GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2013 REGULAR SESSION

SENATE BILL NO. 202

AS ENACTED

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY K. Adler

1 AN ACT relating to self-insured groups.

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

3 ➔Section 1. KRS 304.50-010 is amended to read as follows:

4 (1) The commissioner may authorize twenty (20) or more employers with common
5 interests or membership in a bona fide trade association, or two (2) or more
6 governmental entities, to enter into agreements to pool their liabilities under KRS
7 Chapter 342 for the purpose of qualifying as a workers' compensation self-insured
8 group under this subtitle and KRS 342.350. ***Any heterogeneous self-insured group***
9 ***so authorized may contract and may sue and be sued in the name adopted by the***
10 ***group.***

11 (2) The commissioner shall promulgate administrative regulations as necessary to
12 govern admission, certification, and regulation of workers' compensation self-
13 insured groups as authorized by this section and KRS 342.350. The commissioner
14 shall take any and all action necessary to effectuate the provisions of this subtitle.
15 The commissioner shall be responsible for maintaining records obtained or prepared
16 in association with this oversight.

17 (3) The Governor may assign the regulatory authority under this subtitle to another
18 board or agency pursuant to KRS 12.028.

19 (4) Except as specifically provided in this subtitle, no other provision of this chapter
20 shall apply to a workers' compensation self-insured group.

21 ➔Section 2. KRS 304.50-085 is amended to read as follows:

22 (1) Each self-insured group shall be operated by a board of trustees. Except for a self-
23 insured group formed by governmental entities, the board of trustees for each self-
24 insured group shall consist of at least two (2) but not more than twenty (20) persons
25 selected in the manner prescribed in the bylaws of the self-insured group or other
26 laws of the Commonwealth.

27 (2) The board of trustees shall:

1 (a) Be residents of Kentucky or officers of corporations authorized to do business
2 in Kentucky;
3 (b) Administer the operations of the workers' compensation self-insured group
4 ensuring that there is adequate funding to pay compensation required by KRS
5 Chapter 342, that all claims are paid promptly and processed to conclusion,
6 and that all necessary precautions are taken to safeguard the assets of the
7 group;
8 (c) Maintain responsibility for all moneys collected or disbursed from the group;
9 (d) Maintain minutes of its meetings and make the minutes available to the
10 commissioner and group members;
11 (e) Designate an administrator to carry out the policies established by the board of
12 trustees and to provide day-to-day management of the self-insured group;
13 (f) Develop rates and collect premium and assessments; and
14 (g) Invest the self-insured group's funds.
15 (3) The board of trustees shall not:
16 (a) Extend credit to individual group members for payment of premiums or
17 assessments, except in accordance with payment plans filed with the
18 commissioner;
19 (b) Permit the loan of any moneys to or borrow any moneys from the self-insured
20 group or in the name of the group, except that a workers' compensation self-
21 insured group formed by governmental entities may borrow moneys in the
22 name of the group; or
23 (c) Have a direct or indirect pecuniary interest in a service organization.
24 (4) ***A workers' compensation heterogeneous self-insured group may contract and***
25 ***may sue and be sued in the name adopted by the group.***
26 *(5)* (a) The trustees may contract with a service organization, an administrator, or a
27 fiscal agent to carry out the administration of the workers' compensation self-

1 insured group.
2 (b) A service organization and its employees and agents shall be duly licensed to
3 perform those functions for which a license is required under Kentucky law.
4 (c) A revolving fund of not more than twenty percent (20%) of estimated
5 premiums may be established for use by a service organization for the
6 payment of claims.
7 *(6)*[~~(5)~~] In its discretion, the workers' compensation self-insured group may refer to its
8 trustees as directors. If this is done, the provisions of this subtitle referring to
9 trustees shall be construed as referring to directors.
10 ➔Section 3. KRS 342.350 is amended to read as follows:
11 (1) In order to comply with KRS 342.340, groups of employers may form, either among
12 themselves or with employers in other states, mutual insurance associations, or
13 reciprocal or interinsurance exchanges subject to the insurance laws of this state and
14 any reasonable conditions and restrictions not inconsistent therewith fixed by the
15 commissioner. Membership in these mutual insurance associations or reciprocal or
16 interinsurance exchanges so approved, together with evidence of the payment of
17 premiums due, shall be evidence of compliance with KRS 342.340.
18 (2) The commissioner may, except as provided in subsection (3), require any mutual
19 insurance association or reciprocal or interinsurance exchange to purchase an
20 annuity or to effect reinsurance with a company authorized to transact insurance in
21 this state or to make a deposit with a bank or trust company of this state that shall in
22 either case be approved by the commissioner for the purpose of fully securing the
23 payment of all deferred installments upon any claim for compensation.
24 (3) Any mutual insurance association or reciprocal or interinsurance exchange
25 possessing a surplus of at least one hundred thousand dollars ($100,000) and not
26 less in amount than the capital required of a domestic stock insurance company
27 transacting the same kind of insurance shall not be required to purchase an annuity

1 or effect reinsurance with a company authorized to transact insurance in this state or
2 to make a deposit with a bank or trust company of this state for the purpose of fully
3 securing the payment of all deferred installments upon any claim for compensation.
4 (4) In addition, under the provisions of KRS 304.50-010 and administrative regulations
5 promulgated by the commissioner of the Department of Insurance, twenty (20) or
6 more employers with common interests or membership in a bona fide trade
7 association or two (2) or more city, county, charter county, urban-county, or
8 consolidated local government employers or their agencies may enter into
9 agreements to pool their liabilities under this chapter for the purpose of qualifying
10 as self-insured groups. ***Any heterogeneous self-insured group so authorized may***
11 ***contract and may sue and be sued in the name adopted by the group.***
12 ➔Section 4. KRS 304.48-250 is amended to read as follows:
13 (1) If the assets of a liability ***self-***insurance group are at any time insufficient to enable
14 the group to discharge its legal liabilities, other obligations, and to maintain the
15 required reserves under this subtitle, the group shall immediately levy an assessment
16 upon its members for the amount necessary to make up the deficiency.
17 (2) If there is a deficiency in any fund year, the deficiency shall be made up
18 immediately, from the following:
19 (a) Surplus from a fund year other than the current fund year after prior notice of
20 the transfer has been given to the commissioner;
21 (b) Administrative funds;
22 (c) Assessment of membership; or
23 (d) Alternate methods as the commissioner may direct or approve.
24 (3) If a liability self-insurance group fails to assess its members within thirty (30) days
25 to make up a deficit, the commissioner shall order it to do so. This subsection shall
26 not apply to liability self-insurance groups formed by governmental entities which
27 do not have joint and several liability.

1 (4) If a liability self-insurance group fails to make the required assessment of its
2 members within thirty (30) days after the commissioner orders it to do so, or if the
3 deficiency is not fully made up within sixty (60) days after the date on which the
4 assessment is made, or within a longer period of time as may be permitted by the
5 commissioner, the group shall be determined to be insolvent and may be placed in
6 delinquency proceedings as an insurer pursuant to Subtitle 33 of this chapter.
7 *(5) (a) Governmental entities that:*
8 *1. Participate or have participated in a liability self-insurance group*
9 *authorized by this subtitle; and*
10 *2. Are assessed by the liability self-insurance group to cover an accrued*
11 *deficit;*
12 *may finance the payment of the assessment over a period not to exceed*
13 *twenty (20) years.*
14 *(b) Financing obtained pursuant to paragraph (a) of this subsection may be*
15 *accomplished by:*
16 *1. The issuance of bonds, notes, or other obligations; or*
17 *2. A lease, installment payment agreement, or other similar agreement.*
18 *(c) If the governmental entity fails to make a scheduled payment on the*
19 *financing obtained pursuant to paragraph (a) of this subsection, any*
20 *payments due to that governmental entity shall be withheld or intercepted*
21 *using the process established in KRS 160.160(5).*
22 *(6) Except as provided in subsection (5) of this section, all other provisions of the*
23 *Kentucky Revised Statutes applying to any financing obtained by a governmental*
24 *entity shall apply.*
25 ➔Section 5. KRS 304.50-055 is amended to read as follows:
26 (1) A workers' compensation self-insured group shall establish plans for premium
27 payment, determination and collection of assessments, and for declaration and

1 payment of dividends or other disbursements, which shall be filed for prior approval
2 with the commissioner. Any change in the plans for premium payment,
3 assessments, or dividends shall be filed for prior approval with the commissioner.
4 Approval of plans for assessments and dividends does not constitute approval of
5 any particular assessment or dividend by the commissioner.
6 (2) Prior to the inception of each group member's self-insurance year, the trustees shall
7 collect from that member at least twenty-five percent (25%) of the estimated
8 premium for the ensuing year, except that in the case of a self-insured group formed
9 by governmental entities twenty-five percent (25%) of the estimated premium for
10 the ensuing year shall be collected no later than thirty (30) days after the beginning
11 of the self-insured group's self-insurance year. The balance of the estimated
12 premium shall be collected in either quarterly or monthly installments as set forth in
13 the enabling documents described in KRS 304.50-030(2)(b) or 304.50-060(2)(b).
14 Each group member's payroll shall be audited annually and an adjustment to
15 premium shall be made accordingly.
16 (3) A disbursement from a workers' compensation self-insured group fund shall be for a
17 purpose related to the self-insured group. A dividend shall not be approved or paid
18 until at least thirty-six (36) months after the expiration of the self-insurance year
19 and shall be paid from surplus funds not required for payment of claims or other
20 liabilities. The dividends shall be paid or credited to members according to the
21 reasonable classifications the trustees may establish. A dividend shall not be paid
22 which unfairly discriminates between members of the same classifications. A
23 dividend plan shall specify whether past group members are eligible for the
24 dividend. Payment of a dividend under a dividend plan shall not be made unless the
25 self-insured group has notified the commissioner of its intent to make a dividend
26 payment at least thirty (30) days prior to the payment, and the commissioner has not
27 disapproved the payment within that time.

1 (4) The formula to be used for collection of assessments shall be determined by the
2 trustees and approved by the commissioner. Assessments shall be fair and equitable
3 and shall not unfairly discriminate between members of the same classification.
4 (5) A trustee, fiscal agent, or service organization shall not utilize an asset of the self-
5 insured group for a purpose unrelated to workers' compensation. The trustees shall
6 maintain cash or cash equivalent accounts as may be prudently necessary to pay
7 expenses without having to liquidate long-term investments.
8 (6) The trustees may invest funds in:
9 (a) United States Government bonds, United States Treasury notes, Treasury
10 bills, or other direct obligations guaranteed by the full faith and credit of the
11 United States Government or its agencies;
12 (b) Tax exempt obligations issued by the Commonwealth of Kentucky or its
13 agencies with a minimum rating of "A" by Standard & Poor;
14 (c) Obligations issued by a county, district, municipality, or other legal authority
15 within the Commonwealth with a minimum rating of "AA" by Standard &
16 Poor;
17 (d) Investment share accounts in a savings and loan association in the
18 Commonwealth whose deposits are insured by a federal agency;
19 (e) Certificates of deposit if issued by a duly chartered commercial bank;
20 (f) At the time of purchase, equity securities actively traded on the New York or
21 NASDAQ Stock Exchanges or other registered national securities exchanges
22 with no individual equity holding comprising greater than ten percent (10%)
23 of the equity portion of the portfolio reflected on the most recent quarterly or
24 annual statement of financial condition on file with the commissioner.
25 1. An investment in an individual equity holding shall not represent at the
26 time of purchase more than five percent (5%) of the total market value
27 of the security.

1 2. At the time of purchase, investments in equity securities shall not exceed
2 twenty percent (20%) of the total market value of the investment
3 portfolio of the self-insured group reflected on the most recent quarterly
4 or annual statement of financial condition on file with the commissioner;
5 (g) Corporate bonds if:
6 1. The bond is issued, assumed, or guaranteed by a solvent institution
7 created or existing under the laws of the United States, or a state,
8 province, district, or territory;
9 2. At the time of purchase, the corporate bond investments do not exceed
10 twenty-five percent (25%) of the total market value of the investment
11 portfolio reflected on the most recent quarterly or annual statement of
12 financial condition on file with the commissioner; and
13 3. The bond has a minimum rating of "A" by Standard and Poor; and
14 (h) At the time of purchase, mutual funds and exchange traded funds if the
15 investments do not exceed twenty percent (20%) of the total market value of
16 the investment portfolio reflected on the most recent quarterly or annual
17 statement of financial condition on file with the commissioner.
18 (7) Of the aggregate investments made by the trustees of the self-insured group under
19 this section:
20 (a) Not less than fifty percent (50%) of the total market value of the entire
21 investment portfolio shall be held in cash, cash equivalents, or securities as
22 described in subsection (6)(a) to (e) of this section; and
23 (b) A minimum of five percent (5%) of the total investment portfolio value shall
24 be maintained in cash or cash equivalent accounts or United States Treasury
25 and Federal Agency Securities with a remaining maturity of one (1) year or
26 less.
27 (8) The commissioner may permit variation from the requirements of this section for

1 good cause.

2 *(9) (a) Governmental entities that:*

3 *1. Participate or have participated in a workers' compensation self-*

4 *insured group authorized by this subtitle; and*

5 *2. Are assessed by the workers' compensation self-insured group to cover*

6 *an accrued deficit;*

7 *may finance the payment of the assessment over a period not to exceed*

8 *twenty (20) years.*

9 *(b) Financing obtained pursuant to paragraph (a) of this subsection may be*

10 *accomplished by:*

11 *1. The issuance of bonds, notes, or other obligations; or*

12 *2. A lease, installment payment agreement, or other similar agreement.*

13 *(c) If the governmental entity fails to make a scheduled payment on the*

14 *financing obtained pursuant to paragraph (a) of this subsection, any*

15 *payments due to that governmental entity shall be withheld or intercepted*

16 *using the process established in KRS 160.160(5).*

17 *(10) Except as provided in subsection (9) of this section, all other provisions of the*

18 *Kentucky Revised Statutes applying to any financing obtained by a governmental*

19 *entity shall apply.*

President of Senate

Speaker-House of Representatives

Attest: Chief Clerk of Senate

Approved Governor

Date 3-21-13