

CHAPTER 24**(SB 177)**

AN ACT relating to insurance accounting practices and procedures.

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

Section 1. KRS 304.2-065 is amended to read as follows:

- (1) There is created within the Department of Insurance the position of early warning analyst.
- (2) The commissioner shall appoint a qualified person to serve as early warning analyst.
- (3) The early warning analyst shall detect domiciled companies and companies doing a significant amount of business in the Commonwealth that are in a hazardous or potentially hazardous financial condition.
- (4) The early warning analyst shall be part of the Financial Standards and Examination Division.
- (5) The early warning analyst shall:
 - (a) Take advantage of the information available through the Insurance Regulatory Information System and use the information to monitor insurers;
 - (b) Seek information from other states' detection programs;
 - (c) Work with other Department of Insurance employees representing key regulatory areas of the department;
 - (d) Coordinate and develop the use of an indicator list to determine if an insurer is in a hazardous condition. The indicator list shall include but is not limited to the following indicators:
 1. An insurer fails to file a timely financial statement as established in KRS Chapter 304;
 2. An insurer files financial information which is false or misleading;
 3. An insurer overstates its surplus by twenty-five percent (25%) or more;
 4. An insurer fails to grant authorization to amend its financial statement when requested;
 5. An insurer's financial ratios are outside of the usual range established by the National Association of Insurance Commissioners in the Insurance Regulatory Information System;
 6. A projection by the department of an insurer's current financial condition indicates that the sum of its paid-in capital, paid-in surplus, and contributed surplus will be reduced within the next twelve (12) months;
 7. An insurer's aggregate net retained risk, direct or assumed, under any one (1) insurance policy or certificate of insurance under a group policy is more than ten percent (10%) of the insurer's surplus, except where otherwise permitted by law;
 8. An insurer's reserves for losses and loss adjustment expenses are discounted more than ten percent (10%) of the surplus;

9. An affiliate or subsidiary of an insurer is unable to pay its obligations as the obligations become due and payable;
 10. A life, accident, and health insurer has premium writings that result in the surplus being less than five percent (5%) of the aggregate general account reserves for the life insurance in force plus twenty-five percent (25%) of the new annualized accident and health premium writing;
 11. An insurer has reinsurance reserve credits, recoverable or receivable, that are disputed by the reinsurer, or are due and payable and remain unpaid, and the reinsurance credits, recoverables, and receivables are more than ten percent (10%) of an insurer's surplus;
 12. An insurer consistently issues subordinate premium or surplus debentures to finance its operations;
 13. An insurer fails to adequately maintain books and records in a manner that permits examiners to determine the financial condition of the insurer;
 14. An insurer has reinsurance agreements affecting twenty percent (20%) or more of the insurer's gross written premiums, direct or assumed, and the assuming insurers are not licensed to do insurance business in the Commonwealth of Kentucky;
 15. An insurer's management does not have the experience, competence, or trustworthiness to operate the insurer in a safe and sound manner;
 16. An insurer's management engages in unlawful transactions;
 17. An insurer fails to have an appraisal made on real estate upon which the insurer has made a mortgage loan;
 18. An insurer fails to comply with the terms of an agreement with an affiliate;
 19. An insurer has a pattern of refusing to settle valid claims within a reasonable time after due proof of the loss has been received;
 20. An insurer fails to follow a policy on rating and underwriting standards appropriate to the risk;
 21. An insurer violates KRS Chapter 304;
 22. A final administrative or judicial order, initiated by an insurance regulatory agency of another state, is issued against an insurer; and
 23. An insurer is in any condition that the commissioner finds is a hazard to policyholders, creditors, or the general public;
- (e) Recommend regulatory action and provide status reports to the commissioner; and
- (f) Appear before the Interim Joint Committee on Banking and Insurance or the Standing Committees on Banking and Insurance **annually**~~biannually~~ to report on the status of domestic insurance companies and insurance companies doing a substantial amount of business in the Commonwealth of Kentucky.

Section 2. KRS 304.2-080 is amended to read as follows:

- (1) The commissioner or any deputy, examiner, actuary, assistant or employee of the department, shall not be connected with the management of, or be financially interested,

directly or indirectly, in any insurer, insurance agency or broker, or insurance transaction except as policyholder or claimant under a policy; except, that as to matters wherein a conflict of interest does not exist on the part of any such individual, the commissioner may employ or retain from time to time insurance actuaries, examiners, accountants, attorneys, or other technicians who are independently practicing their profession even though from time to time similarly employed or retained by insurers or others.

- (2) No person shall directly or indirectly give or pay to the commissioner or any deputy, examiner, actuary, assistant, employee or technician retained by the department; and the commissioner, or any deputy, examiner, actuary, assistant, employee or technician retained by the department, shall not directly or indirectly receive or accept any fee, compensation, loan, gift or other thing of value in addition to the compensation and expense allowance provided by law, or by contract with the commissioner, for any service rendered or to be rendered, as such commissioner, deputy, examiner, actuary, assistant, employee or technician, or in connection therewith.
- (3) Subsection (1) of this section shall not be deemed to prohibit receipt by any such person of commissions or retirement benefits to which entitled by reason of services performed prior to becoming commissioner or prior to employment by the commissioner.

~~{(4) This section shall not be deemed to prohibit appointment and functioning of the commissioner as process agent of insurers or of nonresident licensees as provided for in this code.}~~

Section 3. KRS 304.2-300 is amended to read as follows:

- (1) There is created in the State Treasury the "Examination Expense Revolving Fund" for the use of the department. The commissioner shall promptly deposit all funds received under a statute requiring examination expenses to be paid by the party examined and deposited with the State Treasurer to the credit of *the*~~{such}~~ fund.
- (2) Moneys for travel, per diem, compensation and other necessary and authorized expenses incurred by an examiner or other department representative in the examination of any person required to pay, and making payment of, the expense of examination pursuant to KRS 304.2-290 shall be paid out of the examination expense revolving fund, upon approval of the commissioner.
- (3) Moneys for travel~~[-, compensation]~~ and other necessary expenses~~[- of the custodian of insurance securities]~~ assessed pursuant to KRS 304.8-190 shall be paid out of the examination expense revolving fund upon approval of the commissioner.
- (4) If any amount in *the*~~{such}~~ revolving fund remains unexpended at the end of any fiscal year, that amount shall not lapse, but shall remain credited to the account and may be used during the succeeding year or years.

Section 4. KRS 304.2-360 is amended to read as follows:

- (1) In the conduct of hearings under this code and making *a*~~{his}~~ final order thereon, the commissioner shall act in a quasijudicial capacity and in accordance with the provisions of this chapter and KRS Chapter 13B.
- (2) With respect to hearings held concerning merger, consolidation, bulk reinsurance, conversion, affiliation, or change of control of a domestic insurer as provided in Subtitle 24, or in Subtitle ~~37~~~~{27}~~ of this chapter, where notice of the hearing was given to all stockholders and policyholders or to all stockholders of an insurer involved, the

commissioner is required to give a copy of the order on hearing to the corporation and insurer parties, to intervening parties, to a reasonable number of stockholders or policyholders as representative of the class, and to other parties only upon written request of such parties.

- (3) A final order may require that restitution be made to any person aggrieved by a violation of any provisions of this chapter, any statute administered by the commissioner, or any regulation of the commissioner.
- (4) An order prepared by the commissioner's designee and approved in writing by the commissioner shall be considered the commissioner's order.

Section 5. KRS 304.3-110 is amended to read as follows:

An insurer which otherwise qualifies therefor may be authorized to transact any one (1) kind or any combination of kinds of insurance as defined in Subtitle 5, except:

- (1) A life insurer may grant annuities and may be authorized to transact in addition only health insurance; except, that the commissioner may, if the insurer otherwise qualifies therefor, continue so to authorize any life insurer which immediately prior to June 18, 1970, was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and health and annuities. ***Only an insurer with a certificate of authority authorized to sell life insurance may grant and issue annuity contracts.***
- (2) A reciprocal or Lloyd's insurer shall not transact life insurance.
- (3) A title insurer shall be a stock insurer, and shall not transact any other kind of insurance.
- (4) A mortgage guaranty insurer shall be a stock insurer, and shall not transact any other kind of insurance.

Section 6. KRS 304.3-150 is amended to read as follows:

To apply for an original certificate of authority an insurer shall file with the commissioner its written application therefor on forms as prescribed and furnished by the commissioner, accompanied by the applicable fees specified in Subtitle 4, stating under the oath of the president or vice-president or other chief officer and the secretary of the insurer, or of the attorney-in-fact (if a reciprocal insurer or Lloyd's plan insurer), the insurer's name, location of its principal office, the kinds of insurance to be transacted, date of organization or incorporation, form of organization, its domicile, and any additional information as the commissioner may reasonably require, together with the following documents, as applicable:

- (1) If a corporation, a copy of its charter, together with all amendments thereto, or as restated and amended under the laws of its state or country of incorporation, currently certified by the public official with whom the originals are on file in a state or country.
- (2) A copy of its bylaws, certified by the insurer's secretary.
- (3) If a reciprocal insurer, a copy of the power of attorney of its attorney-in-fact, and copy of its subscribers agreement, if any, both certified by the attorney-in-fact; and if a domestic reciprocal insurer, the declaration provided for in KRS ~~304.27-060~~~~{304.2-060}~~.
- (4) If a Lloyd's plan insurer, the names and addresses of all of the underwriters proposing to engage in the business, along with the number of underwriters which shall not be less than twenty-five (25), and that each underwriter is worth in his own right not less than twenty thousand dollars (\$20,000) over and above all his liabilities, along with a statement showing

a list of all cash and invested assets owned by the associated underwriters and their value, certified and sworn to by their duly authorized attorney-in-fact.

- (5) A complete copy of its financial statement as of not earlier than the December 31 next preceding in form as customarily used in the United States by like insurers, sworn to by at least two (2) executive officers of the insurer or certified by the public insurance supervisory official of the insurer's state or country of domicile.
- (6) A copy of the report of last examination of the insurer prior to the filing of the application, certified by the public insurance supervisory official of the insurer's state or country of domicile.
- (7) If a foreign or alien insurer, the name and address of the person to whom the Secretary of State shall forward lawful process served upon him. If a domestic reciprocal insurer, the name and address of the attorney designated pursuant to paragraph (e) of subsection (2) of KRS 304.27-060 shall be deemed to be the person to whom the Secretary of State shall forward lawful process served upon him. Any judgment against a domestic reciprocal so served shall be binding upon each of the insurer's subscribers as their respective contingent liabilities.
- (8) If a foreign or alien insurer, a certificate of the public insurance supervisory official of its state or country of domicile showing that it is authorized or qualified for authority to transact in a state or country the kinds of insurance proposed to be transacted in this state.
- (9) If an alien insurer, a certificate as to deposit, if to be tendered pursuant to subsection (4) of KRS 304.3-140, and a copy of the trust deed, if any, pertaining to a deposit, certified by the trustee.
- (10) If a foreign insurer, a certificate as to deposit, if to be tendered pursuant to subsection (4) of KRS 304.3-140.
- (11) ~~If a life or health insurer, a copy of the insurer's rate book and of each form of policy currently proposed to be issued in this state, and of the form of application therefor.~~
- ~~(12)~~ If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records.
- ~~(12)~~~~(13)~~ Designation by the insurer of its officers or representatives authorized to appoint and remove its agents in this state.
- ~~(13)~~~~(14)~~ If to transact surety insurance, the names and addresses of all its attorneys in fact within this state together with the scope of authority of each attorney-in-fact.

Section 7. KRS 304.3-180 is amended to read as follows:

- (1) A certificate of authority shall continue in force as long as the insurer is entitled thereto under this code, and until suspended or revoked by the commissioner or terminated at the insurer's request; subject, however, to continuance of the certificate by the insurer each year by:
 - (a) Payment ~~on or before March 1~~ of the continuation fee provided in Subtitle 4 **by March 1, or, if paid by mail, postmarked no later than March 1**;
 - (b) Due filing by the insurer of its annual statement for the next preceding calendar year as required by KRS 304.3-240;

- (c) Payment by the insurer of premium taxes with respect to the preceding calendar year; and
 - (d) Due filing by domestic companies of quarterly statements as approved by the National Association of Insurance Commissioners.
- (2) If not so continued by the insurer, its certificate of authority shall expire at midnight on the June 30 next following the failure of the insurer to continue it in force, unless earlier revoked for failure to pay taxes as provided in KRS 304.4-040. The commissioner shall promptly notify the insurer of the occurrence of any failure resulting in impending expiration of its certificate of authority.
 - (3) The commissioner may, in his discretion, upon the insurer's request made within three (3) months after expiration, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in the expiration. Otherwise the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.
 - (4) An insurer shall not use the same accountant or partner of an accounting firm responsible for preparing the *audited financial statement for more than seven (7)* ~~report required by subsection (1) for more than four (4)~~ consecutive years.

Section 8. KRS 304.3-240 is amended to read as follows:

- (1) Each authorized insurer shall annually ~~[, before the first day of March,]~~ file with the commissioner a true statement of its financial condition, transactions, and affairs as of December 31 preceding. The statement shall be on forms prescribed by the National Association of Insurance Commissioners and shall be completed according to the instructions of the National Association of Insurance Commissioners, and shall be verified by the oaths of at least two (2) of the insurer's principal officers. The annual statement of a reciprocal insurer shall be made and verified by its attorney-in-fact. ***The annual statement shall be filed by March 1 of each year, or, if filed by mail, postmarked no later than March 1. The annual statement of a foreign or alien insurer may be executed or verified by facsimile or reproduced signature; however, the annual statement of a domestic insurer shall contain original signatures.***
- (2) ~~[The commissioner shall annually during November furnish each insurer duplicate copies of annual statement forms as next required to be filed.]~~ The statement forms shall be in general form and context as approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner.
- (3) The annual statement of an alien insurer shall relate only to its assets, transactions, and affairs in the United States unless the commissioner requires otherwise. The statement shall be verified by the insurer's United States manager or by its officers duly authorized.
- (4) The commissioner may suspend or revoke the authority of any insurer failing to file its annual and quarterly statement when due or failing so to file during any extension of time therefor which the commissioner, for good cause, may grant.
- (5) Notwithstanding the provisions of this section or any other law of this Commonwealth, an authorized insurer may, subject to the requirements of regulations adopted by the commissioner, publish financial statements or information based on financial statements

prepared on a basis which is in accordance with requirements of a competent authority and which differs from the basis of the statements which have been filed with the commissioner in compliance with this section. Such differing financial statements or information based on the financial statements shall not be made the basis for the application of any provision of this chapter not relating solely to the publication of financial information unless the provision specifically so requires.

Section 9. KRS 304.3-320 is amended to read as follows:

- (1) Foreign insurers currently admitted to do the business of life and health insurance in Kentucky and foreign insurers hereafter admitted to do the business of life and health insurance in Kentucky which are domiciled in states which have no life and health insurance guaranty association or similar guaranty fund in operation may be required by the commissioner, in order to protect Kentucky policyholders, to *furnish to the commissioner a deposit of cash or* ~~[with the custodian of insurance securities]~~ publicly-traded securities having a market value of not less than one hundred thousand dollars (\$100,000) nor more than one million dollars (\$1,000,000).
- (2) In establishing the amount of the deposit required by subsection (1) of this section for a particular insurer, the commissioner shall consider the following factors:
 - (a) The amount of Kentucky writings;
 - (b) The amount of policy reserves and claim reserves pertaining to Kentucky risks;
 - (c) The kind of insurance written in Kentucky;
 - (d) The current financial and operating test results of the insurer provided by the National Association of Insurance Commissioners under its insurance regulatory information system; and
 - (e) Any other relevant financial data.

SECTION 10. A NEW SECTION OF SUBTITLE 6 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

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

- (1) *"Accounting practices and procedures manual" means the accounting practices and procedures manual, as amended, published by the National Association of Insurance Commissioners; and*
- (2) *"SSAP" means the statements of statutory accounting principles in the accounting practices and procedures manual.*

Section 11. KRS 304.6-010 is amended to read as follows:

- (1) In any determination of the financial condition of an insurer, there shall be allowed as assets only such assets as are owned by the insurer and which consist of:
 - (a) Cash in the possession of the insurer, or in transit under its control, and including the true balance of any deposit in a solvent bank or trust company.
 - (b) Investments, securities, properties and loans acquired or held in accordance with this code and in connection therewith the following items:
 1. Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

2. Declared and unpaid dividends on stocks and shares, unless such amount has otherwise been allowed as an asset.
 3. Interest due or accrued upon a collateral loan in an amount not to exceed one (1) year's interest thereon.
 4. Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets, if such interest is in the judgment of the commissioner a collectible asset.
 5. Interest due or accrued on a mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal. **Collectible interest one hundred eighty (180) days past due on a mortgage loan in default is a nonadmitted**; ~~but in no event shall interest accrued for a period in excess of eighteen (18) months be allowed as an~~ asset.
 6. Rent due or accrued on real property if such rent is not in arrears for more than three (3) months, and rent more than three (3) months in arrears if the payment of such rent be adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral.
- (c) Premium notes, policy loans, and other policy assets and liens on policies of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the **policy reserves or cash surrender value** ~~legal reserve and other policy liabilities carried on each individual policy~~.
- (d) The net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer, corresponding to the basis on which reserves are held.
- (e) Premiums in the course of collection, other than for life insurance, not more than three (3) months past due, less commissions payable thereon. **To the extent that there is no related unearned premium, any uncollected premium balances which are over ninety (90) days due shall be nonadmitted. The uncollected agent's receivable on a policy basis which is over ninety (90) days due shall be nonadmitted regardless of any unearned premium** ~~The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States government or by any of its instrumentalities~~.
- (f) Installment premiums other than life insurance premiums to the extent of the policy reserve carried on the policy to which premiums apply. **If an installment premium is past due, the amount over ninety (90) days due plus all future installments that have been recorded on that policy shall be nonadmitted.**
- (g) **Bills receivable** ~~Notes and like written obligations not past due, taken~~ for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the policy reserve carried thereon. **Bills receivable shall be nonadmitted if either of the following conditions are present:**
1. **If an installment premium is over ninety (90) days due, the entire bill's receivable balance from that policy shall be nonadmitted; or**
 2. **If the bill's receivable balance due exceeds the policy's unearned premium, the amount in excess of the unearned premium is nonadmitted.**

- (h) The full amount of reinsurance recoverable *on paid losses and loss adjustment expense* by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under KRS 304.5-140.
- (i) *Funds held or deposited with reinsured companies, whether premiums withheld as security for unearned premium and outstanding loss reserves or advances for loss payments, are admitted assets provided they do not exceed the liabilities they secure and provided the reinsured is solvent. Any funds in excess of the liabilities, and any funds held by an insolvent reinsured, shall be nonadmitted*~~[Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty].~~
- (j) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by *the commissioner*~~[him]~~.
- (k) As to a title insurer, its title plant and equipment reasonably necessary for conduct of its abstract or title insurance business, at not to exceed the cost thereof.
- (l) *Electronic data processing equipment and operating software are admitted assets to the extent they conform to the requirements of SSAP No. 4. Electronic data processing equipment and software shall be depreciated for a period not to exceed three (3) years using methods detailed in SSAP No. 19. The aggregate value of admitted electronic data processing equipment and operating system software (net of accumulated depreciation) shall be limited to three percent (3%) of the reporting entity's capital and surplus on the statutory balance sheet for its most recently filed statement with its domiciliary state commissioner, adjusted to exclude electronic data processing equipment and operating system software, net deferred tax assets, and net positive goodwill.*
- (m) *A collateral loan or unconditional obligation for the payment of money secured by the pledge of an investment to the extent it conforms to the requirements of SSAP No. 4. The outstanding principal balance on the loan and any related accrued interest shall be recorded as an admitted asset subject to the following limitations:*
 - 1. *A collateral loan determined to be impaired shall be an admitted asset equal to the fair market value of the collateral less estimated costs to obtain and sell the collateral. The difference between the net fair value of the collateral and the amount of the collateral loan shall be written off in accordance with SSAP No. 5.*
 - 2. *A collateral loan secured by an asset that does not qualify as an investment shall be nonadmitted.*
 - 3. *A collateral loan that exceeds the fair market value of the collateral shall be an admitted asset equal to the fair market value of the collateral. The excess shall be classified as a nonadmitted asset.*
- (n) *Deferred tax assets as defined in SSAP No. 10.*
- (o) *Receivable for securities as defined in SSAP No. 21.*
- (p) *Guaranteed investment contracts as defined in SSAP No. 21.*

- (q) *Cash value of life insurance where the reporting entity is owner and beneficiary as defined in SSAP No. 21.*
 - (r) *Other amounts receivable under reinsurance contracts as defined in SSAP No. 21.*
 - (s) *State guarantee association promissory notes.*
 - ~~(t) [and mechanical machines and related equipment constituting a data processing, record keeping, or accounting system or systems if the cost of each such system, including additions thereto is at least one hundred thousand dollars (\$100,000), which cost shall be amortized in full over a period not to exceed ten (10) years. The aggregate amount invested in all such systems shall not exceed five percent (5%) of the insurer's assets.~~
 - ~~(m)] All assets [whether or not consistent with the provisions of this section,] as may be allowed pursuant to the *accounting practices and procedures manual* [annual statement form approved by the commissioner for the kinds of insurance to be reported upon therein].~~
 - ~~(u) [(n)]~~ Other assets, not inconsistent with the provisions of this section, deemed by the commissioner to be available for the payment of losses and claims, at values to be determined by *the commissioner* [him].
- (2) Admitted assets may be allowed as deductions from corresponding liabilities, and liabilities may be charged as deductions from assets, and deductions from assets may be charged as liabilities, in accordance with the form of annual statement applicable to such insurer as prescribed by the commissioner, or otherwise in his discretion. The commissioner may make official regulations prescribing the application of the provisions of this section.

Section 12. KRS 304.6-020 is amended to read as follows:

The following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

- (1) Good will, trade names, and other like intangible assets, except as expressly permitted and as prescribed by the National Association of Insurance Commissioners' accounting practices and procedures;
- (2) Advances to officers or directors (other than policy loans) whether secured or not, and advances to employees, agents and other persons on personal security only;
- (3) Stock of such insurer, owned by it, or loans secured thereby. Any such stock owned by such insurer shall be held as treasury stock and be deducted from the total issue of outstanding shares;
- (4) Furniture, fixtures, furnishings, safes, vehicles, libraries, stationery, literature and supplies.
The following assets are not excluded assets under this subsection:
 - (a) ~~[(other than)]~~ Equipment authorized under subsection (1) of KRS 304.6-010);
 - (b) ***For*** ~~[except in the case of]~~ title insurers, such materials and plants as the insurer is expressly authorized to invest in under paragraph (k) of subsection (1) of KRS 304.6-010;
 - (c) ~~[and except, in the case of an insurer,]~~ Such personal property as the insurer is permitted to hold pursuant to Subtitle 7 or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer,

other than real estate used by it for home office, branch office, and similar purposes;
and

- (d) For health reporting entities, furniture, medical equipment, fixtures, and leasehold improvements used for the direct delivery of health care services;*
- (5) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this code;
- (6) Due and accrued investment income determined to be uncollectible in accordance with SSAP No. 5;*
- (7) Due and accrued investment interest determined to be uncollectible in accordance with SSAP No. 5;*
- (8) Nonoperating system software;*
- (9) Leasehold improvements that do not meet the definition of assets set forth in SSAP No. 4;*
- (10) Deposits in suspended depositories;*
- (11) Receivables determined to be uncollectible or otherwise impaired in accordance with SSAP No. 5;*
- (12) Automobiles, airplanes, and other vehicles;*
- (13) A loan receivable and accrued interest, if collateralized by the reporting entity's own stock;*
- (14) Prepaid expenses; and*
- (15) Any other asset that does not meet the definition of an asset, or has been specifically identified as a nonadmitted asset in the accounting practices and procedures manual.*

Section 13. KRS 304.6-040 is amended to read as follows:

In any determination of the financial condition of an insurer, capital stock and liabilities to be charged against its assets shall include:

- (1) The amount of its capital stock outstanding, if any, less the amount of shares held by the insurer as treasury stock as provided in subsection (3) of KRS 304.6-020.
- (2) The amount, estimated consistent with the provisions of Subtitle 6, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expenses of adjustment or settlement thereof.
- (3) With reference to life insurance policies and annuity contracts, and disability and accidental death benefits in or supplemental thereto:
 - (a) The amount of reserves on life insurance policies and annuity contracts in force, valued according to the tables of mortality, rates of interest, and methods adopted pursuant to KRS 304.6-130 to 304.6-180, inclusive.
 - (b) Reserves for disability benefits, for both active and disabled lives required by paragraph (e) of subsection (2) of KRS 304.6-140.
 - (c) Reserves for accidental death benefits, required by paragraph (f) of subsection (2) of KRS 304.6-140.

- (d) Any additional reserves which may be required by the commissioner consistent with applicable customary and general practice in insurance accounting as set forth in regulations promulgated by the commissioner but no such additional reserve shall be required of any company solely for contingent liabilities which may arise under any agreement, filed with and approved by the commissioner, for the assumption of liability by the company growing out of the acts of its exclusive agents within the course and scope of their representation.
- (4) Reserves for health insurance required by KRS 304.6-070.
- (5) With reference to insurance other than specified in subsections (3) and (4) of this section, and other than title insurance, the amount of the policy reserves computed in accordance with Subtitle 6.
- (6) Taxes, expenses and other obligations due or accrued at the date of the statement.
- (7) *Deferred tax liabilities as defined in SSAP No. 10.*

Section 14. KRS 304.6-050 is amended to read as follows:

- (1) As to property, casualty, surety and mortgage guaranty insurance the insurer shall maintain an unearned premium reserve on all policies in force.
- (2) Except as provided in KRS 304.6-060 as to marine and transportation risks and in subsection (3) of this section the unearned premium reserve shall be computed, after deduction of applicable reinsurance in solvent insurers, at the insurer's election either:
- (a) *On a daily pro rata method basis on each item of premium;* ~~As equal to not less than fifty percent (50%) of the annual premiums in force,~~ or
- (b) On a monthly ~~or more frequent~~ pro rata basis as to all such reserves.
- (3) As to mortgage guaranty insurers, premiums on risks written for one (1) year or less must be reserved on a monthly pro rata basis.
- (4) After adopting a method for computing such reserve, an insurer shall not change methods without the approval of the insurance supervisory official of the insurer's domicile.

Section 15. KRS 304.6-090 is amended to read as follows:

For the protection of the *policyholders against loss during periods of extreme economic contraction* ~~people of this Commonwealth and for the purpose of protecting against the effect of adverse economic cycles,~~ each mortgage guaranty insurer shall *maintain a liability referred to as a statutory contingency reserve. The statutory contingency reserve shall be a separate fund, in addition to the mortgage guaranty insurer's unearned premium reserve.* ~~establish a contingency reserve which shall be maintained for one hundred eighty (180) months. To provide for this,~~ The insurer shall annually contribute fifty percent (50%) of the earned premiums *from mortgage guaranty insurance contracts to this liability, which shall be maintained for ten (10) years regardless of the coverage period for which premiums were paid.* ~~reserve. The earned premiums so reserved may be released, annually, after the specified time of one hundred eighty (180) months has elapsed. However,~~ Subject to the approval of the commissioner, *the contingency* ~~this~~ *reserve may be released in any year in which actual incurred losses exceed thirty-five percent (35%) of the corresponding earned premiums. Any reductions shall be made on a first-in, first-out basis. Changes in the reserve shall be recorded directly to unassigned funds* ~~[available only for loss payments, when the loss ratio (incurred losses to premiums earned)~~

~~exceeds twenty percent (20%). This amount so used shall reduce the next subsequent annual release to surplus from the established contingency reserve].~~

Section 16. KRS 304.6-100 is amended to read as follows:

- (1) As to casualty insurance transacted by it, each insurer shall maintain at all times reserves in an amount estimated in the aggregate to provide for payment of all losses and claims incurred, whether reported or unreported, which are unpaid and for which the insurer may be liable, and to provide for the expenses of adjustment or settlement of losses and claims. The reserves shall be computed in accordance with regulations from time to time made by the commissioner, after due notice and hearing, upon reasonable consideration of the ascertained experience and the character of such kind of business for the purpose of adequately protecting the insured and the solvency of the insurer.
- (2) Whenever the loss and loss expense experience of the insurer show that reserves, calculated in accordance with such regulations, are inadequate, the commissioner may require the insurer to maintain additional reserves.
- ~~(3) The minimum reserve requirements prescribed by the commissioner for unpaid losses and loss expenses incurred during each of the most recent three (3) years for coverages included in the lines of business described in the insurer's annual statement as workers' compensation, liability other than auto (B.I.), and auto liability (B.I.) shall not be less than the following: for workers' compensation, sixty five percent (65%) of premiums earned during each year less the amount already paid for losses and expenses incidental thereto incurred during such year; for liability other than auto (B.I.) and auto liability (B.I.), sixty percent (60%) of premiums earned during each year less the amount already paid for losses and expenses incidental thereto incurred during such year.~~
- (4) The commissioner may, by regulation, prescribe the manner and form of reporting pertinent information concerning the reserves provided for in this section.

Section 17. KRS 304.6-180 is amended to read as follows:

- (1) If in any contract year the gross premium charged by any life insurer on any policy or contract, which is subject to subsection (2) of KRS 304.6-140, is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon, but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in KRS 304.6-140 and 304.6-145. Provided that for any life insurance policy issued on or after January 1, 1986, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this section shall be applied as if the method actually used in calculating the reserve for such policy were the method described in KRS 304.6-150, ignoring the second subsection of that section. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in

accordance with KRS 304.6-150, including the second subsection of that section, and the minimum reserve calculated in accordance with this section.

- (2) *When the anticipated losses, loss adjustment expenses, commissions, and the acquisition costs, and maintenance costs exceed the recorded unearned premium reserve, and any future installment premiums on existing policies, a premium deficiency reserve shall be recognized by a property and casualty insurer by recording an additional liability for the deficiency, with a corresponding charge to operations. Commission and other acquisition costs need not be considered in the premium deficiency analysis to the extent they have previously been expensed. For purposes of determining if a premium deficiency exists, insurance contracts shall be grouped in a manner consistent with how policies are marketed, serviced, and measured. A liability shall be recognized for each grouping where a premium deficiency is indicated. Deficiencies shall not be offset by anticipated profits in other policy groupings. If a premium deficiency reserve is established, disclosure of the amount of that reserve shall be made in the financial statements. If a reporting entity utilizes anticipated investment income as a factor in the premium deficiency calculation, disclosure of this shall be made in the financial statements.*
- (3) *When the anticipated losses, loss adjustment expenses, commissions and other acquisition costs, and maintenance costs exceed the recorded unearned premium reserve, contingency reserve, and the estimated future renewal premium on existing policies, a mortgage guaranty insurer shall recognize a premium deficiency reserve by recording an additional liability for the deficiency with a corresponding charge to operations. Commissions and other acquisition costs need not be considered in the premium deficiency analysis to the extent they have been expensed. If a mortgage guaranty insurer utilizes anticipated investment income as a factor in the premium deficiency calculation, disclosure of this shall be made in the financial statements.*
- (4) *When the expected claims payments or incurred costs, claim adjustment expenses and administration costs exceed the premiums to be collected for the remainder of a contract period, an individual or group accident and health insurer or health maintenance organization shall recognize a premium deficiency reserve by recording an additional liability for the deficiency, with a corresponding charge to operations. For purposes of determining if a premium deficiency exists, contracts shall be grouped in a manner consistent with how policies are marketed, serviced, and measured. A liability shall be recognized for each grouping where a premium deficiency is indicated. Deficiencies shall not be offset by anticipated profits in other policy groupings. Such accruals shall be made for any loss contracts, even if the contract period has not yet started.*

Section 18. KRS 304.8-010 is amended to read as follows:

- (1) All deposits of assets of insurers required or permitted under this code and made in this state shall be made and maintained with the **commissioner**.~~[custodian of insurance securities of this state, hereinafter called "custodian."]~~
- (2) In addition to deposits required for an insurer's authority to transact insurance in this state, an insurer may deposit and maintain with the **commissioner**~~[custodian]~~ deposit of assets:
 - (a) Required of an insurer by the laws of other states as prerequisite for authority to transact insurance in such other states.
 - (b) Required by application of the retaliatory provision, KRS 304.3-270.

- (c) In such additional amounts as is permitted by this subtitle, or as expressly required by this code.

Section 19. KRS 304.8-020 is amended to read as follows:

- (1) All ~~such~~ deposits shall be held by the **commissioner** ~~custodian~~ in trust for the benefit and protection of all of the insurer's policyholders and creditors in the United States.
- (2) The deposit of a domestic insurer shall further be security for payment of taxes, assessments, forfeitures, fines, or other charges due and unpaid to this state or any other state in which the insurer has been authorized to transact insurance, and may be applied to **the** ~~such~~ extent as may be necessary for ~~such~~ payment.
- (3) Except, that deposits required pursuant to the retaliatory provision, KRS 304.3-270, or required of a domestic insurer pursuant to the laws of another state, may be limited to **the** ~~such~~ uses and purposes as **are** ~~is~~ consistent with **the** ~~such~~ provision or laws. But no ~~such~~ deposit so required of a domestic insurer shall be allowed in lieu of or as a credit upon any deposit required of **an** ~~such~~ insurer under this subtitle if the purpose of **the** ~~such~~ deposit so required by another state is materially inconsistent with the purpose stated in subsection (1) of this section.

Section 20. KRS 304.8-040 is amended to read as follows:

- (1) The commissioner may accept the home office real property of a domestic insurer as a part of any deposit of assets required of the insurer under this code. For **this** ~~such~~ purpose the insurer shall convey such real property by deed to the commissioner, and the deed shall be duly recorded and deposited with the **commissioner** ~~custodian~~.
- (2) Real property so deposited shall not be sold or further encumbered by the insurer except upon advance approval of the commissioner after full submission of the purposes and detail of **the** ~~any such~~ sale or encumbrance to the commissioner. The commissioner shall join in the execution of any deed or other document required to consummate **the** ~~such~~ sale or encumbrance. Upon any **the** ~~such~~ sale or encumbrance the insurer shall deposit other assets in lieu of such real property.
- (3) **This** ~~Such~~ real property shall be valued at its fair value as determined by the commissioner.

Section 21. KRS 304.8-090 is amended to read as follows:

- (1) The commissioner shall designate at least one (1) **bank** ~~but not more than five (5) banks~~ or trust **company** ~~companies~~ in each county of this state containing a city of the first class or a consolidated local government and such other banks as proposed by the insurer and approved by the commissioner **which** ~~whose~~ vaults shall be used as depositories for assets of insurers deposited under this code.
- (2) **Any expense associated with** ~~Each insurer~~ depositing assets **under this chapter** shall **be borne by the insurer**~~, at its own expense, rent space therefor in the vaults of the banks or trust companies so designated~~.

Section 22. KRS 304.8-095 is amended to read as follows:

Notwithstanding any other provision of law, the commissioner may cause any or all deposits of assets of insurers required or permitted under this code and maintained in this state to be made and maintained in trust with depositories designated pursuant to KRS 304.8-090(1) under trust agreements to which ~~such~~ depositories, insurers, and the commissioner are parties, for the purpose of this subtitle. **These** ~~Such~~ trust agreements shall provide with respect to deposits

thereunder provisions, conditions and stipulations corresponding to those applicable to other deposits under this subtitle and shall require ~~such~~ depositories to perform the same duties with respect to deposits thereunder as the **commissioner**~~custodian of insurance securities~~ is required to perform with respect to other deposits under the subtitle. Insurers who have made deposits under *these*~~such~~ trust agreements shall be relieved of all other obligations under this subtitle with respect to the assets deposited thereunder.

Section 23. KRS 304.8-100 is amended to read as follows:

As to each insurer making or having a deposit the commissioner~~and custodian~~ shall keep a complete record thereof showing:

- (1) The particular assets so deposited.
- (2) The face value, if any, of any~~such~~ asset, and the value thereof as determined by the commissioner.
- (3) Date of deposit, and place thereof.
- (4) Assets withdrawn, date thereof, value of assets so withdrawn, and the name and address of any person to whom *the*~~such~~ assets were delivered.
- (5) *All*~~Such~~ other information as the commissioner deems necessary.

Section 24. KRS 304.8-110 is amended to read as follows:

- (1) The commissioner may at any time inventory assets on deposit as to any insurer. Upon request of the insurer the commissioner shall make~~such~~ an inventory at the insurer's expense, and shall furnish the insurer a copy thereof. All inventories shall be made in the presence of the commissioner and two (2) representatives of the insurer designated for the purpose by its board of directors.
- (2) Upon request, the **commissioner**~~custodian~~ shall give to any insurer depositing assets a certificate thereof describing the assets and setting forth their par value, if any, and their value, which valuation shall be **determined by**~~subject to the approval of~~ the commissioner.

Section 25. KRS 304.8-150 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, every domestic life insurer shall, within ninety (90) days after the net cash value of each policy in force has been ascertained as required by law, deposit with the **commissioner**~~custodian of insurance securities~~ for the security and benefit of its policyholders, assets in an amount which, together with *the*~~such~~ sums as may be deposited by it with other states and governments by the requirements of their laws, shall be not less than the ascertained valuation of all policies in force less any sums that it has advanced from its legal reserve to its policyholders on the pledge to it of their policies and any accumulations thereon.
- (2) If the legal reserve or the aggregate ascertained valuation of all policies in force in any domestic life insurer equals \$20,000,000, no further deposit shall be required of the insurer so long as the legal reserve remains at or above \$20,000,000, unless the insurer elects to represent on its policies or otherwise that the legal reserve or cash value of its policies thereafter written is on deposit with this state or one or more of its designated agencies, in which event the insurer shall deposit assets as above set out in an amount equal to the ascertained valuation of all of its policies in force at the time the representation is made.

Section 26. KRS 304.8-170 is amended to read as follows:

- (1) Any~~[such]~~ required deposit shall be released, in addition to circumstances already provided for, in these instances only:
 - (a) Upon extinguishment of substantially all liabilities of the insurer for the security of which the deposit is held, by reinsurance contract or otherwise.
 - (b) If *the*~~[such]~~ deposit is no longer required under this code.
 - (c) If the deposit was made pursuant to the retaliatory provision, KRS 304.3-270, it shall be released in whole or in part when no longer so required.
 - (d) Upon proper order of a court of competent jurisdiction the deposit shall be released to the receiver, conservator, rehabilitator, or liquidator of the insurer.
- (2) No~~[such]~~ release shall be made except on application to and written order of the commissioner made upon proof satisfactory to *the commissioner*~~[him]~~ of the existence of one of *the*~~[such]~~ grounds therefor.~~[The custodian shall release the deposit upon such order of the commissioner.]~~ The commissioner shall not have any personal liability for any such release of any deposit or part thereof so ordered by *the commissioner*~~[him]~~ in good faith.
- (3) All release of deposits or any part thereof shall be made to the person then entitled thereto upon proof of right satisfactory to the commissioner.

Section 27. KRS 304.8-180 is amended to read as follows:

- (1)~~[Access shall not be had to the vaults wherein the assets are deposited, nor shall any such]~~Assets **shall not** be removed *from the bank or trust company wherein the assets are deposited*~~[therefrom]~~, except upon the written order of at least two (2) officers authorized for the purpose by the insurer's board of directors or other governing body, which order must have been approved by the commissioner.
- (2) The~~[vaults wherein assets are deposited shall be opened and]~~ assets **shall be** deposited or removed only in the joint presence of the *commissioner*~~[custodian]~~ and two (2) representatives of the insurer authorized for the purpose by the insurer's board of directors or other governing body.
- (3) Except, that~~[the vaults may be opened and]~~ assets **may be** deposited or removed under the direction and upon the order of a court of competent jurisdiction, and in the presence of the *commissioner*~~[custodian]~~.

Section 28. KRS 304.8-190 is amended to read as follows:

- (1) Insurers maintaining deposits of assets in this state under this subtitle, shall pay into the examination expense revolving fund as provided in Subtitle 2 of this chapter, moneys sufficient to pay travel,~~[compensation]~~ and other necessary expenses of the *commissioner related to the maintenance, valuation, protection, or administration of the insurer's deposit*~~[custodian of insurance securities, through the office of the commissioner of insurance]~~.
- (2) The portion of *the*~~[such]~~ expense fund to be paid by each such insurer shall be in the same approximate proportion as the amount *the*~~[such]~~ insurer had on deposit on December 31 of the preceding year bears to the total such deposits of all insurers as of December 31 of the preceding year. The commissioner shall assess each insurer for its proportionate share of *the*~~[such]~~ expense fund. The minimum charge for each insurer shall be five dollars (\$5).

Section 29. KRS 304.13-390 is amended to read as follows:

- (1) *If the state fire marshal gives notice to the Department of Insurance that any authorized insurer has failed to comply with the provisions of KRS 227.250, the commissioner may take appropriate action up to and including revoking or suspending the insurer's certificate of authority*~~[The commissioner shall ascertain as soon as practicable the annual fire loss in each municipality in the Commonwealth; obtain, make and maintain a record thereof and collect such data with respect thereto as will enable the commissioner to classify the fire losses in each municipality in the Commonwealth, the causes thereof, and the amount of premiums collected therefor for each class of risks and the amount paid thereon, in such manner as will aid in determining equitable insurance rates, methods of reducing such fire losses and reducing the insurance rates for risks in each municipality in the Commonwealth as provided in this section.~~
- (2)~~The commissioner shall compile for each municipality in Kentucky a list of the insured fire losses in excess of five hundred dollars (\$500) per loss paid in that municipality for the preceding statistical year.~~
- (3)~~The list shall include:~~
- (a) ~~The names of persons recovering insured losses;~~
 - (b) ~~The addresses or locations where the losses occurred; and~~
 - (c) ~~The amount paid by the insurance company on each loss.~~
- (4)~~The commissioner shall obtain the information to make the lists from insurance company reports of individual losses during the statistical year, either directly from such insurance companies or from such lawful rating organization or agency of which such insurance companies may be a member or subscriber.~~
- (5)~~Each municipality shall examine its list to determine the losses actually occurring in its limits and shall make a report to the fire marshal, which report shall include:~~
- (a) ~~A list of the losses that occurred within the limits of the municipality;~~
 - (b) ~~A list of the losses not occurring within the municipality; and~~
 - (c) ~~Other evidence essential to establishing the losses in the municipality. The fire marshal shall transmit a copy of each municipality's report to the commissioner.~~
- (6)~~The commissioner shall make such changes or corrections as he shall determine to be necessary in order to correct the list of insured fire losses paid in a particular municipality].~~

Section 30. KRS 304.24-300 is amended to read as follows:

- (1) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in such agreement. The agreement may provide for interest, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan, except that if public offering and sale is made of the loan securities, the insurer may pay the reasonable costs thereof approved by the commissioner.
- (2) Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any setoff; but until repaid,

financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid. *A surplus note shall be reported as surplus and not as debt only if the surplus note contains the following provisions:*

- (a) *Subordination to policyholder;*
 - (b) *Subordination to claimant and beneficiary claims;*
 - (c) *Subordination to all other classes of creditors other than surplus note holders; and*
 - (d) *Interest payments and principal repayments require prior approval of the state of domicile.*
- (3) Any such loan shall be subject to the commissioner's approval. The insurer shall in advance of the loan, file with the commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement shall be deemed approved unless within fifteen (15) days after date of such filing the insurer is notified of the commissioner's disapproval and the reasons therefor. The commissioner shall disapprove any proposed loan or agreement if he finds the loan is unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.
- (4) Any such loan or substantial portion thereof shall be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such a loan shall be made unless approved in advance by the commissioner.
- (5) This section shall not apply to other kinds of loans obtained by the insurer in ordinary course of business, nor to loans secured by pledge or mortgage of assets.

Section 31. KRS 304.24-500 is amended to read as follows:

- (1) The purpose of this section is to:
- (a) Provide a means whereby any insurer organized under the laws of any other state may become a domestic insurer;
 - (b) Provide a means for any domestic insurer to transfer its domicile to another state; and
 - (c) Provide a means for the continuation of a certificate of authority and other approvals pertaining to any foreign insurer which transfers its corporate domicile to another state by merger, consolidation, or any other lawful method.
- (2) Any insurer which is organized under the laws of any other state and is admitted to do business in this state for the purpose of writing insurance may, **upon approval of the commissioner**, become a domestic insurer by complying with all of the requirements of this chapter relating to the organization and authorization of a domestic insurer of the same type and by designating its principal place of business at a place in this state. ~~The~~~~Such~~ a domestic insurer ~~shall~~~~will~~ be entitled to like certificates of authority to transact business in this state, and shall be subject to the authority and jurisdiction of this state.
- (3) Any domestic insurer may, upon approval of the commissioner, transfer its domicile to any other state in which it is admitted to transact the business of insurance. Upon ~~the~~~~such a~~ transfer ~~the~~~~such an~~ insurer shall cease to be a domestic insurer, and shall be authorized to transact insurance business in this state if qualified as a foreign insurer. The commissioner

shall approve ~~the [any such]~~ proposed transfer unless ~~the commissioner [he]~~ shall determine ~~the [such]~~ transfer is not in the interest of the policyholders of this state.

- (4) The certificate of authority, agents' appointments and licenses, rates, and other items which the commissioner allows, in ~~the commissioner's [his]~~ discretion, which are in existence at the time any insurer authorized to transact the business of insurance in this state transfers its corporate domicile to this or any other state by merger, consolidation, or merger pursuant to KRS 271B.11-070, or any other lawful method, shall continue in full force and effect upon ~~the [such]~~ transfer if ~~the [such]~~ insurer remains duly qualified to transact the business of insurance in this state. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the insurer or its new location unless so ordered by the commissioner. Every transferring insurer shall file new policy forms with the commissioner on or before the effective date of the transfer but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the commissioner. However, every transferring insurer shall notify the commissioner in writing of the details of the proposed transfer and shall file promptly appropriate amendments to corporate documents required to be filed with the commissioner.
- (5) (a) *Any insurer transferring its domicile in accordance with subsections (2) or (3) of this section shall file an application for redomestication and transfer of domicile with the commissioner. This transfer of domicile must be approved by order of the commissioner. If the commissioner does not approve the transfer of domicile, the applicant insurer may request a hearing in accordance with KRS 304.2-310(2)(b).*
- (b) *An applicant filing to become a domestic insurer in accordance with subsection (2) of this section shall include a notice of transfer of domicile to the Secretary of State and the articles, amended articles, or restated articles of incorporation in compliance with KRS 271B.2-020.*
- (c) *An application filed by a domestic insurer to transfer its domicile to another state in accordance with subsection (3) of this section shall include a copy of the order approving the redomestication issued by the new state of domicile.*

Section 32. KRS 304.27-070 is amended to read as follows:

- (1) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.
- (2) The commissioner may refuse, suspend or revoke the certificate of authority, in addition to other grounds therefor, *including those provided in Subtitles 2 and 3 of this chapter*, for failure of the attorney to comply with any applicable provision of this code.

Section 33. KRS 304.28-070 is amended to read as follows:

Action on any policy or contract of insurance made by the attorney for the underwriters may be brought against the attorney or against the attorney and the underwriters or any of them. In ~~an [such]~~ action, summons and process shall be served on either the *Secretary of State as provided in KRS 304.3-230*~~[commissioner]~~ or on the attorney and when so served shall have the same force and effect as if served on the attorney and on each underwriter personally. A judgment in any such action against the attorney or against any of the underwriters shall be binding upon and be a judgment against each and all of the underwriters as their several liabilities may appear in the contract of insurance on which the action is brought.

Section 34. KRS 304.29-281 is amended to read as follows:

Societies shall be subject to the provisions of KRS 304.2-210, 304.2-220, 304.2-230, 304.2-240, 304.2-250, 304.2-260, 304.2-270, 304.2-280, 304.2-290, 304.2-300, and Subtitle 2 of this chapter for determining financial condition, market conduct, and business practices~~[(1) The commissioner, or any person he may appoint, may examine any domestic, foreign or alien society transacting or applying for admission to transact business in this state in the same manner as authorized for examination of domestic, foreign or alien insurers. Requirements of notice and an opportunity to respond before findings are made public, as provided in the laws regulating insurers, shall also be applicable to the examination of societies.~~

~~(2) The expense of each examination and of each valuation, including compensation and actual expense of examiners shall be paid by the society examined or whose certificates are valued, upon statements furnished by the commissioner.~~

Section 35. KRS 304.30-060 is amended to read as follows:

(1) Every licensee shall maintain records of its premium finance transactions and the ~~{said }~~records shall be open to examination and investigation by the commissioner.~~{The commissioner may at any time require any licensee to bring such records as he may direct to the commissioner's office for examination. Any examination or any part of the examination of any organization subject to the provisions of Subtitle 30 of this chapter shall be made by the commissioner or by examiners designated by him and shall be at the expense of the organization examined as specified in Subtitle 2 of this chapter.}~~

(2) Every licensee shall preserve its records of ~~{such }~~premium finance transactions, including cards used in a card system, for at least **five (5)**~~{three (3)}~~ years after making the final entry in respect to any premium finance agreement. The preservation of records in photographic form shall constitute compliance with this requirement.

(3) ***For the purpose of determining market conduct, business practices, financial condition, ability to fulfill and manner of fulfillment of its obligations, the nature of its operations and compliance with law, the commissioner shall examine the affairs, transactions, accounts, records and assets of each licensed premium finance company as often as reasonably necessary.***

(4) ***Premium finance companies shall be subject to the provisions of KRS 304.2-220, 304.2-230, 304.2-240, 304.2-250, 304.2-260, 304.2-270, 304.2-280, 304.2-290, 304.2-300, and Subtitle 2 of this chapter for determining financial condition, market conduct, and business practices.***

SECTION 36. A NEW SECTION OF SUBTITLE 32 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) ***If the certificate of authority of a corporation is suspended, the corporation shall not, during the period of suspension, enroll any additional subscribers or members except newborn children or other newly acquired dependents of existing subscribers or members, and shall not engage in any advertising or solicitation whatsoever.***

(2) ***If the certificate of authority of a corporation is revoked, the corporation shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the corporation. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit further***

operation of the corporation as the commissioner may find to be in the best interest of subscribers or members, to the end that subscribers or members will be afforded the greatest practical opportunity to obtain continuing coverage. If the commissioner permits further operation, the corporation shall continue to collect the dues and fees required of subscribers or members.

Section 37. KRS 304.32-030 is amended to read as follows:

- (1) Any nonprofit corporation organized under the laws of this state for the purpose of establishing, maintaining, and operating a nonprofit plan, whereby hospital care, medical-surgical care, dental care, and other health services are made available to persons who become subscribers to such plan or plans under a contract with the corporation, shall be subject to and be governed by the provisions of this subtitle, and shall be exempt from all other provisions of this code, except as ~~herein~~ expressly provided in *this subtitle* ~~[KRS 304.32-270]~~, and no insurance law hereafter enacted shall be deemed to apply to ~~these~~ ~~[such]~~ corporations unless they be specifically referred to therein.
- (2) Except as provided in KRS 304.32-300 to 304.32-320, the provisions of this subtitle shall not apply to any employer's self-insured health plan or service established and maintained solely for its members and their immediate families, or to any self-insured health plan or service established, maintained, and insured jointly by any employer and any labor organization or organizations.

Section 38. KRS 304.32-140 is amended to read as follows:

- (1) No corporation subject to provisions of this subtitle shall be permitted to do any business in this state unless, in addition to the other requirements of law, it shall have and maintain liquid reserves in an amount not less than five percent (5%) of the corporation's subscription income collected in the preceding year not exceeding two million dollars (\$2,000,000), plus two and one-half percent (2.5%) of income exceeding two million dollars (\$2,000,000) but not exceeding ten million dollars (\$10,000,000), plus one percent (1%) of income exceeding ten million dollars (\$10,000,000); but in no event shall reserves be less than five hundred thousand dollars (\$500,000). All corporations subject to the provisions of this subtitle shall place on deposit with the *commissioner* ~~[custodian of insurance securities]~~ a guarantee fund of cash or approved securities in an amount determined by this formula, but not less than five hundred thousand dollars (\$500,000) nor more than one million five hundred thousand dollars (\$1,500,000). Any amount of liquid reserves required by this subsection in excess of one million five hundred thousand dollars (\$1,500,000) shall be maintained by the corporation at all times, but shall not be required to be placed on deposit, provided that ~~the~~ ~~[such a]~~ corporation shall be allowed a period of five (5) years after July 15, 1982, to establish the liquid reserves and deposit the guarantee fund with the commissioner. A corporation subject to the provisions of this subtitle shall at all times comply with the risk-based capital requirements as established in administrative regulations promulgated by the commissioner.
- (2) The cash or securities representing the guarantee fund required by this section shall be acceptable to the *commissioner* ~~[custodian of insurance securities]~~ and ~~the~~ ~~[such]~~ securities shall be negotiable securities.
- (3) The investments of a corporation subject to the provisions of this subtitle shall be the same kind of investments which life insurance companies are authorized to have.

Section 39. KRS 304.32-210 is amended to read as follows:

- (1) *Nonprofit hospital, medical-surgical, dental, and health service corporations shall be subject to the provisions of KRS 304.2-210, 304.2-220, 304.2-230, 304.2-240, 304.2-250, 304.2-260, 304.2-270, 304.2-280, 304.2-290, 304.2-300, and Subtitle 2 of this chapter for determining financial condition, market conduct, and business practice*~~[The commissioner, or any person authorized by him, shall have power to examine the financial condition, affairs, and management of any corporation subject to the provisions of this subtitle. He shall have free access to all the books, papers, and documents relating to the business of the corporation, and may summon witnesses and administer oaths and affirmations in the examination of the directors, trustees, officers, agents, representatives, or employees of any corporation, or any other person in relation to its affairs, transactions, and conditions. The commissioner shall make an examination of each corporation subject to the provisions of this subtitle at least once every four (4) years].~~
- (2) Each corporation subject to the provisions of this subtitle may own and invest or have invested any of its funds in its principal office building not to exceed an amount which would reduce its surplus, exclusive of the investment, below \$50,000, unless approved by the commissioner.

Section 40. KRS 304.32-270 is amended to read as follows:

Nonprofit hospital, medical-surgical, dental, and health service corporations shall be subject to the provisions of this subtitle, and to the following provisions of this code, to the extent applicable and not in conflict with the express provisions of this subtitle:

- (1) Subtitle 1 -- Scope -- General Definitions and Provisions;
- (2) Subtitle 2 -- Insurance Commissioner;
- (3) Subtitle 7 -- Investments;
- (4) Subtitle 8 -- Administration of Deposits;
- (5) Subtitle 12 -- Trade Practices and Frauds;
- (6) Subtitle 25 -- Continuity of Management;
- (7) Subtitle 33 -- Insurers Rehabilitation and Liquidation;
- (8) Subtitle 18 -- KRS 304.18-110, 304.18-120 -- Group Conversion and KRS 304.18-045;
- (9) Subtitle 4 -- Fees and Taxes;
- (10) Subtitle 99 -- Penalties;
- (11) Subtitle 14 -- KRS 304.14-500 to 304.14-560;
- (12) Subtitle 17A -- Health Benefit Plans;
- (13) Subtitle 17B -- Kentucky Access;~~[and]~~
- (14) Subtitle 9 -- Agents, Consultants, Solicitors and Adjusters; *and*
- (15) *Subtitle 3 -- Authorization of Insurers and General Requirements.*

Section 41. KRS 304.33-110 is amended to read as follows:

- (1) Whenever the commissioner has reasonable cause to believe, and determines~~[, after a hearing held as prescribed in subsection (2) of this section,]~~ that any insurer has committed or engaged in, or is committing or engaging in or is about to commit or engage in any act, practice, or transaction that would subject it to formal delinquency proceedings under this

subtitle, he may make and serve upon the insurer and any other persons involved an emergency order in accordance with KRS 13B.125, other than seizure orders under KRS 304.33-120, as is reasonably necessary to correct, eliminate, or remedy the conduct, condition, or ground. If the emergency order is for a restoration of or addition to capital, it shall be carried out as provided in KRS 304.24-350.

- (2) The commissioner may apply for and any court of general jurisdiction may grant, restraining orders, temporary and permanent injunctions, and other orders as are deemed necessary to enforce an emergency order.

Section 42. KRS 304.38-120 is amended to read as follows:

Health maintenance organizations shall be subject to the provisions of KRS 304.2-210, 304.2-220, 304.2-230, 304.2-240, 304.2-250, 304.2-260, 304.2-270, 304.2-280, 304.2-290, 304.2-300, and Subtitle 2 of this chapter for determining financial condition, market conduct, and business practices.~~(1) The commissioner, or any person authorized by him, shall have power to examine the financial condition, affairs, and management of any organization subject to the provisions of this subtitle. He shall have free access to all the books, papers, and documents relating to the business of the organization, and may summon witnesses and administer oaths and affirmations in the examination of the directors, trustees, officers, agents, representatives, or employees of any organization, or any other person in relation to its affairs, transactions, and conditions. The commissioner shall make an examination of each organization subject to the provisions of this subtitle at least once every three (3) years.~~

- ~~(2) Any examination, or any part of the examination of any organization subject to the provisions of this subtitle, shall be made by the commissioner or by examiners designated by him and shall be at the expense of the organization examined as specified in Subtitle 2 of this chapter.~~

Section 43. KRS 304.38-130 is amended to read as follows:

- (1) The commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization under this subtitle if ***the commissioner finds that any of the conditions exist for which the commissioner could suspend or revoke a certificate of authority as provided in Subtitles 2 and 3 of this chapter or if the commissioner***~~he~~ finds that any of the following conditions exist:
- (a) The health maintenance organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under KRS 304.38-040, unless amendments to such submissions have been filed with and approved by the commissioner;
 - (b) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which do not comply with the requirements of KRS 304.38-050 ***or Subtitle 17A of this chapter***;
 - (c) The health maintenance organization does not provide or arrange for health care services as approved by the commissioner in KRS 304.38-050(1)(a);
 - (d) The certificate of need and licensure board certifies to the commissioner that the health maintenance organization fails to meet the requirements of the board or that the health maintenance organization is unable to fulfill its obligations to furnish health care services;

- (e) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;
 - (f) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;
 - (g) The continued operation of the health maintenance organization would be hazardous to its enrollees;
 - (h) The health maintenance organization has otherwise failed to substantially comply with this subtitle.
- (2) ~~If~~~~A certificate of authority shall be suspended or revoked only after compliance with the hearing procedures set out in Subtitle 2.~~
- ~~(3) When~~ the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of ~~the~~~~[such]~~ suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.
- ~~(3)~~~~(4)~~ ~~If~~~~When~~ the certificate of authority of a health maintenance organization is revoked, ~~the~~~~[such]~~ organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of ~~the~~~~[such]~~ organization. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit ~~the~~~~[such]~~ further operation of the organization as ~~the commissioner~~~~[he]~~ may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage. If the commissioner permits such further operation the health maintenance organization will continue to collect the periodic prepayments required of enrollees.

Section 44. KRS 304.38-170 is amended to read as follows:

- (1) All applications, filings, and reports required under this subtitle shall be treated as public documents, except as otherwise provided for herein.
- (2) ~~The~~~~[insurance law and the]~~ nonprofit hospital, medical-surgical, dental, and health service corporation law of this state shall not be applicable to any health maintenance organization granted a certificate of authority under this subtitle. This provision does not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this subtitle.

Section 45. KRS 136.410 is amended to read as follows:

~~(1)~~ Every bail bondsman doing business in this Commonwealth shall, on or before the first day of March of each year, return to the Revenue Cabinet a statement of all amounts paid to him or his representatives, as premiums for bail bonds written in the courts of this Commonwealth during the preceding calendar year, or since the last returns were made, and shall at the same time pay a tax of two dollars (\$2) upon each one hundred dollars (\$100) of such amounts paid to the bail bondsman or his representatives. Amounts received for reimbursement for expenses or court costs are not to be considered as premiums for the purposes of this section.

~~[(2) In addition to the requirements of subsection (1) of this section, a copy of the statement of all amounts paid to the bail bondsman or his representatives, whether designated as premiums or otherwise, shall be filed with the commissioner of insurance at the same time the bail bondsman files his report of assets and liabilities as required by KRS 304.34-050(1).]~~

Section 46. KRS 304.2-195 is amended to read as follows:

- (1) The commissioner may enter into interstate compacts for issuing certificates of authority to insurers if the commissioner determines that:
 - (a) Each state participating in the compact has requirements for issuing certificates of authority that provide protections substantially similar to or greater than the requirements of this subtitle; or
 - (b) The interstate compact contains requirements for issuing certificates of authority that provide protections substantially similar to or greater than the requirements of this subtitle.
- (2) In lieu of the documents required in KRS 304.3-150~~[(1) to (14)]~~ to be filed with an application for certificate of authority, the commissioner may accept documentation in accordance with the terms of the interstate compact.
- (3) The commissioner may issue certificates of authority to insurers in accordance with the terms of the interstate compact.

Section 47. KRS 431.510 is amended to read as follows:

- (1) It shall be unlawful for any person to engage in the business of bail bondsman as defined in *subsection (3) of this section*~~[KRS 304.34-010(1)]~~, or to otherwise for compensation or other consideration:
 - (a) Furnish bail or funds or property to serve as bail; or
 - (b) Make bonds or enter into undertakings as surety;

for the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine, imprisonment or death, before any of the courts of this state, including city courts, or to secure the payment of fines imposed and of costs assessed by such courts upon a final disposition.
- (2) Nothing contained herein shall serve to release any bail bondsman heretofore licensed by this state from the obligation of undischarged bail bond liability existing on June 19, 1976.
- (3) ***"Bail bondsman" shall mean any person, partnership or corporation engaged for profit in the business of furnishing bail, making bonds or entering into undertakings, as surety, for the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine, imprisonment, or death, before any of the courts of this state, or securing the payment of fines imposed and of costs assessed by such courts upon final disposition thereof, and the business of a bail bondsman shall be limited to the acts, transactions and undertakings described in this subsection and to no other***~~[Within thirty (30) days from June 19, 1976, every bail bondsman heretofore licensed under Chapter 304, Subtitle 34, shall furnish to the commissioner of the Department of Insurance a certified copy of his daily bond register required by KRS 304.34-070, and the commissioner shall retain the securities of each bail bondsman deposited with the custodian of insurance securities until all undertakings shall have been paid and satisfied in full].~~

- (4) KRS 431.510 to 431.550 shall not be construed to limit or repeal KRS 431.021 or to prevent licensed insurers providing security required by Subtitle 39 of KRS Chapter 304 and nonprofit associations from posting or causing to be posted by licensed insurers security or acting as surety for their insureds or members for an offense arising from the operation of a motor vehicle, provided that such posting of security or acting as surety is merely incidental to the terms and conditions of an insurance contract or a membership agreement and provided further that no separate premium or charge therefor is required from the insureds or members.

Section 48. The following KRS sections are repealed:

- 304.8-060 Custodian of insurance securities.
- 304.8-070 Custodian's duties, bond.
- 304.13-043 Hearings on insurance for political subdivisions.
- 304.32-220 Examination expense.
- 304.32-230 Hearings -- Appeal.
- 304.34-010 Definitions for KRS 304.34-020 to 304.34-140.
- 304.34-020 Commissioner's power to regulate and enforce -- Application for license.
- 304.34-030 Bail bondsman's license required.
- 304.34-040 Security required of bondsmen.
- 304.34-042 Return of securities deposited by bail bondsman.
- 304.34-045 Filing of rate schedules required -- Premiums not to exceed approved rates.
- 304.34-050 Actions required of licensed bondsmen.
- 304.34-060 Affidavit as to consideration for bail bond.
- 304.34-070 Records required of bondsmen.
- 304.34-075 Semiannual reports by bondsmen -- Contents.
- 304.34-080 Actions prohibited to bondsmen -- Persons prohibited from being bondsmen.
- 304.34-090 Causes for failure to renew, suspension, or revocation of license.
- 304.34-100 Procedure on failure to renew, suspension, or revocation of license.
- 304.34-110 Provisions as to suspension or revocation.
- 304.34-120 Action on bondsman's license involves other insurance licenses.
- 304.34-130 Administrative penalties.
- 304.34-140 Permissible city ordinances.
- 304.34-160 Commissioner to notify clerks of licensed bondsmen's names, suspensions, revocations, reinstatements -- Clerk's reports.
- 304.99-030 Penalties for violation of bail bondsman licensing law.

Approved April 1, 2004