

As Amended on September 25, 2008
and
Approved Effective October 23, 2008

SELF-INSURERS' SECURITY FUND

PLAN OF OPERATION AND BYLAWS

PREAMBLE. The Minnesota Self-Insurers' Security Fund is an organization created by the Minnesota Self-Insurers' Security Fund Act, Minnesota Statutes, Chapter 79A and incorporated as a nonprofit corporation under the Minnesota Nonprofit Corporation Act, Minnesota Statutes, Chapter 317A. This Plan of Operation is subject to those statutes, and such other laws of the State of Minnesota as may apply.

Article 1. Plan of Operation and Bylaws; Definitions.

- A. Plan of Operation and Bylaws. This Plan of Operation and Bylaws and any amendments hereto shall become effective upon written approval of the Commissioner.
- B. Definitions.
 1. "Commissioner" shall mean the Commissioner of Commerce of the State of Minnesota.
 2. "Plan" shall mean the Plan of Operation as required by the Act.
 3. "Fund" shall mean the Self-Insurers' Security Fund of Minnesota.
 4. "Act" shall mean the Self-Insurers' Security Fund Act; Chapter 674, Laws 1988 and as may be amended.
 5. "Insolvent Self-Insurer" shall mean a member of the Self-Insurers' Security Fund who has failed to pay compensation as a result of a declaration of bankruptcy or insolvency by a court of competent jurisdiction and whose security deposit has been called by the Commissioner pursuant to Minnesota Statutes Chapter 176, or a member who has failed to pay compensation and who has been issued a Certificate of Default by the Commissioner and whose security deposit has been called by the Commissioner pursuant to Minnesota Statutes Chapter 176.
 6. "Posted Security" shall mean the security posted with the Department of Commerce by a private self-insurer pursuant to Minnesota Statute §79A.04.

7. "Excess Posted Security" shall mean that amount of posted security which is greater than the outstanding workers' compensation loss and loss adjustment expense liabilities of an insolvent self-insurer as determined by an Associate or Fellow of the Casualty Actuarial Society who is retained by the Self-Insurers' Security Fund for the purpose of making that determination.

Article 2. Board of Trustees.

A. There shall be a Board of Trustees in accordance with Section 79A.09 of the Act.

1. The Fund shall be governed by a nine member Board of Trustees. Five of the trustees shall be representatives of private self-insurers who shall be elected by the members of the security fund, other than group self-insurers, each member having one vote. One of the trustees shall be a representative of the private group self-insurers who shall be elected by the members of the security fund who are group self-insurers, each group having one vote. Three additional trustees shall be appointed by the commissioner. In addition to the nine trustees elected by the members or appointed by the commissioner of commerce, the commissioner of labor and industry or the commissioner's designee shall be an ex officio, nonvoting member of the board of trustees.
2. Three of the trustees, including the group self-insurer trustee, initially elected by the members shall serve two-year terms, and three shall serve four-year terms. Thereafter, those trustees shall be elected to four-year terms, and shall serve until their successors are elected and assume office pursuant to the bylaws of the security fund. Two of the trustees initially appointed by the commissioner shall serve four-year terms. The other initially appointed trustee shall serve a two-year term. Thereafter, those trustees shall be appointed to four-year terms, and shall serve until their successors are appointed and assume office pursuant to the bylaws of the security fund. A member of the board of trustees may designate another person to act in the member's place as though the member were acting and the designee's actions shall be deemed those of the member.
3.
 - a. The members selected to the Board of trustees shall elect a chair, a vice chair, a secretary, and a treasurer, and any other officers deemed necessary from among its members. The chair, vice chair and treasurer shall constitute the Board of Trustees Executive Committee, and shall have the power to act on behalf of the Board of Trustees between meetings of the Board of Trustees.
 - b. The duties of the Chair shall include: chair the Board meetings, Membership meetings and Executive Committee meetings; report annually to the membership with respect to Board activities; appointing Self-Insurers' Security Fund Board Committee members with the approval of the Board; set the agenda for Board, Membership and Executive Committee meetings with the assistance of the Executive Director; direct and supervise the Self-Insurers' Security Fund Executive Director and support staff.

The duties of the Vice Chair shall include: membership on the Executive Committee; act in the place and stead of the Chair in the event of the Chair's absence; act as Chair of the Board Nominating Committee and the Officer Nominating Committee; perform such other duties as the Chair may delegate.

The Secretary's duties shall include: responsibility for the accurate recording of the Minutes of the Board meetings and the Membership meetings.

The Treasurer's duties shall include: membership in the Executive Committee, preparation and report of monthly financial statements, supervise Self-Insurers' Security Fund receipts, disbursements and accounting therefor; act as liaison to the independent auditor.

The Executive Director's duties shall include, but not be limited to: report directly to the Chair and the Board; supervise the Administrator; be primary contact between SISF Administration and the Board; develop, with concurrence of the Chair, the agenda for Board meetings; distribute the Board packet to Board; be responsible for timely actions by vendors, be responsible for negotiations with vendor contracts; be responsible for recording and depositing Fund receipts; act as liaison to the Minnesota State agencies, legislature, vendors, the general public, and other interested parties; and provide support to SISF Board, Officers and Committees. The Executive Director shall perform such other duties as the Board may direct.

- c. The Board shall establish the following standing committees: The Claims Committee, the Investment Committee, the Legislative Committee and the Audit Committee, the Officer Nominating Committee and the Board of Trustees Nominating Committee. The Vice Chair of the Board shall be the Chair of both the Officer Nominating Committee and the Board of Trustees Nominating Committee. The Officer Nominating Committee shall consist of the Vice Chair of the Board and two other members of the Board. The Board of Trustees Nominating Committee shall consist of the members of the Officer Nominating Committee and two additional non-board members. The Board may establish such other standing or special committees as may be deemed advisable or necessary to facilitate the operations of the Fund. All such committee members must be members of the Board of Trustees. The Board, in its discretion, may appoint additional non-board members to any such standing or special committees. All such committee members must be either officers or employees of member self-insurers or officers or employees of third party administrators representing member self-insurers, except for the non-board members of the Board of Trustees Nominating Committee, who shall be voting members of that Committee, all non-board members of a Committee shall be non-voting members of that committee. Except as provided above the Chair is empowered to appoint the Committee members and the Committee Chair, subject to the approval of the Board.

4. The Commissioner of Labor and Industry may remove his or her Designee from the Board of Trustees. The Commissioner of Commerce may remove any Trustee appointed by the Commissioner of Commerce. A Trustee who has been elected by the members may be removed by vote of the majority of the members voting on a resolution, previously passed by a majority of the Board of Trustees, calling for removal of the Trustee.
 5. A vacancy as a result of death, resignation or removal in the seat held by the ex officio non-voting member of the Board of Trustees shall be filled by designation of the Commissioner of Labor and Industry. A vacancy in any seat held by a Trustee appointed by the Commissioner of Commerce shall be filled by an appointment by the Commissioner of Commerce. A vacancy in any seat on the Board of Trustees held by an elected Trustee shall be filled by a majority vote of the Board of Trustees. Any vacancy shall be filled for the remainder of the departed Trustee's term; provided, however, that the Trustee so elected must be qualified to serve in accordance with the Act.
- B. Any meeting of the Board of Trustees, each member of the Board shall have one vote. A majority of the Board shall constitute a quorum for the transaction of business and the acts of a majority of the Board members present at a meeting at which a quorum is present shall be the acts of the Board; except that an affirmative vote of a majority of the full Board is required to:
1. Approve a contract with a servicing facility.
 2. Levy an assessment or provide for a refund.
 3. Borrow money or establish a line of credit.
 4. Elect a new Trustee to fill a vacancy caused by death, resignation, or removal.
- C. An annual meeting of the Board shall be held at a time and location approved by the Board. At each such meeting the Board shall:
1. Review each outstanding contract with servicing facilities and, to the extent possible, make any necessary corrections, improvements or additions.
 2. Review operating expenses and covered claims costs and determine if an assessment, or refund of a prior assessment, and the amount of either is necessary for the proper administration of the Fund. If such assessment or refund is determined to be necessary, the Board shall levy such assessment or make such refund in accordance with Section 79A.12 of the Act.
 3. Review, consider and act on any other matters deemed by it to be necessary and proper for the administration of the Fund.
 4. Review any then existing standing Resolutions of the Board.

- D. The Board shall hold an emergency meeting after receiving a Certificate of Default or notice from the Commissioner of the bankruptcy or insolvency of any member self-insurer. At such meeting or a subsequent meeting the Board shall:
1. Consider and decide what method or methods, as permitted under the Act shall be adopted to pay and discharge covered claims of the bankrupt or insolvent self-insurer. If the Board decides to appoint a servicing facility, every effort should be made to secure the receiver, liquidator or statutory successor's participation in such contract to assist the Fund in the performance of its legally imposed duties. In no event shall a bankrupt or insolvent self-insurer be appointed as a servicing facility. Every effort should also be made to permit the Fund to directly pursue all reinsurance recoveries permitted to the bankrupt or insolvent self-insurer.
 2. Consider and decide what immediate action, if any, should be taken to assure the proper retention of the records of the bankrupt or insolvent self-insurer necessary to the prompt, economical handling by the Fund of covered claims. In this effort, the Board or a designated servicing facility, shall work closely with the receiver, liquidator or statutory successor and seek the liquidator's, receiver's or statutory successor's approval of having the Board, or a designated servicing facility, take direct physical control of that portion of the bankrupt or insolvent self-insurer's records deemed by the Board to be necessary for the discharge of its duties imposed by law.
 3. Consider and decide what persons, if any, should be hired by the Fund to implement and carry out broad directives of the Board made pursuant to its statutorily imposed duties. Such persons may include an Executive Director who would have such authority as is properly delegated to him or her by the Board. Such person should be knowledgeable about insurance and self-insurance matters, conversant with the law as it relates to covered claims, and administratively capable of implementing the Board's directives. Such persons may include attorneys at law, insurance actuaries, or other specialists whose advice is deemed by the Board to be necessary to the discharge of its duties imposed by law. Such persons may include accountants, claims persons, third party administrators or any others deemed by the Board to be necessary to the discharge of its duties imposed by law. The Board may agree to compensate such persons as to best serve the interest of the Fund.
 4. Consider and decide to what extent and in what manner the Board shall review and contest settlements and releases or judgments, orders, decisions, verdicts, findings and appeals to which the bankrupt or insolvent self-insurer were parties in accordance with the Act.
 5. Consider and decide what assessment, if any, should be levied or whether any refund should be made to member self-insurers. If such assessment or refund is determined to be necessary, the Board shall levy such assessment or make such refund in accordance with the Act.

6. The Fund shall take all steps permitted by law, and deemed necessary to protect the Fund's rights against the estate of the bankrupt or insolvent self-insurer or its successor in interest.
 7. Consider and decide any other matter deemed by it to be necessary for the proper administration of the Fund.
- E. The Board may determine a schedule of such other regular meetings as it may deem appropriate. Special meetings of the Board may be called by the Chairman and shall be called at the request of any two Board members. Not less than 48 hours written notice shall be given to each Board member of the time and place and purpose or purposes of any special meeting. Any such special or emergency meeting shall be held in person unless a majority of the Board agrees to hold such meeting by teleconference. Any Board member not participating in person or by teleconference may consent in writing to any specific action taken by the Board. Any action approved by the required number of Board members at such special meeting, including those consenting in writing, shall be as valid a Board action as though authorized at a regular meeting of the Board. At such meeting the Board may consider and decide any matter deemed by it to be necessary for the proper administration of the Fund.
- F. Members of the Board may take action by written ballot. Any actions taken by written ballot of the Board shall have the same force and effect as if the Board had taken such action at a duly authorized meeting of the Board.
- G. An annual stipend shall be payable to officers of the Self-Insurers' Security Fund who hold those offices on June 30 of each calendar year: \$2,000 annual stipend for the Chair; \$1,000 annual stipend to the Vice Chair; \$1,000 annual stipend for the Secretary; \$3,000 annual stipend for the Treasurer.

Members of the Board shall be compensated at the rate of \$200.00 for Board meetings and for other authorized Committee meetings or Board activities when authorized by the Board, plus expenses; provided, that the Chair of the Board shall be compensated at the rate of \$350.00 for Board meetings and for other authorized Committee meetings or Board activities when authorized by the Board, plus expenses. No more than one per diem payment shall be made to any Board member during any one calendar day. All expenses, except per diem payments, shall be reported to the Board at least by the Annual Meeting for review and approval. Expenses as used herein shall include mileage expense for transportation at a rate approved by the Internal Revenue Code, actual costs for lodging, meals, incidental expenses including parking, incurred in connection with a Board or Committee meeting or other Board authorized activity.

Members of the Workers' Compensation Self-Insurers' Advisory Committee established by Minn. Stat. §79A.02 should be compensated at the rate of \$110.00 for Advisory Committee meetings, plus expenses as defined above.

Article 3. Operations.

- A. The official address of the Fund shall be the address of the Chairman of the Board unless otherwise designated by the Board.
- B. The Board may employ such persons, firms or corporations to perform such administrative functions as are necessary for the Board's performance of the duties imposed on the Fund. The Board may use the mailing address of such a person, firm or corporation as the official office address of the Fund. Such persons, firms, or corporation shall keep such records of its activities as may be required by the Board.
- C. The Board may open one or more bank accounts and otherwise invest its funds for use in Fund business. Reasonable delegation of deposit, withdrawal and investment authority for Fund business may be made consistent with prudent fiscal policy. The Board may borrow money from or establish a line of credit with any person or organization including a member self-insurer, or from an appointed servicing facility as the Board in its judgment deems advantageous for the Fund.
- D. The Board may levy an assessment to cover the reasonable costs of administering the Fund. The levy shall apply to members and former members according to their status on the date of Board approval of the assessment.
- E. The Board may contract with one or more persons, firms, or corporations to serve as servicing facilities, should the Board receive a Certificate of Default or notice from the Commissioner of bankruptcy or insolvency of a member self-insurer. Such contract terms shall comply with the Act. Such contract terms may include:
 - 1. Terms of payment to the servicing facility.
 - 2. Extent of authority delegated to the servicing facility.
 - 3. Procedures for giving the receiver timely notice, sufficient to protect the Fund's right of subrogation against the receiver, liquidator, or statutory successor, of each and every insolvent member's claim not otherwise reported to the receiver, liquidator or statutory successor.
 - 4. Procedures contemplated for the handling of insolvent member's claims.
 - 5. Procedures for the printing or preparation of forms necessary for the proper handling of insolvent member's claims.
 - 6. Requirement of Bond for faithful performance.
 - 7. Any other provisions deemed necessary and desirable by the Board of Trustees.

Article 4. Records and Reports.

- A. A written record of the proceeding of each Board Meeting shall be made. The original of this record shall be retained at the office of the Fund with copies being furnished to each member of the Board.

Article 5. Membership.

- A. Employers who were private self-insurers on July 1, 1988 in the State of Minnesota shall be members of this Fund. Each employer who becomes a private self-insurer in Minnesota after July 1, 1988, shall automatically become, effective on the date of its self-insurance, members of this Fund; provided, however, that group self-insurers who are issued a Certificate of Self-Insurance Authority by the Department of Commerce as members of the Commercial Self-Insurance Group Security Fund on or after August 1, 1995, shall not be members of the Self-Insurers Security Fund. A self-insurer Security Fund member which ceases to be self-insured after July 1, 1988 shall automatically cease to be a member effective at the date and time of the termination of its certificate to self-insure; provided, such self-insurer shall remain liable for any assessments as provided by law.
- B. Any member self-insurer aggrieved by an action of the Fund shall appeal to the Board before appealing to the Commissioner. If such member self-insurer is aggrieved by the final action or decision of the Board or if the Board does not act on such complaint within 30 days, the member self-insurer may appeal to the Commissioner within 30 days after the action or decision of the Board or the expiration of the 30 days.
- C. The Self-Insurers' Security Fund shall hold an Annual Meeting for the members at a time and place to be selected by the Board. The first day of the month in which the Annual Meeting is held is the date which shall determine eligibility for voting at the membership meeting and for determining whether or not a member is required to receive notice of the Annual Meeting.
- D. Any action that may be taken at a regular or special meeting of members may be taken without a meeting if the Self-Insurers' Security Fund mails or delivers a written ballot to every member entitled to vote on the matter in accordance with Minn. Stat. Section 317A.447.
- E. A member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact in accordance with Minn. Stat. Section 317A.453.

Article 6. Indemnification.

- A. The Self-Insurers' Security Fund of Minnesota (the "Fund") shall indemnify its officers, Trustees, committee members, employees, and agents, including, but not limited to, the Counsel to the Fund, in the manner set forth in Minnesota Statutes Section 317A.521, provided the Fund has made such determination or determinations, if any, as it may reasonably require to establish that the standards set forth in Minnesota Statutes Section 317A.521, subd. 2, have been met. In addition, the Fund may, in the sole discretion of its Board of Trustees (the "Board"), indemnify such persons or any other person under such circumstances or different circumstances as the Board shall deem appropriate as long as the Board reasonably believes

such indemnification to be in the best interests of the Fund.

- B. If a person is made or threatened to be made a party to a civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the Fund, the person is entitled, upon written request to the Fund, to payment or reimbursement by the Fund of reasonable expenses, including attorneys' fees and disbursements, incurred by the person in advance of the final disposition of the proceeding upon receipt by the Fund of a written affirmation by the person of a good faith belief that the criteria for indemnification described in Section A of this article have been satisfied and a written undertaking by the person to repay the amounts paid or reimbursed by the Fund if it is determined that the criteria for indemnification have not been satisfied; and after a determination that the facts then known to those making the determination would not preclude indemnification under this section. The written undertaking is an unlimited general obligation of the person making it but need not be secured and must be accepted without reference to a financial ability to make the repayment.
- C. The indemnification provided by this article shall continue as to a person who has ceased to be a Trustee, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person. Nothing contained in this article shall affect any rights to indemnification to which the Fund's personnel, other than Trustees and officers, may be entitled by contract or otherwise under law.
- D. The Fund may buy and maintain insurance on behalf of any person who is or was a Trustee, officer, employee, or agent of the Fund or who is or was serving at the request of the Fund as a Trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity.

Article 7. Amendment.

This Plan may be amended by the Board of Trustees at any regular or special meeting held by the Board. An affirmative vote of two-thirds of the full Board is required to amend the Plan. Any Plan so amended must be submitted to the Commissioner of Commerce for approval prior to taking effect.

Article 8. Conformity to Statute.

The Minnesota Self-Insurers' Security Fund Act as written, and as may be amended, is incorporated as part of this Plan.

Article 9. Actuarial Guidelines for Terminating Self-Insurer.

In preparing the terminating self-insurer's final actuarial report, the actuary for the departing self-insurer shall provide a report according to the guidelines outlined below:

Self-Insurers who have posted security with the Minnesota Department of Commerce as of the

time of termination of an amount:

- a) Equal to or greater than the Workers' Compensation Reinsurance Association super retention level shall comply with Paragraph A requirements.
- b) Less than the Workers' Compensation Reinsurance Association super retention level shall comply with either Paragraph A or Paragraph B requirements.

A. Provide the Self-Insurers' Security Fund with an estimate of the present value of unlimited indemnity liabilities, applying the following considerations.

1. Limit the scope of analysis to unpaid liabilities for indemnity payments for the purpose of determining the final SISF payment.
2. Include the total amount of projected liabilities, specifically excluding any reduction for anticipated recoveries whether from the WCRA, Special Compensation Fund or other sources.
3. Discount liabilities using an interest rate assumption consistent with Minnesota Department of Commerce policy and applicable Statutes and Rules, and using a payment pattern consistent with the assumptions underlying the estimated unpaid liabilities.
4. Include sufficient discussion and exhibits to allow SISF's actuary to evaluate the methodology, assumptions and findings.
5. Explicitly recognize the liability on any claims on which long-term indemnity payments are expected, reflecting the applicable escalation rate, expected claimant mortality rates and other statutory benefit provisions. When there is a small number of claims, this approach will be taken in conjunction with generally accepted actuarial methods to estimate future payments on other open claims. When there is a sufficiently large number of claims remaining open, the actuary may rely solely on generally accepted actuarial methods in lieu of analysis of claims individually.

B. Provide the Self-Insurer's Security Fund with the actuarial report prepared for the Department of Commerce used to determine the required amount of security to be posted. The Self-Insurer's Security Fund will then apply a factor to the estimated unpaid liability in that report to estimate the present value of unpaid unlimited indemnity liabilities. The factors will be determined from time to time by the Board of Trustees.

1. For self-insurers who always selected the same one of the three retention levels, Low, High or Super, with the Workers' Compensation Reinsurance Association during the self-insurance period, the factors will be as determined by the Board of Trustees for the applicable retention level.

2. For self-insurers who have changed retentions but only infrequently, the factor to be used shall correspond to the retention which applies to at least 75% of the unpaid outstanding liabilities.
3. For self-insurers who selected the low retention and have underlying reinsurance or to whom paragraphs B.1. or B.2. herein do not apply, the factors above will be adjusted accordingly.

Article 10. Excess Posted Security.

- A. In the event that an insolvent self-insurer's posted security includes excess posted security and the security is transferred and assigned by the Commissioner of Commerce to the Self-Insurers' Security Fund pursuant to Minnesota Statutes §79A.04, subd. 10, it shall be placed in the Self-Insurers' Security Fund general account.
- B. A former self-insurer or its successor in interest which claims it is entitled to its excess posted security shall purchase a workers' compensation self-insurance replacement policy pursuant to Minn. Stat. §79A.06, Subd. 5, subject also to such terms and conditions as the Self-Insurers' Security Fund Board of Trustees may impose. If this policy is purchased, with the approval of the Self-Insurers' Security Fund, the posted security which is in the possession of the Fund shall be returned to the self-insurer or its successor in interest, less any amount paid on claims, and less expenses for actuarial, legal, third party administration and other expenses which are directly attributable to the former self-insurer. Any investment return on the posted security, including excess posted security, shall be retained by the Self-Insurers' Security Fund.
- C. If the former self-insurer does not purchase a workers' compensation self-insurance replacement policy pursuant to Minn. Stat. §79A.06, Subd. 5, then the Self-Insurers' Security Fund shall retain all right to, title to and interest in all posted security, including excess posted security, of the former self-insurer. If any excess posted security exists, the Board shall, at least annually, consider returning all or part thereof.

SISF\Plan of Operations(1-25-02)