

**342.908 Default or insolvency of fund member -- Assumption of obligations by fund -- Assessments to finance funds -- Limitation on income distributions -- Effect of payment on liability to fund for reimbursement.**

- (1) The commissioner shall notify a guaranty fund if the commissioner has knowledge that any member of the guaranty fund has failed to timely pay workers' compensation benefits required by this chapter or if a court of competent jurisdiction has declared the member to be bankrupt or insolvent.
- (2) In the event of issuance of a certificate of default, the commissioner shall call all security and transfer it to the appropriate guaranty fund created pursuant to this section. The commissioner shall also immediately notify, by certified mail, the guaranty fund and order the guaranty fund to assume the workers' compensation obligations of the member required in this chapter. The guaranty fund shall commence payment of these obligations within fourteen (14) days of receipt of notification and order of the commissioner. Payment shall be made to claimants whose entitlement to benefits can be ascertained by the guaranty fund with or without proceedings before the Department of Workers' Claims or a court of competent jurisdiction. Upon assumption of the obligations of a member by a guaranty fund, the guaranty fund shall have the right to immediate possession of any security, and the custodian, surety, or issuer of any irrevocable letter of credit shall turn over the security, proceeds of the surety bond, or letter of credit to the guaranty fund, together with the interest that has accrued since the date of the member's insolvency. The guaranty fund may administer payment of benefits or it may retain a third party to do so.
- (3) Notwithstanding any other provision of law, any cash, securities, irrevocable letters of credit, specific excess or aggregate excess insurance proceeds, or any other security deposited or posted in accordance with this section shall be used first, when due, to pay workers' compensation claims. After the security has been exhausted, the payment of workers' compensation claims from member assessments may be made. Where the guaranty fund member-assessment account is used to pay workers' compensation claims on an emergency or an interim basis, pending receipt by the guaranty fund of security which is due but not yet received, the member-assessment account shall be reimbursed for payment from the security when it is received, and the priorities stated above shall thereafter apply.
- (4) To the extent necessary to secure funds for the initial establishment of each guaranty fund member-assessment account, the board of directors of each guaranty fund created pursuant to this section shall levy assessments based on the premium of each individual self-insured employer, as defined and calculated pursuant to KRS 342.0011(28), for members of the Kentucky individual self-insurers guaranty fund and for the Kentucky coal employers self-insurance guaranty fund, and KRS 342.0011(24) for the Kentucky group self-insurance guaranty fund, but no such assessments shall ever exceed, in the aggregate, from all members of a single guaranty fund, an amount in excess of one million dollars (\$1,000,000) at any given time. The assessments shall be made at a maximum annual assessment of: one-half of one percent (0.5%) of the premium for each member of the Kentucky individual

self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(28); two percent (2%) of the premium for each member of the Kentucky coal employers guaranty fund as defined and calculated pursuant to KRS 342.0011(28); and three-fourths of one percent (0.75%) of the premium for each member of the Kentucky group self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(24).

- (5) The initial assessment for each guaranty fund created pursuant to this section shall be for an amount equal to five hundred thousand dollars (\$500,000), to be levied and collected within a one (1) year period. There shall be no reassessments against any member unless the current balance of such guaranty fund created pursuant this section is insufficient after deducting the amount paid for or reserved for outstanding claims and for administrative and other costs in managing the guaranty fund at which point the board of directors shall raise assessments sufficient to bring the minimum amount of the guaranty fund to five hundred thousand dollars (\$500,000) or such other amount not to exceed, in any event, one million dollars (\$1,000,000) based upon a maximum annual assessment for each guaranty fund.
- (6) A guaranty fund created pursuant to this section shall pay no dividends, rebates, interest, or otherwise distribute income from the guaranty fund to any of its members, unless the guaranty fund has the assets prescribed in subsection (5) of this section and the distributions are approved by the commissioner.
- (7) The commissioner shall be provided with any relevant information by the employer, any excess insurer, any third party administrator, or any issuer of any irrevocable letter of credit, issuer of any surety bond, or custodian of any security necessary for the commissioner to carry out the commissioner's obligations under this chapter, and the commissioner shall provide this information to the guaranty fund as necessary to carry out its obligations.
- (8) The payment of benefits by a guaranty fund does not release any person or entity from any liability to the individual guaranty fund for full reimbursement.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 1859, effective July 15, 2010. -- Created 1996 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 24, effective December 12, 1996.