

44-566a. Workers compensation fund; annual assessment; administration; actions against fund, parties, settlement; liabilities of fund; annual report; actuarial review. (a) There is hereby created in the state treasury the workers compensation fund. The commissioner of insurance shall be responsible for administering the workers compensation fund, and all payments from the workers compensation 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. The commissioner of insurance annually shall report to the governor and the legislature the receipts and disbursements from the workers compensation fund during the preceding fiscal year.

(b) (1) On June 1 of each year, the commissioner of insurance shall impose an assessment against all insurance carriers, self-insurers and group-funded workers compensation pools insuring the payment of compensation under the workers compensation act, and the same shall be due and payable to the commissioner on the following July 1, the proceeds of which shall be credited to the workers compensation fund. The total amount of each such assessment shall be equal to an amount sufficient, in the opinion of the commissioner of insurance, to pay all amounts, including attorney fees and costs, which may be required to be paid from such fund during the current fiscal year, less the amount of the estimated unencumbered balance in the workers compensation fund as of the June 30 immediately preceding the date the assessment is due and payable under this section. The total amount of each such assessment shall be apportioned among those upon whom it is imposed, such that each is assessed an amount that bears the same relation to such total assessment as the amount of money paid or payable in workers compensation claims by such insurance carrier, self-insurer or group-funded workers compensation pool in the immediately preceding calendar year bears to all such claims paid or payable during such calendar year. The commissioner of insurance may establish experience-based rates of assessments under this subsection and make adjustments in the assessments imposed under this subsection based on the success of accident prevention programs under K.S.A. 44-5,104, and amendments thereto, and other employer safety programs.

(2) The commissioner of insurance shall remit all moneys received by or for such commissioner under this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the workers compensation fund.

(c) (1) Whenever the workers compensation fund may be made liable for the payment of any amounts in proceedings under the workers compensation act, the commissioner of insurance, in the capacity of administrator of such fund, shall be impleaded in such proceedings and shall represent and defend the workers compensation fund. The commissioner of insurance shall be deemed impleaded in any such proceedings whenever written notice of the proceedings setting forth the nature of the liability asserted against the workers compensation fund, is given to the commissioner of insurance. The commissioner of insurance may be made a party in this manner by any party to the proceedings. A copy of the written notice shall be given to the director and to all other parties to the proceedings.

(2) The administrative law judge shall dismiss the workers compensation fund from any proceeding where the administrative law judge has determined that there is insufficient evidence to indicate involvement by the workers compensation fund.

(3) In any case in which the workers compensation fund has been impleaded by the employer or insurance carrier and where an award has been entered deciding all of the issues in the employee's claim against the employer, but not deciding the issues between the employer and the fund, the fund may file an application with the administrative law judge requesting that the fund be dismissed from the case with prejudice. The employer shall have a period of six months from the filing of the application in which to complete the employer's evidence on the fund issues and submit the case to the administrative law judge for decision. The fund shall then have a period of 60 days after the submission of the employer's evidence to submit its own evidence concerning the fund issues in the case. If the employer fails to do so, the administrative law judge shall dismiss the fund from the case with prejudice on the judge's own motion.

(d) The commissioner of insurance, in the capacity of administrator of the workers compensation fund, may make settlements of any amounts which may be payable from the workers compensation fund with regard to any claim under the workers compensation act, subject to the approval of the director.

(e) The workers compensation fund shall be liable for:

(1) Payment of awards to handicapped employees in accordance with the provisions of K.S.A. 44-569, and amendments thereto, for claims arising prior to July 1, 1994;

(2) payment of workers compensation benefits to an employee who is unable to receive such benefits from such employee's employer under the conditions prescribed by K.S.A. 44-532a, and amendments thereto;

(3) reimbursement of an employer or insurance carrier pursuant to the provisions of K.S.A. 44-534a, and amendments thereto, subsection (d) of K.S.A. 44-556, and amendments thereto, subsection (c) of K.S.A. 44-569, and amendments thereto, and K.S.A. 44-569a, and amendments thereto;

(4) payment of the actual expenses of the commissioner of insurance which are incurred for administering the workers compensation fund, subject to the provisions of appropriations acts; and

(5) any other payments or disbursements provided by law.

(f) If it is determined that the workers compensation fund is not liable as described in subsection (e), attorney fees incurred by the workers compensation fund may be assessed against the party who has impleaded the workers compensation fund other than impleadings pursuant to K.S.A. 44-532a, and amendments thereto.

(g) The commissioner of insurance shall provide for the implementation of the workers compensation fund as provided in this section and shall be responsible for ensuring the fund's adequacy to meet and pay claims awarded against it.

(h) The commissioner of insurance shall make an annual report to the legislative coordinating council, senate committee on commerce and house committee on commerce and labor during January of each year. The report shall include recommendations to the legislature on the advisability of continuation or termination of the workers compensation fund or any provisions of the workers compensation act relating thereto, an analysis of the federal Americans with disabilities act and its effect on the workers compensation fund and recommendations on ways to reduce claim and operational costs of the workers compensation fund.

(i) The commissioner of insurance, or the commissioner's designee, shall provide any consulting actuarial firm contracting with the director of workers compensation or the legislative coordinating council with such information or materials pertaining to the workers compensation fund deemed necessary by the actuarial firm for performing the

requirements of any actuarial reviews of the workers compensation fund for the director of workers compensation or the legislative coordinating council notwithstanding any confidentiality prohibition, restriction or limitation imposed on such information or materials by any other law. The consulting actuarial firm and all employees and former employees thereof shall be subject to the same duty of confidentiality imposed by law on other persons or state agencies with regard to information and materials so provided and shall be subject to any civil or criminal penalties imposed by law for violations of such duty of confidentiality. Any reports of the consulting actuarial firm shall be made in a manner in which will not reveal directly or indirectly the name of any persons or entities or individual reserve information involved in claims against the workers compensation fund. Information provided to the actuary shall not be subject to discovery, subpoena or other means of legal compulsion in any civil proceedings and shall be returned by the actuary to the commissioner of insurance.

History: L. 1974, ch. 203, § 46; L. 1975, ch. 260, § 3; L. 1977, ch. 179, § 1; L. 1979, ch. 156, § 14; L. 1980, ch. 146, § 14; L. 1982, ch. 213, § 6; L. 1983, ch. 166, § 15; L. 1984, ch. 182, § 1; L. 1988, ch. 380, § 1; L. 1990, ch. 28, § 16; L. 1993, ch. 286, § 61; L. 1996, ch. 79, § 13; L. 1997, ch. 125, § 15; L. 2001, ch. 5, § 137; L. 2006, ch. 59, § 1; July 1.

Revisor's Note:

2006 Session repealed the workers compensation oversight committee statute, 46-2401, and assigned the annual reporting duties and duties concerning actuarial reviews to the commissioner of insurance.