

## CHAPTER 152

## (HB 590)

AN ACT relating to insurance.

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

➔Section 1. KRS 304.2-210 is amended to read as follows:

- (1) ***As used in KRS 304.2-210 to 304.2-300, unless the context requires otherwise, "examination workpaper" means a written or recorded document, note, memorandum, critique, comment, recommendation, or other information copied, established, created, or retained by the executive director or his designee for the purpose of conducting an examination or drafting an examination report.***
- (2) For the purpose of determining financial condition, ability to fulfill and manner of fulfillment of its obligations, the nature of its operations, and compliance with law, the executive director shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer as often as reasonably necessary. He shall so examine each domestic insurer not less frequently than every three (3) years. Examination of a reciprocal insurer may include examination of its attorney-in-fact as to its transactions relating to the insurer. Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States, except as the executive director otherwise requires.
- ~~(3)~~~~(2)~~ ***In scheduling and determining the nature, scope, and frequency of the examinations, the executive director shall consider the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the Examiner's Handbook adopted by the National Association of Insurance Commissioners.***
- (4) ***For purposes of completing an examination of an insurer, the executive director may examine or investigate any person, or the business of any person, in so far as the examination or investigation is, in the sole discretion of the executive director, necessary and material to the examination of the insurer.***
- (5) The executive director shall in like manner examine each insurer applying for an initial certificate of authority to transact insurance in this state.
- ~~(6)~~~~(3)~~ In lieu of making his own examination, the executive director may, in his discretion, accept a full report of the most recently completed examination of a foreign, or alien, insurer, certified to by the insurance supervisory official of another state. ***Reports shall only be accepted if:***
  - (a) ***The insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or***
  - (b) ***The examination is performed under the supervision of an accredited insurance department or with the participation of one (1) or more examiners who are employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.***
- ~~(7)~~~~(4)~~ As far as practical, the examination of a foreign or alien insurer shall be made in cooperation with the insurance supervisory officers of other states in which the insurer transacts business, and for the purpose thereof, the executive director may participate in joint examinations of insurers or be represented in an examination by an examiner of another state.

➔Section 2. KRS 304.2-230 is amended to read as follows:

- (1) Whenever the executive director determines to examine the affairs of any person, he shall designate one or more examiners and instruct them as to the scope of the examination. The examiner shall, upon demand, exhibit his official credentials to the person under examination. ***In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The executive director may also employ other guidelines or procedures as the executive director deems appropriate.***
- (2) (a) ***An examiner may not be appointed by the executive director if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary***

*interest in any person subject to examination. This subsection shall not be construed to automatically preclude an examiner from being:*

1. *A policyholder or claimant under an insurance policy;*
2. *A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;*
3. *An investment owner in shares of regulated diversified investment companies; or*
4. *A settler or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.*

*(b) Notwithstanding the requirements of paragraph (a) of this subsection, the executive director may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions even though these persons may from time to time be similarly employed or retained by persons subject to examination.*

*(3) Any person performing an examination of an insurer on behalf of, and as called by, the executive director shall have official immunity and shall be immune from suit and liability, both personally and in their official capacities, for any claim for damage to, or loss of property, or personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the examiner or any assistant or contractor arising out of, or by reason of, their duties or employment. Nothing in this subsection shall be construed to hold the examiner or any assistant or contractor immune from suit and liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the examiner, any assistant, or contractor.*

*(4) The executive director shall conduct such examination in an expeditious, fair and impartial manner.*

*(5) Upon any such examination the executive director, or the examiner if specifically so authorized in writing by the executive director, shall have power to **issue subpoenas**, administer oaths, and to examine under oath any individual as to any matter relevant to the affairs under examination or relevant to the examination.*

*(6) Every person being examined, its officers, attorneys, employees, agents and representatives shall make freely available to the executive director or his examiners the accounts, records, documents, files, information, assets and matters of such person in his possession or control relating to the subject of the examination and shall facilitate the examination.*

*(7) If the executive director or examiner finds any accounts or records to be inadequate, or inadequately kept or posted, he may employ experts to reconstruct, rewrite, post or balance them at the expense of the person being examined if such person has failed to maintain, complete or correct such records or accounting after the executive director or examiner has given him written notice and a reasonable opportunity to do so.*

*(6) Neither the executive director nor any examiner shall remove any record, account, document, file or other property of the person being examined from the offices or place of such person except with the written consent of such person in advance of such removal or pursuant to an order of court duly obtained. This provision shall not be deemed to affect the making and removal of copies or abstracts of any such record, account, document or file.*

*(8) Any individual who refuses without just cause to be examined under oath or who willfully obstructs or interferes with the examiners in the exercise of their authority pursuant to this section is guilty of a violation of this code.*

*(9) The executive director may terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to an examination shall be prima facie evidence in any legal or regulatory action. The executive director may use, and if appropriate, may make public any final or preliminary examination report, any examiner's workpapers or other documents, or any other information discovered or developed during the course of the examination in the furtherance of any legal or regulatory action that the executive director may, in his sole discretion, deem appropriate. Nothing in this subsection shall be binding upon the court in making determinations about relevancy and admissibility in any civil action pertaining to any such documents.*

➔Section 3. KRS 304.2-250 is amended to read as follows:

- (1) Upon completion of an examination, the examiner in charge shall make a true report thereof which shall comprise only facts appearing upon the books, records or other documents of the person examined, or as ascertained from the sworn testimony of its officers or agents or other individuals examined concerning its affairs, and such conclusions and recommendations as may reasonably be warranted from such facts.
- (2) ~~The~~~~Such a~~ report of examination of an insurer shall be prima facie evidence in any action or proceeding for the receivership, conservation or liquidation of the insurer brought in the name of the state against the insurer, its officers or agents upon the facts stated therein, and whether or not the report has then been filed in the office as provided in KRS 304.2-260.
- (3) ***Except as provided in Sections 4 and 5 of this Act, documents, materials, or other information, including examination workpapers, in the possession or control of the executive director that are created, produced, or obtained by or disclosed to the executive director or any other person in the course of an examination made under this subtitle, or in the course of an examination made under KRS 304.2-210 to 304.2-300, or in the course of analysis by the executive director of the financial condition, or market conduct of an insurer shall be confidential by law and privileged, but may be used, received, and shared in accordance with Section 1 of this Act.***

➔Section 4. KRS 304.2-260 is amended to read as follows:

- (1) The executive director shall deliver a copy of the examination report to the person examined, together with a notice affording ~~the~~~~such~~ person twenty (20) days or ~~such~~ additional reasonable period as the executive director for good cause may allow within which to review the report and recommend changes therein.
- (2) If so requested by the person examined, within the period allowed under subsection (1) of this section, or if deemed advisable by the executive director without ~~a~~~~such~~ request, the executive director shall hold a hearing relative to the report and shall not file the report in the office for public inspection until after ~~the~~~~such~~ hearing and his order thereon, except that the executive director may furnish a copy of the report to the Governor or Attorney General of the state pending final decision thereon.
- (3) If no ~~such~~ hearing has been requested or held, the executive director shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order within sixty (60) days of the end of the period allowed under subsection (1) of this section. The order of the executive director shall:
  - (a) Adopt the examination report as filed or with modifications or corrections. If the examination report reveals that the person is operating in violation of or has violated any law, administrative regulation, or prior order of the executive director, the executive director may order the person to take ~~such~~ action to cure the violations and impose ~~such~~ penalties as the executive director considers necessary and appropriate; or
  - (b) Reject the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refiling as provided in KRS 304.2-250; or
  - (c) Call for a hearing for purposes of obtaining additional documentation, data, information, and testimony.
- (4) Upon entry of the executive director's order, the examination report, with ~~such~~ modifications, if any, thereof as the executive director deems proper, shall be filed in the office for public inspection, except that the executive director may withhold from public inspection any examination report for so long as he deems ~~the~~~~such~~ withholding to be necessary for the protection of the person examined against unwarranted injury or to be in the public interest and except that the executive director shall withhold from public inspection any examination report of a domestic insurer as provided in KRS 304.2-270.
- (5) ***An examination workpaper shall be deemed confidential information and shall not be available for public inspection, except that the executive director may in the director's discretion disclose an examination workpaper, the content of a preliminary examination report, examination results, or any other matter resulting to an examination report to the department of insurance of any other state or country, or to the National Association of Insurance Commissioners, or to law enforcement officials of this or any other state, or to an agency of this state or any other state or the federal government at any time, if the agency or office receiving the report or matters relating to the report agrees in writing to hold the information confidential and in a manner consistent with this section.***

- (6) The executive director shall forward to the person examined a copy of the examination report as filed for public inspection, together with the order of the executive director.
- (7)~~(6)~~ If the report concerns the examination of a domestic insurer, a copy of the report, when filed for public inspection, or if withheld from public inspection *in accordance with Section 5 of this Act or*~~under~~ subsection (4) of this section, together with the order of the executive director, shall be presented by the insurer's chief executive officer to the insurer's board of directors or similar governing body at a meeting thereof which shall be held within ninety (90) days next following receipt of the report and order. A copy of the report and order shall also be furnished by the secretary of the insurer, if incorporated, or by the attorney-in-fact if a reciprocal insurer, or Lloyd's plan insurer, to each member of the insurer's board of directors or board of governors, if a reciprocal insurer, or Lloyd's plan insurer, and the certificate of the secretary or attorney-in-fact, which shall be filed promptly with the office, that a copy of the examination report and order, has been so furnished shall be deemed to constitute knowledge of the contents of the report and order by each~~such~~ member.
- (8)~~(7)~~ The report when so filed in the office shall be admissible in evidence in any action or proceeding brought by the executive director against the person examined, or against its officers, employees, or agents. In any~~such~~ action or proceeding *brought by the executive director*, the executive director or his examiners may, however, at any time testify and offer proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished, or filed in the office.
- (9) *If the executive director determines that regulatory action is appropriate as a result of an examination, he or she may initiate any proceedings or actions provided by law.*

➔Section 5. KRS 304.2-270 is amended to read as follows:

The report of examination of a domestic insurer, although filed in the office as provided in KRS 304.2-260 shall nevertheless not be for public inspection except as to those portions of the report showing the insurer's current financial condition. The *examination workpapers*~~comments and recommendations of the examiner(s)~~ shall be deemed confidential information and shall not be available for public inspection, except that the executive director may in his discretion disclose the content of an examination report, preliminary examination report, *examination*~~or~~ results, or any *other* matter relating to an examination report, to the Office of Insurance of any other state or country, or to law enforcement officials of this or any other state, or to an agency of this or any other state or the federal government at any time, if the agency or office receiving the report or matters relating to the report agrees in writing to hold it confidential and in a manner consistent with this section and KRS 304.2-260.

➔SECTION 6. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *For purposes of this section, "free insurance" means:*
- (a) *Insurance for which no identifiable or additional charge is made to the purchaser or lessee of such consumer goods or services directly or indirectly connected with consumer goods; or*
  - (b) *Insurance for which an identifiable or additional charge is made in an amount less than the cost of such insurance as to the seller, lessor, or other person, other than the insurer providing the insurance.*
- (2) *No person shall advertise, offer, or provide free insurance for damage, loss, or theft as an inducement to the purchase, sale, or rental of consumer goods or services directly or indirectly connected with consumer goods.*

Signed by Governor April 24, 2008.