

STATE WORKERS' COMPENSATION FUNDS – SUMMARY OF KEY PROVISIONS

State Fund (Year of Creation)	Serves as Residual Market	Coverage Available (See Key at bottom of page)	Authorized to Write Longshore and Black Lung	Regulated on same basis as Private Market by Insurance Department	Member of Guaranty Fund	Participates In Rating/ Advisory Organization	Adheres to Industry Rate- making System	Authorized To Impose Surcharge	Method of Board Selection	Tax Liability: Pays Federal Tax/ Subject to Premium Taxes and Assessments
Arizona 1925	<u>Yes</u> ¹	2	Yes	<u>No</u> ²	<u>No</u> ³	Yes	Yes	No	Governor	No/Yes
California 1913	Yes	2	Yes	<u>No</u> ⁴	Yes	Yes	Yes	No	Governor	No/Yes
Colorado 1915	Yes	1	No	<u>No</u> ⁵	No	Yes	Yes	No	Governor	No/No
Hawaii 1997	Yes	1	Yes	No	<u>Yes</u> ⁶	Yes	Yes	Yes	<u>Policyholders</u> ⁷	No/No
Idaho 1917	No	1	Yes	Yes	No	Yes	Yes	No	Governor	No/Yes
Kentucky 1995	Yes	1	Yes	<u>Yes</u> ⁸	No	Yes	Yes	No	Governor	No/Yes
Louisiana 1991	Yes	<u>4</u> ⁹	Longshore only	<u>No</u> ¹⁰	<u>Yes</u> ¹¹	Yes	Yes	No	<u>Majority by Governor</u> ¹²	No/Yes
Maine 1992	Yes	<u>3 & 4</u> ¹³	Longshore only	No	No	Yes	Yes	No	<u>Majority by Policyholders</u>	Yes/Yes
Maryland 1914	Yes	<u>2</u> ¹⁴	No	No	<u>Yes</u> ¹⁵	No	No	No	Governor	No/No
<u>Minnesota</u> ¹⁶ 1983	No	<u>4</u> ¹⁷	No	Yes	Yes	Yes	Yes	No	Majority by Governor	Yes/Yes
Missouri 1993	<u>No</u> ¹⁸	2	Longshore only	Yes	Yes	Yes	Yes	No	<u>Majority by Governor</u> ¹⁹	<u>No</u> ²⁰ /Yes
Montana 1915	Yes	<u>1</u> ²¹	No	No	No	Yes	Yes	Yes	Governor	No/No
New Mexico 1991	No	2	No	Yes	Yes	Yes	Yes	No	Majority by Governor	Yes/Yes
New York 1914	Yes	<u>1</u> ²²	Yes	No	No	No	Yes	No	Governor	<u>No/Yes</u> ²³
Oklahoma 1933	Yes	<u>4</u> ²⁴	Yes	No	No	Yes	Yes	No	Governor	No/No
Oregon 1913	No	<u>1</u> ²⁵	Longshore only	No	No	Yes	Yes	No	Governor	No/Yes
Pennsylvania 1915	Yes	1	Yes	No	Yes	Yes	Yes	No	<u>Governor</u> ²⁶	No/Yes
Rhode Island 1992	Yes	1	Longshore only	No	No	No	Yes	No	Majority by Governor	No/No
<u>Tennessee</u> ²⁷ 1992	No	1	No	Yes	No	Not Operational	Not Operational	Yes	<u>Initial Board by Governor</u> ²⁸	No/Yes
Texas 1991	Yes	2	Yes	Yes	<u>Yes</u> ²⁹	Yes	Yes	Yes	Majority by Governor	No/Yes
Utah 1917	Yes	<u>3 & 4</u> ³⁰	No	Yes	Yes	Yes	Yes	No	Governor	No/Yes

Handwritten initials and a circled '7'.

KEY FOR COVERAGE AVAILABLE CATEGORY: 1-Writes only coverage for in-state employers for in-state operations; 2-May write coverage for employers with employees temporarily out-of-state; 3-May form or acquire subsidiary insurers to provide coverage in other states; 4-May write out-of-state operations coverage for in-state employers.

¹ In a technically legal sense, the Fund is not the market of last resort. NCCI administers a traditional assigned risk pool. However, historically the Fund has assumed the obligation *de facto* as the residual market, as the pool is extremely small (about 12 risks). The Fund's *de facto* role was memorialized in 1997, with a Board of Directors resolution committing the Fund to "provide workers' compensation insurance for the Arizona exposure of each and every employer who applies for such coverage with the Fund."

² If the DOI determines Fund is either insolvent or fails to meet risk-based capital requirements, its recourse is limited to notifying Fund's manager and board of directors, and eventually the Governor and Legislature if Fund fails to comply with recommendations for abating the determination.

³ Workers' compensation insurance is excluded from the property and casualty insurance guaranty fund, with the guaranty obligation, for insurers and self-insurers, financed through the special fund that also serves as the second injury fund (secs. 23-966; 23-1065). The State Fund is obligated to assume liability for benefit payments, where any employer or insurer fails to make such payments, with a lien against the employer's or insurer's assets to recover the cost of benefits paid. The Fund also may recover administrative costs from the special fund in connection with its payment-guaranty obligation. Thus, the State Fund effectively assumes the administrative role of a guaranty fund. The State Fund's own insolvency is not clearly contemplated. The statute requires the insurance director, upon a determination that the Fund is impaired, to impose on the Fund a remediation plan which the Fund is required to implement within 60 days. If the Fund fails to comply, the director is required to notify the governor and the legislature (Sec. 23-986).

⁴ Fund is "subject to the powers and authority of the commissioner to the same extent as any other insurer transacting workers' compensation insurance, except where specifically exempted by reference."

⁵ Chapter 351, Laws of 2003, eliminated Pinnacol's exemption with respect to the filing of rates, approval of policy forms and the ability to reduce established rates or offer rebates.

⁶ The Hawaii Employers' Mutual Insurance Company has become a member of the guaranty fund, based on its compliance with surplus requirements applicable to private insurers.

⁷ The initial board is appointed by the governor and all subsequent members are elected by policyholders.

⁸ The Kentucky Employers' Mutual Insurance Company (KEMI) is exempt from surplus requirements for the fund's first seven years of operation.

⁹ The Louisiana Workers' Compensation Corporation (LWCC) may provide out-of-state operations coverage for insureds with a Louisiana nexus. Total premium for out-of-state operations coverage may not exceed 20% of the fund's total premium. No more than 30% of the premium of any insured may be attributable to its out-of-state operations.

¹⁰ The LWCC is regulated by Insurance Department, but it is exempt from the rate approval process applicable to the private market.

¹¹ Guaranty fund exposure (and LWCC exposure for assessments) is prospective, applicable to liability arising from claims filed on or after enactment.

¹² Of twelve Board members, five are appointed by the Governor with the advice and consent of the Senate; four are elected by policyholders; and three (members of the House and Senate, and the Insurance Commissioner or a designee) serve as non-voting ex officio members.

-
- ¹³ The Maine Employers' Mutual Insurance Company (MEMIC) is licensed to write workers' compensation insurance in 41 states other than Maine.
- ¹⁴ The Maryland Injured Workers' Insurance Fund (IWIF) may also provide coverage to out-of-state employers for work within Maryland.
- ¹⁵ Fund has been approved for guaranty fund membership by a legislative audit.
- ¹⁶ Chapter 63, Laws of 2001, privatized the Fund and repealed all sections in the statute creating and authorizing the Fund. The new law provides that notwithstanding the repealed statutory provisions, the Fund "may continue to operate after the effective date of this act as a corporation under Minnesota [law] and as a mutual insurance company..." Despite the apparent privatization of the Fund, Fund officials have indicated that the operations of the Fund have not changed and the State Fund Mutual Insurance Company shall continue to operate as a state fund. Accordingly, for present purposes we have continued to include the Minnesota fund in the survey.
- ¹⁷ The Minnesota fund may apply for license in any other state in order to issue "all states" coverage.
- ¹⁸ Fund guarantees a quote for coverage for any applicant employer meeting reasonable business terms and conditions deemed sufficient to meet the Code's requirements.
- ¹⁹ By statute, MEMIC's initial board of directors is to be appointed by the Governor, and subsequent selection of board members is to be by the policyholders. MEMIC has changed its bylaws so that a majority of the Board will continue to be selected by the governor.
- ²⁰ MEMIC paid federal income tax from 1994 through 1997, but has filed tax-exempt status since 1998, based upon an interpretation that exempt status pursuant to IRC 501(c)(27) does not require a state fund to be the market of last resort to the extent an applicant fails to meet "reasonable requirements." Although MEMIC is not statutorily the market of last resort, it guarantees a quote for coverage for any applicant employer meeting reasonable business terms and conditions deemed sufficient to meet the Code's requirements.
- ²¹ The Montana fund may enter into agreements with other insurers to provide coverage in other states to Montana-domiciled employers.
- ²² The New York fund also administers disability benefits fund to cover benefits for injuries not arising out of or in the course of employment. Amounts in the workers' compensation and disability funds are kept separate, but advances between the funds are permitted.
- ²³ Fund claims an exemption from requirement that it collect assessments from its policyholders to finance the funding obligations of the Special Disability Fund.
- ²⁴ By statute, the Oklahoma fund may offer medical malpractice insurance and reinsurance to health care employers.
- ²⁵ The Oregon State Accident Insurance Fund (SAIF) may provide reinsurance to Oregon employers and excess insurance to self-insured employers.
- ²⁶ The board of directors of Pennsylvania's State Workers' Insurance Fund (SWIF) consists of the Secretary of Labor & Industry, the State Treasurer and the Insurance Commissioner.
- ²⁷ The Tennessee fund is not operational. The Commissioner of Commerce and Insurance must determine annually whether membership in the assigned risk pool for the prior calendar year exceeded 15% of the eligible employer market, based on premium. Following this, the Commissioner must issue a report to the Advisory Council that recommends (i) activating the Fund, (ii) implementing a plan of direct assignment, or (iii) taking other or no action. The Advisory Council must then provide written comments to the Commissioner, who may then take such action as he deems appropriate -- though a hearing is required for options (i) and (ii).
- ²⁸ After selection by the governor of the Tennessee fund's initial board, subsequent board members are to be selected by the policyholders.

²⁹ Texas Mutual became a member of the guaranty fund based on Chapter 1126, Laws of 1999. Guaranty fund exposure (and company's exposure for assessments) is prospective, applicable to liability arising from claims filed on or after January 1, 2000.

³⁰ Chapter 33, Laws of 2001 permits the Utah fund to expand its operations to other states by allowing the fund to offer workers' compensation insurance to public and private insurers who contract with the fund's claims administration subsidiary. The fund may enter into "joint enterprises" to provide workers' compensation and property or liability coverage in Utah, so long as fund does not bear any non-workers' compensation risk, and non-workers' compensation coverage is offered as part of a program involving workers' compensation provided by the fund. The fund may offer out-of-state coverage for Utah employers.