

3-29-2012

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Georgia State University Law Review

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Recommended Citation

Georgia State University Law Review (1996) "LABOR AND INDUSTRIAL RELATIONS Workers' Compensation: Alter Determination of Experience Modifiers; Change Provisions Relating to Admission and Termination of Members of a Self-Insurance Fund; Revise Provisions Relating to Maintenance of Loss Reserves," *Georgia State University Law Review*: Vol. 13: Iss. 1, Article 48. Available at: <http://scholarworks.gsu.edu/gsulr/vol13/iss1/48>

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LABOR AND INDUSTRIAL RELATIONS

Workers' Compensation: Alter Determination of Experience Modifiers; Change Provisions Relating to Admission and Termination of Members of a Self-Insurance Fund; Revise Provisions Relating to Maintenance of Loss Reserves

CODE SECTIONS: O.C.G.A. §§ 33-23-102 (amended), 34-9-138 (new), -152, -155 to -156, -163 to -164, -167 (amended)

BILL NUMBER: HB 106

ACT NUMBER: 907

GEORGIA LAWS: 1996 Ga. Laws 919

SUMMARY: The Act amends several sections of the Workers' Compensation Code. The Act provides for the inclusion of a formerly self-insured employer's experience in determining an experience modifier and requires the prior self-insurance fund to release data for the replacement insurer to determine the proper experience modifier. The Act allows fund trustees, officers, or administrators to solicit membership. The Act also changes provisions relating to maintenance of loss reserves, and payment of operating expenses by fund members. The Act requires a fidelity bond for an applicant for a fund administrator's license.

EFFECTIVE DATE: April 15, 1996¹

History

As introduced in 1995, HB 106 provided workers' compensation coverage to Olympic and Paralympic Volunteers.² The Georgia General Assembly enacted a similar Senate version of the legislation in 1995.³ HB 106 had already passed the House in 1995, and remained in the Senate until late in the 1996 legislative session when representatives of

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1. The Act became effective upon approval by the Governor.
 2. HB 106, as introduced, 1995 Ga. Gen. Assem.; *see also* Telephone Interview with Rep. Bob Lane, House District No. 146 (May 7, 1996) [hereinafter Lane Interview]. Representative Lane is the Chairman of the House Industrial Relations Committee and the primary sponsor of HB 106. *Id.*
 3. 1995 Ga. Laws 852, § 1, at 852-53 (codified at O.C.G.A. § 34-9-2.4 (Supp. 1996)); Lane Interview, *supra* note 2.

the Georgia Home Builders Association (GHBA), the Georgia Automobile Dealers Association (GADA), and the State Insurance Commission (the Commission) used the bill as a "rider" for the Act.⁴ The original language regarding Olympic and Paralympic volunteers was replaced with the text of the Act to expedite consideration and passage by the General Assembly.⁵

The GHBA, GADA, and the Commission intended to clarify the legislation in this area and level the playing field among insurers that pay claims quickly and those that procrastinate.⁶ Therefore, adjustment in the computation of loss reserves was necessary.⁷ Furthermore, the Commission wanted to ensure that employers who left a self-insurance fund would have the necessary records for the computation of experience modifiers forwarded to the new insurer.⁸ This was necessary because some carriers were offering an experienced employer a policy with an experience modifier of 1.00 in order to attract business.⁹ The Commission considered this activity to be unfair competition, and an important goal of the Act was to prevent this type of solicitation.¹⁰

HB 106 addressed these concerns and several other Code sections related to the formation and maintenance of workers' compensation funds.¹¹

HB 106

Experience Modifiers

The Act adds Code section 34-9-138, which requires workers' compensation insurance providers to include a formerly self-insured employer's experience while in a self-insurance fund in the determination of an employer's experience modifier.¹² Under the system, an employer without experience begins with an experience modifier of 1.00.¹³ This modifier is adjusted according to the number

4. Lane Interview, *supra* note 2.

5. Compare HB 106, as introduced, 1995 Ga. Gen. Assem. with 1996 Ga. Laws 919. Lane Interview, *supra* note 2.

6. Telephone Interview with Dan Champlin, Legislative Liaison, Georgia State Insurance Commission (May 6, 1996) [hereinafter Champlin Interview].

7. *Id.*

8. *Id.* For a definition of "experience modifiers," see *infra* note 12.

9. *Id.*

10. *Id.*

11. *Id.*

12. O.C.G.A. § 34-9-138 (Supp. 1996). An experience modifier consists of the prior claims filed and the severity of the injuries under the claims, which determines the risk involved in providing workers' compensation coverage. Champlin Interview, *supra* note 6.

13. Champlin Interview, *supra* note 6.

and type of claims filed against the employer.¹⁴ Because the new Code section 34-9-138 requires use of an employer's prior experience in determining an experience modifier, the Act also amends Code section 34-9-156.¹⁵ The amended Code section requires that data necessary for the determination of an experience modifier be provided to the former member of a self-insurance fund for use by the replacement workers' compensation insurer.¹⁶ Recomputation of an employer's experience modifier is required whether termination from a self-insurance fund is voluntary or not.¹⁷ These changes were made to prevent unfair competition among insurance carriers.¹⁸

Solicitation of Group Self-Insurance Fund Members

The Act amends Code section 34-9-155 and allows "a trustee, officer or administrator" of a group self-insurance fund to solicit members for the fund.¹⁹ Prior to the Act, only persons with a valid agent's license for property and casualty insurance, and officers, directors, or employees of a professional or trade association, public utility or federal government subdivision could solicit membership in a fund.²⁰ The Commission could not find a cognizable reason to prevent trustees, officers, or administrators from soliciting members; therefore, the General Assembly enacted the amendment to the provision.²¹

Maintenance of Loss Reserves

A loss reserve is set up to estimate, as accurately as possible, the current value of future payments owed by a workers' compensation insurance fund.²² When a covered employee is injured, the insurance company attempts to estimate from experience the total cost of the claim, and once the cost is calculated, establish a reserve in that amount.²³ Establishment of loss reserves allows a clear determination of an insurer's financial position.²⁴ The insurance company adjusts the

14. *Id.*

15. O.C.G.A. § 34-9-156(d) (Supp. 1996).

16. *Id.* Prior to the Act, a terminated member carried its existing experience modifier as determined by the self-insurance fund to the replacement provider. 1995 Ga. Laws 1201, § 6, at 1210-11 (formerly found at O.C.G.A. § 34-9-156(d) (Supp. 1995)).

17. O.C.G.A. § 34-9-156(d) (Supp. 1996).

18. Champlin Interview, *supra* note 6.

19. O.C.G.A. § 34-9-155(a) (Supp. 1996).

20. 1993 Ga. Laws 1365, § 3, at 1367 (formerly found at O.C.G.A. § 34-9-155(a)(1) to (2) (Supp. 1995)).

21. Champlin Interview, *supra* note 6.

22. *Id.*

23. *Id.*

24. *Id.*

reserve as it determines the actual cost of treatment and lost work days.²⁵ Because self-insurance group funds are a relatively new form of insurance, the amount of necessary loss reserves cannot be accurately determined, and adjustments in the statutory system are required as insurers and the Commission gain experience in the field.²⁶

The Act increases the statutory percentage of premiums received in the three preceding years that must be placed in loss reserves from forty to forty-five percent.²⁷ However, an insurer may deduct "all loss and loss expense payments made in connection with the claims under policies written in [the three previous] years."²⁸ Overall, the Act is expected to be effectively neutral since insurers who pay claims quickly will be allowed to deduct the amount paid from their loss reserve while slower paying insurers will maintain higher reserves because of an inability to deduct unmade payments.²⁹ Typically, funds that were efficient and faster in paying their claims were found to be over-reserved, and slower paying funds were under-reserved.³⁰ The Act should bring the disparity into balance.³¹

Payment of Expenses and Premiums

The Act amends Code section 34-9-164, which relates to the payment of operating expenses by fund members.³² The Act clarifies that only the board or the actual administrator of a fund may determine a member's projected share of "workers' compensation liability, administrative expenses, and other costs incurred by the fund."³³ Under the prior law, an administrator of one fund could have determined the expenses for another fund; however, the General Assembly never intended this result.³⁴

The Act further amends Code section 34-9-164, by removing the requirement that "no member of a fund [could] be charged a basic rate which is in excess of 108 percent of the basic rate charged to any other member of the fund."³⁵ This requirement was in the original workers' compensation statute and was intended to provide rate stability while

25. *Id.*

26. *Id.*

27. Compare 1995 Ga. Laws 1201, § 12, at 1214 (formerly found at O.C.G.A. § 34-9-163(b)(2) (Supp. 1995)) with O.C.G.A. § 34-9-163(b)(2) (Supp. 1996).

28. O.C.G.A. § 34-9-163(b)(2) (Supp. 1996).

29. Champlin Interview, *supra* note 6.

30. *Id.*

31. *Id.*

32. O.C.G.A. § 34-9-164(a) (Supp. 1996).

33. *Id.*

34. Champlin Interview, *supra* note 6.

35. 1980 Ga. Laws 1686, § 1, at 1699 (formerly found at O.C.G.A. § 34-9-164(a) (Supp. 1995)).

the funds were new.³⁶ With the current financial and rate-making requirements, the requirement was no longer needed; therefore, the General Assembly deleted it.³⁷

The Act further amends this section by allowing premium payment plans developed by a fund's board and requiring that such plans be "submitted to and approved by the [State Insurance] Commissioner."³⁸ The interstate agreements of most funds refer to a payment plan set forth by the board of trustees; therefore, the General Assembly amended the law to correspond with those interstate agreements and require payment plan approval by the Commissioner.³⁹

Fees and Bond Requirements

The Act amends Code section 34-9-152 and requires that Code section 33-8-1 determine the fee for a certificate of authority to create a group self-insurance fund.⁴⁰ Prior to the Act, a filing fee of three-hundred dollars was required with each application.⁴¹ This change was enacted to remove all fee amounts from title 34 of the Code and move them into title 33, which deals with insurance.⁴² For the same reason, Code section 34-9-167 is amended to require that a fund administrator "maintain a fidelity bond pursuant to Code section 33-23-102."⁴³ Prior to the Act, the Commissioner determined the amount of the bond,⁴⁴ but because these funds are so similar to other types of insurance plans, the bond requirements are now uniform.⁴⁵

Code section 33-23-102, as amended, requires applicants for an insurance administrator's license to maintain a "fidelity" bond.⁴⁶ Prior to the Act, no specific type of bond was required, and several insurers attempted to file a surety bond with the Commissioner.⁴⁷ Because the Commission considers a surety bond inappropriate to secure a third

36. Champlin Interview, *supra* note 6.

37. *Id.*

38. O.C.G.A. § 34-9-164(a) (Supp. 1996).

39. Champlin Interview, *supra* note 6.

40. O.C.G.A. § 34-9-152(d) (Supp. 1996); *see* 1992 Ga. Laws 2725, § 11, at 2736 (codified at O.C.G.A. § 33-8-1(1)(CC) (Supp. 1996)).

41. 1995 Ga. Laws 1201, § 3, at 1207 (formerly found at O.C.G.A. § 34-9-152(d) (Supp. 1995)).

42. Telephone Interview with Erv Goodroe, Georgia Home Builders Association (May 8, 1996) [hereinafter Goodroe Interview].

43. O.C.G.A. § 34-9-167(a) (Supp. 1996); *see also* Goodroe Interview, *supra* note 42.

44. 1981 Ga. Laws 1759, § 1, at 1774 (formerly found at O.C.G.A. § 34-9-167(a) (1992)).

45. Champlin Interview, *supra* note 6.

46. O.C.G.A. § 33-23-102(a) (1996).

47. Champlin Interview, *supra* note 6.

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party's funds, the Act amended the law to prevent the use of such bonds.⁴⁸

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48. *Id.* A fidelity bond covers employer-business loss due to embezzlement, larceny or gross negligence by an employee. BLACK'S LAW DICTIONARY 179 (6th ed. 1990). A surety bond is an instrument that binds the surety in an agreement between the surety, principal and obligee, if the principal defaults. *Id.* at 181.