

Notice of Rulemaking Hearing  
Department of Commerce and Insurance  
Insurance Division

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance ("Division") to consider the promulgation of rules. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4—5—204 and will take place in Conference Room A of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:00 a.m. CST on the 2<sup>4th</sup> day of April, 2008.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division's ADA Coordinator at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 and (615) 741-6500.

For a copy of this notice of rulemaking hearing contact: Dakasha K. Winton, Chief Counsel for Insurance, Office of Legal Counsel, Davy Crockett Tower, Twelfth Floor, Nashville, Tennessee 37243, Department of Commerce and Insurance, and (615) 741-2199.

Substance of Proposed Amendments

Chapter 0780-01-54  
Self-Insured Workers' Compensation Pools

0780-01-54-.02 Definitions is amended by adding the following as Paragraph (4) and renumbering the subsequent Paragraphs accordingly:

- (4) "Declaration" or "declared" for purposes of Rule 0780-01-54-.15 means an action by a Board that has the effect of making the surplus monies for a fund year payable to its members, regardless of whether the amount of surplus is known at the time of the declaration or whether it is intended to be paid at that time.

Authority: T.C.A. §§ 50-6-405(c) and (h).

0780-01-54-.04(3) Application for Certificate of Authority is amended by adding the following as Subparagraph (e) and renumbering the subsequent Subparagraphs accordingly:

- (e) The pool has deposited with the Commissioner, in a form approved by the Commissioner, one of the following types of security in the amount of one hundred thousand dollars (\$100,000) to be used for the payment of claims in the event the pool becomes insolvent:
  - 1. Negotiable securities;
  - 2. Certificates of deposit;
  - 3. Letters of credit; or
  - 4. Surety bonds.

Authority: T.C.A. §§ 50-6-405(c) and (h).

0780-01-54-.08 Members of the Pool is amended by deleting Paragraph (1) and replacing it with the following:

- (1) The board of trustees shall establish underwriting guidelines with respect to the addition of members to the pool as well as the renewal of its members. At a minimum, such underwriting guidelines shall set forth requirements for the members to be able to provide the pool evidence that the member is solvent. Each pool shall file such guidelines and any amendments thereto with the Commissioner no later than thirty (30) days prior to their proposed effective date.

Authority: T.C.A. §§ 50-6-405(c) and (h), and 50-6-115.

0780-01-54-.08 Members of the Pool is amended by deleting the words “application and” from the last sentence of Paragraph (4).

Authority: T.C.A. §§ 50-6-405(c) and (h), and 50-6-115.

Rule 0780-01-54-.09 Financial Statements and Other Reports is amended by adding the following as new Subparagraph (2)(a) and renumbering the subsequent Subparagraph accordingly. Financial Statements and Other Reports is also amended by adding the following as new Paragraphs (3),(4), (5), and (6) renumbering the subsequent Paragraphs accordingly:

- (2)
  - (a) The pool must submit an unaudited management report indicating the current financial condition of each fund year.
- (3) In determining the financial condition of the pool, the Commissioner may, in the Commissioner’s sole discretion, non-admit the following assets of the pool for any regulatory purpose:
  - a. Account receivables over ninety (90) days;
  - b. Pre-paid expenses;
  - c. Office furniture, computer systems with a value less than fifty thousand dollars (\$50,000), and vehicles;
  - d. Intangible assets;
  - e. Loans on personal security and cash advances;
  - f. Discounting reserves; and
  - g. Unearned premiums.
- (4) The commissioner may hold a hearing in accordance with the procedures set out in T.C.A. Title 4, Chapter 5, Part 3, to determine whether a certified accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial statement made pursuant to this Chapter and require the insurer to replace the accountant with another that the commissioner deems appropriate.
- (5) The financial statements required by this Rule shall be prepared in accordance with the NAIC’s Accounting Practices and Procedures Manual in effect for the period covered by the statement.

(6) The Commissioner may prescribe the format and frequency of other reports which may include, but shall not be limited to, payroll audit reports, summary loss reports, and quarterly financial statements.

(a) Quarterly loss ratios shall be reported on an accident year basis within thirty (30) days from the end of the quarter.

Authority: T.C.A. §§ 4-5-101 *et seq.*, 50-6-405(c) and (h), 56-1-501(h), and 56-4-101.

0780-01-54-.10 Rates and Rate Reporting is amended by adding the following as a new Paragraph:

(8) All pools must report their losses, loss adjustment expenses, premium, and payroll to the Commissioner's designated rate service organization in accordance with the designated rate service organization's rules and procedures.

Authority: T.C.A. §§ 50-6-405(c) and (h).

0780-01-54-.11 Premiums and Reserves is amended by adding the following as new Paragraphs (1) and (3) and renumbering the subsequent Paragraphs accordingly:

(1) A pool shall establish and maintain an aggregate surplus equal to:

(a) thirty percent (30%) of the unpaid claims liability of the pool. The pool may accumulate the surplus at a rate of ten percent (10%) per fund year over the next three (3) years. However, each pool shall have an aggregate surplus of thirty percent (30%) of the unpaid claims liability three (3) years from the effective date of this Chapter.

(3) The commissioner may hold a hearing in accordance with the procedures set out in T.C.A. Title 4, Chapter 5, Part 3, to determine whether an actuary is qualified and, considering the evidence presented, may rule that the actuary is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial statement made pursuant to this Chapter and require the insurer to replace the actuary with another that the commissioner deems appropriate.

Authority: T.C.A. §§ 4-5-101 *et seq.*, 50-6-405(c) and (h), 56-1-402.

0780-01-54-.15 Refunds and Dividends is amended by deleting Paragraph (1) in its entirety and replacing it with the following:

(1) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the board of trustees not less than eighteen (18) months after the end of the fund year and only with the written approval of the Commissioner.

(a) Any request for approval under this Paragraph shall be accompanied by an unaudited management report indicating the financial condition of each fund year.

(b) In addition to the information sought in Subparagraph (a) of this Paragraph, the Commissioner may request such additional information of a pool to help in determining whether the declaration of the dividend would be hazardous to the financial condition of the pool.

Authority: T.C.A. §§ 50-6-405(c) and (h).

- (1) Rule 0780-01-54-.16 Sponsoring Associations is amended by deleting the Rule in its entirety

Authority: T.C.A. §§ 50-6-405(c)(6).

Rule 0780-01-54-.20 Examinations and Investigations is amended by deleting Paragraph (1) in its entirety and replacing it with the following:

- (1) The Commissioner has the authority to examine the affairs of any pool that has applied for or received a certificate of authority under this Chapter in order to determine the financial condition of the pool or to determine whether the pool is in compliance with all insurance laws and regulations applicable to it. Such examinations shall be conducted when deemed necessary but no less than once every five (5) years, and all expenses of such examinations shall be assessed against the pool, including the costs of contract examiners or specialists.
  - (a) No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the Department a verified written report of examination under oath. Upon receipt of the verified report, the Department shall transmit the report to the pool examined, together with a notice which shall afford the pool examined a reasonable opportunity of not more than sixty (60) days to make a written submission or rebuttal with respect to any matters contained in the examination report.
  - (b) Within thirty (30) days of the end of the period allowed for the receipt of written submission or rebuttals, the Commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's work papers and enter an order:
    1. Adopting the examination report as filed or with modifications or corrections. If the examination report reveals that a pool is operating in violation of any law, regulation, or prior order of the Commissioner, the Commissioner may order the pool to take any action the Commissioner considers necessary and appropriate to cure such violations;
    2. Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and re-filing; or
    3. Calling for an investigatory hearing with no less than twenty (20) days notice to the pool for purposes of obtaining additional documentation, data, information or testimony.
  - (c) If the examination reveals that the pool is operating in violation of any law, regulation or prior order, the Commissioner in such written order may require the pool to take any action the Commissioner considers necessary or appropriate in accordance with the report of examination or the hearing, if any, on such. That order shall be subject to judicial review in accordance with the provisions of Title 27, Chapter 9.
  - (d) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the Commissioner or any person in the course of an examination made under this Rule must be given confidential treatment and may not be made public by the Commissioner or any other person.

Authority: T.C.A. §§ 50-6-405(c) and (h), 56-1-204, 56-1-408, 56-1-409(b)(5), 56-1-411 and 56-1-413.

Rule 0780-01-54-.22 Suspension or Revocation of Certificate of Authority is amended by deleting Paragraph (2) and replacing it with the following:

- (2) With respect to any pool licensed or required to be licensed under this Chapter, and in addition to or in lieu of any action taken in Rule 0780-01-54-.21 or Paragraph (1) of this Rule, the Commissioner may assess a civil penalty against such pool in an amount not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each separate violation of a statute or rule applicable to the pool. Each day of continued violation constitutes a separate violation for purposes of computing such penalty.

Authority: T.C.A. § 50-6-405(c)(10).

Rule 0780-01-54-.24 Assessments is amended by deleting Paragraph (1) in its entirety and replacing it with the following:

- (a) (1) If the aggregate assets of the pool are at any time insufficient to enable the pool to discharge its legal liabilities and other obligations and to maintain the reserves required of it under this Chapter, the pool shall, within thirty (30) days of receiving notice of such deficiency, levy an assessment upon its members for the amount needed to eliminate the deficiency. In the event of a deficiency in any fund year, such deficiency shall be made up within thirty (30) days, either from:
1. Surplus funds obtained by the pool from a fund year prior to the deficient year with the prior written approval of the commissioner;
  2. Surplus funds obtained by the pool from a fund year subsequent to the deficient year with the prior written approval of the commissioner. However, a pool should satisfy the deficiency under Subparagraph (a)1. of this Paragraph where practical before using the funds of a subsequent fund year;
  3. Administrative funds;
  4. Assessment of the membership, if ordered by the pool; or
  5. Such alternative method as the commissioner may approve or direct.
- (b) Any deficiency expected for any fund year shall be reported, accompanied by supporting financial documentation, to the commissioner within three (3) working days of the pool receiving notice of the deficiency.

Authority: T.C.A. §§ 50-6-405(c) and 56-9-101, *et seq.*

Rule 0780-01-54 is amended by adding the following as a new Rule:

Rule 0780-01-54-.26 Effective Date.

The effective date of this Chapter or any amendments thereto shall be as set forth below; but Rule 0780-01-54-.10 (8) shall be enforced for policies effective March 1, 2009.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of February, 2008. (FS 02-30-08; DBID 830)