

CHAPTER 48

(SB 77)

AN ACT relating to self-insurance groups.

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

➔Section 1. KRS 304.33-020 is amended to read as follows:

The proceedings authorized by this subtitle may be applied to:

- (1) All domestic insurers, whether or not they purport to do business in this state;
- (2) All insurers who are doing, or have done, an insurance business in this state, and against whom claims arising from that business may exist now or in the future;
- (3) All insurers who purport to do an insurance business in this state;
- (4) All insurers who have insureds resident in this state;
- (5) All other persons organized or in the process of organizing with the intent to do an insurance business in this state;
- (6) All fraternal benefit societies as defined in Subtitle 29;
- (7) All nonprofit hospital, medical-surgical, dental, and health service corporations, as defined in Subtitle 32;
- (8) All health maintenance organizations as defined in Subtitle 38;
- (9) All limited health service organizations as defined in KRS 304.38A-010;
- (10) Workers' compensation self-insured groups authorized in KRS 342.350; ~~and~~
- (11) Workers' compensation self-insured groups authorized in KRS 304.50-010 and defined in KRS 304.50-015; *and*
- (12) *Liability self-insurance groups defined in KRS 304.48-020 and authorized in KRS 304.48-030.*

➔Section 2. KRS 304.48-090 is amended to read as follows:

- (I) The funds of a liability self-insurance group shall be invested *in*:
 - (a) *United States Government bonds, United States Treasury notes, United States Treasury bills, or other direct obligations guaranteed by the full faith and credit of the United States Government or its agencies;*
 - (b) *Tax exempt obligations issued by the Commonwealth of Kentucky or its agencies with a minimum rating of "A" by Standard & Poor's;*
 - (c) *Obligations issued by a county, district, municipality, or other legal authority within the Commonwealth with a minimum rating of "AA" by Standard & Poor's;*
 - (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;*
 - (f) *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, as follows:*
 1. *An investment in an individual equity holding shall not represent more than five percent (5%) of the total market value of the security; and*
 2. *Investments in equity securities shall not exceed twenty percent (20%) of the total market value of the investment portfolio of the liability self-insurance group reflected on the most recent quarterly or annual statement of financial condition on file with the executive director;*

- (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. **The corporate bond investments do not exceed twenty-five percent (25%) 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; and**
 3. **The bond has a minimum rating of "A" by Standard and Poor's; or**
- (h) **Mutual funds and exchange traded funds if, at the time of purchase, the investments do 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.**
- (2) **Of the aggregate investments made under this section:**
- (a) **Not less than fifty percent (50%) 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 (1) of this section; and**
 - (b) **A minimum of five percent (5%) 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.**
- (3) **The executive director may permit variation from the requirements of this section for good cause shown**~~[only in securities or other investments permitted by subtitle 7 of this chapter, or such other securities or investments as the executive director may permit by administrative regulation].~~

➔Section 3. KRS 304.48-140 is amended 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 liability self-insurance group or by other laws of the Commonwealth.~~[Except for liability self insurance groups formed by governmental entities.]~~ 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 liability self-insurance group, such as assuring that there is adequate funding to cover professional or public liabilities, assuring 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 executive director; ~~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; **and**
 - (d) **Establish a formal conflict-of-interest policy or code of conduct applicable to the board of trustees, officers, and employees that includes a description of the system used to monitor compliance with the conflict-of-interest policy or code of conduct.**
- (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 executive director; or
 - (b) Permit the loan of any moneys to, or borrow any moneys from, the group or in the name of the group. However, a liability self-insurance group formed by governmental entities may borrow moneys in the name of the group.
- (4) In its discretion, the liability self-insurance group may refer to its trustees as directors. If this is done, the provisions of this subtitle referring to trustees shall be construed as referring to directors.
- (5) **Upon the request of a group member, a liability self-insurance group shall make available the statement of financial condition required by subsection (1) of this section.**

➔Section 4. KRS 304.48-170 is amended to read as follows:

- (1) All liability self-insurance groups shall file with the executive director a statement of financial condition audited by an independent certified public accountant on or before one hundred and 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 executive director 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) ***Within forty-five (45) days from the end of each fiscal quarter, all liability self-insurance groups shall file with the executive director 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.***
- (3) No person shall make a deceptive statement or fail to correct a misstatement in connection with the solicitation of membership of a group.
- ~~(4)~~~~(3)~~ The financial statements required by this section shall be completed in accordance with administrative regulations promulgated by the executive director.
- (5) ***Upon the request of a group member, a liability self-insurance group shall make available the statement of financial condition required by subsection (1) of this section.***

➔Section 5. KRS 304.48-180 is amended to read as follows:

Liability self-insurance groups shall file with the executive director their rates, underwriting guidelines, evidence of coverage, and any changes therein ***in accordance with KRS 304.13-051 and 304.14-120 and administrative regulations promulgated thereunder.*** The filing shall be accompanied by a filing fee of five dollars (\$5) per filing.

➔Section 6. KRS 304.48-240 is amended to read as follows:

- (1) No person shall make any deceptive statement or omit material facts in connection with solicitation for membership in a liability self-insurance group.
- (2) Liability self-insurance groups shall not engage in unfair claims settlement practices and shall:
 - (a) Respond to claimant inquiries within fifteen (15) working days.
 - (b) Respond to Office of Insurance inquiries concerning claims within fifteen (15) working days.
 - (c) Complete the investigation of losses within thirty (30) days from the date the group has notice of a loss. An additional thirty (30) day period may be taken if reasonably necessary and upon written notice to the claimant.
 - (d) Not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations, a policy, or contract time limit without giving the claimant written notice at least sixty (60) days before the date on which the time limit shall expire and affect the claimant's rights.
 - (e) Not commit any other unfair or deceptive act or practice, ***as described in Subtitle 12 of this chapter,*** relating to claim settlement.

- (3) Liability self-insurance groups shall not commit unfair or deceptive acts or practices, *as described in Subtitle 12 of this chapter*, under its certificate of filing from the executive director.

➔Section 7. KRS 304.48-250 is amended to read as follows:

- (1) If the assets of a liability insurance group are at any time insufficient to enable the group to discharge its legal liabilities, other obligations, and to maintain the required reserves under this subtitle, the group shall immediately levy an assessment upon its members for the amount necessary to make up the deficiency.
- (2) If there is a deficiency in any fund year, the deficiency shall be made up immediately, from the following:
- (a) Surplus from a fund year other than the current fund year after prior notice of the transfer has been given to the executive director;
 - (b) Administrative funds;
 - (c) Assessment of membership; or
 - (d) Alternate methods as the executive director may direct or approve.
- (3) If a liability self-insurance group fails to assess its members within thirty (30) days to make up a deficit, the executive director shall order it to do so. This subsection shall not apply to liability self-insurance groups formed by governmental entities which do not have joint and several liability.
- (4) If a liability self-insurance group fails to make the required assessment of its members within thirty (30) days after the executive director orders it to do so, or if the deficiency is not fully made up within sixty (60) days after the date on which the assessment is made, or within a longer period of time as may be permitted by the executive director, the group shall be determined to be insolvent *and may be placed in delinquency proceedings as an insurer pursuant to Subtitle 33 of this chapter*.

➔Section 8. KRS 304.48-260 is amended to read as follows:

- (1) After a hearing or upon agreement by the liability self-insurance group, the executive director may suspend or revoke the certificate of filing of a liability self-insurance group, impose a civil penalty of up to five thousand dollars (\$5,000) per violation on a liability self-insurance group, or both, for:
- (a) Violations of this subtitle or administrative regulations adopted 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) *Violations of Subtitle 12 of this chapter or administrative regulations promulgated pursuant thereto*~~[Unfair or deceptive business practices]~~.
- (2) The executive director, in his discretion and without advance notice or a hearing thereon, may suspend or revoke the certificate of filing of any liability self-insurance group upon the commencement of the following proceedings:
- (a) Receivership;
 - (b) Conservatorship;
 - (c) Rehabilitation; or
 - (d) Other delinquency proceedings.

➔SECTION 9. A NEW SECTION OF SUBTITLE 48 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A liability self-insurance group regulated under this subtitle and administrative regulations promulgated pursuant thereto shall be subject to the provisions of this subtitle, Subtitle 12 of this chapter, and KRS 304.2-310 to 304.2-370, to the extent applicable and not in conflict with the expressed provisions of this subtitle.

➔Section 10. KRS 304.50-155 is amended to read as follows:

A group self-insurance fund regulated under this subtitle and administrative regulations promulgated by the executive director shall be subject to the provisions of this subtitle, *Subtitle 12 of this chapter*, and ~~the provisions of~~ KRS 304.2-310 to 304.2-370, to the extent applicable and not in conflict with the expressed provisions of this subtitle.

Signed by Governor March 30, 2010.