

Rulemaking Hearing Rules  
Of  
Department of Commerce and Insurance  
Insurance Division

Chapter 0780-01-81  
Administration of Self Insurance Workers' Compensation Programs by Single Employers or Pools  
Amendments

Rule 0780-01-81-.02 Definitions is amended by adding the following new subparagraph at the end of Paragraph (13):

- (h) A Tennessee licensed insurance company that performs services on behalf of a self-insured employer under T.C.A. §§ 50-6-405(a) and (b) or a self-insured pool under T.C.A. § 50-6-405(c).

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

Rule 0780-01-81-.09 Certificate of Authority is amended by deleting subparagraph (2)(d) and replacing it with the following:

- (2) The application shall include or be accompanied by the following information and documents:
  - (d) Audited annual financial statements for the past year that are no more than six (6) months older than the date of application that prove that the applicant has a positive net worth. In lieu of audited financial statements, an applicant may submit financial statements or reports that are attested to by a company officer in a form approved by the commissioner. If attested, the attestation must refer to the financial statement by date and bear original signatures and notarized seal. The financial statements may be prepared on a GAAP basis but the commissioner reserves the ability to only consider assets that would be admitted by the NAIC's Accounting Practices and Procedures Manual. The financial statement must be in the name of the applicant or prepared on a consolidated basis that includes a columnar consolidating or combining worksheet that is filed with the report and includes the following:
    1. Amounts shown on the consolidated audited or attested financial report shall be shown on the worksheet;
    2. Amounts for each entity shall be stated separately;
    3. Explanations of consolidation and eliminating entries; and
    4. Other information as the commissioner may require in determining the current financial condition of the applicant.

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

Rule 0780-01-81-.09 Certificate of Authority is amended by adding the following as Paragraph (3) and renumbering all subsequent paragraphs accordingly:

- (3) Proof of a fidelity bond, fidelity insurance coverage and/or crime insurance coverage in the amount of Two Hundred Fifty Thousand Dollars (\$250,000)

issued in the name of the applicant. The deductible on the bond or insurance policy may not exceed ten percent (10%) of the third party administrator's or applicant's net worth as determined by the commissioner.

- (a) Bonds and insurance must be written by an insurance company licensed to do business in Tennessee.
- (b) Bonds and insurance policies must specify the beginning and end date. The notation "until cancelled" is not acceptable for purposes of this subparagraph.
- (c) The Department of Commerce and Insurance shall be listed as the certificate holder on the bond or insurance policy so as to be notified in the event of the bond or policy's cancellation.

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

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 13th day of October, 2008, and will become effective on the 27th day of December, 2008. (FS 10-07-08; DBID 3520)

**Economic Impact Statement:**

1. Types of small businesses directly affected:

The type or types of small businesses directly affected by these proposed rules may include those wishing to offer third party administration services to either self-insured employers or self-insured workers' compensation pools.

2. Projected reporting, recordkeeping, and other administrative costs:

Administrative costs are thought to be minimal to implement.

3. Probable effect on small businesses:

The impact on small businesses after these rules take effect will be the same as the impact on other businesses to which these rules apply. The Insurance Division has taken steps to lessen any adverse impact on small businesses by allowing applicants to submit financial statements attested to by a company officer in lieu of audited financial statements. The rule now requires financial statements from the last six (6) months instead of the last two (2) years, and no longer requires their preparation in accordance with Generally Accepted Accounting Principles (GAAP). Businesses will also be required to obtain a fidelity bond issued in the name of the applicant in the amount of \$250,000.

4. Less burdensome, intrusive, or costly alternative methods:

Alternative means to accomplishing the intent, which is to ensure the efficient and lawful operation of the third party administrator do not exist.

5. Comparison with federal and state counterparts:

The following states require a license to provide administration services in their state:

- California
- Texas
- West Virginia

North Carolina does not require a license to operate as a third party administrator but does impose strict regulatory requirements, such as:

- Access to books and records
- Approval over the third party administrator compensation agreements
- Must obtain a fidelity bond and an errors and omissions policy
- Required periodic accounting to the self-insured entity by the third party administrator regarding the premium collected and claims paid
- Written agreement required

6. Effect of possible exemption of small businesses:

Small businesses cannot be exempted due to the nature and importance of these regulations, and must be required to comply with these regulations so that entities administering self-insurance programs can be appropriately regulated by the Insurance Division. Strict regulation of third party administrators is required because they handle funds on behalf of the company or pool to which they provide services.