

**CHAPTER 34****( HB 191 )**

AN ACT relating to insurance.

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

➔Section 1. KRS 329A.070 is amended to read as follows:

The provisions of KRS 329A.010 to 329A.090 do not apply to:

- (1) An officer or employee of the United States, this state, another state, or any political subdivision thereof, performing his or her official duties within the course and scope of his or her employment;
- (2) A public accountant, certified public accountant, or the bona fide employee of either, performing duties within the scope of public accountancy;
- (3) A person engaged exclusively in the business of obtaining and furnishing information regarding the financial rating or standing and credit of persons;
- (4) An attorney-at-law, or an attorney's bona fide employee, performing duties within the scope of the practice of law or authorized agent with duties limited to document and record retrieval or witness interviews;
- (5) An insurance company, licensed insurance agent, ~~for~~ staff or independent adjuster if authorized to do business in Kentucky, ***or an individual employed by an insurance company or licensed insurance agent to investigate suspected fraudulent insurance claims, but who does not adjust losses or determine claims payments,*** performing investigative duties limited to matters strictly pertaining to an insurance transaction;
- (6) A person engaged in compiling genealogical information, or otherwise tracing lineage or ancestry, by primarily utilizing public records and historical information or databases;
- (7) A private business employee conducting investigations relating to the company entity by which he or she is employed;
- (8) An individual obtaining information or conducting investigations on his or her own behalf;
- (9) An employee of a private investigator or a private investigating firm who works under the direction of the private investigator or the private investigating firm for less than two hundred forty (240) hours per year. The board shall promulgate administrative regulations to establish a method of verification of the number of hours worked;
- (10) A professional engineer, a professional land surveyor, or a professional engineer's or professional land surveyor's bona fide employee, performing duties within the scope of practice of engineering or land surveying; or
- (11) A secured creditor, or person acting on behalf of a secured creditor, engaged in the repossession of the creditor's collateral pursuant to KRS 355.9-609.

➔Section 2. 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 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 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 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 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 given to the licensee at least thirty (30) days prior to the termination.
- (b) The commissioner may ask for evidence of financial responsibility at any time he or she deems relevant.
- (c) 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) ***Notwithstanding any other provision of this subtitle, an individual who is employed by an insurer to investigate suspected fraudulent insurance claims, but who does not adjust losses or determine claims payments, shall not be required to be licensed as a staff adjuster.***
- (9) 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.
- ~~(10)(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.

~~(11)~~~~(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.

~~(12)~~~~(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.

~~(13)~~~~(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.

~~(14)~~~~(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 3. KRS 304.20-020 is amended to read as follows:

- (1) No automobile liability or motor vehicle liability policy of insurance insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in KRS 304.39-110 under provisions approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided that ~~any~~~~the~~ named insured shall have the right to reject in writing such coverage; and provided further that ***the rejection shall be valid for all insureds under the policy, and*** unless ~~a~~~~the~~ named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal, ***reinstatement, substitute, replacement, or amended policy issued to the same named insured by the same insurer or any of its affiliates or subsidiaries***~~[where the named insured had rejected the coverage in connection with a policy previously issued to him or her by the same insurer].~~
- (2) For the purpose of this coverage the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency; an insured motor vehicle with respect to which the amounts provided, under the bodily injury liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of such motor vehicle, are less than the limits described in KRS 304.39-110; and an insured motor vehicle to the extent that the amounts provided in the liability coverage applicable at the time of the accident is denied by the insurer writing the same.
- (3) Protection against an insurer's insolvency shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tortfeasor becomes insolvent within one (1) year after such an accident. Nothing herein contained shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to its insureds than is provided hereunder.
- (4) In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

➔Section 4. KRS 304.39-230 is amended to read as follows:

- (1) If no basic or added reparation benefits have been paid for loss arising otherwise than from death, an action therefor may be commenced not later than two (2) years after the injured person suffers the loss and either knows, or in the exercise of reasonable diligence should know, that the loss was caused by the accident, or not later than four (4) years after the accident, whichever is earlier. If basic or added reparation benefits have been paid for loss arising otherwise than from death, an action for further benefits, other than survivor's benefits, by either the same or another claimant, may be commenced not later than two (2) years after the last payment of benefits.
- (2) If no basic or added reparation benefits have been paid to the decedent or his *or her* survivors, an action for survivor's benefits may be commenced not later than one (1) year after the death or four (4) years after the accident from which death results, whichever is earlier. If survivor's benefits have been paid to any survivor, an action for further survivor's benefits by either the same or another claimant may be commenced not later than two (2) years after the last payment of benefits. If basic or added reparation benefits have been paid for loss suffered by an injured person before his *or her* death resulting from the injury, an action for survivor's benefits may be commenced not later than one (1) year after the death or four (4) years after the last payment of benefits, whichever is earlier.
- (3) If timely action for basic reparation benefits is commenced against a reparation obligor and benefits are denied because of a determination that the reparation obligor's coverage is not applicable to the claimant under the provisions on priority of applicability of basic reparation security, an action against the applicable reparation obligor or the assigned claims bureau may be commenced not later than sixty (60) days after the determination becomes final or the last date on which the action could otherwise have been commenced, whichever is later.
- (4) Except as subsections (1), (2), or (3) of this section prescribe a longer period, an action by a claimant on an assigned claim which has been timely presented may be commenced not later than sixty (60) days after the claimant received written notice of rejection of the claim by the reparation obligor to which it was assigned.
- (5) If a person entitled to basic or added reparation benefits is under legal disability when the right to bring an action for the benefits first accrues, the period of his *or her* disability is a part of the time limited for commencement of the action.
- (6) An action for tort liability not abolished by KRS 304.39-060 may be commenced not later than two (2) years after the injury, or the death, or the *date of issuance of the* last basic or added reparation payment made by any reparation obligor, whichever later occurs. *For the purposes of determining the date of issuance of the last basic or added reparation payment made by a reparation obligor, a replacement payment does not extend the date beyond the date of the original payment. For the purposes of this section, "replacement payment" means a payment in the same amount as the original payment, but which is issued as a replacement for the original payment for reasons including but not limited to the original payment being lost, stolen, or not delivered. A reparation obligor shall provide to a claimant or the claimant's attorney upon written request information on whether any payment is a replacement payment.*

➔Section 5. KRS 304.9-295 is amended to read as follows:

- (1) This section shall apply to individuals who hold licenses or lines of authority requiring continuing education each biennium.
- (2) The continuing education biennial compliance date for an individual resident licensee shall be as follows:
  - (a) A licensee whose birth date is in an even-numbered year shall satisfy continuing education requirements on or before the last day of the licensee's birth month in the even-numbered year. A licensee shall show proof of compliance to the commissioner within sixty (60) days after the continuing education biennial compliance date. If the licensee has not held the license for one (1) year, the compliance date is adjusted to the next even-numbered year and each subsequent even-numbered year thereafter. If the license becomes inactive and reissued within a twelve (12) month period, the compliance date shall remain the same;
  - (b) A licensee whose birth date is in an odd-numbered year shall satisfy continuing education requirements and show proof of compliance to the commissioner on or before the last day of the licensee's birth month in the odd-numbered year. A licensee shall show proof of compliance to the commissioner within sixty (60) days after the continuing education biennial compliance date. If the licensee has not held the license for one (1) year, the compliance date is adjusted to the next odd-numbered year and each subsequent odd-numbered year thereafter. If the license becomes inactive and reissued within a twelve (12) month period, the compliance date shall remain the same.

- (3) This section shall not apply to:
- (a) Limited lines of authority under agent licenses, as exempted by the commissioner in accordance with KRS 304.9-230;
  - (b) Licensees not licensed for one (1) full year prior to the end of the applicable continuing education biennium;
  - (c) Licensees holding nonresident licenses who have met the continuing education requirements of their home state and whose home state gives credit to Kentucky resident licensees on the same basis; or
  - (d) Licensees maintaining their licenses for the sole purpose of receiving renewals or deferred commissions and providing the department with a supporting affidavit.
- (4) A licensee, who holds an agent license and who is not exempt under subsection (3) of this section, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which three (3) hours shall have a course concentration in ethics, during each continuing education biennium.
- (5) Beginning July 31, 2012, an individual who holds an independent or public adjuster license and who is not exempt under KRS 304.9-430 **(10) or (11)**~~[(9) or (10)]~~, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which three (3) hours shall have a course concentration in ethics in accordance with subsection (4) of this section. Continuing education hours shall be reported to the commissioner on a biennial basis in conjunction with the licensee's renewal in accordance with subsection (10) of this section.
- (6) Only continuing education courses approved by the commissioner shall be used to satisfy the continuing education requirement of subsection (4) of this section and any other continuing education requirement of this chapter.
- (a) The continuing education courses which meet the commissioner's standards for continuing education requirements are:
    - 1. Any part of the Life Underwriter Training Council life course curriculum;
    - 2. Any part of the Health Underwriter Training Council health course curriculum;
    - 3. Any part of the American College Chartered Life Underwriter diploma curriculum;
    - 4. Any part of the American Institute for Property and Liability Underwriters' chartered property and casualty underwriter profession designation program;
    - 5. Any part of the Insurance Institute of America's programs;
    - 6. Any part of the certified insurance counselor program;
    - 7. Any insurance related course taught at an accredited college or university, if the course is approved by the commissioner;
    - 8. Any course of instruction or seminar developed or sponsored by any authorized insurer, recognized agent association, recognized insurance trade association, or any independent program of instruction, if approved by the commissioner;
    - 9. Any correspondence course approved by the commissioner; and
    - 10. Any course in accordance with provisions of reciprocal agreements the commissioner enters with other states.
  - (b) The commissioner shall prescribe the number of hours of continuing education credit for each continuing education course approved in accordance with this subsection. Continuing education courses submitted in accordance with a reciprocal agreement shall be approved according to the provisions of the reciprocal agreement.
  - (c) If a continuing education course requires successful completion of a written examination, no continuing education credit shall be given to licensees who do not successfully complete the written examination.
  - (d) The fee for filing continuing education courses for approval by the commissioner shall be as specified in Subtitle 4 of KRS Chapter 304.

- (e) For continuing education courses of reciprocal states, continuing education providers shall be approved in accordance with the provisions of the reciprocal agreements.
- (7) An individual teaching any approved continuing education course shall qualify for the same number of hours of continuing education credit as would be granted to a licensee taking and satisfactorily completing the course.
- (8) Excess credit hours accumulated during any continuing education biennium may be carried forward. The commissioner may, by regulation, limit the number of hours carried forward.
- (9) For good cause shown, the commissioner may grant an extension of time during which the continuing education requirement of subsection (2) of this section may be completed, but the extension of time shall not exceed two (2) years. What constitutes good cause for the extension of time rests within the discretion of the commissioner.
- (10) Every licensee subject to this section shall furnish to the commissioner written certification as to the continuing education courses satisfactorily completed by the licensee. The certification shall be signed by or on behalf of the provider sponsoring the continuing education course. The certification shall be on a form prescribed by the commissioner.
- (11) The provider shall furnish to the commissioner certification as to the continuing education courses satisfactorily completed by each licensee. The certification shall be signed or authenticated by or on behalf of the provider sponsoring the continuing education course. The certification shall be on a form or in a format prescribed by the commissioner.
- (12) The license or line of authority requiring continuing education shall expire if the individual holding the license or line of authority fails to comply with the continuing education requirement and has not been granted an extension of time to comply in accordance with subsection (9) of this section. If the license has expired, the license shall be promptly surrendered to the commissioner without demand. If the line of authority has terminated but another line of authority not requiring continuing education is still in effect, the license shall be promptly delivered to the commissioner for reissuance as to the line of authority still in effect.
- (13) The license of any individual subject to the continuing education requirement shall be suspended or revoked, a civil penalty imposed, or both, in accordance with KRS 304.9-440, if the individual submits to the commissioner a false or fraudulent certificate of compliance with the continuing education requirement.
- (14) (a) The commissioner may withdraw approval of a continuing education provider, course, or instructor for good and just cause.  
(b) In addition to or in lieu of withdrawal of approval, the commissioner may impose a civil penalty of not more than one thousand dollars (\$1,000) per violation of this chapter by a provider or an instructor.

➔Section 6. KRS 304.9-436 is amended to read as follows:

- (1) An authorized insurer shall not do business in Kentucky with an adjuster who is unlicensed in violation of KRS 304.9-080 and 304.9-430. This section shall not apply to transactions between an authorized insurer and persons providing adjusting services pursuant to KRS 304.9-430 **(10), (11), and (13)**~~[(9), (10), and (12)]~~.
- (2) An authorized insurer shall not do business in Kentucky with an administrator who is not licensed in accordance with KRS 304.9-052. This subsection shall not apply to transactions between an authorized insurer and persons providing administrator services pursuant to KRS 304.9-051.

**Signed by Governor March 20, 2017.**