

CHAPTER 31

(HB 334)

AN ACT relating to insurance producers.

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

➔Section 1. KRS 304.9-350 is amended to read as follows:

- (1) A consultant who is also licensed as an agent shall not, directly or indirectly, receive or share in both a fee and other compensation paid, directly or indirectly, from an insured or any insurer with respect to any insurance or annuity contract procured, renewed, continued, modified, terminated, or otherwise disposed of pursuant to any recommendation given or transaction engaged in by the licensee under this license or any license issued under this code~~]; but this subsection shall not preclude any consultant or agent from receiving or sharing in both a fee and other compensation for services rendered in connection with the administration of a pension, profit-sharing, group life insurance, group health insurance, or deferred compensation plan].~~
- (2)
 - (a) If the licensee has received or is to receive any fee, commission, or compensation from the insured or proposed insured, or from any other person other than the insurer, directly or indirectly, with respect to any insurance transaction or proposed insurance transaction, or with respect to any insurance or annuity contract existing or proposed, it shall conclusively be presumed that the licensee was acting as a consultant with respect to such transaction or contract.
 - (b) *An individual or business entity dually licensed as a consultant and an agent shall not sell, solicit, or negotiate insurance, or otherwise act as an agent, either directly or indirectly, with respect to the insurance risk of the insured or prospective insured that was the subject of a written consulting contract required by subsection (4) of this section:*
 1. *During the term of the written consulting contract; or*
 2. *Within twelve (12) months after the expiration of the consulting contract, but no less than twenty-four (24) months from the inception of the contract.*
 - (c) *An agent who has a financial or business ownership interest or affiliation with the consultant acting as such pursuant to a written consulting contract required by subsection (4) of this section shall not sell, solicit, or negotiate insurance, either directly or indirectly, with respect to the insurance risk of the insured or prospective insured that was the subject of a consulting contract:*
 1. *During the term of the written consulting contract; or*
 2. *Within twelve (12) months after the expiration of the consulting contract, but no less than twenty-four (24) months from the inception of the contract.*
 - (d) *Consulting fees paid to a consultant pursuant to a written contract in compliance with subsection (4) of this section may be shared between a business entity licensed as a consultant and an individual who is licensed as a consultant and is an owner, officer, partner, member, or employee of the business entity.*
- (3) No person licensed as a consultant under this section may receive any fee, commission or thing of value for examining, appraising, reviewing or evaluating any insurance policy, bond, annuity or pension or profit-sharing contract, plan or program or for making recommendation or giving advice with regard to any of the above, unless such compensation is based upon a prior written *contract as provided in subsection (4) of this section*~~agreement signed by the party to be charged and specifying or clearly defining the amount or extent of such compensation and the services to be rendered. A copy of every such agreement shall be retained by the licensee for not less than five (5) years after such services have been fully performed].~~
- (4) *Prior to the provision of consultant's services, a person licensed as a consultant under this section shall disclose the following in a written contract signed by*~~the agreement to~~ *the party to be charged:*
 - (a) *The services to be provided by the consultant to the insured and prospective insured;*
 - (b) *The beginning and ending date of the agreement;*
 - (c) *Any insurance to which the contract for consultant's services applies;*

- (d) *The arrangement for compensation of the consultant, whether by a flat rate, hourly rate, or otherwise;*
- (e) *Whether the consultant is dually licensed as an agent; and*
- (f) *Whether the consultant has a financial or business ownership interest in or affiliation with, or controls in whole or in part, any business entity or insurer* ~~[whether he owns an interest in an insurance agency].~~

A copy of every contract shall be retained by the consultant for not less than five (5) years after expiration of the contract.

- (5) No person licensed as a consultant may receive any compensation, direct or indirect, as a result of:
 - (a) The sale of insurance or annuities to; or
 - (b) The use of securities or trusts in connection with pensions for any person to whom any such licensee has performed any related consulting service for which he has received a fee or contracted to receive a fee within the preceding twelve (12) months unless such compensation is provided for in the *written contract* ~~[agreement]~~ required *by subsection (4) of this section.*
- (6) No person licensed as an insurance consultant under this section may be an executive in, or employee of, or own stock which gives him a majority interest, direct or indirect, in any authorized insurer. No consultant may recommend or encourage the purchase of insurance, annuities, or securities from any authorized insurer in which any member of his immediate family holds an executive position or holds a majority interest.
- (7) *A person dually licensed as a consultant and an agent shall not act as both a consultant and an agent with regards to any risk which is the subject of a contract required by subsection (4) of this section.*
- (8) *Nothing in this section shall prohibit an agent who holds some form of formal financial planning certification or designation recognized in administrative regulation promulgated by the office from receiving a fee for services provided under that certification or designation and from receiving a commission for the sale, solicitation, or negotiation of life insurance or annuities if:*
 - (a) *Prior to providing financial planning services, the agent discloses the following in a written contract signed by the party to be charged:*
 - 1. *The financial planning services for which the fee is to be charged;*
 - 2. *The amount of the fee to be charged, including a description of how the fee will be determined or calculated; and*
 - 3. *That the party to be charged is under no obligation to purchase any insurance product through the agent; and*
 - (b) *Prior to the execution of the written agreement provided for in paragraph (a) of this subsection, or solicitation of the sale of a product or service, the agent discloses that:*
 - 1. *He or she is an agent; and*
 - 2. *A commission for the sale, solicitation, or negotiation of insurance will be received in addition to a fee for financial planning, if applicable.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 304.11-020 TO 304.11-050 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, unless the context requires otherwise:*
 - (a) 1. *"Agent" means an agent as defined in KRS 304.9-020;*
 - 2. *"Agent" does not include the following:*
 - a. *A managing general agent;*
 - b. *A surplus lines broker;*
 - c. *A licensed insurance agent who is employed by an insurer; or*

- d. *An exclusive agent under contract with one (1) insurer or a group of affiliated insurers who receives his sole compensation from the insurer;*
- (b) *"Client" means a person that purchases insurance covering the business operations and exposures to loss of that person, and that has entered into an agreement with an agent pursuant to a written disclosure agreement as provided in subsection (2) of this section, and:*
1. *For the purpose of health insurance as defined in KRS 304.5-040, life insurance as defined in KRS 304.5-020, but only as it relates to group life contracts, and ancillary employee benefits, the person meets or exceeds at least one (1) of the following measures from subdivisions a. and b. of this subparagraph and one (1) from subdivisions c. and d. of this subparagraph for the size of the business for the most recent fiscal year end closed:*
 - a. *Total assets of the business of at least twenty-five million dollars (\$25,000,000); or*
 - b. *Total sales or revenue of at least twenty-five million dollars (\$25,000,000) per year; and*
 - c. *Total number of eligible employees of at least one hundred (100); or*
 - d. *Annual health and employee benefits premiums of at least five hundred thousand dollars (\$500,000);*
 2. *A person whose health benefit plan is procured through an employer-organized association as defined in KRS 304.17A-005;*
 3. *For the purposes of property insurance as defined in KRS 304.5-050 and casualty insurance as defined in KRS 304.5-070, the person meets or exceeds at least one (1) of the following measures from subdivisions a. and b. of this subparagraph and one (1) from subdivisions c. and d. of this subparagraph for the size of the business for the most recent fiscal year end closed:*
 - a. *Total assets of the business of at least twenty-five million dollars (\$25,000,000); or*
 - b. *Total sales or revenue of at least twenty-five million dollars (\$25,000,000) per year; and*
 - c. *Total number of eligible employees of at least one hundred (100); or*
 - d. *Annual property and casualty policy premiums of at least four hundred thousand dollars (\$400,000); or*
 4. *A person purchasing an unbundled insurance program either with fixed costs exceeding one hundred thousand dollars (\$100,000) or with a deductible relative to any one (1) line of coverage of at least one hundred thousand dollars (\$100,000);*
- (c) *"Compensation" means any commissions or payments received by an agent from an insurer or a client for the sale of insurance or any other service rendered on behalf of the client;*
- (d) *"Written disclosure agreement" means a written document signed by an agent and a client that describes the compensation arrangement agreed to between the agent and the insurer or the client, the method of payment of the compensation, and the services to be provided for the compensation, and that otherwise complies with this section;*
- (e) *"Service" means any assistance or programs provided by the agent to the client that is intended to reduce the future cost of insurance of the client or the probability or severity of loss and means any assistance or programs designed to assist in the efficient administration of the client's insurance program or to assist the client in complying with any state or federal law; and*
- (f) *"Unbundled insurance program" means a large account where the insurer provides the insurance coverage and related underwriting services for the insured, then the insured obtains claim adjustment services from another entity engaged in the business of providing such services and not from the insurer itself.*
- (2) *An agent may receive from an insurer or client, compensation in any amount agreed to by the agent and the insurer or client for placement of insurance and for a service rendered on behalf of the client if, prior to the placement of the insurance, the provision of a service as a result of the placement, or for the provision*

of any other service, the agent and the client enter into a written disclosure agreement. A disclosure agreement shall:

- (a) *Include a description of the services to be provided pursuant to the agreement, specify if any policy or service is exempt from the agreement, and specify the compensation to be received by the agent from the insurer or client;*
 - (b) *Be signed by the client prior to the placement of insurance or provision of services; and*
 - (c) *Be retained by the agent for a period of five (5) years from the date the agreement expires or is otherwise terminated.*
- (3) *The agent shall verify, prior to the sale, solicitation, or negotiation with the client, that the person qualifies as a client under subsection (1)(b) of this section. The agent shall retain sufficient documentation in the agent's files to show the client meets the qualification criteria in subsection (1)(b) of this section.*
- (4) *An agent, when operating under a written disclosure agreement with a client under this section, may:*
- (a) *Use an authorized property and casualty insurer;*
 - (b) *Use an unauthorized property and casualty insurer if the business is exported in accordance with Subtitle 10 of this chapter; and*
 - (c) *Use only an authorized life, health, or workers' compensation insurer.*
- (5) (a) *Any insurer writing business in accordance with this section shall comply with applicable rate and form filing requirements.*
- (b) *Notwithstanding applicable rate and form filing requirements, an agent placing business for a client may provide for alternative compensation in a written disclosure agreement as provided in subsection (2) of this section.*
- (6) *This section shall not apply to personal lines of insurance issued for personal or family protection to a person.*

➔Section 3. KRS 304.12-100 is amended to read as follows:

Nothing in KRS 304.12-080, ~~and~~ 304.12-090, **or 304.12-110** shall be construed as prohibiting:

- (1) Payment of lawfully earned commission or other lawful compensation to duly licensed insurance producers as defined in KRS 304.9-020(7) *or compensation disclosed in a written disclosure agreement as described in Section 2 of this Act;*
- (2) Distribution by a participating insurer to its participating policyholders of dividends, savings, or the unused or unabsorbed portion of premiums and premium deposits;
- (3) Furnishing of information, advice, *programs*, or services *that are intended to reduce the future cost of insurance of the policyholder or the probability or severity of loss and assist in the efficient administration and management of the policyholder's insurance program or to assist the client in complying with any state or federal law. Such services shall include but are not limited to providing software to administer an insured's employee benefits or risk management programs, employee wellness programs, risk management services, loss control services, workers' compensation analysis forecasting, or any other service designed to assist in the efficient administration of a policyholder's insurance program*~~for the purpose of reducing the loss or liability to loss under a policy~~;
- (4) Life insurers from paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, if such bonus or abatement is fair and equitable to all policyholders and for the best interests of the insurer and its policyholders;
- (5) In the case of insurance policies issued on the debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the savings in collection expense or making allowance to policyholders who make premium payments at less frequent intervals than required; or

- (6) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of any policy year of insurance thereunder, which may be made retroactive only for such policy year.

➔Section 4. KRS 304.99-025 is amended to read as follows:

If any consultant or agent is found by the executive director, after a hearing, to be in violation of Section 1 of this Act, the executive director may, in addition to any applicable suspension, revocation, or refusal to continue the consultant's or agent's license, impose a fine in the amount of the consultant's or agent's fees or commissions associated with the sale of the product which is the subject of the violation of KRS 304.9 350 shall, upon conviction, be punishable by a fine of not more than five thousand dollars (\$5,000), or by imprisonment up to one (1) year, or by both.

Signed by Governor April 9, 2008.