

806 KAR 12:020. Fair disclosure to consumers.

RELATES TO: KRS 304.1-050, 304.2-310, 304.9-440, 304.12-010, 304.12-020, 304.12-040, 304.12-110, 304.12-130, 304.14-120 to 304.14-180

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as established in KRS 304.1-010. This administrative regulation establishes standards to assure fair disclosure to insurance consumers.

Section 1. Definitions.

- (1) "Agent" is defined by KRS 304.9-020.
- (2) "Commissioner" is defined by KRS 304.1-050(1).
- (3) "Consultant" is defined by KRS 304.9-040.
- (4) "Department" is defined by KRS 304.1-050(2).
- (5) "Insurer" is defined by KRS 304.1-050.
- (6) "Person" is defined by KRS 304.1-020.
- (7) "Pure endowment benefit" means a guaranteed insurance benefit, actuarially determined, the payment of which is contingent upon the survival of the insured to a specified point in time.

Section 2. Applicability. This administrative regulation shall apply to:

- (1)
 - (a) Any insurance company, person, or consultant;
 - (b) Acts and practices in the advertising, promotion, solicitation, and negotiation of or effecting the sale of life insurance policies; and
 - (c) Acts and practices related to the sale of insurance, whether or not they involve the use of language disseminated by means of sales kits, policy jackets or covers, letters, personal presentations, visual aids, or other sales media.
- (2) This administrative regulation shall not apply to group insurance policies or to annuity contracts.

Section 3. Statement of Policy.

- (1) To assure fair disclosure of relevant facts in the sale of life insurance and to protect purchasers and prospective purchasers of life insurance policies sales methods that are misleading shall not be used, including:
 - (a) The omission of facts fairly describing both the subject matter of a life insurance policy and the benefits obtainable under the policy;
 - (b) An undue emphasis upon facts that might be true but are not relevant to the sales of life insurance; and
 - (c) An undue emphasis upon features that are of incidental or secondary importance to the life insurance aspects of a policy.
- (2) Although this administrative regulation is addressed to selected acts and practices that have been of serious concern to the Department of Insurance, this shall not be a determination that any act of practice not established in this administrative regulation is in conformance with the statutory provisions.
- (3) The acts and practices established in Sections 7 through 7 of this administrative regulation shall be prohibited.

Section 4. Policy Forms. A company shall not:

- (1) Include coupons as a part of policies containing pure endowment benefits;
- (2) Issue a policy of insurance containing pure endowment benefits unless the gross premium for these provisions is shown prominently and separately in the policy as

distinct from the regular insurance gross premium. This subsection shall not apply to any policy in which the amount of any pure endowment or periodic benefit or benefits payable during any policy year is greater than the total annual premium for the year.

(a) This separate gross premium for the series of pure endowments shall be based on reasonable assumptions and be consistent with the policy as to interest, mortality, and expense.

(b) The amount of the guaranteed series of pure endowment benefits shall be expressed in dollar amounts and shall not be presented or defined, either in the policy or any sales and advertising material, as a "percentage" of any premiums or benefits contained in the policy.

(c) All policies with pure endowments sold in Kentucky shall include the following statement stamped on the face of the policy until present stocks are exhausted: "The premium includes \$ _____ for pure endowment benefits;"

(3) Use a dividend illustration in connection with a participating life insurance policy unless the dividend illustration is on file with the commissioner as a part of a rate book or as a separate filing; and

(4) Use words or phrases such as "investment or investment plan," "insured investment plan," "profitsharing," "charter plan," "founders plan," or similar language in a life insurance policy, either in context or under circumstances or conditions as to have the capacity and tendency to mislead a purchaser or prospective purchaser to believe that he or she will receive or that it is probable he or she will receive something other than an insurance policy, some benefit not provided in the policy, or some benefit not available to other persons of the same class and equal expectation of life.

Section 5. Sales Presentation and Solicitation. Sales presentations and solicitations shall not:

(1) Reference to a policy using similar terminology as established in Section 4(4) of this administrative regulation, including:

(a) Statements or representations that the prospective policyholder shall receive the right to benefits from the insurance company that are not stipulated in the policy itself; or

(b) Statements or references that refer to premium payments in language stating the payment is a "deposit" unless:

1. The payment establishes a debtor-creditor relationship between the insurance company and the policyholder; or

2. The term is used in conjunction with the word "premium" in a manner that clearly indicates the true character of the payment;

(c) Statements that describe a life insurance policy or premium payments in terms of "unit of participation", unless accompanied by other language fairly indicating their reference to a life insurance policy or to premium payments. Statements that describe a life insurance policy or premium payments in terms of units shall be followed by the dollar amount representing the annual premium for each unit or units described, and further wording clearly indicating that the unit or units represent a life insurance policy; and

(d) Statements that infer that the guaranteed endowments available under a policy are interest, earnings, return on investment, or anything other than benefits for which the cost is taken into consideration in calculating the total premium;

(2) Reference to any policy or contract in a manner as to misrepresent its true nature and more particularly:

(a) Statements that tend to lead the prospect to believe that the agent is dealing in other than a life insurance contract;

(b) Statements that tend to lead the prospect to believe that life insurance is incidental to the purchase of the contract;

- (c) Statements or reference relating to the growth of the life insurance industry or to the tax status of life insurance companies in a context that would reasonably be understood to interest a prospect in the purchase of shares of stock in an insurance company rather than in the purchase of a life insurance policy;
 - (d) Statements that reasonably give rise to the inference that the insured will enjoy a status common to a stockholder or will acquire a stock ownership interest in the insurance company by virtue of purchasing the policy; and
 - (e) References or statements to a company's "investment department," "insured investment department," or similar terminology in a manner as to imply that the policy was sold, issued, or is serviced by the investment department of the insurance company;
- (3) Reference the payment of dividends in a manner as to misrepresent their true nature, including:
- (a) Providing any illustration as to projected dividends unless the dividend scale is based on the experience currently used by the company for dividends and unless the illustration is expressed in dollar amounts;
 - (b) Statements that use the words "dividends," "cash dividends," "surplus," or similar phrases in a manner as to state or imply that the payment of dividends is guaranteed or certain to occur;
 - (c) Statements or references that a purchaser of a policy will share in a stated percentage or portion of the earnings of the company;
 - (d) Statements that use the word "dividend," "cash dividends," "surplus," or similar terminology not expressed as a dollar amount. This shall apply to projected dividends and past experience on dividends; and
 - (e) Statements or inferences that projected dividends under a participating policy are sufficient at any time to assure the receipt of benefits without the further payment of premiums unless the statement is accompanied by an adequate explanation as to:
 - 1. What benefits or coverage would be provided; and
 - 2. The conditions under which this would occur; and
- (4) Reference to any policy or contract in a manner as to suggest that certain policyholders will receive preferential treatment, including:
- (a) Statements or references that would reasonably tend to imply that by purchasing a policy, the purchaser or prospective purchaser will become a member of a limited group of persons who may receive in the payment of dividends, special advantages, benefits, or favored treatment. This paragraph shall not apply to policies under which insured persons of one (1) class of risk may receive dividends of a higher rate than persons of another class of risk;
 - (b) Statements or references that each policyholder is given the right to allocate a specific number of policies;
 - (c) Statements or inferences that only a limited number of person or a limited class of persons, will be eligible to buy a particular kind of policy, unless the limitation is related to recognized underwriting practices;
 - (d) Statements or inferences that policyholders who act as "centers of influence" for an insurance company in that capacity will share in the company's surplus earnings in some manner not available to policyholders of the same class; and
 - (e) Comparisons to the past experience of other life insurance companies in which the comparison is based on an arbitrary selection as to either the companies or the statistics or other data used.

Section 6. Dividends.

- (1) Policyholder premium or gross cost reductions on participating policies shall be designated dividends. Other items shall not be designated as dividends.

(a) Dividends shall not be guaranteed as to amount, percentage, or premium, or other basis.

(b) The decision for declaration of a dividend shall be determined by the insurance company's board of directors, based solely on operating results or projection for those policies designated participating policies.

(2) If dividends are declared for a policy year classification based on specific plan or age classifications as they relate to contribution of company ability to declare dividends, dividends shall be apportioned to all policies so entitled in that policy year.

(3) The date dividends are declared shall be the date liability is established for the dividends and the reserve established for this liability shall be the full amount of the dividends declared.

(I-12.01; 1 Ky.R. 1077; eff. 7-2-75; TAm eff. 8-9-2007; Crt eff. 2-26-2020; 47 Ky.R. 1082, 1568; eff. 5-4-2021.)