

**65-34,126. Third party liability insurance plan.** (a) The commissioner of insurance shall adopt and implement a plan for applicants for insurance who are in good faith entitled to insurance necessary to achieve compliance with the financial responsibility requirements for third-party liability imposed by 40 CFR part 280, subpart H, and part 281 adopted by the federal environmental protection agency. Insurers undertaking to transact the kinds of insurance specified in subsection (b) or (c) of K.S.A. 40-1102 and amendments thereto and rating organizations which file rates for such insurance shall cooperate in the preparation and submission to the commissioner of insurance of a plan or plans for the insurance specified in this section. Such plan shall provide:

(1) Insurance necessary to achieve compliance with the financial responsibility requirements for third-party liability imposed by 40 CFR part 280, subpart H, and part 281;

(2) for the appointment by the plan of a servicing carrier which shall be: (A) An insurance company authorized to transact business in this state; (B) an insurance company which is listed with the commissioner pursuant to K.S.A. 40-246e and amendments thereto; or (C) a risk retention group, as defined by K.S.A. 40-4101 and amendments thereto, which meets the requirements established under the federal liability risk retention act of 1986 (15 U.S.C. 3901 *et seq.*) and has registered with the commissioner pursuant to K.S.A. 40-4103 and amendments thereto;

(3) reasonable rules governing the plan, including provisions requiring, at the request of the applicant, an immediate assumption of the risk by an insurer or insurers upon completion of an application, payment of the specified premium and deposit of the application and the premium in the United States mail, postage prepaid and addressed to the plan's office;

(4) rates and rate modifications applicable to such risks, which rates shall be established as provided by subsection (b);

(5) the limits of liability which the insurer shall be required to assume;

(6) coverage for only underground storage tanks located within this state;

(7) coverage for at least 12 months from the date of the original application with respect to any underground storage tank which has been installed for less than 10 years, and may provide such coverage with respect to any such tank which has been installed 10 or more years, without requiring tank integrity tests, soil tests or other tests for insurability if, within six months immediately preceding application for insurance, the tank has been made to comply with all provisions of federal and state law, and all applicable rules and regulations adopted pursuant thereto, but the plan may provide for renewal or continuation of such coverage to be contingent upon satisfactory evidence that the tank or tanks to be insured continue to be in compliance with such laws and rules and regulations;

(8) exclusion from coverage of any damages for noneconomic loss and any damages resulting from intentional acts of the insured or agents of the insured;

(9) to the extent allowed by law, subrogation of the insurer to all rights of recovery from other sources for damages covered by the plan or plans;

(10) an optional deductible of the first \$2,500, \$5,000 or \$10,000 of liability per occurrence at any one location for compensation of third parties for bodily injury and property damage caused by either gradual or sudden and accidental releases from underground petroleum storage tanks, but no such deductible shall apply to reasonable and necessary attorney fees and other reasonable and necessary expenses incurred in defending a claim for such compensation;

(11) coverage only of claims for occurrences that commenced during the term of the policy and that are discovered and reported to the insurer during the policy period or within six months after the effective date of the cancellation or termination of the policy;

(12) a method whereby applicants for insurance, insureds and insurers may have a hearing on grievances and the right of appeal to the commissioner;

(13) a method whereby adequate reserves are established for open claims and claims incurred but not reported based on advice from an independent actuary retained by the plan at least annually, the cost of which shall be borne by the plan;

(14) a method whereby the plan shall compare the premiums earned to the losses and expenses sustained by the plan for the preceding fiscal year and if, for that year: (A) There is any excess of losses and expenses over premiums earned, plus amounts transferred pursuant to subsection (a)(15), an amount equal to such excess losses and expenses shall be transferred from the underground fund established by K.S.A. 65-34,114 and amendments thereto to the plan; or (B) there is any surplus of premiums earned, plus amounts transferred pursuant to subsection (a)(15), over losses, including loss reserves, and expenses sustained, 1/2 of such surplus shall be transferred to such fund from the plan and the remaining 1/2 of such surplus shall be refunded from the plan to the insureds in proportion to the amount each paid into the plan during the preceding fiscal year; and

(15) a method whereby, during any fiscal year, whenever the losses and expenses sustained by the plan exceed premiums earned, an amount equal to the excess of losses and expenses shall be transferred from the underground fund established by K.S.A. 65-34,114 and amendments thereto to the plan upon receipt by the secretary of health and environment of evidence, satisfactory to the secretary, of the amount of the excess losses and expenses.

(b) The commissioner of insurance shall establish rates, effective January 1 of each year, for coverage provided under the plan adopted pursuant to this section. Such rates shall be reasonable, adequate and not unfairly discriminatory. Such rates shall be based on loss and expense experience developed by risks insured by the plan and shall be in an amount deemed sufficient by the commissioner to fund anticipated claims based upon reasonably prudent actuarial principles, except that:

(1) Due consideration shall be given to the loss and expense experience developed by similar plans operating or trust funds offering third party liability coverage in other states and the voluntary market; and

(2) before January 1, 1992, the annual rate shall be not more than \$500 for each tank for which coverage is provided under the plan with selection of a \$10,000 deductible.

In establishing rates pursuant to this subsection, the commissioner shall establish, as appropriate, lower rates for tanks complying with all federal standards, including design, construction, installation, operation and release detection standards, with which such tanks are or will be required to comply by 40 C.F.R. part 280 as in effect on the effective date of this act.

(c) The commissioner of insurance shall appoint a governing board for the plan. The governing board shall meet at least annually to review and prescribe operating rules of the plan. Such board shall consist of five members appointed as follows: One representing domestic or foreign insurance companies, one representing independent insurance agents, one representing underground storage tank owners and operators and two representing the general public. No member representing the general public shall be, or be affiliated with, an insurance company, independent insurance agent or underground storage tank operator. Members shall be appointed for terms of three years, except that the initial appointment shall include two members appointed for two-year terms and one member appointed for a one-year term, as designated by the commissioner.

(d) Before adoption of a plan pursuant to this section, the commissioner of insurance shall hold a hearing thereon.

(e) An insurer participating in the plan adopted by the commissioner of insurance pursuant to this section may pay a commission with respect to insurance assigned under the plan to an agent licensed for any other insurer participating in the plan or to any insurer participating in the plan.

(f) The commissioner of insurance may adopt such rules and regulations as necessary to administer the provisions of this section.

(g) The department of health and environment and the plan shall provide to each other such information as necessary to implement and administer the provisions of this section. Any such information which is confidential while in the possession of the department or plan shall remain confidential after being provided to the other pursuant to this subsection.

(h) This section shall be part of and supplemental to the Kansas storage tank act.

**History:** L. 1990, ch. 229, § 5; L. 1992, ch. 311, § 21; L. 2001, ch. 143, § 2; July 1.