

**304.50-050 Security deposits -- Dividends on and exchange of assets -- Collection by commissioner -- Release -- Commissioner to approve custodian bank or trust company for security deposits -- Qualifications for approval.**

- (1) The group shall provide security deposits to the commissioner on a form prescribed by the commissioner in an amount not less than two hundred fifty thousand dollars (\$250,000), ten percent (10%) of the annual premium, or ten percent (10%) of the reserve requirement as established in the most recent audited statement of financial condition on file with the commissioner, whichever is greater.
- (2) The trustees may file cash, cash equivalents, or United States Treasuries as security deposit or a bank letter of credit on a form or forms prescribed by the commissioner, in satisfaction of the security deposit requirement. Notwithstanding any other provision of law to the contrary, the deposit required under this section shall be under trust agreements to which depositories, a self-insured group, and the commissioner are parties. The commissioner may at any time inventory assets on deposit for any self-insured group. Assets shall not be removed or deposited in or from the bank or trust company in which the assets are deposited, except upon a written order, approved by the commissioner, of at least two (2) officers authorized for such purpose by the workers' compensation group self-insurance fund's board of directors or other governing body, except that assets may be deposited or removed under the direction and upon the order of a court of competent jurisdiction, and in the presence of the commissioner. Deposit assets shall be valued at market.
- (3)
  - (a) Unless a fund fails to cure a deficiency, is insolvent, subject to a delinquency proceeding, or is in default as to taxes or other charges due under state law, a group self-insurance fund shall be entitled:
    1. To collect and receive interest, dividends, and payments accruing upon assets held on deposit for its account.
    2. From time to time, to exchange and substitute for any such assets, other assets eligible for deposits.
  - (b) If the group self-insurance fund fails to cure a deficiency when required, is insolvent, subject to delinquency proceedings, or is in default as to taxes or other charges due to the Commonwealth under law, the commissioner shall collect such interest, dividends, and payments and add them to the group self-insurance fund's deposit.
- (4)
  - (a) Any required deposit shall be released, in addition to circumstances already provided for in the following instances only:
    1. Upon extinguishment of substantially all liabilities of the group self-insurance fund for the security for which the deposit is held;
    2. If the deposit is no longer required under this subtitle; or
    3. Upon proper order of a court of competent jurisdiction, the deposit shall be released to the receiver, conservator, rehabilitator, or liquidator of the group self-insurance fund.
  - (b) No release of a deposit shall be made except on application to and written order of the commissioner made upon proof satisfactory to the commissioner

of the existence of one (1) of the grounds required in paragraph (a) of this subsection. The commissioner shall not have any personal liability for any such release of any deposit or part thereof so ordered by the commissioner in good faith.

- (5) (a) A proposed custodian bank or trust company for security deposits shall be approved by the commissioner and shall be under a custodial agreement approved by the commissioner.
- (b) An approved custodian bank or trust company shall possess the following qualifications:
  - 1. The custodian bank or trust company's custodial functions for the self-insured group shall be carried out under its trust department;
  - 2. The custodian bank or trust company shall be audited annually by independent certified public accountants, and the audit report, related financial statements, and report on internal controls shall be available to the self-insured group and the commissioner;
  - 3. The custodian bank or trust company shall be organized under the laws recognizing that the custodied securities are special deposits rather than general deposits, remain the specific property of the self-insured group, and are not subject to any creditor relationship of the custodian bank or trust company;
  - 4. The custodian bank or trust company shall maintain blanket coverage relating to its custodial functions with limits to or exceeding those suggested by the American Bankers Association;
  - 5. The custodian bank or trust company's capital and surplus shall equal or exceed twenty-five million dollars (\$25,000,000) unless it is licensed and regulated by the Commonwealth of Kentucky, in which case its capital and surplus shall equal or exceed ten million dollars (\$10,000,000); and
  - 6. The custodian bank or trust company has demonstrated sufficient experience in handling custodial accounts.
- (6) The commissioner shall publish a list of banks or trust companies for the security deposits or letter of credit as proposed by the group self-insurance fund.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 1632, effective July 15, 2010. -- Amended 2008 Ky. Acts ch. 183, sec. 3, effective July 15, 2008. -- Created 2005 Ky. Acts ch. 7, sec. 10, effective March 1, 2005.