

CHAPTER 39
SENATE BILL No. 515

AN ACT concerning workers compensation; relating to group-funded workers compensation pool; surplus funds; actuarial review; adequate surplus funds; amending K.S.A. 44-582, 44-584 and 44-588 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 44-582 is hereby amended to read as follows: 44-582. (a) 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)~~ (1) 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)~~ (2) 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)~~ (3) 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)~~ (4) 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)~~ (5) 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)~~ (6) 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)~~ (7) 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)~~ (8) Evidence that the annual Kansas gross premium of the pool will be ~~(1)~~ (A) 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)~~ (B) 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)~~ (9) 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)~~ (10) (A) 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)~~ (B) proof of payment by each member of a pool, which meets the requirements of subsection (b) of K.S.A. 44-581 and amendments thereto, of not less than 35% of the estimated annual premium into a designated depository.

~~(k)~~ (11) A copy of the procedures adopted by the pool to provide services with respect to underwriting matters and safety engineering.

~~(l)~~ (12) A copy of the procedures adopted by the pool to provide claims adjusting and reporting of loss data.

~~(m)~~ (13) A confirmation of specific and aggregate excess insurance, or in lieu of the aggregate excess insurance required herein, adequate surplus funds as approved by the commissioner, 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)~~ (14) Any other relevant factors the commissioner may deem necessary.

(b) *The commissioner may require an independent actuarial review of claims reserves as part of the commissioner's review of surplus funds.*

(c) *For the purposes of this section:*

(1) *"Surplus funds" means retained earnings of the pool after reserves have been established for all known and incurred, but not reported, losses of the pool after all other liabilities of the pool, including unearned premium reserves, have been deducted from total assets.*

(2) *"Adequate surplus funds" means the amount necessary for the pool to fund its self-insured obligations.*

Sec. 2. K.S.A. 44-584 is hereby amended to read as follows: 44-584.

(a) The application for a new 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)~~ *(a)(6) through (a)(14)* 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) An approved certificate of authority shall remain in full force and effect until such certificate is suspended or revoked by the commissioner. An existing pool operating under an approved certificate of authority must file with the commissioner, within 120 days following the close of the pool's fiscal year, a current financial statement on a form approved by the commissioner showing the financial ability of the pool to meet its obligations under the worker compensation act and confirmation of specific and aggregate excess insurance as required by law for the pool. If an existing pool's certificate of authority is suspended or revoked, such pool shall have the same rights to a hearing by the commissioner as for applicants for new certificates of authority as set forth in subsection (a) above.

(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 in accordance with K.S.A. 40-222 and 40-223 and amendments thereto, 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 hearing under K.S.A. 40-222b, and amendments thereto, and the provisions shall apply to group workers compensation pools.

Sec. 3. K.S.A. 44-588 is hereby amended to read as follows: 44-588. In addition to the fees required to be paid in K.S.A. 44-587, *and amendments thereto*, 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, *and amendments thereto*, 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)~~ (a) of K.S.A. 44-582, *and amendments thereto*.

Sec. 4. K.S.A. 44-582, 44-584 and 44-588 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 23, 2006.
