

COMMONWEALTH OF KENTUCKY

DEPARTMENT OF INSURANCE

Frankfort, Kentucky

BULLETIN 2020-04

INSURANCE LEGISLATION ADOPTED BY THE
2020 KENTUCKY GENERAL ASSEMBLY (REGULAR SESSION)

July 1st, 2020

THIS BULLETIN IS FOR INFORMATION PURPOSES ONLY. IT DOES NOT AMEND OR INTERPRET PROVISIONS OF THE KENTUCKY REVISED STATUTES OR THE KENTUCKY ADMINISTRATIVE REGULATIONS. THE COMPLETE AND ACCURATE TEXT OF THE LAW CAN BE SECURED WHEN THE 2020 ACTS OF THE KENTUCKY GENERAL ASSEMBLY ARE PUBLISHED IN THE SUMMER OF 2020. UNLESS OTHERWISE NOTED, THE EFFECTIVE DATE OF THE LEGISLATION IS JULY 15, 2020.

*(Bills as enacted are available on the LRC website at
<https://apps.legislature.ky.gov/record/20rs/law.html>)*

SB 60 – An Act relating to newborn screening for spinal muscular atrophy (SMA)

This bill amends KRS 214.155 to add spinal muscular atrophy (SMA) to the required newborn screenings for heritable disorders.

*Contact: Insurance Product Regulation Division, Health and Life Branch
502-564-6088*

SB 102 – An Act relating to the operation of executive branch agencies

This bill amends KRS 304.14-617 to require long-term care policies issued on or after the effective date of the Act that provide coverage for adult day care services to cover services in any adult health care facility that meets the requirements of KRS 216B.0441 and 216B.0443.

*Contact: Insurance Product Regulation Division, Health and Life Branch
502-564-6088*

SB 150 – An Act relating to the state of emergency in response to COVID-19 and declaring an emergency

The bill states the following supportive statutory measures related to the COVID-19 state of emergency:

- Section 1(1) relates to the waiver or suspension of licensing fees by agencies;
- Section 1(2) relates to unemployment;
- Section 1(3) relates to changes in tax filing and payment requirements;
- Section 1(4) relates to the use of telemedicine;
- Section 1(5) relates to essential health care providers, emergency and urgent care, and a defense to civil liability for ordinary negligence related to treatment;
- Section 1(6) relates to the sale of bread, milk, and other staples;
- Section 1(7) relates to the sale of alcoholic beverages;
- Section 1(8) relates to open records and open meetings requirements;
- Section 1(9) relates to deadlines for planning and zoning;
- Section 1(10) relates to a defense to civil liability for those making personal protective equipment or hygiene supplies;
- Section 1(11) relates to legal testimony and signature requirements;
- Section 1(12) relates to operating a commercial vehicle for farm retail outlets and agricultural supplies;
- Section 1(13) relates to the waiver of specific requirements for professional licensure boards related to health care services;
- Section 2 states the intent of the General Assembly to provide support for the COVID 19 hotline;
- Section 3 requires the Governor to declare, in writing, the date the state of emergency ceases. If he fails to do so prior to the first day of the next legislative session, the General Assembly may make the determination; and
- Section 4 is the emergency clause, which makes this bill effective on March 30, 2020, when it was signed by the Governor.

*Contact: Commissioner's Office
502-564-6026*

HB 313 – An Act relating to Insurance

Sections 1 and 2 amend KRS 304.47-055 and 304.47-060 to allow the commissioner to share and confidential and privileged information with the National Insurance Crime Bureau and to receive confidential and privileged information from the National Insurance Crime Bureau; and to provide immunity from civil liability for any person who provides information related to suspected fraudulent insurance acts to or receives information from the National Insurance Crime Bureau.

Contact: Insurance Fraud Investigation Division
502-564-1461

Section 3 repeals and reenacts KRS 304.20-410 to require that any discount offered by motor vehicle insurance companies for insured motor vehicles with an antitheft device or mechanism must be actuarially appropriate. The statute further requires the insurer's highest discount be applied if a motor vehicle has two (2) or more antitheft devices or mechanisms attached to the vehicle. These requirements will apply to motor vehicle insurance policies issued or renewed on or after January 1, 2021.

Contact: Insurance Product Regulation Division, Property and Casualty Branch.
502-564-6046

HB 417 – An Act relating to credit for reinsurance

This bill adopts the reinsurance collateral provisions of the Covered Agreements that were entered into between the United States and the European Commission, and the United Kingdom. The agreements require states to eliminate collateral requirements entirely within five years or be subject to federal preemption. The amendments to KRS 304.5-140 were made in accordance with the NAIC Model Law #785. Specifically, the bill:

- Defines “reciprocal jurisdiction” and “covered agreement”;
- Establishes requirements for certain reinsurance arrangements; and
- Requires the Commissioner of Insurance to publish a list of reciprocal jurisdictions and assuming insurers.

Contact: Financial Standards and Examination Division
502-564-6082

For Informational Purposes Only

A brief summary of the following bills that have an impact on the private insurance market is included for information purposes only. Inquiries regarding the bills should be directed to the referenced agency or entity with oversight authority.

SB 50 – An Act relating to pharmacy benefits in the Medicaid program and declaring an emergency

This bill requires the Department for Medicaid Services to select, through the procurement process, a pharmacy benefit manager (PBM) for every Medicaid Managed Care Organization (MCO.) The selection must be made by December 31, 2020. The MCOs are required to contract with the state selected PBM to administer all pharmacy benefits for Medicaid recipients.

The state Medicaid PBM contract shall:

- Require the use of pass-through pricing and the use of the preferred drug list, reimbursement methodologies, and dispensing fees established by the Department for Medicaid Services (DMS)
- Prohibit spread pricing, generic effective rates, dispensing effective rates, brand effective rates, or any other mechanism that reduces or aggregately reduces payment for pharmacy services
- Require approval by DMS of any fee on a pharmacy or Medicaid recipient
- Prohibit incentives for a Medicaid recipient to use a pharmacy owned by or associated with the state PBM
- Prohibit requiring a Medicaid recipient to use a mail-order pharmacy

The bill also:

- Requires the state Medicaid PBM to comply with KRS 304.9-053, 304.9-054, and 304.9-055.
- Restricts changes to terms of existing PBM contracts from the effective date of the Act until December 31, 2020. Imposes a fine by DMS of \$25,000 for any violations.
- Amends the Technical Advisory Committee on Pharmacy to add membership (from 5 to 7 members) and add the responsibility of making recommendations to DMS on the reimbursement methodologies and dispensing fees used by the state Medicaid PBM.

The bill contains an emergency clause making it effective upon the Governor's signature on March 27, 2020.

SB 82 – An Act relating to the Kentucky Eating Disorder Council and making an appropriation therefor

This bill:

- Creates the Kentucky Eating Disorder Council in the Cabinet for Health and Family Services to:
 - Oversee the development and implementation of eating disorder awareness, education, and prevention programs
 - Identify strategies for improving access to adequate diagnosis and treatment services
 - Assist the cabinet in identifying eating disorder research projects
 - Work with the Cabinet for health and Family Services and other appropriate entities to routinely examine existing surveillance systems, data collection systems, and administrative databases to determine the best strategies for implementing evidence-based eating disorder measures that provide data for program and policy planning purposes
 - Collaborate and coordinate on data research projects with the Cabinet for Health and Family Services and other appropriate entities
 - Make recommendations regarding legislative and regulatory changes

- Appoints the Commissioner of Insurance or her designee as a member
- Requires the council to meet at least quarterly and to provide an annual report on activities, findings and recommendations to LRC by December 1, 2020.
- Sunsets the council on December 1, 2030 unless otherwise reestablished by the General Assembly.

SB 123 – An Act relating to reorganization

This bill:

- Confirms the reorganization creating the Office of Health Data and Analytics within the Cabinet for Health and Family Services. Requires the Office to:
 - Identify and innovate strategic initiatives to inform public policy initiatives and provide opportunities for improved health outcomes for all Kentuckians through data analytics
 - Provide leadership in the redesign of the health care delivery system using electronic information technology as a means to improve patient care and reduce medical errors and duplicative services
 - Facilitate the purchase of individual and small business health insurance coverage for Kentuckians
- Confirms the reorganization creating the Division of Telehealth Services within the Office of Health Data and Analytics. Requires the division to:
 - Provide oversight, guidance, and direction to Medicaid providers delivering care using telehealth
 - Implement telehealth services and develop standards, guidance, resources, and education to help promote access to healthcare services in the Commonwealth

SB 125 – An Act relating to athletic trainers

This bill clarifies that athletic trainers are healthcare providers licensed and regulated by the Board of Medical Licensure. The bill amends the scope of practice for an athletic trainer related to:

- Providing prescription and over-the-counter medication and prohibits an athletic trainer from having prescriptive authority and from dispensing controlled substances
- Invasive procedures
- Athletic training services for employment injuries
- Procedures for third party reimbursement

SB 263 – An Act relating to the coal workers’ pneumoconiosis fund

The bill amends KRS 342.142 to:

- Allow for refunds of any excess assessments to the employers on a pro rata basis as determined from the cumulative amounts of assessments received from workers' compensation premiums paid by employers for insured or self-insured plans on or after January 1, 2017;
- Require the Kentucky Employers' Mutual Insurance Authority (KEMI) to disperse, on a pro rata basis, the excess assessments to each employer engaged in the severance or processing of coal which is in good standing and authorized to do business in the Commonwealth;
- Establish the process for employers to assert a claim to the excess assessments once a determination is made by the Kentucky Workers' Compensation Funding Commission and the KEMI that the final audits are closed and the liabilities of the fund are fully funded;
- Requires distribution of excess funds for employers in bankruptcy to be made to former employees to whom past due wages are owed, subject to the approval of the bankruptcy judge;
- Prohibit the distribution of excess funds to employers who have outstanding balances due for taxes or other obligations to the Commonwealth or local government until those outstanding balances are paid in full;
- Requires the Attorney General to file an action to recover the funds against an employer who filed a certification related to fund distribution that was materially false; and
- Requires the funds for employers who do not submit timely certification to be transferred to the coal employers self-insurance guaranty fund.

HB 135 – An Act relating to licensees of the Kentucky Board of Medical Licensure

The bill amends KRS 311.842 relating to the licensing of physician assistants to:

- Adopt professional standards for prescribing and administering controlled substances;
- Adopt professional standards for prescribing or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone;
- Establish continuing education requirements for physician assistants who are authorized to prescribe controlled substances;
- Permit the Board of Medical Licensure to take action against the license of a physician's assistant for:
 - certain sexual offenses;
 - being unable to practice medicine due to physical or mental illness; or
 - engaging in dishonorable, unethical, or unprofessional conduct

HB 155 – An Act relating to property and trusts

This bill creates new statutes within KRS 386 to create requirements for community property trusts including:

- Required disclosures;
- The terms of the agreement establishing the community property trust;
- Rights to amend or revoke the trust agreement;
- Classification of community property;
- Management and control of the property within the trust;
- Distribution of property from the trust; and
- Tax treatment of the property within the trust.

The bill also creates a new statute within KRS Chapter 396 to require creditors to present claims within six (6) months after the appointment of the personal representative in a probate action or sixty (60) days after the mailing of notice from the personal representative. The bill also amends KRS 396.011 to require claims against a decedent's estate which arose before the death of the decedent to be filed the earlier of eight (8) months after the decedent's death, six (6) months after the appointment of a personal representative, or sixty (60) days after the mailing of notice from the personal representative. This time frame does not apply to claims by governmental entities or claims barred earlier by other statutes.

HB 186 – An Act relating to direct sellers

The bill exempts direct sellers, as defined in Section 3508(b)(2) of the Internal Revenue Code, from the requirements of KRS Chapter 342 related to workers' compensation and from the definition of covered employment.

HB 195 – An Act relating to the publication of local government legal advertisements

This bill creates a new statute within KRS 424 to set forth the following alternative procedures for local governments to satisfy the requirement to publish an advertisement in a newspaper:

- In lieu of newspaper publication, local governments may post the required advertisement online on a notice Website operated by the local government that is accessible to the public at all times. Publication is deemed to have occurred on the date the advertisement is posted on the local government's notice Website.
- In conjunction with the posting on the Website, the local shall publish a newspaper advertisement one time providing notice that the public may view the full advertisement on the notice Website.
 - This newspaper publication must be made within ten (10) day of the posting on the Website when the purpose is to inform the public of a completed act and within three (3) days when the purpose is to inform the public of the right to take a certain action.
 - Failure to make this newspaper publication does not void the action of the local government or negate the enforceability of the matter advertised in the online posting. Violations are subject to monetary fines.

The bill specifies the contents of the advertisement, the length of time the advertisement must remain on the Website, and specific format requirements for the notice Website.

To satisfy any newspaper publication requirement, local governments using an online notice shall memorialize the posting by capturing the posting in electronic or paper format and complete an affidavit stating the local government satisfied the publication requirement by an alternative Internet posting.

If a newspaper makes an error in a publication or fails to make a publication after receiving the information to be published, the affected local government may remedy the error or failure by making the publication on its notice Website.

HB 236 – An Act relating to hemp and declaring an emergency

This bill is designed to bring the Commonwealth into compliance with recent guidelines issued by the United States Department of Agriculture related to hemp and hemp products

HB 327 – An Act relating to expungement of criminal records

This bill amends KRS 431.076 to require the expungement of records after thirty (30) days if the court enters:

- An order of acquittal of criminal charges against a person; or
- An order dismissing with prejudice all criminal charges in a case against a person and not in exchange for a guilty plea to another charge.

This automatic expungement does not apply to traffic infractions not otherwise classified as a misdemeanor.

The bill allows a person to petition the court for expungement if:

- A person has been acquitted of a criminal offense or against whom charges have been dismissed not in exchange for a guilty plea to another charge and whose records have not been expunged; or
- A person against whom felony charges originally filed in the District Court have not resulted in an indictment or in an information filed by the Commonwealth's Attorney

The bills establishes the timeframe after which a petition for expungement may be filed and the timeframe for the court to issue the expungement order.

HB 378 – An Act relating to the filing of documents

This bill amends KRS 186A.520 to state that the county clerk shall rely on information provided by the owner or authorized agent on:

- Any approved, notarized state form utilized in lien titling or the title transfer process signed by the owner or authorized agent; and
- Any document submitted during the transfer of a salvage vehicle from an owner to an insurer.

A county clerk relying on this information is not liable to any third party claiming a failure to comply with the salvage title requirements.

The bill further states that when a salvage vehicle is transferred from an owner to an insurer, the following are exempt from notarization requirements:

- The transfer of ownership on the certificate of title;
- Any power of attorney required in connection with the transfer of ownership to the insurer;
- Any required odometer disclosure statement;
- The application for a salvage certificate of title; and
- The transfer of ownership on the salvage certificate of title issued.

Finally, the bill establishes a \$20 fee for the filing or recording of a lien or release of a lien by a local government.

HB 382 – An Act relating to the operation of golf carts

The bill amends KRS 189.286 to permit the operation of a golf cart on a public roadway at any time of day where allowed by local governments. Previously, the law only permitted the operation of golf carts on a public roadway between sunrise and sunset.