

**CHAPTER 380****(HB 354)**

AN ACT relating to insurance.

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

Section 1. KRS 304.13-011 is amended to read as follows:

***As used in this subtitle, unless the context requires otherwise:***

- (1) A "market" is the interaction between buyers and sellers consisting of a product market component and a geographic market component. A product market component consists of identical or readily substitutable products including but not limited to consideration of coverage, policy terms, rate classifications, and underwriting. A geographic market component is a geographical area in which buyers have a reasonable degree of access to insurance sales outlets. Determination of a geographic market component shall consider existing market patterns.
- (2) "Supplementary ~~rating~~~~rate~~ information" ***includes***~~is~~ any manual or plan of rates, classification, rating schedule, minimum premium, policy ~~fees~~~~fee~~, rating ~~rules~~~~rule~~, ~~or~~~~and~~ any other similar information needed to determine the applicable rate ***or premium***. ***This shall include underwriting rules, but only to the extent necessary to determine the rate or premium that will be applicable to a risk should the insurer decide to provide coverage. This does not include guidelines that relate to the selection of those risks that are acceptable to an insurer***~~in effect or to be in effect~~.
- (3) "Supporting information" is the experience and judgment of the filer and the experience or data of other insurers or organizations relied on by the filer, the interpretation of any ~~other~~~~statistical~~ data relied on by the filer, descriptions of methods used in making the rates, and any other~~similar~~ information required to be filed by the commissioner.
- (4) "Personal risks" ***means homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other***~~are those covered by~~ property and casualty insurance for personal, family, or household needs.
- (5) "Commercial risks" are any kinds of risks that are not personal risks.
- (6) "Joint underwriting" is a voluntary arrangement established~~on an ad hoc basis~~ to provide insurance coverage for a~~commercial~~ risk pursuant to which two (2) or more insurers ~~jointly~~~~separately~~ contract with the insured at a price and under policy terms agreed on between the insurers.
- (7) A "pool" is a voluntary arrangement, other than by a contract of reinsurance, established on a general and continuing basis pursuant to which two (2) or more insurers participate in the sharing of risks on a predetermined basis. A pool may operate through an association, syndicate or other pooling agreement.
- (8) A "residual market mechanism" is an agreement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance that may be afforded applicants who are unable to obtain insurance through ordinary methods.
- (9) An "advisory organization" is any ***entity, including its affiliates or subsidiaries,***~~organization~~ which either has two (2) or more member insurers or is controlled

*either directly or indirectly* by two (2) or more insurers and which assists insurers in ratemaking related activities. Two (2) or more insurers having a common ownership or operating in this state under common management or control constitute a single insurer *for purposes of this definition*.

- (10) A "competitive market" is a market that has not been found to be noncompetitive pursuant to KRS 304.13-041 and for which no such order is in effect.
- (11) A "noncompetitive market" is a market for which there is an order in effect pursuant to KRS 304.13-041 that a reasonable degree of competition does not exist.
- (12) "~~Loss~~-Trending" is any ~~appropriate~~ procedure for projecting developed losses to the average date of loss, *or premiums or exposures to the average date of writing*, for the period during which the policies are to be effective.
- (13) "Expenses" are those portions of any rate attributable to ~~unallocated loss adjustment expenses,~~ acquisition, field supervision, and collection expenses, general expenses, and *premium* taxes, licenses, and fees. ~~Expenses do not include those directly allocated by the insurer to the settlement of specific losses.~~
- (14) "Profit" is the portion of any rate attributable to funds needed for growth, contingencies, and return to stockholders.
- (15) "Pure premium" *means the loss cost per unit of exposure excluding all loss adjustment expenses*~~is the loss cost per unit of exposure plus the loss adjustment expense directly allocated to the settlement of specific losses~~.
- (16) "*Classification system*" or "*classification*" *means the process of grouping risks with similar risk characteristics so that differences in cost may be recognized.*
- (17) "*Developed losses*" *means losses (including loss adjustment expenses) adjusted, using standard actuarial techniques, to their ultimate anticipated value.*
- (18) "*Experience rating*" *means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.*
- (19) "*Form provider*" *means a person who prepares, files, and distributes policy contract forms and endorsements and consults with members, subscribers, customers, or others relative to their use and application, but is not an advisory organization as defined in this subtitle.*
- (20) "*Loss adjustment expenses*" *means the expenses incurred by the insurer in the course of settling claims.*
- (21) "*Prospective loss costs*" *means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and are based on historical aggregate losses or output from simulation models and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time. Loss costs, derived in part or entirely upon output from simulation models, must be approved by the commissioner before they become effective.*
- (22) "*Rate*" *means the expected value of the future cost of insurance per exposure unit which accounts for the treatment of losses, expenses, and profit prior to any application of*

*individual risk variations based on loss or expense considerations, but does not include minimum premium.*

- (23) *“Special assessments” means guaranty fund assessments, residual market mechanism assessments, and other similar assessments which are included in ratemaking. Special assessments shall not be considered as either expenses or losses. Additional charges collected by the insurer and returned to a governmental agency on behalf of an insured are not special assessments. Examples of these additional charges include, but are not limited to, the Special Fund charge for workers’ compensation imposed by KRS Chapter 342, local government premium tax imposed by KRS 91A.080, and the Revenue Cabinet surcharge imposed by KRS Chapter 136.*
- (24) *“Statistical agent” means an entity that has been licensed by the commissioner to collect statistics from insurers and provide reports developed from these statistics to the commissioner for the purpose of fulfilling the statistical reporting obligations of those insurers under this chapter.*

Section 2. KRS 304.13-021 is amended to read as follows:

KRS 304.13-011 to 304.13-161 apply to all types of insurance written on risks in this state by any insurer authorized under this chapter to do business in this state, except:

- (1) Life insurance;
- (2) Annuities;
- (3) ~~Wet~~~~Ocean~~ marine *and transportation* insurance;
- (4) Accident and health insurance;
- (5) Reinsurance;
- (6) Assessment or cooperative companies operating under the provisions of KRS Chapter 299;~~{~~  
~~and~~~~}~~
- (7) Individual and group workers' compensation self-insurers;
- (8) *Title insurance; and*
- (9) *Liability self-insurance groups.*

Section 3. KRS 304.13-031 is amended to read as follows:

- (1) In a noncompetitive market, rates shall be made in accordance with the following provisions:
- (a) Manual, minimum, class rates, rating schedules or rating plans, shall be made and adopted, except in the case of specific inland marine rates on risks specially rated; (b) Rates shall not be excessive, inadequate or unfairly discriminatory; (c) Due consideration shall be given:
    1. To past and prospective loss experience within and outside this state;
    2. To the conflagration and catastrophe hazards;
    3. To a reasonable margin for underwriting profit and contingencies;
    4. To dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers;
    5. To past and prospective expenses both *countrywide*~~[countywide]~~ and those

especially applicable to this state;

6. To all other relevant factors within and outside this state; and
  7. In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during a period of not less than the most recent three (3) year period for which such experience is available;
- (d) The ~~systems of~~ expense provisions included in the rates for use by any insurer or group of insurers ~~shall may differ from those of other insurers or group of insurers to~~ reflect the requirements of the operating methods of any such insurer or group **and its anticipated expenses**, with respect to any kind of insurance or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable;
- (e) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks which **can be demonstrated to** ~~may~~ have a probable effect upon losses or expenses. Rates made in accordance with this section may be used subject to this subtitle.

Section 4. KRS 304.13-061 is amended to read as follows:

- (1) The information furnished in support of a filing may include:
  - (a) The experience or judgment of the insurer;
  - (b) The insurer's interpretation of any statistical data it relies on;
  - (c) The experience of other insurers; and (d) Any other relevant factors.
- (2) The commissioner may adopt reasonable **administrative regulations** ~~rules~~ for use by insurers to record and report to the commissioner their rates and other information determined by the commissioner to be necessary or appropriate for the administration of KRS 304.13-011 to 304.13-161, **and the effectuation of its purposes. The commissioner may adopt reasonable administrative regulations to assure that the experience of all insurers is made available at least annually in such form and detail as is necessary to aid in determining whether rating systems comply with the standards set forth in this subtitle.** ~~[However, except for workers' compensation reports, no insurer shall be required to report its loss experience on a classification basis that is inconsistent with the rating system filed by it.]~~ The commissioner may designate one (1) or more advisory organizations **or statistical agents** to assist him in gathering, compiling, and reporting such information, **which shall be a matter of public record. The scope of these rules may include the data which must be reported by insurers, definitions of data elements, the timing and frequency of statistical reporting by insurers, data quality standards, data edit and audit requirements, data retention requirements, reports to be generated by advisory organizations or statistical agents to fulfill the requirements of this section, and the timing of such reports.** ~~[Insurers shall record and report their workers' compensation experience on a classification basis consistent with that of an advisory organization designated by the commissioner.]~~

- (3) *The commissioner may promulgate administrative regulations for the interchange of data necessary for the application of rating plans.*
- (4) *In order to further uniform administration of rate regulatory laws, the commissioner and every insurer, advisory organization, and statistical agent may exchange information and experience data with insurance supervisory officials, insurers, and advisory organizations in other states and may consult with them with respect to the application of rating systems and the collection of statistical data.*

Section 5. KRS 304.13-081 is amended to read as follows:

- (1) All rates, supplementary rate information, and supporting information filed under KRS 304.13-011 to 304.13-161 shall be open to public inspection at any reasonable time. Copies may be obtained by any person on request and on payment of a charge specified in Subtitle 4 of this chapter.
- (2) The commissioner shall ~~utilize, [designate certain types of personal risks coverages for which the commissioner shall]~~ develop, **or cause to be developed** a consumer information system that will **provide and** disseminate price and other relevant information on a readily available basis **to purchasers of homeowners or private passenger insurance. The commissioner may utilize, develop, or cause to be developed a consumer information system which will provide and disseminate price and other relevant information on a readily available basis to purchasers of insurance for commercial risks and personal risks not otherwise specified in this section. Such activity may be conducted internally within the department, in cooperation with other state insurance departments, through outside contractors, or in any other appropriate manner. To the extent the commissioner considers necessary and appropriate, [ insurers, advisory organizations, *statistical agents*, and other persons or organizations involved in conducting the business of insurance in this state, **to which this section applies**, shall cooperate with the commissioner in the development and **utilization** ~~in the operation~~ of a consumer information system. The reasonable cost of developing a consumer information system shall be assessed against insurers subject to this chapter on an equitable basis.**

SECTION 6. KRS 304.13-091 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *No advisory organization, statistical agent, or form provider shall provide any otherwise permitted service, and no insurer shall utilize the services unless the organization has obtained a license pursuant to subsection (3) of this section.*
- (2) *No advisory organization, statistical agent, or form provider shall refuse to supply any services for which it is licensed in Kentucky to any insurer authorized to do business in Kentucky and offering to pay the fair and usual compensation for the services.*
- (3) *An advisory organization, statistical agent, or form provider applying for a license shall include with its application:*
  - (a) *A copy of its constitution, charter, articles of organization, agreement, association or incorporation, bylaws, plan of operation, and any other rules or regulations governing the conduct of its business;*
  - (b) *A list of its members, subscribers, and customers;*

- (c) *The name and address of one (1) or more residents of Kentucky upon whom notices, process affecting it, or orders of the commissioner may be served;*
  - (d) *A statement showing its technical qualifications for acting in the capacity for which it seeks a license;*
  - (e) *A biography of the ownership and management of the organization; and*
  - (f) *Any other relevant information and documents that the commissioner may require.*
- (4) *Every organization which has applied for a license shall notify the commissioner of every material change in the facts or in the documents on which its application was based. Any amendment to a document filed under this section shall be filed at least thirty (30) days before it becomes effective.*
- (5) *If the commissioner finds that the applicant and the natural persons through whom it acts are competent, trustworthy, and technically qualified to provide the services proposed, and that all requirements of the law are met, he or she shall issue a license specifying the authorized activity of the applicant. The commissioner shall not issue a license if the proposed activity would tend to create a monopoly or to substantially lessen the competition in any market. At the request of the licensee, licenses issued under this section may be renewed on an annual basis.*
- (6) *Licenses issued pursuant to this section shall remain in effect for one (1) year unless:*
- (a) *The licensee fails to pay fees required by law for the continuance or renewal of its license;*
  - (b) *The licensee withdraws from the state; or*
  - (c) *The license is suspended or revoked.*
- The commissioner may at any time, after a hearing to be conducted in accordance with the provisions of this chapter and KRS 304.2-310, revoke or suspend the license of an advisory organization, statistical agent, or form provider which does not comply with the requirements and standards of this chapter.*
- (7) *The commissioner shall by administrative regulation establish a written summary of information that shall be included in an application for licenses issued under this section.*
- (8) *Advisory organizations wishing to operate as statistical agents or form providers may be so authorized under their license as an advisory organization. A separate license is not required.*
- (9) *Each advisory organization, statistical agent, and form provider shall pay fees as required by KRS 304.4-010 for the application, continuance, or renewal of its license.*

Section 7. KRS 304.13-111 is amended to read as follows:

No advisory organization *or statistical agent* shall:

- (1) Make an agreement with an insurer or another advisory organization that has the purpose or effect of substantially lessening competition in an insurance market; *or*
- (2) After January 1, 1983, compile or distribute recommendations relating to rates that include profit or expenses, except loss adjustment expenses~~]; or~~
- (3) ~~File rates or other information on behalf of an insurer].~~

Section 8. KRS 304.13-121 is amended to read as follows:

Any~~an~~ advisory organization *in addition to other activities not prohibited, is authorized, on behalf of its members and subscribers, to*~~may~~:

- (1) Collect statistical data from members, *subscribers*, or any other source;
- (2) Develop statistical plans including territorial and class definitions;
- (3) *Prepare, file, and distribute prospective loss costs which may include provisions for special assessments. Loss costs, derived in part or entirely upon output form simulation models, must be approved by the commissioner before they become effective*~~Distribute pure premium data, adjusted for loss development and loss trending, in accordance with its statistical plans~~;
- (4) *Prepare, file, and distribute manuals of rating rules,*~~and~~ *rating schedules, and other supplementary rating information that do*~~except that the manuals may~~ *not include final rates, expense provisions, profit provisions, or minimum premiums*~~or permit calculation of final rates without outside information~~;
- (5) *Prepare, file, and distribute factors, calculations, or formulas pertaining to classification, territory, increased limits, and other variables*~~Distribute information by circulars that are filed with the commissioner and open to public inspection~~;
- (6) *Distribute information that is required or directed to be filed with the commissioner;*
- (7) Conduct research and *on-site*~~field~~ inspections *in order* to prepare *classifications of public fire defenses,*~~defense classifications~~ and to consult with public officials regarding public fire protection as it would affect members, *subscribers* and others;
- ~~(7)~~ (8) Conduct research *in order to discover, identify, and classify information relating to*~~on the~~ causes or prevention of losses;
- (9) *Conduct research relating to the impact of statutory changes upon prospective loss costs and special assessments;*
- ~~(8)~~ (10) *Prepare, file, and distribute policy forms and endorsements and consult with members, subscribers, and others relative to their*~~on~~ use and application;
- ~~(9)~~ (11) Conduct research and *on-site*~~field~~ inspections *for the purpose of providing risk*~~to collect~~ information~~for calculating rates or collecting statistics~~ relating to individual structures~~risks~~; ~~and~~
- (12) *Conduct on-site inspections to determine rating classifications for individual insureds;*
- (13) *For workers' compensation insurance, establish a committee which may include insurance company representatives to review the determination of the rating classification for individual insureds and suggest modifications to the classification system, pursuant to subsection (1) of Section 11 of this Act;*
- ~~(10)~~ (14) *Collect, compile, and publish*~~distribute~~ past and current prices of *individual* insurers, if such information is *also*~~filed with the commissioner and is~~ made available to the public *at a reasonable cost;*
- (15) *Collect and compile exposure and loss experience for the purpose of individual risk experience ratings;*
- (16) *File final rates, at the direction of the commissioner, for residual market mechanisms; and*

- (17) Furnish any other services, as approved or directed by the commissioner, related to those enumerated in this section.*

SECTION 9. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*In addition to other activities not prohibited, any statistical agent is authorized, on behalf of its members and subscribers, to:*

- (1) Develop statistical plans including territorial and class definitions;*
- (2) Collect historical data from members, subscribers, or any other source;*
- (3) Distribute information that is required or directed to be filed with the commissioner;*
- (4) Collect, compile, and distribute past and current prices of individual insurers and publish such information;*
- (5) Collect and compile exposure and loss experience for the purpose of individual risk experience ratings; and*
- (6) Furnish any other services, as approved or directed by the commissioner, related to those enumerated in this section.*

SECTION 10. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) Every advisory organization shall file with the commissioner every statistical plan, all prospective loss costs, provisions for special assessments, and all supplementary rating information, and every change or amendment or modification of any of the foregoing proposed for use in Kentucky. Each filing shall be filed thirty (30) days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed thirty (30) days, if written notice is given within the initial thirty (30) day period to the advisory organization that additional time is needed for the consideration of the filing. The commissioner may, upon giving written notice to the advisory organization, request additional information that is needed to complete the review of the filing. If the commissioner requests such additional information prior to the filing becoming effective, the filing shall become effective thirty (30) days after the additional information is provided to the commissioner.*
- (2) Upon written application by the advisory organization, the commissioner may authorize an earlier effective date.*
- (3) All filings shall be subject to the provisions of Section 5 of this Act and all other provisions of this chapter relating to filings made by insurers.*

SECTION 11. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) Every workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating system filed with the commissioner by an advisory organization designated by the commissioner.*
- (2) Every workers' compensation insurer shall report its experience in accordance with the statistical plans and other reporting requirements in use by an advisory organization designated by the commissioner.*



- (3) *A workers' compensation insurer may develop subclassifications of the uniform classification system upon which rates may be made. These subclassifications and their filing shall be subject to the provisions of this chapter applicable to filings generally.*
- (4) *A workers' compensation insurer may develop rating plans which identify loss experience as a factor to be used. These rating plans and their filing shall be subject to the provisions of this chapter applicable to filings generally.*
- (5) *The commissioner shall disapprove subclassifications, rating plans, or other variations from manual rules filed by a workers' compensation insurer if the insurer fails to demonstrate that the data thereby produced can be reported consistent with the uniform classification system and experience rating system and in such a fashion so as to allow for the application of experience rating filed by the advisory organization.*

SECTION 12. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*No person shall willfully withhold information which will affect the rates or premiums chargeable under this subtitle from, or knowingly give false or misleading information to, the commissioner, any statistical agent, any advisory organization, or any insurer.*

Section 13. KRS 304.13-131 is amended to read as follows:

- (1) No insurer *or advisory organization* shall make *any arrangement* ~~[an agreement]~~ with any other insurer, advisory organization, or *other* person that has the purpose or effect of unreasonably restraining trade or *unreasonably* ~~[of substantially]~~ lessening competition in *the business of* ~~[an]~~ insurance ~~[market]~~.
- (2) *No insurer or advisory organization shall:*
  - (a) *Attempt to monopolize, or combine, or conspire with any other person to monopolize an insurance market; or*
  - (b) *Engage in a boycott, on a concerted basis, of an insurance market.*
- (3) No insurer shall agree with any other insurer or with an advisory organization to *mandate adherence* ~~[adhere]~~ to, *or to mandate use of*, any rate, *prospective loss cost*, rating plan, rating schedule, rating rule, *policy or bond form*, rate classification, rate territory, underwriting rule, ~~[or]~~ survey, *inspection or similar material*, except as needed to *facilitate the reporting of statistics to advisory organizations, statistical agents, or the commissioner* ~~[develop and maintain statistical plans permitted by KRS 304.13-011 to 304.13-161]~~. *The fact that two (2) or more insurers, whether or not members or subscribers of an advisory organization, use consistently or intermittently the same rates, prospective loss cost, rating plans, rating schedules, rating rules, policy or bond forms, rate classifications, rate territories, underwriting rules, surveys, or inspections or similar materials is not sufficient in itself to support a finding that an agreement exists.*
- ~~(4)(3)~~ Two (2) or more insurers having a common ownership or operating in this state under common management or control may act in concert between or among themselves with respect to *any matters pertaining to* those activities authorized in this chapter as if they *constituted* ~~[were]~~ a single insurer.

Section 14. KRS 304.13-141 is amended to read as follows:

- (1) The commissioner may examine any insurer, pool, advisory organization, *statistical agent*, *form provider*, or residual market or joint underwriting mechanism as deemed necessary to ascertain compliance with *this chapter* ~~[KRS 304.13-011 to 304.13-161]~~. Any examination made by the commissioner or by examiners designated by him shall be at the expense of the organization examined as specified in Subtitle 2 of KRS Chapter 304.
- (2) Every insurer, pool, advisory organization, *statistical agent*, and residual market or joint underwriting mechanism shall maintain reasonable records, adapted to its method of operation, containing its experience or the experience of its members. Records shall include the statistics and other information used by it in its activities. The records shall be available at all reasonable times and at a reasonable location to enable the commissioner to determine whether the activities of an insurer, *pool*, advisory organization, *statistical agent*, *residual market or joint underwriting mechanism* ~~[or other association formed pursuant to KRS 304.13-011 to 304.13-161]~~ are in compliance with this chapter.
- (3) In lieu of an examination, the commissioner may accept the report of an examination by the insurance supervisory official of another state, if the report is made pursuant to the laws of that state.

Section 15. KRS 304.13-151 is amended to read as follows:

- (1) Notwithstanding *subsection (2)(a) of KRS 304.13-131*, insurers participating in joint underwriting, *joint reinsurance* pools, or residual market mechanisms may, in connection with such activity, cooperate *with each other* in the making of rates, rating systems, policy forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss and expense statistics *or* ~~[and]~~ other information, *or carrying on* ~~[and the undertaking of]~~ research. ~~[A]~~ Joint underwriting, *joint reinsurance pools*, *and* ~~[pool or]~~ residual market *mechanisms* ~~[mechanism]~~ shall not be deemed ~~[an]~~ advisory *organizations* ~~[organization]~~.
- (2) *Except to the extent modified by this section, insurers, joint underwriting, joint reinsurance pool and residual market mechanism activities are subject to the provisions of this chapter.*
- (3) *Every* ~~[A]~~ pool shall file with the commissioner a copy of its constitution, bylaws, rules, *and regulations* governing its activities, and articles of incorporation, agreement, or association. It shall also file with the commissioner a list of its members and the name and address of a resident of this state on whom notices or orders of the commissioner *or process* may be served, *and any changes in amendments or changes in the foregoing.*
- ~~(4)~~ ~~(3)~~ Any *residual market mechanism*, plan, or agreement to implement a residual market mechanism, *and any changes or amendments in the plan* shall be submitted *in writing* to the commissioner for *consideration and* approval, *together with any other information as may be reasonably required*. The commissioner shall approve only those agreements that *he or she finds contemplates both* ~~[contemplate]~~ the use of rates *which meet the standards of this chapter and activities and practices* ~~[that are adequate but not excessive]~~, that are not *unfair, unreasonable, or* ~~[unfairly discriminatory, and that are]~~ otherwise *inconsistent with the provisions of this chapter* ~~[consistent with KRS 304.13-011 to 304.13-161]~~. *At any time after any agreements are in effect, the commissioner may review the practices and activities of the adherents to these agreements and if, after a hearing, the commissioner finds that any practice or activity is unfair or unreasonable, or is otherwise inconsistent with the provisions of this Chapter, the commissioner may issue a written order to the parties and either require the discontinuance of these acts or revoke approval of any such agreement.*

(5)~~(4)~~ If the commissioner finds after a hearing that *any*~~an~~ activity *or practice* of an insurer participating in joint underwriting *or*~~,~~ a pool *is unfair, is unreasonable,* ~~or a residual market mechanism~~ will tend to ~~substantially~~ lessen competition in *any*~~an insurance~~ market, or is otherwise inconsistent with the provisions *or purposes* of *this chapter*~~[KRS 304.13-011 to 304.13-161]~~, an order may be issued ~~specifying in what respects the activity is anticompetitive or inconsistent with KRS 304.13-011 to 304.13-161 and~~ requiring the discontinuance of the activity *or practice*.

(6)~~(5)~~ As a condition of its authority under this chapter to transact casualty insurance (as defined in KRS 304.5-070) in this state, every insurer so authorized shall become and remain a signatory to the "Kentucky automobile insurance plan" as it is presently formulated or as it is hereafter amended with the approval of the commissioner. The "Kentucky automobile insurance plan" shall be deemed to be a mandated "residual market mechanism" as defined in KRS 304.13-011(8).

Section 16. KRS 304.13-350 is amended to read as follows:

The commissioner shall review, approve, and hear appeals on the assignment, reassignment, or modification of any fire protection classification of any fire protection district, municipality, or locality in the state which is made by any lawful *insurer, advisory*~~rating~~ organization, or agency operating in the Commonwealth.

Section 17. KRS 304.13-355 is amended to read as follows:

Any fire protection district, municipality, or locality in the state which is assigned a fire protection classification by any lawful *advisory*~~rating~~ organization or insurer which makes its own rates, operating in the Commonwealth, may appeal to the commissioner for modification or reassignment of the classification within thirty (30) days of receipt of the classification. The commissioner shall determine the manner in which an appeal may be filed.

Section 18. KRS 304.13-360 is amended to read as follows:

- (1) The commissioner shall make such investigation as he deems necessary or convenient for proper determination regarding an appeal.
- (2) The books, accounts, papers and records of every fire protection classification *advisory*~~rating~~ organization or insurer which makes its own rates, operating in the Commonwealth, shall be available to the commissioner for inspection and examination. By notice and order, the commissioner may require their production or the production of verified copies at such time and place as he designates, any expense incurred to be borne by the rating organization or insurer so ordered.

Section 19. KRS 304.13-365 is amended to read as follows:

- (1) Within thirty (30) days of the filing of an appeal, the commissioner shall hold an administrative hearing to be conducted in accordance with KRS *304.2-310*~~[Chapter 13B]~~. Whenever the commissioner determines that a fire protection classification is unreasonable, he shall by final order prescribe a reasonable classification to be followed for a period not to exceed one (1) year. A subsequent evaluation by the *advisory*~~rating~~ organization or insurer shall not be permitted until the expiration of the period set by the commissioner.

- (2) The commissioner may compel obedience to its final orders by proper proceedings in the Franklin Circuit Court or any other court of competent jurisdiction, and these proceedings shall have priority over all pending cases.

Section 20. KRS 304.13-370 is amended to read as follows:

- (1) No insurer may increase premiums for fire insurance based on a fire protection classification until the expiration of the thirty (30) day period for appeal by the fire protection district, municipality or locality, as provided in KRS 304.13-355. If an appeal is filed, no insurer may increase such premiums until approval of the fire protection classification by the commissioner.
- (2) If the commissioner's reassignment or modification of a fire protection classification results in lower fire insurance premiums, the appropriate insurers shall make any refunds of paid premiums due to customers within the affected fire protection district, municipality or locality. Such refunds shall be determined from the date the **advisory**~~[rating]~~ organization or insurer last assigned or reassigned the classification appealed.

Section 21. KRS 304.14-120 is amended to read as follows:

- (1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or printed rider or indorsement form or form of renewal certificate, shall be delivered, or issued for delivery in this state, unless the form has been filed with and approved by the commissioner. This provision shall not apply to any rates filed under Subtitle 17A of this chapter, surety bonds, or to specially-rated inland marine risks, or to policies, riders, indorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner or distribution of benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to group insurance policies issued and delivered to an association outside this state but covering persons resident in this state, all or substantially all of the premiums for which are payable by the insured members, the group certificates to be delivered or issued for delivery in this state shall be filed with and approved by the commissioner.
  - (a) As to forms for use in property, marine (other than wet marine and transportation insurance), casualty and surety insurance coverages (***other than accident and health***) the filing required by this subsection may be made by **advisory**~~[rating]~~ organizations ***or form providers*** on behalf of ***their***~~[its]~~ members and subscribers; but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.
  - (b) ***Every advisory organization and form provider shall file with the commissioner for approval every property and casualty policy form and endorsement before distribution to members, subscribers, customers, or others.***
  - (c) ***Every property and casualty insurer shall file with the commissioner notice of adoption before use of any approved form filed by an advisory organization or form provider or filed by the insurer pursuant to paragraph (a) of this subsection.***
- (2) Every such filing shall be made not less than sixty (60) days in advance of any such delivery. At the expiration of such sixty (60) days the form so filed shall be deemed approved unless

prior thereto it has been affirmatively approved or disapproved by order of the commissioner. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than a thirty (30) day period within which he may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the initial sixty (60) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.

- (3) Any order of the commissioner disapproving any such form or any notice of the commissioner withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonably to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at expiration of such period, not less than thirty (30) days after the giving of the notice of withdrawal, as the commissioner shall in such notice prescribe.
- (4) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order to which, in his opinion, this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.
- (5) Appeals from orders of the commissioner disapproving any such form or withdrawing a previous approval shall be taken as provided in Subtitle 2 of this chapter.
- (6) *For the purposes of this section, unless the context requires otherwise:*
  - (a) *"Advisory organization" has the meaning provided in Section 1 of this Act; and (b) "Form provider" has the meaning provided in Section 1 of this Act.*

SECTION 22. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*As used Sections 22 to 28 of this Act:*

- (1) *"Rental vehicle agent" means an individual or business entity that is licensed to sell, solicit, or negotiate rental vehicle insurance under this subtitle.*
- (2) *"Managing employee" means a salaried full-time employee of a licensed business entity that holds a license as an individual under Section 24 of this Act and is responsible for the supervision of the other employees engaged in the placement of insurance under this section.*
- (3) *"Rental agreement" means any written agreement that states the terms and conditions that govern the use or lease of a rental vehicle during the rental period.*
- (4) *"Rental period" means the term of the rental agreement that is sixty (60) days or less.*
- (5) *"Rental vehicle" or "vehicle" means a motor vehicle operated by a driver who is not required to possess a commercial driver's license to operate the motor vehicle and the motor vehicle is either a private motor vehicle or a cargo van. A "private motor vehicle" includes a passenger vehicle, passenger van, minivan, or sport utility vehicle. A "cargo van" includes a cargo van, pickup truck, or truck with a gross vehicle weight of less than twenty-six thousand (26,000) pounds.*

- (6) *"Rental vehicle insurance" means insurance underwritten by an insurer authorized to transact business in this state that is sold in connection with and incidental to a rental agreement.*

SECTION 23. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A rental vehicle agent may sell, solicit, or negotiate insurance at the rental vehicle company office as specified in this section for any of the following types of insurance:*
- (a) *Insurance that covers the risks of travel, including accident and health insurance that provides coverage to renters and other rental vehicle occupants for accidental death or dismemberment and reimbursement for medical expenses that result from the operation or use of the rental vehicle during the rental period;*
  - (b) *Liability insurance that provides coverage to renters and other authorized drivers of rental vehicles for liability that arises from the operation or use of the rental vehicle, which may include uninsured motorist and underinsured motorist coverage, whether offered separately or in combination with other liability insurance;*
  - (c) *Personal property insurance that provides coverage to renters and other rental vehicle occupants for the loss of or damage to personal effects that occurs during the rental period;*
  - (d) *Roadside assistance;*
  - (e) *Emergency sickness protection programs; and*
  - (f) *Any other insurance incidental to the rental of a motor vehicle and approved by the commissioner.*
- (2) *When a renter purchases any of the rental vehicle insurance coverages listed in subsection (1) of this section, the coverages shall be primary over any other coverages which may be available to the renter or authorized driver covering the same loss.*

SECTION 24. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A license issued under this section shall permit rental vehicle insurance sales by the license holder provided the sales are conducted in accordance with the provisions of Section 25 of this Act.*
- (2) *A business entity licensee shall register with the commissioner each separate business location where its employees sell, solicit, or negotiate insurance and may pay a location registration fee for each separate location.*
- (3) *The commissioner may issue to an applicant qualified under this section a license to act as a rental vehicle agent.*
- (4) *For a license to be issued under this section, the applicant shall submit to the commissioner all of the following:*
- (a) *A written application, signed by the applicant, on a form prescribed by the commissioner, that contains the information prescribed by the commissioner;*
  - (b) *A certification by an insurer authorized to do business in this state, signed, and affirmed as true under penalty of perjury by an officer stating that:*

1. *The insurer has satisfied itself that the named applicant is trustworthy and competent to act as the insurer's agent; and*
  2. *The insurer has appointed the applicant to act as agent for the type of insurance specified;*
- (c) *The application fee, appointment fee, and location registration fee as provided in KRS 304.4-010 and Sections 22 to 28 of this Act;*
  - (d) *A business entity applicant shall submit a list of physical locations where activities authorized by the rental vehicle agent license will be conducted;*
  - (e) *A business entity applicant shall certify that each proposed licensed managing employee has successfully completed education and training programs, successfully passed course examinations, and will receive continuing education all approved by the commissioner in accordance with Section 28 of this Act; and*
  - (f) *A business entity applicant shall submit proof that the applicant will provide education, training, and continuing education approved by the commissioner in accordance with Section 28 of this Act for each rental vehicle employee or representative. However, a test shall not be required for each rental vehicle employee or representative who is not a licensed managing employee.*
- (5) *The commissioner may require any documents reasonably necessary to verify the information contained in the application submitted in accordance with subsection (4) of this section.*

SECTION 25. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A license issued to a business entity under Section 24 of this Act shall authorize an employee or representative of the business entity licensee to sell, solicit, or negotiate rental vehicle insurance without being licensed, registered, or otherwise individually identified, if all of the following are true:*
- (a) *The employee, representative, or managing employee operates with permission from the business entity licensee;*
  - (b) *The business entity licensee assumes responsibility for the insurance activities of its unlicensed employees or representatives;*
  - (c) *The employee or representative operates under the supervision of a managing employee who is licensed as a rental vehicle agent and who shall be available at all times for consultation for and adequate supervision of the business locations registered with the commissioner during the sale, solicitation, or negotiation of rental vehicle insurance. However, a managing employee need not be present at each business location registered with the commissioner;*
  - (d) *The business entity maintains an adequate number of managing employees available for consultation and supervision for the employees or representatives offering insurance products;*
  - (e) *The employee, representative, or managing employee has been instructed by the rental vehicle agent with respect to the consumer disclosures that are required under Section 26 of this Act prior to the sale of the rental vehicle insurance;*

- (f) *The employee or representative is not primarily compensated based on the amount of insurance sold by the employee or representative; and*
  - (g) *The business location is registered with the commissioner.*
- (2) *A licensee shall not advertise, represent, or otherwise hold out the licensee or any employee or representative of the licensee as a licensed insurance agent under another section of this subtitle, unless the entity or individual actually holds the applicable license.*

SECTION 26. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Insurance shall not be transacted under Sections 22 to 28 of this Act at any location unless the following consumer protection disclosures are made in writing that meets the readability standards set forth in KRS 304.14-440 and the regulations promulgated thereunder prior to the sale of rental vehicle insurance and are included with the rental vehicle agreement:*
- (a) *A clear and concise description of the material terms and conditions of the coverage, including a description of exclusions;*
  - (b) *A description of the process for filing a claim and a toll-free telephone number for reporting a claim;*
  - (c) *A statement that the coverage offered by the rental vehicle agent may be a duplication of coverage already provided by the renter's personal automobile insurance policy or by another source of coverage;*
  - (d) *A statement that the renter is not required to purchase any insurance from the rental vehicle company in order to rent a vehicle. However, the rental vehicle company may refuse to rent a vehicle to an uninsured driver;*
  - (e) *The name and address of the underwriting insurer;*
  - (f) *A separate itemization of all costs for the rental vehicle insurance;*
  - (g) *Confirmation that the insurer underwriting coverage is authorized to transact insurance in Kentucky; and*
  - (h) *A statement that the rental vehicle insurance is primary coverage as set forth in subsection (2) of Section 23 of this Act.*

SECTION 27. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*A rental vehicle agent who is licensed in accordance with this subtitle shall not sell, solicit, or negotiate insurance that is not sold in conjunction with a rental vehicle transaction.*

SECTION 28. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *If a licensee violates a provision of this chapter, the commissioner may take administrative action and impose penalties in accordance with this chapter.*
- (2) *A licensed business entity under Section 24 of this Act shall provide to the commissioner its courses of instruction, course examinations for managing employees, employee training,*



*and continuing education material for all employees subject to the commissioner's approval prior to issuance of a license under this section.*

- (3) *A licensee under Section 24 of this Act may receive commissions or other compensation for services rendered in connection with the sale of rental vehicle insurance.*
- (4) *Licenses shall be renewed biennially as set forth in KRS 304.9-260 and 304.9-270.*
- (5) *The commissioner shall promulgate administrative regulations to carry out the purpose of Sections 22 to 28 of this Act.*

Section 29. KRS 304.2-150 is amended to read as follows:

- (1) The commissioner shall carefully preserve in the department and in permanent form, a correct account of all his transactions and of all fees and moneys received by him by virtue of his office, together with all financial statements, examination reports, correspondence, filings, and documents duly received by the department. The commissioner shall hand the same over to his successor in office.
- (2) The commissioner shall keep a suitable record of all insurer certificates of authority and of all licenses issued under this code, together with all applicable suspensions and revocations and of the causes thereof.
- (3) Unless otherwise provided by law, records of the department shall be open to the extent provided by the Kentucky Open Records Act, KRS 61.872 to 61.884:
  - (a) The following records shall be open:
    1. Rate and form filings and information filed in support thereof;
    2. Other records as provided by law; and
    3. All information filed by the department with the National Association of Insurance Commissioners, which that association makes available;
  - (b) The following records shall be closed:
    1. All information received in confidence from *insurance supervisory officials of other states or countries*, or the National Association of Insurance Commissioners, including, but not limited to, information from the insurance regulatory information system. However, records described in this paragraph may be used by the commissioner in enforcement prosecutions and proceedings for disciplinary action, and may be disclosed to other law enforcement authorities; and
    2. Other records as provided by law; and
  - (c) When inspection of department records is denied, any person challenging the denial shall follow the procedures set forth in the Kentucky Open Records Act, KRS 61.872 to 61.884.
- (4) After five (5) years, the commissioner may destroy unneeded or obsolete records and filings in the department.
- (5) The department shall not charge a fee inconsistent with fees charged by other state agencies for copies of records requested by the public pursuant to this section.

Section 30. The following KRS section is repealed:

304.24-410 Acquisition of insurer's securities -- Approval by commissioner -- Presumption of control.

**Approved April 7, 2000**