting or depositing of security under this section shall release all previously posted or deposited security from any obligations under the posting or depositing and any surety bond so released shall be returned to the surety. Any other security shall be returned to the depositor or the person posting the bond.

Subd. 3. **Type of acceptable security.** The commissioner may only accept as security, and the commercial self-insurance group shall deposit as security, cash, approved government securities as set forth in section 176.181, subdivision 2b, surety bonds or irrevocable letters of credit in any combination in accordance with the requirements under section 79A.04, subdivision 3.

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

(b) Upon the commissioner sending a request to renew, request to post, or request to increase a security deposit, a perfected security interest is created in the commercial self-insurance group's and member's assets in favor of the commissioner to the extent of any then unsecured portion of the commercial self-insurance group's incurred liabilities. The perfected security interest is transferred to any cash or securities thereafter posted by the commercial self-insurance group with the state treasurer and is released only upon either of the following:

(1) the acceptance by the commissioner of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for the payment of compensation; or

(2) the return of cash or securities by the commissioner. The commercial self-insurance group loses all right, title, and interest in and any right to control all assets or obligations posted or left on deposit as security. In the event of a declaration of bankruptcy or insolvency by a court of competent jurisdiction, or in the event of the issuance of a certificate of default by the commissioner, the commissioner shall liquidate the deposit as provided in this chapter, and transfer it to the commercial self-insurance group security fund for application to the commercial self-insurance group's incurred liability.

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

(d) Any securities deposited with the state treasurer or with a custodial account assigned to the state treasurer or letters of credit or surety bonds held by the commissioner may be exchanged or replaced by the depositor with any other acceptable securities or letters of credit or surety bond of like amount so long as the market value of the securities or amount of the surety bonds or letter of credit equals or exceeds the amount of the deposit required. If securi-

ties are replaced by surety bond, the commercial self-insurance group must maintain securities on deposit in an amount sufficient to meet all outstanding workers' compensation liability arising during the period covered by the deposit of the replaced securities.

History: 1995 c 231 art 2 s 33; 1998 c 339 s 7-9

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

Subdivision 1. **Notice of insolvency, bankruptcy, or default.** The commissioner of labor and industry shall notify the commissioner and the commercial self-insurance group security fund if the commissioner of labor and industry has knowledge that any commercial self-insurance group has failed to pay workers' compensation benefits as required by chapter 176. If the commissioner determines that a court of competent jurisdiction has declared the commercial self-insurance group to be bankrupt or insolvent and the commercial self-insurance group has failed to pay workers' compensation as required by chapter 176 or if the commissioner issues a certificate of default against a commercial self-insurance group for failure to pay workers' compensation as required by chapter 176, then the security deposit posted by the commercial self-insurance group shall be utilized to administer and pay the commercial self-insurance group's workers' compensation obligation.

Subd 2. **Revocation of certificate to self-insure.** (a) The commissioner shall revoke the commercial self-insurance group's certificate to self-insure once notified of the commercial self-insurance group's bankruptcy, insolvency, or upon issuance of a certificate of default. The revocation shall be completed as soon as practicable, but no later than 30 days after the commercial self-insurance group's security has been called.

(b) The commissioner shall also revoke a commercial self-insurance group's authority to self-insure on the following grounds:

- (1) failure to comply with any lawful order of the commissioner;
- (2) failure to comply with any provision of chapter 176;
- (3) a deterioration of the commercial self-insurance group's financial condition affecting its ability to pay obligations in chapter 176;
- (4) committing an unfair or deceptive act or practice as defined in section 72A.20; or
- (5) failure to abide by the plan of operation of the workers' compensation reinsurance association.

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

History: 1995 c 231 art 2 s 34

79A.26 COMMERCIAL SELF-INSURANCE GROUP SECURITY FUND.

Subdivision 1. **Creation.** The commercial self-insurance group security fund is established as a nonprofit corporation pursuant to the Minnesota Nonprofit Corporation Act, sections 317A.001 to 317A.909. If any provision of the Minnesota Nonprofit Corporation Act conflicts with any provision of this chapter, the provisions of this chapter apply. Each commercial self-insurance group that elects to be subject to the terms of sections 79A.19 to 79A.32 rather than sections 79A.01 to 79A.18 shall participate in the commercial self-insurance group security fund. This participation shall be a condition of maintaining its certificate to self-insure.

Subd. 2. **Board of trustees.** The commercial security fund shall be governed by a board consisting of a minimum of three and maximum of five trustees. The trustees shall be representatives of commercial self-insurance groups who shall be elected by the participants of the commercial security fund, each group having one vote. The trustees initially elected by the participants shall serve staggered terms of either two or three years. Thereafter, trustees

shall be elected to three-year terms and shall serve until their successors are elected and assume office pursuant to the bylaws of the commercial security fund. Two additional trustees shall be appointed by the commissioner. Initially, one of these trustees shall serve a two-year term. Thereafter, the trustees shall be appointed to four-year terms, and shall serve until their successors are appointed and assume office according to the bylaws of the commercial security fund. In addition to the trustees elected by the participants or appointed by the commissioner, the commissioner of labor and industry or the commissioner's designee shall be an ex officio, nonvoting member of the board of trustees. A member of the board of trustees may designate another person to act in the member's place as though the member were acting and the designee's actions shall be deemed those of the member.

Subd. 3. **Bylaws.** The commercial security fund shall establish bylaws and a plan of operation, subject to the prior approval of the commissioner, necessary to the purposes of this chapter and to carry out the responsibilities of the commercial security fund. The commercial security fund may carry out its responsibilities directly or by contract, and may purchase services and insurance and borrow funds it deems necessary for the protection of the commercial self-insurance group participants and their employees.

Subd. 4. **Confidential information.** The commercial security fund may receive private data concerning the financial condition of commercial self-insurance groups whose liabilities to pay compensation have become its responsibility and shall adopt bylaws to prevent dissemination of that information.

Subd. 5. **Employees.** Commercial security fund employees are not state employees and are not subject to any state civil service regulations.

Subd. 6. **Assumption of obligations.** Upon order of the commissioner under section 79A.25, subdivision 3, the commercial security fund shall assume the workers' compensation obligations of an insolvent commercial self-insurance group. The commissioner shall further order the commercial self-insurance group security fund to commence payment of these obligations within 14 days of the receipt of this notification and order.

Subd. 7. **Act or omissions; penalties.** Notwithstanding subdivision 6, the commercial security fund shall not be liable for the payment of any penalties assessed for any act or omission on the part of any person other than the commercial security fund or its appointed administrator, including, but not limited to, the penalties provided in chapter 176 unless the commercial security fund or its appointed administrator would be subject to penalties under chapter 176 as the result of the actions of the commercial security fund or its administrator.

Subd. 8. **Party in interest.** The commercial security fund shall be a party in interest in all proceedings involving compensation claims against an insolvent commercial self-insurance group whose compensation obligations have been paid or assumed by the commercial security fund. The commercial security fund shall have the same rights and defenses as the insolvent commercial self-insurance group, including, but not limited to, all of the following:

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

Subd. 9. **Payments to commercial security fund.** Notwithstanding sections 79A.19 to 79A.32 or chapter 176 to the contrary, in the event that the commercial self-insurance group security fund assumes the obligations of any bankrupt or insolvent commercial self-insurance group pursuant to this section, then the proceeds of any surety bond, workers' compensation reinsurance association, specific excess insurance or aggregate excess insurance policy, and any special compensation fund payment or supplementary benefit reimbursements shall be paid to the commercial self-insurance group security fund instead of the bankrupt or insolvent commercial self-insurance group or its successor in interest. No special compensation fund reimbursements shall be made to the commercial security fund unless the special compensation fund assessments under section 176.129 are paid and the required reports are made to the special compensation fund.

Subd. 10. **Insolvent commercial self-insurance group.** The commercial security fund shall have the right and obligation to obtain reimbursement from an insolvent commercial self-insurance group up to the amount of the commercial self-insurance group's workers'

compensation obligations paid and assumed by the commercial security fund, including reasonable administrative and legal costs. This right includes, but is not limited to, a right to claim for wages and other necessities of life advanced to claimants as subrogee of the claimants in any action to collect against the commercial self-insurance group as debtor.

Subd. 11. **Security deposits.** The commercial security fund shall have the right and obligation to obtain from the security deposit of an insolvent commercial self-insurance group the amount of the commercial self-insurance group's compensation obligations, including reasonable administrative and legal costs, paid or assumed by the commercial security fund. Reimbursement of administrative costs, including legal costs, shall be subject to approval by a majority of the commercial security fund's voting trustees. The commercial security fund shall be a party in interest in any action to obtain the security deposit for the payment of compensation obligations of an insolvent commercial self-insurance group.

Subd. 12. **Legal actions.** The commercial security fund shall have the right to bring an action against any person or entity to recover compensation paid and liability assumed by the commercial security fund, including, but not limited to, any excess insurance carrier of the insolvent commercial self-insurance group and any person or entity whose negligence or breach of an obligation contributed to any underestimation of the commercial self-insurance group's accrued liability as reported to the commissioner.

Subd. 13. **Party in interest.** The commercial security fund may be a party in interest in any action brought by any other person seeking damages resulting from the failure of an insolvent commercial self-insurance group to pay workers' compensation required under this subdivision.

Subd. 14. **Assets maintained.** The commercial security fund shall maintain cash, readily marketable securities, or other assets, or a line of credit, approved by the commissioner, sufficient to immediately continue the payment of the compensation obligations of an insolvent commercial self-insurance group pending receipt of the security deposit, surety bond proceeds, irrevocable letter of credit, or, if necessary, assessment of the participants. The commissioner may establish the minimum amount to be maintained by, or immediately available to, the commercial security fund for this purpose.

Subd. 15. **Assessment.** The commercial security fund may assess each of its participants a pro rata share of the funding necessary to carry out its obligation and the purposes of sections 79A.19 to 79A.32. Total annual assessments in any calendar year shall be a percentage of the workers' compensation benefits paid under sections 176.101 and 176.111 during the previous calendar year. The annual assessment calculation shall not include supplementary benefits paid which will be reimbursed by the special compensation fund. Funds obtained by assessments under this subdivision may only be used for the purposes of sections 79A.19 to 79A.32. The trustees shall certify to the commissioner the collection and receipt of all money from assessments, noting any delinquencies. The trustees shall take any action deemed appropriate to collect any delinquent assessments.

Subd. 16. **Audit of fund.** The trustees shall annually contract for an independent certified audit of the financial activities of the fund. An annual report on the financial status of the commercial self-insurance group security fund shall be submitted to the commissioner and to each commercial group participant.

History: 1995 c 231 art 2 s 35; 1998 c 339 s 10

79A.27 INDEMNITY AGREEMENT FORM.

INDIVIDUAL AND PROPORTIONATE INDEMNITY AGREEMENT

WHEREAS, (name of company) has agreed to be and has been accepted as a member of (name of commercial self-insurance group).

WHEREAS, (name of company) has agreed to be bound by all of the provisions of the Minnesota Workers' Compensation Act and all rules promulgated thereunder.

WHEREAS, that (name of company) has agreed to be bound by bylaws or plan of operation and all amendments thereto of (name of commercial self-insurance group);

NOW THEREFORE, IT IS AGREED that:

1. (Name of company) shall be jointly and severally liable for all claims and expenses of all the members of (name of commercial self-insurance group) arising in any fund year in which (name of company) is a member of the commercial self-insurance group.

2. (Name of commercial self-insurance group) shall assess (name of company) on an individual and proportionate basis for its share of the total liability of the commercial self-insurance group.

3. In the event that (name of company) is not a member for the full year, it shall be only liable for a pro rata share of that liability.

IN WITNESS WHEREOF, the (name of company) and (name of commercial self-insurance group) have caused this indemnity agreement to be executed by its authorized officers:

Commercial Self-Insurance Group Name

Company Name

By: ..
date: ..

By:
date:

History: 1995 c 231 art 2 s 36

79A.28 OPEN MEETING; ADMINISTRATIVE PROCEDURE ACT.

The commercial self-insurance group security fund and its board of trustees shall not be subject to:

- (1) the Open Meeting Law;
- (2) the Open Appointments Law;
- (3) the Data Privacy Law; and
- (4) except where specifically set forth, the Administrative Procedure Act.

History: 1995 c 231 art 2 s 37

79A.29 RULES.

The commissioner may adopt, amend, and repeal rules reasonably necessary to carry out the purposes of this chapter. Minnesota Rules, chapter 2780, shall apply to commercial self-insurance groups unless otherwise specified by rule.

History: 1995 c 231 art 2 s 38

79A.30 GOVERNING LAW.

If there is any inconsistency between sections 79A.19 to 79A.32 and any other statute or rule, the provisions of sections 79A.19 to 79A.32 shall govern with respect to commercial self-insurance groups.

History: 1995 c 231 art 2 s 39

79A.31 COMMERCIAL SELF-INSURANCE GROUP SECURITY FUND MEMBERSHIP; WITHDRAWAL FROM SELF-INSURERS' SECURITY FUND.

Subdivision 1. **Withdrawal.** Any group self-insurer that is a member of the self-insurers' security fund established under section 79A.09, may elect to withdraw from that fund and become a member of the commercial self-insurance group security fund established under section 79A.26. The transferring group shall be subject to the provisions and requirements of sections 79A.19 to 79A.32 as of the date of transfer. Additional security may be required pursuant to section 79A.24. Group self-insurers electing to transfer to the commercial self-insurance group fund shall not be subject to the provisions of section 79A.06, subdivision 5, including, but not limited to, assessments by the self-insurers' security fund. Notice of transfer must be filed by November 1 for all transfers that must be effective at midnight on December 31.

Subd. 2. **Transfer; notice to commissioner.** A group self-insurer shall provide to the commissioner written notice of its intent to transfer membership to the commercial self-insurance group security fund. The notice shall be sent at least 30 days prior to the date the

group self-insurer requests membership in the commercial self-insurance group security fund.

Subd. 3. Transfer of potential and contingent liabilities. Upon transfer pursuant to subdivision 1, the commercial self-insurance group security fund shall assume all of the past, present, and future potential and contingent workers' compensation liabilities of the transferring group in the event of any bankruptcy or insolvency of that group or its failure to meet its obligations under this chapter and chapter 176.

Subd. 4. Election. A group self-insurer established after August 1, 1995, may elect to become a member of either the self-insurers' security fund or the commercial self-insurance group security fund. However, once the election is made, a group may not transfer to the other security fund.

History: 1995 c 231 art 2 s 40; 1996 c 305 art 1 s 26; 1998 c 339 s 11

79A.32 REPORTING TO MINNESOTA WORKERS' COMPENSATION INSURERS' ASSOCIATION.

Subdivision 1. **Required activity.** Each self-insurer shall perform the following activities:

(1) maintain membership in and report loss experience data to the Minnesota workers' compensation insurers association, or a licensed data service organization, in accordance with the statistical plan and rules of the organization as approved by the commissioner;

(2) establish a plan for merit rating which shall be consistently applied to all insureds, provided that members of a data service organization may use merit rating plans developed by that data service organization;

(3) provide an annual report to the commissioner containing the information and prepared in the form required by the commissioner; and

(4) keep a record of the losses paid by the self-insurers and premiums for the group self-insurers.

Subd. 2. **Permitted activity.** In addition to any other activities not prohibited by this chapter, self-insurers may:

(1) through licensed data service organizations, individually, or with self-insurers commonly owned, managed, or controlled, conduct research and collect statistics to investigate, identify, and classify information relating to causes or prevention of losses;

(2) develop and use classification plans and rates based upon any reasonable factors; and

(3) develop rules for the assignment of risks to classifications

Subd. 3. **Delayed reporting.** Private self-insurers established under sections 79A.01 to 79A.18 prior to August 1, 1995, need not begin filing the reports required under subdivision 1 until January 1, 1998.

History: 1995 c 231 art 2 s 41