

CHAPTER 78

(SB 120)

AN ACT relating to 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:

The purpose of Sections 1 to 23 of this Act is to establish minimum standards for self-insured employer-organized association groups to assure that such groups are providing adequate coverage for health benefit liability risks.

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

- (1) *"Administrator" means an individual, partnership, corporation, association, or other legal entity engaged by a self-insured employer-organized association group's board of trustees to carry out the policies established by the group's board of trustees and to provide day-to-day management of the group.*
- (2) *"Agent" means any person directly or indirectly associated with such organization who engages in solicitation or enrollment of persons for profit or pecuniary gain in a self-insured employer-organized association group.*
- (3) *"Commissioner" means the commissioner of the Department of Insurance.*
- (4) *"Deceptive" means an act, practice, or statement which has the tendency or capacity to deceive, without regard to whether there is an intent to deceive or whether any person has suffered loss or injury as a result of the act, practice, or statement.*
- (5) *"Employer-organized association" means an entity defined in Section 3 of this Act.*
- (6) *"Governmental entity" means the Commonwealth of Kentucky, other states, or the United States, their political subdivisions, municipal corporations, or public agencies.*
- (7) *"Insolvent" or "insolvency" means the inability of a self-insured employer-organized association group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it.*
- (8) *"Person" includes but is not limited to any individual, partnership, association, trust, or corporation.*
- (9) *"Qualified actuary" means a member of the American Academy of Actuaries or a Fellow of the Society of Actuaries.*
- (10) *"Self-insured employer-organized association group" means a group described in Section 3 of this Act.*
- (11) *"Service company" means a person or entity which provides services not provided by the administrator, including but not limited to claims adjustment, compilation of statistics in preparation of contribution and assessments, loss, and tax reports, preparation of other required self-insurance reports, development of members' contributions, assessments, and fees, and administration of a claim fund.*

(12) "Unfair" means an act, practice, or statement which is unconscionable.

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

Sections 1 to 23 of this Act apply to the members of a self-insured employer-organized association group as authorized by KRS 304.17A-320. A self-insured employer-organized association group may be composed of any number of members, who join together to self-insure against health risks for sickness, accident, or bodily injury. This section does not apply to employees' workers' compensation claims which arise from the operation of institutions or other legal entities by members of the group.

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

No person or entity in this state shall be, act as, or hold itself out as a self-insured employer-organized association group unless it holds a certificate of filing from the commissioner. All certificates of filing shall be issued by the commissioner.

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

A proposed self-insured employer-organized association group shall file with the commissioner an application for a certificate of filing accompanied by a nonrefundable filing fee of five dollars (\$5). Each application for a certificate of filing shall be submitted to the commissioner upon a form prescribed by the commissioner and shall set forth or be accompanied by:

- (1) The group's name, location of its principal office, date of organization, and identification of its fiscal year. The application shall also include the name and address of each member if known at the time of application. If this information is unknown, a description of the group to be solicited for membership shall be included;*
- (2) A copy of the articles of association or governance documents;*
- (3) A copy of agreements with the administrator and with any service company;*
- (4) A copy of the bylaws of the proposed group;*
- (5) Certification of the group's financial solvency as set forth in Section 7 of this Act;*
- (6) Designation of the initial board of trustees and administrator; and*
- (7) The address where books and records of the group will be maintained at all times.*
- (8) A statement describing the self-insured employer-organized association which shall include:*
 - (a) The health services to be offered;*
 - (b) The financial risks to be assumed;*
 - (c) The initial geographic area to be served;*
 - (d) Pro forma financial projections for the first three (3) years of operation, including the assumptions the projections are based upon;*
 - (e) The sources of working capital and funding;*
 - (f) A description of the persons to be covered by the self-insured employer-organized association;*

- (g) *Any proposed reinsurance arrangements;*
- (h) *Any proposed management, administrative, or cost-sharing arrangements; and*
- (i) *A description of the self-insured employer-organized association's proposed method of marketing.*

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

Upon receipt of an application for a certificate of filing, the commissioner shall issue or deny the same. A certificate of filing shall be issued only if the commissioner finds that the applicant has complied with Section 5 of this Act, has paid the application fee, and the commissioner is satisfied that the following conditions are met:

- (1) *The persons responsible for the conduct of the affairs of the self-insured employer-organized association group are competent, trustworthy, and possess good reputation;*
- (2) *The self-insured employer-organized association group is financially responsible and may reasonably be expected to meet its obligations to participants and prospective participants. In making this determination, the commissioner may consider:*
 - (a) *The adequacy of working capital;*
 - (b) *Any agreement with an insurer, a government, or any other organization for insuring the payment of health claims or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the self-insurance group; and*
 - (c) *Compliance with Section 7 of this Act, as a guarantee that the obligations will be duly performed.*

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

- (1) *This section applies to a group applying for and holding a certificate of filing as a self-insured employer-organized association group.*
- (2) *To obtain and to maintain its certificate of filing, a self-insured employer-organized association group shall have sufficient financial strength to pay all public or professional liabilities covered by the group, including known claims and expenses and incurred but unreported claims and expenses.*
- (3) *The commissioner shall require the following of a self-insured employer-organized association group:*
 - (a) *An actuarial certification by a member of the American Academy of Actuaries of the adequacy of the proposed rates funding arrangements of the group;*
 - (b) *Specific reinsurance ensuring the solvency of the funding arrangement;*
 - (c) *A demonstration of capital and surplus as follows:*
 - 1. *Initial financial requirements. Every self-insured employer-organized association shall demonstrate initial capital and surplus equal to the greater of:*
 - a. *Five hundred thousand dollars (\$500,000);*

- b. *Two percent (2%) of projected annual contribution revenues on the first one hundred fifty million dollars (\$150,000,000) of contributions and one percent (1%) of projected annual contributions on the contributions in excess of one hundred fifty million dollars (\$150,000,000); or*
 - c. *An amount equal to the sum of eight percent (8%) of projected annual health care expenditures except those paid on a capitated basis or managed hospital payment basis and four percent (4%) of projected annual hospital expenditures paid on a managed hospital payment basis.*
2. *Continuing financial requirements. Every self-insured employer-organized association shall demonstrate ongoing capital and surplus equal to the greater of:*
- a. *Five hundred thousand dollars (\$500,000);*
 - b. *Two percent (2%) of annual contribution revenues, as reported on the most recent annual financial statement filed with the commissioner, on the first one hundred fifty million dollars (\$150,000,000) of contributions and one percent (1%) of annual premiums on the contributions in excess of one hundred fifty million dollars (\$150,000,000); or*
 - c. *An amount equal to the sum of eight percent (8%) of projected annual health care expenditures except those paid on a capitated basis or managed hospital payment basis and four percent (4%) of annual hospital expenditures paid on a managed hospital payment basis, as reported on the most recent financial statement filed with the commissioner; and*
- (d) *A fidelity bond for the administrator and a fidelity bond for the service company in forms and amounts prescribed by the commissioner.*
- (4) *The commissioner, if not satisfied with the financial strength of a self-insured employer-organized association group, may require any or all of the following of a self-insured employer-organized association group:*
- (a) *Security in the form and amount prescribed by the commissioner as follows:*
 - 1. *A surety bond issued by a corporate surety authorized to transact business in the Commonwealth of Kentucky; or*
 - 2. *Any financial security endorsement issued as part of an acceptable excess insurance contract issued by an authorized insurer, which may be used to meet all or part of the security requirement.*

The bond or financial security endorsement shall be solely for the benefit of the insured creditors to pay claims and associated expenses and shall be payable upon the failure of the group to pay professional or public liability claims the group is legally obligated to pay. The commissioner may establish and adjust the requirements for the amount of security based on differences among groups in their size, types of business, years in existence, or other relevant factors.
 - (b) *Specific and aggregate excess insurance in a form and amount issued by an insurer acceptable to the commissioner.*

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

A self-insured employer-organized association group shall notify the commissioner immediately of any change in the information required to be filed under Section 5 or Section 7 of this Act.

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

The funds of a self-insured employer-organized association group shall be invested only in securities or other investments permitted by Subtitle 7 of this chapter, or such other securities or investments as the commissioner may permit by administrative regulation.

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

- (1) An agent of a self-insured employer-organized association group shall be licensed as an agent with the life and health lines of authority in accordance with Subtitle 9 of this chapter regulating all aspects of agent licenses.*
- (2) Subsection (1) of this section includes the requirement that the agent shall satisfactorily complete the continuing education requirements in accordance with KRS 304.9-295.*
- (3) An agent of a self-insured employer-organized association group shall be appointed by the self-insured employer-organized association group in accordance with the provisions of Subtitle 9 of this chapter regulating all aspects of agent appointments.*

SECTION 11. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner or any person authorized by him shall have the power to examine the financial condition, affairs, and management of any self-insured employer-organized association group subject to the provisions of Sections 1 to 23 of this Act. The commissioner shall have free access to all the books, papers, and documents relating to the business of the organization, and may summon witnesses and administer oaths and affirmations in the examination of the directors, trustees, officers, agents, representatives, or employees of any group, or any person in relation to its affairs, transactions, or conditions. The commissioner shall so examine each self-insured employer-organized association group subject to the provisions of Sections 1 to 23 of this Act no less frequently than every four (4) years. An examination under this section shall be subject to the provisions of KRS 304.2-210 to 304.2-290.

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

Any self-insured employer-organized association group holding a certificate of filing pursuant to Sections 1 to 23 of this Act is deemed to have appointed the Secretary of State as its attorney to receive service of legal process issued against it in Kentucky. This appointment shall be irrevocable, shall bind any successor in interest, and shall remain in effect as long as there are in this state any health liabilities.

SECTION 13. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A certificate of filing remains in effect until terminated at the request of the group or suspended or revoked by the commissioner pursuant to Section 21 of this Act.*
- (2) *The commissioner shall not grant the request of the self-insured employer-organized association group to terminate its certificate of filing unless the group has filed with the commissioner a statement describing what arrangements, if any, have been made to pay obligations of the group, including both known claims and expenses and incurred but unreported claims and expenses.*
- (3) *Subject to filing with the commissioner, a self-insured employer-organized association group may merge with another self-insured employer-organized association group. As a result of any merger, the resulting self-insured employer-organized association shall assume in full all obligations of the constituent groups.*

SECTION 14. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Each group shall be operated by a board of trustees which shall consist of not less than two (2) persons selected in the manner prescribed by the self-insured employer-organized association or by other laws of the Commonwealth. The trustees shall not be officers, employees, or agents of an administrator or servicing organization. All trustees shall be residents of Kentucky or officers of corporations authorized to do business in Kentucky. The trustees shall have the authority to administer the operations of the self-insured employer-organized association group, and to assure that there is adequate funding to cover health liabilities, that all claims are paid promptly, and that all necessary precautions are taken to safeguard the assets of the group.*
- (2) *The board of trustees shall:*
 - (a) *Maintain responsibility for all moneys collected or disbursed from the group;*
 - (b) *Maintain minutes of its meetings and make the minutes available to the commissioner; and*
 - (c) *Designate an administrator to carry out the policies established by the board of trustees and to provide day-to-day management of the group, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.*
- (3) *The board of trustees shall not:*
 - (a) *Extend credit to individual group members for payment of contributions or assessments, except pursuant to payment plans filed with the commissioner; or*
 - (b) *Permit the loan of any moneys to, or borrow any moneys from, the group or in the name of the group.*
- (4) *In its discretion, the self-insured employer-organized association group may refer to its trustees as directors. If this is done, the provisions of Sections 1 to 23 of this Act referring to trustees shall be construed as referring to directors.*

SECTION 15. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *An employer joining a self-insured employer-organized association group after the group has been issued a certificate of filing shall submit an application for membership to the board of trustees or its administrator. Membership shall take effect no earlier than each*

member's date of application. The application for membership and its approval shall be maintained as permanent records of the board of trustees.

- (2) *Individual members of a self-insured employer-organized association group shall be subject to cancellation by the group pursuant to the governance documents of the group. In addition, individual group members may elect to terminate their participation in the group.*
- (3) *A self-insured employer-organized association shall pay all health liabilities which are covered under the terms, conditions, and exclusions of the group's evidence of coverage which each member elects during its period of membership. A member who elects to terminate its membership or is canceled by a group remains liable for contribution obligations which were incurred during the canceled or terminated group members' period of membership. A group member is not relieved of its health liabilities incurred during its period of membership in a self-insured employer-organized association group except through payment of its contribution obligations to the group.*
- (4) *The insolvency or bankruptcy of a group member does not relieve the self-insured employer-organized association group of liability for the payment of health liabilities which are covered under the terms, conditions, and exclusions of the group's evidence of coverage and incurred during the insolvent or bankrupt group member's period of membership.*

SECTION 16. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

No trustee of a self-insured employer-organized association group nor any of its employees, officers, or directors shall be an employee, officer, or director of, or have either a direct or indirect interest in, an administrator. No administrator nor any of its employees, officers, or directors shall be a trustee, employee, officer, or director of, or have either a direct or indirect financial interest in, a self-insured employer-organized association group.

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

- (1) *All self-insured employer-organized association groups shall file with the commissioner a statement of financial condition audited by an independent certified public accountant on or before one hundred twenty (120) days from the end of the group's fiscal year for the immediately preceding fiscal year. The financial statement shall be in a form approved by the commissioner and shall include:*
 - (a) *Actuarially-appropriate reserves for:*
 1. *Known claims and expenses associated therewith.*
 2. *Claims incurred but not reported and any expenses associated therewith.*
 3. *Unearned contributions and assessments.*
 4. *Bad debts, which reserves shall be known as liabilities.*
 - (b) *An actuarial opinion by a qualified actuary and a supporting reserve study regarding reserves for known claims and expenses associated therewith. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods.*

- (2) *No person shall make a deceptive statement or fail to correct a misstatement in connection with the solicitation of membership of a group.*
- (3) *The financial statements required by this section shall be completed in accordance with administrative regulations promulgated by the commissioner.*

SECTION 18. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Self-insured employer-organized association groups shall file with the commissioner their rates, underwriting guidelines, evidence of coverage, and any changes therein. The filing shall be accompanied by a filing fee of five dollars (\$5) per form filing.

SECTION 19. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Self-insured employer-organized association groups shall establish contribution plans.

SECTION 20. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Every member of a self-insured employer-organized association group shall receive written evidence of coverage by the group.*
- (2) *All evidences of coverage issued pursuant to this section shall contain coverage terms, conditions, and exclusions.*
- (3) *All evidences of coverage issued pursuant to this section shall contain the following disclosure in prominent, contrasting type: THIS COVERAGE HAS BEEN PLACED WITH A SELF-INSURED EMPLOYER-ORGANIZED ASSOCIATION GROUP WHICH HAS RECEIVED A CERTIFICATE OF FILING FROM THE COMMONWEALTH OF KENTUCKY. HEALTH CLAIMS AGAINST GROUP MEMBERS ARE NOT COVERED BY THE KENTUCKY INSURANCE GUARANTY ASSOCIATION.*

SECTION 21. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The commissioner may suspend or revoke any certificate of filing issued to a self-insured employer-organized association group if the commissioner finds that any of the following conditions exist:*
 - (a) *The self-insured employer-organized association group is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under Sections 1 to 23 of this Act, unless amendments to the submissions have been filed with and approved by the commissioner;*
 - (b) *The self-insured employer-organized association group is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to participants or prospective participants;*
 - (c) *The self-insured employer-organized association group, or any person at its direction, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;*

- (d) *The self-insured employer-organized association group has engaged in any unfair or deceptive practices under its certificate of filing; or*
 - (e) *The self-insured employer-organized association group has failed to correct a violation of Sections 1 to 23 of this Act or the administrative regulations promulgated thereunder, within a reasonable time period established by the commissioner in administrative regulations.*
- (2) *A certificate of filing shall be suspended or revoked only after compliance with the hearing procedure set forth in KRS 304.2-310 to 304.2-370.*
 - (3) *When a certificate of filing of a self-insured employer-organized association group is suspended, the group shall not, during the period of suspension, enroll any new participants and shall not engage in any advertising or solicitation.*
 - (4) *If the certificate of filing of a self-insured employer-organized association group is revoked, the group shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It shall engage in no further advertising or solicitation. The commissioner may, by written order, prevent further operation of the group if he finds it to be in the best interest of the participants, to the end that the participants will be afforded the greatest practical opportunity to obtain health coverage elsewhere. If the commissioner permits further operation, the self-insured employer-organized association group shall continue to collect the contributions required of participants.*

SECTION 22. A NEW SECTION OF KRS CHAPTER 17A IS CREATED TO READ AS FOLLOWS:

The commissioner may promulgate reasonable administrative regulations not inconsistent with the provisions of Sections 1 to 23 of this Act that he deems necessary for the proper administration of these sections. Nothing in Sections 1 to 24 of this Act nor any administrative regulation promulgated thereunder shall require any self-insured employer-organized association group or its members to take any action in violation of the Constitution of the Commonwealth of Kentucky.

SECTION 23. A NEW SECTION OF KRS CHAPTER 17A IS CREATED TO READ AS FOLLOWS:

- (1) *After a hearing or upon agreement by the self-insured employer-organized association group, the commissioner may suspend or revoke the certificate of filing of a self-insured employer-organized association group, impose a civil penalty of up to five thousand dollars (\$5,000) per violation on a self-insured employer-organized association group, or both, for:*
 - (a) *Violations of Sections 1 to 23 of this Act or administrative regulations promulgated thereunder;*
 - (b) *Obtaining a certificate of filing by unfair or deceptive means;*
 - (c) *Operating in a financially hazardous manner;*
 - (d) *Misappropriation, conversion, illegal withholding, or refusal to pay over upon proper demand any moneys that belong to a member, an employee of a member, or a person otherwise entitled thereto by the group or its administrator; or*

- (e) *Unfair or deceptive business practices.*
- (2) *The commissioner, in his discretion and without advance notice or a hearing thereon, may suspend or revoke the certificate of filing of any self-insured employer-organized association group upon the commencement of the following proceedings:*
- (a) *Receivership;*
- (b) *Conservatorship;*
- (c) *Rehabilitation; or*
- (d) *Other delinquency proceedings.*

Section 24. KRS 304.17A-320 is amended to read as follows:

- (1) No employer-organized association shall in this state self-insure in order to provide health benefit plans for its members unless it holds a certificate of filing from the commissioner.
- (2) To qualify for a certificate of filing and to maintain a certificate of filing, the employer-organized association shall comply with the provisions of *Sections 1 to 23*~~[Subtitle 48]~~ of this ~~Act~~~~[chapter]~~ to the extent not in conflict with the expressed provisions of this section.
- (3) Each association that holds a certificate of filing from the commissioner shall be subject to the following:
- (a) All assessments placed on insurers under KRS 304.17B-021;
- (b) All rating restrictions placed on employer-organized associations under KRS 304.17A-0954;
- (c) All rate review requirements placed on insurers under this subtitle;
- (d) All data collection requirements placed on insurers under this subtitle; and
- (e) Provisions of Subtitle 12 of this chapter that apply to health insurers.
- (4) Each association that holds a certificate of filing from the commissioner shall notify its members that health benefit plans issued to its members through the association are not protected through the Kentucky Life and Health Insurance Guaranty Association.
- (5) Under the provisions of *Section 21 of this Act*~~[KRS 304.48-220]~~, the commissioner may revoke the certificate of filing of any association. A violation of any provision of this section shall be deemed a violation of *Sections 1 to 23 of this Act*~~[Subtitle 48 of this chapter]~~ for purposes of *Section 21 of this Act*~~[KRS 304.48-220]~~.

Approved March 18, 2003