

CHAPTER 62

(HB 307)

AN ACT relating to liability and workers' compensation self-insurance group investments.

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

➔Section 1. KRS 304.48-090 is amended to read as follows:

- (1) *As used in this section, "nationally recognized statistical rating organization" or "NRSRO" means a credit rating agency approved by the United States Securities and Exchange Commission to provide assessments of the creditworthiness of financial instruments.*
- (2) 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 *and taxable* obligations issued by *any state or any of its agencies, counties, cities, municipalities, districts, political subdivisions, or other legal authorities within the United States of America*~~[the Commonwealth of Kentucky or its agencies]~~ with a minimum rating of "**BBB**~~[A]~~" by *any NRSRO, except that no less than fifty percent (50%) of the investments made under this paragraph shall be in* ~~[Standard & Poor's];~~
 - ~~(c)~~ obligations issued by *the Commonwealth, its agencies, or* a county, *city*, district, municipality, *political subdivision*, or other legal authority within the Commonwealth~~[with a minimum rating of "AA" by Standard & Poor's];~~
 - ~~(c)~~~~(d)~~ Investment share accounts in a savings and loan association in the Commonwealth whose deposits are insured by a federal agency;
 - ~~(d)~~~~(e)~~ Certificates of deposit if issued by a duly chartered commercial bank;
 - ~~(e)~~~~(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 commissioner, 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 commissioner;
 - ~~(f)~~~~(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 commissioner; and
 3. The bond has a minimum rating of "**BBB**~~[A]~~" by *any NRSRO*~~[Standard and Poor's];~~~~[or]~~
 - ~~(g)~~~~(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 commissioner; *or*
 - (h) *Asset-backed securities 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 asset-backed security investments do not exceed ten percent (10%) 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 commissioner; and*
3. *The bond has a minimum rating of "BBB" by any NRSRO.*

~~(3)(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 subsection ~~(2)(+)~~(a) to ~~(d)(e)~~ 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.

~~(4)(3)~~ *In the event that any security investment authorized by subsection (2) of this section is downgraded below "BBB," the liability self-insurance group shall divest itself of that investment as prudently as possible without incurring unnecessary losses.*

(5) The commissioner may permit variation from the requirements of this section for good cause shown.

➔Section 2. KRS 304.50-055 is amended to read as follows:

(1) *As used in this section, "nationally recognized statistical rating organization" or "NRSRO" means a credit rating agency approved by the United States Securities and Exchange Commission to provide assessments of the creditworthiness of financial instruments.*

(2) 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 commissioner. Any change in the plans for premium payment, assessments, or dividends shall be filed for prior approval with the commissioner. Approval of plans for assessments and dividends does not constitute approval of any particular assessment or dividend by the commissioner.

~~(3)(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.

~~(4)(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 commissioner of its intent to make a dividend payment at least thirty (30) days prior to the payment, and the commissioner has not disapproved the payment within that time.

~~(5)(4)~~ The formula to be used for collection of assessments shall be determined by the trustees and approved by the commissioner. Assessments shall be fair and equitable and shall not unfairly discriminate between members of the same classification.

~~(6)(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.

~~(7)(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 its agencies;

- (b) Tax exempt *and taxable* obligations issued by *any state or any of its agencies, counties, cities, municipalities, districts, political subdivisions, or other legal authorities within the United States of America*~~[the Commonwealth of Kentucky or its agencies]~~ with a minimum rating of "BBB~~[A]~~" by *any NRSRO, except that no less than fifty percent (50%) of the investments made under this paragraph shall be in* ~~[Standard & Poor];~~
- ~~(c)~~ Obligations issued by *the Commonwealth, its agencies, or* a county, *city* district, municipality, *political subdivision*, or other legal authority within the Commonwealth~~[with a minimum rating of "AA" by Standard & Poor];~~
- ~~(c)~~~~(d)~~ Investment share accounts in a savings and loan association in the Commonwealth whose deposits are insured by a federal agency;
- ~~(d)~~~~(e)~~ Certificates of deposit if issued by a duly chartered commercial bank;
- ~~(e)~~~~(f)~~ **1.** At the time of purchase, 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 commissioner.
- ~~2.~~~~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.
- ~~3.~~~~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 commissioner;
- ~~(f)~~~~(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%) 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 commissioner; and
 3. The bond has a minimum rating of "BBB~~[A]~~" by *any NRSRO*~~[Standard and Poor]; [and]~~
- ~~(g)~~~~(h)~~ At the time of purchase, mutual funds and exchange traded funds if 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 commissioner; *and*
- ~~(h)~~ *Asset-backed securities 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 asset-backed security investments do not exceed ten percent (10%) 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 commissioner; and*
 3. *The bond has a minimum rating of "BBB" by any NRSRO.*
- ~~(8)~~~~(7)~~ Of the aggregate investments made by the trustees of the self-insured group 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 subsection ~~(7)~~~~(6)~~(a) to ~~(d)~~~~(e)~~ 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.
- ~~(9)~~~~(8)~~ *In the event that any security investment authorized by subsection (7) of this section is downgraded below "BBB," the workers' compensation self-insurance group shall divest itself of that investment as prudently as possible without incurring unnecessary losses.*

(10) The commissioner may permit variation from the requirements of this section for good cause.

(11)~~(9)~~ (a) Governmental entities that:

1. Participate or have participated in a workers' compensation self-insured group authorized by this subtitle; and
2. Are assessed by the workers' compensation self-insured group to cover an accrued deficit; may finance the payment of the assessment over a period not to exceed twenty (20) years.

(b) Financing obtained pursuant to paragraph (a) of this subsection may be accomplished by:

1. The issuance of bonds, notes, or other obligations; or
2. A lease, installment payment agreement, or other similar agreement.

(c) If the governmental entity fails to make a scheduled payment on the financing obtained pursuant to paragraph (a) of this subsection, any payments due to that governmental entity shall be withheld or intercepted using the process established in KRS 160.160(5).

(12)~~(10)~~ Except as provided in subsection **(11)**~~(9)~~ of this section, all other provisions of the Kentucky Revised Statutes applying to any financing obtained by a governmental entity shall apply.

Signed by Governor March 30, 2022.