

House Bill 1101 (AS PASSED HOUSE AND SENATE)

By: Representatives Coan of the 101st, Marin of the 96th, Smith of the 129th, Horne of the 71st, Dawkins-Haigler of the 93rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to
2 workers' compensation, so as to provide for the publication of decisions of the board; to
3 provide for the entry and execution of judgment upon final orders and decisions regarding
4 the Self-insurers Guaranty Trust Fund; to modify the notification period for revocation of a
5 certificate of self-insurance; to revise provisions relative to the Self-insurers Guaranty Trust
6 Fund; to provide immunity from liability for members of the board of trustees of the Self-
7 insurers Guaranty Trust Fund; to provide for related matters; to repeal conflicting laws; and
8 for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

10 Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to workers'
11 compensation, is amended by revising subsection (b) of Code Section 34-9-12, relating to
12 employer's record of injuries, availability of board records, supplementary report on
13 termination of disability, penalties, and routine reports, as follows:

15 "(b) The records of the board, insofar as they refer to accidents, injuries, and settlements,
16 shall not be open to the public but only to the parties satisfying the board of their interest
17 in such records and their right to inspect them. The board shall provide data contained on
18 Employers' First Report of Injury forms reporting fatalities to the Georgia Department of
19 Labor and the United States Department of Labor for use in the Census of Fatal
20 Occupational Injuries Program. The board shall provide data to such other state and federal
21 governmental entities or departments as required by law. Under such reasonable rules and
22 regulations as the board may adopt, the records of the board as to any employee in any
23 previous case in which such employee was a claimant shall be open to and made available
24 to such claimant, to an employer or its insurance carrier which is called upon to pay
25 compensation, medical expenses, or funeral expenses, and to any party at interest, except
26 that the board may make such reasonable charge as it deems proper for furnishing

27 information by mail and for copies of records. Nothing in this subsection shall prohibit the
 28 board or its designees from publishing decisions of the board, provided adequate security
 29 measures have been taken to protect the identity and privacy of the parties."

30

SECTION 2.

31 Said chapter is further amended by revising Code Section 34-9-106, relating to entry and
 32 execution of judgment on settlement agreement, final order or decision, or award and
 33 modification and revocation of orders and decrees, as follows:

34 "34-9-106.

35 (a) Any party in interest in a matter involving an injury may file in the superior court of
 36 the county in which the injury occurred or, if the injury occurred outside this state or if the
 37 matter does not involve an injury, in the county in which the original hearing was had, a
 38 certified copy of: ~~a settlement agreement approved by the board or of a final order or~~
 39 ~~decision of the members or of an award of the members unappealed from or of an award~~
 40 ~~of the members affirmed upon appeal,~~

41 (1) A settlement agreement approved by the board;

42 (2) A final order or decision of the board;

43 (3) An unappealed award of the board;

44 (4) An award of the board affirmed upon appeal; or

45 (5) Any final order or decision regarding the Self-insurers Guaranty Trust Fund,

46 whereupon the court shall render judgment in accordance therewith and notify the parties.
 47 Such judgment shall have the same effect and all proceedings in relation thereto shall
 48 thereafter be the same as though the judgment had been rendered in an action duly heard
 49 and determined by such court; provided, however, that where the payment of compensation
 50 is insured or provided for in accordance with this chapter, no such judgment shall be
 51 entered nor execution thereon issued except upon application to the court and for good
 52 cause shown.

53 (b) Upon presentation to the court of the certified copy of a decision of the board ending,
 54 diminishing, or increasing a weekly payment under the provisions of this chapter,
 55 particularly of Code Section 34-9-104, the court shall revoke or modify the order or decree
 56 to conform to such decision of the board."

57

SECTION 3.

58 Said chapter is further amended by revising subsection (c) of Code Section 34-9-127, relating
 59 to issuance by the board of certificate of self-insurance, review, and revocation, as follows:

60 "(c) The board may, upon at least ~~60~~ 30 days' notice to the employer, and proof of receipt
 61 of same, and after a hearing, revoke the certificate upon satisfactory evidence for such

62 revocation having been presented. At any time after such revocation, the board may grant
63 a new certificate to the employer upon ~~his~~ the employer's petition."

64 **SECTION 4.**

65 Said chapter is further amended by revising Article 10, relating to the Self-insurers Guaranty
66 Trust Fund, as follows:

67 "ARTICLE 10

68 34-9-380.

69 It is the purpose of this article through the establishment of a guaranty trust fund to provide
70 for the continuation of workers' compensation benefits due and unpaid, excluding penalties,
71 fines, and attorneys' fees assessed against a participant, when a self-insured employer
72 becomes insolvent.

73 34-9-381.

74 As used in this article, the term:

75 (1) 'Applicant' means an employee entitled to workers' compensation benefits.

76 (2) 'Board' means the State Board of Workers' Compensation.

77 (3) 'Board of trustees' means the board of trustees of the fund.

78 (4) 'Fund' means the Self-insurers Guaranty Trust Fund established by this article.

79 (5) 'Insolvent self-insurer' means a self-insurer who files for relief under the federal
80 Bankruptcy Act, a self-insurer against whom involuntary bankruptcy proceedings are
81 filed, ~~or~~ a self-insurer for whom a receiver is appointed in a federal or state court of this
82 or any other jurisdiction ~~and who is determined~~, or a self-insurer who is determined by
83 the board to be insolvent by in default of its workers' compensation obligations or
84 requirements according to rules and regulations promulgated by the board of trustees and
85 approved by the board.

86 (6) 'Participant' means a self-insurer who is a member of the fund and exclusive of those
87 entities described in Article 5 of this chapter.

88 (7) 'Self-insurer' means a private employer, including any hospital authority created
89 pursuant to the provisions of Article 4 of Chapter 7 of Title 31, the 'Hospital Authorities
90 Law,' that has been authorized to self-insure its payment of workers' compensation
91 benefits pursuant to this chapter, except any governmental self-insurer or other employer
92 who elects to group self-insure pursuant to Code Section 34-9-152, ~~or~~ captive insurers as
93 provided for in Chapter 41 of Title 33, or employers who, pursuant to any reciprocal

94 agreements or contracts of indemnity executed prior to March 8, 1960, created funds for
 95 the purpose of satisfying the obligations of self-insured employers under this chapter.

96 (8) 'Trustee' means a member of the Self-insurers Guaranty Trust Fund board of trustees.

97 34-9-382.

98 (a) There is established a Self-insurers Guaranty Trust Fund for the sole purpose of making
 99 payments in accordance with this article. The fund shall be administered by an
 100 administrator appointed by the ~~chairman~~ chairperson of the board of trustees with the
 101 approval of the board of trustees. All moneys in the fund shall be held in trust and shall not
 102 be money or property of the state or the participants and shall be exempt from levy,
 103 attachment, garnishment, or civil judgment for any claim or cause of action other than for
 104 not making payments in accordance with this article. The board of trustees shall be
 105 authorized to invest the moneys of the fund in the same manner as provided by law for
 106 investments in government backed securities.

107 (b) All returns on investments shall be retained by the fund. The funds of the Self-insurers
 108 Guaranty Trust Fund shall be for the purposes of compensating employees or their
 109 dependents who are eligible to receive workers' compensation benefits from their
 110 employers pursuant to the provisions of this chapter when, pursuant to this Code section,
 111 the board has determined that compensation benefits due are unpaid or interrupted due to
 112 the insolvency or default of a participant. Moneys in the fund may be used to compensate
 113 an employee or his or her dependents for any type of injury or occupational disease or
 114 death, including medical or rehabilitation expenses which are compensable under this
 115 chapter against a participant, and all claims for related administrative fees, operating costs
 116 of the ~~board of trustees~~ fund, attorneys' fees incurred by the board of trustees or at its
 117 direction, and other costs reasonably incurred by the board of trustees. Payment from the
 118 Self-insurers Guaranty Trust Fund shall be made in accordance with this chapter.

119 (c) As a condition of self-insurance, a all private ~~employer~~ employers, except any
 120 governmental self-insurer or other employer who elects to group self-insure pursuant to
 121 Code Section 34-9-152, captive insurers as provided for in Chapter 41 of Title 33, or
 122 employers who, pursuant to any reciprocal agreements or contracts of indemnity executed
 123 prior to March 8, 1960, created funds for the purpose of satisfying the obligations of
 124 self-insured employers under this chapter, must make application to and be accepted in the
 125 Self-insurers Guaranty Trust Fund.

126 34-9-383.

127 (a) Each member of the board of trustees shall be an employee of a participant. The board
 128 of trustees shall consist of a chairperson and six trustees elected by the participants. The

129 board of trustees shall initially be appointed by the Governor not later than August 1, 1990.
 130 Three of the initial trustees shall be appointed for terms of office which shall end on
 131 January 1, 1993, and the chairperson and the three other initial trustees shall be appointed
 132 for terms of office which shall end on January 1, 1995. Thereafter, each trustee shall be
 133 elected to a four-year term and shall continue to serve unless otherwise ineligible under
 134 subsection (b) of this Code section. No later than 90 days prior to the end of any member's
 135 term of office, the chairperson shall select a nominating committee from among the
 136 participants to select candidates for election by the participants for the following term. In
 137 the event the chairperson fails to complete his or her term of office, a successor ~~will~~ shall
 138 be elected by the board of trustees to fill the unexpired term of office.

139 (b) A vacancy in the office of any elected member of the board of trustees shall occur upon
 140 the member's resignation, death, or conviction of a felony; or when the trustee's employer
 141 no longer qualifies as a self-insured participant or the trustee is no longer an employee of
 142 a participant. The board of trustees may remove any ~~member~~ trustee from office on a
 143 formal finding of incompetence, neglect of duty, or malfeasance in office. Within 30 days
 144 after the office of any elected member becomes vacant for any reason, the board of trustees
 145 shall elect a successor to fill that office for the unexpired term. Failure to fill the vacant
 146 office shall not invalidate any action taken by the board of trustees provided that said action
 147 is taken pursuant to an affirmative vote of not less than four trustees.

148 34-9-384.

149 The board of trustees shall possess all powers necessary and convenient to accomplish the
 150 objectives prescribed by this article, including, but not limited to, the following:

151 (1) Not later than 90 days from its appointment, the board of trustees must make and
 152 submit to the board for approval such bylaws, rules, regulations, and resolutions as are
 153 necessary to carry out its responsibilities, including, but not limited to, the establishment
 154 of an application fee. The board of trustees may carry out its responsibilities directly or
 155 by contract or other instrument and may purchase such services, borrow money, purchase
 156 excess or liability insurance, levy penalties, ~~and~~ fines, and assessments and collect such
 157 funds as it deems necessary to effectuate its activities and protect the members of the
 158 board of trustees and its administrator, agents, and employees. The board of trustees shall
 159 appoint, retain, and employ such persons as it deems necessary to achieve the purposes
 160 of the board of trustees. All expenses incurred pursuant to this provision shall be paid
 161 from the fund;

162 (2) The board of trustees shall meet not less than quarterly and shall meet at other times
 163 upon the call of the chairperson, issued to the trustees in writing not less than 48 hours
 164 prior to the day and hour of the meeting, or upon a request for a meeting presented in

165 writing to the chairperson not less than 72 hours prior to the proposed day and hour of the
 166 meeting and signed by at least a majority of the trustees, whereupon the chairperson shall
 167 provide notice issued in writing to the trustees not less than 48 hours prior to the meeting
 168 and shall convene the meeting at the time and place stated in the request;

169 (3) Four trustees shall constitute a quorum to transact business at any meeting, and the
 170 affirmative vote of four trustees shall be necessary for any action taken by the board of
 171 trustees. No vacancy shall otherwise impair the rights of the remaining trustees to
 172 exercise all of the powers of the board of trustees;

173 (4) The board of trustees shall serve without compensation, but each member shall be
 174 entitled to be reimbursed for necessary and actual expenses incurred in the discharge of
 175 his or her official duties; and

176 (5) The board of trustees shall have the right to bring and defend actions only in the
 177 name of the fund. ~~Neither the trustees nor their employers shall be liable~~ The
 178 administrator, the trustees, and the trustees' employers, agents, and employees shall not
 179 be liable jointly or individually for matters arising from or out of ~~the~~ their conduct of the
 180 affairs of the fund while acting in the scope of their employment.

181 34-9-385.

182 (a) Any participant who files for relief under the federal Bankruptcy Act or against whom
 183 bankruptcy proceedings are filed or for whom a receiver is appointed shall file written
 184 notice of such fact with the board and the board of trustees within 30 days of the
 185 occurrence of such event.

186 (b) Any person who files an application for adjustment of a claim against a participant who
 187 is in default or has filed for relief under the federal Bankruptcy Act or against whom
 188 bankruptcy proceedings have been filed or for whom a receiver has been appointed must
 189 file a written notice of such fact with the board and the board of trustees within 30 days of
 190 such person's knowledge of the event.

191 (c) Upon receipt of any notice as provided in subsection (a) or (b) of this Code section, the
 192 board shall determine whether the participant is insolvent or in default according to
 193 procedures established by the board of trustees and approved by the board. Such
 194 determination shall be made within a reasonable time after the date the board and board of
 195 trustees receive notification as provided in subsection (a) or (b) of this Code section.

196 (d) When a participant is determined to be in default or an insolvent self-insurer, the board
 197 of trustees is empowered to and shall assume on behalf of the participant its outstanding
 198 workers' compensation obligations excluding penalties, fines, and claimant's attorneys' fees
 199 assessed against the participant pursuant to subsection (b) of Code Section 34-9-108 and
 200 shall take all steps necessary to collect, recover, and enforce all outstanding ~~securities~~

201 security, indemnity, insurance, or bonds furnished by such participant guaranteeing the
 202 payment of compensation provided in this chapter for the purpose of paying outstanding
 203 obligations of the participant. The board of trustees shall convert and deposit into the fund
 204 such ~~securities~~ security and any amounts received under agreements of surety, guaranty,
 205 insurance, or otherwise on behalf of the participant. Any amounts remaining from such
 206 ~~securities~~ security, indemnity, insurance, bonds, guaranties, and sureties, following
 207 payment of all compensation costs and related administrative expenses and fees of the
 208 board of trustees including attorneys' fees, and following exhaustion collection of all
 209 amounts assessed and received pursuant to subsections (a) and (d) of Code Section
 210 34-9-121 and any applicable rule of the board may be refunded by the fund as directed by
 211 the board of trustees, subject to the approval of the board, to the appropriate party one year
 212 from the date of final payment and closure of all claims, provided no outstanding
 213 self-insured liabilities remain against the fund and the applicable statute of limitations has
 214 run.

215 (e) The ~~board of trustees~~ fund shall be a party in interest in all proceedings involving
 216 workers' compensation claims against a participant whose workers' compensation
 217 obligations ~~have been~~ are to be paid or assumed by the ~~board of trustees~~ fund and shall be
 218 subrogated to the rights of the participant. In such proceedings the ~~board of trustees~~ fund
 219 shall assume and may exercise all rights and defenses of the participant, including, but not
 220 limited to:

- 221 (1) The right to appear, defend, and appeal claims;
- 222 (2) The right to receive notice of, investigate, adjust, compromise, settle, and pay claims;
- 223 and
- 224 (3) The right to investigate, handle, and controvert claims.

225 (f) In any proceeding in bankruptcy in which the payment of benefits has been stayed, the
 226 board of trustees, through a designated representative, ~~shall~~ may appear and move to lift
 227 the stay so that the orderly administration of claims can proceed. The fund shall be
 228 subrogated to the rights and claims of any claimant against a participant to the extent of the
 229 payments made by the fund to the claimant and may pursue recovery against the participant
 230 to the extent of the claims paid or to be paid.

231 (g) The board of trustees shall notify all employees who have pending claims against a
 232 participant for workers' compensation benefits which are subject to the provisions of this
 233 article of the name, address, and telephone number of the party administering and
 234 defending their claim.

235 (h) The board may, in its discretion, direct that the Self-insurers Guaranty Trust Fund
 236 honor and pay, in whole or in part, the contractual fee arrangement between an attorney and
 237 a claimant pursuant to subsection (a) of Code Section 34-9-108, provided that application

238 to honor the fee arrangement is made after notice pursuant to subsection (g) of this Code
239 section and subject to consideration of objections by any party.

240 (i) No provision of this Code section shall impair any claims in the insolvent self-insurer's
241 bankruptcy by the board of trustees, any employee, or any provider of services related to
242 the insolvent self-insurer's workers' compensation obligations, to the extent those claims
243 remain unpaid, including but not limited to medical providers or attorneys representing
244 either the insolvent self-insurer or claimants.

245 34-9-386.

246 (a)(1) The board of trustees shall, commencing January 1, 1991, assess each participant
247 in accordance with paragraph (2) of this subsection. Upon reaching a funded level of \$10
248 million net of all liabilities, all annual assessments against participants who have paid at
249 least three prior assessments shall cease except as specifically provided in paragraph (4)
250 of this subsection.

251 (2) Assessment for each new participant in the first calendar year of participation shall
252 be ~~\$4,000.00~~ \$8,000.00. Thereafter, assessments shall be in accordance with paragraphs
253 (3) and (4) of this subsection.

254 (3) After the first calendar year of participation, the annual assessment of each
255 participant shall be made on the basis of a percentage of the total of indemnity and
256 medical benefits paid by, or on behalf of, each the participant during the previous
257 calendar year. Except as provided in paragraph (2) of this subsection for the first
258 calendar year of participation and paragraph (4) of this subsection, a participant will ~~not~~
259 ~~be assessed at any one time an amount in excess of 1.5 percent of the medical and~~
260 ~~indemnity benefits paid by that participant during the previous calendar year or \$1,000.00~~
261 \$2,000.00, whichever is greater. The ~~total~~ maximum amount of annual assessments under
262 this paragraph, not including those ~~set out~~ special assessments provided for in paragraph
263 (4) of this subsection, in any calendar year against ~~any one~~ a participant shall ~~not exceed~~
264 ~~the amount of \$4,000.00~~ be \$8,000.00.

265 (4) If ~~after the full funded level of \$10 million has been attained~~, the fund is reduced to
266 an amount below ~~\$7~~ \$5 million net of all liabilities as the result of the payment of claims,
267 the administration of claims, or the costs of administration of the fund, the board of
268 trustees ~~shall~~ may levy a special assessment ~~in proportion to the~~ against participants upon
269 approval by the board, according to the same procedure for assessment provided for set
270 forth in paragraph (3) of this subsection, ~~of the participants~~ in an amount sufficient to
271 increase the funded level to ~~\$7~~ \$5 million net of all liabilities; provided, however, that
272 such special assessment in any calendar year against any one participant shall not exceed
273 ~~the amount of \$10,000.00~~ \$8,000.00.

274 (5) Funds obtained by such assessments shall be used only for the purposes set forth in
 275 this article and shall be deposited upon receipt by the board of trustees into the fund. If
 276 payment of any assessment made under this article is not made within 30 days of the
 277 sending of the notice to the participant, the board of trustees is authorized to do any or all
 278 of the following: ~~proceed in court for judgment against the participant, including the~~
 279 ~~amount of the assessment, the costs of suit, interest, and reasonable attorneys' fees or~~
 280 ~~proceed directly against the security pledged by the participant.~~

281 (A) Levy fines or penalties;

282 (B) Proceed in court for judgment against the participant, including the amount of the
 283 assessment, fines, penalties, the costs of suit, interest, and reasonable attorneys' fees;

284 (C) Proceed directly against the security pledged by the participant for the collection
 285 of same; or

286 (D) Seek revocation of the participant's insured status.

287 (b)(1) The fund shall be liable for claims arising out of injuries occurring after January
 288 1, 1991; provided, however, no claim may be asserted against the fund until the funding
 289 level has reached \$1.5 million.

290 (2) All active participants shall be required to maintain surety bonds or the board of
 291 trustees may, in its discretion, accept any irrevocable letter of credit or other acceptable
 292 forms of security in the amount of no less than ~~\$100,000.00 until the board, after~~
 293 ~~consultation with the board of trustees, has determined that the financial capability of the~~
 294 ~~trust fund and the participant no longer warrants any form of security \$250,000.00. In~~
 295 addition, each active participant shall be required to purchase excess insurance for
 296 statutory limits with a self-insured retention specified by the board, and the excess policy
 297 shall include the bankruptcy endorsement required by the board and board of trustees.
 298 For participants who are no longer active, security in an amount commensurate with their
 299 remaining exposure, as determined by the board, shall be required until all self-insured
 300 claims have been closed and all applicable statutes of limitation have run.

301 (c) A participant who ceases to be a self-insurer shall be liable for any and all assessments
 302 made pursuant to this Code section as for so long as indemnity or medical benefits are
 303 ~~compensation~~ is paid for claims which originated when the participant was a self-insurer.
 304 Assessments of such a participant shall be based on the indemnity and medical benefits
 305 paid by the participant during the previous calendar year.

306 (d) Upon refusal to pay assessments, penalties, or fines to the fund ~~when due~~ or upon
 307 refusal to comply with a board order increasing security, the fund may treat the self-insurer
 308 as being in ~~noncompliance~~ default with this chapter and the self-insurer shall be subject to
 309 revocation of its board authorization to self-insure and forfeiture of its security.

310 34-9-387.

311 (a) The board of trustees shall have the right and ~~obligation~~ duty to obtain reimbursement
312 from any participant for payment of compensation obligations in the amount of the
313 participant's compensation obligations assumed by the board of trustees and paid from the
314 fund by the board of trustees as directed by the board, including, but not limited to, claims
315 for all benefits and reasonable administrative and legal costs. The amount of the claims for
316 reimbursement of reasonable administrative and legal costs shall be subject to the approval
317 of the board of trustees.

318 (b) The board of trustees shall have the right and obligation to use the security deposit of
319 any participant, its excess insurance ~~carrier~~ coverage, and of any other ~~guarantor~~ guarantee
320 to pay the participant's workers' compensation obligation assumed by the board of trustees,
321 including reasonable administrative and legal costs. The amount of the claims for
322 reimbursement of reasonable administrative and legal costs shall be subject to the approval
323 of the board of trustees.

324 (c) The board of trustees shall be a party in interest in any action or proceeding to obtain
325 the security deposit of a participant for the payment of ~~its~~ the participant's compensation
326 obligations, in any action or proceeding under the participant's excess insurance policy, and
327 in any other action or proceeding to enforce an agreement of any security deposit; or
328 captive or excess insurance carrier; and from any other ~~guarantor~~ guarantee to satisfy such
329 obligations. The fund is authorized to file a claim against a bankrupt participant or the
330 participant's agents and seek reimbursement for any payments made by the fund on behalf
331 of the participant pursuant to this chapter. The fund is subrogated to the claim of any
332 employee whose benefits are paid by the fund. Further, the fund shall have a lien against
333 any reimbursement payments the participant is entitled to from the Subsequent Injury Trust
334 Fund in an amount equal to the payments made by the fund to satisfy the participant's
335 liability for workers' compensation benefits.

336 34-9-388.

337 (a) It shall be the duty of the board to report to the board of trustees when the board has
338 reasonable cause to believe that any participant examined or being examined may be in
339 danger of insolvency.

340 (b) The board shall, at the inception of a participant's self-insured status and at least
341 annually thereafter, so long as the participant remains self-insured, furnish the board of
342 trustees with a complete, original bound copy of each participant's audit performed in
343 accordance with generally accepted ~~auditing~~ accounting standards by an independent
344 certified public accounting firm, three to five years of loss history, name of the person or
345 company to administer claims, and any other pertinent information submitted to the board

346 to authenticate the participant's self-insured status. The board of trustees may contract for
347 the services of a qualified certified public accountant or firm to review, analyze, and make
348 recommendations on these documents. All financial information submitted by a participant
349 shall be considered confidential and not public information.

350 (c) The board of trustees shall make reports and recommendations to the board upon any
351 matter germane to the solvency, liquidation, or rehabilitation of any participant. The board
352 of trustees shall examine the same documents as required in subsection (b) of this Code
353 section. Such reports and recommendations shall not be considered public documents.

354 (d) The board of trustees shall have the authority to review all applications for
355 self-insurance and shall make recommendations to the board concerning the acceptance of
356 the prospective self-insurer. If the board rejects in part or in whole the recommendations
357 of the board of trustees, the board shall give written notice to the board of trustees ten days
358 prior to accepting the application for self-insurance.

359 34-9-389.

360 The State of Georgia shall not be responsible for any debts incurred as a result of the
361 operation or administration of this fund."

362 **SECTION 5.**

363 All laws and parts of laws in conflict with this Act are repealed.