

**KENTUCKY INDIVIDUAL SELF-INSURANCE GUARANTY FUND
BY-LAWS AND PLAN OF OPERATION**

INTRODUCTION

The Kentucky Individual Self-Insurance Guaranty Fund (Fund) is created by KRS 342.906(1) and shall operate as a non-profit unincorporated legal entity. Pursuant to KRS 342.906(7) these By-Laws and Plan of Operation are adopted by the Board of the Kentucky Individual Self-Insurance Guaranty Fund (Board). The effective date of the By-Laws and Plan of Operation shall be the date upon which the Board obtains the written approval of the Kentucky Department of Workers' Claims.

**ARTICLE I
FUND MEMBERSHIP**

A. MEMBERS

All individual self-insured employers, either currently or hereafter certified by the Department of Workers' Claims, excluding individual self-insureds engaged in the severance or processing of coal and public sector employers, are required to become members of the Kentucky Individual Self-Insurance Guaranty Fund, and their membership in the Fund is a condition of their authority to self-insure in the Commonwealth of Kentucky. If any individually self-insured employer fails to maintain membership in the Fund and pay assessments as levied from time to time by the Fund, the Commissioner of the Department of Workers' Claims shall immediately revoke the self-insured's authority to be self-insured.

B. WITHDRAWAL OR TERMINATION OF MEMBERSHIP

A Member may voluntarily withdraw from the Fund upon its ceasing to maintain its certificate required to be self-insured but will not be eligible for any rebate of previously collected assessments paid into the Fund during which time that it was self-insured.

Voluntary withdrawal or termination by the Kentucky Department of Workers Claims of any individual self-insured's certificate shall automatically terminate its membership in the Fund. Provided, however, such termination of membership of an individual self-insured employer shall not absolve that employer from liability to the Fund for: (1) any assessment(s) imposed while a member of the Fund and (2) any assessment(s) imposed within three (3) years following termination from the Fund.

**ARTICLE II
BOARD OF DIRECTORS**

The Fund shall be governed by a Board of Directors pursuant to the mandate of KRS 342.906(5). It shall consist of nine (9) persons elected by the members of the Fund who shall serve staggered terms not to exceed four (4) years, along with the Commissioner of the Department of Workers' Claims and the Commissioner of the Kentucky Department of Insurance. The Commissioners shall sit ex-officio. The Board shall through a majority vote, elect a Chairman, Vice-Chairman, Secretary, and Treasurer. The office of Secretary and Treasurer may be combined.

Initially three (3) of the Board members shall serve two (2) year terms, three (3) shall serve three (3) year terms and three (3) shall serve four (4) year terms. Thereafter, Board members shall serve four (4) year terms.

Whenever an officer is absent or whenever for any reason the Board of Directors may deem it desirable, the Board may delegate the powers and duties of an officer to any other officer or officers, or to any director or directors. Such other offices as are created from time to time by the Board, shall have duties as may be assigned to them by the Board in minutes of meetings duly adopted, or by resolution of the Board.

Each Director may be reimbursed for expenses or granted a proper per diem allowance for carrying out the duties of the Board on behalf of the Fund, pursuant to Resolutions adopted from time to time by the Board.

Chairman: The Chairman shall act as the Chief Executive Officer of the Fund and shall conduct the meetings of the Board of the Fund and perform all duties incident to the office of Chairman and such other duties as may be prescribed by the Board of Directors from time to time.

Vice-Chairman: In the absence of the Chairman or in the event of his or her inability, or refusal to act, the Vice-Chairman shall perform the duties of the Chairman and, when so acting, shall have all the powers and be subject to all the restrictions upon the Chairman. Any Vice-Chairman shall perform such other duties as from time to time may be assigned by the Chairman or the Board of Directors.

Secretary: The Secretary shall (1) keep the minutes of the Board of Directors meetings; (2) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (3) be custodian of the Fund records; and (4) in general, perform all duties incident to the office of Secretary and each other duties as from time to time may be assigned by the Chairman or the Board of Directors.

Treasurer: The Treasurer shall (1) have charge and have custody of and be responsible for all funds and securities of the Fund; receive and give receipts of money due and payable to the Fund from any source whatsoever and deposit all monies in the name of the Fund: in such banks, trust companies, or other depositories that shall be selected by the Board of Directors; and (2) in general, perform all duties to the office of Treasurer and such other duties as from time to time may be assigned by the Chairman or by the Board of Directors.

ARTICLE III **COMMITTEES**

The Board of Directors shall have authority to establish such committees as it may consider necessary or convenient for the conduct of its business, including an Executive Committee, and without limitation, at least an Investment/Finance Committee and an Administrative Regulatory Committee.

The Investment/Finance Committee may review, in conjunction with the Department of Workers' Claims and Department of Insurance, any financial information pertinent to the operation of the Fund and the condition of its members and make recommendations to the Department of Workers' Claims based on those records.

ARTICLE IV
VACANCIES

Vacancies shall be deemed to occur upon the Board when a term expires, or when a Director, during that Director's term:

- a) resigns
- b) expires
- c) is convicted of a felony
- d) misses three (3) consecutive meetings, regular or emergency, of the Board, except for absences which have been excused by the majority of the Board
- e) is removed for cause by a vote of not less than six (6) Directors.

Should a vacancy occur on the Board, the remaining Directors shall elect a successor to fill the vacancy.

ARTICLE V
MEETINGS

Each member of the Board of Directors shall have one vote and a majority shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, provided that, if less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Manner of Acting: The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. A majority vote shall be required in all instances and is specifically necessary to: a) approve a contract with a servicing facility; b) levying assessment or provide for a refund; c) borrow money or establish line of credit.

Regular Meetings: The Board of Directors shall meet no less than once a quarter. All meetings of the Board of Directors shall be held after written notice. Meetings may be called by or at the request of the Chairman or by a majority of Directors in office. The person or persons authorized to call meetings of the Board of Directors may fix the place for holding the meeting and notice thereof shall be given at least seventy-two (72) hours prior thereto by written notice, delivered personally, by facsimile transmission or by electronic mail, to each Director at his or her business address. If mailed, such notices shall be deemed to be delivered when deposited in the United States Mail in a sealed envelope so addressed with first class postage thereon prepaid.

At any meeting, the Board may 1) review any outstanding contract and make any necessary corrections, improvements or additions upon a majority vote; 2) review operating expenses and covered claims costs and determine if any assessment or refund is necessary pursuant to KRS 342.908(6). In order to secure the monies necessary to maintain a minimum amount of Five Hundred Thousand Dollars (\$500,000) as required by statute, pay for claims which are deemed to be the responsibility of the Fund and pay the costs of operating the Fund; the Fund shall certify to the Commissioner the amount of assessment subject to a maximum annual assessment of one-half of one percent (0.5%) of the premium for each

Member as defined and calculated pursuant to KRS 342.011(24), to be levied on each Member. In no event shall any one assessment exceed One Million Dollars (\$1,000,000); 3) review any other matter deemed to be necessary and proper for the administration of the Fund.

Emergency Meetings: In the event that the Fund receives a Certificate of Default or Notice from the Department of Workers' Claims of the bankruptcy or insolvency of any Member of the Fund, the Board shall hold an emergency meeting and determine the method or methods as permitted under KRS 342.908 which should be adopted to pay and discharge covered claims of the bankrupt or insolvent Member. Notice of such emergency meeting shall be given as soon as reasonably practical.

Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Any notice required hereunder shall state the time and place of the meeting and the business to be transacted at or the purpose of the meeting. At the discretion of the Chairman, or majority of the Board, meetings may be conducted in whole or in part by telephonic communications or by telephonic facsimile.

ARTICLE VI **OPERATIONS**

The official address of the Fund shall be P. O. Box 1495, Frankfort, Kentucky 40602, unless otherwise designated by the Board. The Board may also use such mailing address as it decides is necessary.

The Board, through its Treasurer, may open one or more insured accounts in a bank or savings and loan authorized to do business in Kentucky. These accounts may be used to deposit and dispense funds for the purpose of conducting Fund business. The collection, deposit, or withdrawal of funds shall be done only with Board approval, as authorized by legislation, and any withdrawal or dispersal of funds shall require the signatures of the Treasurer and one other Director, or any two Directors, if the Treasurer is unavailable. The Board may borrow money or establish a line of credit, as may be appropriate or necessary to carry out its duties and responsibilities, as authorized by law or regulation.

The Board shall invest any assets of the Fund in a prudent manner. These investments may be fully insured obligations with a federally insured financial institution, and/or U.S. Government Treasury notes or other obligations backed by the U.S. Government. The Board may establish an investment policy consistent with its legal authority and contract with a third party person or organization to be custodian of funds or assets to be invested. These investments shall be monitored on a regular basis by the Treasurer and the Board, to ensure that the investments are secure and realizing an appropriate, "market rate" of return.

The Board may authorize the Treasurer, or a committee of Board members, to transfer funds to other established accounts for the purpose of investing or conducting business, as long as the authorization of the withdrawal or transfer requires two signatures from Board members.

The Board shall annually contract for an independent certified audit of the financial activities of the Fund. An annual report as of June 30 of each year shall be provided to the Commissioner of the Department of Workers' Claims and to each Member.

The Board may contract with one or more persons, firms, or corporations to serve as a servicing organization and may contract with this entity for terms of payment, extent of authority, procedure for giving timely notices and subrogation recovery, procedures for handling insolvent Member's claims, requirement of bonding for faithful performance, and any other provisions deemed necessary and desirable by the Board of Directors.

The Board shall establish the necessary programs to provide for payment of claims of an insolvent or bankrupt Member within fourteen (14) days of receipt of notification and order of the Commissioner of the Department of Workers' Claims.

The Board shall further consider and decide to what extent and in what manner the Board shall review and contest settlements, releases, judgments, ordered decisions, verdicts, findings, and appeals to which the bankrupt or insolvent Member was a party.

The Board shall take all steps permitted by law that are necessary to protect the Fund's rights against the estate of the bankrupt or insolvent Member or its successor in interest and shall decide all matters deemed necessary for the proper administration of the Fund.

The Board may purchase liability, property, errors and omissions, or any other type of insurance as it deems necessary to effectuate the purpose of and to protect the interest of the Fund.

The Board shall engage in all other activities deemed proper and necessary to carry out the purposes of the Fund as prescribed in KRS 342.906(7) whether specifically enumerated herein or not.

ARTICLE VII **ASSESSMENTS**

A. DETERMINATION AND PAYMENT OF ASSESSMENTS

The Fund will initially assess its Members according to the provision of KRS 342.908(4) in order to secure funds necessary to pay covered claims of Members and also pay reasonable costs of administration of the Fund to comply with the requirements of the law.

The Fund shall levy an initial assessment on its Members according to the provisions of KRS 342.908(5).

Each Member shall be given not less than thirty (30) days notice (to last known address) as to the date the assessment is due and payable. The Fund may levy penalties and interest for late payments as deemed appropriate.

The notice shall advise the Member to remit their assessment payable to the Fund. Upon receipt of the assessment the Fund or its designee shall deposit funds in a guaranty fund account and shall be used for the purposes stated in these By-Laws and pursuant to the provisions of KRS 342.906, 342.908, 342.910 and 342.912.

If any Member's assessment is not received by the Fund when due, the Fund shall notify the Commissioner. The Commissioner shall revoke the Member's authority to self-insure in the State pursuant to KRS 342.906(1).

The Fund shall enforce its right to collect any unpaid assessment remaining unpaid more than sixty (60) days after it shall have become due, by appropriate action of law against the delinquent Member.

B. INSUFFICIENT FUNDS, PRORATION OF PAYMENT

If in any one year, funds available from assessments together with funds previously collected are not sufficient to make all payments and reimbursements then owing, after setting aside the estimated amounts for Fund operating expenses or the Fund balance drops below the minimum amount of Five Hundred Thousand Dollars (\$500,000), the Board shall make reassessments in accordance with KRS 342.908(5).

ARTICLE VIII
SECURITY AND PAYMENT OF CLAIMS

The Board, upon receipt, from the Commissioner of the Department of Workers' Claims, of the security for a Member that has become insolvent or bankrupt, shall immediately reimburse the Fund, from the security received, for all payments made on behalf of such Member.

The Board shall apportion the remaining security of the insolvent or bankrupt Member proportionately between claims that occurred prior to March 1, 1997 and claims that occurred after March 1, 1997, based upon the total value of all claims occurring prior to March 1, 1997 and the total value of all claims occurring after March 1, 1997, and determined by generally accepted and actuarially sound reserving practices for such claims. (For example, if the Member has claims prior to March 1, 1997 valued at \$2,000,000 and claims after March 1, 1997 valued at \$1,000,000, with a security of \$3,000,000, then \$2,000,000 of the security would be designated for pre-March 1, 1997 claims and \$1,000,000 to post-March 1, 1997 claims.) If after all pre-March 1, 1997 claims are fully paid, there is remaining security, then such remaining security shall be used, as needed, to pay post-March 1, 1997 claims and vice versa. If, after full reimbursement of the Fund and all claims for the Member have been paid in full and there is no potential for new claims, any remaining security shall be returned to the Member.

ARTICLE IX
RECORDS, REPORTS

A written record of the proceedings of each Board meeting shall be made. The original of this record shall be retained at the office of the Fund with copies to be furnished to each member of the Board.

ARTICLE X
GRIEVANCE PROCEDURE

Any Member aggrieved by the levy of an assessment or the execution of any function of the Fund shall file with the Board a written demand for review within thirty (30)

days of such action or inaction. The Board shall schedule an informal hearing within sixty (60) days of receipt of the demand at which time the Member shall state with specificity the nature of his/her grievance. If the Member fails to appear at such hearing, the grievance shall be dismissed with prejudice. Otherwise, the Board shall render a written decision within thirty (30) days of the informal hearing.

ARTICLE XI
INDEMNIFICATION

All Board members shall be indemnified by the Fund for any and all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any action, suit or proceedings brought against such person on account of any action taken by such person in the performance of his or her powers and duties under these By-Laws or under KRS 342.906(10) unless each person shall be finally adjudged to have committed a breach of duty involving fraud, dishonesty, willful malfeasance or reckless disregard to the responsibilities of his or her office.

In no event, shall the Fund be liable under this Article for any indemnification to any person other than the officers, directors or employees of the Fund unless the actions of such persons seeking such indemnification have been specifically authorized and received specific prior written authorization from the Board of Directors.

ARTICLE XII
AMENDMENT

These By-Laws may be amended by the Board of Directors at any regular or emergency meeting held by the Board. An affirmative vote of two-thirds (2/3) of the full Board is required to amend the By-Laws.

Adopted 5/8/97