

CHAPTER 124

(HB 349)

AN ACT relating to legislative committees.

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

➔Section 1. KRS 11.202 is amended to read as follows:

- (1) The duties of the Commission on Small Business Advocacy shall include~~[-]~~ but not be limited to:
 - (a) Coordinate and promote the awareness of the Federal Small Business Regulatory Enforcement Fairness Act of 1996, and its subsequent amendments within the small business community of the Commonwealth;
 - (b) Develop a process by which the small business community is made aware of state legislation and administrative regulations affecting it, both prior to its enactment and during its implementation;
 - (c) Advocate for the small business sectors when state legislation and administrative regulations are overly burdensome, costly, or harmful to the success and growth of the sector;
 - (d) Collect information and research those public policies and government practices which are helpful or detrimental to the success and growth of the small business community; and
 - (e) Review administrative regulations that may impact small business. The commission may seek input from other agencies, organizations, or interested parties. In acting as an advocate for small business, the commission may submit a written report to the promulgating administrative body to be considered as comments received during the public comment period required by KRS 13A.270(1)(c). The report may specify the commission's findings regarding the administrative regulation, including an identification and estimate of the number of small businesses subject to the administrative regulation, the projected reporting, recordkeeping, and other administrative costs required for compliance with the administrative regulation, and any suggestions the commission has for reducing the regulatory burden on small businesses through the use of tiering or exemptions, in accordance with KRS 13A.210. A copy of the report shall be filed with the regulations compiler of the Legislative Research Commission.
- (2) By September 1 of each year, the commission shall submit a report to the Governor and the Interim Joint Committee on ~~Economic Development and~~ Tourism, ***Small Business, and Information Technology*** detailing its work in the prior fiscal year, including, but not limited to the following:
 - (a) Activities and achievements of the commission in accomplishing its purposes and duties;
 - (b) Findings of the commission related to its collection of information and research on public policies and government practices affecting small businesses, including specific legislation and administrative regulations that are helpful or detrimental to the success of small businesses; and
 - (c) Specific recommendations of ways state government could better promote the economic development efforts of small businesses in the Commonwealth.
- (3) Beginning December 1, 2012, and on every December 1 thereafter, the commission shall submit an annual report to the Secretary of State and the Legislative Research Commission setting forth an analysis of how the one-stop electronic business portal established in KRS 14.250 may be improved to make the business portal more user friendly for businesses.

➔Section 2. KRS 304.13-340 is amended to read as follows:

The Workers' Compensation Insurance Plan (KWCI), a workers' compensation residual market mechanism, in existence by virtue of this subtitle, shall not write new policies or renew policies after September 1, 1995. The board of directors of the Employers' Mutual Insurance Authority, the commissioner of the Department of Workers' Claims, and the commissioner of the Department of Insurance shall develop a plan, which shall be reviewed by the ***Economic Development and Workforce Investment***~~[-Labor and Industry]~~ Committee and the Banking and Insurance Committee of the General Assembly, for the orderly and equitable phase-out of the KWCI. All claims on workers' compensation assigned risk policies in effect or issued prior to September 1, 1995, shall be paid by the KWCI. The plan developed shall include procedures for application and transfer of the insureds in the KWCI to the authority, who shall be subject to the qualifications and conditions of coverage required in KRS 342.801 to 342.843 and this

section. The authority shall not be liable for any liabilities or deficits incurred on assigned risk policies in effect or issued prior to September 1, 1995.

➔Section 3. KRS 304.50-160 is amended to read as follows:

Annually on or before the fifteenth day of December, the commissioner shall make a report to the Governor and the Interim Joint Committees of Banking and Insurance and *Economic Development and Workforce Investment*~~Labor and Industry~~ on the status of workers' compensation self-insured groups.

➔Section 4. KRS 341.240 is amended to read as follows:

- (1) There is hereby created in the State Treasury a special fund to be known as the unemployment compensation administration fund. All money deposited or paid into this fund is hereby appropriated and shall be continuously available to the secretary for expenditure consistent with this chapter, and shall not lapse at any time. A general statement that all continuing appropriations are repealed shall not be construed as repealing this section.
- (2) All money in the unemployment compensation administration fund shall be expended solely to defray the cost of the administration of this chapter.
- (3)
 - (a) The unemployment compensation administration fund shall consist of all money appropriated by this state and all money received from the United States, or any agency thereof or from any other source, for the administration of this chapter.
 - (b) The secretary is authorized to obtain funding through any commercially reasonable means for the benefit of the unemployment compensation administration fund, including reasonable expenses, so long as the debt, note, security, or obligations are payable solely from the surcharge proceeds, revenues, or funds and accounts specifically authorized for such purpose under this chapter. The State Treasurer shall maintain a separate record of all money received for the unemployment compensation administration fund under this paragraph. The secretary is authorized to pledge the surcharge proceeds under this chapter as security for financing obtained pursuant to this section.
 - (c) Any obligation incurred under this subsection shall not constitute a debt, liability, obligation, or pledge of the credit or taxing power of this Commonwealth. Any debt or obligation incurred as a result of this subsection shall be payable solely from the surcharge proceeds, revenues, or funds and accounts pledged or available for such purpose under this chapter.
 - (d) On or before July 1, 2012, and quarterly thereafter, the secretary shall report to the Legislative Research Commission, for referral to the Appropriations and Revenue Committee and the *Economic Development and Workforce Investment*~~Labor and Industry~~ Committee, on the financing authorized in this section for the payment of interest on advances under Title XII of the Social Security Act, the status of the trust fund, and efforts to obtain a cap on the federal unemployment tax credit reduction.
- (4) In order to establish and maintain free employment offices, the secretary may enter into agreements with the Railroad Retirement Board or any other agency charged with the administration of an unemployment insurance law, with any cities or other political subdivisions of this state or with any private nonprofit organization. As a party to any such agreement, the secretary may accept money, service or quarters as a contribution to the unemployment compensation administration fund.

➔Section 5. KRS 342.035 is amended to read as follows:

- (1) Periodically, the commissioner shall promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 and this section shall be fair, current, and reasonable and shall be limited to such charges as are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. In determining what fees are reasonable, the commissioner may also consider the increased security of payment afforded by this chapter. On or before November 1, 1994, and on July 1 every two (2) years thereafter, the schedule of fees contained in administrative regulations promulgated pursuant to this section shall be reviewed and updated, if appropriate. Within ten (10) days of April 4, 1994, the commissioner shall execute a contract with an appropriately qualified consultant pursuant to which each of the following elements within the workers' compensation system are evaluated; the methods of health care delivery; quality assurance and utilization mechanisms; type, frequency, and intensity of services; risk management programs; and the schedule of fees contained in administrative regulation. The consultant shall present recommendations based on its review to the commissioner not later than sixty (60) days following execution of the contract. The commissioner shall consider these recommendations and, not later than thirty (30) days after their receipt,

promulgate a regulation which shall be effective on an emergency basis, to effect a twenty-five percent (25%) reduction in the total medical costs within the program.

- (2) No provider of medical services or treatment required by this chapter, its agent, servant, employee, assignee, employer, or independent contractor acting on behalf of any medical provider, shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment of any charge, for services covered by a workers' compensation insurance plan for the treatment of a work-related injury or occupational disease, in excess of that provided by a schedule of fees, or cause the credit of any employee to be impaired by reason of the employee's failure or refusal to pay the excess charge. In addition to the penalty imposed in KRS 342.990 for violations of this subsection, any individual who sustains damages by any act in violation of the provisions of this subsection shall have a civil cause of action in Circuit Court to enjoin further violations and to recover the actual damages sustained by the individual, together with the costs of the lawsuit, including a reasonable attorney's fee.
- (3) Where these requirements are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting it. No compensation shall be payable for the death or disability of an employee if his or her death is caused, or if and insofar as his disability is aggravated, caused, or continued, by an unreasonable failure to submit to or follow any competent surgical treatment or medical aid or advice.
- (4) The commissioner shall, by December 1, 1994, promulgate administrative regulations to adopt a schedule of fees for the purpose of regulating charges by medical providers and other health care professionals for testimony presented and medical reports furnished in the litigation of a claim by an injured employee against the employer. The workers' compensation medical fee schedule for physicians, 803 KAR 25:089, having an effective date of February 9, 1995, shall remain in effect until July 1, 1996, or until the effective date of any amendments promulgated by the commissioner, whichever occurs first, it being determined that this administrative regulation is within the statutory grant of authority, meets legislative intent, and is not in conflict with the provisions of this chapter. The medical fee schedule and amendments shall be fair, current, and reasonable and otherwise comply with this section.
- (5)
 - (a) To ensure compliance with subsections (1) and (4) of this section, the commissioner shall promulgate administrative regulations by December 31, 1994, which require each insurance carrier, self-insured group, and self-insured employer to certify to the commissioner the program or plan it has adopted to ensure compliance.
 - (b) In addition, the commissioner shall periodically have an independent audit conducted by a qualified independent person, firm, company, or other entity hired by the commissioner, in accordance with the personal service contract provisions contained in KRS 45A.690 to 45A.725, to ensure that the requirements of subsection (1) of this section are being met. The independent person, firm, company, or other entity selected by the commissioner to conduct the audit shall protect the confidentiality of any information it receives during the audit, shall divulge information received during the audit only to the commissioner, and shall use the information for no other purpose than the audit required by this paragraph.
 - (c) The commissioner shall promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, self-insured group, or self-insured employer pursuant to this chapter. Utilization review required under administrative regulations may be waived if the insurance carrier, self-insured group, or self-insured employer agrees that the recommended medical treatment is medically necessary and appropriate or if the injured employee elects not to proceed with the recommended medical treatment.
 - (d) Periodically, or upon request, the commissioner shall report to the Interim Joint Committee on *Economic Development and Workforce Investment* ~~[Labor and Industry]~~ of the Legislative Research Commission or to the corresponding standing committees of the General Assembly, as appropriate, the degree of compliance or lack of compliance with the provisions of this section and make recommendations thereon.
 - (e) The cost of implementing and carrying out the requirements of this subsection shall be paid from funds collected pursuant to KRS 342.122.
- (6) The commissioner may promulgate administrative regulations incorporating managed care or other concepts intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter.

- (7) For purposes of this chapter, any medical provider shall charge only its customary fee for photocopying requested documents. However, in no event shall a photocopying fee of a medical provider or photocopying service exceed fifty cents (\$.50) per page. However, a medical provider shall not charge a fee when the initial copy of medical records is provided to the injured worker or his or her attorney in response to a written request pursuant to KRS 422.317. In addition, there shall be no charge for reviewing any records of a medical provider, during regular business hours, by any party who is authorized to review the records and who requests a review pursuant to this chapter.
- (8) (a) The commissioner shall develop or adopt practice parameters or evidence-based treatment guidelines for medical treatment for use by medical providers under this chapter, including but not limited to chronic pain management treatment and opioid use, and promulgate administrative regulations in order to implement the developed or adopted practice parameters or evidenced-based treatment guidelines on or before December 31, 2019. The commissioner may adopt any parameters for medical treatment as developed and updated by the federal Agency for Health Care Policy Research, or the commissioner may adopt other parameters for medical treatment which are developed by qualified bodies, as determined by the commissioner, with periodic updating based on data collected during the application of the parameters.
- (b) The commissioner shall develop or adopt a pharmaceutical formulary for medications prescribed for the cure of and relief from the effects of a work injury or occupational disease and promulgate administrative regulations to implement the developed or adopted pharmaceutical formulary on or before December 31, 2018.
- (c) Any provider of medical services under this chapter who has followed the practice parameters or treatment guidelines or formularies developed or adopted and implemented pursuant to this subsection shall be presumed to have met the appropriate legal standard of care in medical malpractice cases regardless of any unanticipated complication that may thereafter develop or be discovered.
- (9) (a) Notwithstanding any other provision of law to the contrary, the medical fee schedule adopted under subsection (4) of this section shall require all worker's compensation insurance carriers, worker's compensation self-insured groups, and worker's compensation self-insured employers to provide coverage and payment for surgical first assisting services to registered nurse first assistants as defined in KRS 216B.015.
- (b) The provisions of this subsection apply only if reimbursement for an assisting physician would be covered and a registered nurse first assistant who performed the services is used as a substitute for the assisting physician. The reimbursement shall be made directly to the registered nurse first assistant if the claim is submitted by a registered nurse first assistant who is not an employee of the hospital or the surgeon performing the services.

➔Section 6. KRS 342.1223 is amended to read as follows:

- (1) The Kentucky Workers' Compensation Funding Commission is created as an agency of the Commonwealth for the public purpose of controlling, investing, and managing the funds collected pursuant to KRS 342.122.
- (2) The commission shall:
- (a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS 342.122 and its other funds separate and apart from all "state funds" or "public funds," as defined in KRS Chapter 446;
- (b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power over the funds collected pursuant to KRS 342.122, and may invest association funds through one (1) or more banks, trust companies, or other financial institutions with offices in Kentucky in good standing with the Department of Financial Institutions, in investments described in KRS Chapter 386, except that the funding commission may, at its discretion, invest in equity securities;
- (c) Report to the General Assembly at each even-numbered-year regular session the actuarial soundness and adequacy of the funding mechanism for the special fund and other programs supported by the mechanism, including detailed information on the investment of funds and yields thereon;
- (d) Recommend to the General Assembly, not later than October 31 of the year prior to each even-numbered-year regular legislative session, changes deemed necessary in the level of the assessments imposed in this chapter;

- (e) In conjunction with the Labor Cabinet, submit to the General Assembly, not later than October 31 of the year prior to each even-numbered-year regular legislative session, a proposed budget for the biennium beginning July 1 following the even-numbered-year regular session of the General Assembly;
 - (f) In conjunction with the Labor Cabinet, provide to the Interim Joint Committee on Appropriations and Revenue an annual budget and detailed quarterly financial reports;
 - (g) Conduct periodic audits, independently or in cooperation with the Labor Cabinet or the Department of Revenue, of all entities subject to the assessments imposed in this chapter; and
 - (h) Report monthly to the Committees on Appropriations and Revenue and on *Economic Development and Workforce Investment* ~~(Labor and Industry)~~ its monthly expenditures of restricted agency funds and the nature of the expenditures.
- (3) The commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including, but not limited to, the power:
- (a) To sue and be sued, complain, or defend, in its name;
 - (b) To elect, appoint, or hire officers, agents, and employees, and define their duties and fix their compensation within the limits of its budget approved by the General Assembly. Notwithstanding any provision of KRS Chapter 18A to the contrary, officers and employees of the funding commission may be exempted from the classified service;
 - (c) To contract for investment counseling, legal, actuarial, auditing, and other professional services in accordance with the provisions relating to personal service contracts contained in KRS Chapter 45A;
 - (d) To appoint, hire, and contract with banks, trust companies, and other entities to serve as depositories and custodians of its investment receipts and other funds;
 - (e) To take any and all other actions consistent with the purposes of the commission and the provisions of this chapter; and
 - (f) To make and promulgate administrative regulations.
- (4) The Kentucky Workers' Compensation Funding Commission may utilize the investment expertise and advice of the Office of Financial Management within the Finance and Administration Cabinet. The Kentucky Workers' Compensation Funding Commission may procure one (1) or more consulting firms and enter into a personal service contract with such consulting firms to provide investment advisory, investment counseling, or investment management services. The Office of Financial Management shall participate in the selection of any firms for investment services provided, however, the Kentucky Workers' Compensation Funding Commission shall have the right to make the final decision on the selection of any firms. Notwithstanding any provisions of this section to the contrary, all contracts for investment advisory, investment counseling, or investment management services or for the management of assets shall be subject to KRS Chapter 45A. The fees charged by financial institutions for managing the investments of the funds of the funding commission shall be paid from the investment earnings of the funds.
- (5) The commission shall be attached to the Labor Cabinet for administrative purposes only.
- ➔Section 7. KRS 342.230 is amended to read as follows:
- (1) The commissioner with the assistance of the board shall train and instruct the administrative law judges on an ongoing basis; assign cases; and monitor the caseloads of the administrative law judges and the Workers' Compensation Board to ensure timely disposition of cases; keep and be the custodian of the records of the board and the administrative law judges; annually report the activities of the board and the administrative law judges to the Governor; and devote his or her full time to the duties of his or her office. The commissioner shall be paid a salary not less than the salary of a member of the board.
 - (2) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4) years, not more than nineteen (19) administrative law judges, each of whom shall be an attorney and shall have five (5) years' experience in the Commonwealth in the practice of workers' compensation law or a related field, and extensive knowledge of workers' compensation law, and shall be paid the same salary as a Circuit Judge. Each administrative law judge shall be exempt from the classified service, and his or her support staff may be exempt from the classified service. Each administrative law judge may be employed for additional terms with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days

prior to the expiration of a term of an administrative law judge, shall provide the name of the individual whom he intends to appoint to the position to the chairman of the Senate ***Economic Development and Workforce Investment***~~(Labor and Industry)~~ Committee. These administrative law judges shall conduct hearings, and otherwise supervise the presentation of evidence and perform any other duties assigned to them by statute and shall render final decisions, orders, or awards. Administrative law judges may, in receiving evidence, make rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case.

- (3) To ensure that the administrative law judges perform their responsibilities competently and issue decisions consistent with this chapter, the commissioner shall, at least twice annually, conduct training and education seminars in workers' compensation law; administrative law; and methods and procedures for writing well-reasoned, clear, correct, and concise opinions, orders, or awards.
- (4) The Governor may at any time remove the commissioner or any member of the board. The commissioner may remove any administrative law judge. A member of the board or an administrative law judge may be removed for good cause, including violation of the code of judicial ethics or the code of ethics applicable to the executive branch of the Commonwealth. In addition, an administrative law judge or a member of the board may be removed for the persistent or repeated failure to perform satisfactorily the specific duties assigned in this chapter, including the requirement of timely disposition of cases, review of attorney's fees, and failure to attend training and continuing education programs required by this section.
- (5) Any vacancy in the term of an administrative law judge, which occurs prior to the expiration of the term, shall be filled if necessary by appointment of the Governor in accordance with subsection (2) of this section within sixty (60) days from the date the vacancy occurs, with the consent of the Senate in accordance with KRS 11.160, for the remainder of the term.
- (6)
 - (a) On January 1, 1998, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to administrative law judges under this chapter.
 - (b) On January 1, 2000, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to administrative law judges under this chapter.
- (7) One (1) of the administrative law judges appointed pursuant to this section shall be appointed as a chief administrative law judge, to have the same qualifications, powers, duties, and requirements as those of other administrative law judges. The chief administrative law judge shall not be assigned regular dockets but shall instead assist the commissioner by doing all scheduling of the administrative law judges, handling dockets assigned to the administrative law judges in case of an emergency, providing supervision of the administrative law judges, and providing educational opportunities for the administrative law judges. The chief administrative law judge shall be paid at the same rate as the administrative law judges plus an additional three thousand dollars (\$3,000) per year. At any time the commissioner may replace the chief administrative law judge with one (1) of the other administrative law judges at which time the former chief administrative law judge shall resume the duties assigned to the other administrative law judges pursuant to this chapter. On January 1, 1998, the commissioner shall employ a person in this position for a four (4) year term.

➔Section 8. KRS 342.342 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 342.340, KRS 342.350, or any administrative regulations promulgated pursuant to those provisions, the commissioner shall annually review the adequacy of the financial or other security requirements contained in administrative regulations, promulgated pursuant to the individual self-insurance provisions in this chapter. The commissioner shall report the results of the review to the ***Economic Development and Workforce Investment***~~(Labor and Industry)~~ Committee of the General Assembly and any recommendations for proposed changes to insure the financial soundness of the individual self-insurers authorized pursuant to this chapter. In addition, the commissioner shall report not less often than annually a summary report on the financial soundness of the individual self-insurers.
- (2) The ***Economic Development and Workforce Investment***~~(Labor and Industry)~~ Committee of the General Assembly shall annually review the administrative regulations promulgated pursuant to the individual provisions under this chapter.
- (3) On July 1, 1994, the Division of Security and Compliance of the Department of Workers' Claims in the Labor Cabinet shall be expanded by five (5) employees. These additional employees shall be employed for the purpose of conducting financial audits, examinations, and reviews and other activities necessary to ensure and monitor the financial soundness of the individual self-insured employers authorized pursuant to KRS 342.340.

➔Section 9. KRS 342.765 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS Chapter 342 to the contrary, the office of the Attorney General shall be responsible for the administration of the uninsured employers' fund and shall be charged with the conservation of the assets of the fund. Funds to reimburse the Attorney General's office for expenses incurred in litigation and administration in defense of the uninsured employers' fund shall be transferred upon request of the Attorney General's office and approval by the secretary of the Labor Cabinet.
- (2) The office of the Attorney General shall report monthly to the Interim Joint Committee on Appropriations and Revenue, the Interim Joint Committee on *Economic Development and Workforce Investment*~~(Labor and Industry)~~, and the commissioner the amount of the agency fund expenditures in each month for the uninsured employers' fund and the nature of these expenditures. In addition, the Office of the Attorney General shall report quarterly to the commissioner on the amount of funds recouped from uninsured employers.

➔Section 10. KRS 342.817 is amended to read as follows:

- (1) The authority, through its board and manager, shall establish separate rating plans, rates, and underwriting standards for different classes of risks for the authority.
- (2) The rating plans, rates, and underwriting standards developed for the categories of risk shall be based on generally accepted actuarial practices and procedures as set forth in the Statement of Principles Regarding Property and Casualty Ratemaking of the Casualty Actuarial Society, in accordance with the actuarial standards of practice and compliance guidelines of the Actuarial Standards Board. The rates shall be actuarially sound for both the voluntary market and the market of last resort and set at levels which are expected, in the aggregate, to be sufficient to pay all workers' compensation claims incurred by the participating employer risks and other permitted expenses of the authority. The rates for the voluntary market and the market of last resort shall be filed individually with the commissioner of the Department of Insurance on forms prescribed by the commissioner by the promulgation of administrative regulations.
- (3) Multitiered premium or rating plans may be developed to provide workers' compensation coverage to insureds in the Commonwealth.
- (4) The manager shall develop statistical and other information as necessary to distinguish its writings in the voluntary market, and its writings as a market of last resort.
- (5) The rates established by the authority for its policyholders shall be based only on Kentucky loss experience data, except that other loss experience data may be utilized as a supplement to Kentucky data if supplemental or additional data are necessary to establish statistical credibility of an employment classification.
- (6) Any and all rates, whether for the voluntary market or the market of last resort, established by the board are deemed competitive and shall be filed with the commissioner of insurance in accordance with KRS Chapter 304 in the same manner as any other mutual insurance company writing workers' compensation in the Commonwealth.
- (7) Notwithstanding any provision of KRS Chapter 304 to the contrary, the surplus requirements for mutual insurance companies in the Commonwealth shall not apply to the authority until the authority has been in operation for eighty-four (84) months, unless modified by the General Assembly. In addition to other reporting requirements in KRS 342.809 and 342.821, the authority shall report to the *Economic Development and Workforce Investment*~~(Labor and Industry)~~ Committee of the General Assembly, no later than October 31 of each year, on the status of its efforts to build and maintain a surplus as required by KRS Chapter 304.

Signed by Governor March 25, 2021.