

CHAPTER 74**(HB 295)**

AN ACT relating to insurance.

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

➔Section 1. 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 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 commissioner.
- (2) If not so continued by the insurer, its certificate of authority shall expire at midnight on the ~~April 30~~~~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 or her 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 **and paid the fine as set forth in Section 21 of this Act**. 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 partner of an accounting firm responsible for preparing the audited financial statement for more than five (5) consecutive years.

➔Section 2. KRS 304.9-105 is amended to read as follows:

- (1) An individual applying for an agent license shall make application to the commissioner on the uniform individual application or other application prescribed by the commissioner. Before approving the application, the commissioner shall find that the applicant:
 - (a) Is at least eighteen (18) years of age;
 - (b) Has fulfilled the residence requirements as set forth in KRS 304.9-120 or is a nonresident who is not eligible to be issued a license in accordance with KRS 304.9-140;
 - (c) Has not committed any act that is a ground for denial, suspension, or revocation set forth in KRS 304.9-440;
 - (d) Is trustworthy, reliable, and of good reputation, evidence of which shall be determined through an investigation by the commissioner;
 - (e) Is competent to exercise the license and has:
 1. Except for variable life and variable annuities line of authority and limited lines of authority identified in KRS 304.9-230, completed a prelicensing course of study consisting of forty (40) hours for life and health, forty (40) hours for property and casualty, or twenty (20) hours for each line of authority, as applicable, for which the individual has applied. The commissioner shall promulgate administrative regulations to carry out the purpose of this section;
 2. Except for variable life and variable annuities line of authority and limited lines of authority identified in accordance with KRS 304.9-230, successfully passed the examinations required by the commissioner for the lines of authority for which the individual has applied; and

3. Paid the fees set forth in KRS 304.4-010; and
- (f) Is financially responsible to exercise the license and has *maintained in effect while so licensed*:
1. ~~{a. Filed with the commissioner }~~The certificate of an insurer authorized to write legal liability insurance in this state, that the insurer has and will keep in effect on behalf of the person a policy of insurance covering the legal liability of the licensed person as the result of erroneous acts or failure to act in his or her capacity as an insurance agent, and enuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than twenty thousand dollars (\$20,000) and one hundred thousand dollars (\$100,000) in the aggregate for all occurrences within one (1) year~~[-, and that the policy shall not be terminated unless at least thirty (30) days' prior written notice will have been given to the commissioner];~~~~[- or]~~
 - 2.~~{b. }~~~~Deposited with the commissioner cash, or }~~A cash surety bond executed by an insurer authorized to write business in this Commonwealth, in the sum of twenty thousand dollars (\$20,000), which shall be subject to lawful levy of execution by any party to whom the licensee has been found to be legally liable as the result of erroneous acts or failure to act in his or her capacity as an agent; or
 - 3.~~{c. }~~~~Filed with the commissioner on his or her behalf, by an authorized insurer or group of affiliated insurers for which he or she is or is to become an exclusive agent, }~~An agreement **by an authorized insurer or group of affiliated insurers for which he or she is or is to become an exclusive agent** whereby the insurer or group of affiliated insurers agrees to assume responsibility, to the benefit of any aggrieved party, for legal liability of the licensed person as the result of erroneous acts or failure to act in his or her capacity as an insurance agent on behalf of the insurer or group of affiliated insurers in the sum of twenty thousand dollars (\$20,000) for any single occurrence and that the agreement shall not be terminated until the license is surrendered to the commissioner~~[- or at least thirty (30) days' prior written notice will have been given to the commissioner, whichever shall first occur; and~~
 - 2.~~Agreed with the commissioner that if at any time notice is given to the commissioner that any policy filed in accordance with subparagraph 1.a. of this paragraph, or agreement filed in accordance with subparagraph 1.c. of this paragraph, is to be terminated and has not been replaced by another policy or agreement within the time established by regulations of the commissioner, or if any deposit in accordance with subparagraph 1.b. of this paragraph be reduced through levy of execution and not replaced by any necessary additional deposit within the time established by administrative regulations of the commissioner, any and all licenses held by the licensee are terminated and shall be promptly surrendered to the commissioner without demand}.~~
- (2) The commissioner may require additional information or submissions from applicants and may obtain any documents or information reasonably necessary to verify the information contained in an application.

➔Section 3. KRS 304.9-320 is amended to read as follows:

For the protection of the people of this Commonwealth the commissioner shall not issue, continue, or permit to exist any license as consultant except in compliance with this subtitle, or as to any person not qualified therefor as follows:

- (1) If an individual, the applicant:
 - (a) Must be eighteen (18) or more years of age;
 - (b) Must have had not less than five (5) years of actual experience as a licensed agent with respect to the kinds of insurance and contracts to be covered by the license~~[-, or other special experience, education or training, all of sufficient content and duration reasonably necessary for competence in fulfilling the responsibilities of a consultant];~~
 - (c) Must have a thorough knowledge of insurance and annuity contracts of the kinds proposed to be covered under the license;
 - (d) Must satisfy the commissioner by written examination; **and**
 - (e) Must be competent, trustworthy under highest fiduciary standards, financially responsible, and of good personal and business reputation~~[-, and~~

~~(f) Must have filed the bond required by KRS 304.9-330).~~

- (2) If a business entity, the applicant:
- (a) Must complete and submit a National Association of Insurance Commissioners uniform license application;
 - (b) Must pay applicable fees as set forth in KRS 304.4-010;
 - (c) Must be competent, trustworthy under the highest fiduciary standards, financially responsible, and of good business reputation; and
 - (d) Must designate each individual authorized to act for the business entity under its consultant license in accordance with KRS 304.9-133.
- (3) A consultant license shall cover either or both of the following categories, as selected by the licensee:
- (a) Property and casualty; or
 - (b) Life and health.

A consultant licensed in both categories shall qualify separately for, and be licensed in, each category.

➔Section 4. KRS 304.9-330 is amended to read as follows:

- (1) To the extent the Gramm-Leach-Bliley Act, 15 U.S.C. sec. 6751(f), provides that evidence of financial responsibility may be required for licensing, every *licensed consultant*~~[applicant for license as a consultant shall file with the commissioner with his or her application for license, and]~~ shall maintain in effect while so licensed:
- (a) The certificate of an insurer authorized to write legal liability insurance in this state, that the insurer has and will keep in effect on behalf of the consultant a policy of insurance covering the legal liability of the consultant as the result of erroneous acts or failure to act in his or her capacity as an insurance consultant, and inuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than twenty thousand dollars (\$20,000) and one hundred thousand dollars (\$100,000) in the aggregate for all occurrences within one (1) year~~[-, and that the policy shall not be terminated unless at least thirty (30) days prior written notice will have been given to the commissioner]~~; or
 - (b) A ~~[deposit with the commissioner of cash, or a]~~ cash surety bond executed by an insurer authorized to write this business in this Commonwealth, in the sum of twenty thousand dollars (\$20,000) which shall be subject to lawful levy of execution by any party to whom the consultant has been found to be legally liable as the result of erroneous acts or failure to act in his or her capacity as a consultant.
- (2) The bond shall indemnify any person damaged by any fraudulent or unlawful act or conduct of the licensee in transactions under the license, and shall likewise be conditioned upon faithful accounting and application of all moneys coming into the licensee's possession in connection with his or her activities as the licensee.
- (3) The bond shall remain in force until~~[- released by the commissioner, or until]~~ canceled by the surety. Without prejudice to any liability previously incurred thereunder, the surety may cancel the bond upon thirty (30) days advance written notice to the licensee~~[- and the commissioner]~~.

➔Section 5. KRS 304.9-430 is amended to read as follows:

- (1) No person shall in this state act as or hold himself, herself, or itself out to be an independent, staff, or public adjuster unless then licensed by the Kentucky Department of Insurance as an independent, staff, or public adjuster.
- (2) An individual applying for a resident independent, staff, or public adjuster license shall make application to the commissioner on the appropriate uniform individual application and in a format prescribed by the commissioner. The applicant shall declare under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the individual to be licensed:
- (a) Is at least eighteen (18) years of age;
 - (b) Is eligible to designate Kentucky as his or her home state;

- (c) Is trustworthy, reliable, and of good reputation, evidence of which shall be determined through an investigation by the commissioner;
 - (d) Has not committed any act that is a ground for probation or suspension, revocation, or refusal of a license as set forth in KRS 304.9-440;
 - (e) Has successfully passed the examination for the adjuster license and the applicable line of authority for which the individual has applied;
 - (f) Has paid the fees established by the commissioner pursuant to KRS 304.4-010; and
 - (g) Is financially responsible to exercise the license.
- (3) (a) To demonstrate financial responsibility, a person applying for a public adjuster license shall obtain a bond or irrevocable letter of credit prior to issuance of a license and shall maintain the bond or letter of credit for the duration of the license ~~[-The applicant shall provide evidence of financial responsibility in a format prescribed by the commissioner]~~ with the following limits:
1. A surety bond executed and issued by an insurer authorized to issue surety bonds in Kentucky, which bond shall:
 - a. Be in the minimum amount of twenty thousand dollars (\$20,000);
 - b. Be in favor of the state of Kentucky and shall specifically authorize recovery ~~[-by the commissioner on behalf]~~ of any person in Kentucky who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction for unfair trade practices in his or her capacity as a public adjuster; and
 - c. Not be terminated unless written notice is ~~[-filed with the commissioner and]~~ given to the licensee at least thirty (30) days prior to the termination; or
 2. An irrevocable letter of credit issued by a qualified financial institution, which letter of credit shall:
 - a. Be in the minimum amount of twenty thousand dollars (\$20,000);
 - b. Be ~~[-to an account of the commissioner and]~~ subject to lawful levy of execution on behalf of any person to whom the public adjuster has been found to be legally liable as the result of erroneous acts, failure to act, conviction of fraud, or conviction for unfair practices in his or her capacity as a public adjuster; and
 - c. Not be terminated unless written notice is ~~[-filed with the commissioner and]~~ given to the licensee at least thirty (30) days prior to the termination.
- (b) ~~[-The issuer of the evidence of financial responsibility shall notify the commissioner upon termination of the bond or letter of credit, unless otherwise directed by the commissioner.]~~
- ~~[-(e)]~~ The commissioner may ask for evidence of financial responsibility at any time he or she deems relevant.
- ~~[-(c)]~~ ~~[-(d)]~~ The public adjuster license shall automatically terminate if the evidence of financial responsibility terminates or becomes impaired and shall be promptly surrendered to the commissioner without demand.
- (4) A business entity applying for a resident independent or public adjuster license shall make application to the commissioner on the appropriate uniform business entity application and in a format prescribed by the commissioner. The applicant shall declare under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the business entity's knowledge and belief. Before approving the application, the commissioner shall find that the business entity:
- (a) Is eligible to designate Kentucky as its home state;
 - (b) Has designated a licensed independent or public adjuster responsible for the business entity's compliance with the insurance laws and regulations of Kentucky;
 - (c) Has not committed an act that is a ground for probation or suspension, revocation, or refusal of an independent or public adjuster's license as set forth in KRS 304.9-440; and
 - (d) Has paid the fees established by the commissioner pursuant to KRS 304.4-010.

- (5) The commissioner may require additional information or submissions from applicants and may obtain any documents or information reasonably necessary to verify the information contained in an application.
- (6) Unless denied licensure pursuant to KRS 304.9-440, a person or business entity who has met the requirements of subsections (2) to (5) of this section shall be issued an independent, staff, or public adjuster license.
- (7) An independent or staff adjuster may qualify for a license in one (1) or more of the following lines of authority:
 - (a) Property and casualty;
 - (b) Workers' compensation; or
 - (c) Crop.
- (8) A public adjuster may qualify for a license in one (1) or more of the following lines of authority:
 - (a) Property and casualty; or
 - (b) Crop.
- (9) Notwithstanding any other provision of this subtitle, a license as an independent adjuster shall not be required of the following:
 - (a) An individual who is sent into Kentucky on behalf of an insurer for the sole purpose of investigating or making adjustment of a particular loss resulting from a catastrophe, or for the adjustment of a series of losses resulting from a catastrophe common to all losses;
 - (b) An attorney licensed to practice law in Kentucky, when acting in his or her professional capacity as an attorney;
 - (c) A person employed solely to obtain facts surrounding a claim or to furnish technical assistance to a licensed independent adjuster;
 - (d) An individual who is employed to investigate suspected fraudulent insurance claims, but who does not adjust losses or determine claims payments;
 - (e) A person who solely performs executive, administrative, managerial, or clerical duties, or any combination thereof, and who does not investigate, negotiate, or settle claims with policyholders, claimants, or their legal representatives;
 - (f) A licensed health care provider or its employee who provides managed care services as long as the services do not include the determination of compensability;
 - (g) A health maintenance organization or any of its employees or an employee of any organization providing managed care services as long as the services do not include the determination of compensability;
 - (h) A person who settles only reinsurance or subrogation claims;
 - (i) An officer, director, manager, or employee of an authorized insurer, surplus lines insurer, or risk retention group, or an attorney-in-fact of a reciprocal insurer;
 - (j) A United States manager of the United States branch of an alien insurer;
 - (k) A person who investigates, negotiates, or settles claims arising under a life, accident and health, or disability insurance policy or annuity contract;
 - (l) An individual employee, under a self-insured arrangement, who adjusts claims on behalf of his or her employer;
 - (m) A licensed agent, attorney-in-fact of a reciprocal insurer, or managing general agent of the insurer, to whom claim authority has been granted by the insurer; or
 - (n) A person who:
 1. Is an employee of a licensed independent adjuster or an employee of an affiliate that is a licensed independent adjuster or is supervised by a licensed independent adjuster, if there are no more than twenty-five (25) persons under the supervision of one (1) licensed individual independent adjuster or licensed agent who is exempt from licensure pursuant to paragraph (m) of this subsection;

2. Collects claim information from insureds or claimants;
3. Enters data into an automated claims adjudication system; and
4. Furnishes claim information to insureds or claimants from the results of the automated claims adjudication system.

For purposes of this paragraph, "automated claims adjudication system" means a preprogrammed computer system designed for the collection, data entry, calculation, and system-generated final resolution of consumer electronic products insurance claims that complies with claim settlement practices pursuant to Subtitle 12 of KRS Chapter 304.

- (10) Notwithstanding any other provision of this subtitle, a license as a public adjuster shall not be required of the following:
 - (a) An attorney licensed to practice law in Kentucky, when acting in his or her professional capacity as an attorney;
 - (b) A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;
 - (c) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including photographers, estimators, private investigators, engineers, and handwriting experts; or
 - (d) A licensed health care provider or its employee who prepares or files a health claim form on behalf of a patient.
- (11) For purposes of this section, "home state" means any state or territory of the United States or the District of Columbia in which an independent, staff, or public adjuster maintains his, her, or its principal place of residence or business and is licensed to act as a resident independent, staff, or public adjuster. If the state of the principal place of residence does not license an independent, staff, or public adjuster for the line of authority sought, the independent, staff, or public adjuster shall designate as his, her, or its home state, any state in which the independent or public adjuster is licensed and in good standing.
- (12) Temporary registration for emergency independent or staff adjusters shall be issued by the commissioner in the event of a catastrophe declared in Kentucky in the following manner:
 - (a) An insurer shall notify the commissioner by submitting an application for temporary emergency registration of each individual not already licensed in the state where the catastrophe has been declared, who will act as an emergency independent adjuster on behalf of the insurer;
 - (b) A person who is otherwise qualified to adjust claims, but who is not already licensed in the state, may act as an emergency independent or staff adjuster and adjust claims if, within five (5) days of deployment to adjust claims arising from the catastrophe, the insurer notifies the commissioner by providing the following information, in a format prescribed by the commissioner:
 1. The name of the individual;
 2. The Social Security number of the individual;
 3. The name of the insurer that the independent or staff adjuster will represent;
 4. The catastrophe or loss control number;
 5. The catastrophe event name and date; and
 6. Any other information the commissioner deems necessary; and
 - (c) An emergency independent or staff adjuster's registration shall remain in force for a period not to exceed ninety (90) days, unless extended by the commissioner.
- (13) (a) Unless refused licensure in accordance with KRS 304.9-440, a nonresident person shall receive a nonresident independent, staff, or public adjuster license if:
 1. The person is currently licensed in good standing as an independent, staff, or public adjuster in his, her, or its home state;
 2. The person has submitted the proper request for licensure, and has paid the fees required by KRS 304.4-010;

3. The person has submitted, in a form or format prescribed by the commissioner, the uniform individual application; and
 4. The person's designated home state issues nonresident independent, staff, or public adjuster licenses to persons of Kentucky on the same basis.
- (b) The commissioner may verify the independent, staff, or public adjuster's licensing status through any appropriate database or may request certification of good standing.
 - (c) As a condition to the continuation of a nonresident adjuster license, the licensee shall maintain a resident adjuster license in his, her, or its home state.
 - (d) The nonresident adjuster license issued under this section shall terminate and be surrendered immediately to the commissioner if the resident adjuster license terminates for any reason, unless the termination is due to the adjuster being issued a new resident independent or public adjuster license in his, her, or its new home state. If the new resident state does not have reciprocity with Kentucky, the nonresident adjuster license shall terminate.
- (14) An individual applying for a nonresident independent, staff, or public adjuster license in Kentucky shall be allowed one hundred eighty (180) days from July 15, 2010, to establish a home state. This subsection shall expire two (2) years from July 15, 2010.

➔Section 6. KRS 304.10-030 is amended to read as follows:

As used in this subtitle:

- (1) *"Admitted insurer" means an insurer that is licensed or authorized to transact the business of insurance in Kentucky.*
- (2) *"Affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.*
- (3) *"Broker" [as used in this subtitle] means a surplus lines broker duly licensed as such under this subtitle.*
- (4) *"Exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:*
 - (a) *The person employs or retains a qualified risk manager to negotiate insurance coverage;*
 - (b) *The person has paid aggregate nationwide commercial property and casualty insurance premium in excess of one hundred thousand dollars (\$100,000) in the immediately preceding twelve (12) months;*
 - (c) *1. The person meets at least one (1) of the following criteria:*
 - a. *The person possesses a net worth in excess of twenty million dollars (\$20,000,000), adjusted pursuant to subparagraph 2. of this paragraph;*
 - b. *The person generates annual revenues in excess of fifty million dollars (\$50,000,000), as adjusted pursuant to subparagraph 2. of this paragraph;*
 - c. *The person employs more than five hundred (500) full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand (1,000) employees in the aggregate;*
 - d. *The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars (\$30,000,000), adjusted pursuant to subparagraph 2. of this paragraph; or*
 - e. *The person is a municipality with a population in excess of fifty thousand (50,000) persons.*
 - 2. Effective on the fifth January 1 occurring after the effective date of this Act, and each fifth January 1 occurring thereafter, the amounts in subparagraph 1.a., b., and d. of this paragraph shall be adjusted to reflect the percentage change for the five (5)-year period in the consumer price index for all urban consumers published by the Bureau of Labor Statistics of the Department of Labor.*

- (5)~~(2)~~ To "export" means to place in an unauthorized insurer under this Surplus Lines Law insurance covering a subject of insurance resident, located or to be performed in Kentucky.

- (6) **"Home state" means:**
- (a) 1. **The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or**
 2. **If one hundred percent (100%) of the insured risk is located out of the state referred to in subparagraph 1. of this paragraph, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or**
 - (b) **If more than one (1) insureds from an affiliated group are named insureds on a single nonadmitted insurance contract, the home state, as determined pursuant to paragraph (a) of this section, of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract.**
- (7) **"Nonadmitted insurance" means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept the insurance.**
- (8) **"Nonadmitted insurer" means an insurer that is not authorized or admitted to transact the business of insurance in Kentucky.**

➔Section 7. KRS 304.10-040 is amended to read as follows:

Nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home state is Kentucky, ~~If certain insurance coverages cannot be procured from authorized insurers such coverages~~ hereinafter designated "surplus lines," may be procured from a nonadmitted insurer ~~(unauthorized insurers)~~ subject to the following conditions:

- (1) The insurance must be procured through a licensed surplus lines broker.
- (2) The full amount of insurance required must not be procurable, after diligent effort **by a licensed agent with a line of authority for property and casualty** has been made to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in this state, and the amount of insurance exported shall be only the excess over the amount procurable from authorized insurers.
- (3) The insurance must not be so exported for the purpose of securing advantages either as to:
 - (a) A lower premium rate than would be accepted by an authorized insurer; or
 - (b) Terms of the insurance contract.
- (4) **The requirements of subsection (2) of this section related to a diligent effort shall not be required for coverage procured or placed for an exempt commercial purchaser if:**
 - (a) **The broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and**
 - (b) **The exempt commercial purchaser has subsequently requested in writing that the broker procure or place insurance from a nonadmitted insurer.**

➔Section 8. KRS 304.10-070 is amended to read as follows:

- (1) A broker shall ~~not~~ place surplus lines insurance **only** with an insurer that he or she knows, or in the exercise of reasonable diligence could know:
 - (a) **Is authorized to write the type of insurance in its domiciliary jurisdiction;**
 - (b) **Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of:**
 1. **The minimum capital and surplus requirements set forth in KRS 304.3-120; or**
 2. **Fifteen million dollars (\$15,000,000); and**
 - (c) **Is listed on the quarterly listing of alien insurers maintained by the National Association of Insurance Commissioners, if the insurer is a nonadmitted insurer domiciled outside of the United States**

~~Has a surplus in regard to policyholders of less than six million dollars (\$6,000,000);~~

- (b) ~~Has not established satisfactory evidence of good repute and financial integrity;~~

- ~~(e) — Is unsound financially; or~~
- ~~(d) — Is ineligible under the Kentucky insurance code}.~~
- (2) A broker may:
 - (a) Place insurance covering certificates of investment with an insurance company or guarantee fund which is financially sound and has capital funds and reserves in excess of fifteen million dollars (\$15,000,000); and
 - (b) Place insurance with a United States insurance exchange which the commissioner, in his or her discretion, may designate for use by surplus lines brokers licensed by the Commonwealth of Kentucky.
- ~~(3) [A broker shall not place insurance with an alien insurer that is not recognized by the National Association of Insurance Commissioners and does not maintain in the United States a trust fund for the benefit of United States policyholders of at least five million four hundred thousand dollars (\$5,400,000).~~
- ~~(4) — A broker shall not place insurance with an insurer that has engaged in the insurance business less than three (3) years unless the insurer has deposited with the commissioner publicly traded securities with a market value of at least six hundred thousand dollars (\$600,000).~~
- ~~(5) — This section shall not apply to surplus lines insurers eligible to do business in Kentucky as of July 15, 1982, except that the commissioner may revoke eligibility, or may order the insurer to comply with this section or may suspend the operation of the insurer in Kentucky.~~
- ~~(6) —]The commissioner may declare that a surplus lines insurer is ineligible to transact business in Kentucky. The commissioner shall promptly mail notice of all declarations of ineligibility to each surplus lines broker if at any time the commissioner has reason to believe that a surplus lines insurer **no longer meets the standards set forth in this subtitle**[-~~
 - ~~(a) — Is in unsound financial condition;~~
 - ~~(b) — Has acted in an untrustworthy manner;~~
 - ~~(c) — No longer meets the standards set forth in this subtitle;~~
 - ~~(d) — Has willfully violated the laws of Kentucky; or~~
 - ~~(e) — Does not conduct a proper claims practice}.~~

➔Section 9. KRS 304.10-120 is amended to read as follows:

- (1) Any person **may be licensed as a surplus lines broker** who:
 - (a) Is a resident of Kentucky or is a nonresident who is not eligible to be issued a license in accordance with KRS 304.9-140; **and**
 - (b) ~~[Holds an agent license with lines of authority for property and casualty; and~~
 - ~~(c) —]Is deemed by the commissioner to be competent and trustworthy with respect to the handling of surplus lines[-~~

~~— may be licensed as a surplus lines broker}.~~

- (2) Application for the license shall be made to the commissioner on forms as designated and furnished by the commissioner.
- (3) The license fee shall be as specified in KRS 304.4-010.
- (4) The license and licensee shall be subject to the applicable provisions of Subtitle 9 of this chapter.
- (5) Notwithstanding subsection (1) of this section, on or after July 1, 2002, an applicant licensed as a surplus lines broker in the applicant's home state may be issued a nonresident surplus lines broker's license in Kentucky if the applicant's home state issues surplus lines broker licenses to Kentucky residents on the same basis.
- (6) If the resident surplus lines broker fails to maintain his or her agent license with lines of authority for property and casualty, the surplus lines broker license shall terminate and shall be promptly surrendered to the commissioner without demand.

➔Section 10. KRS 304.10-140 is amended to read as follows:

- (1) To the extent the Gramm-Leach-Bliley Act, 15 U.S.C. sec. 6751(f), provides that evidence of financial responsibility may be required for licensing ~~of a license as a surplus lines broker, the applicant shall file with the commissioner, and~~ for as long as the license remains in effect, **a licensed resident surplus lines broker** shall keep in force:
- (a) Evidence of financial responsibility in the sum of not less than one million dollars (\$1,000,000) per occurrence, and the sum of two million dollars (\$2,000,000) in the aggregate, for all occurrences within one (1) year, either in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or a combination of a bond issued by an authorized corporate surety and a deposit ~~of a bond or deposit shall not be terminated unless at least thirty (30) days' prior written notice is given to the licensee and the commissioner~~; and
 - (b) A bond in favor of the State of Kentucky in the penal sum of fifty thousand dollars (\$50,000), with an authorized corporate surety guaranteeing that he or she will conduct business under the license in accordance with the provisions of this subtitle and that he or she will promptly remit the taxes required by KRS 304.10-180. The aggregate liability of the surety for any and all claims on any bond shall in no event exceed the penal sum. ~~No bond shall be terminated unless not less than thirty (30) days' prior written notice is given to the licensee and filed with the commissioner.~~
- (2) An insurer issuing coverage under subsection (1)(a) or (b) of this section may offer, as a part of the policy or as an optional endorsement to the policy, deductibles optional to the surplus lines broker applicant or licensee for the payment of claims. Deductible amounts offered in accordance with this section shall be fully disclosed to the applicant or licensee in writing. If the applicant or licensee chooses a deductible policy, the insurer shall pay the deductible amount initially and the licensee shall be liable to the insurer, at the time and in the manner prescribed in the policy, for the amount of the deductible. If the licensee fails to reimburse the insurer as required by this subsection, his or her surplus lines broker license and all other licenses issued by the commissioner are revoked and shall be promptly surrendered to the commissioner without demand. Nothing contained in this subsection is intended to or shall in any manner alter or affect the rights of the insurer to collect the reimbursement for the deductible from the surplus lines broker.

➔Section 11. KRS 304.15-700 is amended to read as follows:

- (1) No person may act as a life settlement provider without first having obtained a license as a life settlement provider from the commissioner.
- (2) Except as provided in paragraph (b) or (c) of this subsection, no person may broker, solicit, or negotiate life settlement contracts between an owner and one (1) or more life settlement providers or otherwise act on behalf of an owner without first having obtained a license as a life settlement broker from the commissioner as follows:
 - (a) All applicants for a life settlement broker license shall attend the required life broker training and pass a life broker examination designated by the commissioner through administrative regulation;
 - (b) A person licensed as a resident or nonresident insurance agent with a life line of authority, as set forth in KRS 304.9-030(2)(a), shall be deemed to meet the licensing requirements of a life settlement broker and shall be permitted to operate as a life settlement broker without obtaining a license as a life settlement broker as set forth in this subtitle if:
 1. That person has been licensed as a resident insurance agent with a life line of authority in his home state for at least one (1) year;
 2. Not later than thirty (30) days from the first day of operating as a life settlement broker, the agent notifies the commissioner, on a notification form prescribed by the commissioner, that he is acting as a life settlement broker and pays any applicable fees to be determined by the commissioner. The notification shall include an acknowledgment by the agent that he will operate as a life settlement broker in accordance with this subtitle; and
 3. Irrespective of the manner in which a life settlement broker or life insurance agent is compensated, the life settlement broker or life insurance agent is deemed to represent only the owner and owes a fiduciary duty to the owner to act according to the owner's instructions and in the best interests of the owner;
 - (c) Notwithstanding this subsection, a person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to

represent the owner, whose compensation is not paid directly or indirectly by the life settlement provider, may negotiate life settlement contracts without having to obtain a license as a life settlement broker; and

- (d) A life insurance agent operating as a life settlement broker in accordance with paragraph (b) of this subsection, prior to the execution of the life settlement contract by all the parties for which such agent is operating as a life settlement broker, shall have in force ~~and file with the commissioner~~ evidence of financial responsibility as follows:
1. A policy of insurance covering the legal liability of the agent as the result of erroneous acts or failure to act in his or her capacity as a life settlement broker, and inuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than twenty thousand dollars (\$20,000) and one hundred thousand dollars (\$100,000) in the aggregate for all occurrences within one (1) year; or
 2. An agreement with a licensed life settlement provider whereby the agent is an additional insured on the policy of insurance covering the legal liability of both the life settlement provider and the agent as the result of erroneous acts or failure to act in his or her capacity as a life settlement broker on a life settlement contract to which the life settlement provider is a party, in the sum of twenty thousand dollars (\$20,000) for any single occurrence; or
 3. ~~A deposit with the commissioner of cash or a~~ cash surety bond, executed by an insurer authorized to write business in this Commonwealth, in the sum of twenty thousand dollars (\$20,000), which shall be subject to lawful levy of execution by any party to whom the agent has been found to be legally liable as the result of erroneous acts or failure to act in his or her capacity as a life settlement broker.
- (3) Application for a life settlement provider license or a life settlement broker license shall be made in accordance with KRS 304.9-150.
- (4) Licenses for life settlement providers and life settlement brokers shall be in accordance with Subtitle 9 of KRS Chapter 304. A business entity licensed as a life settlement broker or life settlement provider shall designate individuals to act under its license in accordance with KRS 304.9-133.
- (5) Prior to issuance of a license as a life settlement broker or life settlement provider, except as provided in subsection (2)(d) of this section, the applicant shall **obtain** ~~file with the commissioner~~, and thereafter for as long as the license remains in effect shall keep in force, evidence of financial responsibility in the sum of not less than twenty thousand dollars (\$20,000) per occurrence, and the sum of one hundred thousand dollars (\$100,000) in the aggregate, for all occurrences within one (1) year. This evidence shall be in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or any combination of these evidences of financial responsibility. The policy, bond, deposit, or combination thereof shall not be terminated without thirty (30) days' prior written notice to the licensee ~~and the commissioner~~. This subsection shall not apply to a life insurance agent operating as a life settlement broker in accordance with subsection (2) of this section.
- (6) No person shall use a life settlement contract form or provide to an owner a disclosure statement form in this Commonwealth unless it has been filed with and approved by the commissioner in the following manner:
- (a) At the expiration of sixty (60) days from the date the filing is complete, the form filed shall be deemed approved unless the commissioner has by order given prior approval or disapproval. Approval of a form by the commissioner shall constitute a waiver of any unexpired portion of the waiting period. The commissioner may extend by not more than thirty (30) days the time period in which he or she may approve or disapprove the form. The commissioner shall give notice to the licensee of the extension before expiration of the initial sixty (60) day period. At the expiration of the extended period, and in the absence of the prior approval or disapproval, the form shall be deemed approved. The commissioner may at any time, after notice and for cause shown, withdraw any approval. The commissioner shall disapprove a life settlement contract form or disclosure statement form if, in the determination of the commissioner, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise are misleading or unfair to the owner. Upon notice and hearing the commissioner shall withdraw approval of any contract later determined to be unreasonable, misleading, unfair, or contrary to the interest of the public; and
 - (b) Forms may be submitted simultaneously with an application or at any time during the process of approving an application for a license pursuant to this subtitle or at any other time.

- (7) A licensed life settlement provider shall not use any person to perform the functions of a life settlement broker as defined in KRS 304.15-020 unless the person holds a current and valid license or is a licensed insurance agent authorized pursuant to this subtitle to operate as a life settlement broker. A licensed life settlement broker shall not use any person to perform the functions of a life settlement provider as defined in KRS 304.15-020 unless the person holds a current and valid license as a life settlement provider.
- (8) If any employee of a licensee violates any provision of KRS 304.15-020, 304.15-700 to 304.15-720, 304.42-190, and 304.99-126, the department may take disciplinary action against the employer licensee.
- (9) When a life settlement provider elects to use a related provider trust, the life settlement provider shall file notice of its intention to use that trust with the department with a copy of the trust agreement. Any change in the trust agreement shall be filed with the commissioner prior to its effect.
- (10) Any additional death benefit payment on a life insurance policy that is the subject of a life settlement contract with a double or additional indemnity for accidental death shall be payable to the following:
 - (a) The beneficiary last named by the policy owner prior to entering into the life settlement contract; or
 - (b) To the estate of the owner in the absence of a beneficiary.
- (11) An insurer that issued a policy that is the subject of a life settlement contract shall not be responsible for any act or omission of a broker, provider, or purchaser arising out of or in connection with the life settlement transaction, unless the insurer receives compensation for the placement of the life settlement contract from the provider, purchaser, or broker in connection with the life settlement contract.
- (12) No insurer may, as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract, require that the owner, insured, provider, or broker sign any form, disclosure, consent, waiver, or acknowledgment that has not been expressly approved by the commissioner for use in connection with life settlement contracts in the Commonwealth.

➔SECTION 12. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *With respect to any insurer registered pursuant to Section 14 of this Act, and in accordance with subsection (3) of this section, the commissioner shall have the authority to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this subtitle. The powers of the commissioner with respect to supervisory colleges include, but are not limited to:*
 - (a) *Initiating the establishment of a supervisory college;*
 - (b) *Clarifying the membership and participation of other supervisors in the supervisory college;*
 - (c) *Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a groupwide supervisor;*
 - (d) *Coordinating the ongoing activities of the supervisory college, including planning meetings, supervising activities, and establishing processes for information sharing; and*
 - (e) *Establishing a crisis management plan.*
- (2) *Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with subsection (3) of this section, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of these expenses.*
- (3) *In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of individual insurers in accordance with Section 16 of this Act, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies. The commissioner may enter into agreements in accordance with KRS 304.37-050 providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.*

➔Section 13. KRS 304.37-010 is amended to read as follows:

As used in this subtitle, the following terms shall have the respective meanings set forth, unless the context shall otherwise require:

- (1) The term "commissioner" shall mean the commissioner of insurance or the Department of Insurance, as appropriate;
- (2) "Insurer" includes every person engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts of insurance, ***except it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;***
- (3) An "insurance holding company system" consists of two (2) or more affiliated persons, one (1) or more of which is an insurer;
- (4) An "affiliate", or person "affiliated" with a specific person, is a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;
- (5) A "person" is an individual, a corporation, a partnership, an association, a joint stock company, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert, but shall not include any bank in its fiduciary capacity or securities broker performing no more than the usual and customary broker's function;
- (6) A "subsidiary" of a specified person is an affiliate controlled by the person directly or indirectly through one (1) or more intermediaries;
- (7) The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security;~~and~~
- (8) The terms "control," "controlling," "controlled by," and "under common control with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a loan contract or commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by KRS 304.37-020(12) that control does not exist in fact. The commissioner may determine, after forwarding all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;
- (9) ***"Enterprise risk" means any activity, circumstance, event, or series of events involving one (1) or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse affect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level as set forth in KRS 304.3-125 and administrative regulations promulgated thereunder or would cause the insurer to be in hazardous financial condition in accordance with KRS 304.2-065; and***
- (10) ***"Supervisory college" means a forum for cooperation and communication between the involved supervisors established for the fundamental purpose of facilitating the effectiveness of supervision of entities which belong to an insurance group and facilitating both the supervision of the group as a whole on a groupwide basis and improving the legal entity supervision of the entities within the insurance group.***

➔Section 14. KRS 304.37-020 is amended to read as follows:

- (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign or alien insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. For an alien insurer, the domiciliary state shall be deemed to be its state of entry. Any insurer which is subject to registration under this section shall register within sixty (60) days after June 16, 1972, or fifteen (15) days after it becomes subject to registration, whichever is later, and annually thereafter by April 1 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is

not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurer with the insurance regulatory authority of its domiciliary jurisdiction.

- (2) Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:
- (a) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;
 - (b) The identity of every member of the insurance holding company system;
 - (c) The following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:
 1. Loans to, other investments in, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;
 2. Purchases, sales, or exchanges of assets;
 3. Transactions not in the ordinary course of business;
 4. Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered in the ordinary course of the insurer's business;
 5. All management and service contracts and all cost-sharing arrangements;
 6. All reinsurance agreements;
 7. Dividend and other distributions to shareholders; and
 8. Consolidated tax allocation agreements;
 - (d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate for a loan made to any member of the insurance holding company system;~~and~~
 - (e) ***If requested by the commissioner, financial statements of, or within, an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the United States Securities and Exchange Commission, pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1932, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the United States Securities and Exchange Commission;***
 - (f) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner;
 - (g) ***Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and***
 - (h) ***Any other information required by the commissioner through administrative regulations.***
- (3) It shall not be necessary to disclose information on the registration statement filed pursuant to subsection (2) of this section if the information is not material for the purposes of this section. Unless the commissioner by administrative regulation or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, or investments, involving one-half of one percent (0.5%) or less of an insurer's admitted assets as of the thirty-first day of December next preceding shall not be deemed material for purposes of this section.
- (4) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within thirty (30) days after the end of the month in which it learns of each change or addition.
- (5) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.
- (6) Subject to KRS 304.37-030(5), each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the dividend or distribution declaration.

- (7) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, if the information is reasonably necessary to enable the insurer to comply with the provisions of this subtitle.
- (8) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.
- (9) The commissioner may require or allow two (2) or more affiliated insurers subject to registration to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.
- (10) The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) and to file all information and material required to be filed under this section.
- (11) The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by administrative regulation or order shall exempt it from the provisions of this section.
- (12) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the persons and the insurer as well as the basis for disclaiming the affiliation. ***A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty (30) days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been approved.*** ~~After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.~~
- (13) ***On and after July 15, 2014, the ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.***
- (14) The failure to file a registration statement or any amendment thereto, ***a summary of the registration statement, or an enterprise risk filing*** required by this section within the time specified for the filing shall be a violation of this subtitle.

➔Section 15. KRS 304.37-030 is amended to read as follows:

- (1) Material transactions by registered insurers with their affiliates shall be subject to the following standards:
- (a) The terms shall be fair and reasonable;
- (b) ***Agreements for cost sharing services and management shall include provisions as required by administrative regulations promulgated by the commissioner;***
- (c) Charges or fees for services performed shall be reasonable;
- ~~(d)(e)~~ Expenses incurred and payment received shall be allocated to the insurer in conformity with consistently applied accounting practices;
- ~~(e)(d)~~ The books, accounts, and records of each party shall be maintained to clearly and accurately disclose the precise nature and details of the transactions; and
- ~~(f)(e)~~ The insurer's surplus as regards policyholders, following any dividends or distributions to shareholder affiliates, shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.
- (2) (a) The following transactions involving a domestic insurer and any person in its ***insurance*** holding company system, ***including amendments or modifications of affiliate agreements previously filed pursuant to this subsection, which are subject to any materiality standards contained in this***

subsection, shall not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty (30) days prior to the transaction, or a shorter period as the commissioner may permit, and the commissioner has not disapproved it within that time. ***The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty (30) days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any:***

1. Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments, if the transactions are equal to or exceed, with respect to non-life insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders, or with respect to life insurers, three percent (3%) of the insurer's admitted assets, each as of December 31 next preceding;
 2. Loans or extensions of credit to any person who is not an affiliate, if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit if the transactions are equal to or exceed, with respect to non-life insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders, or, with respect to life insurers, three percent (3%) of the insurer's admitted assets, each as of December 31 next preceding;
 3. Reinsurance agreements or modifications ***including:***
 - a. ***All reinsurance pooling agreements; and***
 - b. ***Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liability in any of the next three (3) years, equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one (1) or more affiliates of the insurer;***
 4. All management agreements, service contracts, and all cost sharing arrangements;~~and~~
 5. ***Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one percent (0.5%) of the insurer's admitted assets or ten percent (10%) of surplus, regarding policyholders as of the thirty-first day of December of the preceding year. All guarantees which are not quantifiable as to amount shall be subject to the notice requirements of this paragraph;***
 6. ***Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holding in investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to KRS 304.37-110, authorized under this subtitle, or in nonsubsidiary insurance affiliates that are subject to the provisions of this subtitle are exempt from this requirement; and***
 7. Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.
- (b) This subsection shall not authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.
- (c) A domestic insurer shall not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the commissioner determines that the separate transactions were entered into over any twelve (12) month period for avoidance purposes, the commissioner may exercise his or her authority under KRS 304.99-151.

- (d) The commissioner, in reviewing transactions pursuant to this subsection, shall consider whether the transactions comply with the standards set forth in subsection (1) of this section and whether they may adversely affect the interests of policyholders.
 - (e) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one (1) corporation if the total investment in the corporation by the insurance holding company exceeds ten percent (10%) of the corporation's voting securities.
- (3) (a) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this chapter.
- (b) Nothing in this section precludes a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one (1) or more other persons under arrangements which meet the standards of subsection (1) of this section.
- (4) The following factors, among others, shall be considered in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs:
- (a) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;
 - (b) The extent to which the insurer's business is diversified among the several lines of insurance;
 - (c) The number and size of risks insured in each line of business;
 - (d) The extent of the geographical dispersion of the insurer's insured risks;
 - (e) The nature and extent of the insurer's reinsurance program;
 - (f) The quality, diversification, and liquidity of the insurer's investment portfolio;
 - (g) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;
 - (h) The surplus as regards policyholders maintained by other comparable insurers;
 - (i) The adequacy of the insurer's reserves; and
 - (j) The quality and liquidity of investments in subsidiaries. The commissioner may treat any investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders if in his or her judgment the investment warrants.
- (5) No insurer subject to registration under KRS 304.37-020 shall pay any extraordinary dividend or make any other extraordinary distribution to its stockholders until thirty (30) days after the commissioner has received notice of the declaration thereof and has not within the period disapproved the payment, or the commissioner shall have approved the payment within the thirty (30) day period. For purposes of this section, an extraordinary dividend or distribution is any dividend or distribution which, together with other dividends or distribution made within the preceding twelve (12) months, exceeds the lesser of (a) ten percent (10%) of the insurer's surplus as regards policyholders as of December 31 next preceding, or (b) the net gain from operations of the insurer company, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, for the twelve (12) month period ending December 31 next preceding, but shall not include pro rata distribution of any class of the insurer's own securities. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and the declaration shall confer no rights upon stockholders until the commissioner has approved the payment of the dividend or distribution or until the commissioner has not disapproved the payment within the thirty (30) day period referred to in this section.

➔Section 16. KRS 304.37-040 is amended to read as follows:

- (1) Subject to the limitation contained in this section and in addition to the powers which the commissioner has under KRS Chapter 304 relating to the examination of insurers, the commissioner shall also have the power to:
- (a) ***Examine an insurer registered under Section 14 of this Act and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk, to the insurer by:***
 - 1. ***The ultimate controlling party;***

2. *Any entity or combination of entities within the insurance holding company system; or*

3. *The insurance holding company system on a consolidated basis;*

- (b) Order any insurer registered under KRS 304.37-020 to produce such records, books, or other information ~~[papers]~~ in the possession of the insurer or its affiliates as shall be necessary to **determine compliance with this subtitle; and** ~~[ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner shall have the power to examine such affiliates to obtain such information]~~
- (c) *Order any insurer registered under Section 14 of this Act to produce information not in the possession of the insurer if the insurer can obtain access to the information pursuant to contractual relationships, statutory obligations, or another method. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Failure of the insurer to provide the information without good cause may result in a civil penalty pursuant to KRS 304.99-020.*

- (2) The commissioner shall exercise his or her power under subsection (1) of this section only if the examination of the insurer under KRS Chapter 304 is inadequate or the interests of the policyholders of such insurer may be adversely affected.
- (3) The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (1) of this section. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.
- (4) Each registered insurer producing for examination records, books, and papers pursuant to subsection (1) of this section shall be liable for and shall pay the expense of such examination in accordance with the provisions of KRS Chapter 304.
- (5) *If the insurer fails to comply with an order, the commissioner shall have the power to examine its affiliates to obtain the information, and may subpoena witnesses in accordance with KRS 304.2-340.*

➔Section 17. KRS 304.37-120 is amended to read as follows:

- (1) No person other than the issuer shall make a tender offer for, a request or invitation for tenders of, enter into any agreement to exchange securities, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic insurer if, after the consummation, the person would, directly or indirectly, or by conversion, or by exercise of any right to acquire, be in control of the insurer. No person shall enter into an agreement to merge with or to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time of the offer, request, or invitation is made, or any agreement is entered into, or prior to the acquisition of these securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner prescribed in this section.
- (a) For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless the person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance. ~~[However, the person shall file a preacquisition notification with the commissioner containing the information required in KRS 304.37-130(3)(a) thirty (30) days prior to the proposed effective date of the acquisition. The person who fails to file a preacquisition notification shall be subject to the penalty set out in KRS 304.99-151.]~~For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary brokers function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.
- (b) *For purposes of this section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least thirty (30) days prior to the cessation of control. The commissioner shall determine those instances in which the party seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in his or her discretion, determines that confidential treatment will*

interfere with the enforcement of this section. If the statement referred to in this subsection is otherwise filed, this paragraph shall not apply.

- (c) ***With respect to a transaction subject to this section, the acquiring person shall also file a preacquisition notification with the commissioner, which shall contain the information set forth in KRS 304.37-130. A failure to file the notification may be subject to penalties specified in KRS 304.37-130.***
- (2) The statement to be filed with the commissioner under this section shall be made under oath or affirmation and shall contain the following information:
- (a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) of this section is to be effected; and
 - 1. If the person is an individual, his or her principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years; or
 - 2. If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for a lesser period that the person and any predecessors have been in existence, an informative description of the business intended to be done by the person and the person's subsidiaries, and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to these functions. The list shall include for each individual the information required by subparagraph 1. of this paragraph;
 - (b) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for merger or other acquisition of control, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration; but if a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests;
 - (c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party, or for a lesser period that the acquiring party and any predecessors have been in existence, and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement;
 - (d) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets, or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;
 - (e) The number of shares of any security referred to in subsection (1) of this section which the acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section, and a statement as to the method used to determine the fairness of the proposal;
 - (f) The amount of each class of any security referred to in subsection (1) of this section which is beneficially owned, or concerning any security referred to in subsection (1) of this section which there is a right to acquire beneficial ownership of by each acquiring party;
 - (g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) of this section in which any acquiring party is involved, such as transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom these contracts, arrangements, or understandings have been entered into;
 - (h) A description of the purchase of any security referred to in subsection (1) of this section during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid;
 - (i) A description of any recommendations to purchase any security referred to in subsection (1) of this section made during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party;

- (j) Copies of all tender offers for requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) of this section, and of additional soliciting material distributed which relates;
 - (k) The term of any agreement, contract, or understanding made with, or proposed to be made with any broker-dealer, as to solicitation of securities referred to in subsection (1) of this section for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to subsection (1) of this section;
 - (l) *An agreement by the person required to file the statement referred to in subsection (1) of this section that it will provide the annual report specified in section 14 of this act for so long as control exists;*
 - (m) *An acknowledgement by the person required to file the statement referred to in subsection (1) of this section that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer;*
 - (n) Any additional information as the commissioner may by regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest;
 - (o)~~(m)~~ If the person required to file the statement referred to in subsection (1) of this section is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by paragraphs (a) to (m)~~(4)~~ of this subsection shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or other group, and each person who controls the partner or member. If any partner, member, or person is a corporation, or the person required to file the statement referred to in subsection (1) of this section is a corporation, the commissioner may require that the information called for by paragraphs (a) to (l) of this subsection shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation; and
 - (p)~~(n)~~ If any material change occurs in the facts in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment stating the change, with copies of all documents and other materials relevant to the change, shall be filed with the commissioner and sent to the insurer within two (2) business days after the person learns of the change.
- (3) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) of this section may utilize those documents in furnishing the information required by the statement referred to in subsection (1) of this section.
- (4) (a) The commissioner shall approve any merger or other acquisition of control referred to in subsection (1) of this section unless, after a public hearing the commissioner finds that:
- 1. After the change of control, the domestic insurer referred to in subsection (1) of this section would not be able to satisfy the requirements for issuance of a certificate of authority to write the line or lines of insurance for which it is presently authorized;
 - 2. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in Kentucky or tend to create a monopoly. In applying the competitive standard in this paragraph:
 - a. The informational requirements of KRS 304.37-130(3)(a) and the standards of KRS 304.37-130(4)(b) shall apply;
 - b. The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by KRS 304.37-130(4)(c) exist; and
 - c. The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;
 - 3. The financial condition of the acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;

4. The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;
 5. The competence, experience, and integrity of persons who would control the operation of the insurer would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or
 6. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.
- (b) The public hearing required by this section shall be conducted as directed in Subtitle 2 of this chapter.
- (c) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff that may be necessary to assist the commissioner in reviewing the proposed acquisition of control.
- (5) The provisions of this section shall not apply to:
- (a) Any transaction which is subject to the provisions of KRS 304.24-390, dealing with the merger or consolidation of a domestic insurer; or
 - (b) Any offer, request, invitation, agreement, or acquisition which the commissioner, by order, shall exempt from the section as not having been made or entered into for the purpose of and not having the effect of changing or influencing the control of, a domestic insurer, or not comprehended within the purposes of this section; or
 - (c) Any acquisition of stock of a former mutual by an affiliate company that occurs in connection with the conversion of a mutual insurer to a stock insurer under KRS 304.24-600 to 304.24-625, provided that no person acquires control of the parent company. For purposes of this paragraph, "former mutual" has the meaning provided in KRS 304.24-601.
- (6) The following shall be violations of this section:
- (a) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (1) or (2) of this section; or
 - (b) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his or her approval.
- (7) The courts of this state shall have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and overall actions involving such person arising out of violations of this section. Each person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the Secretary of State to be his or her true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of the violations of this section. Copies of all lawful process shall be served on the Secretary of State and transmitted to the person at his or her last known address by the Secretary of State in the same manner as service of process on foreign insurers.

➔Section 18. KRS 304.37-565 is amended to read as follows:

- (1) A public hearing required by KRS 304.37-505 and 304.37-510 shall be conducted as directed in Subtitle 2 of this chapter and KRS Chapter 13B.
- (2) ***In lieu of an administrative hearing, the commissioner may, upon agreement of the parties, adopt the findings by the insurance supervisory official of another state.***
- (3) In addition to any notice required by this chapter and KRS Chapter 13B, the department shall supplement any notice by newspaper publication and broadcast announcements, in accordance with KRS Chapter 424.
- ~~(4)~~~~(3)~~ The commissioner may retain at the applicant's expense any attorneys, actuaries, accountants, investment bankers, or other experts not otherwise a part of the commissioner's staff that may be necessary to assist the commissioner in reviewing the proposed application and plan of reorganization or merger.
- ~~(5)~~~~(4)~~ Upon receipt of the application and plan of reorganization or merger, the commissioner shall submit any application to the Attorney General for examination. The Attorney General shall have access to the commissioner's staff and all consultants retained by the commissioner for review of the application. The Attorney General may examine the application and plan or reorganization or merger for compliance with the

standards in KRS 304.37-555. The Attorney General may submit written findings and a recommendation of approval, disapproval, or conditional approval of the application and plan or reorganization or merger to the commissioner. Written findings and recommendations shall be delivered to the commissioner no later than five (5) days prior to the public hearing required by KRS 304.37-505 and 304.37-510 and shall be entered into the record at the hearing.

- ~~(6)~~~~(5)~~ The commissioner shall at all times retain jurisdiction over the mutual insurance holding company and its intermediate holding company subsidiaries with stock insurance company subsidiaries.
- ~~(7)~~~~(6)~~ Following the hearing required in KRS 304.37-505 and 304.37-510, the commissioner shall, by order, approve, conditionally approve, or deny an application. The commissioner may require, as a condition of approval of the proposed reorganization, modification of the proposed plan or reorganization as the commissioner finds necessary. The applicant shall accept required modifications by filing appropriate amendments to the proposed plan of reorganization with the commissioner within thirty (30) days of the date of the order of the commissioner requiring modifications. If the applicant does not accept the required modifications by failing to file the required amendments to the proposed plan of reorganization within thirty (30) days, the proposed reorganization shall be deemed denied.
- ~~(8)~~~~(7)~~ An approval or conditional approval of a plan of reorganization shall expire if the reorganization is not completed within one hundred eighty (180) days unless the time period is extended by the commissioner upon a showing of good cause.
- ~~(9)~~~~(8)~~ The commissioner may revoke approval or conditional approval of an applicant's plan of reorganization if the commissioner finds the applicant has failed to comply with the plan of reorganization. The commissioner may compel completion of a plan of reorganization unless the plan is abandoned in its entirety. The commissioner shall retain jurisdiction over the applicant until a plan of reorganization has been completed.
- ~~(10)~~~~(9)~~ Upon completion of all elements of a plan of reorganization and any conditions placed on the reorganization by the commissioner, the applicant shall provide a notice of and documentation of completion to the commissioner.
- ~~(11)~~~~(10)~~ Within twelve (12) months after the commissioner receives the notice specified in subsection (9) of this section, the commissioner shall examine the affairs, transactions, accounts, records, and assets of the mutual holding company, reorganized insurer, and its affiliated persons for compliance with the plan of reorganization and for protection of policyholder interests.

➔Section 19. KRS 304.49-150 is amended to read as follows:

- (1) No provisions of this chapter, other than those contained in KRS 304.49-010 to 304.49-230 or contained in specific references contained in KRS 304.49-010 to 304.49-230, shall apply to captive insurance companies.
- (2) *Any industrial insured captive insurer that is created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. sec. 3901 et seq., as amended, shall be subject to the following provisions of this chapter and the administrative regulations promulgated thereunder, to the extent applicable and not in conflict with the express provisions of this subtitle:*
- (a) *Subtitle 1--Scope--General Definitions and Provisions;*
- (b) *Subtitle 2--Commissioner of the Department of Insurance;*
- (c) *Subtitle 3--Authorization of Insurers and General Requirements, including but not limited to:*
1. *KRS 304.3-400 to 304.3-430; and*
 2. *KRS 304.3-500 to 304.3-570;*
- (d) *Subtitle 4--Fees and Taxes;*
- (e) *Subtitle 5--Kinds of Insurance--Limits of Risk--Reinsurance, including but not limited to KRS 304.5-120;*
- (f) *Subtitle 6--Assets and Liabilities;*
- (g) *Subtitle 7--Investments;*
- (h) *KRS 304.9-700 to 304.9-759--Reinsurance Intermediary Act;*
- (i) *Subtitle 33--Insurers Rehabilitation and Liquidation;*

(j) *Subtitle 37--Insurance Holding Company Systems; and*

(k) *Subtitle 99--Penalties.*

➔Section 20. KRS 304.49-070 is amended to read as follows:

- (1) Captive insurance companies shall not be required to make any annual report except as provided in KRS 304.49-010 to 304.49-230.
- (2)
 - (a) On or before March 1 of each year, each captive insurer shall submit to the commissioner a report of its financial condition, verified by oath of two (2) of its executive officers.
 - (b) Each captive insurer shall report using generally accepted accounting principles, unless the commissioner approves the use of statutory accounting principles or international accounting standards. The approved accounting method may contain any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. Any captive insurer whose use of statutory accounting principles is approved by the commissioner may make modifications and adaptations as are necessary to record as admitted the full value of all investments by the captive insurer permitted under this subtitle and, subject to the commissioner's approval, to make its reports under this section consistent with the purposes of this subtitle.
 - (c) Except as otherwise provided, all captive insurers, with the exception of those formed as a risk retention group, shall file reports on a form prescribed by the commissioner. ***An actuarial opinion summary shall not be required to be filed when a certification of loss and loss expense reserves and opinion of reserve adequacy is filed with the department by a captive insurer, unless otherwise requested by the commissioner***~~[The provisions of KRS 304.3-242(7)(a) and (d) shall not apply to a captive insurer].~~
 - (d) A captive insurer formed as a risk retention group shall file reports pursuant to KRS 304.2-205 ***and an actuarial opinion summary pursuant to KRS 304.3-242***, with additional information or modification as the commissioner may prescribe.
 - (e) The commissioner shall by administrative regulation propose the forms in which captive insurers shall report.
- (3) Any captive insurer may make written application for filing the required report on a fiscal year end. If an alternative reporting date is granted, the annual report is due sixty (60) days after the fiscal year end.
- (4) Sixty (60) days after the fiscal year end, a branch captive insurer shall file with the commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the foreign captive insurer is formed, verified by oath of two (2) of its executive officers. If the commissioner is satisfied that the annual report filed by the foreign captive insurer in its domiciliary jurisdiction provides adequate information concerning the financial condition of the foreign captive insurer, the commissioner may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction.

➔SECTION 21. A NEW SECTION OF SUBTITLE 99 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The certificate of authority of an insurer may be reinstated by the commissioner pursuant to Section 1 of this Act if the request for reinstatement is accompanied by a fine in the amount of one thousand dollars (\$1,000).

➔Section 22. KRS 304.99-085 is amended to read as follows:

- (1) ***A broker that fails to file an affidavit as provided by KRS 304.10-050 shall be liable for a penalty fee of one hundred dollars (\$100).***
- (2) ***A broker that exhibits a pattern of failing to file affidavits as provided by KRS 304.10-050 shall be subject to a penalty fee not less than one thousand dollars (\$1,000) or more than five thousand (\$5,000), revocation of license, or both, unless it is shown to the satisfaction of the commissioner that the failure is due to reasonable cause.***
- (3) ***A broker that***~~[If any broker]~~ fails to file ***a quarterly***~~[his or her annual]~~ statement as provided by KRS 304.10-170~~[, he or she]~~ shall be liable for a ***penalty of five hundred dollars (\$500)***~~[fine of ten dollars (\$10) for each day of delinquency commencing with the first day of April].~~

(4)~~(2)~~ If any broker fails to remit the tax provided by **KRS 304.10-180(1)(a)**~~[KRS 304.10-180]~~, unless it is shown to the satisfaction of the commissioner that the failure is due to reasonable cause, five percent (5%) of the tax found to be due by the commissioner shall be added to the tax for each thirty (30) days or fraction thereof elapsing between the due date of the return and the date on which it was filed, but the total penalty shall not exceed twenty-five percent (25%) of the tax; provided, however, that in no case shall a penalty be less than **five hundred dollars (\$500)**~~[twenty five dollars (\$25)]~~.

→Section 23. KRS 304.99-152 is amended to read as follows:

- (1) Any insurer failing, without just cause, to file any registration statement as required by Subtitle 37 of this chapter, shall be required, after notice and hearing, to pay a civil penalty of ten thousand dollars (\$10,000) for each day's delay to the commissioner. The maximum civil penalty under this section shall be one hundred thousand dollars (\$100,000). The commissioner may reduce the civil penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.
- (2) Every director or officer of an insurance holding company system who knowingly violates, participates in, assents to, or who knowingly permits any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to KRS 304.37-020(1), 304.37-030(2), or 304.37-030(5), or which violate Subtitle 37 of this chapter, shall pay, in their individual capacities, a civil penalty of not more than five thousand dollars (\$5,000) per violation, after notice and hearing before the commissioner. In determining the amount of the civil penalty, the commissioner shall take into account the appropriateness of the civil penalty with respect to the gravity of the violation, the history of previous violations, and other matters justice may require.
- (3) If it appears that any insurer subject to Subtitle 37 of this chapter, or any director, officer, employee, or agent has engaged in any transaction or entered into any contract which is subject to KRS 304.37-030 and which would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void the contracts and restore the status quo if the action is in the best interest of the policyholders, creditors, or the public.
- (4) If it appears that any insurer or any director, officer, employee, or agent has committed a willful violation of Subtitle 37 of this chapter, the commissioner may cause criminal proceedings to be instituted in the Circuit Court for the county in which the principal office of the insurer is located, or if the insurer has no office in Kentucky, in the Franklin Circuit Court against the insurer or the responsible director, officer, employee, or agent. Any insurer which willfully violates Subtitle 37 of this chapter, may be fined not more than one hundred thousand dollars (\$100,000). Any individual who willfully violates Subtitle 37 of this chapter, may be fined in his or her individual capacity not more than one thousand dollars (\$1,000), be imprisoned for not more than one (1) to three (3) years, or both.
- (5) Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of his or her duties under Subtitle 37 of this chapter, upon conviction, shall be imprisoned for not more than one (1) year or more than five (5) years, or fined ten thousand dollars (\$10,000), or both. Any fines imposed shall be paid by the officer, director, or employee in his or her individual capacity.
- (6) ***If it appears to the commissioner that any person has committed a violation of Section 17 of this Act which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with Subtitle 33 of this chapter.***

→Section 24. Section 12 of this Act takes effect on July 15, 2014.

Signed by Governor April 11, 2012.