MISSISSIPPI LEGISLATURE

By: Senator(s) Kirby

To: Insurance

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2003

SENATE BILL NO. 2688

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Be deemed the self-insurer to the extent of its obligation on the covered claims and to such extent shall have all
rights, duties and obligations of the self-insurer in default as if the self-insurer were not in default.

(c) Assess member self-insurers amounts necessary to pay the obligations of the association under subsection (2) of this section, the expenses of handling covered claims and other expenses authorized by Sections 71-3-151 through 71-3-181. The assessments of each member self-insurer shall be two percent (2%) of the gross paid compensation and medical supplies and services of said member self-insurer during each period of six (6) months. Said two percent (2%) assessment shall be collected by the commission at the same time as and pursuant to the procedures adopted by the commission pursuant to Section 71-3-99, Mississippi Code of 1972. The two percent (2%) assessment is to be collected by the commission until the sum of Two Million Dollars ($2,000,000.00) is accumulated. At that time the assessments shall be suspended. However, any employer that becomes authorized under Section 71-3-75 to be a self-insurer after July 1, 1996, is not entitled to have the assessment suspended until the self-insurer has contributed to the guaranty fund for the first four (4) years the employer is a member self-insurer of the association regardless of the amount in the guaranty fund. The assessment shall be reinstituted for all member self-insurers at any time that the guaranty fund balance reaches One Million Five Hundred Thousand Dollars ($1,500,000.00) and the assessment shall continue until such time as the balance in the guaranty fund is Two Million Dollars ($2,000,000.00). If the maximum assessment, together with the other assets of the association, does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available shall be paid as directed by the commission and any unpaid portion shall be paid as soon thereafter as funds become available. When the guaranty fund balance reaches One Million Dollars ($1,000,000.00), the
commission may waive the need for bonding requirements for
self-funded pools.

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

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

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

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

(2) The association may:

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

(b) Sue or be sued.

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

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

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

71-3-165. (1) The association shall submit to the commission a plan of operation and any amendments thereto
necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commission.

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

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

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

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

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

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

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

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

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

(h) Establish the procedures whereby selections for the board of directors will be submitted to the commission.
(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

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

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

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

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

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

(2) The commission may:

(a) Require that the association notify the members of any group self-insurer in default and any other interested parties of the default. Such notification shall be by mail at their last known address, where available, but if sufficient information for
notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

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

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

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

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

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

(2) The association may recover from the self-insurer in default all amounts paid by the association on account of covered
claims of employees of the self-insurer in default and all
expenses incurred by the association in evaluating, adjusting,
defending or settling covered claims of the employees of the
self-insurer in default.

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

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

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

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

(c) The board of directors may, upon majority vote,
make reports and recommendations to the commission upon any matter
germane to the solvency, bankruptcy or reorganization of any member self-insurer. Such reports and recommendations shall not be considered public documents.

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

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

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

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

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

71-3-181. All proceedings in which the self-insurer in default is a party before the commission or in any court in this state, on order of the commission, may be stayed for a period not to exceed six (6) months from the date of the default to permit proper defense by the association of all covered claims. If any judgment, order, decision, verdict or finding is made or entered against the self-insurer in default or against the association while the stay provided in this section is effective, the association may apply to have such judgment, order, decision,
verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding. The association shall be permitted to enter its appearance and defend against any covered claim which is pending on the date of default or which is filed thereafter.

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

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