

*****Adopted***
AMENDMENT No. 1 PROPOSED TO**

House Bill NO. 1305

By Senator(s) Committee

**Amend by striking all after the enacting clause and inserting in
lieu thereof the following:**

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 herein**

32 **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 defined
45 by this act that has defaulted or failed for any reason to satisfy any of
46 its obligations under the workers' compensation law, including,
47 without limitation, all obligations for payment of indemnity
48 compensation, disability, expenses of medical, hospital, surgical,
49 rehabilitation and other services, death benefits and funeral expenses,
50 whether such default or failure is the result of insolvency or

51 **bankruptcy or receivership or otherwise.**

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

55 (g) "Self-insurer" is an employer who has been authorized
56 under Section 71-3-75, Mississippi Code of 1972, to insure under the
57 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, is
61 amended as follows:

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

63 (a) Be obligated to the extent of the covered claims existing
64 prior to the date of default and arising within thirty (30) days after the
65 date of default. In no event shall the association be obligated to a

66 claimant in an amount in excess of the obligation of the * * *

67 self-insurer in default.

68 (b) Be deemed the self-insurer to the extent of its obligation

69 on the covered claims and to such extent shall have all rights, duties

70 and obligations of the * * * self-insurer in default as if the self-insurer

71 were not in default.

72 (c) Assess member self-insurers amounts necessary to pay

73 the obligations of the association under subsection (2) of this section,

74 the expenses of handling covered claims and other expenses

75 authorized by Sections 71-3-151 through 71-3-181. The assessments

76 of each member self-insurer shall be two percent (2%) of the gross

77 paid compensation and medical supplies and services of said member

78 self-insurer during each period of six (6) months. Said two percent

79 (2%) assessment shall be collected by the commission at the same

80 time as and pursuant to the procedures adopted by the commission

81 **pursuant to Section 71-3-99, Mississippi Code of 1972. The two**
82 **percent (2%) assessment is to be collected by the commission until the**
83 **sum of Two Million Dollars (\$2,000,000.00) is accumulated. At that time**
84 **the assessments shall be suspended. However, any employer that**
85 **becomes authorized under Section 71-3-75 to be a self-insurer after**
86 **July 1, 1996, is not entitled to have the assessment suspended until**
87 **the self-insurer has contributed to the guaranty fund for the first four**
88 **(4) years the employer is a member self-insurer of the association**
89 **regardless of the amount in the guaranty fund. The assessment shall**
90 **be reinstated for all member self-insurers at any time that the**
91 **guaranty fund balance reaches One Million Five Hundred Thousand**
92 **Dollars (\$1,500,000.00) and the assessment shall continue until such**
93 **time as the balance in the guaranty fund is Two Million Dollars**
94 **(\$2,000,000.00). If the maximum assessment, together with the other**
95 **assets of the association, does not provide in any one year an amount**

96 **sufficient to make all necessary payments, the funds available shall be**
97 **paid as directed by the commission and any unpaid portion shall be**
98 **paid as soon thereafter as funds become available. When the guaranty**
99 **fund balance reaches One Million Dollars (\$1,000,000.00), the**
100 **commission may waive the need for bonding requirements for**
101 **self-funded pools.**

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

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

110 **(f) Handle claims through its employees or through one or**

111 more other persons designated as servicing facilities. Designation of a
112 servicing facility is subject to the approval of the commission.

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

118 (2) The association may:

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

121 (b) Sue or be sued.

122 (c) Negotiate and become a party to such contracts as are
123 necessary to carry out the purposes of Sections 71-3-151 through
124 71-3-181.

125 (d) Perform such other acts as are necessary or proper to

126 **effectuate the purposes of Sections 71-3-151 through 71-3-181.**

127 **SECTION 3. Section 71-3-165, Mississippi Code of 1972, is**

128 **amended as follows:**

129 **71-3-165. (1) The association shall submit to the commission a**
130 **plan of operation and any amendments thereto necessary or suitable**
131 **to assure the fair, reasonable and equitable administration of the**
132 **association. The plan of operation and any amendments thereto shall**
133 **become effective upon approval in writing by the commission.**

134 **(2) If at any time the association fails to submit suitable**
135 **amendments to the plan, the commission shall, after notice and**
136 **hearings, adopt and promulgate such reasonable rules as are**
137 **necessary or advisable to effectuate the provisions of Sections**
138 **71-3-151 through 71-3-181. Such rules shall continue in force until**
139 **modified by the commission or superseded by a plan submitted by the**
140 **association and approved by the commission.**

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

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

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

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

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

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

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

156 **directors.**

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

160 **(h) Establish the procedures whereby selections for the**
161 **board of directors will be submitted to the commission.**

162 **(i) Contain additional provisions necessary or proper for**
163 **the execution of the powers and duties of the association.**

164 **(4) The plan of operation may provide that any or all powers and**
165 **duties of the association, except those under Section 71-3-163(1)(c),**
166 **are delegated to a corporation, association or other organization which**
167 **performs or will perform functions similar to those of this association.**

168 **Such a corporation, association or organization shall be reimbursed**
169 **as a servicing facility would be reimbursed, and shall be paid for its**
170 **performance of any other functions of the association. A delegation**

171 under this subsection shall take effect only with the approval of both
172 the board of directors and the commission, and may be made only to a
173 corporation, association or organization which extends protection not
174 substantially less favorable and effective than that provided by
175 Sections 71-3-151 through 71-3-181.

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

178 71-3-167. (1) The commission shall:

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

184 (b) Upon request of the board of directors, provide the
185 association with a statement of compensation payments of each

186 member self-insurer.

187 (2) The commission may:

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

194 (b) Suspend or revoke, after notice and hearing, the
195 authority to self-insure granted under Section 71-3-75, Mississippi
196 Code of 1972, any member self-insurer who fails to pay an assessment
197 when due, or fails to comply with the plan of operation. As an
198 alternative, the commission may levy a fine on any member self-insurer
199 who fails to pay an assessment when due or fails to comply with the
200 plan of operation. Such fine shall not exceed five percent (5%) of the

201 **unpaid assessment per month, except that no fine shall be less than**
202 **One Hundred Dollars (\$100.00) per month.**

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

205 **(3) Any final action or order of the commission under Sections**
206 **71-3-151 through 71-3-181 shall be subject to judicial review in a court**
207 **of competent jurisdiction.**

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

210 **71-3-169. (1) Any person recovering under Sections 71-3-151**
211 **through 71-3-181 shall be deemed to have assigned his rights under**
212 **the Workers' Compensation Law to the association to the extent of his**
213 **recovery from the association. Any claimant seeking the protection of**
214 **Sections 71-3-151 through 71-3-181 shall cooperate with the**
215 **association to the same extent as such person would have been**

216 required to cooperate with the * * * self-insurer in default. The
217 association shall have no cause of action against the claimant under
218 the Workers' Compensation Law of the * * * self-insurer in default for
219 any sums it has paid out except such causes of action as the * * *
220 self-insurer in default would have had if such sums had been paid by
221 the * * * self-insurer in default.

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

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

229 71-3-173. To aid in the detection and prevention of self-insurer
230 insolvencies:

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

246 **to the public.**

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

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

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

260 **(e) The board of directors shall, at the conclusion of any**

261 **self-insurer insolvency or bankruptcy case or in * * * the event of**
262 **default by a member self-insurer where the association was obligated**
263 **to pay covered claims, prepare a report on the history and causes of**
264 **such insolvency and bankruptcy, based on the information available to**
265 **the association, and submit such report to the commission.**

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

268 **71-3-179. There shall be no liability on the part of and no cause of**
269 **action of any nature shall arise against any member self-insurer, the**
270 **association, its agents or employees, the board of directors, or the**
271 **commission or its representatives for any good faith, affirmative action**
272 **taken by them in the performance of their powers and duties under**
273 **Sections 71-3-151 through 71-3-181. * * ***

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

276 **71-3-181. All proceedings in which the * * * self-insurer in default**
277 **is a party before the commission or in any court in this state, on order**
278 **of the commission, may be stayed for a period not to exceed six (6)**
279 **months from the date of the default to permit proper defense by the**
280 **association of all covered claims. If any judgment, order, decision,**
281 **verdict or finding is made or entered against the self-insurer in default**
282 **or against the association while the stay provided in this section is**
283 **effective, the association may apply to have such judgment, order,**
284 **decision, verdict or finding set aside by the same court or**
285 **administrator that made such judgment, order, decision, verdict or**
286 **finding. The association shall be permitted to enter its appearance and**
287 **defend against any covered claim which is pending on the date of**
288 **default or which is filed thereafter.**

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

291 **repealed.**

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

**Further, amend by striking the title in its entirety and inserting in
lieu thereof the following:**

1 **AN ACT TO REVISE THE MISSISSIPPI WORKERS'**
2 **COMPENSATION SELF-INSURER GUARANTY ASSOCIATION LAW SO**
3 **THAT THE EVENT THAT TRIGGERS THE OBLIGATION OF THE**
4 **ASSOCIATION IS THE DEFAULT OF THE SELF-INSURER RATHER**
5 **THAN THE DETERMINATION OF THE INSOLVENCY OF THE**
6 **SELF-INSURER; TO AMEND SECTION 71-3-157, MISSISSIPPI CODE OF**
7 **1972, TO REVISE DEFINITIONS; TO AMEND SECTION 71-3-165,**
8 **MISSISSIPPI CODE OF 1972, TO REMOVE CERTAIN REQUIREMENTS**
9 **FOR PROVIDING NOTICE OF CLAIMS; TO AMEND SECTION 71-3-167,**
10 **MISSISSIPPI CODE OF 1972, TO REVISE THE DUTIES AND POWERS**
11 **OF THE WORKERS' COMPENSATION COMMISSION CONCERNING**
12 **THE DETERMINATION OF DEFAULT OF MEMBER SELF-INSURERS; TO**
13 **AMEND SECTION 71-3-169, MISSISSIPPI CODE OF 1972, TO PROVIDE**
14 **THAT THE ASSOCIATION MAY RECOVER FROM THE SELF-INSURER**
15 **IN DEFAULT ALL AMOUNTS PAID BY THE ASSOCIATION ON**
16 **ACCOUNT OF COVERED CLAIMS OF EMPLOYEES OF THE**
17 **SELF-INSURER; TO AMEND SECTION 71-3-179, MISSISSIPPI CODE OF**
18 **1972, TO REVISE THE IMMUNITY FROM LIABILITY FOR ANY MEMBER**
19 **SELF-INSURER, THE ASSOCIATION, ITS AGENTS OR EMPLOYEES,**

20 THE BOARD OF DIRECTORS AND THE COMMISSION; TO AMEND
21 SECTION 71-3-181, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
22 THE COMMISSION MAY ORDER A STAY OF PROCEEDINGS IN WHICH
23 THE SELF-INSURER IN DEFAULT IS A PARTY FOR A PERIOD NOT TO
24 EXCEED SIX MONTHS TO PERMIT PROPER DEFENSE BY THE
25 ASSOCIATION OF ALL COVERED CLAIMS; TO AMEND SECTIONS
26 71-3-163 AND 71-3-173, MISSISSIPPI CODE OF 1972, IN CONFORMITY
27 THERETO; TO REPEAL SECTION 71-3-171, MISSISSIPPI CODE OF
28 1972, WHICH PROVIDES RECOVERY UNDER ANOTHER INSURANCE
29 GUARANTY ASSOCIATION; AND FOR RELATED PURPOSES.