

1 AN ACT relating to the supervision of insurance companies.

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

3 ➔SECTION 1. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS
4 CREATED TO READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Insurance group" means those insurers and affiliates included within an*
7 *insurance holding company system as defined in Section 2 of this Act;*

8 *(b) "Lead state regulator" means the state insurance regulator of the state that*
9 *is the lead state for an insurance group, as determined by procedures*
10 *outlined in the National Association of Insurance Commissioner's*
11 *Financial Analysis Handbook, as amended; and*

12 *(c) "CGAD" means Corporate Governance Annual Disclosure.*

13 *(2) This section shall not be construed to:*

14 *(a) Prescribe or impose corporate governance standards or internal procedures*
15 *beyond those required under applicable state corporate law; or*

16 *(b) Limit the authority of the commissioner or the department, or the rights or*
17 *obligations of third parties, under this chapter.*

18 *(3) (a) By June 1 of each calendar year, an insurer shall submit a CGAD to the*
19 *department, unless the insurer is a member of an insurance group, in which*
20 *case either the insurer, or the insurance group of which the insurer is a*
21 *member, shall submit a CGAD to the lead state regulator for the insurance*
22 *group.*

23 *(b) 1. An insurer or insurance group not required to submit a CGAD under*
24 *paragraph (a) of this subsection shall submit a CGAD to the*
25 *department if requested by the commissioner, but not more than once*
26 *per calendar year.*

27 *2. The insurer or insurance group required to provide a CGAD under*

1 this paragraph shall notify the department of the CGAD's proposed
2 submission date within thirty (30) days of the commissioner's request.

3 (4) (a) Subject to paragraph (b) of this subsection, an insurer or insurance group
4 shall have discretion in:

5 1. Determining the appropriate format of the CGAD; and

6 2. Communicating the information required by this section in the
7 CGAD.

8 (b) Notwithstanding paragraph (a) of this subsection, an insurer or insurance
9 group shall:

10 1. Provide sufficient material and relevant information in the CGAD to
11 enable the commissioner to understand the corporate governance
12 structure, policies, and practices used by the insurer or insurance
13 group;

14 2. Provide any additional information requested by the commissioner
15 that the commissioner deems necessary to comply with the
16 requirements of this section; and

17 3. Ensure that the CGAD is prepared in compliance with all
18 requirements of this section.

19 (5) (a) Each CGAD submitted to the department shall:

20 1. Contain the signature of the insurer's or insurance group's chief
21 executive officer or corporate secretary attesting that, to the best of his
22 or her belief and knowledge, the insurer or insurance group has:

23 a. Implemented the corporate governance practices disclosed in the
24 CGAD; and

25 b. Provided a copy of the CGAD to the insurer's or insurance
26 group's board of directors or to the appropriate committee of the
27 board;

- 1 2. Be as descriptive as possible;
- 2 3. Include any attachments or example documents used in the
- 3 governance process; and
- 4 4. Describe the following:
- 5 a. The corporate governance framework and structure of the
- 6 insurer or insurance group;
- 7 b. The policies and practices:
- 8 i. Of the insurer's or insurance group's most senior
- 9 governing entity and its significant committees; and
- 10 ii. For directing the insurer's or insurance group's senior
- 11 management; and
- 12 c. The processes by which the insurer's or insurance group's
- 13 board, its committees, and senior management ensure an
- 14 appropriate amount of oversight to the critical risk areas that
- 15 have an impact on the insurer's business activities.
- 16 (b) 1. An insurer or insurance group may comply with this subsection by
- 17 cross-referencing other existing relevant and applicable documents, if
- 18 the documents contain information substantially similar to the
- 19 information required by this subsection.
- 20 2. For purposes of this paragraph, "other existing relevant and
- 21 applicable documents" include but are not limited to:
- 22 a. The ORSA Summary Report as defined in KRS 304.3-600;
- 23 b. The filings required under KRS 304.37-020;
- 24 c. Securities and Exchange Commission proxy statements; and
- 25 d. Documents filed in compliance with other state, federal, or
- 26 international reporting requirements.
- 27 3. An insurer or insurance group that cross-references documents under

1 *this paragraph shall:*

2 *a. Clearly identify and reference the specific location of the*
3 *documents; and*

4 *b. Include the referenced documents as an attachment to the*
5 *CGAD, unless the documents have already been filed with, or*
6 *made available to, the department.*

7 *(6) For purposes of completing the CGAD:*

8 *(a) An insurer or insurance group may:*

9 *1. Report information at one (1) of the following levels, depending upon*
10 *the structure of its corporate governance system:*

11 *a. The ultimate controlling parent level;*

12 *b. An intermediate holding company level; or*

13 *c. The individual legal entity level; and*

14 *2. Make disclosures at the level:*

15 *a. Used to determine the risk appetite of the insurer or insurance*
16 *group;*

17 *b. At which the earnings, capital, liquidity, operations, and*
18 *reputation of the insurer are collectively overseen and the*
19 *supervision of those factors is coordinated and exercised; or*

20 *c. At which legal liability for failure of general corporate*
21 *governance duties is placed; and*

22 *(b) An insurer or insurance group shall:*

23 *1. Indicate the reporting level used;*

24 *2. If the reporting level was based on the criteria set forth in paragraph*
25 *(a)2. of this subsection, indicate the criteria used to determine the*
26 *reporting level; and*

27 *3. Explain any subsequent changes in reporting level.*

- 1 (7) An insurer or insurance group shall maintain documentation and support for all
2 information provided in the CGAD, which shall be made available to the
3 commissioner upon examination or upon request.
- 4 (8) For each year following the initial filing of a CGAD with the department, the
5 insurer or insurance group shall comply with this section by filing an amended
6 version of the CGAD previously filed. The amended CGAD shall indicate any
7 changes that have been made from the previously filed CGAD. If no changes
8 were made in the information or activities reported by the insurer or insurance
9 group since the previous filing, the insurer or insurance group shall so indicate.
- 10 (9) Subject to subsection (10) of this section:
- 11 (a) Filings, documents, and information in the possession or control of the
12 department that are obtained by, created by, or disclosed to the
13 commissioner or any other person under this section are recognized as
14 being proprietary and containing trade secrets, and shall be confidential by
15 law and privileged. The filings, documents, and information shall not be
16 subject to:
- 17 1. Disclosure or production by the department under:
- 18 a. The Kentucky Open Records Act, KRS 61.870 to 61.884; or
19 b. A subpoena; or
- 20 2. Discovery or admission into evidence in any private civil action; and
- 21 (b) The following persons shall not be permitted or required to testify in any
22 private civil action regarding the filings, documents, or information
23 referenced in paragraph (a) of this subsection:
- 24 1. The commissioner or any person who received filings, documents, or
25 information while acting under the authority of the commissioner;
26 and
- 27 2. Any person with whom filings, documents, or information are shared

1 under subsection (10) of this section.

2 (10) The filings, documents, and information subject to subsection (9) of this section
3 may be:

4 (a) Used by the commissioner in furtherance of any regulatory or legal action
5 brought against an insurer as part of the commissioner's official duties;
6 and

7 (b) Shared, upon request, by the commissioner with the following, if the
8 recipient agrees in writing to maintain the confidential and privileged status
9 of the filings, documents, or information and has verified in writing the
10 recipient's legal authority to do so:

11 1. Other state, federal, and international financial regulatory agencies,
12 including members of any supervisory college as defined in Section 2
13 of this Act;

14 2. The National Association of Insurance Commissioners; and

15 3. Third-party consultants retained under subsection (14) of this section.

16 (11) (a) The commissioner may receive CGAD filings, related documents, or
17 governance-related information from the following:

18 1. Other state, federal, and international financial regulatory agencies,
19 including members of any supervisory college as defined in Section 2
20 of this Act; and

21 2. The National Association of Insurance Commissioners.

22 (b) Any filing, document, or information received under this subsection, with
23 notice that the filing, document, or information is confidential or privileged
24 under the laws of the jurisdiction that is the source of the filing, document,
25 or information, shall be confidential by law and privileged in accordance
26 with subsection (9) of this section.

27 (12) The sharing of documents or information by the commissioner under this section

1 shall not constitute a delegation of regulatory authority or rulemaking. The
2 commissioner is solely responsible for the administration, execution, and
3 enforcement of this subtitle.

4 (13) A waiver of any applicable privilege or claim of confidentiality in the filings,
5 documents, or information received or provided under this section shall not occur
6 as a result of:

7 (a) Disclosure to the commissioner or any person acting under authority of the
8 commissioner; or

9 (b) Sharing as authorized in this section.

10 (14) (a) The commissioner may retain, at the insurer's or insurance group's
11 expense, third-party consultants and the National Association of Insurance
12 Commissioners for the purpose of assisting the commissioner in the
13 performance of his or her regulatory duties under this section, including
14 but not limited to understanding the insurer's or insurance group's:

15 1. Risk management framework;

16 2. Own Risk and Solvency Assessment (ORSA) and ORSA Summary
17 Report, as those terms are defined in KRS 304.3-600; and

18 3. CGAD filing.

19 (b) As part of the retention process, each party retained by the commissioner
20 shall agree, in writing, to the following:

21 1. Adhere to the same confidentiality standards and requirements as the
22 commissioner;

23 2. Comply with specific procedures and protocols for maintaining the
24 confidentiality and security of information shared with the retained
25 party;

26 3. Comply with specific procedures and protocols for sharing by the
27 National Association of Insurance Commissioners only with other

1 state regulators from states in which the insurance group has
2 domiciled insurers. The agreement shall:

3 a. Specify that the recipient state agrees to maintain the
4 confidentiality and privileged status of the information received;
5 and

6 b. Provide verification that the recipient state has legal authority to
7 maintain confidentiality;

8 4. Recognize that:

9 a. Ownership of information shared with the retained party shall
10 remain with the department; and

11 b. The retained party's use of shared information is subject to the
12 direction of the commissioner;

13 5. Verify and give notice to the insurer that the retained party is free of
14 any conflict of interest;

15 6. Monitor compliance with applicable confidentiality and conflict of
16 interest standards in accordance with a system of internal procedures;

17 7. Not store information shared with the retained party in a permanent
18 database after the underlying analysis is completed;

19 8. Provide prompt notice to the commissioner and the insurer or
20 insurance group of any subpoena or request received by the retained
21 party for the insurer's or insurance group's filings, documents, or
22 information; and

23 9. Consent to intervention by an insurer in any judicial or administrative
24 action in which the retained party may be required to disclose
25 confidential information about the insurer that was shared with the
26 retained party under this section.

27 ➔Section 2. KRS 304.37-010 is amended to read as follows:

1 As used in this subtitle, ~~the following terms shall have the respective meanings set~~
2 ~~forth,~~ unless the context requires~~[shall]~~ otherwise~~[require]~~:

3 (1) "Affiliate" or person "affiliated" with a specific person means a person that
4 directly, or indirectly through one (1) or more intermediaries, controls, or is
5 controlled by, or is under common control with, the person specified;

6 (2) ~~[The term]~~ "Commissioner" means~~[shall mean]~~ the commissioner of insurance or
7 the Department of Insurance, as appropriate;

8 (3) (a) "Control," "controlling," "controlled by," and "under common control
9 with" mean the possession, direct or indirect, of the power to direct or cause
10 the direction of the management and policies of a person, whether through
11 the ownership of voting securities, by contract other than a loan contract or
12 commercial contract for goods or nonmanagement services, or otherwise,
13 unless the power is the result of an official position with or corporate office
14 held by the person.

15 (b) Control shall be presumed to exist if any person, directly or indirectly, owns,
16 controls, holds with the power to vote, or holds proxies representing ten
17 percent (10%) or more of the voting securities of any other person. This
18 presumption may be rebutted by a showing made in the manner provided by
19 KRS 304.37-020(12) that control does not exist in fact. The commissioner
20 may determine, after forwarding all persons in interest notice and
21 opportunity to be heard and making specific findings of fact to support the
22 determination, that control exists in fact, notwithstanding the absence of a
23 presumption to that effect;

24 (4) "Enterprise risk" means any activity, circumstance, event, or series of events
25 involving one (1) or more affiliates of an insurer that, if not remedied promptly, is
26 likely to have a material adverse effect upon the financial condition or liquidity of
27 the insurer or its insurance holding company system as a whole, including but

1 not limited to anything that would cause the insurer's risk-based capital to fall
 2 into company action level as set forth in KRS 304.3-125 and administrative
 3 regulations promulgated thereunder or would cause the insurer to be in
 4 hazardous financial condition in accordance with KRS 304.2-065;

5 (5) "Groupwide supervisor" means the regulatory official authorized to engage in
 6 conducting and coordinating groupwide supervision activities in accordance with
 7 Section 3 of this Act;

8 (6) "Insurance holding company system" means two (2) or more affiliated persons,
 9 one (1) or more of which is an insurer;

10 ~~(7)(2)~~ "Insurer" includes every person engaged as principal and as indemnitor,
 11 surety, or contractor in the business of entering into contracts of insurance, except it
 12 shall not include agencies, authorities, or instrumentalities of the United States, its
 13 possessions and territories, the Commonwealth of Puerto Rico, the District of
 14 Columbia, or a state or political subdivision of a state;

15 (8) "Internationally active insurance group" means an insurance holding company
 16 system that:

17 (a) Includes an insurer registered under KRS 304.37-020; and

18 (b) Meets the following criteria:

19 1. Has premiums written in at least three (3) countries;

20 2. Has gross premiums written outside of the United States that are at
 21 least ten percent (10%) of the system's total gross written premiums;

22 and

23 3. Based on a three (3) year rolling average:

24 a. Has total assets that are at least fifty billion dollars
 25 (\$50,000,000,000); or

26 b. Has total gross written premiums that are at least ten billion
 27 dollars (\$10,000,000,000).

- 1 ~~[(3) An "Insurance holding company system" consists of two (2) or more affiliated~~
2 ~~persons, one (1) or more of which is an insurer;~~
- 3 ~~(4) An "affiliate," or person "affiliated" with a specific person, is a person that directly,~~
4 ~~or indirectly through one (1) or more intermediaries, controls, or is controlled by, or~~
5 ~~is under common control with, the person specified;]~~
- 6 **(9)**~~[(5)]~~ [A-]"Person" ***means***~~[is]~~ an individual, a corporation, a partnership, an
7 association, a joint stock company, an unincorporated organization, any similar
8 entity, or any combination of the foregoing acting in concert, but shall not include
9 any bank in its fiduciary capacity or securities broker performing no more than the
10 usual and customary broker's function;
- 11 **(10)**~~[(6)]~~ [A-]"Subsidiary" of a specified person ***means***~~[is]~~ an affiliate controlled by the
12 person directly or indirectly through one (1) or more intermediaries;
- 13 ***(11) "Supervisory college" means a forum for cooperation and communication***
14 ***between the involved supervisors established for the fundamental purpose of***
15 ***facilitating the effectiveness of supervision of entities which belong to an***
16 ***insurance group and facilitating both the supervision of the group as a whole on***
17 ***a groupwide basis and improving the legal entity supervision of the entities within***
18 ***the insurance group; and***
- 19 **(12)**~~[(7)]~~ [The term-]"Voting security" ***includes***~~[shall include]~~ any security convertible
20 into or evidencing a right to acquire a voting security[;]
- 21 ~~(8) The terms "control," "controlling," "controlled by," and "under common control~~
22 ~~with" mean the possession, direct or indirect, of the power to direct or cause the~~
23 ~~direction of the management and policies of a person, whether through the~~
24 ~~ownership of voting securities, by contract other than a loan contract or commercial~~
25 ~~contract for goods or nonmanagement services, or otherwise, unless the power is the~~
26 ~~result of an official position with or corporate office held by the person. Control~~
27 ~~shall be presumed to exist if any person, directly or indirectly, owns, controls, holds~~

1 with the power to vote, or holds proxies representing ten percent (10%) or more of
 2 the voting securities of any other person. This presumption may be rebutted by a
 3 showing made in the manner provided by KRS 304.37-020(12) that control does not
 4 exist in fact. The commissioner may determine, after forwarding all persons in
 5 interest notice and opportunity to be heard and making specific findings of fact to
 6 support the determination, that control exists in fact, notwithstanding the absence of
 7 a presumption to that effect;

8 ~~(9) "Enterprise risk" means any activity, circumstance, event, or series of events~~
 9 ~~involving one (1) or more affiliates of an insurer that, if not remedied promptly, is~~
 10 ~~likely to have a material adverse affect upon the financial condition or liquidity of~~
 11 ~~the insurer or its insurance holding company system as a whole, including, but not~~
 12 ~~limited to, anything that would cause the insurer's risk-based capital to fall into~~
 13 ~~company action level as set forth in KRS 304.3-125 and administrative regulations~~
 14 ~~promulgated thereunder or would cause the insurer to be in hazardous financial~~
 15 ~~condition in accordance with KRS 304.2-065; and~~

16 ~~(10) "Supervisory college" means a forum for cooperation and communication between~~
 17 ~~the involved supervisors established for the fundamental purpose of facilitating the~~
 18 ~~effectiveness of supervision of entities which belong to an insurance group and~~
 19 ~~facilitating both the supervision of the group as a whole on a groupwide basis and~~
 20 ~~improving the legal entity supervision of the entities within the insurance group].~~

21 ➔SECTION 3. A NEW SECTION OF SUBTITLE 37 OF KRS CHAPTER 304
 22 IS CREATED TO READ AS FOLLOWS:

23 (1) (a) The commissioner may:

24 1. Act as the groupwide supervisor for any internationally active
 25 insurance group in accordance with this section; or

26 2. Acknowledge another regulatory official as the groupwide supervisor,
 27 if the internationally active insurance group:

- 1 a. Does not have substantial insurance operations in the United
2 States;
3 b. Has substantial insurance operations in the United States, but
4 not in this state; or
5 c. Has substantial insurance operations in the United States and in
6 this state, but the commissioner determines under this section
7 that the other regulatory official is the appropriate groupwide
8 supervisor.

9 (b) An insurance holding company system that does not otherwise qualify as an
10 internationally active insurance group may request the commissioner to
11 make a determination or acknowledgment as to a groupwide supervisor
12 under this section.

13 (2) (a) In cooperation with other state, federal, and international regulatory
14 agencies, the commissioner shall identify a single groupwide supervisor for
15 an internationally active insurance group.

16 (b) For an internationally active insurance group that conducts substantial
17 insurance operations in this state, the commissioner may:
18 1. Determine that he or she is the appropriate groupwide supervisor; or
19 2. Acknowledge a regulatory official from another jurisdiction as the
20 appropriate groupwide supervisor.

21 (c) In making a determination or acknowledgment of a groupwide supervisor,
22 the commissioner shall consider the following factors:

23 1. With regard to the internationally active insurance group:

24 a. The place of domicile of:

25 i. The insurers within the group that hold the largest share of
26 the group's written premiums, assets, or liabilities; and

27 ii. The top-tiered insurer or insurers in the insurance holding

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company system of the group; and

b. The location of the executive officers or largest operational officers of the group; and

2. Whether another regulatory official acting or seeking to act as the groupwide supervisor:

a. Acts under a regulatory system that the commissioner determines to be:

i. Substantially similar to the system of regulation provided under the laws of this state; or

ii. Otherwise sufficient in terms of providing for groupwide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

b. Provides the commissioner with reasonably reciprocal recognition and cooperation.

(d) If the commissioner is identified under this section as the groupwide supervisor, he or she may determine that it is appropriate to acknowledge another supervisor to serve as the groupwide supervisor. This acknowledgement shall be made:

1. After consideration of the factors set forth in paragraph (c) of this subsection;

2. In cooperation with and subject to the acknowledgement of other regulatory officials involved with supervision of members of the internationally active insurance group; and

3. In consultation with the internationally active insurance group.

(3) (a) Notwithstanding any other provision of law, when another regulatory official is acting as the groupwide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory

1 official as the groupwide supervisor until there is a material change in the
2 internationally active insurance group that results in:

3 1. Insurers domiciled in this state holding the largest share of the
4 group's premiums, assets, or liabilities; or

5 2. This state being the place of domicile of the top-tiered insurer or
6 insurers in the insurance company holding system of the group.

7 (b) In the event of a material change under paragraph (a) of this subsection,
8 the commissioner shall make a determination or acknowledgement as to the
9 appropriate groupwide supervisor in accordance with subsection (2) of this
10 section.

11 (4) (a) Pursuant to KRS 304.37-040, the commissioner may collect from any
12 insurer registered under KRS 304.37-020 all information necessary to make
13 a determination or acknowledgment of groupwide supervisor under this
14 section.

15 (b) Prior to making a determination that he or she is the appropriate groupwide
16 supervisor for an internationally active insurance group, the commissioner
17 shall notify the insurer registered under KRS 304.37-020 and the ultimate
18 controlling person within the group.

19 (c) The internationally active insurance group shall have at least thirty (30)
20 days to provide the commissioner with additional information pertinent to
21 the pending determination.

22 (d) The commissioner shall publish the identity of internationally active
23 insurance groups that the commissioner has determined are subject to
24 groupwide supervision by him or her.

25 (5) The commissioner may engage in any of following activities when acting as a
26 groupwide supervisor of an internationally active insurance group:

27 (a) Assess the enterprise risks within the group to ensure that:

- 1 1. The material financial condition and liquidity risks to the members of
2 the group engaged in the business of insurance are identified by
3 management; and
- 4 2. Reasonable and effective mitigation measures are in place;
- 5 (b) Request from any member of the group subject to the commissioner's
6 supervision information necessary and appropriate to assess enterprise risk,
7 including but not limited to information about the group member's:
- 8 1. Governance, risk assessment, and management;
9 2. Capital adequacy; and
10 3. Material intercompany transactions;
- 11 (c) Coordinate and, through the authority of the regulatory officials of the
12 jurisdictions where members of the group are domiciled, compel
13 development and implementation of reasonable measures designed to
14 ensure that the group is able to timely recognize and mitigate enterprise
15 risks to group members that are engaged in the business of insurance;
- 16 (d) Communicate with other state, federal, and international regulatory
17 agencies for members of the group and share relevant information, subject
18 to the confidentiality provisions of Section 4 of this Act, through supervisory
19 colleges as set forth in KRS 304.37-055 or otherwise;
- 20 (e) Enter into agreements with or obtain documentation from any insurer
21 registered under KRS 304.37-020, any member of the group, and any other
22 state, federal, and international regulatory agencies for group members,
23 providing the basis for or otherwise clarifying the commissioner's role as
24 groupwide supervisor, including provisions for resolving disputes with other
25 regulatory officials. These agreements or documentation shall not serve or
26 be admissible as evidence in any proceeding seeking to establish that an
27 insurer or person within an insurance holding company system not

1 domiciled or incorporated in this state is doing business or is otherwise
2 subject to the personal jurisdiction of a court in this state; and

3 (f) Other groupwide supervision activities, consistent with the authority and
4 purposes set forth in this section, considered necessary by the
5 commissioner.

6 (6) If the commissioner acknowledges that another regulatory official from a
7 jurisdiction that is not accredited by the National Association of Insurance
8 Commissioners is the appropriate groupwide supervisor, the commissioner may
9 reasonably cooperate, through supervisory colleges or otherwise, with groupwide
10 supervision undertaken by the groupwide supervisor if:

11 (a) The commissioner's cooperation is in compliance with the laws of this state;
12 and

13 (b) The regulatory official acknowledged as the groupwide supervisor also
14 recognizes and cooperates with the commissioner's activities as a groupwide
15 supervisor for other internationally active insurance groups where
16 applicable. If recognition and cooperation is not reasonably reciprocal, the
17 commissioner may refuse recognition and cooperation.

18 (7) The commissioner may enter into agreements with or obtain documentation
19 from:

20 (a) Any insurer registered under KRS 304.37-020, including any affiliate of the
21 insurer; and

22 (b) Other state, federal, and international regulatory agencies for members of
23 an internationally active insurance group, if the regulatory officials for the
24 state, federal, or international agencies provide the basis for or otherwise
25 clarify the officials' roles as groupwide supervisors for the group.

26 (8) An insurer registered under KRS 304.37-020 and subject to this section shall be
27 liable for and pay the reasonable expenses of the commissioner's participation in

1 *the administration of this section, including:*

2 *(a) The engagement of attorneys, actuaries, and any other professionals; and*

3 *(b) All reasonable travel expenses.*

4 ➔Section 4. KRS 304.37-050 is amended to read as follows:

5 (1) (a) *Subject to paragraph (b) of this subsection,* all documents, materials, or other
6 information in the possession or control of the department that are obtained by
7 or disclosed to the commissioner *or* ~~by~~ any other person in the course of an
8 examination, analysis, or investigation made *under* ~~pursuant to~~ KRS 304.37-
9 040 and all information reported *or provided to the department*
10 *under* ~~pursuant to~~ KRS 304.37-020, *KRS 304.37-030, and Section 3 of this*
11 *Act,* shall:

- 12 1. Be confidential by law and privileged; and
- 13 2. Not be subject to:
 - 14 a. The Kentucky Open Records Act, KRS 61.872 to 61.884;
 - 15 b. Subpoena; *or*
 - 16 c. Discovery~~[-]~~ or~~[-]~~
 - 17 d. ~~—~~ admission *into* ~~in~~ evidence in any private civil action.

18 (b) The commissioner may use the documents, materials, or other information in
19 the furtherance of any regulatory or legal action brought as a part of the
20 commissioner's official duties.

21 (c) The commissioner shall not otherwise make the documents, materials, or
22 other information public without the prior written consent of the insurer to
23 which it pertains unless the commissioner, after giving the insurer and its
24 affiliates who would be affected thereby notice and opportunity to be heard,
25 determines that the interests of policyholders, shareholders, or the public will
26 be served by the publication thereof, in which event the commissioner may
27 publish all or any part thereof in such manner as the commissioner may deem

1 appropriate.

2 (2) Neither the commissioner nor any person who received documents, materials, or
3 other information while acting under the authority of the commissioner or with
4 whom such documents, materials, or other information are shared, pursuant to this
5 subtitle, shall be permitted or required to testify in any private civil action
6 concerning any confidential documents, materials, or other information subject to
7 subsection (1) of this section.

8 (3) The commissioner:

9 (a) May share documents, materials, or other information, including confidential
10 and privileged documents, materials, or other information subject to
11 subsection (1) of this section, with other state, federal, and international
12 regulatory agencies, the National Association of Insurance Commissioners
13 and its affiliates and subsidiaries, and with state, federal and international law
14 enforcement authorities, including members of any supervisory college
15 described in KRS 304.37-055, if the recipient agrees in writing to maintain the
16 confidentiality and privileged status of the documents, materials, or other
17 information, and has verified in writing the legal authority to maintain
18 confidentiality;

19 (b) May only share confidential and privileged documents, materials, or other
20 information reported pursuant to KRS 304.37-020(13), notwithstanding
21 paragraph (a) of this subsection, with commissioners of states having statutes
22 or regulations substantially similar to subsection (1) of this section, and who
23 have agreed in writing not to disclose such information;

24 (c) 1. May receive documents, materials, or other information, including
25 confidential and privileged documents, materials, or other information
26 from the National Association of Insurance Commissioners and its
27 affiliates and subsidiaries and from regulatory and law enforcement

- 1 officials of other foreign or domestic jurisdiction; and
- 2 2. Shall maintain as confidential or privileged any documents, materials, or
- 3 other information received with notice or the understanding that it is
- 4 confidential or privileged under the laws of the jurisdiction that is the
- 5 source of the documents, materials, or other information; and
- 6 (d) Shall enter into written agreements with the National Association of Insurance
- 7 Commissioners governing sharing and use of information provided pursuant
- 8 to this subtitle, consistent with this subsection that:
- 9 1. Specify procedures and protocols regarding the confidentiality and
- 10 security of information shared with the National Association of
- 11 Insurance Commissioners and its affiliates and subsidiaries, pursuant to
- 12 this subtitle, including procedures and protocols for sharing the National
- 13 Association of Insurance Commissioners with other state, federal, or
- 14 international regulators;
- 15 2. Specify that ownership of information shared with the National
- 16 Association of Insurance Commissioners and its affiliates and
- 17 subsidiaries, pursuant to this subsection, remains with the commissioner,
- 18 and the National Association of Insurance Commissioners' use of the
- 19 information is subject to the direction of the commissioner;
- 20 3. Require prompt notice be given to an insurer whose confidential
- 21 information, in the possession of the National Association of Insurance
- 22 Commissioners, pursuant to this subtitle, is subject to a request or
- 23 subpoena to the National Association of Insurance Commissioners,
- 24 pursuant to this subtitle, for disclosure or production; and
- 25 4. Require the National Association of Insurance Commissioners and its
- 26 affiliates and subsidiaries to consent to intervention by an insurer in any
- 27 judicial or administrative action in which the National Association of

1 Insurance Commissioners and its affiliates and subsidiaries may be
 2 required to disclose confidential information about the insurer shared
 3 with the National Association of Insurance Commissioners and its
 4 affiliates and subsidiaries.

5 (4) The sharing of information by the commissioner shall not constitute a delegation of
 6 regulatory authority or rulemaking, and the commissioner is solely responsible for
 7 administration, execution, and enforcement of this subtitle.

8 (5) A waiver of any applicable privilege or claim of confidentiality in the documents,
 9 materials, or information shall not occur as a result of disclosure to the
 10 commissioner under this section or as a result of sharing as authorized in subsection
 11 (3) of this section.

12 (6) Documents, materials, or information in the possession or control of the National
 13 Association of Insurance Commissioners and its affiliates and subsidiaries, pursuant
 14 to this subtitle, shall:

15 (a) Be confidential by law and privileged; and

16 (b) Not be subject to:

17 1. The Kentucky Open Records Act, KRS 61.872 to 61.884;

18 2. Subpoena; or

19 3. Discovery~~;~~ or~~;~~

20 4. ~~—~~ admission into~~in~~ evidence in any private civil action.

21 ➔Section 5. KRS 304.3-090 is amended to read as follows:

22 No foreign insurer shall be authorized to transact insurance in Kentucky, which has not
 23 been issuing its own policies as an authorized insurer for at least three (3) years in its state
 24 or country of domicile, unless the insurer is otherwise qualified for a certificate of
 25 authority under this code and is:

26 (1) The wholly owned subsidiary as defined in KRS 304.37-010~~+(6)~~ of an insurer
 27 which is already an authorized insurer in Kentucky; or

1 (2) The successor in interest through statutory merger or statutory consolidation, or
2 through bulk reinsurance of substantially all of the insurance risks in this state, of an
3 authorized insurer; or

4 (3) An insurer organized solely for the purpose of insuring against earthquake, flood,
5 nuclear radiation, war or other special hazards to property or liability for which, in
6 the opinion of the commissioner, adequate provision is not made by insurers already
7 authorized in this state.

8 ➔Section 6. KRS 304.3-400 is amended to read as follows:

9 As used in KRS 304.3-400 to 304.3-430, unless the context requires otherwise:

10 (1) "Accredited state" means a state in which the insurance regulatory agency has
11 qualified as meeting the minimum financial regulatory standards promulgated and
12 established from time to time by the National Association of Insurance
13 Commissioners;

14 (2) "Control" or "controlled" has the meaning set forth in KRS 304.37-010~~(8)~~;

15 (3) "Controlled insurer" means an authorized insurer which is controlled, directly or
16 indirectly, by a producer;

17 (4) "Controlling producer" means a producer who directly or indirectly, controls an
18 insurer;

19 (5) "Authorized insurer" or "insurer" means an insurer holding a certificate of authority
20 from the commissioner to transact property or casualty insurance business in
21 Kentucky. The following, among others, are not authorized insurers for the
22 purposes of KRS 304.3-400 to 304.3-430:

23 (a) All residual market mechanisms and joint underwriting authorities or
24 associations; and

25 (b) All captive insurers, other than risk retention groups as defined in 15 U.S.C.
26 secs. 3901 et seq. and 42 U.S.C. sec. 9671, including insurers owned by
27 another organization whose exclusive purpose is to insure risks of the parent

1 organization and affiliated companies or, in the case of groups and
2 associations, insurance organizations owned by the insureds whose exclusive
3 purpose is to insure risks to member organizations or group members and
4 their affiliates; and

5 (6) "Producer" means a person, firm, association, or corporation, when, for any
6 compensation, commission, or other thing of value, the person, firm, association, or
7 corporation acts or aids in any manner in soliciting, negotiating, or procuring the
8 making of any insurance contract on behalf of an insured other than the person,
9 firm, association, or corporation.

10 ➔Section 7. KRS 304.24-290 is amended to read as follows:

11 The insurer shall establish and maintain in this state its principal office and place of
12 business. The insurer's principal records shall be kept either at its principal office or, with
13 the approval of the commissioner, at its place of business in any other state where it, or its
14 affiliate as defined in ~~subsection (4) of~~ KRS 304.37-010, is engaged in the business of
15 entering into contracts of insurance.

16 ➔Section 8. KRS 304.37-130 is amended to read as follows:

17 (1) The following definitions shall apply for the purposes of this section only:

18 (a) "Acquisition" means any agreement, arrangement, or activity the
19 consummation of which results in a person acquiring directly or indirectly the
20 control of another person, such as the acquisition of voting securities, the
21 acquisition of assets, bulk reinsurance, and mergers; and

22 (b) An "involved insurer" includes an insurer which either acquires or is acquired,
23 is affiliated with an acquirer or acquired, or is the result of a merger.

24 (2) (a) This section applies to any acquisition in which there is a change of control of
25 an insurer authorized to do business in Kentucky, except as set forth in
26 paragraph (b) of this subsection.

27 (b) This section shall not apply to the following:

- 1 1. An acquisition subject to approval or disapproval of the commissioner
2 pursuant to KRS 304.37-120;
- 3 2. A purchase of securities solely for the investment purposes so long as
4 the securities are not used by voting or otherwise to cause or attempt to
5 cause the substantial lessening of competition in any insurance market in
6 Kentucky. If a purchase of securities results in a presumption of control
7 under KRS 304.37-010(3)~~[(8)]~~, it is not solely for investment purposes
8 unless the insurance regulatory official of the insurer's state of domicile
9 accepts a disclaimer of control, or affirmatively finds that control does
10 not exist, and the disclaimer action or affirmative finding is
11 communicated by the domiciliary insurance regulatory official to the
12 commissioners;
- 13 3. If the acquisition of a person by another person when both persons are
14 neither directly nor through affiliates primarily engaged in the business
15 of insurance, if preacquisition notification is filed with the commissioner
16 in accordance with subsection (3)(a) of this section thirty (30) days prior
17 to the proposed effective date of the acquisition. However, the
18 acquisition notification shall not be required for exclusion from this
19 section if the acquisition would otherwise be excluded from this section
20 by any other subparagraph of this paragraph;
- 21 4. The acquisition of already affiliated persons;
- 22 5. An acquisition if, as an immediate result of the acquisition:
 - 23 a. The combined market share of the involved insurers would not
24 exceed five percent (5%) of the total market;
 - 25 b. There would be no increase in any market share; or
 - 26 c. The combined market share of the involved insurers would not
27 exceed twelve percent (12%) of the total market; and the market

1 share would not increase by more than two percent (2%) of the
2 total market.

3 For the purpose of this subparagraph (b)5., a market means direct
4 written insurance premium in Kentucky for a line of business as
5 contained in the annual statement required to be filed by insurers
6 authorized to do business in Kentucky;

7 6. An acquisition for which a preacquisition notification would be required
8 pursuant to this section due solely to the resulting effect on the ocean
9 marine insurance line of business; and

10 7. An acquisition of an insurer whose domiciliary insurance regulatory
11 official affirmatively finds that the insurer is in failing condition, there is
12 lack of feasible alternative to improving the condition, the public
13 benefits of improving the insurer's condition through the acquisition
14 exceed the public benefits that would arise from not lessening
15 competition, and the findings are communicated by the domiciliary
16 insurance regulatory official to the commissioner.

17 (3) An acquisition covered by subsection (2) of this section may be subject to an order
18 pursuant to subsection (5) of this section or KRS 304.37-010 unless the acquiring
19 person files a preacquisition notification and the waiting period has expired. The
20 acquired person may file a preacquisition notification. The commissioner shall give
21 confidential treatment to information submitted under this subsection in the same
22 manner as provided in KRS 304.37-050.

23 (a) The preacquisition notification shall be in the form and contain the
24 information prescribed by the National Association of Insurance
25 Commissioners relating to those markets which, under subsection (2)(b)5. of
26 this section, cause the acquisition not to be exempted from the provisions of
27 this section. The commissioner may require additional material and

1 information the commissioner deems necessary to determine whether the
2 proposed acquisition, if consummated, would violate the competitive standard
3 of subsection (4) of this section. The required information may include an
4 opinion of an economist as to the competitive impact of the acquisition in
5 Kentucky accompanied by a summary of the education and experience of the
6 economist indicating his or her ability to render an informed opinion.

7 (b) The waiting period required shall begin on the date of receipt by the
8 commissioner of a preacquisition notification and shall end on the earlier of
9 the thirtieth day after the date of receipt, or termination of the waiting period
10 by the commissioner. Prior to the end of the waiting period, the commissioner
11 may, on a one-time basis, require the submission of additional needed
12 information relevant to the proposed acquisition; if the submission is required,
13 the waiting period shall end on the earlier of the thirtieth day after receipt of
14 the additional information by the commissioner or termination of the waiting
15 period by the commissioner.

16 (4) (a) The commissioner may enter an order under subsection (5)(a) of this section
17 with respect to an acquisition if there is substantial evidence that the effect of
18 the acquisition may be to lessen substantially competition in any line of
19 insurance in Kentucky or tend to create a monopoly, or if the insurer fails to
20 file adequate information in compliance with subsection (3) of this section.

21 (b) In determining whether a proposed acquisition would violate the competitive
22 standard of paragraph (a) of this subsection, the commissioner shall consider
23 the following:

24 1. Any acquisition covered under subsection (2) of this section involving
25 two (2) or more insurers competing in the same market is prima facie
26 evidence of violation of the competitive standards:

27 a. If the market is highly concentrated and the involved insurers

1 possess the following shares of the market:

2	Insurer A	Insurer B
3	4%	4% or more
4	10%	2% or more
5	15%	1% or more;

6 or

7 b. If the market is not highly concentrated and the involved insurers
8 possess the following shares of the market:

9	Insurer A	Insurer B
10	5%	5% or more
11	10%	4% or more
12	15%	3% or more
13	19%	1% or more.

14 A highly concentrated market means one in which the share of the four
15 (4) largest insurers is seventy-five percent (75%) or more of the market.
16 Percentages not shown in the tables are interpolated proportionately to
17 the percentages that are shown. If more than two (2) insurers are
18 involved, exceeding the total of the two (2) columns in the table is prima
19 facie evidence of violation of the competitive standard in paragraph (a)
20 of this subsection. For the purpose of this subparagraph, the insurer with
21 the largest share of the market shall be deemed to be insurer A;

22 2. There is a significant trend toward increased concentration when the
23 aggregate market share of any grouping of the largest insurers in the
24 market, from the two (2) largest to the eight (8) largest, has increased by
25 seven percent (7%) or more of the market over a period of time
26 extending from any base year five (5) to ten (10) years prior to the
27 acquisition up to the time of the acquisition. Any acquisition or merger

- 1 covered under subsection (2) of this section involving two (2) or more
2 insurers competing in the same market is prima facie evidence of
3 violation of the competitive standard in paragraph (a) of this subsection
4 if:
- 5 a. There is a significant trend toward increased concentration in the
6 market;
 - 7 b. One of the insurers involved is one of the insurers in a grouping of
8 the large insurers showing the requisite increase in the market
9 share; and
 - 10 c. Another involved insurer's market is two percent (2%) or more;
- 11 3. For the purposes of subsection (4)(b) of this section:
- 12 a. The term "insurer" includes any company or group of companies
13 under common management, ownership or control;
 - 14 b. The term "market" means the relevant product and geographical
15 markets. In determining the relevant product and geographical
16 markets, the commissioner shall give due consideration to factors
17 such as the definitions or guidelines, if any, promulgated by the
18 National Association of Insurance Commissioners and to
19 information, if any, submitted by parties to the acquisition. In the
20 absence of sufficient information to the contrary, the relevant
21 product market is assumed to be the direct written insurance
22 premium for a line of business, the line being that used in the
23 annual statement required to be filed by insurers doing business in
24 Kentucky, and the relevant geographical market is assumed to be
25 Kentucky; and
 - 26 c. The burden of showing prima facie evidence of violation of the
27 competitive standard rests upon the commissioner; and

1 4. Even though an acquisition is not prima facie violative of the
2 competitive standard under paragraph (b) of this subsection, the
3 commissioner may establish the requisite anticompetitive effect based
4 upon other substantial evidence. Even though an acquisition is prima
5 facie violative of the competitive standard under paragraph (b) of this
6 subsection, a party may establish the absence of the requisite
7 anticompetitive effect based upon other substantial evidence. Relevant
8 factors in making this determination shall be such factors as market
9 shares, volatility of ranking of market leaders, number of competitors,
10 concentration, trend of concentration in the industry, and ease of entry
11 into and exit from the market.

12 (c) An order shall not be entered under subsection (5)(a) of this section if:

- 13 1. The acquisition will yield substantial economies of scale or economies
14 in resource utilization that cannot be feasibly achieved in any other way,
15 and the public benefits which would arise from the economies exceed
16 the public benefits which would arise from not lessening competition; or
17 2. The acquisition will substantially increase the availability of insurance,
18 and the public benefits of the increase exceed the public benefits which
19 would arise from not lessening competition.

20 (5) (a) If an acquisition violates the standards of this section, the commissioner may
21 enter an order:

- 22 1. Requiring an involved insurer to cease and desist from doing business in
23 Kentucky with respect to the line or lines of insurance involved in the
24 violation; or
25 2. Denying the application of an acquired or acquiring insurer for a
26 certificate of authority to do business in Kentucky.

27 (b) The order referred to in paragraph (a) of this subsection shall be entered

1 pursuant to a hearing held under Subtitle 2 of this chapter.