

Approved: January 26, 1995
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on January 25, 1995 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Burke, Downey, Feleciano, Gooch, Harris, Hensley, Kerr, Petty, Ranson, Reynolds, Steffes and Vidricksen.

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:
Hoot Gibson, Fund Manager, Builders' Association Self-Insurers Fund of Kansas
Bill Wempe, Kansas Department of Insurance
Terry Leatherman, KCCI
Larry Magill, Jr., Kansas Association of Insurance Agents

Others attending: See attached list

Jerry Donaldson, Principal Analyst, submitted a Memorandum regarding Workers Compensation Self Insurance Pools. See attachment 1

Upon motion by Senator Gooch, seconded by Senator Reynolds, the Minutes of January 24, 1995 meeting were unanimously approved.

The Chair remarked to the Committee that the displays on the first floor of the Capitol building yesterday were a good example of innovative firms which have been funded at some level of development or commercialization by KTEC.

SB 29 -Group-funded workers compensation pools:

Hoot Gibson, Fund Manager, Builders' Association Self-Insurers Fund of Kansas, requested amendments to the current statutes that would: (1) no longer require pools to submit a renewal application on a yearly basis to obtain a new certificate of authority. (2) modify language to conform with "open rating" effective June 1, 1995; (3) require the filing of certain financial information with the insurance commissioner 120 days following the close of the pool's fiscal year.

Mr. Gibson referred to a proposed amendment offered by Larry Magill, Kansas Association of Insurance Agents. This amendment was agreed upon after conversations with the Insurance Department. The amendment provides for loss cost data in determining rates; and if pool has been in operation for five years, the board of trustees may determine rates as approved by the commissioner. See attachment 2.

The Committee discussed the bill and the proposed amendment at length and asked questions of Bill Wempe, Kansas Department of Insurance. Mr. Wempe confirmed discussions with representatives of self-insurance pools and testified the Insurance Department has no objections to the bill or the proposed amendment.

Senator Feleciano moved and Senator Ranson seconded the amendment to SB 29 proposed in (attachment 3) be adopted. The amendment was unanimously adopted on a voice vote.

Senator Feleciano moved and Senator Reynolds seconded to report SB 29 as amended favorable for passage. The motion passed unanimously on a recorded vote.

SB 93-Group-funded workers compensation pools and municipal group-funded pools, optional deductibles and confidentiality of financial information

Terry Leatherman, KCCI, appeared in support of the bill. Mr. Leatherman stated allowing deductibles

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on January 26, 1995.

gives the employer greater responsibility. The confidentiality of financial information which is the same provision included in a 1994 bill vetoed by the Governor is requested inasmuch as a great deal of the information contained in the reports should not be open to the public

Senate Bill 30 - Municipal group-funded premium contributions

Norman Wilks, Kansas Association of School Boards, appeared in support, stating that the bill establishes the same requirements for municipal group-funded pools as for other group-funded pools. Mr. Wilks further requested that the amendment offered for SB 29 be included in SB 30.

The Committee adjourned at 8:40 a.m.

The next meeting is scheduled for January 26, 1995.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: January 25

NAME	REPRESENTING
George Gomez	DHA / WORK CAMP
Norm Wilks	KASB
Terry Leatherman	KCCI
BILL JARRELL	BOEING
BOB ADEESON	SECP
LARRY MAGILL	KAIA
Hot Gibson	BASTF
London Giles	KHCA
Tom Wilder	Kansas Dept of Insurance
Bill Wringe	" " " "
KEVIN MCFARLAND	Ks. Homes & Services for the Aging
Larry Shaffer	Kns. Hosp. Assoc.
Tom Slattery	AGC of Ks.
John Grove	KAHSA
Mark Rouse (ina)	RDOCAH
William	Kansas Environmental Committee
DWAYNE ZIMMERMAN	CONSOLIDATED ADMINISTRATORS, INC.
Tony Denker	KS Dept. of Agriculture
Tom Bell	Ks. Hosp Assn.

MEMORANDUM

Kansas Legislative Research Department

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January 24, 1995

To: Senate Commerce Committee
From: Jerry Ann Donaldson, Principal Analyst
Re: Workers Compensation Self Insurance Pools

The Workers Compensation Act requires an employer to provide benefits to an employee who is injured on the job or who suffers from a work related occupational disease. Thus, employers are required to provide insurance or some other security provisions to demonstrate an ability to fulfill these compensation obligations. Most employers obtain workers compensation coverage through the purchase of private insurance through an insurance carrier authorized to offer workers compensation insurance in Kansas. Some employers use a form of self insurance by supplying proof, to the Director of Workers Compensation, of the financial ability to pay workers compensation benefit claims. These self insurers are usually the larger employers in the state.

Due to the increasing cost of workers compensation insurance, some employers in the early 1980s sought an alternative method of providing workers compensation benefits to injured workers through the concept of group self insurance. Enacted in 1983, the statutes, K.S.A. 44-581 *et seq.*, allowed certain qualified employers to form group funded self insurance pools to underwrite their own workers compensation coverage. The statutes provide that five or more employers, regardless of domicile, may form a self insurance pool. Originally, the Act required these employers to be members of the same trade or professional association and engaged in the same or similar type of business. In 1993, the provisions were expanded to include employers with dissimilar types of businesses to enter into pool agreements, although there are higher qualifications required. For pool agreements involving similar types of businesses the requirements include a combined net worth of the pool to be at least \$1,000,000; an annual gross premium for the pool of at least \$250,000; and, an indemnity agreement which jointly and severally binds the group and each member to comply with the provisions of the Workers Compensation Act. Pools composed of dissimilar types of members must have a combined net worth in the amount of \$1,250,000; an annual gross premium for the pool of at least \$500,000; and, an indemnity agreement which jointly and severally binds the group and each member of the group to comply with the provisions of the Workers Compensation Act.

Group funded self insurance pools are subject to the same taxes and assessments as an insurance company doing business in Kansas including:

1. a gross premium tax;
2. an annual assessment for the Workers Compensation Fund;

January 25, 1995
Commerce

Attachment 1

3. an annual assessment to cover the expense of administering the law; and
4. an annual assessment to cover the expense to the Insurance Department of administering the group funded self insurance pools.

In 1987, the Kansas Municipal Group Funded Pool Act, K.S.A. 12-2616 *et seq.*, became law. This Act allows five or more municipalities to enter into insurance pooling arrangements subject to the same approval and regulatory oversight by the Insurance Commissioner as the earlier enacted group funded self insurance pools. The latter Act was patterned after the earlier one.

ees of the division of mental health and retardation services of the department of social and rehabilitation services shall be made against the state workers compensation self-insurance fund. Such claims shall be served upon the secretary of administration in the secretary's capacity as administrator of the state workers compensation self-insurance fund in the manner provided for claims against other employers under the workers compensation act. The chief attorney for the department of administration, or another attorney of the department of administration designated by the chief attorney, shall represent and defend the state workers compensation self-insurance fund in all proceedings under the workers compensation act.

(b) The secretary of administration shall investigate, or cause to be investigated, each claim for compensation against the state workers compensation self-insurance fund. For the purposes of such investigations, the secretary of administration is authorized to obtain expert medical advice regarding the injuries, occupational diseases and disabilities involved in such claims. If, based upon such investigation and any other available information, the secretary of administration finds that there is no material dispute as to any issue involved in the claim, that the claim is valid and that the claim should be settled by agreement, the secretary of administration may proceed to enter into such an agreement with the claimant, for the state workers compensation self-insurance fund. Any such agreement may provide for lump-sum settlements subject to approval by the director and all such agreements shall be filed in the office of the director for approval as provided in K.S.A. 44-527 and amendments thereto. All other claims for compensation against such fund shall be paid in accordance with the workers compensation act pursuant to final awards or orders of an administrative law judge or the board or pursuant to orders and findings of the director under the workers compensation act.

History: L. 1974, ch. 204, § 3; L. 1977, ch. 180, § 2; L. 1993, ch. 286, § 69; July 1.

44-578. Same; administrative rules and regulations. The secretary of administration may adopt rules and regulations necessary for the administration of the state workers compensation self-insurance fund, including the processing and settling of claims for compensation made against such fund. Such rules and

regulations shall be subject to the provisions of K.S.A. 75-3706 and amendments thereto and shall be adopted in accordance therewith.

History: L. 1974, ch. 204, § 4; L. 1993, ch. 286, § 70; July 1.

44-579. Same; copies of accident reports to secretary of administration. From and after July 1, 1974, whenever any report is required to be made to the workmen's compensation director by any state agency as an employer pursuant to the provisions of K.S.A. 44-557, or any amendments thereto, such state agency shall make such report to the workmen's compensation director and shall send a copy thereof to the secretary of administration.

History: L. 1974, ch. 204, § 5; April 8.

44-580. Same; construction of 44-575 to 44-580. The provisions of K.S.A. 44-575 to 44-580, inclusive, shall be construed as supplemental to and as a part of the workmen's compensation act.

History: L. 1974, ch. 204, § 6; April 8.

GROUP-FUNDED WORKERS COMPENSATION POOLS

44-581. Group-funded workers compensation pools; requirements. (a) Five or more employers, regardless of domicile, who are members of the same bona fide trade, merchant or professional association, regardless of domicile, which has been in existence for not less than five years and who are engaged in the same, similar or closely related type of business may enter into agreements to pool their liabilities for Kansas workers compensation benefits and

(b) Five or more employers, regardless of domicile, who are members of the same bona fide trade, merchant or professional association, regardless of domicile, which has been in existence for not less than five years and who are engaged in dissimilar types of businesses for which the commissioner of insurance finds an accurate prediction of loss can be made, may enter into agreements to pool their liabilities for Kansas workers compensation benefits and employers' liability.

(c) All such arrangements shall be known as group-funded workers compensation pools, which shall not be deemed to be insurance or insurance companies and shall not be subject to the provisions of chapter 40 of the Kansas Statutes Annotated, except as otherwise provided herein.

(d) For purposes of this section, (1) "same, similar or closely related type of business"

means, but is not limited to, any business which the principal purpose is the classification or combination of representing occupations, professions or essential part of the business in which is the primary membership of the business or professional association.

(2) "principal pay" means the principal pay for any year or, in the absence of such, the highest pay has no preceding full year of pay more than 51% of estimated annual payroll or estimated annual payroll shall include the annual payroll set forth in the statement of the standstill in the rules promulgated by the commissioner on compensation.

History: L. 1983, ch. 286, § 71; July 1.

Research and Practice A
Workers' Compensation
C.J.S. Workmen's Com

Attorney General's Opini
Use of claims fund acc
gregate excess insurance.

CASE A

1. Noted in discussion
payment of award in prei
Stout v. Staxon Petroleum
1185 (1992).

44-582. Same; application. Application for authority to operate a group-funded workers compensation pool shall be filed with the commissioner of insurance not less than 30 days prior to the payment of the pool. The application shall be in the following form:

(a) A copy of the application, a copy of the pool, a copy of the trust agreement, any, and a copy of the proposed pool. 1. If the pool is to be incorporated, the proposed pool shall be changed, the pool shall be dissolved by the commissioner within 30 days of the date of the change.

(b) A copy of the pool, a copy of the trust agreement, and a copy of the payment of workmen's compensation. If the trust agreement is changed, the trust agreement shall notify the commissioner of the change after such change.

(c) Designation of trustees and administrator of the pool. The commissioner shall change of administration

but is not limited to, a business in which the principal payroll is in a manual classification or combination of classifications representing occupations which contribute to an essential part of the end product or service which is the primary business interest of the membership of the bona fide trade, merchant or professional association; and

(4) "principal payroll", means not less than 81% of the total payroll for the preceding policy year or, in the case of an employer who has no preceding full-year's payroll, not less than 81% of estimated annual payroll; principal payroll or estimated annual payroll shall not include the annual payroll of those employees set forth in the standard exceptions contained in the rules promulgated by the national council on compensation insurance.

History: L. 1983, ch. 186, § 1; L. 1993, ch. 288, § 71; July 1.

Research and Practice Aids:

Workers' Compensation § 1045.

C.J.S. Workmen's Compensation § 353(1) et seq.

Attorney General's Opinions:

Use of claims fund account to pay for specific and aggregate excess insurance. 90-138.

CASE ANNOTATIONS

1. Noted in discussion of 44-556 in determining when payment of award in preliminary hearing order past due. *Shout v. Sison Petroleum*, 17 K.A.2d 195, 201, 836 P.2d 1185 (1992).

44-582. Same; certificate of authority; application. Application for a certificate of authority to operate a group-funded workers compensation pool shall be made to the commissioner of insurance not less than 60 days prior to the proposed inception date of the pool. The application shall include the following:

(a) A copy of the bylaws of the proposed pool, a copy of the articles of incorporation, if any, and a copy of all agreements and rules of the proposed pool. If any of the bylaws, articles of incorporation, agreements or rules are changed, the pool shall notify the commissioner within 30 days after such change.

(b) A copy of the trust agreement securing the payment of workers compensation benefits. If the trust agreement is changed, the pool shall notify the commissioner within 30 days after such change.

(c) Designation of the initial board of trustees and administrator. When there is a change in the membership of the board of trustees or change of administrator, the pool shall notify

the commissioner within 30 days after such change.

(d) The address where the books and records of the pool will be maintained at all times. If this address is changed, the pool shall notify the commissioner within 30 days after such change.

(e) An individual application for each initial member of the pool. Each individual application shall include a current certified financial statement on a form approved by the commissioner.

(f) A current certified financial statement on a form approved by the commissioner showing that (1) the combined net worth of all members applying for coverage on the inception date of the pool is in an amount not less than \$1,000,000 in the case of a pool meeting the requirements of subsection (a) of K.S.A. 44-581 and amendments thereto, or (2) the combined net worth of all members applying for coverage on the inception date of the pool is in an amount of \$1,250,000 in the case of a pool meeting the requirements of subsection (b) of K.S.A. 44-581 and amendments thereto.

(g) A current certified financial statement on a form approved by the commissioner showing the financial ability of the pool to meet its obligations under the workers compensation act.

(h) Evidence that the annual Kansas gross premium of the pool will be (1) not less than \$250,000 in the case of a pool meeting the requirements of subsection (a) of K.S.A. 44-581 and amendments thereto, or (2) not less than \$500,000 in the case of a pool meeting the requirements of subsection (b) of K.S.A. 44-581 and amendments thereto. The annual Kansas gross premium shall be based upon the authorized rates as filed by the national council of compensation insurance.

(i) An indemnity agreement jointly and severally binding the group and each member thereof to comply with the provisions of the workmen's compensation act. The indemnity agreement shall be in a form acceptable to the commissioner.

(j) (1) Proof of payment by each member of a pool, which meets the requirements of subsection (a) of K.S.A. 44-581 and amendments thereto, of not less than 25% of the estimated annual premium into a designated depository; and

(2) proof of payment by each member of a pool, which meets the requirements of subsection (b) of K.S.A. 44-581 and amendments

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thereto, of not less than 35% of the estimated annual premium into a designated depository.

(k) A copy of the procedures adopted by the pool to provide services with respect to underwriting matters and safety engineering.

(l) A copy of the procedures adopted by the pool to provide claims adjusting and reporting of loss data.

(m) A confirmation of specific and aggregate excess insurance, except that, in the case of a pool authorized under subsection (b) of K.S.A. 44-581 and amendments thereto, such pool shall maintain an aggregate excess policy with a limit of not less than \$2,000,000 which attaches at no more than 125% of standard premium.

(n) Any other relevant factors the commissioner may deem necessary.

History: L. 1983, ch. 166, § 2; L. 1993, ch. 286, § 72; July 1.

44-583. Same; irrevocable consent; service of process on commissioner of insurance. Every group-funded workers' compensation pool applying for authority to operate a pool in this state, as a condition precedent to obtaining such authority, shall file in the insurance department a written irrevocable consent, that any action may be commenced against such pool in the proper court of any county in this state in which the cause of action shall arise or in which the plaintiff may reside by the service of process on the commissioner of insurance of this state, and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the trustees or the administrator of such pool. The consent shall be executed by the board of trustees and shall be accompanied by a duly certified copy of the resolution passed by the trustees to execute such consent.

History: L. 1983, ch. 166, § 3; July 1.

44-584. Same; certificate of authority, renewal, suspension, revocation; examinations. (a) The application for a new certificate or a renewal of an existing certificate shall be signed by the trustees of the trust fund created by the pool. Any application for a renewal of an existing certificate shall meet at least the standards established in subsections (f), (g), (h), (i), (j), (k), (l), (m) and (n) of K.S.A. 44-582 and amendments thereto. After evaluating the application the commissioner shall notify the applicant that the plan submitted is approved or conversely, if the plan submitted is inadequate,

the commissioner shall then fully explain to the applicant what additional requirements must be met. If the application is denied, the applicant shall have 15 days to make an application for hearing by the commissioner after service of the denial notice. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) All certificates granted hereunder shall expire on April 30 of each year unless sooner suspended or revoked by the commissioner.

(c) Whenever the commissioner shall deem it necessary the commissioner may make, or direct to be made, an examination of the affairs and financial condition of any pool, except that once every five years the commissioner shall conduct an examination of the affairs and financial condition of each pool. Each pool shall submit a certified independent audited financial statement no later than 90 days after the end of the pool's fiscal year. The financial statement shall include outstanding reserves for claims and for claims incurred but not reported. Each pool shall file payroll records, accident experience and compensation reports and such other reports and statements at such times and in such manner as the commissioner shall require. Whenever it appears to the commissioner from such examination or other satisfactory evidence that the solvency of any such pool is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its ability to pay or cause to be paid the compensation in the amount, manner and time due as provided for in the Kansas workers compensation act, the commissioner shall, before filing such report or making the same public, grant such pool upon reasonable notice a hearing in accordance with the provisions of the Kansas administrative procedure act, and, if on such hearing the report be confirmed, the commissioner shall suspend the certificate of authority for such pool until its solvency shall have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the solvency of such pool and in complying with the law, revoke the certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hear-

ing under K.S.A. thereto, and the pro workers' compensati History: L. 1983, ch. 356, § 141; L. 1

44-585. Same; deposit of premium contributions to the appropriate manual plus or minus applicable debits, and minus proved by the trust manual premium. classifications and ra national council on and must report pr rating organization.

(b) At least 70% shall be placed into the sole purpose of be called the claim maintaining annual pre: a designated depos taxes, fees and adm be called the admit

(c) Any surplus excess of the amou obligations under th act for that fund ye refundable by the months after the ei the approval of the proval can be obtai evidence that suffic posit for the payme and expenses, inclu ported claims. Any only to those emplo ipants in the pool fi of previously earnee contingent on continue.

History: L. 1983

Attorney General's Opi Use of claims fund ac gregate excess insurance

44-586. Same. ments. The trustees moneys collected as unrelated to Kansa Moneys not needed be invested by the shall be limited to of indebtedness issu by the United Stat agency or instrum cates of deposit in a

under K.S.A. 40-222b, and amendments thereto, and the provisions shall apply to group workers' compensation pools.

History: L. 1983, ch. 166, § 4; L. 1988, ch. 386, § 141; L. 1992, ch. 39, § 1; April 16.

44-585. Same; premiums; contributions; deposit of premiums; refunds. (a) Premium contributions to the pool shall be based upon appropriate manual classification and rates, plus or minus applicable experience credits or debits, and minus any advance discount approved by the trustees, not to exceed 15% of manual premium. The pool must use rules, classifications and rates as promulgated by the national council on compensation insurance and must report premium and loss data to a rating organization.

(b) At least 70% of the annual premium shall be placed into a designated depository for the sole purpose of paying claims. This shall be called the claims fund account. The remaining annual premium shall be placed into a designated depository for the payment of taxes, fees and administrative costs. This shall be called the administrative fund account.

(c) Any surplus moneys for a fund year in excess of the amount necessary to fulfill all obligations under the workmen's compensation act for that fund year may be declared to be refundable by the trustees not less than 12 months after the end of the fund year, upon the approval of the commissioner. Such approval can be obtained only upon satisfactory evidence that sufficient funds remain on deposit for the payment of all outstanding claims and expenses, including incurred but not reported claims. Any such refund shall be paid only to those employers who remained participants in the pool for an entire year. Payment of previously earned refunds shall not be contingent on continued membership in the pool.

History: L. 1983, ch. 166, § 5; July 1.

Attorney General's Opinions:

Use of claims fund account to pay for specific and aggregate excess insurance. 90-138.

44-586. Same; premiums; use; investments. The trustees shall not utilize any of the moneys collected as premiums for any purpose unrelated to Kansas workers' compensation. Moneys not needed for current obligations may be invested by the trustees. Such investments shall be limited to bonds or other evidences of indebtedness issued, assumed or guaranteed by the United States of America, or by any agency or instrumentality thereof; in certificates of deposit in a federally insured bank; or

in shares or savings deposits in a federally insured savings and loan association.

History: L. 1983, ch. 166, § 6; July 1.

44-587. Same; group-funded workers' compensation pools fee fund; expense of administration; assessments. The expense of the administration of the group-funded workers' compensation pools shall be financed in the following manner:

(a) There is hereby created in the state treasury a fund to be called the group-funded workers' compensation pools fee fund. All amounts which are required to be paid from the group compensation pools fee fund for the operating expenditures incident to the administration of the group-funded workers' compensation pools shall be paid from the group-funded workers' compensation pools fee fund. The commissioner of insurance shall be responsible for administering the group-funded workers' compensation pools fee fund and all payments from the fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner of insurance or a person or persons designated by the commissioner.

(b) The commissioner of insurance shall estimate as soon as practical after January 1 of each year the expenses necessary for the administration of the group-funded workers' compensation pools for the fiscal year beginning on July 1 thereafter. Not later than June 1 of each year, the commissioner of insurance shall notify all such group-funded workers' compensation pools of the amount of each assessment imposed under this subsection on such group-funded workers' compensation pools and the same shall be due and payable to the commissioner on the July 1 following.

(c) The commissioner of insurance shall remit all moneys received by or for such commissioner under this section to the state treasurer. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the group-funded workers' compensation pools fee fund.

History: L. 1983, ch. 166, § 7; July 1.

44-588. Same; premium tax; payment. In addition to the fees required to be paid in K.S.A. 44-587, and as a condition precedent to the continuation of the certificate of authority provided in this act, all group-funded workers' compensation funds shall pay a tax annually upon the annual Kansas gross premium based upon the manual rates in effect at the date of renewal pursuant to subsection

(b) of K.S.A. 44-584 as filed by the national council of compensation insurance at the rate of 1% per annum applied to the collective payroll of the pool for the preceding calendar year. In the computation of the tax, all pools shall be entitled to deduct any annual Kansas gross premiums returned on account of cancellation or dividends returned to members of such pools or expenditures used for the purchase of specific and aggregate excess insurance, as provided in subsection (m) of K.S.A. 44-582.

History: L. 1983, ch. 166, § 8; July 1.

44-580. Same; assessments; subject to article 24 of chapter 40 of Kansas Statutes Annotated. (a) Each licensed pool shall be assessed annually as provided by K.S.A. 74-713, K.S.A. 44-586a, and amendments thereto, and K.S.A. 44-588.

(b) Each licensed pool shall be subject to the provisions of article 24 of chapter 40 of the Kansas Statutes Annotated.

History: L. 1983, ch. 166, § 9; July 1.

44-590. Same; new members; application; termination. (a) After the inception date of the group-funded workers' compensation pool, prospective new members of the pool shall submit an application for membership to the board of trustees or its administrator. The trustees may approve the application for membership pursuant to the bylaws of the pool. The application for membership and approval shall then be filed with the commissioner. Membership takes effect after approval.

(b) Individual members may elect to terminate their participation in a pool or be subject to cancellation by the pool pursuant to the bylaws of the pool. On termination or cancellation of a member, the pool shall notify the commissioner within 10 days and shall maintain coverage of each cancelled or terminating member for 30 days after notice to the commissioner or until the commissioner gives notice that the cancelled or terminating member has procured workers' compensation and employer's liability insurance, whichever occurs first.

History: L. 1983, ch. 166, § 10; July 1.

44-591. Same; board of trustees; duties. To ensure the financial stability of the operations of each group-funded workers' compensation pool, the board of trustees of each pool is responsible for all operations of the pool. The board of trustees shall consist of not less than three nor more than 11 persons whom a pool elects for stated terms of office to direct

the administration of a pool, and whose duties include approving applications by new members of the pool. The majority of the trustees must be members of the pool, but a trustee may not be an owner, officer or employee of any service agent or representative. All trustees must be residents of this state or officers of corporations authorized to do business in this state. The board of trustees of each fund shall take all necessary precautions to safeguard the assets of the fund, including all of the following:

(a) Designate an administrator to administer the financial affairs of the pool who shall furnish a fidelity bond to the pool in an amount sufficient to protect the pool against the misappropriation or misuse of any moneys or securities. The commissioner shall determine the amount of the bond and the administrator shall file evidence of the bond with the commissioner. The bond is one of the conditions required for approval of the establishment and continued operation of a pool.

(b) Retain control of all moneys collected or disbursed from the pool and segregate all moneys into a claims fund account and an administrative fund account. The amount allocated to the claims fund account shall be sufficient to cover payment of any aggregate loss fund as defined in the aggregate excess policy. Only disbursements that are credited toward the aggregate loss fund are made from the claims fund account. All administrative costs and other disbursements are made from the administrative fund account. The administrator of the pool shall establish a revolving fund for use by the authorized service agent which is replenished from time to time from the claims fund account. The service agent and its employees shall be covered by a fidelity bond, with the pool as obligee, in an amount sufficient to protect all moneys placed in the revolving fund.

(c) Audit the accounts and records of the pool annually or at any time as required. The commissioner may prescribe the type of audits and a uniform accounting system for use by pool and service agents to determine the solvency of the pool.

(d) The trustees shall not extend credit to individual members for payment of a premium.

(e) The board of trustees shall not borrow any moneys from the pool or in the name of the pool without advising the commissioner of

the nature and purporting approval from

(f) The board of trustees shall have authority for specific functions of the pool. The board may delegate including with a service agent premium chargeable to members, investing and approving application of the board of trustees shall authority to delegate of the trustees' meeting authority is not effective until resolution passed by the board.

History: L. 1983.

CASE A:

1. Noted in discussion payment of award in preli Stout v. Stixen Petroleum 1185 (1992).

44-592. Same; limiting workers compensation soliciting the person compensation insurance provided in K.S.A. 40 amendments thereto. person shall be required requirements regard providing reinsurance excess coverage.

History: L. 1983, ch. 286, § 73; July 1.

44-593. Reorganization under 12-2216 ties, as defined by K.S.A. 12-2216 amendments thereto, which agreement to pool the workers compensation liability under the present seq., and amendments thereto, effective January 1, 1987, may be made by the board of trustees and amendments to the fund balance and the fund balance workers compensation to the pool seeking amendments thereto, upon approval of the commissioner of insurance.

History: L. 1993

44-594, 44-595

the nature and purpose of the loan and obtaining approval from the commissioner.

(f) The board of trustees may delegate authority for specific functions to the administrator of the pool. The functions which the board may delegate include such matters as contracting with a service agent, determining the premium chargeable to and refunds payable to members, investing surplus moneys and approving applications for membership. The board of trustees shall specifically define all authority it delegates in the written minutes of the trustees' meetings. Any delegation of authority is not effective without a formal resolution passed by the trustees.

History: L. 1983, ch. 166, § 11; July 1.

CASE ANNOTATIONS

1. Noted in discussion of 44-500 in determining when payment of award in preliminary hearing order past due. *Stout v. Stixton Petroleum*, 17 K.A.2d 195, 201, 836 P.2d 1185 (1992).

44-502. Same; licensing of persons soliciting workers compensation insurance. Any person soliciting the business of workers compensation insurance for a group-funded workers compensation pool must be licensed as provided in K.S.A. 40-240 through 40-243, and amendments thereto, except that no such person shall be required to satisfy the certification requirements regarding insurance companies providing reinsurance, secondary insurance, or excess coverage.

History: L. 1983, ch. 166, § 12; L. 1993, ch. 286, § 73; July 1.

44-503. Reorganization of pool agreement under 12-2216 et seq. Any municipalities, as defined by K.S.A. 75-6102, and amendments thereto, who have entered into an agreement to pool their liabilities for Kansas workers compensation benefits and employers' liability under the provisions of K.S.A. 44-581 et seq., and amendments thereto, prior to January 1, 1987, may seek to reorganize the pooling agreement under K.S.A. 12-2616 et seq., and amendments thereto. All assets, liabilities and the fund balance of each group-funded workers compensation pool shall be transferred to the pool seeking a certificate of authority under K.S.A. 12-2616 et seq., and amendments thereto, upon authorization by the commissioner of insurance.

History: L. 1993, ch. 112, § 1; April 15.

44-504, 44-505. Reserved.

ADVISORY COUNCIL

44-500. Workers compensation advisory council; composition and appointment; duties and functions; annual organization; vote required to adopt recommendations; closed meeting of employer or employee representatives; expense allowances; specifically assigned studies. (a) There is hereby established the workers compensation advisory council. The advisory council shall be composed of the director of workers compensation, or the director's designee from the division of workers compensation, a representative of the insurance industry appointed by the commissioner of insurance, and 10 members who shall be appointed by the secretary of human resources in accordance with this section. Five members of the advisory council shall be broadly representative of employers throughout Kansas that are under the workers compensation act and shall be appointed as follows: One member shall be appointed from a list of nominees submitted to the secretary of human resources by the Kansas chamber of commerce and industry and four members shall be appointed from nominees submitted to the secretary of human resources by employers or other representatives of employers or other employer organizations. Five members of the advisory council shall be broadly representative of employees throughout Kansas that are under the workers compensation act and shall be appointed as follows: One member shall be appointed from a list of nominees submitted to the secretary of human resources by the Kansas A.F.L.-C.I.O. and four members shall be appointed from nominees submitted to the secretary of human resources by employees or other representatives of employees or other employee organizations. The representative of the insurance industry shall be knowledgeable of insurance underwriting practices. The director of workers compensation and the representative of the insurance industry shall be nonvoting members of the advisory council.

(b) Each member of the advisory council shall serve at the pleasure of the secretary of human resources. Any vacancy on the advisory council shall be filled by nomination and appointment in the same manner as the original appointment of the member creating the vacancy.

(c) The advisory council shall study the workers compensation act, proposed amendments to the act and such other matters relating thereto

governing body. Moneys may be paid into such risk management reserve fund from any source which may be lawfully utilized for such purposes, including transfers from the general fund, from any special liability expense fund established in accordance with the provisions of K.S.A. 75-6110, or from any other fund or grant program account of the governmental unit in reasonable proportion to the estimated cost of self insuring the risk losses covered by such reserve fund. Such fund shall not be subject to the provisions of K.S.A. 79-2925 to 79-2937, inclusive, and acts amendatory thereof or supplemental thereto, except that in making the budget of such city, county or school district, the amounts credited to and the amount on hand in such reserve fund, and the amount expended therefrom, shall be included in the annual budget for the information of the residents. Interest earned on the investment of moneys in such reserve fund shall be credited to such fund.

(b) If the governing body of any city, county or school district shall determine on an actuarial basis that money which has been credited to such fund, or any part thereof, is no longer needed for the purposes for which it was established, said governing body may transfer such amount not needed to the funds or accounts from which the money was received. Any money so transferred shall be budgeted in accordance with the provisions of K.S.A. 79-2925 to 79-2937, inclusive, and acts amendatory thereof or supplemental thereto.

History: L. 1980, ch. 145, § 2; July 1.

Cross References to Related Sections:

Counties, insurance, see 19-212.

Liability insurance, see 75-6111.

School districts, purchase of insurance, see ch. 72, art. 64.

Attorney General's Opinions:

Risk management reserve fund; city employees vacation and sick leave benefits. 82-262.

GROUP-FUNDED LIABILITY POOLS

Attorney General's Opinions:

Use of claims fund account to pay for specific and aggregate excess insurance. 90-138.

12-2616. Name and citation of act; application of 40-2209 and 40-2215. (a) K.S.A. 12-2616 through 12-2629 and amendments thereto shall be known and may be cited as the Kansas municipal group-funded pool act.

(b) The provisions of K.S.A. 40-2209 and 40-2215 and amendments thereto shall apply to municipal group-funded pools and all con-

tracts issued under the municipal group-funded pool act and amendments thereto.

History: L. 1987, ch. 74, § 1; L. 1991, ch. 134, § 4; July 1.

Attorney General's Opinions:

Interlocal cooperation agreements; separate legal entities; municipalities; school districts. 91-4.

12-2617. Authorization of municipalities to pool liabilities; pools not deemed insurance and not subject to regulation except as enumerated. Five or more municipalities as defined in K.S.A. 75-6102, and amendments thereto, may enter into agreements to pool their liabilities for Kansas fire, marine, inland marine and allied lines, as defined in K.S.A. 40-901, and amendments thereto, casualty, surety and fidelity lines as defined in K.S.A. 40-1102, and amendments thereto, including workers' compensation and employers' liability, group sickness and accidents, as defined in K.S.A. 40-2209, and amendments thereto, and life insurance, as regulated in K.S.A. 40-433, and amendments thereto. Such arrangements shall be known as group-funded pools, which shall not be deemed to be insurance or insurance companies and shall not be subject to the provisions of chapter 40 of the Kansas Statutes Annotated, except as otherwise provided herein.

History: L. 1987, ch. 74, § 2; L. 1990, ch. 76, § 1; July 1.

Attorney General's Opinions:

Interlocal cooperation agreements; separate legal entities; municipalities; school districts. 91-4.

12-2618. Certificate of authority to operate pool; application; hearing upon denial of application. Application for a certificate of authority to operate a pool shall be made to the commissioner of insurance not less than 30 days prior to the proposed inception date of the pool. The application shall include the following:

(a) A copy of the bylaws of the proposed pool, a copy of the articles of incorporation, if any, and a copy of all agreements and rules of the proposed pool. If any of the bylaws, articles of incorporation, agreements or rules are changed, the pool shall notify the commissioner within 30 days after such change.

(b) Designation of the initial board of trustees and administrator. When there is a change in the membership of the board of trustees or change of administrator, the pool shall notify the commissioner within 30 days after such change.

(c) The address where the books and records of the pool will be maintained at all times. If this address is changed, the pool shall notify the commissioner within 30 days after such change.

(d) Evidence that the annual Kansas gross premium of the pool will be not less than \$250,000 for each of the categories described in subparagraphs (1) through (4) of this subsection: (1) All property insurance under article 9 of chapter 40 of the Kansas Statutes Annotated except motor vehicle physical damage; (2) motor vehicle liability and physical damage insurance; (3) workers' compensation and employers' liability insurance; (4) all casualty insurance under article 11 of chapter 40 of the Kansas Statutes Annotated except insurance under categories (2) and (3) above; (5) group sickness and accident insurance if at the date of issue the annual gross premium for such coverage will be not less than \$1,000,000; and (6) group life insurance if at the date of issue the coverage will insure at least 60% of the eligible participants or the total number of persons covered will exceed 600. The pool shall notify the commissioner within 30 days if the minimum premium qualification or participation requirement is less than that specified in this subsection for any of the above categories of insurance.

(e) An agreement binding the group and each member thereof to comply with the provisions of the workers compensation act if such coverage is to be provided by the pool. For all lines of coverage, all members of the pool shall be jointly liable for the payment of claims to the extent of the assets of the pool.

(f) A copy of the procedures adopted by the pool to provide services with respect to underwriting matters and, with respect to the categories identified in subsection (d)(1) through (4), safety engineering.

(g) A copy of the procedures adopted by the pool to provide claims adjusting and accumulation of income and expense and loss data.

(h) A confirmation that specific and aggregate excess insurance provided by an insurance company holding a Kansas certificate of authority is or will be in effect concurrent with the assumption of risk by the pool, as selected by the board of trustees of the pool, or adequate surplus funds as approved by the commissioner, in the pool. The pool shall notify the commissioner within 30 days of any change in the specific or aggregate excess insurance

carried by the pool. For the purposes hereof, "surplus funds" shall mean retained earnings of the pool after reserves have been established for all known and incurred but not reported losses of the pool and after all other liabilities of the pool, including unearned premium reserves, have been deducted from total assets. The term "adequate surplus funds" shall mean the amount necessary for the pool to fund its self-insured obligations.

(i) After evaluating the application the commissioner shall notify the applicant if the plan submitted is inadequate, fully explaining to the applicant what additional requirements must be met. If the application is denied, the applicant shall have 10 days to make an application for hearing by the commissioner after the denial notice is received. A record shall be made of such hearing, and the cost thereof shall be assessed against the applicant requesting the hearing.

(j) Any other relevant factors the commissioner may deem necessary.

History: L. 1987, ch. 74, § 3; L. 1990, ch. 76, § 2; L. 1991, ch. 60, § 1; May 23.

12-2619. Irrevocable consent for service of process on commissioner of insurance. Every group-funded pool applying for authority to operate a pool in this state, as a condition precedent to obtaining such authority, shall file in the insurance department a written irrevocable consent, that any action may be commenced against such pool in the proper court of any county in this state in which the cause of action shall arise or in which the plaintiff may reside by the service of process on the commissioner of insurance of this state, and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the trustees or the administrator of such pool. The consent shall be executed by the board of trustees and shall be accompanied by a duly certified copy of the resolution passed by the trustees to execute such consent.

History: L. 1987, ch. 74, § 4; May 28.

12-2620. Certificate of authority granted on perpetual basis; examinations; submission of financial statement and reports; suspension of certificate, grounds, hearing; revocation; dissolution or injunction of pool. (a) All certificates granted hereunder shall be perpetual unless sooner suspended or revoked by the commissioner or the attorney general.

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History: L. 1987, ch.

12-2621. Premium
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(b) Whenever the commissioner shall deem necessary the commissioner may make, or direct to be made, an examination of the affairs and the financial condition of any pool, except that once every five years the commissioner shall conduct an examination of the affairs and the financial condition of each pool. Each pool shall submit a certified independent audited financial statement no later than 90 days after the end of the fiscal year. The financial statement shall include outstanding reserves for claims and for claims incurred but not reported. Each pool shall file reports as to income, expenses and loss data at such times and in such manner as the commissioner shall require. Whenever it appears to the commissioner from such examination or other satisfactory evidence that the ability to pay current and future claims of any such pool is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its ability to pay or cause to be paid claims in the amount, manner and time due, the commissioner shall, before filing such report or making the same public, grant such pool upon reasonable notice a hearing, and, if on such hearing the report be confirmed, the commissioner shall suspend the certificate of authority for such pool until its ability to pay current and future claims shall have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the ability to pay claims of such pool and in complying with the law, revoke the certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hearing under K.S.A. 40-222b, and amendments thereto, and the provisions thereof shall apply to group-funded pools.

History: L. 1987, ch. 74, § 5; May 28.

12-2621. Premium contributions, determination, deposit and use; refunds. (a) With respect to the categories of coverage described in subparagraphs (d)(1) through (4) of K.S.A. 12-2618, and amendments thereto, premium contributions to the pool shall be based upon appropriate manual classification and rates,

plus or minus applicable experience credits or debits, and minus any advance discount approved by the trustees, not to exceed 25% of manual premium. The pool shall use rules, classifications and rates as promulgated by the national council on compensation insurance for workers' compensation. Premium contributions to the pool for all other lines of insurance shall be based on rates filed by a licensed rating organization or on rates of certain companies filing rates with the commissioner and approved by the commissioner for the pool. In lieu of the foregoing, the board of trustees may determine such classification, rates and discounts as approved by the commissioner.

Premium contributions to any pool providing life insurance or any pool providing group sickness and accident insurance as described in K.S.A. 12-2617, and amendments thereto, shall be based on sound actuarial principles.

(b) An amount equal to at least 70% of the annual premium shall be maintained in a designated depository for the purpose of paying claims in a claims fund account. The remaining annual premium shall be placed into a designated depository for the payment of taxes, fees and administrative and other operational costs in an administrative fund account.

(c) Any moneys for a fund year in excess of the amount necessary to fulfill all obligations of the pool for that fund year, including any obligation to retain adequate surplus funds, as defined by subsection (h) of K.S.A. 12-2618, and amendments thereto, in lieu of specific and aggregate excess insurance, may be declared to be refundable by the trustees not less than 12 months after the end of the fund year. Any such refund shall be paid only to those members who remained participants in the pool for an entire year. Payment of previously earned refunds shall not be contingent on continued membership in the pool.

History: L. 1987, ch. 74, § 6; L. 1990, ch. 76, § 3; L. 1991, ch. 60, § 2; May 23.

12-2622. Same; investments. The trustees shall not utilize any of the contributions collected as premiums for any purpose unrelated to the pool. Moneys not needed for current obligations may be invested by the trustees. Such investments shall be limited to bonds or other evidences of indebtedness issued, assumed or guaranteed by the United States of America, or by any agency or instrumentality thereof; in certificates of deposit in a federally insured bank located in Kansas; or

in shares or savings deposits in a federally insured savings and loan association located in Kansas.

History: L. 1987, ch. 74, § 7; May 28.

12-2023. Group-funded pools fee fund, payment of operating expenditures, expenses of administration, assessments, deposit of remittances. The expense of state supervision of the group-funded pools shall be financed in the following manner:

(a) There is hereby created in the state treasury a fund to be called the group-funded pools fee fund. All amounts which are required to be paid from the group-funded pools fee fund for the operating expenditures incident to the supervision of the group-funded pools shall be paid from the group-funded pools fee fund. The commissioner of insurance shall be responsible for administering the group-funded pools fee fund and all payments from the fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner of insurance or a person or persons designated by the commissioner.

(b) The commissioner of insurance shall estimate as soon as practical after January 1 of each year the expenses necessary for the supervision of the group-funded pools for the fiscal year beginning on July 1 thereafter. Not later than June 1 of each year, the commissioner of insurance shall notify all such group-funded pools of the amount of each assessment imposed under this subsection on such group-funded pools and the same shall be due and payable to the commissioner on the July 1 following.

(c) The commissioner of insurance shall remit all moneys received by or for such remittance to the state treasurer. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the group-funded pools fee fund.

History: L. 1987, ch. 74, § 8; May 28.

12-2024. Gross premium tax, rate, payment; deductions for cancellations and dividends. In addition to the fees required to be paid in K.S.A. 12-2622 and amendments thereto, and as a condition precedent to the continuation of the certificate of authority provided in this act, all group-funded pools shall pay no later than 90 days after the end of each fiscal year a tax upon the annual Kansas gross premium collected by the pool at the rate of

1% per annum applied to the collective premium relating to all Kansas members of the pool for the preceding fiscal year. In the computation of the tax, all pools shall be entitled to deduct any annual Kansas gross premiums returned on account of cancellation or dividends returned to members of such pools or expenditures used for the purchase of specific and aggregate excess insurance, as provided in subsection (h) of K.S.A. 12-2018 and amendments thereto.

History: L. 1987, ch. 74, § 9; L. 1991, ch. 60, § 3; May 23.

12-2025. Pools subject to additional assessments and certain provisions of chapter 40 of Kansas Statutes Annotated; workers compensation exception. (a) Each pool shall be assessed annually as provided by K.S.A. 44-566a and 74-713, and amendments thereto.

(b) Each proposed and authorized pool and each person representing such proposed or authorized pool shall be subject to the provisions of article 24 of chapter 40 of the Kansas Statutes Annotated.

(c) Each pool shall be subject to the provisions of K.S.A. 40-246b to 40-246e, inclusive, and amendments thereto.

(d) Whenever a pool is available providing workers compensation coverage to a statewide group of municipalities, the premium on workers compensation coverage written on municipalities eligible to become members of such pool by an insurer shall not be considered in the determination of any assessments levied by the Kansas workers compensation plan established pursuant to K.S.A. 40-2109 and amendments thereto.

History: L. 1987, ch. 74, § 10; L. 1991, ch. 60, § 4; May 23.

12-2026. Application for membership in pool; written notice; approval; termination or cancellation of participation. (a) After the inception date of the group-funded pool, prospective new members of the pool shall submit an application for membership to the board of trustees or its administrator. The trustees may approve the application for membership pursuant to the bylaws of the pool.

(b) Before the time that membership in a group funded pool is granted, the applicant for such membership shall be provided a written notice stating that: (1) The group funded pool is not an insurance company subject to the general laws and rules and regulations relating to insurance companies; and (2) the group

funded pool is subject by the Kansas Insurance Code to the provisions authorized by state statute or continue operations or authority. Such authority shall not constitute an endorsement or coverage provided.

(c) Individual members shall have the right to terminate their participation in the pool subject to cancellation by the pool. On the termination of a workers' compensation pool shall notify the director of insurance within 10 days of the termination of coverage of each cancelled member for 30 days of the cancellation or until such time as the cancelled or terminated member secures workers' compensation liability insurance, which shall be in full force and effect.

History: L. 1987, ch. 60, § 5; May 23.

12-2027. Board of trustees; powers, duties, administration; credit transactions; delegation of authority from board to administrator; financial stability of the pool. (a) Each group-funded pool, the board of trustees of each pool is responsible for the financial stability of the pool. The board of trustees shall not be less than three persons and shall be named in the bylaws of the pool to the office to direct the administration and whose duties include the selection and nomination by new members of the board of trustees majority of the trustees must be named in the governing body or an administrator of the pool, and shall be an owner, officer or representative of the pool. (b) Residents of this state who have been formed on or before January 1, 1991, shall event the number of Kansas residents of the pool must be that the number of Kansas residents of the pool that equal the number of Kansas residents of the pool with respect to all lives insured in the pool on the last day of the fiscal year of operation of the pool. The board of trustees of each fund shall take all necessary steps to safeguard the assets of the pool, including all of the following:

(a) Designate an administrator to manage the financial affairs of the pool and furnish a fidelity bond to

unded pool is subject to separate regulation by the Kansas insurance department as authorized by state statute and cannot commence or continue operations without a certificate of authority. Such authorization does not constitute an endorsement or recommendation of the coverage provided.

(c) Individual members may elect to terminate their participation in a pool or be subject to cancellation by the pool pursuant to the bylaws of the pool. On termination or cancellation of a workers' compensation member, the pool shall notify the division of workers' compensation within 10 days and shall maintain coverage of each cancelled or terminating member for 30 days after notice to such division or until such division gives notice that the cancelled or terminating member has procured workers' compensation and employers' liability insurance, whichever occurs first.

History: L. 1987, ch. 74, § 11; L. 1991, ch. 60, § 5; May 23.

12-2627. Board of trustees of pool, qualifications, duties, administrator, bond, audits, credit transactions, delegation of authority from board to administrator. To ensure the financial stability of the operations of each group-funded pool, the board of trustees of each pool is responsible for all operations of the pool. The board of trustees shall consist of not less than three persons selected according to the bylaws of the pool for stated terms of office to direct the administration of a pool, and whose duties include approving applications by new members of the pool. The majority of the trustees must be a member of the governing body or an officer or employee of members of the pool, but a trustee may not be an owner, officer or employee of any service agent or representative. All trustees shall be residents of this state unless the pool was formed on or before January 1, 1990, in which event the number of Kansas resident trustees of the pool must be that percentage of all trustees of the pool that equals the percentage of the number of Kansas lives covered by the pool with respect to all lives covered by the pool on the last day of the prior fiscal year of the operation of the pool. The board of trustees of each fund shall take all necessary precautions to safeguard the assets of the fund, including all of the following:

(a) Designate an administrator to administer the financial affairs of the pool who shall furnish a fidelity bond to the pool in an amount

determined by the trustees to protect the pool against the misappropriation or misuse of any moneys or securities. The administrator shall file evidence of the bond with the commissioner. The bond shall be one of the conditions required for approval of the establishment and continued operation of a pool. Any administrator so designated shall be a resident of Kansas if an individual or shall be authorized to do business in Kansas if a corporation.

(b) Retain control of all moneys collected or disbursed from the pool and segregate all moneys into a claims fund account and an administrative fund account. All administrative costs and other disbursements shall be made from the administrative fund account. The trustees may establish a revolving fund for use by the authorized service agent which is replenished from time to time from the claims fund account. The service agent and its employees shall be covered by a fidelity bond, with the pool as obligee, in an amount sufficient to protect all moneys placed in the revolving fund.

(c) Audit the accounts and records of the pool annually or at any time as required. The commissioner shall prescribe the type of audits and a uniform accounting system for use by pool and service agents to determine the ability of the pool to pay current and future claims.

(d) The trustees shall not extend credit to individual members for any purpose.

(e) The board of trustees shall not borrow any moneys from the pool or in the name of the pool without advising the commissioner of the nature and purpose of the loan.

(f) The board of trustees may delegate authority for specific functions to the administrator of the pool. The functions which the board may delegate include such matters as contracting with a service agent, determining the premium chargeable to and refunds payable to members, investing surplus moneys and approving applications for membership. The board of trustees shall specifically define all authority it delegates in the written minutes of the trustees' meetings. Any delegation of authority shall not be effective without a formal resolution passed by the trustees.

History: L. 1987, ch. 74, § 12; L. 1989, ch. 65, § 1; L. 1991, ch. 60, § 6; May 23.

12-2628. Licensing of persons or agencies soliciting insurance business for pool. Any person or agency soliciting for a proposed or authorized group-funded pool shall hold a cur-

rent license authorizing such person to sell each line of insurance offered for sale. Any person licensed for the kinds of insurance offered by the pool shall be deemed to be certified by a company for the kinds of insurance permitted by the pool.

History: L. 1987, ch. 74, § 13; L. 1991, ch. 60, § 7; May 23.

12-2629. Commissioner of insurance to provide advice and counsel to local governments. The commissioner of insurance shall make such recommendations as deemed advisable to assist Kansas local governments in the effective, efficient and fiscally sound operation of any proposed group-funded pool. Within the time and resources available, the department of insurance shall provide advice and counsel to any group-funded pool.

History: L. 1987, ch. 74, § 14; May 28.

12-2630. Allowing municipalities in Douglas, Johnson, Leavenworth, Miami and Wyandotte counties to pool with municipalities outside of state. Notwithstanding the provisions of K.S.A. 12-2616 through 12-2629 and amendments thereto, any municipalities as defined in K.S.A. 75-6102 and amendments thereto, located in and including Douglas, Johnson, Leavenworth, Miami and Wyandotte counties, may qualify to enter into agreements to pool their sickness and accident related liabilities in accordance with K.S.A. 12-2617 *et seq.* and amendments thereto with municipalities located in other states if such a pool was formed on or before January 1, 1990. Any investments held by such pool shall be held in an entity described in K.S.A. 12-2622 and amendments thereto. In the event the law or laws of any other state in which a member of the pool is located are inconsistent with or contrary to any provision of K.S.A. 12-2617 through 12-2626, 12-2628 and 12-2629 and amendments thereto, the law of the state with the more stringent requirement shall apply.

History: L. 1991, ch. 60, § 8; May 23.

Article 27.—WATER SUPPLY, WATERWORKS AND DISTRIBUTION OF WATER

CITIES AND TOWNSHIPS IN CERTAIN COUNTIES BETWEEN 30,000 AND 40,000

Cross References to Related Sections:

Districts in certain counties, see 19-3501 to 19-3521.

12-2701. Definitions. As used in this act:

(a) The term "municipality" means any city of the first, second or third class owning and operating a water distribution system or any township or improvement district owning and operating a water distribution system, and which city, township or improvement district is located in a county having a population of not less than thirty thousand (30,000) nor more than forty thousand (40,000) with an assessed taxable tangible valuation of not less than seventy-eight million dollars (\$78,000,000) nor more than ninety million dollars (\$90,000,000).

(b) The term "governing body" as applied to a city means the mayor and council or mayor and commissioners, as the case may be, and as applied to a township means the township clerk, the township treasurer and the township trustee acting as a board, and as applied to an improvement district means the board of directors of such improvement district acting as a board.

(c) The word "corporation" means a private corporation which is, or contemplates becoming, a water customer of a municipality and which enters into a contract with such municipality under the provisions of this act, or any board of education, rural high-school district, community high-school district or common-school district which is, or contemplates becoming, a water customer of a municipality and which enters into a contract with such municipality under the provisions of this act; and any such board of education, rural high-school district, community high-school district or common-school district shall have power to enter into contracts under the provisions of this act to remain in force as long as any bonds issued by any municipality under the provisions of this act shall be outstanding.

History: L. 1955, ch. 87, § 1; April 14.

Research and Practice Aids:

Municipal Corporations — 271.

C.J.S. Municipal Corporations § 1051.

Attorney General's Opinions:

Election expenses of candidates and organizations; reporting requirements applicable to counties. 81-129.

12-2702. Contracts for common supply of water. Two or more municipalities, or one or more municipalities and one or more corporations, are hereby empowered to enter into a contract, contracts or a series of contracts, from time to time, to provide for a common supply of water, including joint acquisition, construction, operation and maintenance of any and all sites, rights of way, easements, other interests in real property, equipment and fa-

cilities necessary for, with, the procuring and to the said municipality. Such contracts for a shall provide for the construction of the co-agement and operat- method of fixing the each participating mu- and of making contri- making annual adjust- ate shares of the annu- method of collection - charges, and enforcem- rate schedules and oth- of rules and regulatio- tion of the system an- the adjudication of dis- ters necessary to arrangement.

History: L. 1955,

12-2703. Acquisi- distribution of commo- mon supply of water r- developed (including- limitation, the acquisi- necessary sites, rights- interests in real prop- essary for the acquis- water in bulk) by all- municipalities and corpo- by the individual acti- ipalities acting for all- municipalities and cor- municipalities and cor- contract. Regardless- upon, title to all real- quired or constructed- the names of all of th- ties and corporations- shall be provided by- such provisions for dis- vided by contract.

History: L. 1955,

12-2704. Contra- operation; reports. Tl- tem may be managed- operating agency or b- municipalities or corpo- ing municipalities and- vide. Any such agree- for periodic reports of- to the participatin- corporations.

History: L. 1955,

1-14



Builders' Association Self-Insurers' Fund

3801 S.W. TRAFFICWAY • P.O. BOX 32246 • KANSAS CITY, MO 64111
PHONE 816-831-2642 • FAX 816-831-2335



TESTIMONY - KANSAS SENATE BILL #29 - JANUARY 25, 1995

KANSAS COMMERCE COMMITTEE

TIME: 8:00AM

PLACE:

Capital Building
Topeka, Kansas

Ladies and gentlemen of the committee:

My name is Hoot Gibson. I am the Fund Manager for the Builders' Association Self-Insurers Fund of Kansas, a Group Self Funded Workers' Compensation Pool operating with an approved certificate of authority.

I appear today on behalf of a number of the Kansas Group Self Funded Workers' Compensation Pools that develop approximately \$50 million annually in Workers' Compensation premiums. Group Self Funded Workers' Compensation Pools have helped a growing number of employers control their Workers' Compensation premiums through aggressive loss prevention/loss control programs and have proven themselves to be a sound alternative to the traditional Workers' Compensation marketplace.

Kansas Senate Bill 29 is identical to last year's Senate Bill 625 which passed both the Senate and the House. Senate Bill 625 proposed that specific and aggregate excess insurance costs could be paid before the premium is allocated into administrative and claim accounts. Additionally, Senate Bill 625 amended K.S.A. 44-591 by allowing a Pool's board of

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Attachment 2i

trustees to be selected according to the bylaws of the said Pool. However, Senate Bill 29 has two additional provisions. First, Senate Bill 29 amends K.S.A. 44-585 by no longer requiring Pools to submit a renewal application in order to obtain a new certificate of authority. The vast majority of the information required by the current renewal application process is a repetition of prior year renewal information. The present renewal application process is time consuming and costly to both Pools and the Kansas Insurance Department. Finally, the information contained within the renewal application is audited by the Kansas Insurance Department when a physical triennial audit is conducted. Second, the language in K.S.A. 44-585 is modified to conform with "open rating" that goes into effect in Kansas on June 1, 1995. Currently, rates are recommended by the National Council on Compensation Insurance to the Kansas Insurance Department. Following public hearings and a complete review of the rates by the Department, the Commissioner approves these rates with or without modification. Insurance Companies or Group Self-Funded Workers' Compensation Pools then use these rates as a basis for premium determination. The new "open rating" format requires the NCCI to file with the Department loss cost data only. In other words, the loss cost filing forecasts what Workers' Compensation losses are projected to be in a specific work classification without the overhead and profit of an Insurance Company or Pool. The Insurance Company or Pool then applies their overhead in order to fully develop the rate. The current Workers' Compensation Pooling statutes must be changed to allow for this new format. This section would also allow Pools to determine their own rates, with Insurance Commissioner approval, after the said Pool has been in operation for five years.

We have previously met with the Kansas Insurance Department and discussed all the provisions contained within Senate Bill 29 in order to obtain their input.

We urge the committee to recommend Senate Bill 29 favorable for passage.

1 dition of each pool. Each pool shall submit a certified independent au-
 2 dited financial statement no later than 90 days after the end of the pool's
 3 fiscal year. The financial statement shall include outstanding reserves for
 4 claims and for claims incurred but not reported. Each pool shall file pay-
 5 roll records, accident experience and compensation reports and such
 6 other reports and statements at such times and in such manner as the
 7 commissioner shall require. Whenever it appears to the commissioner
 8 from such examination or other satisfactory evidence that the solvency of
 9 any such pool is impaired, or that it is doing business in violation of any
 10 of the laws of this state, or that its affairs are in an unsound condition so
 11 as to endanger its ability to pay or cause to be paid the compensation in
 12 the amount, manner and time due as provided for in the Kansas workers
 13 compensation act, the commissioner shall, before filing such report or
 14 making the same public, grant such pool upon reasonable notice a hearing
 15 in accordance with the provisions of the Kansas administrative procedure
 16 act, and, if on such hearing the report be confirmed, the commissioner
 17 shall suspend the certificate of authority for such pool until its solvency
 18 shall have been fully restored and the laws of the state fully complied
 19 with. The commissioner may, if there is an unreasonable delay in restoring
 20 the solvency of such pool and in complying with the law, revoke the
 21 certificate of authority of such pool to do business in this state. Upon
 22 revoking any such certificate the commissioner shall communicate the
 23 fact to the attorney general, whose duty it shall be to commence and
 24 prosecute an action in the proper court to dissolve such pool or to enjoin
 25 the same from doing or transacting business in this state. The commis-
 26 sioner of insurance may call a hearing under K.S.A. 40-222b, and amend-
 27 ments thereto, and the provisions shall apply to group ~~workers'~~ workers
 28 compensation pools.

29 Sec. 2. K.S.A. 44-585 is hereby amended to read as follows: 44-585.

30 (a) Premium contributions to the pool shall be based upon appropriate
 31 manual classification and rates, plus or minus applicable experience cred-
 32 its or debits, and minus any advance discount approved by the trustees,
 33 not to exceed 15% of manual premium. The pool must use rules, classi-
 34 fications and ~~rates loss cost data~~ as promulgated by the national council
 35 on compensation insurance ~~for workers compensation if the pool has been~~
 36 ~~in operation for less than five years. If the pool has been in operation for~~
 37 ~~more than five years, the board of trustees may determine such rates and~~
 38 ~~discounts as approved by the commissioner and must report premium~~
 39 and loss data to a rating organization.

40 (b) At least 70% of the annual premium shall be placed into a des-
 41 ignated depository for the sole purpose of paying claims. ~~If so approved~~
 42 ~~by the commissioner of insurance, the annual premium to be designated~~
 43 ~~to such depository may be determined to be the net amount of premium~~

rates

Such rates shall either be the rates ^{effective} approved 6/1/94
 or the prospective loss costs as defined in
 K.S.A. 40-1113c plus expenses necessary to administer
 the pool. For purposes of subsection (b) the
 prospective loss costs shall be presumed to be the
 70% required to be deposited in the claims fund.
 If the pool has been in operation for more than five
 years, the board of trustees may determine such rates
 as approved by the commissioner.

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 Attachment 3