

By: Representatives Stevens, Montgomery  
(74th)

To: Insurance

HOUSE BILL NO. 1305

1 AN ACT TO REVISE THE MISSISSIPPI WORKERS' COMPENSATION  
2 SELF-INSURER GUARANTY ASSOCIATION LAW SO THAT THE EVENT THAT  
3 TRIGGERS THE OBLIGATION OF THE ASSOCIATION IS THE DEFAULT OF THE  
4 SELF-INSURER RATHER THAN THE DETERMINATION OF THE INSOLVENCY OF  
5 THE SELF-INSURER; TO AMEND SECTION 71-3-157, MISSISSIPPI CODE OF  
6 1972, TO REVISE DEFINITIONS; TO AMEND SECTION 71-3-165,  
7 MISSISSIPPI CODE OF 1972, TO REMOVE CERTAIN REQUIREMENTS FOR  
8 PROVIDING NOTICE OF CLAIMS; TO AMEND SECTION 71-3-167, MISSISSIPPI  
9 CODE OF 1972, TO REVISE THE DUTIES AND POWERS OF THE WORKERS'  
10 COMPENSATION COMMISSION CONCERNING THE DETERMINATION OF DEFAULT OF  
11 MEMBER SELF-INSURERS; TO AMEND SECTION 71-3-169, MISSISSIPPI CODE  
12 OF 1972, TO PROVIDE THAT THE ASSOCIATION MAY RECOVER FROM THE  
13 SELF-INSURER IN DEFAULT ALL AMOUNTS PAID BY THE ASSOCIATION ON  
14 ACCOUNT OF COVERED CLAIMS OF EMPLOYEES OF THE SELF-INSURER; TO  
15 AMEND SECTION 71-3-179, MISSISSIPPI CODE OF 1972, TO PROVIDE  
16 CERTAIN IMMUNITY FROM LIABILITY FOR ANY MEMBER SELF-INSURER, THE  
17 ASSOCIATION, ITS AGENTS OR EMPLOYEES, THE BOARD OF DIRECTORS AND  
18 THE COMMISSION; TO AMEND SECTION 71-3-181, MISSISSIPPI CODE OF  
19 1972, TO PROVIDE THAT THE COMMISSION MAY ORDER A STAY OF  
20 PROCEEDINGS IN WHICH THE SELF-INSURER IN DEFAULT IS A PARTY FOR A  
21 PERIOD NOT TO EXCEED SIX MONTHS TO PERMIT PROPER DEFENSE BY THE  
22 ASSOCIATION OF ALL COVERED CLAIMS; TO AMEND SECTIONS 71-3-163 AND  
23 71-3-173, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO  
24 REPEAL SECTION 71-3-171, MISSISSIPPI CODE OF 1972, WHICH PROVIDES  
25 RECOVERY UNDER ANOTHER INSURANCE GUARANTY ASSOCIATION; AND FOR  
26 RELATED PURPOSES.

27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

28 **SECTION 1.** Section 71-3-157, Mississippi Code of 1972, is  
29 amended as follows:

30 71-3-157. For the purposes of Sections 71-3-151 through  
31 71-3-181, the following words shall have the meanings ascribed  
32 herein unless the context shall otherwise require:

33 (a) "Association" means the Mississippi Workers'  
34 Compensation Self-insurer Guaranty Association created under  
35 Section 71-3-159.

36 (b) "Commission" means the Mississippi Workers'  
37 Compensation Commission.



38 (c) "Compensation" means amounts payable to claimants  
39 under the Mississippi Workers' Compensation Law as defined in  
40 Section 71-3-3(j), Mississippi Code of 1972.

41 (d) "Covered claim" means an unpaid claim upon which  
42 compensation or medical is payable by the self-insurer under the  
43 Workers' Compensation Law \* \* \*.

44 (e) "Self-insurer in default" means a self-insurer as  
45 defined by this act that has defaulted or failed for any reason to  
46 satisfy any of its obligations under the workers' compensation  
47 law, including, without limitation, all obligations for payment of  
48 indemnity compensation, disability, expenses of medical, hospital,  
49 surgical, rehabilitation and other services, death benefits and  
50 funeral expenses, whether such default or failure is the result of  
51 insolvency or bankruptcy or receivership or otherwise.

52 (f) "Member self-insurer" means a self-insurer as  
53 defined by this chapter who is a member of the Mississippi  
54 Workers' Compensation Self-insurer Guaranty Association.

55 (g) "Self-insurer" is an employer who has been  
56 authorized under Section 71-3-75, Mississippi Code of 1972, to  
57 insure under the Workers' Compensation Law.

58 (h) "Person" means any individual, corporation,  
59 partnership, association or voluntary organization.

60 **SECTION 2.** Section 71-3-163, Mississippi Code of 1972,  
61 is amended as follows:

62 71-3-163. (1) The association shall:

63 (a) Be obligated to the extent of the covered claims  
64 existing prior to the date of default and arising within thirty  
65 (30) days after the date of default. In no event shall the  
66 association be obligated to a claimant in an amount in excess of  
67 the obligation of the \* \* \* self-insurer in default.

68 (b) Be deemed the self-insurer to the extent of its  
69 obligation on the covered claims and to such extent shall have all



70 rights, duties and obligations of the \* \* \* self-insurer in  
71 default as if the self-insurer were not in default.

72 (c) Assess member self-insurers amounts necessary to  
73 pay the obligations of the association under subsection (2) of  
74 this section, the expenses of handling covered claims and other  
75 expenses authorized by Sections 71-3-151 through 71-3-181. The  
76 assessments of each member self-insurer shall be two percent (2%)  
77 of the gross paid compensation and medical supplies and services  
78 of said member self-insurer during each period of six (6) months.  
79 Said two percent (2%) assessment shall be collected by the  
80 commission at the same time as and pursuant to the procedures  
81 adopted by the commission pursuant to Section 71-3-99, Mississippi  
82 Code of 1972. The two percent (2%) assessment is to be collected  
83 by the commission until the sum of Two Million Dollars  
84 (\$2,000,000.00) is accumulated. At that time the assessments  
85 shall be suspended. However, any employer that becomes authorized  
86 under Section 71-3-75 to be a self-insurer after July 1, 1996, is  
87 not entitled to have the assessment suspended until the  
88 self-insurer has contributed to the guaranty fund for the first  
89 four (4) years the employer is a member self-insurer of the  
90 association regardless of the amount in the guaranty fund. The  
91 assessment shall be reinstated for all member self-insurers at  
92 any time that the guaranty fund balance reaches One Million Five  
93 Hundred Thousand Dollars (\$1,500,000.00) and the assessment shall  
94 continue until such time as the balance in the guaranty fund is  
95 Two Million Dollars (\$2,000,000.00). If the maximum assessment,  
96 together with the other assets of the association, does not  
97 provide in any one (1) year an amount sufficient to make all  
98 necessary payments, the funds available shall be paid as directed  
99 by the commission and any unpaid portion shall be paid as soon  
100 thereafter as funds become available. When the guaranty fund  
101 balance reaches One Million Dollars (\$1,000,000.00), the



102 commission may waive the need for bonding requirements for  
103 self-funded pools.

104 (d) Investigate claims brought against the association;  
105 adjust, compromise, settle and pay covered claims to the extent of  
106 the association's obligations; deny all other claims; and may  
107 review settlements, releases and judgments to which the \* \* \*  
108 self-insurer in default were parties to determine the extent to  
109 which such settlements, releases and judgments may be properly  
110 contested.

111 (e) Notify such persons as the commission directs under  
112 Section 71-3-167(2) (a).

113 (f) Handle claims through its employees or through one  
114 or more other persons designated as servicing facilities.  
115 Designation of a servicing facility is subject to the approval of  
116 the commission.

117 (g) Reimburse each servicing facility for obligations  
118 of the association paid by the facility and for expenses incurred  
119 by the facility while handling claims on behalf of the  
120 association, and shall pay the other expenses of the association  
121 authorized by Sections 71-3-151 through 71-3-181.

122 (2) The association may:

123 (a) Employ or retain such persons as are necessary to  
124 handle claims and perform other duties of the association.

125 (b) Sue or be sued.

126 (c) Negotiate and become a party to such contracts as  
127 are necessary to carry out the purposes of Sections 71-3-151  
128 through 71-3-181.

129 (d) Perform such other acts as are necessary or proper  
130 to effectuate the purposes of Sections 71-3-151 through 71-3-181.

131 **SECTION 3.** Section 71-3-165, Mississippi Code of 1972, is  
132 amended as follows:

133 71-3-165. (1) The association shall submit to the  
134 commission a plan of operation and any amendments thereto



135 necessary or suitable to assure the fair, reasonable and equitable  
136 administration of the association. The plan of operation and any  
137 amendments thereto shall become effective upon approval in writing  
138 by the commission.

139 (2) If at any time the association fails to submit suitable  
140 amendments to the plan, the commission shall, after notice and  
141 hearings, adopt and promulgate such reasonable rules as are  
142 necessary or advisable to effectuate the provisions of Sections  
143 71-3-151 through 71-3-181. Such rules shall continue in force  
144 until modified by the commission or superseded by a plan submitted  
145 by the association and approved by the commission.

146 (3) All member self-insurers shall comply with the plan of  
147 operation. The plan of operation shall:

148 (a) Establish the procedures whereby all the powers and  
149 duties of the association under Section 71-3-163 will be  
150 performed.

151 (b) Establish procedures for handling assets of the  
152 association.

153 (c) Establish the amount and method of reimbursing  
154 members of the board of directors under Section 71-3-161.

155 (d) Establish procedures by which claims may be filed  
156 with the association, and establish acceptable forms of proof of  
157 covered claims. \* \* \*

158 (e) Establish regular places and times for meetings of  
159 the board of directors.

160 (f) Establish procedures for records to be kept of all  
161 financial transactions of the association, its agents and the  
162 board of directors.

163 (g) Provide that any member self-insurer aggrieved by  
164 any final action or decision of the association may appeal to the  
165 commission within thirty (30) days after the action or decision.

166 (h) Establish the procedures whereby selections for the  
167 board of directors will be submitted to the commission.



168 (i) Contain additional provisions necessary or proper  
169 for the execution of the powers and duties of the association.

170 (4) The plan of operation may provide that any or all powers  
171 and duties of the association, except those under Section  
172 71-3-163(1)(c), are delegated to a corporation, association or  
173 other organization which performs or will perform functions  
174 similar to those of this association. Such a corporation,  
175 association or organization shall be reimbursed as a servicing  
176 facility would be reimbursed, and shall be paid for its  
177 performance of any other functions of the association. A  
178 delegation under this subsection shall take effect only with the  
179 approval of both the board of directors and the commission, and  
180 may be made only to a corporation, association or organization  
181 which extends protection not substantially less favorable and  
182 effective than that provided by Sections 71-3-151 through  
183 71-3-181.

184 **SECTION 4.** Section 71-3-167, Mississippi Code of 1972, is  
185 amended as follows:

186 71-3-167. (1) The commission shall:

187 (a) Upon the request of the association or of any other  
188 party or without any request on its own motion, enter any  
189 appropriate order finding a member self-insurer to be in default  
190 and to determine the date of such default and promptly notify the  
191 association of the existence of a self-insurer in default and the  
192 date of the default.

193 (b) Upon request of the board of directors, provide the  
194 association with a statement of compensation payments of each  
195 member self-insurer.

196 (2) The commission may:

197 (a) Require that the association notify the members of  
198 any group self-insurer in default and any other interested parties  
199 of the default. Such notification shall be by mail at their last  
200 known address, where available, but if sufficient information for



201 notification by mail is not available, notice by publication in a  
202 newspaper of general circulation shall be sufficient.

203 (b) Suspend or revoke, after notice and hearing, the  
204 authority to self-insure granted under Section 71-3-75,  
205 Mississippi Code of 1972, any member self-insurer who fails to pay  
206 an assessment when due, or fails to comply with the plan of  
207 operation. As an alternative, the commission may levy a fine on  
208 any member self-insurer who fails to pay an assessment when due or  
209 fails to comply with the plan of operation. Such fine shall not  
210 exceed five percent (5%) of the unpaid assessment per month,  
211 except that no fine shall be less than One Hundred Dollars  
212 (\$100.00) per month.

213 (c) Revoke the designation of any servicing facility if  
214 it finds claims are being handled unsatisfactorily.

215 (3) Any final action or order of the commission under  
216 Sections 71-3-151 through 71-3-181 shall be subject to judicial  
217 review in a court of competent jurisdiction.

218 **SECTION 5.** Section 71-3-169, Mississippi Code of 1972, is  
219 amended as follows:

220 71-3-169. (1) Any person recovering under Sections 71-3-151  
221 through 71-3-181 shall be deemed to have assigned his rights under  
222 the Workers' Compensation Law to the association to the extent of  
223 his recovery from the association. Any claimant seeking the  
224 protection of Sections 71-3-151 through 71-3-181 shall cooperate  
225 with the association to the same extent as such person would have  
226 been required to cooperate with the \* \* \* self-insurer in default.  
227 The association shall have no cause of action against the claimant  
228 under the Workers' Compensation Law of the \* \* \* self-insurer in  
229 default for any sums it has paid out except such causes of action  
230 as the \* \* \* self-insurer in default would have had if such sums  
231 had been paid by the \* \* \* self-insurer in default.

232 (2) The association may recover from the self-insurer in  
233 default all amounts paid by the association on account of covered



234 claims of employees of the self-insurer in default and all  
235 expenses incurred by the association in evaluating, adjusting,  
236 defending or settling covered claims of the employees of the  
237 self-insurer in default.

238 **SECTION 6.** Section 71-3-173, Mississippi Code of 1972, is  
239 amended as follows:

240 71-3-173. To aid in the detection and prevention of  
241 self-insurer insolvencies:

242 (a) The board of directors may, upon majority vote,  
243 request that the commission order an examination of any member  
244 self-insurer which the board in good faith believes may be in a  
245 financial condition hazardous to the potential claimants or the  
246 public. Within thirty (30) days of the receipt of such request,  
247 the commission shall begin such examination. The examination may  
248 be conducted by such persons as the commission designates. The  
249 cost of such examination shall be paid by the association, and the  
250 examination report shall be treated as are other examination  
251 reports. In no event shall such examination report be released to  
252 the board of directors prior to its release to the public, but  
253 this shall not preclude the commission from complying with  
254 paragraph (b) of this section. The commission shall notify the  
255 board of directors when the examination is completed. The request  
256 for an examination shall be kept on file by the commission, but it  
257 shall not be open to public inspection prior to the release of the  
258 examination report to the public.

259 (b) It shall be the duty of the commission to report to  
260 the board of directors when it has reasonable cause to believe  
261 that any member self-insurer examined or being examined at the  
262 request of the board of directors may be insolvent or in a  
263 financial condition hazardous to potential claimants or the  
264 public.

265 (c) The board of directors may, upon majority vote,  
266 make reports and recommendations to the commission upon any matter





267 germane to the solvency, bankruptcy or reorganization of any  
268 member self-insurer. Such reports and recommendations shall not  
269 be considered public documents.

270 (d) The board of directors may, upon majority vote,  
271 make recommendations to the commission for the detection and  
272 prevention of member self-insurer insolvencies.

273 (e) The board of directors shall, at the conclusion of  
274 any self-insurer insolvency or bankruptcy case or in \* \* \* the  
275 event of default by a member self-insurer where the association  
276 was obligated to pay covered claims, prepare a report on the  
277 history and causes of such insolvency and bankruptcy, based on the  
278 information available to the association, and submit such report  
279 to the commission.

280 **SECTION 7.** Section 71-3-179, Mississippi Code of 1972, is  
281 amended as follows:

282 71-3-179. There shall be no liability on the part of and no  
283 cause of action of any nature shall arise against any member  
284 self-insurer, the association, its agents or employees, the board  
285 of directors, or the commission or its representatives for any  
286 good faith, affirmative action taken by them in the performance of  
287 their powers and duties under Sections 71-3-151 through  
288 71-3-181. \* \* \*

289 **SECTION 8.** Section 71-3-181, Mississippi Code of 1972, is  
290 amended as follows:

291 71-3-181. All proceedings in which the \* \* \* self-insurer in  
292 default is a party before the commission or in any court in this  
293 state, on order of the commission, may be stayed for a period not  
294 to exceed six (6) months from the date of the default to permit  
295 proper defense by the association of all covered claims. If any  
296 judgment, order, decision, verdict or finding is made or entered  
297 against the self-insurer in default or against the association  
298 while the stay provided in this section is effective, the  
299 association may apply to have such judgment, order, decision,



300 verdict or finding set aside by the same court or administrator  
301 that made such judgment, order, decision, verdict or finding. The  
302 association shall be permitted to enter its appearance and defend  
303 against any covered claim which is pending on the date of default  
304 or which is filed thereafter.

305         **SECTION 9.** Section 71-3-171, Mississippi Code of 1972, which  
306 provides for recovery under another insurance guaranty  
307 association, is repealed.

308         **SECTION 10.** This act shall take effect and be in force from  
309 and after July 1, 2003.

