

HOUSE BILL No. 2730

By Committee on Appropriations

3-10

1 AN ACT concerning school districts; relating to insurance; pertaining to
2 the establishment of a school district group-funded pool.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) Sections 1 through 14, and amendments thereto, shall
6 be known and may be cited as the Kansas school district group-funded
7 pool act.

8 Sec. 2. All school districts in this state shall enter into an agreement
9 to pool their liabilities for property lines as defined in K.S.A. 40-901, and
10 amendments thereto, and casualty, surety and fidelity lines as defined in
11 K.S.A. 40-1102, and amendments thereto, including workers
12 compensation and life insurance, as regulated in K.S.A. 40-433, and
13 amendments thereto. Such arrangement shall be known as the school
14 district group-funded pool, which shall not be deemed to be insurance or
15 insurance companies and shall not be subject to the provisions of chapter
16 40 of the Kansas Statutes Annotated, and amendments thereto, except as
17 otherwise provided in this act.

18 Sec. 3. Application for a certificate of authority to operate the pool
19 shall be made to the commissioner of insurance not less than 60 days prior
20 to the proposed inception date of the pool. The application shall include
21 the following:

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

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

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

34 (d) Evidence that the annual Kansas gross premium of the pool will
35 be not less than \$250,000 for each of the categories described in
36 paragraphs (1) through (4) of this subsection: (1) All property insurance

1 under article 9 of chapter 40 of the Kansas Statutes Annotated, and
2 amendments thereto, except motor vehicle physical damage; (2) motor
3 vehicle liability and physical damage insurance; (3) workers compensation
4 and employers liability insurance; (4) all casualty insurance under article
5 11 of chapter 40 of the Kansas Statutes Annotated, and amendments
6 thereto, except insurance under paragraphs (2) and (3); and (5) group life
7 insurance if, at the date of issue, the coverage will insure at least 60% of
8 the eligible participants or the total number of persons covered will exceed
9 600. The pool shall notify the commissioner within 30 days if the
10 minimum premium qualification or participation requirement is less than
11 that specified in this subsection for any of the above categories of
12 insurance.

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

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

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

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

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

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

2 Sec. 4. The school district group-funded pool applying for authority
3 to operate a pool in this state, as a condition precedent to obtaining such
4 authority, shall file in the insurance department a written irrevocable
5 consent, that any action may be commenced against such pool in the
6 proper court of any county in this state in which the cause of action shall
7 arise or in which the plaintiff may reside by the service of process on the
8 commissioner of insurance of this state, and stipulating and agreeing that
9 such service shall be taken and held in all courts to be as valid and binding
10 as if due service had been made upon the trustees or the administrator of
11 such pool. The consent shall be executed by the board of trustees and shall
12 be accompanied by a duly certified copy of the resolution passed by the
13 trustees to execute such consent.

14 Sec. 5. (a) All certificates granted hereunder shall be perpetual unless
15 sooner suspended or revoked by the commissioner or the attorney general.

16 (b) Whenever the commissioner shall deem it necessary, the
17 commissioner may make, or direct to be made, an examination of the
18 affairs and the financial condition of the pool, except that once every five
19 years, the commissioner shall conduct an examination of the affairs and
20 the financial condition of the pool. The pool shall submit a certified
21 independent audited financial statement no later than 150 days after the
22 end of the fiscal year. The financial statement shall include outstanding
23 reserves for claims and for claims incurred but not reported. The pool shall
24 file reports as to income, expenses and loss data at such times and in such
25 manner as the commissioner shall require. If the pool does not use rates
26 developed by an approved rating organization, such pool shall file with the
27 commissioner an actuarial certification that such rates are actuarially
28 sound. Whenever it appears to the commissioner from such examination or
29 other satisfactory evidence that the ability to pay current and future claims
30 of such pool is impaired, or that it is doing business in violation of any of
31 the laws of this state, or that its affairs are in an unsound condition so as to
32 endanger its ability to pay or cause to be paid claims in the amount,
33 manner and time due, the commissioner shall, before filing such report or
34 making the same public, grant such pool upon reasonable notice a hearing,
35 and, if on such hearing the report be confirmed, the commissioner may
36 require any of the actions allowed under K.S.A. 40-222b, and amendments
37 thereto, or suspend the certificate of authority for such pool until its ability
38 to pay current and future claims shall have been fully restored and the laws
39 of the state fully complied with. The commissioner may, if there is an
40 unreasonable delay in restoring the ability to pay claims of such pool and
41 in complying with the law or if rehabilitation or corrective action taken
42 under K.S.A. 40-222b, and amendments thereto, is unsuccessful, revoke
43 the certificate of authority of such pool to do business in this state. Upon

1 revoking any such certificate, the commissioner shall communicate the
2 fact to the attorney general, whose duty it shall be to commence and
3 prosecute an action in the proper court to dissolve such pool or to enjoin
4 the same from doing or transacting business in this state. The
5 commissioner of insurance may call a hearing under K.S.A. 40-222b, and
6 amendments thereto, and the provisions thereof shall apply to the school
7 district group-funded pool.

8 (c) On an annual basis, or within 30 days of any change thereto, the
9 pool shall supply to the commissioner the name and qualifications of the
10 designated administrator of the pool and the terms of the specific and
11 aggregate excess insurance contracts of the pool.

12 Sec. 6. (a) With respect to the categories of coverage described in
13 section 3(d)(1) through (4), and amendments thereto, premium
14 contributions to the pool shall be based upon appropriate manual
15 classification and rates, plus or minus applicable experience credits or
16 debits, and minus any advance discount approved by the trustees, not to
17 exceed 25% of manual premium. The pool shall use rules, classifications
18 and rates as promulgated by an approved rating organization for workers
19 compensation if the pool has been in operation for less than five years.
20 Such rates shall be the prospective loss costs, as authorized in K.S.A. 40-
21 955, and amendments thereto, plus expenses necessary to administer the
22 pool. For purposes of subsection (b), the prospective loss costs shall be
23 presumed to be the 70% required to be deposited in the claims fund. If the
24 pool has been in operation for more than five years, the board of trustees
25 may determine such rates and discounts as approved by the commissioner.
26 Premium contributions to the pool for all other lines of insurance shall be
27 based on rates filed by a licensed rating organization or on rates of certain
28 companies filing rates with the commissioner and approved by the
29 commissioner for the pool. In lieu of the foregoing, the board of trustees
30 may determine such classification, rates and discounts as approved by the
31 commissioner. Premium contributions to the pool for providing life
32 insurance shall be based on sound actuarial principles.

33 (b) An amount equal to at least 70% of the annual premium shall be
34 maintained in a designated depository for the purpose of paying claims in
35 a claims fund account. If so approved by the commissioner of insurance,
36 the annual premium to be designated to such depository may be
37 determined to be the net amount of premium after all or a portion of the
38 specific and aggregate excess insurance premium costs have been paid.
39 This shall be called the claims fund account. If the pool has been in
40 operation for more than five years, the commissioner may authorize
41 allocation of a different amount to the claims fund account, if solvency of
42 the pool would not be endangered. The remaining annual premium shall be
43 placed into a designated depository for the payment of taxes, fees and

1 administrative and other operational costs in an administrative fund
2 account.

3 (c) Any moneys for a fund year in excess of the amount necessary to
4 fulfill all obligations of the pool for that fund year, including any
5 obligation to retain adequate surplus funds, as defined by section 3(h), and
6 amendments thereto, in lieu of specific and aggregate excess insurance,
7 may be declared to be refundable by the trustees not less than 12 months
8 after the end of the fund year. Any such refund shall be paid only to those
9 members who remained participants in the pool for an entire year.
10 Payment of previously earned refunds shall not be contingent on continued
11 membership in the pool.

12 Sec. 7. The trustees shall not utilize any of the contributions collected
13 as premiums for any purpose unrelated to the pool. Moneys not needed
14 for current obligations may be invested by the trustees. Such investments
15 shall be limited to investments permitted by K.S.A. 12-1677b and 75-
16 4209, and amendments thereto, except that a pool which has been in
17 existence for at least five years shall be permitted to invest in any of the
18 securities or other investments permitted by article 2a of chapter 40 of the
19 Kansas Statutes Annotated, and amendments thereto.

20 Sec. 8. The expense of state supervision of the school district group-
21 funded pool shall be financed in the following manner:

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

32 (b) The commissioner of insurance shall estimate as soon as practical
33 after January 1 of each year the expenses necessary for the supervision of
34 the school district group-funded pool for the fiscal year beginning on July
35 1 thereafter. Not later than June 1 of each year, the commissioner of
36 insurance shall notify such school district group-funded pool of the
37 amount of each assessment imposed under this subsection on such group-
38 funded pool and the same shall be due and payable to the commissioner on
39 the July 1 following.

40 (c) The commissioner of insurance shall remit all moneys received by
41 or for such remittance to the state treasurer in accordance with the
42 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
43 each such remittance, the state treasurer shall deposit the entire amount in

1 the state treasury to the credit of the school district group-funded pool fee
2 fund.

3 Sec. 9. In addition to the fees required to be paid in section 8, and
4 amendments thereto, and as a condition precedent to the continuation of
5 the certificate of authority provided in this act, the pool shall pay no later
6 than 90 days after the end of each fiscal year a tax upon the annual Kansas
7 gross premium collected by the pool at the rate of 1% per annum applied
8 to the collective premium relating to all members of the pool for the
9 preceding fiscal year. In the computation of the tax, the pool shall be
10 entitled to deduct any annual Kansas gross premiums returned on account
11 of cancellation or dividends returned to members of the pool or
12 expenditures used for the purchase of specific and aggregate excess
13 insurance, as provided in section 3(h), and amendments thereto.

14 Sec. 10. (a) The pool shall be assessed annually as provided by
15 K.S.A. 44-566a and 74-713, and amendments thereto.

16 (b) The pool and each person representing such pool shall be subject
17 to the provisions of article 24 of chapter 40 of the Kansas Statutes
18 Annotated, and amendments thereto.

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

21 (d) The premium on workers compensation coverage written on
22 school districts eligible to become members of such pool by an insurer
23 shall not be considered in the determination of any assessments levied by
24 the Kansas workers compensation plan established pursuant to K.S.A. 40-
25 2109, and amendments thereto.

26 Sec. 11. (a) After the inception date of the school district group-
27 funded pool, prospective new members of the pool shall submit an
28 application for membership to the board of trustees or its administrator.
29 The trustees may approve the application for membership pursuant to the
30 bylaws of the pool.

31 (b) Before the time that membership in the pool is granted, the
32 applicant for such membership shall be provided a written notice stating
33 that: (1) The group-funded pool is not an insurance company subject to the
34 general laws and rules and regulations relating to insurance companies;
35 and (2) the group-funded pool is subject to separate regulation by the
36 Kansas insurance department as authorized by state statute and cannot
37 commence or continue operations without a certificate of authority. Such
38 authorization does not constitute an endorsement or recommendation of
39 the coverage provided.

40 (c) Individual members may be subject to cancellation by the pool
41 pursuant to the bylaws of the pool. On cancellation of a workers
42 compensation member, the pool shall notify the division of workers
43 compensation within 10 days and shall maintain coverage of each canceled

1 or terminating member for 30 days after notice to such division or until
2 such division gives notice that the canceled member has procured workers
3 compensation and employers liability insurance, whichever occurs first.

4 Sec. 12. To ensure the financial stability of the operations of the
5 school district group-funded pool, the board of trustees of such pool is
6 responsible for all operations of the pool. The board of trustees shall
7 consist of not fewer than three persons selected according to the bylaws of
8 the pool for stated terms of office to direct the administration of the pool,
9 and whose duties include approving applications by new members of the
10 pool. The majority of the trustees must be members of the governing body
11 or an officer or employee of members of the pool, but a trustee may not be
12 an owner, officer or employee of any service agent or representative. All
13 trustees shall be residents of this state. The board of trustees of each fund
14 shall take all necessary precautions to safeguard the assets of the fund,
15 including all of the following:

16 (a) Designate an administrator to administer the financial affairs of
17 the pool who shall furnish a fidelity bond to the pool in an amount
18 determined by the trustees to protect the pool against the misappropriation
19 or misuse of any moneys or securities. The administrator shall file
20 evidence of the bond with the commissioner. The bond shall be one of the
21 conditions required for approval of the establishment and continued
22 operation of a pool. Any administrator so designated shall be a resident of
23 Kansas, if an individual, or shall be authorized to do business in Kansas, if
24 a corporation.

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

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

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

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

42 (f) The board of trustees may delegate authority for specific functions
43 to the administrator of the pool. The functions which the board may

1 delegate include such matters as contracting with a service agent,
2 determining the premium chargeable to and refunds payable to members,
3 investing surplus moneys and approving applications for membership. The
4 board of trustees shall specifically define all authority it delegates in the
5 written minutes of the trustees' meetings. Any delegation of authority shall
6 not be effective without a formal resolution passed by the trustees.

7 Sec. 13. Any person or agency soliciting for a proposed or authorized
8 group-funded pool shall hold a current license authorizing such person to
9 sell each line of insurance offered for sale. Any person licensed for the
10 kinds of insurance offered by the pool shall be deemed to be certified by a
11 company for the kinds of insurance permitted by the pool.

12 Sec. 14. The commissioner of insurance shall make such
13 recommendations as deemed advisable to assist school districts in the
14 effective, efficient and fiscally sound operation of the proposed school
15 district group-funded pool. Within the time and resources available, the
16 department of insurance shall provide advice and counsel to the school
17 district group-funded pool.

18 Sec. 15. This act shall take effect and be in force from and after its
19 publication in the statute book.