GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2012 REGULAR SESSION

HOUSE BILL NO. 338

WEDNESDAY, FEBRUARY 22, 2012

The following bill was reported to the Senate from the House and ordered to be printed.

RECEIVED AND FILED
DATE April 11, 2012
2:46 p.m.
ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY Mary Sue Helm

1 AN ACT relating to delaying the effective date of insurance premium surcharge
2 increases.
3 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***
4 ➔Section 1. KRS 136.392 is amended to read as follows:
5 (1) (a) Every domestic, foreign, or alien insurer, other than life and health insurers,
6 which is either subject to or exempted from Kentucky premium taxes as levied
7 pursuant to the provisions of either KRS 136.340, 136.350, 136.370, or
8 136.390, shall charge and collect a surcharge of one dollar and fifty cents
9 ($1.50) upon each one hundred dollars ($100) of premium, assessments, or
10 other charges, except for those municipal premium taxes, made by it for
11 insurance coverage provided to its policyholders, on risk located in this state,
12 whether the charges are designated as premiums, assessments, or otherwise.
13 The premium surcharge shall be collected by the insurer from its
14 policyholders at the same time and in the same manner that its premium or
15 other charge for the insurance coverage is collected. The premium surcharge
16 shall be disclosed to policyholders pursuant to administrative regulations
17 promulgated by the commissioner of insurance. However, no insurer or its
18 agent shall be entitled to any portion of any premium surcharge as a fee or
19 commission for its collection. On or before the twentieth day of each month,
20 each insurer shall report and remit to the Department of Revenue, on forms as
21 it may require, all premium surcharge moneys collected by it during its
22 preceding monthly accounting period less any moneys returned to
23 policyholders as applicable to the unearned portion of the premium on policies
24 terminated by either the insured or the insurer. Insurers with an annual liability
25 of less than one thousand dollars ($1,000) for each of the previous two (2)
26 calendar years may report and remit to the Department of Revenue all
27 premium surcharge moneys collected on a calendar year basis on or before the

1 twentieth day of January of the following calendar year. The funds derived
2 from the premium surcharge shall be deposited in the State Treasury, and shall
3 constitute a fund allocated for the uses and purposes of the Firefighters
4 Foundation Program fund, KRS 95A.220 and 95A.262, and the Law
5 Enforcement Foundation Program fund, KRS 15.430.
6 (b) Effective July 1, 1992, the surcharge rate in paragraph (a) of this subsection
7 shall be adjusted by the commissioner of revenue to a rate calculated to
8 provide sufficient funds for the uses and purposes of the Firefighters
9 Foundation Program fund as prescribed by KRS 95A.220 and 95A.262 and
10 the Law Enforcement Foundation Program fund as prescribed by KRS 15.430
11 for each fiscal year. The rate shall be calculated using as its base the number
12 of local government units eligible for participation in the funds under
13 applicable statutes as of January 1, 1994. To allow the commissioner of
14 revenue to calculate an appropriate rate, the secretary of the Public Protection
15 Cabinet and the secretary for the Justice and Public Safety Cabinet shall
16 certify to the commissioner of revenue ~~[, no later than January 1 of]~~ each
17 year~~[,]~~ the estimated budgets for the respective funds specified above,
18 including any surplus moneys in the funds, which shall be incorporated into
19 the consideration of the adjusted rate~~[for the next biennium]~~. As soon as
20 practical, the commissioner of revenue shall advise the commissioner of
21 insurance of the new rate and the commissioner ***of insurance*** shall inform the
22 affected insurers. The ***new rate shall take effect no earlier than six (6)***
23 ***months from the date that the commissioner of insurance notifies the***
24 ***affected insurers***~~[rate adjustment process shall continue on a biennial basis]~~.
25 (2) Within five (5) days after the end of each month, all insurance premium surcharge
26 proceeds deposited in the State Treasury as set forth in this section shall be paid by
27 the State Treasurer into the Firefighters Foundation Program fund trust and agency

1 account and the Law Enforcement Foundation Program fund trust and agency
2 account. The amount paid into each account shall be proportionate to each fund's
3 respective share of the total deposits, pursuant to KRS 42.190. Moneys deposited to
4 the Law Enforcement Foundation Program fund trust and agency account shall not
5 be disbursed, expended, encumbered, or transferred by any state official for uses
6 and purposes other than those prescribed by KRS 15.410 to 15.500, except that
7 beginning with fiscal year 1994-95, through June 30, 1999, moneys remaining in
8 the account at the end of the fiscal year in excess of three million dollars
9 ($3,000,000) shall lapse. On and after July 1, 1999, moneys in this account shall not
10 lapse. Money deposited to the Firefighters Foundation Program fund trust and
11 agency account shall not be disbursed, expended, encumbered, or transferred by any
12 state official for uses and purposes other than those prescribed by KRS 95A.200 to
13 95A.300, except that beginning with fiscal year 1994-95, through June 30, 1999,
14 moneys remaining in the account at the end of the fiscal year in excess of three
15 million dollars ($3,000,000) shall lapse, but moneys in the revolving loan fund
16 established in KRS 95A.262 shall not lapse. On and after July 1, 1999, moneys in
17 this account shall not lapse.
18 (3) Insurance premium surcharge funds collected from the policyholders of any
19 domestic mutual company, cooperative, or assessment fire insurance company shall
20 be deposited in the State Treasury, and shall be paid monthly by the State Treasurer
21 into the Firefighters Foundation Program fund trust and agency account as provided
22 in KRS 95A.220 to 95A.262. However, insurance premium surcharge funds
23 collected from policyholders of any mutual company, cooperative, or assessment
24 fire insurance company which transfers its corporate domicile to this state from
25 another state after July 15, 1994, shall continue to be paid into the Firefighters
26 Foundation Program fund and the Law Enforcement Foundation Program fund as
27 prescribed.

1 (4) No later than July 1 of each year, the Department of Insurance shall provide the
2 Department of Revenue with a list of all Kentucky-licensed property and casualty
3 insurers and the amount of premium volume collected by the insurer for the
4 preceding calendar year as set forth on the annual statement of the insurer. No later
5 than September 1 of each year, the Department of Revenue shall calculate an
6 estimate of the premium surcharge due from each insurer subject to the insurance
7 premium surcharge imposed pursuant to this section, based upon the surcharge rate
8 imposed pursuant to this section and the amount of the premium volume for each
9 insurer as reported by the Department of Insurance. The Department of Revenue
10 shall compare the results of this estimate with the premium surcharge paid by each
11 insurer during the preceding year and shall provide the Legislative Research
12 Commission, the Commission on Fire Protection Personnel Standards and
13 Education, the Kentucky Law Enforcement Council, and the Department of
14 Insurance with a report detailing its findings on a cumulative basis. In accordance
15 with KRS 131.190, the Department of Revenue shall not identify or divulge the
16 confidential tax information of any individual insurer in this report.
17 (5) The insurance premiums surcharge provided in this section shall not apply to
18 premiums collected from the following:
19 (a) The federal government;
20 (b) Resident educational and charitable institutions qualifying under Section
21 501(c)(3) of the Internal Revenue Code;
22 (c) Resident nonprofit religious institutions for real, tangible, and intangible
23 property coverage only;
24 (d) State government for coverage of real property; or
25 (e) Local governments for coverage of real property.
26 (6) Pursuant to the Non-Admitted and Reinsurance Reform Act of 2010, Title V,
27 Subtitle B, of the Dodd-Frank Wall Street Reform and Consumer Protection Act,

1 Pub. L. No. 111-203, the insurance premium surcharge on non-admitted insurance
2 for multistate risks shall be exempt from the provisions of this section but shall be
3 subject to the provisions of KRS 304.10-180.

Speaker-House of Representatives

President of Senate

Attest: Chief Clerk of House of Representatives

Approved Governor

Date 4-11-12