

CHAPTER 207

(HB 281)

AN ACT relating to health insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 12 of this Act, unless the context requires otherwise:

- (1) *"Eligible employee" means any full time or part time employee who is actively engaged in the conduct of business of the employer, who has satisfied any employer waiting period requirements, and who has been given a voucher by the employer to purchase a health benefit plan;*
- (2) *"Eligible person" means an employer, eligible employee, self-employed person, unemployed person, or retiree who is not eligible for Medicare;*
- (3) *"Employer" means any corporation, partnership, sole proprietorship, or other business entity doing business in Kentucky that provides a voucher for a health benefit plan to its eligible employees to purchase a health benefit plan;*
- (4) *"Insurance purchasing outlet" means a business entity licensed as an administrator in accordance with Subtitle 9 of Chapter 304, which collects premiums and vouchers from or on behalf of health purchasing outlet members, and which is issued a certificate of registration in accordance with Sections 1 to 12 of this Act;*
- (5) *"Insurance purchasing outlet member" means an eligible person, including a dependent of an eligible person, who is enrolled in a health benefit plan offered through an insurance purchasing outlet by a participating insurer;*
- (6) *"Participating insurer" means an authorized insurer that contracts with an insurance purchasing outlet to provide coverage to insurance purchasing outlet members under a health benefit plan; and*
- (7) *"Voucher" means an instrument that is issued to an eligible employee by an employer to purchase a health benefit plan.*

SECTION 2. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *No individual or business entity shall act or hold themselves out as an insurance purchasing outlet without first being registered as an insurance purchasing outlet by the commissioner of the Kentucky Department of Insurance in accordance with Sections 1 to 12 of this Act.*
- (2) *No individual or business entity shall act for an insurance purchasing outlet to sell, solicit, or negotiate a health benefit plan to an eligible person unless the individual or business entity acting for the insurance purchasing outlet is licensed in accordance with Subtitle 9 of Chapter 304 as an agent with a health line of authority.*
- (3) *The commissioner may promulgate administrative regulations necessary to administer Sections 1 to 12 of this Act.*

SECTION 3. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A business entity seeking to obtain a certificate of registration to act as an insurance purchasing outlet shall complete and file with the commissioner of the Kentucky Department of Insurance an application prescribed by the commissioner.*
- (2) *An application shall not be deemed filed until all information necessary to process the application properly has been received by the commissioner.*
- (3) *Within one hundred eighty (180) days of receipt of an application for a certificate of registration, the commissioner shall make a determination concerning the application and provide notice to the applicant. If approved, a certificate of registration, in a form prescribed by the commissioner, shall be provided to the insurance purchasing outlet.*
- (4) *The business entity seeking a certificate of registration to act as an insurance purchasing outlet shall file the following with the commissioner:*
 - (a) *Organizational information, including partnership agreements, articles of incorporation, bylaws, and other applicable documents.*
 - (b) *A business plan, including plan of operations, marketing plan, and financial projections of not less than three (3) years;*
 - (c) *Appeal procedures for denied enrollment to a health purchasing outlet;*
 - (d) *Enrollment procedures;*
 - (e) *Payment procedures;*
 - (f) *Evidence of financial responsibility to operate as an insurance purchasing outlet in the form of the following:*
 1. *A fidelity bond in an amount not less than ten percent (10%) of projected annual premiums collected; and*
 2. *A certificate of an insurer authorized to write legal liability insurance in Kentucky certifying that the insurer has and will keep in effect on behalf of the insurance purchasing outlet a policy of insurance covering the legal liability of the insurance purchasing outlet as a result of erroneous acts or failure to act in its capacity as an insurance purchasing outlet. The policy shall provide indemnification for the benefit of any aggrieved party as a result of each single occurrence in the sum of not less than ten thousand dollars (\$10,000). The policy shall not be terminated unless at least thirty (30) days prior written notice will have been given to the commissioner and to the insurance purchasing outlet;*
 - (g) *Biographical affidavits of owners, partners, officers, and directors of the applicant;*
 - (h) *Identification of any contracted company which manages the insurance purchasing outlet, or any administrator which adjusts or settles claims of the insurance purchasing outlet members;*
 - (i) *Names and addresses of the principal place of business of the applicants;*
 - (j) *Geographic area to be serviced;*
 - (k) *Requirements for membership and participation in the insurance purchasing outlet;*

- (l) Name and address of each participating insurer, if known;*
 - (m) Proposed health benefit plan to be offered, if known; and*
 - (n) Any other information required by the commissioner to evaluate the applicant's suitability as an insurance purchasing outlet.*
- (5) Any information filed by an insurance purchasing outlet pursuant to subsection (4) of this section that changes shall be refiled with the commissioner for approval.*
- (6) The commissioner may promulgate administrative regulations to establish standards in accordance with subsection (4) of this section.*

SECTION 4. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

An application for or an existing certificate of registration of an insurance purchasing outlet may be denied, suspended, or revoked for any reason penalty could be imposed upon an administrator's license in accordance with KRS 304.9-440. In addition to denial, suspension, or revocation, a civil penalty may also be imposed.

SECTION 5. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) The insurance purchasing outlet may collect premiums and the value of vouchers from or on behalf of insurance purchasing outlet members under its administrator license.*
- (2) The insurance purchasing outlet shall not adjust or settle claims on insurance purchasing outlet members under its administrator license.*
- (3) The insurance purchasing outlet shall comply with KRS 304.9-371 to 304.9-377.*
- (4) The insurance purchasing outlet shall furnish annual and quarterly financial statements no later than sixty (60) days after the end of the reporting period on a form prescribed by the commissioner. Additionally, the insurance purchasing outlet shall furnish to the commissioner annual audited financial statements based on generally accepted accounting principles by an independent certified public accountant on or before one hundred twenty (120) days from the end of the insurance purchasing outlet's fiscal year for the immediately preceding fiscal year.*
- (5) The books and records of the insurance purchasing outlet shall be retained in the state of Kentucky and made available to the commissioner for inspection or examination.*
- (6) Upon payment of all applicable fees, the certificate of registration issued in accordance with Section 3 of this Act shall be renewed at the same time that the insurance purchasing outlet renews its administrator license in accordance with Subtitle 9 of Chapter 304.*
- (7) The certificate of registration issued under Section 3 of this Act is not transferable.*
- (8) The department shall promulgate administrative regulations to establish fees for the initial registration and renewal of registration of an insurance purchasing outlet.*

SECTION 6. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) An insurance purchasing outlet shall:*

- (a) *Set and collect fees to finance necessary costs incurred in marketing, selling, servicing, and administering its services;*
 - (b) *Offer health benefit plans to eligible persons;*
 - (c) *Provide premium and voucher collection services for participating insurers;*
 - (d) *Establish and adhere to appropriate administrative and accounting procedures for operating the health purchasing outlet;*
 - (e) *Establish and adhere to rules, conditions, and procedures for insurance purchasing outlet members and participating insurers;*
 - (f) *Establish and adhere to enrollment and participation requirements for insurance purchasing outlet members;*
 - (g) *Receive, review, and conduct appeals for persons who have been denied enrollment to an insurance purchasing outlet;*
 - (h) *Demonstrate and maintain at all times proof of financial responsibility and solvency;*
 - (i) *Prepare an annual report on the operations of the insurance purchasing outlet in accordance with administrative regulations promulgated by the commissioner;*
 - (j) *Establish procedures for billing and collection of premiums from insurance purchasing outlet members;*
 - (k) *Establish procedures for collecting and redeeming vouchers; and*
 - (l) *Maintain an administrator license in accordance with Subtitle 9 of Chapter 304.*
- (2) *An insurance purchasing outlet may:*
- (a) *Contract with qualified third parties for any services necessary to carry out the powers and duties authorized or required by this chapter;*
 - (b) *Employ necessary staff;*
 - (c) *Sue or be sued;*
 - (d) *Contract with independent licensed administrators to adjust or settle claims, since the insurance purchasing outlet is prohibited from these activities in accordance with Section 5 of this Act; and*
 - (e) *Employ, contract, or otherwise use licensed insurance agents to market and service coverage.*

SECTION 7. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *For administrative purposes, an insurance purchasing outlet shall be the policyholder or contract holder of the health benefit plan on behalf of an insurance purchasing outlet member.*
- (2) *The participating insurer shall issue a certificate of coverage to each insurance purchasing outlet member;*
- (3) *The insurance purchasing outlet shall provide the following disclosures to an insurance purchasing outlet member at the time of enrollment:*

- (a) *The insurance purchasing outlet is not an insurer and does not pay benefits or claims. It collects and distributes premiums on behalf of insurance purchasing outlet members;*
- (b) *The insurance purchasing outlet is registered with the Kentucky Department of Insurance to provide specific administrative services and may not assume any risk for claim and benefit payments; and*
- (c) *Other disclosures as the commissioner shall require by administrative regulation.*

SECTION 8. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any other provision of this chapter, the amount or rate of premiums for an insurance purchasing outlet health benefit plan may be determined, subject to the restrictions of subsection (2) of this section, based upon the experience or projected experience of the insurance purchasing outlets whose members obtain coverage under the plan. The index rate for the insurance purchasing outlet shall be calculated solely with respect to that insurance purchasing outlet and shall not be tied to, linked to, or otherwise adversely affected by any other index rate used by the participating insurer.*
- (2) *The following restrictions shall be applied in calculating the permissible amount or rate of premiums for an insurance purchasing outlet health benefit plan:*
 - (a) *The premium rates charged during a rating period to members of the insurance purchasing outlet with similar characteristics for the same or similar coverage, or the premium rates that could be charged to a member of the insurance purchasing outlet under the rating system for that class of business, shall not vary from its own index rate by more than twenty-five percent (25%), except that the premium rates charged to an insurance purchasing outlet member shall not vary from the index rate by more than fifty percent (50%) through December 31, 2002. However, upon any policy issuance or renewal, on or after January 1, 2003, the maximum variation shall revert to twenty-five percent (25%) of the index rate.*
 - (b) *The percentage increase in the premium rate charged to a member of an insurance purchasing outlet for a new rating period shall not exceed the sum of the following:*
 - 1. *The percentage change in the new business premium rate for the insurance purchasing outlet measured from the first day of the prior rating period to the first day of the new rating period;*
 - 2. *Any adjustment, not to exceed twenty percent (20%) annually and adjusted pro rata for rating periods of less than one (1) year, due to the claims experience, mental and physical condition, including medical condition, medical history, and health service utilization, or duration of coverage of the member as determined from the insurer's rate manual; and*
 - 3. *Any adjustment due to change in coverage or change in the case characteristics of the member as determined by the insurer's rate manual.*
- (3) *In utilizing case characteristics the ratio of the highest rate factor to the lowest rate factor within a class of business shall not exceed five to one (5:1). For purposes of this limitation, case characteristics include age, gender, occupation or industry, and geographic area.*

SECTION 9. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Health benefit plan coverage obtained through an insurance purchasing outlet shall be deemed group health insurance in accordance with KRS 304.18-020.*
- (2) *Health benefit plans obtained through an insurance purchasing outlet shall meet the requirements in KRS 304.17A-200, 304.17A-220, and 304.17A-240.*
- (3) *An insurance purchasing outlet member who no longer meets participation requirements may, at the option of the member, remain a member of the insurance purchasing outlet until the time of renewal.*

SECTION 10. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A voucher issued by an employer shall only be redeemable at an insurance purchasing outlet. A voucher shall be nonassignable and nontransferable.*
- (2) *An insurance purchasing outlet shall redeem the value of the voucher with the employer. If an employer fails to redeem the value of the voucher, the insurance purchasing outlet shall notify the eligible person. An eligible person may pay the premium amount directly to the insurance purchasing outlet if the employer fails to redeem the value of the voucher.*
- (3) *An insurance purchasing outlet shall pay an insurer the appropriate premium amount on or before the premium due date. If an insurance purchasing outlet fails to pay the premium amount on or before the due date the following shall occur:*
 - (a) *An insurer shall issue the insurance purchasing outlet a notice of termination if the premium amount is not paid pursuant to KRS 304.17A-245.*
 - (b) *Upon receipt of a notice of termination from the insurer, the insurance purchasing outlet shall issue the eligible member a notice of termination.*
 - (c) *The insurer shall notify the eligible person of his conversion rights under KRS 304.18-110.*
- (4) *An insurer may allow for a thirty-one (31) day grace period for the premium amount to be paid by the insurance purchasing outlet.*
- (5) *The department shall prescribe the items to be included on a voucher.*
- (6) *An insurance purchasing outlet shall be required to accept a voucher as payment for a health benefit plan, or as partial payment if the value of the voucher is insufficient to cover the full premium of the health benefit plan.*
- (7) *An insurance purchasing outlet may charge a reasonable administrative fee to cover the cost of processing the voucher.*
- (8) *The commissioner shall promulgate administrative regulations to implement the provisions of this section.*

Section 11. KRS 304.47-020 is amended to read as follows:

- (1) For the purposes of this subtitle, a person or entity commits a "fraudulent insurance act" if he or she engages in any of the following, including, but not limited to, matters relating to workers' compensation:

- (a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, Special Fund, or any agent thereof, any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or from a "self-insurer" as defined by KRS Chapter 342, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;
- (b) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, or any agent thereof, any statement as part of, or in support of, an application for an insurance policy, for renewal, reinstatement, or replacement of insurance, or in support of an application to a lender for money to pay a premium, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the application;
- (c) Knowingly and willfully transacts any contract, agreement, or instrument which violates this title;
- (d) Knowingly and with intent to defraud or deceive, receives money for the purpose of purchasing insurance, and fails to obtain insurance;
- (e) Knowingly and with intent to defraud or deceive, fails to make payment or disposition of money *or voucher as defined in Section 1 of this Act*, as required by agreement or legal obligation, that comes into his or her possession while acting as a licensee under this chapter;
- (f) Issues or knowingly presents fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, insurance binders, or any other documents that purport to evidence insurance;
- (g) Makes any false or fraudulent representation as to the death or disability of a policy or certificate holder in any written statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;
- (h) Engages in unauthorized insurance, as defined in KRS 304.11-030;
- (i) Knowingly and with intent to defraud or deceive, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or to the commissioner, any statement, knowing that the statement contains any false, incomplete, or misleading information concerning any material fact or thing, as part of, or in support of one (1) or more of the following:
 - 1. The rating of an insurance policy;
 - 2. The financial condition of an insurer;
 - 3. The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one (1) or more lines of insurance in all or part of this Commonwealth by an insurer; or
 - 4. A document filed with the commissioner;
- (j) Knowingly and with intent to defraud or deceive, engages in any of the following:

1. Solicitation or acceptance of new or renewal insurance risks on behalf of an insolvent insurer; or
 2. Removal, concealment, alteration, tampering, or destruction of money, records, or any other property or assets of an insurer; or
- (k) Assists, abets, solicits, or conspires with another to commit a fraudulent insurance act in violation of this subtitle.
- (2) (a) Except as provided in paragraphs (b) and (c) of this subsection, a person convicted of a violation of subsection (1) of this section shall be guilty of a misdemeanor where the aggregate of the claim, benefit, or money referred to in subsection (1) of this section is less than or equal to three hundred dollars (\$300), and shall be punished by:
1. Imprisonment for not more than one (1) year;
 2. A fine, per occurrence, of not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or
 3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph;
- (b) Except as provided in paragraph (c) of this subsection, where the claim, benefit, or money referred to in subsection (1) of this section exceeds an aggregate of three hundred dollars (\$300), a person convicted of a violation of subsection (1) of this section shall be guilty of a felony and shall be punished by:
1. Imprisonment for not less than one (1) nor more than five (5) years;
 2. A fine, per occurrence, of not more than ten thousand dollars (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or
 3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.
- (c) Any person, with the purpose to establish or maintain a criminal syndicate, or to facilitate any of its activities, as set forth in KRS 506.120(1), shall be guilty of engaging in organized crime, a Class B felony, and shall be punished by:
1. Imprisonment for not less than ten (10) years nor more than twenty (20) years;
 2. A fine, per occurrence, of not more than ten thousand dollars (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation, or twice the amount of gain received as a result of the violation; whichever is greater; or
 3. Both imprisonment and a fine, as set forth in subparagraphs 1. and 2. of this paragraph.
- (d) In addition to imprisonment, the assessment of a fine, or both, a person convicted of a violation of paragraph (a), (b), or (c) of subsection (2) of this section may be ordered to make restitution to any victim who suffered a monetary loss due to any actions by that person which resulted in the adjudication of guilt, and to the division for the cost of any investigation. The amount of restitution shall equal the monetary value of the actual loss or twice the amount of gain received as a result of the violation, whichever is greater.

- (3) Any person damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts.
- (4) The provisions of this section shall also apply to any agent, unauthorized insurer or its agents or representatives, or surplus lines carrier who, with intent, injures, defrauds, or deceives any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in subsection (3) of this section.

SECTION 12. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Insurance purchasing outlets shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

- (1) *Subtitle 1;*
- (2) *Subtitle 2;*
- (3) *Subtitle 3;*
- (4) *Subtitle 4;*
- (5) *Subtitle 9;*
- (6) *Subtitle 12;*
- (7) *Subtitle 14;*
- (8) *Subtitle 18;*
- (9) *Subtitle 25;*
- (10) *Subtitle 47; and*
- (11) *Subtitle 99.*

Approved April 5, 2002