

HOUSE BILL No. 2076

By Committee on Insurance

1-24

1 AN ACT concerning insurance; relating to municipal pools; *relating to*
2 *group-funded pool filings with the insurance commissioner; relating*
3 *to the extension of the insurance department's anti-fraud divisions*
4 *exception to disclosure of records under the open records act;*
5 amending K.S.A. 12-2620 and K.S.A. 2010 Supp. 12-2618 *and 44-584*
6 and repealing the existing sections; *also repealing K.S.A. 2010 Supp.*
7 *40-2,118.*
8

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

10 Section 1. K.S.A. 2010 Supp. 12-2618 is hereby amended to read as
11 follows: 12-2618. Application for a certificate of authority to operate a
12 pool shall be made to the commissioner of insurance not less than ~~30~~ 60
13 days prior to the proposed inception date of the pool. The application shall
14 include the following:

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

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

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

27 (d) Evidence that the annual Kansas gross premium of the pool will
28 be not less than \$250,000 for each of the categories described in
29 subparagraphs (1) through (4) of this subsection: (1) All property
30 insurance under article 9 of chapter 40 of the Kansas Statutes Annotated
31 except motor vehicle physical damage; (2) motor vehicle liability and
32 physical damage insurance; (3) workers' compensation and employers'
33 liability insurance; (4) all casualty insurance under article 11 of chapter 40
34 of the Kansas Statutes Annotated except insurance under categories (2)
35 and (3) above; (5) group sickness and accident insurance if at the date of
36 issue the annual gross premium for such coverage will be not less than

1 \$1,000,000; and (6) group life insurance if at the date of issue the coverage
2 will insure at least 60% of the eligible participants or the total number of
3 persons covered will exceed 600. The pool shall notify the commissioner
4 within 30 days if the minimum premium qualification or participation
5 requirement is less than that specified in this subsection for any of the
6 above categories of insurance.

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

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

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

17 (h) A confirmation that specific and aggregate excess insurance
18 provided by an insurance company holding a Kansas certificate of
19 authority or reinsurance approved by the commissioner is or will be in
20 effect concurrent with the assumption of risk by the pool, as selected by
21 the board of trustees of the pool, or adequate surplus funds as approved by
22 the commissioner, in the pool. The pool shall notify the commissioner
23 within 30 days of any change in the specific or aggregate excess insurance
24 or reinsurance carried by the pool. For the purposes hereof, "surplus
25 funds" shall mean retained earnings of the pool after reserves have been
26 established for all known and incurred but not reported losses of the pool
27 and after all other liabilities of the pool, including unearned premium
28 reserves, have been deducted from total assets. The term "adequate surplus
29 funds" shall mean the amount necessary for the pool to fund its self-
30 insured obligations.

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

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

39 Sec. 2. K.S.A. 12-2620 is hereby amended to read as follows: 12-
40 2620. (a) All certificates granted hereunder shall be perpetual unless
41 sooner suspended or revoked by the commissioner or the attorney general.

42 (b) Whenever the commissioner shall deem it necessary the
43 commissioner may make, or direct to be made, an examination of the

1 affairs and the financial condition of any pool, except that once every five
2 years the commissioner shall conduct an examination of the affairs and the
3 financial condition of each pool. Each pool shall submit a certified
4 independent audited financial statement no later than ~~90~~ 150 days after the
5 end of the fiscal year. The financial statement shall include outstanding
6 reserves for claims and for claims incurred but not reported. Each pool
7 shall file reports as to income, expenses and loss data at such times and in
8 such manner as the commissioner shall require. Any pool which does not
9 use rates developed by an approved rating organization shall file with the
10 commissioner an actuarial certification that such rates are actuarially
11 sound. Whenever it appears to the commissioner from such examination
12 or other satisfactory evidence that the ability to pay current and future
13 claims of any such pool is impaired, or that it is doing business in violation
14 of any of the laws of this state, or that its affairs are in an unsound
15 condition so as to endanger its ability to pay or cause to be paid claims in
16 the amount, manner and time due, the commissioner shall, before filing
17 such report or making the same public, grant such pool upon reasonable
18 notice a hearing, and, if on such hearing the report be confirmed, the
19 commissioner may require any of the actions allowed under K.S.A. 40-
20 222b and amendments thereto or suspend the certificate of authority for
21 such pool until its ability to pay current and future claims shall have been
22 fully restored and the laws of the state fully complied with. The
23 commissioner may, if there is an unreasonable delay in restoring the ability
24 to pay claims of such pool and in complying with the law or if
25 rehabilitation or corrective action taken under K.S.A. 40-222b and
26 amendments thereto is unsuccessful, revoke the certificate of authority of
27 such pool to do business in this state. Upon revoking any such certificate
28 the commissioner shall communicate the fact to the attorney general,
29 whose duty it shall be to commence and prosecute an action in the proper
30 court to dissolve such pool or to enjoin the same from doing or transacting
31 business in this state. The commissioner of insurance may call a hearing
32 under K.S.A. 40-222b, and amendments thereto, and the provisions thereof
33 shall apply to group-funded pools.

34 (c) On an annual basis, or within 30 days of any change thereto, each
35 pool shall supply to the commissioner the name and qualifications of the
36 designated administrator of the pools and the terms of the specific and
37 aggregate excess insurance contracts of the pool.

38 ***New Sec. 3. (a) For purposes of this act a "fraudulent insurance***
39 ***act" means an act committed by any person who, knowingly and with***
40 ***intent to defraud, presents, causes to be presented or prepares with***
41 ***knowledge or belief that it will be presented to or by an insurer,***
42 ***purported insurer, broker or any agent thereof, any written statement as***
43 ***part of, or in support of, an application for the issuance of, or the rating***

1 *of an insurance policy for personal or commercial insurance, or a claim*
2 *for payment or other benefit pursuant to an insurance policy for*
3 *commercial or personal insurance which such person knows to contain*
4 *materially false information concerning any fact material thereto; or*
5 *conceals, for the purpose of misleading, information concerning any*
6 *fact material thereto.*

7 *(b) An insurer that has knowledge or a good faith belief that a*
8 *fraudulent insurance act is being or has been committed shall provide to*
9 *the commissioner, on a form prescribed by the commissioner, any and*
10 *all information and such additional information relating to such*
11 *fraudulent insurance act as the commissioner may require.*

12 *(c) Any other person that has knowledge or a good faith belief that*
13 *a fraudulent insurance act is being or has been committed may provide*
14 *to the commissioner, on a form prescribed by the commissioner, any and*
15 *all information and such additional information relating to such*
16 *fraudulent insurance act as the commissioner may request.*

17 *(d) (1) Each insurer shall have antifraud initiatives reasonably*
18 *calculated to detect fraudulent insurance acts. Antifraud initiatives may*
19 *include: fraud investigators, who may be insurer employees or*
20 *independent contractors; or an antifraud plan submitted to the*
21 *commissioner no later than July 1, 2007. Each insurer that submits an*
22 *antifraud plan shall notify the commissioner of any material change in*
23 *the information contained in the antifraud plan within 30 days after*
24 *such change occurs. Such insurer shall submit to the commissioner in*
25 *writing the amended antifraud plan.*

26 *The requirement for submitting any antifraud plan, or any*
27 *amendment thereof, to the commissioner shall expire on the date*
28 *specified in paragraph (2) of this subsection unless the legislature*
29 *reviews and reenacts the provisions of paragraph (2) pursuant to K.S.A.*
30 *45-229 and amendments thereto.*

31 *(2) Any antifraud plan, or any amendment thereof, submitted to the*
32 *commissioner for informational purposes only shall be confidential and*
33 *not be a public record and shall not be subject to discovery or subpoena*
34 *in a civil action unless following an in camera review, the court*
35 *determines that the antifraud plan is relevant and otherwise admissible*
36 *under the rules of evidence set forth in article 4 of chapter 60 of the*
37 *Kansas Statutes Annotated, and amendments thereto. The provisions of*
38 *this paragraph shall expire on July 1, 2016, unless the legislature*
39 *reviews and reenacts this provision pursuant to K.S.A. 45-229, and*
40 *amendments thereto, prior to July 1, 2016.*

41 *(e) Except as otherwise specifically provided in K.S.A. 21-3718, and*
42 *amendments thereto, and K.S.A. 44-5,125, and amendments thereto, a*
43 *fraudulent insurance act shall constitute a severity level 6, nonperson*

1 *felony if the amount involved is \$25,000 or more; a severity level 7,*
2 *nonperson felony if the amount is at least \$5,000 but less than \$25,000;*
3 *a severity level 8, nonperson felony if the amount is at least \$1,000 but*
4 *less than \$5,000; and a class C nonperson misdemeanor if the amount is*
5 *less than \$1,000. Any combination of fraudulent acts as defined in*
6 *subsection (a) which occur in a period of six consecutive months which*
7 *involves \$25,000 or more shall have a presumptive sentence of*
8 *imprisonment regardless of its location on the sentencing grid block.*

9 *(f) In addition to any other penalty, a person who violates this*
10 *statute shall be ordered to make restitution to the insurer or any other*
11 *person or entity for any financial loss sustained as a result of such*
12 *violation. An insurer shall not be required to provide coverage or pay*
13 *any claim involving a fraudulent insurance act.*

14 *(g) This act shall apply to all insurance applications, ratings, claims*
15 *and other benefits made pursuant to any insurance policy.*

16 *Sec. 4. K.S.A. 2010 Supp. 44-584 is hereby amended to read as*
17 *follows: 44-584. (a) The application for a new certificate shall be signed*
18 *by the trustees of the trust fund created by the pool. Any application for*
19 *a renewal of an existing certificate shall meet at least the standards*
20 *established in subsections (a)(6) through (a)(14) of K.S.A. 44-582, and*
21 *amendments thereto. After evaluating the application the commissioner*
22 *shall notify the applicant that the plan submitted is approved or*
23 *conversely, if the plan submitted is inadequate, the commissioner shall*
24 *then fully explain to the applicant what additional requirements must be*
25 *met. If the application is denied, the applicant shall have 15 days to*
26 *make an application for hearing by the commissioner after service of the*
27 *denial notice. The hearing shall be conducted in accordance with the*
28 *provisions of the Kansas administrative procedure act.*

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

41 *(c) Whenever the commissioner shall deem it necessary the*
42 *commissioner may make, or direct to be made, an examination of the*
43 *affairs and financial condition of any pool in accordance with K.S.A.*

1 *40-222 and 40-223, and amendments thereto, except that once every five*
2 *years the commissioner shall conduct an examination of the affairs and*
3 *financial condition of each pool. Each pool shall submit a certified*
4 *independent audited financial statement no later than 90 150 days after*
5 *the end of the pool's fiscal year. The financial statement shall include*
6 *outstanding reserves for claims and for claims incurred but not reported.*
7 *Each pool shall file payroll records, accident experience and*
8 *compensation reports and such other reports and statements at such*
9 *times and in such manner as the commissioner shall require. Whenever*
10 *it appears to the commissioner from such examination or other*
11 *satisfactory evidence that the solvency of any such pool is impaired, or*
12 *that it is doing business in violation of any of the laws of this state, or*
13 *that its affairs are in an unsound condition so as to endanger its ability*
14 *to pay or cause to be paid the compensation in the amount, manner and*
15 *time due as provided for in the Kansas workers compensation act, the*
16 *commissioner shall, before filing such report or making the same public,*
17 *grant such pool upon reasonable notice a hearing in accordance with*
18 *the provisions of the Kansas administrative procedure act, and, if on*
19 *such hearing the report be confirmed, the commissioner shall suspend*
20 *the certificate of authority for such pool until its solvency shall have*
21 *been fully restored and the laws of the state fully complied with. The*
22 *commissioner may, if there is an unreasonable delay in restoring the*
23 *solvency of such pool and in complying with the law, revoke the*
24 *certificate of authority of such pool to do business in this state. Upon*
25 *revoking any such certificate the commissioner shall communicate the*
26 *fact to the attorney general, whose duty it shall be to commence and*
27 *prosecute an action in the proper court to dissolve such pool or to enjoin*
28 *the same from doing or transacting business in this state. The*
29 *commissioner of insurance may call a hearing under K.S.A. 40-222b,*
30 *and amendments thereto, and the provisions shall apply to group*
31 *workers compensation pools.*

32 *Sec. ~~3~~ 5. K.S.A. 12-2620 and K.S.A. 2010 Supp. 12-2618, 40-2,118*
33 *and 44-584 are hereby repealed.*

34 *Sec. ~~4~~ 6. This act shall take effect and be in force from and after its*
35 *publication in the statute book.*