

CHAPTER 25

(HB 126)

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 *five (5)*~~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) 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 *prescribed by the executive director*~~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, insofar 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) 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) 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 304.2-320 is amended to read as follows:

- (1) Notice of hearings shall be given in accordance with the provision of this chapter and KRS Chapter 13B. If the persons to be given notice are not specified in the provision pursuant to which the hearing is held, the executive director shall give notice to all persons whose pecuniary interest, to the executive director's knowledge or belief, are to be directly and immediately affected by the hearing.
- (2) If any hearing is to be held for consideration of matters which, under subsection (1) of this section, would otherwise require separate notice to more than thirty (30) persons, in lieu of other notice the executive director may give notice of the hearing by publication pursuant to KRS Chapter 424; but the executive director shall mail this notice to all persons who had requested the same in writing in advance and have paid to the executive

director the reasonable amount fixed by him to cover the cost thereof. *The costs associated with the publication of a notice of hearing shall be borne by the person seeking the hearing.*

➔Section 3. 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 executive director or terminated at the insurer's request; subject, however, to continuance of the certificate by the insurer each year by:
 - (a) Payment 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 ordered by the executive director*~~[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 executive director shall promptly notify the insurer of the occurrence of any failure resulting in impending expiration of its certificate of authority.
- (3) The executive director 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) *Beginning with the statutory audits for the year 2010*, an insurer shall not use the same *lead or coordinating*~~[accountant or]~~ partner of an accounting firm responsible for preparing the audited financial statement for more than *five (5)*~~[seven (7)]~~ consecutive years.

➔Section 4. KRS 304.3-242 is amended to read as follows:

- (1) *Every insurer authorized to transact property or casualty insurance, unless otherwise exempt in accordance with subsection (7) of this section, shall annually submit the opinion of an appointed actuary entitled "Statement of Actuarial Opinion," which shall be provided with the annual statement required by KRS 304.3-240 and 304.3-241.*
- (2) *Every insurer authorized to transact property or casualty insurance that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary written by the company's appointed actuary, which shall be provided with the annual statement required by KRS 304.3-240 and 304.3-241 and considered as a document supporting the statement of actuarial opinion.*
- (3) *An actuarial report and underlying workpapers shall be prepared to support each statement of actuarial opinion.*
- (4) *The executive director may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and prepare the supporting actuarial report or workpapers if:*
 - (a) *The insurer fails to provide a supporting actuarial report or workpapers at the request of the executive director; or*
 - (b) *The executive director determines that the supporting actuarial report or workpapers provided by the insurer is otherwise unacceptable to the executive director.*
- (5) *The appointed actuary shall not be liable for damages to any person other than the insurer and the executive director for any act, error, omission, decision, or conduct with respect to the actuary's opinion, except in cases of gross negligence, fraud, or willful misconduct on the part of the appointed actuary.*
- (6) (a) *The statement of actuarial opinion shall be provided with the annual statement prepared in accordance with KRS 304.3-240 and 304.3-241 and shall be available for public inspection.*

- (b) *Documents, materials, or other information in the possession or control of the office that are considered an actuarial report, workpapers, or actuarial opinion summary provided in support of the opinion, and any other material provided by the insurer to the executive director in connection with the actuarial report, workpapers, or actuarial opinion summary, shall be confidential and privileged. The confidentiality and privilege protections contained in this paragraph shall not extend to any nonregulatory person or entity holding the documents, materials, or other information.*
- (c) *Paragraph (b) of this subsection shall not be construed to limit the executive director's authority to:*
1. *Release the documents to the Actuarial Board for Counseling and Discipline if the material is required for the purpose of professional disciplinary proceedings and the Actuarial Board for Counseling and Discipline establishes procedures satisfactory to the executive director for preserving the confidentiality of the documents; or*
 2. *Use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the executive director's official duties.*
- (d) *Neither the executive director nor any person who received documents, materials, or other information while acting under the authority of the executive director shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to this subsection.*
- (e) *In order to assist in the performance of his or her duties as set forth in KRS 304.2-100, the executive director:*
1. *May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to this subsection, with other state, federal, and international regulatory agencies and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information and has the legal authority to maintain confidentiality;*
 2. *May receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information, from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and*
 3. *May enter into agreements governing the sharing and use of information consistent with this subsection.*
- (f) *No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information shall occur as a result of disclosure to the executive director under this section or as a result of sharing as authorized in paragraph (e) of this subsection.*

~~[As used in this section, a "qualified loss reserve specialist" means a person who is not a director, principal, or direct or indirect owner of an insurer and is a member in good standing of the Casualty Actuarial Society, and the American Academy of Actuaries, and who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries, or has other experience acceptable to the executive director to assure a professional opinion on the adequacy of loss and loss adjustment expense reserves.~~

~~(2) The board of directors of every insurer authorized to transact property or casualty insurance and required to file an annual statement with the executive director pursuant to KRS 304.3-240 shall engage a qualified loss reserve specialist to certify the adequacy of the insurer's loss and loss adjustment expense reserves. The report shall be filed with the annual statement required by KRS 304.3-240.~~

~~(3) The statement of opinion required by this section shall consist of at least the following information:~~

- ~~(a) Identification of the qualified loss reserve specialist;~~
- ~~(b) Identification of the subjects on which the opinion is to be expressed and a description of the scope of the qualified loss reserve specialist's work;~~

- ~~(c) An expression of the qualified loss reserve specialist's opinion with respect to the subjects required to be described in paragraph (b) of this subsection; and~~
- ~~(d) Additional information which the qualified loss reserve specialist considers necessary to state a qualification of opinion or to explain any aspect of the annual statement which is not already sufficiently explained in the annual statement.]~~

(7)(4) It shall not be necessary to file the *actuarial* report required by this section in the following instances:

- (a) An insurer that has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year, or that has less than one thousand (1,000) policyholders or certificate holders at the end of a calendar year. An insurer which intends to utilize this exemption shall submit a letter of intent to the insurance regulatory official in its domiciliary state no later than December 1 of the calendar year for which the exemption is to be claimed;
- (b) An insurer which is under rehabilitation, liquidation, or any other delinquency proceeding ordered pursuant to a statutory provision, unless ordered to make the report by the insurance regulatory official in its domiciliary state;
- (c) An insurer writing property insurance only if the exemption is agreed to by the insurance regulatory official in the insurer's domiciliary state; or
- (d) Filing the report would constitute financial hardship, which is presumed to exist if the projected reasonable cost of the report would exceed the lesser of:
 1. One percent (1%) of the insurer's capital and surplus reflected in the insurer's annual statement for the calendar year for which the exemption is sought; or
 2. Three percent (3%) of the insurer's net direct plus assumed premiums written during the calendar year for which the exemption is sought as reflected in the insurer's annual statement filed with the insurance regulator official in its domiciliary state.

➔SECTION 5. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The executive director shall develop a notice by promulgation of administrative regulation to inform the owner of a policy of life insurance issued in this state of his or her rights as an owner of a life insurance policy. The notice shall be made available free of charge to insurance companies and life insurance producers, and shall be written in nontechnical language.*
- (2) *The notice developed under subsection (1) of this section shall:*
 - (a) *Inform the consumer that life insurance is a critical part of a broader financial plan;*
 - (b) *Inform the consumer that alternatives to lapse or surrender of the policy exist;*
 - (c) *Provide the consumer with a general description of life settlements and state that life settlements are a regulated transaction in Kentucky;*
 - (d) *Provide the consumer with a general description of other common products and services that may be available to owners of life insurance policies prior to lapse or surrender of a policy; and*
 - (e) *Include a statement that advises recipients of the notice that life insurance, life settlements, or any of the products or services described in the notice may or may not be available to the recipient depending on a number of circumstances, including but not limited to the age and health of the insured or the terms of a life insurance policy. The statement shall also advise recipients that owners of life insurance policies are encouraged to contact their financial advisor, agent, or broker to seek further assistance or advice.*
- (3) *For each policy issued, the life insurance company shall provide the notice required by subsection (1) of this section to the owner of an individual life insurance policy:*
 - (a) *When the insured is sixty (60) years of age or older; or*
 - (b) *If the insurer has been notified that the insured person under the policy is terminally or chronically ill, upon the occurrence of one (1) of the following:*

1. *The life insurance company receives from the owner a request to surrender, in whole or in part, an individual policy;*
 2. *The life insurance company receives from the owner a request to receive an accelerated death benefit under an individual policy;*
 3. *The life insurance company sends to the owner all notices of lapse of an individual policy; provided, however, that the life insurance company shall not be required to include the notice developed pursuant to subsection (1) of this section to the owner of the policy more than one (1) time within a twelve (12) month period from the date of the first notice of lapse of the policy; or*
 4. *The occurrence of any other event as set forth by the executive director in administrative regulation.*
- (4) *In addition to the conditions set forth in subsection (3) of this section, the executive director may promulgate administrative regulations to establish that the notice be made only with respect to policies with a net death benefit that is one hundred thousand dollars (\$100,000) or greater, if the executive director finds that this additional condition is in the best interest of the citizens of the Commonwealth and does not discriminate against owners of life insurance policies based on other factors such as race, religion, national origin, age, disability, marital status, or economic means.*

Signed by the Governor March 25, 2010.