

THE BEACON MUTUAL INSURANCE COMPANY

CHARTER

Rhode Island Public Laws 2003, Chapter 410, enacted August 6, 2003; as amended by Rhode Island Public Laws 2005, Chapter 117, Article 16, Section 10, enacted July 1, 2005; as amended by Rhode Island Public Laws 2011, Chapter 72, enacted June 15, 2011

SECTION 1. **Title.** - Workers' Compensation Insurance Fund.

SECTION 2. **Definitions.** - When used in this act, the following words have the following meanings:

(1) "Board" means the board of directors of the state compensation insurance fund;

(2) "Fund" means the state compensation insurance fund known as The Beacon Mutual Insurance Company;

(3) "Chief executive officer" means the chief executive officer of the state compensation insurance fund;

(4) "Personal injury" or "injury" has the meaning given to it in chapter 29 of title 28.

SECTION 3. **Creation of fund.** - (a) The purpose of the fund is to ensure that all employers in the state of Rhode Island have the opportunity to obtain workers' compensation insurance at the lowest possible price. It is also the policy and purpose of this act to establish and maintain that the fund shall be the workers' compensation insurance carrier of last resort. The fund is created as a nonprofit independent public corporation for the purpose of insuring employers against liability for personal injuries for which their employees may be entitled to benefits under chapter 33 of title 28 or under 33 U.S.C. Section 901 et seq., and other employer's liabilities incidental to those provisions.

(b) The fund shall be organized and, except as provided in subsection (c) of this section, subsection (c) of section 11, or in this act, operated as a domestic mutual insurance company.

(c) The fund shall be deemed to have met the requirements of sections 27-1-37 and 27-8-5 when the director of the department of labor and training has appropriated to the fund any portion of the amount provided for in section 18 and all policies issued by the fund shall be without contingent mutual liability of the policyholders for assessment.

(d) The fund shall be deemed for all purposes to be an insurance company organized in accordance with section 7-1-5 and chapter 1.1 of title 7. Without limiting the foregoing, section 7-1.1-4.1 relating to, among other things, indemnification of officers, directors, and employees, and section 7-1.1-33(b) - (e) relating to directors shall apply to the fund.

(e) The fund may amend its charter pursuant to section 7-1.1-53.1, subject to the prior approval of all amendments by the director of the department of business regulation.

(f) The general assembly declares that a stable market for workers' compensation insurance for all employers seeking coverage is necessary to the economic welfare of Rhode Island; that a stable and competitive insurance market will benefit all employers, all employees and their families, and all insurance companies doing business in Rhode Island; that without this insurance at a competitive rate, the orderly growth and economic development of the state would be severely impeded; and that the provision of competitive insurance coverage by the fund for employers in Rhode Island and the capitalization of the fund through capital assessments as provided in this act is for the benefit of the public and in furtherance of a public purpose.

SECTION 4. **Board of directors.** - The board of directors shall be comprised of eight (8) members elected or appointed as provided in this section and the chief

executive officer of the fund who shall be an ex officio member. Each director shall hold office until a successor is appointed and qualified. Except for the ex officio member, each director shall be a policyholder or an officer or employee of a policyholder. The governor shall appoint five (5) directors and three (3) directors shall be elected by the fund's policyholders. No more than one (1) member of the board may be an elected or appointed official of state or municipal government. At least three (3) members of the board shall be policyholders of an officer or employee of a policyholder which is a for profit entity. No member other than the chief executive officer may represent to be an employee of an insurance company. The terms of board members, except for the ex officio member, shall be four (4) years in accordance with the provisions for the election and classification of directors as may be established in the fund's bylaws. Any vacancy occurring during the term of any director shall be filled as provided in the fund's bylaws in the same manner as the member's predecessor. The board shall annually elect a chairperson from among its members, and any other officers it deems necessary for the performance of its duties.

SECTION 5. Fund management. - The management and control of the fund is vested solely in the board.

SECTION 6. Power and duties of the board. - The board is vested with full power, authority, and jurisdiction over the fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the fund, either in the administration of the fund or in connection with the insurance business to be carried on by it under the provisions of this act, as fully and completely as the governing body of all other domestic insurance carriers to fulfill the objectives and intent of this act. The board's authority to invest funds is subject to the limitations imposed on domestic insurance companies in chapter 11.1 of title 27.

SECTION 7. **Chief executive officer.** - Subject to the authority of the board, the chief executive officer appointed by the board pursuant to section 12 shall administer the fund.

SECTION 8. **Personal liability excluded.** - The members of the board and officers or employees of the fund are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the fund.

SECTION 9. **Insurance of workers' compensation liability.** - The fund may insure an employer against any workers' compensation claim, claims under 33 U.S.C. Section 901 et seq., and other employer's liabilities incidental to those provisions arising out of and in the course of employment, including the provision of excess workers' compensation insurance coverage, as fully as any other insurer.

SECTION 10. **General powers and limitations.** - For the purposes of exercising the specific powers granted in this act and effectuating the other purposes of this act, the fund may:

- (1) Sue and be sued;
- (2) Have a seal and alter it at will;
- (3) Make, amend, and repeal bylaws and rules relating to the conduct of the business of the fund;
- (4) Enter into contracts relating to the administration of the fund;
- (5) Rent, lease, buy, or sell property, real and personal, in its own name and may construct or repair buildings necessary to provide space for its operations;
- (6) Declare dividends to its policyholders when there is an excess of assets over liabilities, and minimum surplus requirements;
- (7) Pay medical expenses, rehabilitation expenses, compensation due claimants of insured employers, pay salaries, and pay administrative and other expenses of the fund;

(8) Hire personnel and set salaries and compensation; and

(9) Perform all other functions and exercise all other powers of a domestic mutual insurance company that are necessary, appropriate, or convenient to administer the fund and to its members; provided, that the fund shall not be a member of the National Council on Compensation Insurance (NCCI).

SECTION 11. Insurance coverage program. - (a) Provision of workers' compensation coverage. Subject to the limitations set forth in this act, the fund shall provide workers' compensation insurance against liabilities arising under title 28 for any employer that tenders the necessary premium.

(b) Applications; provisions of coverage.

(1) Policy applications. - Applicants may apply for coverage by the fund in good faith, either directly or through an insurance producer licensed by the state of Rhode Island to procure workers' compensation insurance according to rules adopted by the board under section 16.

(2) Denial, cancellation, and nonrenewal. - The nonpayment of premium for current or prior policies issued by the fund to the applicant, or to another entity for which the fund deems the applicant to be a successor in interest, may be a basis for the fund to deny, not renew or terminate coverage. The failure or refusal by an applicant or insured to fully and accurately disclose to the fund information concerning the applicant's or insured's ownership, change of ownership, operations, or payroll, including allocation of payroll among state and federal compensation programs, classification of payroll, and any other information determined by the fund to be important in determining proper rates shall be sufficient grounds for the fund to deny an application or to not renew or cancel an existing policy or to assess a premium surcharge against the insured pursuant to subsection (d). The failure or refusal by any insured or applicant to comply with the fund's safety requirements or to permit premises inspections to the sole satisfaction of

the fund shall be sufficient grounds for having its workers' compensation insurance coverage surcharged, not renewed, or cancelled, or an application for the coverage denied.

(3) Appeal to director. - Any determination of the fund with respect to the denial, cancellation, or nonrenewal of any workers' compensation insurance policy against liabilities arising under title 28, with the exception of cancellation for nonpayment of premium, may be appealed to the director of the department of business regulation, in writing, within thirty (30) days of notice of this action. If the director determines that the fund has unreasonably denied, cancelled, or failed to renew any workers' compensation insurance policy, the fund shall in good faith reconsider issuing, reinstating, or renewing the workers' compensation policy. If the fund has not issued, reinstated, or renewed the workers' compensation insurance policy within thirty (30) days of a determination of the director, the applicant or insured may appeal the denial, cancellation, or failure to renew by the fund to the superior court for Providence County.

(c) Exemptions.

(1) Except as provided in subsection (d), the fund shall be subject to rate regulation under chapter 7.1 of title 27.

(2) Notwithstanding the provisions of this section, if, at any time, the director finds that a rate or filing of the fund is unjust, unreasonable, inadequate, excessive, or unfairly discriminatory, he or she shall, after a hearing held upon not less than ten (10) days written notice, specifying the matters to be considered at that hearing, issue an order specifying in what respects he or she finds that the rate or filing is unjust, unreasonable, inadequate, excessive, or unfairly discriminatory and stating when within a reasonable period after this the rate shall no longer be used or the filing shall be deemed no longer effective. That order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order. If the director finds that

an unfair discrimination exists in the application of a rate or filing to an individual applicant or insured, the director may, after a hearing held on similar notice to the fund, issue an order that the discrimination be removed.

(d) Rate regulation.

(1) When a filing is not accompanied by the information upon which the fund supports that filing, and the director does not have sufficient information to determine whether the filing meets the requirements of applicable law, the director may require the fund to furnish the information upon which it supports the filing. The information furnished in support of a filing may include: (i) the experience or judgment of the fund, (ii) its interpretation of any statistical data it relies upon, (iii) the experience of other insurers or rating organizations, or (iv) any other relevant factors.

(2) Notwithstanding any law to the contrary, the fund and any workers' compensation insurance policyholder may mutually consent to modify the rates for that policyholder's workers' compensation insurance policy, provided the fund files notice of the modification with the director of the department of business regulation.

(3) Notwithstanding any law to the contrary, the fund may establish and apply a premium surcharge protocol. The protocol shall provide for higher premium and surcharge payments by insured who present higher than normal risks within a class, including the ability of the fund to assess from time to time a premium surcharge of up to three (3) times its applicable premium rate, as it deems appropriate to further the public purposes set forth in this act. The surcharge may be payable, at the option of the fund, upon assessment, over the policy year, or upon renewal. Any premium surcharge assessed by the fund may be appealed to the director of the department of business regulation within twenty (20) days of notice of the surcharge, and the director may modify or rescind the surcharge if the director determines that the surcharge is unjust, unreasonable, inadequate, excessive or unfairly discriminatory.

(4) Notwithstanding any other provisions of law, immediately upon May 18, 1992, the fund may issue workers' compensation insurance policies at an initial rate not in excess of the rates then in effect for residual market workers' compensation insurance coverage offered by any other insurers within the state of Rhode Island, subject to the discretion of the fund to apply discounts and surcharge multipliers of up to three (3) times the premiums that would otherwise be applicable under the rates, with the premium surcharge to be payable as provided in subdivision (d)(3). The fund may continue to issue workers' compensation insurance coverage at the initial rates until the effectiveness of any revised rates filed pursuant to subdivision (d)(1).

SECTION 12. Chief executive officer. - Appointment and qualifications. - The board shall appoint a chief executive officer of the fund who shall be in charge of the day to day operations of the fund. The chief executive officer shall have proven successful experience as an executive at the general management level. The chief executive officer shall receive compensation as set by the board and shall serve at the pleasure of the board.

SECTION 13. Chief executive officer's powers. - Subject to the authority of the board and the provisions of this act, the chief executive officer shall perform the duties of chief executive officer as provided in the fund's bylaws or that have been determined by resolution of the board of directors. Without limitation on this provision, the chief executive officer or qualified officers or employees of the fund designated by the chief executive officer shall:

(1) Make safety inspections of risks and furnish advisory services to employers on safety and health measures;

(2) Act for the fund in collecting and disbursing money necessary to administer the fund and conduct the business of the fund; and

(3) Cause an abstract summary of any audit or survey conducted. The chief executive officer may perform all other acts necessary to exercise the powers, authorities and jurisdictions of the fund, either in the administration of the fund or in connection with the insurance business to be carried on by the fund under this act, including the establishment of premium rates. Subject to the approval of the board, the chief executive officer may delegate any duties, on behalf of the fund, to qualified officers and employees of the fund, and may contract with the qualified independent contractors to perform those duties for the fund.

SECTION 14. **Property of fund.** - All premiums and other money paid to the fund, all property and securities acquired through the use of money belonging to the fund, all capital assessment amounts received pursuant to section 19, and all interest and dividends earned upon money belonging to the fund and deposited or invested by the fund are the sole property of the fund and shall be used exclusively for the operation and obligations of the fund. The money of the fund is not state money. The property of the fund is not state property. The employees of the fund shall not be considered state employees.

SECTION 15. **Not a state agency.** - The fund shall not be considered a state agency for any purpose.

SECTION 16. **Private independent insurance producers.** - Private independent insurance producers licensed to sell workers' compensation insurance in this state may sell insurance coverage for the fund according to the rules adopted by the board. The board shall by rule also establish a schedule of commissions for voluntary risk and residual risk coverage that the fund will pay for the services of an insurance producer.

SECTION 17. **Annual report.** - The board shall submit an annual report to the governor and legislature indicating the business done by the fund during the previous year and containing a statement of the resources and liabilities of the fund.

SECTION 18. **Funding.** - The director of the department of labor and training is mandated and directed to appropriate an amount not to exceed five million dollars (\$5,000,000) to the state compensation insurance fund to be repaid pursuant to a term and at a rate to be negotiated and determined by the director of the department of labor and training and the board of directors of the state compensation insurance fund. The rate shall not exceed three percent (3%) over the federal discount rate and will be adjusted annually on October first of each year. The payment schedule shall be no less than ten (10) years or more than fifteen (15) years. Payment shall not commence until October 1, 1992. The terms of the agreement must be approved by the state auditor general. Any scheduled payment may be deferred at the time the payment is due, if in the opinion of the board, the director of labor and training, and the state auditor general there is, or the scheduled payment would cause there to be if made, insufficient surplus to support the risk insured by the fund.

SECTION 19. **Workers' compensation capital assessment.** - (a) In order to establish the capital reserves and surplus to allow the fund to effect the assumption of residual risk market in fulfillment of the public purposes as set forth in this act, a workers' compensation capital assessment shall be assessed and collected by the director of the department of labor and training against each insurance company deemed by the director of the department of business regulation to have been licensed as of January 1, 1991, to write workers' compensation insurance in Rhode Island. The assessment shall be payable quarterly and due within fifteen (15) days following the close of each calendar quarter or, at the discretion of the director of the department of labor and training, on an annual basis on or before July first of each year. The director of the department of labor and training shall have the power to institute suit to collect any assessment under this section to the same extent as provided in section 28-37-28.

(b) The director of the department of labor and training shall collect all of the capital assessment amounts in a separate restricted purpose account and shall promptly transfer all the amounts to the fund upon receipt and the amounts shall become the property of the fund pursuant to section 14 for capital reserve and surplus purposes in recognition of the fund's role as carrier of last resort. During the transition period, the assessment for this party shall equal three percent (3%) of gross premiums received from workers' compensation insurance or employer's liability insurance written or renewed on risks within the state or subject to the jurisdiction of the state, or any other level of gross premiums that the director of the department of business regulation deems appropriate to ensure both the solvency of the fund and the fund's ability to establish a surplus reasonably adequate to allow it to complete the assumption of the residual risk market in furtherance of the public purposes stated in this act. For the purpose of this act, "gross premiums" shall be calculated for insurance companies in the same manner as provided in section 28-37-14 for the applicable period. From and after the transition period, the director of the department of business regulation shall periodically determine the rate of the assessment at levels adequate to allow the fund to service the residual risk market and satisfy the reserve and surplus requirements of section 20.

(c) Each insurance company may pass through the entire capital assessment amount to each of its policyholders on a pro rata basis.

(d) In the event that any insurance company deemed by the director of the department of business regulation to have been licensed on January 1, 1991, to write workers' compensation insurance discontinues the issuance of workers' compensation insurance policies in Rhode Island prior to December 31, 1994, that company shall be and remain obligated to pay the capital assessment surcharge through December 31, 1994, calculated on the basis of the average voluntary and residual risk gross premiums

received or the average voluntary and residual risk gross losses paid in the thirty-six (36) month period prior to its departure from the Rhode Island market.

(e) The fund shall pay an annual fee to the director of the department of labor and training in the amount of two-tenths of one percent (.2%) of the earned premiums of the fund for the prior year in recognition of the continuing obligations of the department of labor and training under subsections (a) and (b) of this section.

SECTION 20. Reserves - Premium to surplus ratio - Insolvency fund. - (a) The fund shall maintain a ratio of premiums on policies written to surplus of not more than three (3) to one (1), or any greater or lesser ratio that the director of the department of business regulation deems appropriate. In determining the ratio, the director may at all times consider the net present value of future capital assessment amounts as current surplus. To facilitate the ongoing oversight of the fund, the fund shall submit to the department of business regulation quarterly and annual statements in the format and scope specified in section 27-12-2.

(b) The fund shall not participate in, or be subject to, the insurers' insolvency fund established under section 27-34-6.

(c) In the event of the liquidation of the fund pursuant to the Insurers' Rehabilitation and Liquidation Act, chapter 14.3 of title 27, the fund's policyholders, in their capacity as owners of the fund, shall have no distributive claims under section 27-14.3-46(8) to the liquidation estate of the fund and, upon satisfaction of any other class 1 through class 7 claims under section 27-14.3-46, the insurance commissioner, as receiver, shall distribute the residual, if any, of the fund's liquidation estate to the director of the department of labor and training; provided, that in no event shall these provisions affect the validity or priority of: (1) any claims arising from and within the coverage of any policies of the fund; or (2) claims of the director of the department of labor and training to repayment of the term note of the fund issued pursuant to section 18.

SECTION 21. **Payment assessments and fees.** - (a) Except as provided in this act, the fund shall pay assessments in the same manner as an insurance carrier authorized to issues workers' compensation insurance in Rhode Island. In no event shall any amounts received by the fund relating to the workers' compensation capital assessment be subject to any form of state taxation or assessment.

(b) The corporation shall be subject to the provisions of chapter 17 of title 44 of the Rhode Island general laws and shall file returns and pay taxes in accordance therewith; provided, however, that the corporation shall be taxed on gross premiums on contracts of insurance written by the corporation after July 1, 2005.

(c) The corporation shall be subject to the provisions of chapter 26 of title 44 of the Rhode Island general laws except that the "safe harbor" provisions contained in subsection 44-26-2.1(i) shall not apply to tax year 2006 and estimated tax payments for tax year 2006 shall be due on March 15, 2006 and June 15, 2006 in accordance with the other provisions of chapter 26 of title 44 and such estimated payments shall together be equal to at least two percent (2%) of the gross premiums on contracts of insurance written by the corporation in calendar year 2005.

SECTION 22. The general assembly hereby declares that it is the intent of the general assembly that this act shall be made and included as part of the public laws and shall not be codified as part of the general laws.

SECTION 23. The general assembly further declares that the placement of this act in the public laws shall not impair the continuing existence of the state compensation insurance fund nor impair the obligation of any contract or agreement or any rights of the state compensation insurance fund heretofore existing, it being expressly recognized and intended that there shall be full continuity between chapter 27-7.2 of the general laws and the passage of this act.

SECTION 24. Chapter 27-7.2 of the General Laws entitled "Workers' Compensation Insurance Fund" is hereby repealed in its entirety.