

House Bill 818 (AS PASSED HOUSE AND SENATE)

By: Representatives Shaw of the 176th, Nimmer of the 178th, Fleming of the 121st, England of the 116th, Bryant of the 162nd, 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 change certain provisions relating to workers' compensation
3 insurance, awards, benefits, and administration; to provide that administrative law judges are
4 subject to the Georgia Code of Judicial Conduct; to change provisions related to an
5 employer's duties to provide the State Board of Workers' Compensation with certain
6 information; to increase the compensation benefits for total disability and temporary partial
7 disability; to increase the total compensation payable to a surviving spouse as a sole
8 dependent at the time of death and where there are no other dependents; to change certain
9 provisions related to the purpose, definitions, participants, liabilities, and the board of
10 trustees of the Self-Insurers Guaranty Trust Fund; to provide for related matters; to repeal
11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to workers'
15 compensation, is amended by revising subsection (c) of Code Section 34-9-47, relating to the
16 trial division and appellate division created within the State Board of Workers'
17 Compensation, composition, and sessions, as follows:

18 "(c) The trial division shall be composed of administrative law judges appointed by the
19 board who shall serve as hearing officers and exercise judicial functions in implementing
20 this chapter. ~~Administrative law judges~~ An administrative law judge shall have the power
21 to subpoena witnesses and administer oaths and may take testimony in those cases brought
22 before the board. An administrative law judge hearing a case shall make an award, subject
23 to review and appeal as provided in this chapter. An administrative law judge shall be
24 subject to the Georgia Code of Judicial Conduct."

25 **SECTION 2.**

26 Said chapter is further amended by revising subsection (a) of Code Section 34-9-121, relating
 27 to duty of employer to insure in licensed company or association or to deposit security,
 28 indemnity, or bond as self-insurer, application to out-of-state employers, and membership
 29 in mutual insurance company, as follows:

30 "(a) Unless otherwise ordered or permitted by the board, every employer subject to the
 31 provisions of this chapter relative to the payment of compensation shall secure and
 32 maintain full insurance against such employer's liability for payment of compensation
 33 under this article, such insurance to be secured from some person, corporation, association,
 34 or organization licensed by law to transact the business of workers' compensation insurance
 35 in this state or from some mutual insurance association formed by a group of employers
 36 so licensed; or such employer shall ~~furnish~~ provide the board with sufficient information
 37 for the board to make an adequate assessment of the employer's workers' compensation
 38 exposure and liabilities and shall further provide evidence satisfactory proof to the board
 39 of such employer's financial ability to pay the compensation directly in the amount and
 40 manner and when due, as provided for in this chapter. In the latter case, the board may, in
 41 its discretion, require the deposit of acceptable security, indemnity, or bond to secure the
 42 payment of compensation liabilities as they are incurred; provided, however, that it shall
 43 be satisfactory proof of the employer's financial ability to pay the compensation directly
 44 in the amount and manner when due, as provided for in this chapter, and the equivalent of
 45 acceptable security, indemnity, or bond to secure the payment of compensation liabilities
 46 as they are incurred, if the employer shall show the board that such employer is a member
 47 of a mutual insurance company duly licensed to do business in this state by the
 48 Commissioner of Insurance, as provided by the laws of this state, or of an association or
 49 group of employers so licensed and as such is exchanging contracts of insurance with the
 50 employers of this and other states through a medium specified and located in their
 51 agreements with each other, but this proviso shall in no way restrict or qualify the right of
 52 self-insurance as authorized in this Code section. Nothing in this Code section shall be
 53 construed to require an employer to place such employer's entire insurance in a single
 54 insurance carrier."

55 **SECTION 3.**

56 Said chapter is further amended by revising Code Section 34-9-261, relating to compensation
 57 for total disability, as follows:

58 "34-9-261.

59 While the disability to work resulting from an injury is temporarily total, the employer shall
 60 pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the

61 employee's average weekly wage but not more than ~~\$550.00~~ \$575.00 per week nor less
 62 than \$50.00 per week, except that when the weekly wage is below \$50.00, the employer
 63 shall pay a weekly benefit equal to the average weekly wage. The weekly benefit under
 64 this Code section shall be payable for a maximum period of 400 weeks from the date of
 65 injury; provided, however, that in the event of a catastrophic injury as defined in
 66 subsection (g) of Code Section 34-9-200.1, the weekly benefit under this Code section shall
 67 be paid until such time as the employee undergoes a change in condition for the better as
 68 provided in paragraph (1) of subsection (a) of Code Section 34-9-104."

69 **SECTION 4.**

70 Said chapter is further amended by revising Code Section 34-9-262, relating to compensation
 71 for temporary partial disability, as follows:

72 "34-9-262.

73 Except as otherwise provided in Code Section 34-9-263, where the disability to work
 74 resulting from the injury is partial in character but temporary in quality, the employer shall
 75 pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the
 76 difference between the average weekly wage before the injury and the average weekly
 77 wage the employee is able to earn thereafter but not more than ~~\$367.00~~ \$383.00 per week
 78 for a period not exceeding 350 weeks from the date of injury."

79 **SECTION 5.**

80 Said chapter is further amended by revising subsection (d) of Code Section 34-9-265, relating
 81 to compensation for death resulting from injury and other causes, penalty for death from
 82 injury proximately caused by intentional act of employer, and payment of death benefits
 83 where no dependents found, as follows:

84 "(d) The total compensation payable under this Code section to a surviving spouse as a sole
 85 dependent at the time of death and where there is no other dependent for one year or less
 86 after the death of the employee shall in no case exceed ~~\$220,000.00~~ \$230,000.00."

87 **SECTION 6.**

88 Said chapter is further amended by revising Code Section 34-9-380, relating to the purpose
 89 of Article 10 of Title 34, as follows:

90 "34-9-380.

91 It is the purpose of this article through the establishment of a guaranty trust fund to provide
 92 for the continuation of workers' compensation benefits due and unpaid, excluding penalties,
 93 fines, and attorneys' fees assessed against a participant, when ~~a self-insured employer~~
 94 ~~becomes insolvent~~ such participant becomes an insolvent self-insurer."

SECTION 7.

95
96 Said chapter is further amended by revising Code Section 34-9-381, relating to definitions
97 relative to the Self-Insurers Guaranty Trust Fund, as follows:

98 "34-9-381.

99 As used in this article, the term:

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

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

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

103 ~~(4) 'Company' means a corporation, association, partnership, proprietorship, firm, or~~
104 ~~other form of business organization.~~

105 ~~(4)(5)~~ 'Fund' means the Self-insurers Guaranty Trust Fund established by this article.

106 ~~(5)(6)~~ 'Insolvent self-insurer' means a self-insurer:

107 ~~(A) a self-insurer who~~ Who files for relief under the federal Bankruptcy Act; ~~a;~~

108 ~~(B) self-insurer against~~ Against whom involuntary bankruptcy proceedings are filed;
109 ~~a;~~

110 ~~(C) self-insurer for~~ For whom a receiver is appointed in a federal or state court of this
111 state or any other jurisdiction; ~~or a self-insurer who;~~

112 ~~(D) Who is in default on workers' compensation obligations; or~~

113 ~~(E) Who is determined by the board to be in default of its~~ noncompliance with workers'
114 compensation obligations or requirements according to under the laws of this state and
115 the rules and regulations promulgated by the board of trustees and approved by of the
116 board.

117 ~~(6)(7)~~ 'Participant' means a self-insurer who is a member of the fund ~~and exclusive of~~
118 ~~those entities described in Article 5 of this chapter.~~

119 ~~(7)(8)~~ 'Self-insurer' means a private employer, including any hospital authority created
120 pursuant to the provisions of Article 4 of Chapter 7 of Title 31, the 'Hospital Authorities
121 Law,' that has been authorized to self-insure its payment of workers' compensation
122 benefits pursuant to this chapter; ~~except any. The term 'self-insurer' shall not mean or~~
123 include any of the following:

124 ~~(A) Any governmental self-insurer or other employer authorized by the board to~~
125 self-insure;

126 ~~(B) Any employer who elects to group self-insure pursuant to Code Section 34-9-152;~~
127 captive;

128 ~~(C) Captive insurers as provided for in Chapter 41 of Title 33;~~ or employers;

129 ~~(D) Any employer who, pursuant to any reciprocal agreements or contracts of~~
130 indemnity executed prior to March 8, 1960, created funds for the purpose of satisfying
131 the obligations of self-insured employers under this chapter; or

- 132 (E) Any individual or company who:
 133 (i) Enters into a contract or agreement with an employer under which the employer
 134 outsources its workers' compensation risks, responsibilities, obligations, or liabilities
 135 to such individual or company; and
 136 (ii) Pursuant to such contract or agreement, is required to provide workers'
 137 compensation benefits to an injured employee even though no common-law
 138 master-servant relationship or contract of employment exists between the injured
 139 employee and the individual or company providing the benefits.
 140 ~~(8)~~(9) "Trustee" means a member of the Self-insurers Guaranty Trust Fund board of
 141 trustees."

142 SECTION 8.

143 Said chapter is further amended by revising Code Section 34-9-382, relating to establishment
 144 of Self-insurers Guaranty Trust Fund, use of fund, and application to be accepted in fund, as
 145 follows:

146 "34-9-382.

147 (a) There is established a Self-insurers Guaranty Trust Fund for the sole purpose of making
 148 payments in accordance with this article. The fund shall be administered by an
 149 administrator appointed by the chairperson of the board of trustees with the approval of the
 150 board of trustees. All moneys in the fund shall be held in trust and shall not be money or
 151 property of the state or the participants and shall be exempt from levy, attachment,
 152 garnishment, or civil judgment for any claim or cause of action other than for not making
 153 payments in accordance with this article. ~~The board of trustees shall be authorized to~~
 154 ~~invest the moneys of the fund in the same manner as provided by law for investments in~~
 155 ~~government-backed securities~~ The fund assets shall be invested only in obligations issued
 156 or guaranteed by the United States government.

157 (b) All returns on investments shall be retained by the fund. The funds of the Self-insurers
 158 Guaranty Trust Fund shall be for the purposes of compensating employees or their
 159 dependents who are eligible to receive workers' compensation benefits from their
 160 employers pursuant to the provisions of this chapter when, pursuant to this Code section,
 161 the board has determined that compensation benefits due are unpaid or interrupted due to
 162 the insolvency or default of a participant. Moneys in the fund may be used to compensate
 163 an employee or his or her dependents for any type of injury or occupational disease or
 164 death, including medical or rehabilitation expenses which are compensable under this
 165 chapter against a participant, and all claims for related administrative fees, operating costs
 166 of the fund, attorneys' fees incurred by the board of trustees or at its direction, and other

167 costs reasonably incurred by the board of trustees. Payment from the Self-insurers
168 Guaranty Trust Fund shall be made in accordance with this chapter.

169 (c) As a condition of self-insurance, all private employers, except ~~any governmental~~
170 ~~self-insurer or other employer who elects to group self-insure pursuant to Code Section~~
171 ~~34-9-152, captive insurers as provided for in Chapter 41 of Title 33, or employers who,~~
172 ~~pursuant to any reciprocal agreements or contracts of indemnity executed prior to March~~
173 ~~8, 1960, created funds for the purpose of satisfying the obligations of self-insured~~
174 ~~employers under this chapter, must those precluded from membership in the fund pursuant~~
175 ~~to subsection (d) of this Code section, shall~~ make application to and be accepted in the
176 Self-insurers Guaranty Trust Fund.

177 (d) Membership in the fund shall not be permitted for any of the following:

- 178 (1) Any governmental employer authorized by the board to self-insure;
179 (2) Any employer who elects to group self-insure pursuant to Code Section 34-9-152;
180 (3) Captive insurers as provided for in Chapter 41 of Title 33;
181 (4) Any employer who, pursuant to any reciprocal agreements or contracts of indemnity
182 executed prior to March 8, 1960, created funds for the purpose of satisfying the
183 obligations of self-insured employers under this chapter; or
184 (5) Any individual or company who:
185 (A) Enters into a contract or agreement with an employer under which the employer
186 outsources its workers' compensation risks, responsibilities, obligations, or liabilities
187 to such individual or company; and
188 (B) Pursuant to such contract or agreement, is required to provide workers'
189 compensation benefits to an injured employee even though no common-law
190 master-servant relationship or contract of employment exists between the injured
191 employee and the individual or company providing the benefits."

192 **SECTION 9.**

193 Said chapter is further amended by revising paragraph (2) of Code Section 34-9-384, relating
194 to general powers of board of trustees, as follows:

195 "(2)(A) The board of trustees shall meet not less than quarterly and shall meet at other
196 times upon the call of the chairperson, issued to the trustees in writing not less than 48
197 hours prior to the day and hour of the meeting, or upon a request for a meeting
198 presented in writing to the chairperson not less than 72 hours prior to the proposed day
199 and hour of the meeting and signed by at least a majority of the trustees, whereupon the
200 chairperson shall provide notice issued in writing to the trustees not less than 48 hours
201 prior to the meeting and shall convene the meeting at the time and place stated in the
202 request;.

203 (B) Any trustee may participate in a meeting of the board of trustees by telephone
 204 conference or similar communications technology which allows all individuals
 205 participating in the meeting to hear and speak with each other. Participation in a
 206 meeting pursuant to this subparagraph shall constitute presence in person at such
 207 meeting."

208 SECTION 10.

209 Said chapter is further amended by revising Code Section 34-9-385, relating to bankruptcy
 210 of participants, as follows:

211 "34-9-385.

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

216 (b) Any ~~person~~ individual who files an application for adjustment of a claim against a
 217 participant who is ~~in default or has filed for relief under the federal Bankruptcy Act or~~
 218 ~~against whom bankruptcy proceedings have been filed or for whom a receiver has been~~
 219 ~~appointed~~ must or becomes an insolvent self-insurer shall file a written notice of such fact
 220 participant's status with the board and the board of trustees within 30 days of such ~~person's~~
 221 individual having knowledge of the ~~event~~ participant becoming an insolvent self-insurer.

222 (c) Upon receipt of any notice as provided in subsection (a) or (b) of this Code section, the
 223 board shall determine whether the participant is an insolvent ~~or in default according to~~
 224 ~~procedures established by the board of trustees and approved by the board~~ self-insurer.
 225 Such determination shall be made within a reasonable time after the date the board and
 226 board of trustees receive notification as provided in subsection (a) or (b) of this Code
 227 section.

228 (d) When a participant is determined to be ~~in default~~ or an insolvent self-insurer, the board
 229 of trustees is empowered to and shall assume on behalf of the participant its outstanding
 230 workers' compensation obligations excluding penalties, fines, and claimant's attorneys' fees
 231 assessed against the participant pursuant to subsection (b) of Code Section 34-9-108 and
 232 shall take all steps necessary to collect, recover, and enforce all outstanding security,
 233 indemnity, insurance, or bonds furnished by such participant guaranteeing the payment of
 234 compensation provided in this chapter for the purpose of paying outstanding and
 235 continuing obligations of the participant. The board of trustees shall convert and deposit
 236 into ~~the fund~~ a separate account established within the fund such security and any amounts
 237 received under agreements of surety, guaranty, insurance, or otherwise on behalf of the
 238 participant. Any amounts remaining from such security, indemnity, insurance, bonds,

239 guaranties, and sureties, following payment of all compensation costs and related
 240 administrative expenses and fees of the board of trustees including attorneys' fees, and
 241 following collection of all amounts assessed and received pursuant to subsections (a) and
 242 (d) of Code Section 34-9-121 and any applicable rule of the board may be refunded by the
 243 fund as directed by the board of trustees, subject to the approval of the board, to the
 244 appropriate party one year from the date of final payment and closure of all claims,
 245 provided no outstanding self-insured liabilities remain against the fund and ~~the~~ all
 246 applicable ~~statute~~ statutes of ~~limitations~~ limitation ~~has~~ have run.

247 (e) The fund shall be a party in interest in all proceedings involving workers' compensation
 248 claims against a participant whose workers' compensation obligations are to be paid or
 249 assumed by the fund and shall be subrogated to the rights of the participant. In such
 250 proceedings the fund shall assume and may exercise all rights and defenses of the
 251 participant, including, but not limited to:

252 (1) The right to appear, defend, and appeal claims;

253 (2) The right to receive notice of, investigate, adjust, compromise, settle, and pay claims;
 254 and

255 (3) The right to investigate, handle, and controvert claims.

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

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

266 (h) The board may, in its discretion, direct that the Self-insurers Guaranty Trust Fund
 267 honor and pay, in whole or in part, the contractual fee arrangement between an attorney and
 268 a claimant pursuant to subsection (a) of Code Section 34-9-108, provided that application
 269 to honor the fee arrangement is made after notice pursuant to subsection (g) of this Code
 270 section and subject to consideration of objections by any party.

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

276

SECTION 11.

277 Said chapter is further amended by revising Code Section 34-9-386, relating to assessment
 278 of participants, liability of fund and participants for claims, and revocation of participant's
 279 authority to be self-insured, as follows:

280 "34-9-386.

281 (a)(1) The board of trustees shall, commencing January 1, 1991, assess each participant
 282 in accordance with paragraph (2) of this subsection. Upon reaching a funded level of ~~\$10~~
 283 \$15 million net of all liabilities, all annual assessments against participants who have paid
 284 at least three prior assessments shall cease except as specifically provided in
 285 paragraph (4) of this subsection.

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

289 (3) After the first calendar year of participation, the annual assessment of each
 290 participant shall be made on the basis of a percentage of the total of indemnity and
 291 medical benefits paid by, or on behalf of, the participant during the previous calendar
 292 year. Except as provided in paragraph (2) of this subsection for the first calendar year
 293 of participation and paragraph (4) of this subsection, a participant will be assessed 1.5
 294 percent of the medical and indemnity benefits paid by that participant during the previous
 295 calendar year or \$2,000.00, whichever is greater. The maximum amount of annual
 296 assessments under this paragraph, not including those special assessments provided for
 297 in paragraph (4) of this subsection, in any calendar year against a participant shall be
 298 \$8,000.00.

299 (4) If the fund is reduced to an amount below \$5 million net of all liabilities as the result
 300 of the payment of claims, the administration of claims, or the costs of administration of
 301 the fund, the board of trustees may levy a special assessment against participants upon
 302 approval by the board, according to the same procedure for assessment set forth in
 303 paragraph (3) of this subsection, in an amount sufficient to increase the funded level to
 304 \$5 million net of all liabilities; provided, however, that such special assessment in any
 305 calendar year against any one participant shall not exceed \$8,000.00.

306 (5) Funds obtained by such assessments shall be used only for the purposes set forth in
 307 this article and shall be deposited upon receipt by the board of trustees into the fund. If
 308 payment of any assessment, penalty, or fine made under this article is not made within
 309 30 days of the sending of the notice to the participant, the board of trustees is authorized
 310 to do any or all of the following:

311 (A) Levy fines or penalties;

- 312 (B) Proceed in court for judgment against the participant, including the amount of the
 313 assessment, fines, penalties, the costs of suit, interest, and reasonable attorneys' fees;
 314 (C) Proceed directly against the security pledged by the participant for the collection
 315 of same; or
 316 (D) Seek revocation of the participant's ~~insured~~ self-insured status.
- 317 (b)(1) The fund shall be liable for claims arising out of injuries occurring after
 318 January 1, 1991; provided, however, that no claim may be asserted against the fund until
 319 the funding level has reached \$1.5 million.
- 320 (2) All active participants shall be required to maintain surety bonds or the board of
 321 trustees may, in its discretion, accept ~~any~~ an irrevocable letter of credit ~~or other~~
 322 ~~acceptable forms of security~~ in the amount of no less than \$250,000.00. In addition, each
 323 active participant shall be required to purchase excess insurance for statutory limits with
 324 a self-insured retention specified by the board, and the excess policy shall include the
 325 bankruptcy endorsement required by the board and board of trustees. For participants
 326 who are no longer active, security in an amount commensurate with their remaining
 327 exposure, as determined by the board, shall be required until all self-insured claims have
 328 been closed and all applicable statutes of limitation have run.
- 329 (c) A participant who ceases to be a self-insurer shall be liable for any and all assessments,
 330 penalties, and fines made pursuant to this Code section for so long as indemnity or medical
 331 benefits are paid for claims which originated when the participant was a self-insurer.
 332 Assessments of such a participant shall be based on the indemnity and medical benefits
 333 paid by the participant during the previous calendar year.
- 334 (d) Upon refusal to pay assessments, penalties, or fines to the fund or upon refusal to
 335 comply with a board order ~~increasing security~~, the fund may treat the self-insurer as being
 336 in default with this chapter and the self-insurer shall be subject to revocation of its board
 337 authorization to self-insure and forfeiture of its security."

338 **SECTION 12.**

339 Said chapter is further amended by revising subsection (c) of Code Section 34-9-387, relating
 340 to reimbursement and security deposit from participant for compensation obligations, as
 341 follows:

342 "(c) The board of trustees shall be a party in interest in any action or proceeding to obtain
 343 the security deposit of a participant for the payment of the participant's compensation
 344 obligations, in any action or proceeding under the participant's excess insurance policy, and
 345 in any other action or proceeding to enforce an agreement of any security deposit or captive
 346 or excess insurance carrier and from any other guarantee to satisfy such obligations. The
 347 fund is authorized to file a claim against ~~a bankrupt~~ an insolvent participant or the

348 participant's agents and seek reimbursement for any payments made by the fund on behalf
 349 of the participant pursuant to this chapter. The fund is subrogated to the claim of any
 350 employee whose benefits are paid by the fund. Further, the fund shall have a lien against
 351 any reimbursement payments the participant is entitled to from the Subsequent Injury Trust
 352 Fund in an amount equal to the payments made by the fund to satisfy the participant's
 353 liability for workers' compensation benefits."

354 **SECTION 13.**

355 Said chapter is further amended by revising subsection (b) of Code Section 34-9-388, relating
 356 to reports of participant's insolvency, participant's audits, review of applications for
 357 self-insurance and recommendations thereon, as follows:

358 "(b) The board shall, at the inception of a participant's self-insured status and at least
 359 annually thereafter, so long as the participant remains self-insured, furnish the board of
 360 trustees with a complete, original bound copy of each participant's ~~audit~~ audited annual
 361 financial statement performed in accordance with generally accepted accounting standards
 362 by an independent certified public accounting firm, three to five years of loss history, name
 363 of the ~~person~~ individual or company to administer claims, and any other pertinent
 364 information submitted to the board to authenticate the participant's self-insured status. The
 365 board of trustees may contract for the services of a qualified certified public accountant or
 366 firm to review, analyze, and make recommendations on these documents. All financial
 367 information submitted by a participant shall be considered confidential and not public
 368 information."

369 **SECTION 14.**

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