

CHAPTER 183**(HB 758)**

AN ACT relating to workers' compensation self-insured groups.

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

➔Section 1. KRS 304.50-020 is amended to read as follows:

The provisions of this subtitle apply to a group or *bona fide trade* association of employers subject to the provisions of KRS Chapter 342, which may include employers voluntarily complying with the provisions of KRS Chapter 342, who join together to self-insure against workers' compensation risks. Any workers' compensation self-insured group operating under a certificate of filing as of March 1, 2005, shall have one (1) year from that date to comply with the provisions of this subtitle, to the extent that these provisions differ from prior requirements in KRS Chapter 342 and the administrative regulations promulgated thereunder. Extensions of time may be granted for good cause shown at the discretion of the executive director.

➔Section 2. KRS 304.50-035 is amended to read as follows:

Certification as a workers' compensation self-insured group shall be granted only if the executive director finds that the applicant has complied with the provisions of this subtitle, paid the application fee, and met the following conditions:

- (1) All persons responsible for the conduct of the affairs of the workers' compensation self-insured group are financially stable and experienced in the administration of a workers' compensation self-insured group;
- (2) The workers' compensation self-insured group is financially responsible and has demonstrated the ability to meet all of its obligations to participants and prospective participants and injured workers as required in KRS Chapter 342. In making this determination, the executive director may consider:
 - (a) The adequacy of working capital;
 - (b) The applicant's compliance with all requirements of this subtitle, including but not limited to:
 1. The adequacy of the funding mechanisms;
 2. The existence and adequacy of appropriate excess insurance;
 3. The participating members' financial strength;
 4. The stability of the membership;
 5. The risks of the industry;
 6. The experience of management and all persons responsible for the conduct of the affairs of the workers' compensation self-insured group; and
 7. An initial and ongoing minimum surplus funds requirement of not less than one million dollars (\$1,000,000), except for a workers' compensation self insured group currently operating under a ~~remedial action~~ plan approved by the executive director *pursuant to KRS 304.50-135 or a remedial action plan approved by the predecessor regulatory agency prior to August 3, 2004.*

➔Section 3. KRS 304.50-050 is amended to read as follows:

- (1) The group shall provide security deposits to the executive director on a form prescribed by the executive director 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~~~~certified~~ statement of financial condition on file with the executive director, 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 executive director, 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 executive director are parties. The executive director 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 executive director, 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 executive director. 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 executive director 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 executive director made upon proof satisfactory to the executive director of the existence of one (1) of the grounds required in paragraph (a) of this subsection. The executive director shall not have any personal liability for any such release of any deposit or part thereof so ordered by the executive director in good faith.
- (5) (a) ***A proposed custodian bank or trust company for security deposits shall be approved by the executive director and shall be under a custodial agreement approved by the executive director.***
- (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 executive director;***
 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 executive director 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.

➔ Section 4. KRS 304.50-055 is amended to read as follows:

- (1) A workers' compensation self-insured group shall establish plans for premium payment, determination and collection of assessments, and for declaration and payment of dividends or other disbursements, which shall be filed for prior approval with the executive director. Any change in the plans for premium payment, assessments, or dividends shall be filed for prior approval with the executive director. Approval of plans for assessments and dividends does not constitute approval of any particular assessment or dividend by the executive director.
- (2) Prior to the inception of each group member's self-insurance year, the trustees shall collect from that member at least twenty-five percent (25%) of the estimated premium for the ensuing year, except that in the case of a self-insured group formed by governmental entities twenty-five percent (25%) of the estimated premium for the ensuing year shall be collected no later than thirty (30) days after the beginning of the self-insured group's self-insurance year. The balance of the estimated premium shall be collected in either quarterly or monthly installments as set forth in the enabling documents described in KRS 304.50-030(2)(b) or 304.50-060(2)(b). Each group member's payroll shall be audited annually and an adjustment to premium shall be made accordingly.
- (3) A disbursement from a workers' compensation self-insured group fund shall be for a purpose related to the self-insured group. A dividend shall not be approved or paid until at least thirty-six (36) months after the expiration of the self-insurance year and shall be paid from surplus funds not required for payment of claims or other liabilities. The dividends shall be paid or credited to members according to the reasonable classifications the trustees may establish. A dividend shall not be paid which unfairly discriminates between members of the same classifications. A dividend plan shall specify whether past group members are eligible for the dividend. Payment of a dividend under a dividend plan shall not be made unless the self-insured group has notified the executive director of its intent to make a dividend payment at least thirty (30) days prior to the payment, and the executive director has not disapproved the payment within that time.
- (4) The formula to be used for collection of assessments shall be determined by the trustees and approved by the executive director. Assessments shall be fair and equitable and shall not unfairly discriminate between members of the same classification.
- (5) A trustee, fiscal agent, or service organization shall not utilize an asset of the self-insured group for a purpose unrelated to workers' compensation. The trustees shall maintain cash or cash equivalent accounts as may be prudently necessary to pay expenses without having to liquidate long-term investments.
- (6) The trustees may invest funds in:
 - (a) United States Government bonds, United States Treasury notes, Treasury bills, or other direct obligations guaranteed by the full faith and credit of the United States Government ~~or~~ and its agencies;
 - (b) Tax exempt obligations issued by the Commonwealth of Kentucky or its agencies with a minimum rating of "A" by Standard & Poor;
 - (c) Obligations issued by a county, district, municipality, or other legal authority within the Commonwealth with a minimum rating of "AA" by Standard & Poor;
 - (d) Investment share accounts in a savings and loan association in the Commonwealth whose deposits are insured by a federal agency;
 - (e) Certificates of deposit if issued by a duly chartered commercial bank ~~in the Commonwealth~~;
 - (f) ***At the time of purchase, Individual*** equity securities actively traded on the New York or NASDAQ Stock Exchanges ***or other registered national securities exchanges*** with no individual equity holding comprising greater than ten percent (10%) of the equity portion of the portfolio ***reflected on the most recent quarterly or annual statement of financial condition on file with the executive director*** ~~at the time of purchase~~.
 1. An investment in an individual equity holding shall not represent at the time of purchase more than five percent (5%) of the total market value of the security.
 2. ***At the time of purchase***, investments in equity securities shall not exceed twenty percent (20%) of the total market value of the investment portfolio of the self-insured group ***reflected on the most recent quarterly or annual statement of financial condition on file with the executive director*** ~~at the time of purchase~~;

- (g) Corporate bonds if:
1. The bond is issued, assumed, or guaranteed by a solvent institution created or existing under the laws of the United States, or a state, province, district, or territory;
 2. ***At the time of purchase***, the corporate bond investments do not exceed ***twenty-five percent (25%)***~~fifteen percent (15%)~~ of the total market value of the investment portfolio ***reflected on the most recent quarterly or annual statement of financial condition on file with the executive director***~~at the time of purchase~~; and
 3. The bond has a minimum rating of "A" by Standard and Poor; and
- (h) ***At the time of purchase***, mutual funds ***and exchange traded funds if the***~~that are registered investment advisors licensed by the Security and Exchange Commission and the Commonwealth to perform investment services.~~ investments ***do***~~in mutual funds shall~~ not exceed twenty percent (20%) of the total market value of the investment portfolio ***reflected on the most recent quarterly or annual statement of financial condition on file with the executive director***~~at the time of purchase~~.
- (7) Of the aggregate investments made by the trustees of the self-insured group under this section:
- (a) Not less than ***fifty percent (50%)***~~seventy five percent (75%)~~ of the total market value of the entire investment portfolio shall be held in cash, cash equivalents, or securities as described in ***paragraphs (a) to (e) of subsection (6)***~~(a)~~ of this section; and
 - (b) A minimum of ***five percent (5%)***~~fifteen percent (15%)~~ of the total investment portfolio value shall be maintained in cash or cash equivalent accounts or United States Treasury and Federal Agency Securities with a remaining maturity of one (1) year or less.

- (8) The executive director may permit variation from the requirements of this section for good cause.

➔Section 5. KRS 304.50-060 is amended to read as follows:

- (1) The information and reports required by this section shall be filed by the self-insured group with the executive director on an annual basis.
- (2) Within one hundred twenty (120) days ***from the end of the self-insured group's fiscal year***~~before the expiration of each self insurance year~~, the self-insured group shall file:
 - (a) Copies of all fidelity bonds, security deposits, and letters of credit;
 - (b) Any material change in the administration of the group, including any change in the organizational documents, change in the administrator, or a change in the service organization or fiscal agent;
 - (c) An attested statement relating to conflicts of interest and compliance with KRS 304.50-105; and
 - (d) Any other information the executive director may require.
- (3) Within ten (10) days before the expiration of each self-insurance year, the self-insured group shall file proof of:
 - (a) ***Specific*** excess insurance coverage for the ensuing year; ***and***
 - (b) ***Aggregate excess insurance coverage for the ensuing year unless such coverage is exempted or waived under subsection (1) of Section 7 of this Act.***
- (4) Within one hundred twenty (120) days from the end of the self-insured group's fiscal year, the group shall file the statement of financial condition required by KRS 304.50-110 and any other relevant financial information requested by the executive director. Within forty-five (45) days from the end of each fiscal quarter, the self-insured group shall file a statement of financial condition along with an acknowledgment signed by the board of trustees or its authorized agent indicating that the statement has been presented to the board and any other relevant financial information requested by the executive director, including a balance sheet, and income and cash flow statement, on a form prescribed by the executive director.
- (5) ***Upon the request of a group member, a self-insured group shall make available the statement of financial condition required in KRS 304.50-110.***

➔Section 6. KRS 304.50-115 is amended to read as follows:

- (1) A workers' compensation self-insured group shall file with the executive director its rates and supplementary rating information and any changes made to its rates and supplementary information.
 - (a) Within one (1) year of March 1, 2005, each existing workers' compensation self-insured group shall place on file with the executive director its existing rates and supplementary rating information.
 - (b) The initial rates and supplementary rating information of any workers' compensation self-insured group newly formed after March 1, 2005, shall not become effective until filed with and approved by the executive director.
 - (c) Any changes made to a workers' compensation self-insured group's rates or supplementary rating information shall be filed pursuant to KRS 304.13-053.
- (2) A workers' compensation self-insured group shall file with the executive director its existing coverage forms and any changes made to such forms, in accordance with KRS 304.14-120.
 - (a) Within one (1) year of March 1, 2005, each existing workers' compensation self-insured group shall place on file with the executive director its existing coverage forms.
 - (b) The initial coverage forms of any workers' compensation self-insured group newly formed after March 1, 2005, shall not be used or delivered until filed with and approved by the executive director pursuant to KRS 304.14-120.
 - (c) Any changes made to a workers' compensation self-insured group's coverage forms shall be filed in accordance with KRS 304.14-120.
 - (d) The executive director shall disapprove any coverage form required to be filed under KRS 304.14-120, or withdraw any previous approval of such form, only on one (1) or more of the following grounds:
 1. If the coverage form is in any respect in violation of, or does not comply with, this subtitle or KRS Chapter 342.
 2. If the coverage form contains or incorporates by reference, where the incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.
 3. If the coverage form has any title, heading, or other indication of its provisions which is misleading, or is printed in a size of type or manner of reproduction as to make the form substantially illegible.
- (3) Coverage form *and rate* filings shall be accompanied by a filing fee as set forth in KRS 304.4-010 and administrative regulations promulgated by the executive director. Filings shall be open to public inspection at any reasonable time. Copies may be obtained by any person on request and on payment of a fee specified in Subtitle 4 of this chapter.

➔Section 7. KRS 304.50-120 is amended to read as follows:

- (1) The executive director shall promulgate administrative regulations setting forth the requirements for aggregate excess insurance and the standards for granting a waiver, *but a workers' compensation self-insured group shall not be required to purchase aggregate excess insurance if the group's fund balance is thirty percent (30%) or more of earned premiums.*
- (2) Except for a worker's compensation self-insured group granted a waiver *or exempted under subsection (1) of this section*, the trustees shall purchase aggregate excess insurance.
- (3) The trustees shall purchase specific excess insurance coverage with a limit of at least twenty-five million dollars (\$25,000,000) per occurrence.
- (4) To be eligible to write excess liability coverage for a self-insured group, a casualty insurance company shall at all times maintain twenty-five million dollars (\$25,000,000) of minimum policyholder surplus.

Signed by Governor April 24, 2008.