



State of Tennessee

PUBLIC CHAPTER NO. 666

HOUSE BILL NO. 2306

By Representative Vaughan

Substituted for: Senate Bill No. 2909

By Senators Bailey, Powers

AN ACT to amend Tennessee Code Annotated, Title 12; Title 48; Title 50 and Title 56, relative to self-insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 6, is amended by adding the following as a new part:

50-6-1001. Short title.

This part is known and may be cited as the "Tennessee Self-Insurers' Guaranty Association Act."

50-6-1002. Purpose.

The purpose of this part is to provide a mechanism for the payment of self-insured workers' compensation claims to avoid excessive delay in payment and to avoid financial loss to claimants because of the insolvency of a self-insured employer, and to provide an association to assess the cost of the protection among self-insured employers doing business in this state.

50-6-1003. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Association" means the Tennessee self-insurers' guaranty association;

(2) "Commissioner" means the commissioner of commerce and insurance;

(3) "Insolvent self-insurer" means any member self-insurer as to whom the commissioner:

(A) Determines has failed to pay workers' compensation benefits to its employees as required by law; and

(B) Notifies the association regarding such failure;

(4) "Member self-insurer":

(A) Means:

(i) A person holding an active certificate of authority from the commissioner to self-insure its workers' compensation liabilities pursuant to § 50-6-405(a)(2); or

(ii) A person holding an inactive certificate of authority from the commissioner to self-insure its workers' compensation liabilities pursuant to § 50-6-405(a)(2), as further defined or limited in the plan of operation, as described in § 50-6-1011; and

(B) Does not include a self-insured group organized pursuant to § 50-6-405(c); and

(5) "Person":

(A) Means:

(i) An individual, corporation, partnership, association, voluntary organization, or any other legal entity; and

(ii) A governmental entity, or department or division of a governmental entity, that has elected to be a member of the association in accordance with § 50-6-1004(e) and has not withdrawn its election; and

(B) Does not include a governmental entity, except as provided in subdivision (5)(A)(ii).

50-6-1004. Creation of the association.

(a) There is created a nonprofit unincorporated legal entity to be known as the Tennessee self-insurers' guaranty association. To the extent that this part conflicts with the Tennessee Nonprofit Corporation Act, compiled in title 48, chapters 51-69, this part controls; however, the association, its officers and directors, and its member self-insurers must not be provided with fewer protections and indemnities from suit than those afforded nonprofit corporations duly incorporated in this state.

(b) All member self-insurers are and must remain members of the association and participate as required in the plan of operation as a condition of their authority to self-insure in this state.

(c) This part does not apply to self-insured groups organized pursuant to § 50-6-405(c).

(d) The association shall perform its functions under a plan of operation established and approved by the commissioner pursuant to § 50-6-1011 and shall exercise its powers through a board of directors established under this part.

(e) This part does not apply to a governmental entity, or a department or division of a governmental entity, that has elected to self-insure pursuant to § 50-6-405(a)(2), unless the governmental entity, or department or division of the governmental entity, accepts this part by requesting to be a member of the association by written notification to the commissioner and the association, and the commissioner and the association consent in writing to such acceptance. Any such request must be made on or before May 1, 2025, for this part to become effective as to the electing governmental entity as of July 1, 2025, and must be made on or before May 1 of any year thereafter, for this part to become effective as of July 1 of that year. The governmental entity, or department or division of the governmental entity, may, at any time, on or before May 1, withdraw its acceptance of this part by written notification to the commissioner and the association. Such withdrawal becomes effective as of the following July 1. In the event of a withdrawal of acceptance of this part, the requirements of § 50-6-405 apply without regard to this part as of the date the withdrawal becomes effective.

50-6-1005. Board of directors.

(a) The board of directors of the association consists of five (5) persons serving three-year terms, with each director having one (1) vote. The commissioner shall select the members of the board. The commissioner, or the commissioner's delegate, shall serve on the board in an ex officio, nonvoting capacity. At least three (3) board members must be employed by a company holding an active certificate of authority to self-insure in this state. Vacancies on the board must be filled for the remaining period of the term in the same manner as initial appointments.

(b) In making selections to the board, the commissioner shall consider, among other things, whether all member self-insurers are fairly represented.

(c) Members of the board serve without compensation but may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

50-6-1006. Powers and duties of the association.

(a) The association shall:

- (1) Adopt procedures to prevent dissemination of confidential information;
- (2) 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 self-insurer pending assessment of the member self-insurers;
- (3) Provide for a risk-based security program in its plan of operation;
- (4) Hold individual collateral for member self-insurers who do not participate in full in the risk-based security program;
- (5) Pay the legitimate claims of insolvent self-insurers;
- (6)
 - (A) Seek tax exempt status from the internal revenue service under section 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c)); and
 - (B) Not conduct any activities inconsistent with such status;
- (7) Establish procedures for the indemnification and defense of any directors and officers as against any claims made against a director or officer in the performance of the director's or officer's duties; and
- (8) Seek recoveries from insolvent self-insurers and third parties as appropriate.

(b) The association may:

- (1) Appear in, defend, and appeal any action on a claim brought against the association;
- (2) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;
- (3) Borrow funds necessary to affect the purposes of this part in accordance with the plan of operation. In the event of a member default resulting in liabilities payable by the association in excess of its capacity to pay from assessments, the association, in its sole discretion, may by resolution request the Tennessee local development authority to issue bonds or notes pursuant to title 4, chapter 31, part 8, in such amounts as the association may determine necessary to provide funds for the payment of said liabilities. However, the amount of the bond issuance may be limited by §§ 4-31-804 and 4-31-805 with the Tennessee local development authority having the final authority to determine the total amount of the bond issuance including issuance costs. When the association and the Tennessee local development authority agree that bonds or notes will be issued, the association may annually assess member self-insurers for an amount necessary to secure and provide for the repayment of the indebtedness, including the principal, redemption premium, if any, and interest on, and related costs of issuance of such indebtedness, including bond investors

insurance. Necessary assessments collected pursuant to this authority must be collected under the same procedures provided in this section. Assessments collected under this section may be assigned and pledged to or on behalf of the Tennessee local development authority for the benefit of the holders of such indebtedness, in order to provide for the payment of the principal of, redemption premium, if any, and interest on such indebtedness, the costs of issuance, and the funding of any reserves and any other payments under the documents under which the indebtedness was incurred. In addition to the assessments provided for in this section, the association in its sole discretion may utilize assessments made under this section to service such indebtedness, if necessary. The association is not obligated to pay liabilities solely from the proceeds of bonds or notes issued under § 4-31-804; provided, that if the association causes assessments to be made under this section for such liabilities, and assigns and pledges such assessments to or on behalf of the Tennessee local development authority as issuer of such indebtedness for the benefit of the holders of bonds or notes, the association may administer such liabilities;

(4) Sue or be sued, including the power and right to intervene as a party before any court that has jurisdiction over an insolvent self-insurer;

(5) Negotiate and become a party to contracts as are necessary to carry out the purpose of this part;

(6) Carry out the association's responsibilities directly or by contract, purchase services and insurance, and borrow funds as the association deems necessary for the protection of the members of the association and the members' employees;

(7) Receive confidential information concerning the financial condition of self-insured employers whose liabilities to pay compensation may devolve upon the association; and

(8) Perform other acts as are necessary to effectuate this part.

(c) With respect to any suit involving the association:

(1) Any action relating to or arising out of this part against the association must be brought in a court in this state. The court in which such action is brought has exclusive jurisdiction over any action relating to or arising out of this part against the association; and

(2) Exclusive venue in any action brought against the association is in the circuit or chancery court in Davidson County; provided, that the association may waive such venue as to a specific action.

50-6-1007. Defaults.

(a) The commissioner shall promptly notify the association in writing that a member self-insurer has failed to timely pay workers' compensation liabilities when due. The notification must be issued to the member self-insurer and the association. Upon receipt of such notice by the commissioner, the association shall promptly take possession of all physical and electronic claims files of the member self-insurer. This subsection (a) does not require the commissioner or the association to proactively investigate a possible failure by a member self-insurer to pay workers' compensation liabilities.

(b) The association is not liable for the administration of any claims, nor the payment of any losses or allocated or unallocated loss adjustment expenses, including costs of claims administration and legal fees, related to an employer who defaulted prior to the effective date of this part, nor penalties assessed for an act or omission on the part of a person other than the association.

(c) The association shall commence payment of the self-insured employer's claim obligations for which it is liable within thirty (30) days of notification. Payments must be

made to claimants whose entitlement to benefits can be ascertained by the association. Notwithstanding this subsection (c), the association is not liable for the payment or reimbursement of the allocated or unallocated loss adjustment expenses, including costs of claims administered and legal fees incurred by the member self-insurer prior to the association assuming administration of the claims. Upon the assumption of obligations by the association, the association has a right to immediate possession of any posted security and the custodian, surety, or issuer of any irrevocable letter of credit must turn over the security to the association, together with the interest that has accrued since the date of the employer's default or insolvency.

(d) The payment of benefits by the association from security deposit proceeds releases and discharges any custodian of the security deposit or surety, issuer of a letter of credit, and the employer from liability to fulfill obligations to provide those same benefits as compensation but does not release a person from any liability to the association for full reimbursement. Payment by a surety constitutes a full release of the surety's liability under the bond to the extent of that payment and entitles the surety to full reimbursement by the principal or the principal's estate. Full reimbursement includes necessary attorney fees and other costs and expenses, without prior claim or proceedings on the part of the injured employee or other beneficiaries.

(e) The association must 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 association. The association has the same rights and defenses as the insolvent employer, including the right to:

(1) Appear, defend, and appeal claims; and

(2) Receive notice of, investigate, adjust, handle, compromise, settle, deny, and pay claims.

(f) The commissioner shall promptly advise the association after receipt of information indicating that an employer may be unable to meet its workers' compensation obligations.

50-6-1008. Indemnification and recourse.

(a) As used in this section, "insolvent self-insurer" includes the entity to which the certificate of authority was issued, any guarantor of the entity's liabilities under the certificate, and any employer who obtained employees from the insolvent self-insurer.

(b) The association may obtain reimbursement from an insolvent self-insurer up to the amount of the employer's workers' compensation obligations paid and assumed by the association, 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 self-insured as debtor.

(c) The association may obtain from the security deposit of an insolvent self-insurer the amount of the employer's compensation obligations, including reasonable administrative and legal costs, paid or assumed by the association.

(d) The association must be a party in interest in any action to obtain the security deposit for the payment of compensation obligations of an insolvent self-insurer.

(e) The association has a cause of action against any person to recover compensation paid and liability assumed by the association, including, but not limited to, any excess insurance carrier of the insolvent self-insurer, and any person whose negligence or breach of any obligation contributed to any underestimation of the insolvent self-insurer's total accrued liability as reported to the commissioner.

(f) The association may be a party in interest in any action brought by another person seeking damages resulting from the failure of an insolvent self-insurer to pay workers' compensation required by law.

50-6-1009. Assessments.

No later than July 1, 2024, and annually thereafter, the association shall assess each of its members a pro rata share of the funding necessary to carry out the purposes of this part. The association shall take any action deemed appropriate to collect any delinquent assessments. Upon payment of the deposit assessment, the employer loses all right, title, and interest in the deposit assessment.

50-6-1010. Security deposits.

(a) The association shall establish minimum security deposit amounts for each member self-insurer. All security deposits must be posted with the association.

(b) The association shall return to a self-insured employer all individual security determined to be in excess of that needed to ensure the administration of the employer's self-insurance, including legal fees, and the payment of any future claims. This subsection (b) does not apply to the risk-based security program, or to any security utilized by the association following default of a member self-insurer.

(c) All financial, actuarial, or claims information received by the commissioner from an employer may be shared by the commissioner with the association under terms and conditions as set by the commissioner to preserve the confidentiality of the financial, actuarial, or claims information.

50-6-1011. Plan of operation.

(a) No later than July 1, 2024, the association shall submit to the commissioner 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 becomes effective upon approval in writing by the commissioner, which the commissioner shall provide no later than August 1, 2024.

(b) The plan of operation must:

(1) Establish the procedures whereby all the powers and duties of the association will be performed;

(2) Establish procedures for handling assets of the association, for the orderly transition of security deposits held by the commissioner to the association, and for the orderly transition of member self-insurer reporting responsibilities from the commissioner to the association, including claims reporting, actuarial reporting, and financial reporting;

(3) Establish the amount and method of reimbursing members of the board of directors;

(4) Establish regular places and times for meetings of the board of directors;

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

(6) Provide that any member self-insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty (30) days after the action or decision; such appeal process must be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(7) Establish the procedures whereby recommendations for the board of directors will be submitted to the commissioner;

(8) Establish a risk-based security program for eligible members;

(9) Establish procedures for the indemnification and defense of officers and directors of the association as against claims arising from the performance of the officers' and directors' duties; and

(10) Contain additional provisions necessary or proper for the execution of the powers and duties of the association, including any amendments to the plan of operation.

(c) The plan of operation may provide that any or all powers of the association are delegated to a corporation, association other than the Tennessee self-insurers' guaranty association, or other organization that performs or will perform functions similar to those of the association, or its equivalent, in two (2) or more states. Such a corporation, association other than the Tennessee self-insurers' guaranty association, or organization must be paid for its performance of any other functions of the association. A delegation under this subsection (c) takes effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association other than the Tennessee self-insurers' guaranty association, or organization that extends protection not substantially less favorable and effective than that provided by this part.

(d) All member self-insurers shall comply with the plan of operation.

50-6-1012. Reports by the board.

The board of directors may, upon majority vote, make reports to the commissioner upon any matter germane to the solvency or default of any member self-insurer.

50-6-1013. Examination of the association - annual financial report.

(a) The association is subject to examination and regulation by the commissioner.

(b) The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

50-6-1014. Tax and fee exemption.

The association is exempt from payment of all fees, except examination fees, and all taxes levied by this state or any of its subdivisions, except taxes levied on real or personal property.

50-6-1015. Immunity.

A member self-insurer, the association, or agents, employees, or the board of directors of the association, or the commissioner or the commissioner's representative, is not liable, and a cause of action does not arise against such individuals or entities, for any action taken by the individuals or entities in the performance of the individuals' or entities' powers and duties under this part.

50-6-1016. Risk-based security program.

(a) As an alternative to each employer securing its own incurred liabilities, the association shall provide in its plan of operation for a risk-based security program whereby all member self-insurers designated for participation by the association collectively secure their aggregate incurred liabilities through the association. The plan of operation must provide for the association to set a total security requirement for these participating employers based on a review of each participating employer's annual reports and any other self-insurer information as the association deems relevant. The association shall propose to the commissioner an annual plan by June 1, which must set forth a combination of cash and securities, surety bonds, irrevocable letters of credit, insurance, or other financial instruments satisfactory to the commissioner. Upon approval of the plan by the commissioner, the combination comprises the risk-based security program and satisfies the security deposit requirements for participating

employers, in lieu of individual collateral. An employer's individual collateral must be returned to the employer upon payment of the assessment. If the commissioner does not approve the plan within thirty (30) days of receipt, then the plan is deemed approved.

(b) A member self-insurer who is deemed eligible to participate must participate in the risk-based security program, pay all assessments arising from the self-insurer's participation, and satisfy the self-insurer's security requirements as required by the association.

(c) To provide for the risk-based security program, the association shall assess each participating member self-insurer a deposit assessment payable within thirty (30) days. The amount of the deposit assessment charged to each participating employer must be set by the association, based on the association's reasonable consideration of the following factors:

- (1) The amount needed to cover the association's operation costs;
- (2) The employer's actuarially determined workers' compensation liabilities;
- (3) The financial strength and creditworthiness of the self-insured; and
- (4) Any other reasonable factors as may be authorized by the plan of operation or the risk-based security program plan.

(d) The commissioner and the bureau of workers' compensation may share with the association information held by them related to the member self-insurers, under terms and conditions as set by the commissioner, to preserve the confidentiality of the financial information.

(e) A member self-insurer does not have a right, title, or interest in the funds paid as assessments to the association, nor to any interest or earning thereon.

(f) To the extent that the total assessments paid by self-insured employers is not exhausted by the association, the surplus plus any interest earned thereon must remain with the association for its use in future years. Such funds must be used to pay self-insured workers' compensation liabilities and the costs and expenses of the association, and shall not be used for any other purposes by this state.

(g) If an employer fails to pay the deposit assessment in the time provided, then the commissioner may order the employer to pay a penalty of not less than ten percent (10%) of its deposit assessment, plus interest on any unpaid amount at the prejudgment rate, and to post a separate security deposit. The penalty and interest must be paid directly to the association. The commissioner may also revoke the certificate of authority to self-insure of any employer who fails to pay the deposit assessment in the time provided. The association may specify additional penalties within the risk-based security program plan.

(h) The association shall set minimum credit, financial, or other conditions that an employer must meet in order to participate in the risk-based security program. If an employer is unable to meet the conditions set by the association for participation, then the association must exclude the employer from participation in the risk-based security program. If an employer is excluded from participation in the risk-based security program, then the employer must post a separate security deposit and pay a deposit assessment set by the association.

(i) An employer whose certificate of authority is inactive may participate in the risk-based security program if the association approves the participation of the employer.

(j) At all times, an employer shall have secured its incurred workers' compensation liabilities as allowed by law and shall not have a lapse in the security of its incurred workers' compensation liabilities.

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SECTION 2. Tennessee Code Annotated, Section 50-6-405, is amended by inserting the following as a new subsection:

(k)

(1) An employer who elects to self-insure under subdivision (a)(2) and is deemed eligible by the Tennessee self-insurers' guaranty association for participation in the risk-based security program:

(A) Must satisfy the employer's security requirements through the program; and

(B) Is only subject to the requirements of subdivisions (b)(1) and (2) as outlined in the association's plan of operation.

(2) Subdivision (k)(1) does not apply to:

(A) Self-insured groups organized pursuant to subsection (c); or

(B) Governmental entities that have not elected to be a member of the Tennessee self-insurers' guaranty association pursuant to § 50-6-1004(e).

SECTION 3. Tennessee Code Annotated, Section 50-6-405(b)(2)(A)(ii), is amended by deleting "shall be brought by the commissioner of commerce and insurance" and substituting "may be brought by the commissioner of commerce and insurance, or, with the approval of the commissioner of commerce and insurance, the Tennessee self-insurers' guaranty association, or both,".

SECTION 4. Tennessee Code Annotated, Section 50-6-405(b)(2)(A)(iv), is amended by deleting "by the commissioner of commerce and insurance under this provision shall" and substituting "by the commissioner of commerce and insurance or the Tennessee self-insurers' guaranty association under this subdivision (b)(2) must".

SECTION 5. Tennessee Code Annotated, Section 50-6-405(b)(3), is amended by designating the existing language as subdivision (b)(3)(A) and adding the following subdivision:

(B) Notwithstanding subdivision (b)(3)(A), the commissioner of commerce and insurance may provide the filings received pursuant to this subsection (b) to the Tennessee self-insurers' guaranty association, which shall keep the filings and information in the filings confidential until made public by the commissioner.

SECTION 6. Tennessee Code Annotated, Section 50-6-405(b), is amended by deleting subdivision (5) and substituting:

(5) For employers electing to self-insure pursuant to subdivision (a)(2), the commissioner of commerce and insurance shall consider all available information when making the determination as to both the adequacy of all security deposits, letters of credit, negotiable securities, or bonds held by the commissioner and whether an employer has the ability to pay all claims that may arise.

SECTION 7. Tennessee Code Annotated, Section 50-6-405(b)(7), is amended by deleting the first sentence and substituting:

If an authorized self-insured employer fails to furnish the commissioner of commerce and insurance the requirements delineated in subdivisions (a)(2) and (b)(2)(A) and (B), or if the Tennessee self-insurers' guaranty association recommends revocation or suspension of an authorized self-insured employer's certificate of authority, then the commissioner may, after giving written notice and an opportunity for a hearing to the affected party or parties within thirty (30) days, suspend or revoke the certificate authorizing the employer to self-insure granted under this section.

SECTION 8. This act takes effect upon becoming a law, the public welfare requiring it.

