

1 AN ACT concerning group workers' compensation pools.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Illinois Insurance Code is amended by  
5 changing Sections 107a.14 and 107a.15 and adding Sections  
6 107a.16, 107a.17, 107a.18, and 107a.19 as follows:

7 (215 ILCS 5/107a.14)

8 Sec. 107a.14. Group workers' compensation pools  
9 assessment provisions.

10 (a) When the Director determines by means of audit,  
11 annual certified statement, actuarial opinion, or otherwise  
12 that the assets possessed by a pool are less than the  
13 reserves required together with any other unpaid liabilities,  
14 he or she shall order the pool trustees to assess the  
15 individual pool participants in an amount not less than  
16 necessary to correct the deficiency. This Section is not  
17 intended to restrict or preclude the trustees from time to  
18 time levying assessments or increasing premium deposits in  
19 accordance with the pooling agreement.

20 (b) When the Director determines that the compensation  
21 and medical services provided pursuant to this Article may be  
22 unpaid by reason of the default of an insolvent qualified  
23 group workers' compensation pool and the penal sum of the  
24 fidelity bond and the securities provided by the qualified  
25 group workers' compensation pool are about to become  
26 exhausted, the Director shall declare the qualified group  
27 workers' compensation pool to be in default and first levy  
28 upon and collect from the individual employer members of the  
29 qualified group workers' compensation pool in default an  
30 assessment to assure prompt payment of compensation and  
31 medical services. No assessment of any individual employer

1 member of the qualified group workers' compensation pool made  
2 pursuant to this subsection shall exceed 25% of the average  
3 annual contribution paid by that employer over the previous  
4 3-year period; however, if the Group Workers' Compensation  
5 Pool Insolvency Fund is then for any reason financially  
6 unable to assure prompt payment of compensation and medical  
7 services, the employer member may be assessed without  
8 limitation. If and only if (i) the Group Workers'  
9 Compensation Pool Insolvency Fund has a positive balance of  
10 less than \$1,000,000, (ii) the Director has declared a  
11 qualified group workers' compensation pool to be in default,  
12 and (iii) the Group Workers' Compensation Pool Insolvency  
13 Fund is financially unable to pay all employees whose  
14 compensation and medical services have been approved, the  
15 Director shall levy upon and collect from all qualified  
16 group workers' compensation pools an assessment to provide  
17 the balance necessary to assure prompt payment of approved  
18 compensation and medical services. If an insurance carrier  
19 becomes liable for workers' compensation and occupational  
20 diseases payments under the terms of the policy covering the  
21 qualified group workers' compensation pool, the carrier shall  
22 make appropriate payments and payments from the Fund shall  
23 cease. Payments from the Fund shall resume only when the  
24 insurance carrier's liability is exhausted.

25 (c) An order of the Director to a qualified group  
26 workers' compensation pool to levy an assessment against its  
27 members, a notice of assessment declared by the Director and  
28 levied upon a individual employer member of the qualified  
29 group workers' compensation pool, and a notice of assessment  
30 declared by the Director and levied upon a qualified group  
31 workers' compensation pool under this Section shall be prima  
32 facie correct and shall be prima facie evidence of the  
33 correctness of the amount of assessment due, as shown in the  
34 order or notice.

1       (d) Proof of an order, notice, assessment, or levy  
2 amount by the Director may be made at a hearing before the  
3 Department and in a legal proceeding by a reproduced copy or  
4 computer print-out of the Department's record relating  
5 thereto in the name of the Department under the certificate  
6 of the Director. If reproduced copies of the Department's  
7 records are offered as proof of an order, notice, assessment,  
8 or levy amount, the Director must certify that those copies  
9 are true and exact copies of records on file with the  
10 Department. If computer print-outs of the Department's  
11 records are offered as proof of an order, notice, assessment,  
12 or levy amount, the Director must certify that those computer  
13 print-outs are true and exact representations of records  
14 properly entered into standard electronic computing equipment  
15 in the regular course of the Department's business, at or  
16 reasonably near the time of the occurrence of the facts  
17 recorded, from trustworthy and reliable information. A  
18 certified, reproduced copy or certified computer print-out  
19 shall, without further proof, be admitted into evidence  
20 before the Department and in any legal proceeding and shall  
21 be prima facie proof of the correctness of the amount of  
22 assessment due, as shown in the copy or computer print-out.

23       (e) When a notice of assessment or an order for  
24 assessment is required by this Section, the notice or order  
25 may be given by United States registered or certified  
26 mail addressed to the person concerned at his or her last  
27 known address, and proof of such mailing shall be sufficient  
28 for the purposes of this Article. Notice of a hearing  
29 provided for by this Article shall be given not less than 7  
30 days before the day fixed for the hearing. Except for the  
31 initial contact of a person represented by an attorney, the  
32 Department may not contact that person, but shall contact  
33 only the attorney representing the person.

34       (Source: P.A. 91-757, eff. 1-1-01.)

1 (215 ILCS 5/107a.15)

2 Sec. 107a.15. Authority of Director.

3 (a) If the Director determines that a group workers'  
4 compensation pool is not in compliance with this Article, the  
5 Director shall require the pool to eliminate the condition  
6 causing the noncompliance within a specified time from the  
7 date the notice of the Director's requirement is mailed or  
8 delivered to the pool.

9 (b) If a pool fails to comply with the Director's  
10 requirement, the pool shall be deemed to be in a hazardous  
11 financial condition, and the Director may take one or more of  
12 the actions authorized by law as to pools in hazardous  
13 financial condition.

14 (c) The Department is authorized to make, promulgate,  
15 and enforce such reasonable rules relating to the  
16 administration and enforcement of the provisions of this  
17 Article as may be deemed expedient.

18 (Source: P.A. 91-757, eff. 1-1-01.)

19 (215 ILCS 5/107a.16 new)

20 Sec. 107a.16. Administrative proceedings.

21 (a) If an individual employer member of a qualified  
22 group workers' compensation pool or a qualified group  
23 workers' compensation pool, or the legal representative of  
24 either, files objections to an order for assessment or an  
25 assessment notice issued under Section 107a.14 within 30 days  
26 after issuance and requests a hearing, the Department shall  
27 give notice of the hearing to the person or the person's  
28 legal representative. The Department shall hold a hearing in  
29 accordance with this Article and shall issue a final  
30 assessment under Section 107a.14 to the person or to the  
31 person's legal representative for the amount found to be due  
32 or issue a final order under Section 107a.14 to levy an  
33 assessment directed to a qualified group workers'

1 compensation pool.

2 (b) If an objection to an order or notice of assessment  
3 and a request for a hearing is not filed within 30 days after  
4 the notice or order is issued, the order or notice of  
5 assessment shall be deemed to be a final assessment or final  
6 order under this Article.

7 (c) After the issuance of a final assessment or order or  
8 an order or notice of assessment that becomes final under  
9 subsection (b) and at any time before the assessment is  
10 reduced to judgment, the Department may, for good cause  
11 shown, grant a rehearing (or grant Departmental review and  
12 hold a hearing if no hearing in the matter has been held)  
13 upon the application of the person aggrieved. Pursuant to  
14 the hearing or rehearing, the Department shall issue a  
15 revised final order to levy an assessment or a revised final  
16 assessment to the person or the person's legal representative  
17 for the amount found to be due.

18 (d) The time limitation period on the Department's right  
19 to issue a notice of assessment shall not run during any  
20 period of time during which the order of any court has the  
21 effect of enjoining or restraining the Department from  
22 issuing the notice of assessment.

23 (e) The time within which a court action is to be  
24 commenced by the Director under this Article shall not run  
25 from the date the individual employer member of the qualified  
26 group workers' compensation pool files a petition in  
27 bankruptcy under the Federal Bankruptcy Act until 30 days  
28 after notice of termination or expiration of the automatic  
29 stay imposed by the Federal Bankruptcy Act.

30 (f) In addition to any other remedy provided by this  
31 Article, and regardless of whether the Department is making  
32 or intends to make use of such other remedy, when a  
33 corporation or limited liability company violates the  
34 provisions of this Article or of any rule promulgated under

1 this Article, the Department may give notice to the Attorney  
2 General of the identity of that corporation or limited  
3 liability company and of the violations committed by that  
4 corporation or limited liability company, for such action as  
5 is not already provided for by this Article and as the  
6 Attorney General may deem appropriate.

7 (g) If the Department determines that an amount of  
8 assessment or penalty or interest was incorrectly assessed,  
9 whether as the result of a mistake of fact or an error of  
10 law, the Department shall waive the amount of assessment or  
11 penalty or interest that accrued due to the incorrect  
12 assessment.

13 (h) Unless the parties consent to alternative venue, all  
14 administrative hearings provided for in this Article with  
15 respect to or concerning a person having its principal place  
16 of business in this State other than in Cook County shall be  
17 held at the Department's office nearest to the location of  
18 the person's principal place of business. If the person's  
19 principal place of business is in Cook County, the hearing  
20 shall be held in Cook County. If the person does not have a  
21 principal place of business in this State, the hearing shall  
22 be held in Sangamon County or Cook County, at the sole  
23 discretion of the Department.

24 (i) The circuit court of the county wherein the person's  
25 principal place of business is located, or of Sangamon County  
26 or Cook County in those cases where the person does not have  
27 a principal place of business in this State, shall have power  
28 to review all final administrative decisions of the  
29 Department in administering the provisions of this Article.  
30 If the proceeding that is to be heard involves a claim for  
31 refund in accordance with Section 2a of the State Officers  
32 and Employees Money Disposition Act, however, the circuit  
33 court having jurisdiction of the action for judicial review  
34 under this Section and under the Administrative Review Law

1 shall be the same court that entered the temporary  
2 restraining order or preliminary injunction authorized under  
3 Section 2a of that Act.

4 (j) The provisions of the Administrative Review Law and  
5 the rules adopted pursuant to that law shall apply to and  
6 govern all proceedings for the judicial review of final  
7 administrative decisions of the Department under this  
8 Article. The term "administrative decision" is defined as in  
9 Section 3-101 of the Code of Civil Procedure.

10 (k) Within 20 days after filing an action under the  
11 administrative Review Law to review a final assessment or  
12 revised final assessment issued by the Department under this  
13 Article, the person filing the action shall file a bond with  
14 good and sufficient surety or sureties residing in this State  
15 or licensed to do business in this State or, instead of a  
16 bond, obtain an order from the court imposing a lien upon the  
17 person's property. A lien imposed by a court in lieu of a  
18 bond does not apply to the real property of a corporate  
19 surety licensed to do business in this State.

20 The court shall set the bond in an amount not less than  
21 the amount of the assessment and any penalty the Department  
22 claims is owed in its final assessment or revised final  
23 assessment, plus the amount of interest owed at the time the  
24 Department issued its final assessment.

25 The bond shall be payable to the Department and  
26 conditioned upon payment, within 30 days after termination of  
27 the proceedings for judicial review, of the amount of  
28 assessment and any penalty and interest found by the court to  
29 be due.

30 From the time the bond is filed and approved until 2  
31 years after termination of the proceeding for judicial review  
32 for which the bond is filed, the bond shall be a lien against  
33 the real estate situated in the county in which the bond is  
34 filed of the person filing the bond and of the sureties on

1 the bond until the conditions of the bond are complied with  
2 or until the bond is cancelled.

3 If the person filing the bond fails to comply with the  
4 bond, the bond shall be forfeited, and the Director may  
5 institute an action upon the bond in his or her own name and  
6 official capacity for the entire amount of the bond and  
7 costs. Action upon the bond shall be in addition to other  
8 remedies provided in this Article. If the person filing the  
9 bond complies with the bond or if the court determines that  
10 no amount of assessment, penalty, or interest is due, the  
11 bond shall be canceled.

12 If the court finds that the person cannot procure and  
13 furnish a satisfactory surety or sureties for the kind of  
14 bond required, the court may relieve the person of the  
15 obligation of filing a bond if, upon the timely application  
16 for a lien in lieu of a bond and adequate proof, the court is  
17 satisfied that the lien imposed would operate to secure the  
18 assessment in the manner and to the degree as would a bond.  
19 Upon a finding that a lien applied for would secure the  
20 assessment at issue, the court shall enter an order, in lieu  
21 of a bond, subjecting the person's real and personal property  
22 (including subsequently acquired property), situated in the  
23 county in which the order is entered, to a lien in favor of  
24 the Department. The lien shall be for the amount of the  
25 assessment and penalty the Department claims is owed in its  
26 final assessment or revised final assessment, plus the amount  
27 of interest owed at the time the Department issued its final  
28 assessment. The lien shall continue in full force and effect  
29 until the termination of the proceedings for judicial review  
30 or until the person pays to the Department the assessment and  
31 penalty and interest secured by the lien, whichever happens  
32 first. In its discretion, the court may impose a lien  
33 regardless of the ratio of the person's assets to the final  
34 assessment or revised final assessment plus the amount of the



1 interest and penalty. Nothing in this Section shall be  
2 construed to give the Director a preference over the rights  
3 of any bona fide purchaser, mortgagee, judgment creditor, or  
4 other lien holder arising prior to the entry of the order  
5 creating the lien in favor of the Department.

6 The word "bona fide", as used in this Section, does not  
7 include any mortgage of real or personal property or any  
8 other credit transaction that results in the mortgagee or  
9 the holder of the security acting as trustee for unsecured  
10 creditors of the person named in the order for lien who  
11 executed the chattel or real property mortgage or the  
12 document evidencing the credit transaction.

13 The lien shall be inferior to any lien for general taxes,  
14 special assessments, and special taxes levied at any time by  
15 any political subdivision of this State.

16 The lien shall not be effective against any purchaser  
17 with respect to any item in a retailer's stock in trade  
18 purchased from the retailer in the usual course of the  
19 retailer's business, and the lien shall not be enforced  
20 against the household effects, wearing apparel, or the books,  
21 tools, or implements of a trade or profession kept for use by  
22 any person. The lien shall not be effective against real  
23 property whose title is registered under the provisions of  
24 the Registered Titles (Torrens) Act until the provisions of  
25 Section 85 of that Act are complied with.

26 If the person filing the complaint fails to comply with  
27 the bond requirements of this subsection within 20 days after  
28 filing the action under the Administrative Review Law, the  
29 Department shall file a motion to dismiss, and the court  
30 shall dismiss, the action unless the person filing the action  
31 complies with the bond requirements within 30 days after the  
32 Department files the motion to dismiss.

33 Upon dismissal of any complaint for failure to comply  
34 with the jurisdictional prerequisites of this Article, the

1 court shall enter judgment against the person and in favor of  
2 the Department in the amount of the final assessment or  
3 revised final assessment, together with any interest that may  
4 have accrued since the Department issued the final assessment  
5 or revised final assessment and costs.

6 (l) Service upon the Director of summons issued in an  
7 action to review a final administrative decision shall be  
8 service upon the Department. The Department shall certify  
9 the record of its proceedings if the person pays to it the  
10 sum of \$0.75 per page of testimony taken before the  
11 Department and \$0.25 per page of all other matters contained  
12 in the record, except that these charges may be waived when  
13 the Department is satisfied that the aggrieved party is a  
14 poor person who cannot afford to pay the charges. If payment  
15 for the record is not made by the person within 30 days after  
16 notice from the Department or the Attorney General of the  
17 cost of the record, the court in which the proceeding is  
18 pending, on motion of the Department, shall dismiss the  
19 complaint and, when the administrative decision as to which  
20 the action for judicial review was filed is a final  
21 assessment or revised final assessment, enter judgment  
22 against the person and in favor of the Department for the  
23 amount of assessment and penalty shown by the Department's  
24 final assessment or revised final assessment to be due, plus  
25 interest as provided in Section 107a.18 from the date the  
26 liability upon which the interest accrued became delinquent  
27 until the entry of the judgment in the action for judicial  
28 review under the Administrative Review Law and costs.

29 (m) When a proceeding authorized by this Article is  
30 begun before the Department, either by the Department or by a  
31 person subject to this Article, and the person thereafter  
32 dies or becomes a person under legal disability before the  
33 proceeding is concluded, the legal representative of the  
34 deceased or person under legal disability shall notify the

1 Department of the death or legal disability. The legal  
2 representative, as such, shall then be substituted by the  
3 Department for such person. If the legal representative fails  
4 to notify the Department of his or her appointment as legal  
5 representative, the Department may, upon its own motion,  
6 substitute the legal representative in the proceeding pending  
7 before the Department for the person who died or became a  
8 person under legal disability.

9 (215 ILCS 5/107a.17 new)

10 Sec. 107a.17. Enforcement. If, within 35 days after the  
11 issuance of a notice of assessment by the Director, an  
12 individual employer member of a defaulting qualified group  
13 workers' compensation pool or any qualified group workers'  
14 compensation pool fails to make payment of the assessment  
15 levied against it, or to make arrangements acceptable to the  
16 Director to secure the payment of the assessment levied  
17 against it by the Director under subsection (b) Section  
18 107a.14, the Director, as receiver of any delinquent  
19 qualified group workers' compensation pool to which the  
20 assessment relates, as legal representative of the Group  
21 Workers' Compensation Pool Insolvency Fund, or in both of  
22 those capacities, may bring suit to recover the amount of the  
23 assessment, penalty, or interest and, if the defaulting party  
24 has died or come under legal disability, file a claim  
25 therefor against its estate. No suit with respect to an  
26 assessment, penalty, or interest may be instituted more than  
27 2 years after the date any proceedings in court for review  
28 have terminated or the time for taking review has expired,  
29 except with the consent of the person from whom the  
30 assessment, penalty, or interest is due. The time limitation  
31 period on the Director's right to bring suit under this  
32 Section shall not run during any period of time during  
33 which the order of any court has the effect of enjoining or

1 restraining the Director from bringing the suit.

2 After the time within which an action may be filed for  
3 judicial review under the Administrative Review Law expires  
4 without an action being filed, a certified copy of the final  
5 assessment of the Director may be filed with the circuit  
6 court of the county in which the individual employer member  
7 or qualified group workers' compensation pool has its  
8 principal place of business or with the Circuit Court of Cook  
9 County or Sangamon County in those cases in which the  
10 individual employer member or qualified group workers'  
11 compensation pool does not have its principal place of  
12 business in this State. The certified copy of the final  
13 assessment must be accompanied by a certification that  
14 recites facts that are sufficient to show that the Director  
15 complied with the jurisdictional requirements of this Article  
16 in arriving at the final assessment and that the individual  
17 employer member or qualified group workers' compensation pool  
18 had the opportunity for an administrative hearing and for  
19 judicial review. If the court is satisfied that the Director  
20 complied with the jurisdictional requirements of this Article  
21 in arriving at the final assessment or the revised final  
22 assessment and that the individual employer member or  
23 qualified group workers' compensation pool had its  
24 opportunity for an administrative hearing and for judicial  
25 review, the court shall enter judgment in favor of the  
26 Director and against the individual employer member or  
27 qualified group workers' compensation pool for the amount  
28 shown to be due by the final assessment, plus any interest  
29 that may be due. The judgment shall be entered in the  
30 judgment docket of the court. The judgment shall bear  
31 interest at the rate set by the Uniform Penalty and Interest  
32 Act, but otherwise shall have the same effect as other  
33 judgments. The judgment may be enforced, and all laws  
34 applicable to sales for the enforcement of a judgment shall

1 be applicable. The Department shall file the certified copy  
2 of its assessment with the circuit court within 2 years after  
3 the assessment becomes final except when the individual  
4 employer member or qualified group workers' compensation pool  
5 consents in writing to an extension of the filing period.  
6 The time limitation period on the Director's right to file  
7 the certified copy of the assessment with the circuit court  
8 shall not run during any period of time during which the  
9 order of any court has the effect of enjoining or restraining  
10 the Director from filing the certified copy of the assessment  
11 with the circuit court.

12 (215 ILCS 5/107a.18 new)

13 Sec. 107a.18. Penalties and interest. The Director may  
14 order and assess penalties, at the rate provided by Section  
15 412(3)(a) of the Illinois Insurance Code, against any  
16 individual employer member or qualified group workers'  
17 compensation pool that fails to pay its assessment when due,  
18 whenever it is shown, after notice and an opportunity for  
19 hearing, that the failure pay under this Article on the date  
20 prescribed for payment (including any extensions of time)  
21 is intentional or fraudulent; however, no penalty or interest  
22 shall be assessed more than 2 years immediately following the  
23 failure to pay on the prescribed date. In addition, any  
24 amount of assessment that is not paid when due shall bear  
25 interest at the rate and in the manner specified in Sections  
26 3-2 and 3-9 of the Uniform Penalty and Interest Act from the  
27 date the assessment becomes past due until the assessment is  
28 paid or a judgment is obtained by the Director.

29 (215 ILCS 5/107a.19 new)

30 Sec. 107a.19. Applicability. The changes made by this  
31 amendatory Act of the 92nd General Assembly apply to all  
32 actions pending on or after January 1, 2001, concerning the

1 enforcement of any assessment, final assessment, or revised  
2 final assessment issued by the Department. The provisions for  
3 administrative hearing remedies under this amendatory Act of  
4 the 92nd General Assembly do not apply to any action  
5 concerning the enforcement of an order for assessment issued  
6 by the Director, unless the order is issued under subsection  
7 (a) of Section 107a.14 on or after the effective date of this  
8 amendatory Act.

9       Section 99. Effective date. This Act takes effect upon  
10 becoming law.