

By: Senator(s) Kirby

To: Insurance

SENATE BILL NO. 2688

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.

