

136.392 Premium surcharge.

- (1) (a) Every domestic, foreign, or alien insurer, other than life and health insurers, which is either subject to or exempted from Kentucky premium taxes as levied pursuant to the provisions of either KRS 136.340, 136.350, 136.370, or 136.390, shall charge and collect a surcharge of one dollar and fifty cents (\$1.50) upon each one hundred dollars (\$100) of premium, assessments, or other charges, except for those municipal premium taxes, made by it for insurance coverage provided to its policyholders, on risk located in this state, whether the charges are designated as premiums, assessments, or otherwise. The premium surcharge shall be collected by the insurer from its policyholders at the same time and in the same manner that its premium or other charge for the insurance coverage is collected. The premium surcharge shall be disclosed to policyholders pursuant to administrative regulations promulgated by the commissioner of insurance. However, no insurer or its agent shall be entitled to any portion of any premium surcharge as a fee or commission for its collection. On or before the twentieth day of each month, each insurer shall report and remit to the Department of Revenue, on forms as it may require, all premium surcharge moneys collected by it during its preceding monthly accounting period less any moneys returned to policyholders as applicable to the unearned portion of the premium on policies terminated by either the insured or the insurer. Insurers with an annual liability of less than one thousand dollars (\$1,000) for each of the previous two (2) calendar years may report and remit to the Department of Revenue all premium surcharge moneys collected on a calendar year basis on or before the twentieth day of January of the following calendar year. The funds derived from the premium surcharge shall be deposited in the State Treasury, and shall constitute a fund allocated for the uses and purposes of the Firefighters Foundation Program fund, KRS 95A.220 and 95A.262, and the Law Enforcement Foundation Program fund, KRS 15.430.
- (b) Effective July 1, 1992, the surcharge rate in paragraph (a) of this subsection shall be adjusted by the commissioner of revenue to a rate calculated to provide sufficient funds for the uses and purposes of the Firefighters Foundation Program fund as prescribed by KRS 95A.220 and 95A.262 and the Law Enforcement Foundation Program fund as prescribed by KRS 15.430 for each fiscal year. The rate shall be calculated using as its base the number of local government units eligible for participation in the funds under applicable statutes as of January 1, 1994. To allow the commissioner of revenue to calculate an appropriate rate, the secretary of the Public Protection Cabinet and the secretary for the Justice and Public Safety Cabinet shall certify to the commissioner of revenue, no later than January 1 of each year, the estimated budgets for the respective funds specified above, including any surplus moneys in the funds, which shall be incorporated into the consideration of the adjusted rate for the next biennium. As soon as practical, the commissioner of revenue shall advise the commissioner of insurance of

the new rate and the commissioner shall inform the affected insurers. The rate adjustment process shall continue on a biennial basis.

- (2) Within five (5) days after the end of each month, all insurance premium surcharge proceeds deposited in the State Treasury as set forth in this section shall be paid by the State Treasurer into the Firefighters Foundation Program fund trust and agency account and the Law Enforcement Foundation Program fund trust and agency account. The amount paid into each account shall be proportionate to each fund's respective share of the total deposits, pursuant to KRS 42.190. Moneys deposited to the Law Enforcement Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered, or transferred by any state official for uses and purposes other than those prescribed by KRS 15.410 to 15.500, except that beginning with fiscal year 1994-95, through June 30, 1999, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse. On and after July 1, 1999, moneys in this account shall not lapse. Money deposited to the Firefighters Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered, or transferred by any state official for uses and purposes other than those prescribed by KRS 95A.200 to 95A.300, except that beginning with fiscal year 1994-95, through June 30, 1999, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse, but moneys in the revolving loan fund established in KRS 95A.262 shall not lapse. On and after July 1, 1999, moneys in this account shall not lapse.
- (3) Insurance premium surcharge funds collected from the policyholders of any domestic mutual company, cooperative, or assessment fire insurance company shall be deposited in the State Treasury, and shall be paid monthly by the State Treasurer into the Firefighters Foundation Program fund trust and agency account as provided in KRS 95A.220 to 95A.262. However, insurance premium surcharge funds collected from policyholders of any mutual company, cooperative, or assessment fire insurance company which transfers its corporate domicile to this state from another state after July 15, 1994, shall continue to be paid into the Firefighters Foundation Program fund and the Law Enforcement Foundation Program fund as prescribed.
- (4) No later than July 1 of each year, the Department of Insurance shall provide the Department of Revenue with a list of all Kentucky-licensed property and casualty insurers and the amount of premium volume collected by the insurer for the preceding calendar year as set forth on the annual statement of the insurer. No later than September 1 of each year, the Department of Revenue shall calculate an estimate of the premium surcharge due from each insurer subject to the insurance premium surcharge imposed pursuant to this section, based upon the surcharge rate imposed pursuant to this section and the amount of the premium volume for each insurer as reported by the Department of Insurance. The Department of Revenue shall compare the results of this estimate with the premium surcharge paid by each insurer during the preceding year and shall provide the Legislative Research Commission, the Commission on Fire Protection Personnel Standards and Education, the Kentucky Law Enforcement Council, and the Department of

Insurance with a report detailing its findings on a cumulative basis. In accordance with KRS 131.190, the Department of Revenue shall not identify or divulge the confidential tax information of any individual insurer in this report.

- (5) The insurance premiums surcharge provided in this section shall not apply to premiums collected from the following:
 - (a) The federal government;
 - (b) Resident educational and charitable institutions qualifying under Section 501(c)(3) of the Internal Revenue Code;
 - (c) Resident nonprofit religious institutions for real, tangible, and intangible property coverage only;
 - (d) State government for coverage of real property; or
 - (e) Local governments for coverage of real property.
- (6) Pursuant to the Non-Admitted and Reinsurance Reform Act of 2010, Title V, Subtitle B, of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, the insurance premium surcharge on non-admitted insurance for multistate risks shall be exempt from the provisions of this section but shall be subject to the provisions of KRS 304.10-180.

Effective: June 8, 2011

History: Amended 2011 Ky. Acts ch. 48, sec. 3, effective June 8, 2011. -- Amended 2010 Ky. Acts ch. 24, sec. 101, effective July 15, 2010. -- Repealed and reenacted 2009 Ky. Acts ch. 86, sec. 1, effective March 24, 2009. -- Amended 2008 Ky. Acts ch. 132, sec. 1, effective April 24, 2008. -- Amended 2007 Ky. Acts ch. 85, sec. 160, effective June 26, 2007. -- Amended 2005 Ky. Acts ch. 85, sec. 328, effective June 20, 2005. -- Amended 2002 Ky. Acts ch. 110, sec. 1, effective July 15, 2002. -- Amended 1998 Ky. Acts ch. 244, sec. 9, effective July 15, 1998; and ch. 510, sec. 9, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 97, sec. 4, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 338, sec. 17, effective July 14, 1992; and ch. 381, sec. 1, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 481, sec. 3, effective July 13, 1990. -- Amended 1986 Ky. Acts ch. 425, sec. 1, effective July 15, 1986. -- Amended 1984 Ky. Acts ch. 300, sec. 1, effective July 13, 1984; and ch. 332, sec. 16, effective July 13, 1984. -- Created 1982 Ky. Acts ch. 246, sec. 1, effective April 1, 1982.

Legislative Research Commission Note (6/8/2011). A reference in subsection (6) of this statute to "Pub. L. No. 111-517," the Non-Admitted and Reinsurance Reform Act of 2010, Title V, Subtitle B, of the Dodd-Frank Wall Street Reform and Consumer Protection Act, has been changed in codification to "Pub. L. No. 111-203" to correct a manifest clerical or typographical error under the authority of KRS 7.136(1).

Legislative Research Commission Note (6/8/2011). 2011 Ky. Acts ch. 48, sec. 5, provided that the provisions contained in Sections 2, 3, and 4 of that Act "shall take effect as provided in Article XIII of Section 1 of this Act, upon legislative enactment of the compact into law by two compacting states, provided the commission shall become effective for purposes of adopting rules, and creating the clearinghouse when there are a total of ten compacting states and contracting states or, alternatively, when there are compacting states and contracting states representing greater than 40 percent of the surplus lines insurance premium volume based on records of the percentage of surplus lines insurance." The Reviser of Statutes has determined that, as of April 8, 2011, two states had enacted the compact, thereby triggering the initial effective date of the compact. Since 2011 Ky. Acts ch. 48, did not contain an

emergency clause, this section became effective June 8, 2011, the normal effective date for 2011 legislation.

Legislative Research Commission Note (3/24/2009). 2009 Ky. Acts ch. 86, sec. 17, provides that "The intent of the General Assembly in repealing and reenacting KRS 136.392, 138.195, 141.160, 160.6156, 160.6157, 160.6158, 131.183, 141.044, 141.235, 134.580, 393.060, and 157.621 in Sections 1 to 12 of this Act is to affirm the amendments made to these sections in 2008 Ky. Acts ch. 132. The provisions in Sections 1 to 12 of this Act shall apply retroactively to April 24, 2008."

Legislative Research Commission Note (3/24/2009). 2009 Ky. Acts ch. 86, sec. 18, provides "To the extent that any provision included in this Act is considered new language, the provisions of KRS 446.145 requiring such new language to be underlined are notwithstanding."