

CHAPTER 145

(HB 50)

AN ACT relating to commercial insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.11-020 is amended to read as follows:

- (1) Other than KRS 304.11-050, the provisions of KRS 304.11-020 to 304.11-050, shall not apply to any insurance company or underwriter issuing contracts of insurance to industrial insureds, ***government entity insureds, and exempt commercial policyholders***, nor to any contract of insurance issued to any one (1) or more industrial insureds.
- (2) For the purpose of this section:~~[(a)]~~ (a) An "industrial insured" is:
 - 1.~~[(a)]~~ An insured who procures the insurance of any risk or risks other than life and annuity contracts by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant; and
 - 2.~~[(b)]~~ An insured whose aggregate annual premiums for insurance on all risks total at least \$25,000; and
 - 3.~~[(c)]~~—An insured having at least twenty-five (25) full-time employees; ***and***
 4. ***All entities that have qualified as industrial insureds as of July 1, 1999.***
- (b) A "government entity insured" is an insured:
 1. ***That is a government entity, municipal corporation, or public agency located in a city or county having a population of less than fifty thousand (50,000); and***
 2. ***That procures the insurance of any risk or risks, other than life and annuity contracts, by use of the services of a full-time employee acting as an insurance manager or buyer, or by the use of the services of a regularly and continuously retained qualified insurance consultant; and***
 3. ***Whose aggregate annual premiums for insurance on all risks total at least one hundred thousand dollars (\$100,000), exclusive of life, health, medical, or annuity premiums; and***
 4. ***That has at least fifty (50) full-time employees; and***
 5. ***That satisfies the criteria the commissioner promulgates by administrative regulation.***
- (c) 1. An "exempt commercial policyholder" means an insured that employs the services of an insurance agent or broker, procures commercial insurance with the services of a full-time risk manager, or a licensed insurance consultant, pursuant to Subtitle 9 of this chapter and:
 - a. ***Is a city, county, or urban-county with a population of at least fifty thousand (50,000) persons, or the Commonwealth, or a not-for-profit organization or a public entity with an annual budget of at least twenty-***

five million dollars (\$25,000,000) or assets of at least twenty-five million dollars (\$25,000,000) in the preceding fiscal year; or

b. Certifies that it meets all four (4) of the following criteria:

i. Possesses a net worth of more than twenty-five million dollars (\$25,000,000) at the time the policy of insurance is issued; ii.

Generated net revenue or sales of more than fifty million dollars

(\$50,000,000) in the preceding fiscal year; iii. Employs more than one hundred (100) employees per individual company or two hundred (200) employees per holding company aggregate at the time the policy of insurance is issued; and

iv. Paid annual aggregate insurance premiums of more than five hundred thousand dollars (\$500,000) in the preceding fiscal year.

2. As used in this subsection, "risk manager" means a person qualified to assess an exempt commercial policyholder's insurance needs and analyze and negotiate a policy of insurance on behalf of an exempt commercial policyholder. A risk manager shall be:

a. A full-time employee of an exempt commercial policyholder who holds a professional designation relevant to the type of insurance to be purchased by the exempt commercial policyholder; or

b. A person retained by an exempt commercial policyholder who holds a professional designation relevant to the type of insurance to be purchased by the exempt commercial policyholder.

(d) The requirements of this section shall not apply to a policy of insurance sold to an exempt commercial policyholder.

(e) Policies issued to an exempt commercial policyholder shall contain a disclaimer in language similar to the following: "The rate provided for in this policy is exempt from the filing and approval requirements of this section."

(f) The exemption of commercial policyholders under this section shall not apply to Subtitle 39 of this chapter, KRS Chapter 342, sections in Subtitle 13 of this chapter that pertain to workers' compensation insurance, and KRS 304.12-230.

(3) Policies issued to industrial insureds, government entity insureds, and exempt commercial policyholders are exempt from the rate and policy form requirements of this chapter.

(4) All industrial insureds, government entity insureds, and exempt commercial policyholders shall reapply to the commissioner for their respective insured status every three (3) years, on a form the commissioner shall promulgate by administrative regulation.

(5) ~~(2)~~ KRS 304.11-020 to 304.11-050, inclusive, shall not apply to any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding educational or scientific institutions organized and operated without profit to any private shareholder or individual by issuing insurance and annuity contracts directly from the home office of the company and without agents or representatives in this

state only to or for the benefit of such institutions and to individuals engaged in the services of such institutions, nor to any policy or contract which it issues; but this exemption shall be conditioned upon any such company complying with the following requirements:

- (a) Payment of an annual registration fee;
- (b) Filing a copy of any policy or contract issued to Kentucky residents with the commissioner;
- (c) Filing a copy of its annual statement prepared pursuant to the laws of its state of domicile, as well as such other financial material as may be requested, with the commissioner; and
- (d) Providing, in such form as may be acceptable for the appointment of the Secretary of State as its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against such company arising out of any policy or contract it has issued to, or which is currently held by, a Kentucky citizen and process so served against such company shall have the same force and validity as if served upon the company.

Section 2. KRS 304.11-050 is amended to read as follows:

- (1) Effective with all premiums collected during the calendar year 1968, except premiums on lawfully procured surplus lines insurance, every unauthorized insurer shall pay to the secretary of revenue before March 1, next succeeding the calendar year in which the insurance was so effectuated, continued, or renewed, a premium tax of two percent (2%) of gross premiums charged for such insurance on subjects resident, located, or to be performed in this state. The insurance whether procured through negotiation or an application, in whole or in part occurring or made within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured or continued in this state. The term "premium" includes all premiums, membership fees, assessments, dues, and any other consideration for insurance. If the tax prescribed by this section is not paid within the time stated, the tax shall be increased by a penalty of twenty-five percent (25%) and by the amount of an additional penalty computed at the rate of one percent (1%) per month or any part thereof from the date the payment was due to the date paid.
- (2) If the policy covers risks or exposures only partly in the state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in the state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except those premiums as are properly allocated or apportioned and reported as taxable premiums to any other state or states.
- (3) Proration of premium taxes due from *those insureds specified in Section 1 of this Act* ~~and industrial insureds~~ under a contract procured from an unauthorized insurer having property in states other than Kentucky, shall be determined by administrative regulations promulgated by the secretary of revenue using the following criteria where applicable:
 - (a) Percentage of physical assets in Kentucky;
 - (b) Percentage of employee payroll in Kentucky;

- (c) Percentage of sales in Kentucky; and
 - (d) Percentage of taxable income reportable in Kentucky.
- (4) The secretary of revenue, or the Attorney General upon request of the secretary of revenue, shall proceed in the courts of this state or any other state or in any federal court or agency to recover tax not paid within the time prescribed in this section.

Section 3. KRS 304.3-230 is amended to read as follows:

- (1) Upon issuance of a certificate of authority to do business in this state, the following shall be deemed to have appointed the Secretary of State as their attorney to receive service of lawful process issued against them in this state:
- (a) Foreign or alien insurers;
 - (b) Domestic reciprocal insurers;
 - (c) Domestic Lloyd's insurers; (d) Qualified self-insurers.
- (2) Such appointment shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the insurer, and shall remain in effect as long as there is in force in this state or elsewhere a contract that would give rise to a cause of action in this state, made by the insurer, or liabilities or duties arising therefrom.
- (3) Service of lawful process against unauthorized insurers, except in contracts issued by insurers or underwriters to *those insureds specified* ~~[industrial insureds as defined]~~ in KRS 304.11-020, shall be made upon the Secretary of State, as provided in KRS 304.11-040.
- (4) Service of lawful process against authorized domestic insurers shall be had pursuant to KRS 271B.5-040.
- (5) If the Secretary of State is by law the lawful attorney for service of process, the clerk of the court in which action is brought shall issue a summons against the defendant named in the complaint and shall serve by certified mail, return receipt requested, two (2) true copies of the summons with two (2) attested copies of plaintiff's complaint to the Secretary of State. The Secretary of State shall immediately mail a copy of the summons and complaint to the defendant; if an authorized insurer, to the person designated pursuant to subsection (7) of KRS 304.3-150, and if an unauthorized insurer to the last known principal place of business. The letter shall be posted by prepaid certified mail, return receipt requested, and shall bear the return address of the Secretary of State. The Secretary of State shall make a return to the court showing that the acts contemplated by this statute have been performed, and shall attach to his return the registry receipt, if any. Summons shall be deemed to be served on the return of the Secretary of State and the action shall proceed as provided in the Kentucky Rules of Civil Procedure.
- (6) The Secretary of State shall keep a record of the date and hour of receipt of such lawful process, as well as the date it is forwarded to the defendant.
- (7) For the purpose of this section, "lawful process" shall include only the summons which initiates and commences a cause of action, and such other initial notices, rules, or orders which would be required by the Kentucky Rules of Civil Procedure to be by personal service.

- (8) The sheriff serving the summons upon the Secretary of State shall pay to him at the time of service a fee in the amount set forth in KRS 454.210, which shall be taxed as costs in the action.

Approved March 23, 2000