

**304.11-030 Prohibition of unauthorized insurance business -- Applicability of law -
- Liability of person acting as agent -- Commissioner's power to enjoin.**

- (1) It shall be unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this state, as set forth in subsection (2) of this section without a certificate of authority from the commissioner; provided, that this subsection shall not apply to:
 - (a) The lawful transaction of surplus lines insurance;
 - (b) The lawful transaction of reinsurance by insurers;
 - (c) Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy;
 - (d) Transactions involving contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid;
 - (e) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses;
 - (f) Transactions in this state involving group life and group health or blanket health insurance or group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business;
 - (g) Transactions in this state involving any policy of insurance issued prior to July 1, 1968; and
 - (h) Insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.
- (2) Any of the following acts in this state effected by mail or otherwise is defined to be doing an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term "insurer" as used in this section includes all corporations, associations, partnerships, and individuals, engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies:
 - (a) The making of or proposing to make, as an insurer, an insurance contract;
 - (b) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;
 - (c) The taking or receiving of any application for insurance;
 - (d) The receiving or collection of any premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof;
 - (e) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;

- (f) Directly or indirectly acting as an agent for, or otherwise representing or aiding on behalf of another, any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, or fixing of rates or investigation or adjustment of claims or losses, or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subsection shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer;
 - (g) The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance;
 - (h) The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this code; and
 - (i) Any other transactions of business in this state by an insurer.
- (3) (a) The failure of a company transacting insurance business in Kentucky to obtain a certificate of authority shall not impair the validity of any act or contract of such company and shall not prevent such company from defending any action at law or suit in equity in any court of this state.
- (b) In event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract shall be liable to the insured for the full amount of the claim or loss in the manner provided by the provisions of such insurance contract.
- (4) Whenever the commissioner believes, from evidence satisfactory to him or her, that any company is violating or about to violate the provisions of these sections, the commissioner may, through the Attorney General of this state, cause a complaint to be filed in the Circuit Court of Franklin County to enjoin and restrain such company from continuing such violation or engaging therein or doing any act in furtherance thereof. The court shall have jurisdiction of the proceeding and shall have the power to make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1102, effective July 15, 2010. -- Created 1970 Ky. Acts ch. 301, subtit. 11, sec. 3, effective June 18, 1970.