

Central Dispatch Facility

New York Black Car Operators'

Injury Compensation Fund, Inc.

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New York State
DEPARTMENT OF STATE
Division of Licensing Services
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New York Black Car Operators' Injury Compensation Fund, Inc.

Article 6-F, Executive Law

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New York Black Car Operators' Injury Compensation Fund, Inc.

§160-cc. Definitions

As used in this article:

1. "Black car operator" means the registered owner of a for-hire vehicle, or a driver designated by such registered owner to operate the registered owner's for-hire vehicle as the registered owner's authorized designee, whose injury arose out of and in the course of providing covered services to a central dispatch facility that is a registered member of the New York Black Car Operators' Injury Compensation Fund, Inc.

2. "Board" means the Workers' Compensation Board.

3. "Central dispatch facility" means a central facility, wherever located, that

(a) dispatches the registered owners of for-hire vehicles, or drivers acting as the designated agent of such registered owners, to both pick-up and discharge passengers in the State, and

(b) has certified to the satisfaction of the Department of State that more than 90 percent of its for-hire business is on a payment basis other than direct cash payment by a passenger; provided, however, that a central dispatch facility shall not include any such central facility that owns 50 percent or more of the cars it dispatches.

4. "Covered services" means, with respect to dispatches from or by a central dispatch facility located in the State, all dispatches from such central dispatch facility regardless of where the pick-up or discharge occurs, and, with respect to dispatches from or by a central dispatch facility located outside the State, all dispatches involving a pick-up in the State, regardless of where the discharge occurs.

5. "Department" means the Department of State.

6. "Fund" means the New York Black Car Operators' Injury Compensation Fund, Inc.

7. "Fund liability date" means the earlier of:

(a) the date as of which the board first approves the Fund's application to self-insure pursuant to §160-ii(2) of this article, or

(b) the date on which coverage commences under the initial insurance policy purchased by the Fund pursuant to §160-ii(3) of this article.

8. "Local licensing authority" means the governmental agency in the State, if any, that is authorized to license a central dispatch facility.

9. "Secretary" means the Secretary of State.

§160-dd. New York Black Car Operators' Injury Compensation Fund, Inc.

There is hereby created a Not-for-Profit Corporation to be known as the New York Black Car Operators' Injury Compensation Fund, Inc. To the extent that the provisions of the Not-for-Profit Corporation Law do not conflict with the provisions of this article, or with the plan of operation established pursuant to this article, the Not-for-Profit Corporation Law shall apply to the Fund, which shall be a Type C Corporation pursuant to such law. If an applicable provision of this article or of the Fund's plan of operation relates to a matter embraced in a provision of the Not-for-Profit Corporation Law but is not in conflict therewith, both provisions shall apply. The Fund shall perform its functions in accordance with its plan of operation established and approved pursuant to §160-gg of this article and

shall exercise its powers through a board of directors established pursuant to this article.

§160-ee. Supervision of central dispatch facilities

A central dispatch facility shall, with respect to the provisions of this article, be subject to the supervision and oversight of the Department and the local licensing authority, if any, as provided in this article.

§160-ff. Management of the Fund; board of directors

1. Within 30 days of the effective date of this article, there shall be appointed a board of directors of the Fund, consisting of nine directors, five of whom shall be selected by the Black Car Assistance Corporation; three of whom shall be chosen by the Governor, including one chosen upon the recommendation of the temporary president of the senate and one chosen upon the recommendation of the Speaker of the Assembly; and one of whom shall be the Secretary, who shall serve ex officio. The initial terms of directors other than the Secretary shall be staggered, the three directors appointed by the Governor serving for initial terms of three years from the effective date of this article, three of the remaining five directors serving for initial terms of two years from the effective date of this article and two directors serving for initial terms of one year from the effective date of this article. The subsequent terms of all directors other than the Secretary shall be three years. The board shall have the power to remove for cause any director other than the Secretary.

2. The directors shall elect annually from among their number a chair and a vice chair who shall act as chair in the chair's absence.

3. For their attendance at meetings, the directors of the Fund shall be entitled to compensation, as authorized by the directors, in an amount not to exceed \$200 per meeting per director and to reimbursement of their actual and necessary expenses.

4. Directors of the Fund, except as otherwise provided by law, may engage in private or public employment or in a profession or business.

5. (a) All of the directors shall have equal voting rights and five or more directors shall constitute a quorum. The affirmative vote of five directors shall be necessary for the transaction of any business or the exercise of any power or function of the Fund.

(b) The Fund may delegate to one or more of its directors, officers, agents or employees such powers and duties as it may deem proper.

(c) A vacancy occurring in a director position for which the Governor was the original appointing authority shall be filled by the Governor, upon the recommendation of the legislative official, if any, that was authorized to recommend the original appointee pursuant to subdivision one of this section. A vacancy occurring in a director position for which the Black Car Assistance Corporation was the original appointing authority shall be filled by the Black Car Assistance Corporation. A vacancy in any one or more of the director positions shall not prevent the remaining directors from transacting any business, provided a quorum is present and voting.

(d) At the expiration of a director's term, the authority that appointed such director pursuant to subdivision one of this section or paragraph (c) of this subdivision shall re-appoint such director for an additional term or appoint a new director for such subsequent term, provided however that no individual may serve as director for more than three successive terms.

§160-gg. Plan of operation

1. Within 75 days of the effective date of this article, the Fund shall file with the Department its plan of operation, which shall be designed to assure the fair, reasonable and equitable administration of the Fund. The plan of operation and any subsequent amendments thereto shall become effective upon being filed with the Department.

2. The plan of operation shall constitute the by-laws of the Fund and shall, in addition to the requirements enumerated elsewhere in this article:

- (a) establish procedures for collecting and managing the assets of the Fund;
- (b) establish regular places and times for meetings of the Fund's board of directors;
- (c) establish the procedure by which the Fund shall determine whether to provide the benefits due pursuant to this article by self-insuring or by purchasing insurance;
- (d) establish accounting and record-keeping procedures for all financial transactions of the Fund, its agents and the board of directors;
- (e) establish a procedure for determining and collecting the appropriate amount of surcharges and assessments under this article;
- (f) set forth the procedures by which the Fund may exercise the audit rights granted to it under this article;
- (g) establish procedures to ensure prompt and accurate notification to the Fund by its members of all accidents and injuries to black car operators, and provide for full reimbursement of the Fund by any central dispatch facility whose failure to provide such notification results in the imposition of a penalty on the Fund by the board; and
- (h) contain such additional provisions as the board of the Fund may deem necessary or proper for the execution of the powers and duties of the Fund.

§160-hh. Membership in the Fund; registration with the Department

1. The membership of the Fund shall be composed of all central dispatch facilities. Each central dispatch facility shall be required, as a condition of doing business within this state, to pay the Department a \$200 annual fee for the purpose of registering as a member of the Fund and receiving a certificate of registration. Such sums shall be used by the Department for the administration of this article. The initial registration fee shall be due no later than 90 days after the effective date of this article. The Department shall have the power to assess an additional fee against each registrant in the amount necessary to provide it with sufficient funds to cover its expenses in performing its duties pursuant to this article. The Department shall provide the Fund with an updated list of registrants on a monthly basis.

2. All central dispatch facilities shall be required, as a condition of obtaining or retaining their license from the local licensing authority, if any, to

- (a) be members of the Fund;
- (b) be registered with the Department as members of the Fund; and
- (c) submit to the local licensing authority a copy of its certificate of registration as proof of such membership and registration.

3. Within 60 days of the effective date of this article, the board of the Fund shall, on the basis of information from trade papers, local licensing authorities and other sources, identify the central dispatch facilities subject to this article and, on a regular and ongoing basis, confirm that all such entities have registered in accordance with subdivision one of this section.

4. The Fund shall, within 75 days of the effective date of this article, provide to its members a copy of the proposed plan of operation filed with the Department and shall inform its members of their rights and duties pursuant to this article.

§160-ii. Securing of compensation

1. Within 210 days of the effective date of this article, the Fund shall secure the payment of workers' compensation to all black car operators entitled thereto pursuant to this chapter by either:

- (a) self-insuring in accordance with §50(3) of the Workers' Compensation Law and the rules promulgated by the board pursuant to such section or
- (b) purchasing workers' compensation insurance covering, on a blanket basis, all black car operators who are the Fund's employees pursuant to §2 of the Workers' Compensation Law.

2. If the Fund initially seeks to apply to the board for authorization to self-insure pursuant to §50(3) of the Workers' Compensation Law, it shall submit its application and accompanying proof to the board within 150 days of the effective date of this article. The board shall notify the Fund and the Secretary in writing of any change in the Fund's status as a self-insurer or of any additional requirements that the board may deem necessary for continuation of such status.

3. If the Fund chooses to secure the payment of workers' compensation pursuant to the Workers' Compensation Law by purchasing an insurance policy from the State Insurance Fund or a licensed insurer, it shall file with the Department no later than 30 days after the commencement of a new policy year a copy of the policy it has purchased. In such case, the Department shall be treated by the insurer as a certificate holder for purposes of receiving notice of cancellation of the policy.

4. No provision of this article shall be construed to alter or affect the liability under the Workers' Compensation Law of any central dispatch facility with respect to black car operators prior to the Fund liability date.

§160-jj Assessment of fund members; customer surcharges; audit powers of the Fund, the board and the Fund's insurer

1. To pay:

- (a) the costs of the insurance purchased pursuant to §160-ii(3) of this article or
- (b) the benefits due under the workers' compensation law in the event the Fund self-insures pursuant to §160-ii(2) of this article, and to pay
- (c) its expenses in carrying out its powers and duties under this article and
- (d) its liabilities, if any, pursuant to §14-A of the Workers' Compensation Law, the Fund shall ascertain by reasonable estimate the total funding necessary to carry on its operations.

2. Based upon its estimation of operating costs, the Fund shall establish a proposed uniform percentage surcharge to be added to

- (a) the invoices or billings for covered services sent to the customers of the Fund's members by a member or its agent and
- (b) the credit payments for covered services received by a member or its agent. The proposed surcharge shall become effective 30 days after being filed with the Department. Notwithstanding the foregoing, beginning on the first day of the first calendar month that shall commence at least 75 days after the effective date of this article, and until the Fund shall have filed with the Department a different surcharge amount, a three percent surcharge

shall be added to every invoice or billing for covered services sent by a member or its agent to, and every credit payment for covered services received by a member or its agent from, the customers of the Fund's members. Each member of the Fund shall be liable for payment to the Fund of an amount equal to the product of

(i) the percentages surcharge due pursuant to this article, divided by 100 and

(ii) all payments received by the member or its agent for covered services from the member's customers, as provided in this subdivision, regardless of whether the surcharge was billed or charged.

3. No local licensing authority or the Department shall issue, continue or renew any license or registration certificate for the operation of any central dispatch facility unless such central dispatch facility, as a condition of maintaining its license and/or registration certificate, adds the surcharge required by this section to every invoice and billing for covered services sent to, and every credit payment for covered services received from, its customers and pays to the Fund no later than the 15th day of each month the total surcharges due pursuant to this article.

4. Each central dispatch facility shall submit to the Fund with its monthly payment a detailed accounting of the charge and surcharge amounts charged to and received from customers for covered services during the previous month. The first such payment and accounting shall be due on the 15th day of the month following the imposition of the surcharge pursuant to subdivision two of this section.

5. Should the Fund determine that the surcharge amounts that have been paid to it are inadequate to meet its obligations under this article, it shall determine the surcharge rate required to eliminate such deficiency and shall file such revised surcharge rate with the Department in accordance with subdivision two of this section. Commencing 30 days after such filing, the members of the Fund shall charge the revised surcharge rate and shall pay to the Fund the total amount of surcharges in accordance with this article.

6. The Fund shall have the power directly or through its agent to conduct financial audits of its members to verify their compliance with the requirements of this article. The Fund or its agent shall be afforded convenient access at all reasonable hours to all books, records and other documents of its members that may be relevant to such audits.

7. For the purposes of conducting payroll audits, an insurer providing coverage to the Fund pursuant to this article may treat the members of the Fund as policyholders. Members of the Fund shall be required to do all things required of employers pursuant to §131 of the Workers' Compensation Law, and shall be required to provide the board access to any and all records and information as otherwise required by the Workers' Compensation Law and the regulations promulgated thereunder, and shall be liable as provided in the Workers' Compensation Law for any failure so to do.

§160-kk. Financial oversight of the Fund

No later than May 1 of each year, the Fund shall submit to the Governor and Legislature certified financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant. The members of the Fund shall be required on and after January 1 of each year to afford the certified public accountant convenient access at all reasonable hours to all books, records and other documents, including but not limited to invoices and vouchers, necessary or useful in the preparation of such statements and in the verification of the monthly statements submitted to the Fund.

§160-ll. Exemption from taxes

The Fund shall be exempt from payment of all fees and taxes levied by this State or any of its subdivisions, except taxes levied on real property.

§160-mm. Liability insurance

The Fund shall purchase such insurance as is necessary to protect the Fund and any director, officer, agent or other representative from liability for their administration of the Fund, and shall, to the extent permitted by law, indemnify such directors, officers, agents or other representatives and hold them harmless from liability for their administration of the Fund.

§160-nn. Regulations

The Department shall adopt regulations implementing the provisions of this article, including the conduct and notice of hearings held pursuant to §160-oo of this article.

§160-oo. Violations; penalties; appeals

1. (a) if the Secretary believes a violation of this article by a Fund member may have occurred, the Secretary shall notify the local licensing authority of such fact and, upon notice to the Fund member, a hearing shall be held by such local licensing authority to determine whether such violation occurred. In the absence of a local licensing authority, or if the local licensing authority chooses not to hold such hearing, the hearing shall be held by the Secretary.

(b) If the Fund believes that a central dispatch facility has failed to pay the Fund the assessments due pursuant to this article, or has failed to pay the reimbursement due pursuant to §160-gg(2)(g) of this article, it shall make a referral to the a local licensing authority, or, in the absence of a local licensing authority, to the Department. Upon receipt of such a referral, the local licensing authority or the Department shall be required to hold a hearing pursuant to paragraph (a) of this subdivision.

2. Except as otherwise provided in this section, a Fund member that is found, after a hearing held pursuant to subdivision one of this section, to have violated a provision of this article, or a rule promulgated by the Department pursuant to this article, shall be liable for a fine in an amount not to exceed \$10,000 per violation. Notwithstanding the foregoing, a Fund member that fails to bill or that collects and fails to submit to the Fund the required surcharges shall be subject, in addition to payment to the Fund of the amount overdue plus interest on such amount as herein provided, to a penalty, at the discretion of the local licensing authority, if any, or, in the absence of such authority, of the Department, of

(a) up to \$5,000 for each 20 days the payment is overdue, or
(b) revocation of its membership in the Fund and of its certificate of registration, or

(c) both a monetary penalty and revocation of its membership in the Fund and of its certificate of registration. The rate of interest applicable pursuant to this section shall be 12 percent per annum. Any monetary penalty imposed pursuant to this subdivision shall be retained by the Department or the local licensing authority and be used to defray the costs of administering this article. The responsible persons, of a central dispatch facility that are found, after a hearing held pursuant to subdivision one of this section, to be in default to the Fund for assessments owed pursuant to this article, shall be personally liable for the amount of such assessments determined to be then due and outstanding, including interest on such assessments awarded pursuant to this subdivision, and for all monetary penalties imposed pursuant to

this subdivision. "Responsible persons," for purposes of this subdivision, include:

(i) the directors of a central dispatch facility that is a corporation;

(ii) the managers of a central dispatch facility that is a limited liability company or its members if management of the central dispatch facility is vested in its members;

(iii) the general partner or partners of a central dispatch facility that is a partnership;

(iv) all individuals who directly or indirectly own, control or hold the power to vote ten percent or more of the voting interests of any corporation, joint stock company, partnership, association, trust, limited liability company or similar entity that manages a central dispatch facility; and

(v) the president, Secretary and treasurer of a central dispatch facility, regardless of its form of organization. Failure of the central dispatch facility, or of its responsible persons to pay any assessments or penalties awarded pursuant to this subdivision within 20 days of issuance of a valid order so to do, or in the event an appeal has been taken from the determination of the Department or the local licensing authority, to deposit with the Secretary or the local licensing authority within 20 days of the issuance of the determination from which the appeal is taken the total amount of the award as security for its payment, shall entitle the Secretary or the local licensing authority to file with the clerk of Albany County a certified copy of the determination of the Department or local licensing authority, and thereupon judgment shall be entered in the Supreme Court by the clerk of Albany County in conformity therewith immediately upon such filing. Such judgment shall be entered in the same manner, have the same effect and be subject to the same proceedings as though rendered in a suit duly heard and determined by the Supreme Court, except that no appeal may be taken therefrom.

3. Within 20 days after issuance by the Department or local licensing authority of a determination adverse to a central dispatch facility following a hearing held pursuant to subdivision one of this section, an appeal may be taken therefrom to the appellate division of the Supreme Court, third department, by the aggrieved central dispatch facility. The Attorney General shall represent the Department or the local licensing authority thereon.

NOTE: This law became effective on June 24, 1999.