

1 AN ACT relating to insurance regulatory requirements.

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

3 ➔Section 1. KRS 304.1-050 is amended to read as follows:

4 ***As used in this chapter, unless the context requires otherwise:***

5 (1) "Commissioner" means the commissioner of the Department of Insurance of this
6 state; ~~and~~.

7 (2) "Department" means the Department of Insurance of this state; ~~unless context~~
8 ~~otherwise requires~~.

9 ➔Section 2. KRS 304.1-110 is amended to read as follows:

10 ***As used in this chapter, unless the context requires otherwise:***

11 (1) ~~{A-}~~"Certificate of authority" ***means a certificate***~~[is one]~~ issued by the
12 commissioner evidencing the authority of an insurer to transact insurance in this
13 state; ~~and~~.

14 (2) ~~{A-}~~"License" ***means a license or other authorization***~~[is authority]~~ granted by the
15 commissioner pursuant to this ***chapter that authorizes***~~[code authorizing]~~ the
16 licensee to engage in a business or operation of insurance in this state other than as
17 an insurer; ~~and the certificate by which such authority is evidenced~~.

18 ➔Section 3. KRS 304.2-160 is amended to read as follows:

19 ***(1) As used in this section, "licensee" means an individual or entity that holds a***
20 ***license issued by the commissioner or department.***

21 ***(2)*** Each written and signed complaint received by the department~~[of Insurance]~~ shall
22 be recorded by the department, including the subsequent disposition thereof, and
23 maintained for a period of not less than five (5) years.

24 ***(3)*** The records of~~[such]~~ complaints ***received by the department*** shall be indexed
25 whenever applicable both by the name of the insurer and by the name of the
26 licensee~~[, including agent, surplus lines broker, adjuster, administrator, reinsurance~~
27 ~~intermediary broker or manager, rental vehicle agent or managing employee,~~

1 specialty credit producer or managing employee, life settlement broker or provider,
2 or consultant} involved.

3 **(4)** The commissioner shall consider~~{such}~~ complaints **received by the department**
4 before issuing or renewing any certificate of authority or license.

5 ➔Section 4. KRS 304.2-220 is amended to read as follows:

6 For the purpose of ascertaining compliance with law, or relationships and transactions
7 between any person and any insurer or proposed insurer, the commissioner may as often
8 as reasonably necessary examine the accounts, records, documents, and transactions
9 pertaining to or affecting the insurance affairs or proposed insurance affairs and
10 transactions of **any**:

11 (1) ~~{Any }~~Insurance holding company;~~{or }~~

12 **(2)** Person holding the shares of voting stock or policyholder proxies of an insurer as
13 voting trustee or otherwise, for the purpose of controlling the management thereof;

14 **(3)**~~{(2)}~~ ~~{Any }~~Insurance agent, **managing general agent**, surplus lines broker,
15 adjuster, consultant, administrator, reinsurance intermediary broker or manager,
16 rental vehicle agent,~~{or }~~ **rental vehicle agent** managing employee, **pharmacy**
17 **benefit manager, portable electronics retailer**~~{specialty credit producer or~~
18 ~~managing employee}~~, or any person holding himself or herself out as any of the
19 foregoing;

20 **(4)**~~{(3)}~~ ~~{Any }~~Person having a contract under which he or she enjoys by terms or in
21 fact the exclusive or dominant right to manage or control **an**~~{the}~~ insurer, as voting
22 trustee~~{,}~~ or otherwise; and

23 **(5)**~~{(4)}~~ ~~{Any }~~Person in this state engaged in,~~{or }~~ proposing to be engaged in~~{this~~
24 ~~state in}~~,~~{or }~~ holding himself or herself out~~{in this state}~~ as so engaging or
25 proposing, or~~{in this state}~~ assisting in the promotion, formation, or financing of:

26 **(a)** An insurer;~~{or }~~

27 **(b)** **An** insurance holding **company**,~~{corporation,}~~ or

(c) A corporation or other group to finance an insurer or the production of its business.

➔Section 5. KRS 304.4-040 is amended to read as follows:

(1) As used in this section, "licensee" means an individual or entity that holds a license issued by the commissioner or department.

(2) The commissioner may revoke the certificate of authority of any insurer which fails to pay when due any taxes, fees, licenses, and other charges owing to this state. The commissioner may likewise revoke the license of any ~~licensee~~~~[agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee, specialty credit producer or managing employee, life settlement broker or provider, or consultant,]~~ as to whom any tax or fee required under this ~~chapter~~~~[code]~~ has not been paid when due.

➔Section 6. KRS 304.5-080 is amended to read as follows:

(1) As used in this chapter, "inland marine insurance" means marine and transportation insurance that may cover or include~~["Marine and transportation insurance" includes]:~~

(a) 1. Imports, wherever the property may be and without restriction as to time, if the coverage includes hazards of transportation.

2. An import, as a proper subject of marine and transportation insurance, shall be deemed to:

a. Maintain its character if the property:

i. Remains segregated in such a way that it can be identified;

and

ii. Has not become incorporated and mixed with the general mass of property in the United States; and

b. Have been completed when the property has been:

i. Sold and delivered by the importer, factor, or consignee;

1 ii. Removed from place of storage and placed on sale as part
2 of an importer's stock in trade at a point of sale or
3 distribution; or

4 iii. Delivered for manufacture, processing, or change in form
5 to premises of the importer or of another used for any such
6 purposes; Insurance against any kinds of loss or damage to:

- 7 1. ~~Vessels, craft, aircraft, goods, freights, cargoes, merchandise, effects,~~
8 ~~disbursements, profits, moneys, bullion, precious stones, securities,~~
9 ~~choses in action, evidences of debt, valuable papers, bottomry and~~
10 ~~respondentia interests and all other kinds of property and interests~~
11 ~~therein, in respect to, appertaining to, or in connection with any and all~~
12 ~~risks or perils of navigation, transit, or transportation, including war~~
13 ~~risks, on or under any seas or other waters, on land or in the air, or while~~
14 ~~being assembled, packed, crated, baled, compressed or similarly~~
15 ~~prepared for shipment or while awaiting the same or during any delays,~~
16 ~~storage, transshipment, or reshipment incident thereto, including marine~~
17 ~~builder's risks and all personal property floater risks, and~~
- 18 2. ~~Person or to property in connection with or appertaining to a marine,~~
19 ~~inland marine, transit or transportation insurance, including liability for~~
20 ~~loss of or damage to either, arising out of or in connection with the~~
21 ~~construction, repair, operation, maintenance or use of the subject matter~~
22 ~~of such insurance (but not including life insurance or surety bonds nor~~
23 ~~insurance against loss by reason of bodily injury to the person arising~~
24 ~~out of the ownership, maintenance or use of automobiles), and~~
- 25 3. ~~Precious stones, jewels, jewelry, gold, silver and other precious metals,~~
26 ~~whether used in business or trade or otherwise and whether the same be~~
27 ~~in course of transportation or otherwise, and~~

1 4. ~~Bridges, tunnels and other instrumentalities of transportation and~~
2 ~~communication (excluding buildings, their furniture and furnishings,~~
3 ~~fixed contents and supplies held in storage), unless fire, tornado,~~
4 ~~sprinkler leakage, hail, explosion, earthquake, riot and/or civil~~
5 ~~commotion are the only hazards to be covered; piers, wharves, docks~~
6 ~~and slips, excluding the risks of fire, tornado, sprinkler leakage, hail,~~
7 ~~explosion, earthquake, riot and/or civil commotion; other aids to~~
8 ~~navigation and transportation, including dry docks and marine railways,~~
9 ~~against all risks. }~~

10 (b) 1. Exports, wherever the property may be and without restriction as to
11 time, if the coverage includes hazards of transportation.

12 2. An export, as a proper subject of marine and transportation
13 insurance, shall be deemed to acquire its character as such when
14 designated or while being prepared for export and retain that
15 character unless diverted for domestic trade, and when so diverted, the
16 provisions of paragraph (c) of this subsection shall apply.

17 3. This paragraph shall not apply to long-established methods of
18 insuring certain commodities;~~["Marine protection and indemnity~~
19 ~~insurance" meaning insurance against, or against legal liability of the~~
20 ~~insured for, loss, damage or expense arising out of, or incident to, the~~
21 ~~ownership, operation, chartering, maintenance, use, repair or~~
22 ~~construction of any vessel, craft or instrumentality in use in ocean or~~
23 ~~inland waterways, including liability of the insured for personal injury,~~
24 ~~illness or death or for loss of or damage to the property of another~~
25 ~~person. }~~

26 (c) 1. Domestic shipments on consignment, for sale or distribution, exhibit,
27 trial, approval, or auction, while in transit, while in the custody of

- 1 others, and while being returned, except in no event shall the
2 insurance cover on premises owned, leased, or operated by the
3 consignor; and
- 4 2. Domestic shipments not on consignment, if the coverage includes
5 hazards of transportation, beginning and ending within the United
6 States, but the shipments shall not be covered:
- 7 a. At the manufacturing premises; or
8 b. After arrival at premises owned, leased, or operated by an
9 insured or purchaser;
- 10 (d) Bridges, tunnels, and other instrumentalities of transportation and
11 communication, which:
- 12 1. Include:
- 13 a. Bridges, tunnels, and other similar instrumentalities, including
14 auxiliary facilities and equipment attendant thereto;
- 15 b. Piers, wharves, docks, slips, dry docks, and marine railways;
- 16 c. Pipelines, including on-line propulsion, regulating, and other
17 equipment appurtenant to the pipelines, but excluding all
18 property at the manufacturing, producing, refining, converting,
19 treating, or conditioning plant;
- 20 d. Power transmission, telephone, and telegraph lines, but
21 excluding all property at generating, converting, or transforming
22 stations, substations, or exchanges;
- 23 e. Radio and television communication equipment in use, as such,
24 including towers, antennae with auxiliary equipment, and
25 appurtenant electrical operating and control apparatus; and
- 26 f. Outdoor cranes, loading bridges, and similar equipment used to
27 load, unload, or transport; and

- 1 2. Exclude buildings, improvements and betterments to buildings,
2 furniture and furnishings, fixed contents, and supplies held in
3 storage;
- 4 (e) Personal property floater risks covering an individual, or generally,
5 including:
- 6 1. Personal effects floaters;
7 2. Personal property floaters;
8 3. Government service floaters;
9 4. Personal fur floaters;
10 5. Personal jewelry floaters;
11 6. Wedding present floaters that do not exceed ninety (90) days after the
12 date of the ceremony;
13 7. Silverware floaters;
14 8. Fine art floaters that cover paintings, etchings, pictures, tapestries, art
15 glass windows, and other bona fide works of art that are of rarity,
16 historical value, or artistic merit;
17 9. Stamp and coin floaters;
18 10. a. Musical instrument floaters.
19 b. As used in this subparagraph, "musical instrument" does not
20 include radios, televisions, record players, or a combination
21 thereof;
- 22 11. Mobile article, machinery, and equipment floaters that:
23 a. Cover identified property of a mobile or floating nature
24 pertaining to or usual to a household; and
25 b. Exclude:
26 i. Motor vehicles designed for highway use;
27 ii. Auto homes, trailers, and semi-trailers, except when hauled

1 by a tractor not designed for highway use; and

2 iii. Furniture and fixtures not customarily used away from
3 premises where the property is usually kept;

4 12. a. Installment sales and leased property insurance that:

5 i. Covers property pertaining to a household and sold under a
6 conditional contract of sale, partial payment contract,
7 installment sales contract, or lease; and

8 ii. Excludes motor vehicles designed for highway use.

9 b. Installment sales and leased property insurance shall cover in
10 transit, but shall not extend beyond the termination of the seller's
11 or lessor's interest; and

12 13. Live animal floaters; and

13 (f) Commercial property floater risks that cover property pertaining to a
14 business, profession, or occupation, including:

15 1. Radium floaters;

16 2. Physician's and surgeons' instrument floaters, which may include
17 coverage of furniture, fixtures, and a tenant insured's interest in
18 improvements and betterments of buildings located in that portion of
19 the premises occupied by the insured in the practice of his or her
20 profession;

21 3. Pattern and die floaters;

22 4. Theatrical floaters that exclude:

23 a. Buildings;

24 b. Improvements and betterments to buildings; and

25 c. Furniture and fixtures that do not travel about with theatrical
26 troupes;

27 5. Film floaters, including:

- 1 a. Builders' risk during the production; and
- 2 b. Coverage on the completed negatives and positives and sound
- 3 records;
- 4 6. Salesmen's samples floaters;
- 5 7. Exhibition insurance on property while on exhibition and in transit to
- 6 or from an exhibition;
- 7 8. Live animal floaters;
- 8 9. Builders risks or installation risks insurance that:
- 9 a. Covers the interest of an owner, seller, or contractor against loss
- 10 or damage to machinery, equipment, or building materials or
- 11 supplies being used with and during the course of installation,
- 12 testing, building, renovating, or repairing;
- 13 b. May cover:
- 14 i. At points or places where work is being performed;
- 15 ii. While in transit; and
- 16 iii. During temporary storage or deposit of property designated
- 17 for and awaiting specific installation, building, renovating,
- 18 or repairing;
- 19 c. Is limited to builders risks or installation risks where perils in
- 20 addition to fire and extended coverage are to be insured; and
- 21 d. i. If written for an owner, ceases upon completion and
- 22 acceptance thereof; or
- 23 ii. If written for a seller or contractor, terminates when the
- 24 interest of the seller or contractor ceases;
- 25 10. Mobile article, machinery, and equipment floaters that:
- 26 a. Cover identified property of a mobile or floating nature, not on
- 27 sale or consignment, or in the course of manufacture, which has

1 come into the custody or control of parties who intend to use the
2 property for which it was manufactured or created; and

3 b. Exclude:

4 i. Motor vehicles designed for highway use;

5 ii. Auto homes, trailers, and semi-trailers except when hauled
6 by a tractor not designed for highway use;

7 iii. Snow plows constructed exclusively for highway use; and

8 iv. Furniture and fixtures not customarily used away from
9 premises where the property is usually kept;

10 11. Insurance that:

11 a. Covers property:

12 i. In transit to, or from and in, the custody of a bailee; and

13 ii. That is not owned, controlled, or operated by the bailor;
14 and

15 b. Excludes the property of the bailee at his or her premises;

16 12. a. Installment sales and leased property insurance that:

17 i. Covers property sold under a conditional contract of sale,
18 partial payment contract, installment sales contract, or
19 lease; and

20 ii. Excludes motor vehicles designed for highway use and
21 machinery and equipment under a certain "lease-back"
22 contract.

23 b. Installment sales and leased property insurance shall cover in
24 transit, but shall not extend beyond the termination of the seller's
25 or lessor's interest;

26 13. Garment contractor floaters;

27 14. Furriers or fur storer customer insurance:

- 1 a. Under which certificates or receipts are issued by furriers or fur
2 storers; and
3 b. That covers specified articles of a customer's property;
4 15. Accounts receivable insurance;
5 16. Valuable papers and records insurance;
6 17. Floor plan insurance that:
7 a. Covers property for sale while in possession of a dealer under a
8 floor plan or any similar plan under which the dealer may
9 borrow money from a bank or lending institution with which to
10 pay the manufacturer, if:
11 i. The merchandise is specifically identifiable as encumbered
12 to the bank or lending institution;
13 ii. The dealer's right to sell or otherwise dispose of the
14 merchandise is conditioned upon the merchandise being
15 released from encumbrance by the bank or lending
16 institution; and
17 iii. The insurance covers in transit and does not extend beyond
18 the termination of the dealer's interest; and
19 b. Excludes:
20 i. Automobiles or motor vehicles; and
21 ii. Merchandise for which the dealer's collateral is the stock
22 or inventory as distinguished from merchandise specifically
23 identifiable as encumbered to the lending institution;
24 18. Sign and street clock insurance, which includes coverage for neon
25 signs, automatic or mechanical signs, and street clocks, while in use as
26 such;
27 19. Fine arts insurance that covers paintings, etchings, pictures,

1 tapestries, art glass windows, and other bona fide works of art of
2 rarity, historical value, or artistic merit for a museum, gallery,
3 university, business, municipality, or other similar interest;

4 20. a. Insurance that covers personal property which, when sold to the
5 ultimate purchaser, may be covered specifically by the owner
6 under an inland marine policy, certificate, or contract,
7 including:

8 i. Musical instrument dealers insurance that covers property
9 consisting principally of musical instruments and their
10 accessories. As used in this subpart, "musical instrument"
11 does not include radios, televisions, record players, or a
12 combination thereof;

13 ii. Camera dealers insurance that covers property consisting
14 principally of cameras and their accessories;

15 iii. Furrier dealers insurance that covers property consisting
16 principally of furs and fur garments;

17 iv. Equipment dealers insurance that covers mobile equipment
18 consisting of binders, reapers, tractors, harvesters,
19 harrows, tedders, and other similar agricultural equipment
20 and accessories and construction equipment consisting of
21 bulldozers, road scrapers, tractors, compressors, pneumatic
22 tools, and other similar equipment and accessories.
23 Equipment dealers insurance shall exclude motor vehicles
24 designed for highway use;

25 v. Stamp and coin dealers insurance that covers property of
26 philatelic and numismatic nature;

27 vi. Jewelers block insurance; and

vii. Fine art dealers insurance.

b. For any insurance referenced in subdivision a. of this subparagraph, the insurance may include coverage of:

i. Money in locked safes or vaults on the insured's premises;

and

ii. Furniture, fixtures, tools, machinery, patterns, molds, dies,

and tenant insureds' interests in building improvements;

21. Wool growers floaters;

22. Domestic bulk liquid insurance that covers tanks and domestic bulk liquids stored therein;

23. Difference in condition coverage that excludes fire and extended coverage perils; and

24. Electronic data processing insurance.

(2) Subsection (1) of this section shall not be construed to permit coverage under an inland marine policy, certificate, or contract for the following, unless the coverage is otherwise permitted under that subsection or this chapter:

(a) Storage of the insured's merchandise;

(b) Merchandise in the course of manufacture, including the property of, and on the premises of, the manufacturer;

(c) Furniture and fixtures;

(d) Improvements and betterments to buildings; or

(e) Moneys or securities held in safes, vaults, safety deposit vaults, or banks, or on the premises of an insured, except while in the course of transportation.

(3)[(2)] (a) As used in this chapter~~[For the purposes of this code], "wet marine and transportation insurance" means~~~~[is that part of]~~ marine and transportation insurance that may cover or include~~[which includes only]:~~

1.[(a)] ~~[Insurance upon]~~ Vessels, crafts, hulls, and of interests therein or

1 with relation thereto;

2 ~~2. (b) Insurance of~~ Marine builders' risks, marine war risks, and
3 contracts of marine protection and indemnity insurance;

4 ~~3. (c) Insurance of~~ Freights and disbursements pertaining to a subject
5 of insurance coming within this definition; and

6 ~~4. (d) Insurance of~~ Personal property and interests therein, in course of
7 exportation from or importation into any country, or in course of
8 transportation coastwise or on inland waters, including transportation by
9 land, water, or air from point of origin to final destination, in respect to,
10 appertaining to, or in connection with, any and all risks or perils of
11 navigation, transit, or transportation, and while being prepared for and
12 while awaiting shipment, and during any delays, storage, transshipment,
13 or reshipment incident thereto.

14 **(b) As used in this subsection, "marine protection and indemnity insurance":**

15 **1. Means insurance against, or against legal liability of the insured for,**
16 **loss, damage, or expense arising out of, or incident to, the ownership,**
17 **operation, chartering, maintenance, use, repair, or construction of any**
18 **vessel, craft, or instrumentality in use in ocean or inland waterways;**
19 **and**

20 **2. Includes liability of the insured for personal injury, illness, or death or**
21 **loss of or damage to the property of another person.**

22 ➔Section 7. KRS 304.9-035 is amended to read as follows:

23 **(1)** Any insurer shall be liable for the acts of its agents **and adjusters** when the agents
24 **or adjusters** are acting;

25 **(a)** In their capacity as representatives of the insurer; and ~~are acting~~

26 **(b)** Within the scope of their authority.

27 **(2)** Licensed individuals designated by a business entity to exercise the business

1 entity's:

2 (a) Agent license shall be deemed agents of an~~the~~ insurer if the business entity
3 holds an appointment from the insurer; and

4 (b) Adjuster license on behalf of an insurer shall be deemed an adjuster of the
5 insurer.

6 ➔Section 8. KRS 304.9-051 is amended to read as follows:

7 As used in KRS 304.9-052 and 304.9-371 to 304.9-377:

8 (1) (a) An "administrator" is an individual or business entity that~~who~~ collects
9 charges or premiums from, or that~~who~~ adjusts or settles claims on, residents
10 of this state in connection with life insurance, health insurance, annuities,
11 nonprofit hospital, medical-surgical, dental, and health service corporation
12 contracts, health maintenance organization contracts, or other life, health, or
13 annuity benefit plans.

14 (b) The following are not considered to be acting as an administrator:

15 1.~~(a)~~ An employer acting on behalf of its employees or the employees
16 of one (1) or more subsidiary or affiliated corporations of the employer;

17 2.~~(b)~~ A union on behalf of its members;

18 3.~~(c)~~ An insurer, which is acting as the insurer with respect to the
19 contract if the insurer is authorized or permitted to transact business in
20 Kentucky or if the contract is lawfully delivered or issued for delivery
21 by it in and pursuant to the laws of a state in which it was authorized or
22 permitted to do business;

23 4.~~(d)~~ A life or health insurance agent licensed in Kentucky whose
24 activities are limited exclusively to the sale of insurance;

25 5.~~(e)~~ A creditor on behalf of its debtors with respect to insurance
26 covering a debt between the creditor and its debtors;

27 6.~~(f)~~ A trust, its trustees, agents, and employees acting thereunder,

1 established in conformity with 29 U.S.C. sec. 186;

2 ~~7.[(g)]~~ A trust exempt from taxation under 26 U.S.C. sec. 501(a), its
3 trustees, and employees acting thereunder, or a custodian, its agents, and
4 employees acting pursuant to a custodian account which meets the
5 requirements of 26 U.S.C. sec. 401(f);

6 ~~8.[(h)]~~ A bank, credit union, or other financial institution which is subject
7 to supervision or examination by federal or state banking authorities;

8 ~~9.[(i)]~~ A credit card issuing company which advances for and collects
9 premiums or charges from its credit card holders who have authorized it
10 to do so, if the ~~provided such~~ company does not adjust or settle
11 claims;~~or~~

12 ~~10.[(j)]~~ An individual who:

13 a. Adjusts or settles claims in the normal course of practice or
14 employment as an attorney-at-law;~~and~~~~who~~

15 b. Does not collect charges or premiums in connection with
16 coverages issued by insurers;or

17 11. An individual working for a business entity that is licensed as an
18 administrator to the extent that the individual's job responsibilities are
19 subject to the supervision and control of the business entity.

20 (2) An "insured" is a person covered under an insurance contract, nonprofit hospital,
21 medical-surgical, dental, and health service corporation contract, health
22 maintenance organization contract, or other source of benefits.

23 ➔Section 9. KRS 304.9-085 is amended to read as follows:

24 (1) A "managing general agent" is an individual or business entity appointed by an
25 insurer to solicit applications from agents for insurance contracts or to negotiate
26 insurance contracts on behalf of an insurer and, if authorized to do so by an insurer,
27 to effectuate and countersign insurance contracts.

- 1 (2) ~~(a) An~~ (a) No individual or business entity ~~[shall]~~ in this state **shall not** be, act as, or
2 hold himself, herself, or itself out as a managing general agent unless then
3 licensed as a managing general agent. In order to qualify for a managing
4 general agent license, an individual shall:
- 5 ~~1. (a)~~ Hold an agent license with property and casualty lines of authority
6 and be appointed by each authorized insurer the licensee holds the
7 contract to represent;
- 8 ~~2. (b)~~ If a nonresident, hold a nonresident agent license with property
9 and casualty lines of authority and be appointed by each authorized
10 insurer the licensee holds a contract to represent in Kentucky; and
- 11 ~~3. (c)~~ Hold a surplus lines broker license if any unauthorized insurers are
12 represented or used.
- 13 (b) In order for a business entity to qualify for a managing general agent license,
14 all individuals acting on behalf of the business entity under its license shall
15 be:
- 16 1. Licensed agents with property and casualty lines of authority; ~~and [shall~~
17 ~~be]~~
- 18 2. Designated with the commissioner as to the license in accordance with
19 all provisions of KRS 304.9-133 ~~[except for subsection (2)(a)]~~.
- 20 (3) As used in this chapter, "agent" includes managing general agent unless the context
21 requires otherwise.
- 22 (4) (a) A managing general agent is a representative of the insurers which the
23 managing general agent holds a contract to represent.
- 24 (b) Each insurer is liable for the acts of the managing general agent in
25 representing that insurer.
- 26 (5) The commissioner shall renew managing general agent licenses in accordance with
27 KRS 304.9-260.

1 ➔Section 10. KRS 304.9-105 is amended to read as follows:

- 2 (1) An individual applying for an agent license shall make application to the
3 commissioner on the uniform individual application or other application prescribed
4 by the commissioner. Before approving the application, the commissioner shall find
5 that the applicant:
- 6 (a) Is at least eighteen (18) years of age;
- 7 (b) Has fulfilled the residence requirements as set forth in KRS 304.9-120 or is a
8 nonresident who is not eligible to be issued a license in accordance with KRS
9 304.9-140;
- 10 (c) Has not committed any act that is a ground for denial, suspension, or
11 revocation set forth in KRS 304.9-440;
- 12 (d) Is trustworthy, reliable, and of good reputation, evidence of which shall be
13 determined through an investigation by the commissioner;
- 14 (e) I. Is competent to exercise the license and has:
- 15 a.~~[1.]~~ Except for variable life and variable annuities line of authority and
16 limited lines of authority identified in KRS 304.9-230;~~[1.]~~
- 17 i. Completed a preclicensing course of study consisting of forty
18 (40) hours for life and health, forty (40) hours for property
19 and casualty, or twenty (20) hours for each line of authority,
20 as applicable, for which the individual has applied~~[. The~~
21 ~~commissioner shall promulgate administrative regulations to~~
22 ~~carry out the purpose of this section]; and~~
- 23 ii.~~[2.]~~ ~~Except for variable life and variable annuities line of~~
24 ~~authority and limited lines of authority identified in~~
25 ~~accordance with KRS 304.9-230,]~~Successfully passed the
26 examinations required by the commissioner for the lines of
27 authority for which the individual has applied; and

1 ~~b.[3.]~~ Paid the fees set forth in KRS 304.4-010.~~[-, and]~~

2 2. The commissioner shall promulgate administrative regulations in
3 accordance with KRS Chapter 13A to implement this paragraph; and

4 (f) Is financially responsible to exercise the license and has maintained in effect
5 while so licensed:

6 1. The certificate of an insurer, which states that the insurer has and will
7 keep in effect on behalf of the person a policy of insurance covering the
8 legal liability of the licensed person as the result of erroneous acts or
9 failure to act in his or her capacity as an insurance agent, and enuring to
10 the benefit of any aggrieved party as the result of any single occurrence
11 in the sum of not less than twenty thousand dollars (\$20,000) and one
12 hundred thousand dollars (\$100,000) in the aggregate for all occurrences
13 within one (1) year;

14 2. A cash surety bond executed by an insurer, in the sum of twenty
15 thousand dollars (\$20,000), which shall be subject to lawful levy of
16 execution by any party to whom the licensee has been found to be
17 legally liable as the result of erroneous acts or failure to act in his or her
18 capacity as an agent; or

19 3. An agreement by an insurer or group of affiliated insurers for which he
20 or she is or is to become an exclusive agent whereby the insurer or
21 group of affiliated insurers agrees to assume responsibility, to the
22 benefit of any aggrieved party, for legal liability of the licensed person
23 as the result of erroneous acts or failure to act in his or her capacity as an
24 insurance agent on behalf of the insurer or group of affiliated insurers in
25 the sum of twenty thousand dollars (\$20,000) for any single occurrence
26 and that the agreement shall not be terminated until the insurer
27 appointment is terminated~~[license is surrendered to the commissioner].~~

1 (2) The commissioner may:

2 (a) Require additional information or submissions from applicants; and ~~may~~

3 (b) Obtain any documents or information reasonably necessary to verify the
4 information contained in an application.

5 ➔Section 11. KRS 304.9-133 is amended to read as follows:

6 (1) As used in this section, "licensed business entity" means a business entity issued

7 a:

8 (a) License under ~~in accordance with~~ this subtitle; ~~or issued a~~

9 (b) Life settlement broker, ~~or~~ life settlement provider, or surplus lines broker
10 license; ~~or~~

11 (2) (a) Except as provided in this subsection:

12 1. A licensed business entity shall designate ~~only~~ individuals to act under
13 the business entity license; and

14 2. Each individual designated to act under the license of a business entity
15 referenced in subparagraph 1. of this paragraph shall hold the same
16 kind of license as the business entity.

17 (b) A portable electronics retailer issued a license shall designate a business
18 entity to act under the license.

19 (c) A managing general agent issued a license shall designate individuals
20 licensed as agents with property and casualty lines of authority to act under
21 the license.

22 (d) A pharmacy benefit manager issued a license shall designate individuals
23 licensed as administrators to act under the license.

24 ~~(3)(2)~~ (a) The first individual designated by a licensed business entity to act
25 under the business entity license ~~Each designated individual~~ shall ~~:~~

26 ~~(a) Hold the same kind of license as the business entity;~~

27 ~~(b) If the business entity license has lines of authority, have one (1) or more of~~

1 the same lines of authority as the business entity.~~[-; and]~~

2 ~~(b)(e)~~ *An individual designated to act under the business entity license who*
3 *is in addition to the first designee referenced in paragraph (a) of this*
4 *subsection shall*~~[If the individual is designated under an agent license,]~~ have
5 at least one (1) appointment with an insurer.

6 ~~(4)(3)~~ A~~[The]~~ licensed business entity shall file with the commissioner:

7 (a) Notice of the designation of an individual within thirty (30) days of the
8 designation; and

9 (b) Notice of termination of designation of an individual within thirty (30) days of
10 the termination of designation.

11 ~~(5)(4)~~ (a) Except as provided in subsection (2)(b) of this section, a licensed
12 business entity shall exercise its license only through one (1) or more~~[a]~~
13 designated individual licensees~~[licensee]~~.

14 ~~(b)(a)~~ 1. The business entity shall have for each of its licenses and active
15 lines of authority at least one (1) licensed individual~~[- with the same line~~
16 ~~of authority]~~ designated with the commissioner at all times.

17 2. If the business entity fails to have at least one (1) licensed individual
18 designated with the commissioner for a line of authority, that line of authority
19 shall become inactive~~[-; and]~~

20 ~~(b) The business entity shall have at least one (1) licensed individual designated~~
21 ~~with the commissioner at all times].~~

22 3. If the business entity fails to have at least one (1) licensed individual
23 designated with the commissioner, the business entity license shall
24 terminate~~[- and shall be promptly surrendered to the commissioner~~
25 ~~without demand].~~

26 ~~(6)(5)~~ An insurer that has appointed the business entity licensee shall be responsible
27 for the acts of each designated individual performed under the business entity's

1 license as if the insurer had appointed the individual licensee.

2 ➔Section 12. KRS 304.9-135 is amended to read as follows:

3 (1) As used in this section:

4 (a) "Financial institution" means:

5 1. A bank or bank holding company, as defined in the Bank Holding
6 Company Act of 1956, ~~[as amended,]~~ **codified at** 12 U.S.C. sec. 1841,
7 **as amended;**

8 2. A savings bank, savings and loan association, trust company, or any
9 depository institution as defined ~~in~~by the Federal Deposit Insurance
10 Act, **codified at**~~[in]~~ 12 U.S.C. sec. 1813(c)(1), **as amended;** and

11 3. Any other individual, corporation, partnership, or association authorized
12 to take deposits and make loans in ~~this~~the Commonwealth, and any
13 affiliate or subsidiary of any of the above;

14 (b) "Insurance agency activities" means any activity relating to insurance, other
15 than title insurance, for which a license as agent, reinsurance intermediary
16 broker or manager, ~~[specialty credit producer or managing employee,]~~ surplus
17 lines broker, or consultant is required under this chapter; and

18 (c) "Insurance information" means any information concerning premiums, terms,
19 and conditions of insurance coverage, including:

20 1. Expiration dates and rates;~~[,]~~ and

21 2. Claims maintained in the records of the financial institution or affiliate.

22 (2) A financial institution authorized by law to engage in insurance agency activities in
23 this state shall, in addition to any other applicable requirements, comply with the
24 following requirements:

25 (a) The financial institution or officer, agent, representative, or employee thereof
26 shall qualify for licensure under all applicable provisions of this chapter and
27 abide by all applicable provisions of this chapter and applicable administrative

1 regulations;

2 (b) A financial institution shall provide a written statement to a consumer
3 regarding the consumer's free choice of agent and insurer according to KRS
4 304.12-150, when the consumer's application for a loan or other extension of
5 credit from the financial institution is pending and when insurance is offered
6 to the consumer, sold to the consumer, or required in connection with the loan
7 or extension of credit by the financial institution or affiliate;

8 (c) A financial institution shall not release a consumer's insurance information to
9 any person or entity for the solicitation or selling of insurance, other than an
10 officer, director, employee, agent, or affiliate of a financial institution, without
11 prior disclosure to the consumer and the opportunity for the consumer to
12 prevent the disclosure;

13 (d) A financial institution shall not release or use health information obtained
14 from the insurance records of a consumer for any purpose, other than
15 activities of a licensed agent, administrator, reinsurance intermediary broker
16 or manager, ~~specialty credit producer or managing employee,~~ surplus lines
17 broker, or consultant, without the written consent of the consumer;

18 (e) A financial institution licensed by the department to engage in insurance
19 agency activities shall:

20 1. Not violate the anti-tying provisions of the Bank Holding Company Act
21 Amendments of 1970, codified at 12 U.S.C. sec. ~~secs.~~ 1971 et seq., in
22 effect as of December 31, 1997; and

23 2. Notify the department in writing within ten (10) days of any final
24 judgment or any final administrative action, by a federal agency
25 authorized to enforce the anti-tying provision, that finds that the
26 financial institution or any of its employees committed a violation of the
27 Bank Holding Company Act. Any such final and unappealable judgment

1 or final and unappealable administrative action shall be deemed a
2 violation of this chapter;

3 (f) Prior to the sale of any policy of insurance to a consumer, a financial
4 institution shall, when practicable, provide to the consumer a written
5 statement that:

- 6 1. The insurance offered by the financial institution is not a deposit;
- 7 2. The insurance offered by the financial institution is not insured by the
8 Federal Deposit Insurance Corporation or other government agency that
9 insures deposits;
- 10 3. The insurance offered by the financial institution is not guaranteed by
11 the financial institution or any affiliate;
- 12 4. The insurance may involve investment risk, including potential loss of
13 principal; and

14 (g) The commissioner shall promulgate administrative regulations in accordance
15 with KRS Chapter 13A that specify the disclosure forms required by
16 subsections (b), (c), and (f) of this section.

17 (3) An officer or employee of a financial institution shall not directly or indirectly
18 delay or impede the completion of a loan transaction or any other transaction with a
19 financial institution for the purpose of influencing a consumer's selection or
20 purchase of any insurance.

21 (4) A financial institution shall not use any advertisement or promotional material
22 causing a reasonable person to mistakenly believe that:

- 23 (a) The federal government or any state guarantees the insurance sales activities
24 of financial institutions or guarantees the credit of the financial institution; or
- 25 (b) Any state or federal government guarantees any return on insurance products
26 or is a source of payment on any insurance product sold by the financial
27 institution.

- 1 (5) A financial institution shall use separate documentation for all credit and insurance
2 transactions when a consumer obtains insurance and credit, other than credit
3 insurance, from a financial institution or any individual or business entity soliciting
4 or selling insurance on the premises of a financial institution.
- 5 (6) A financial institution shall not include an expense of insurance premiums in a
6 credit transaction when a consumer obtains insurance and credit, other than credit
7 insurance, from a financial institution or any individual or business entity soliciting
8 or selling insurance on the premises of a financial institution, without the written
9 consent of the consumer.
- 10 (7) (a) A financial institution shall maintain separate and distinct books and records
11 relating to insurance transactions conducted through the financial institution,
12 including files relating to consumer complaints.
- 13 (b) The books, records, and files shall be made available to the commissioner for
14 inspection in accordance with KRS 304.2-220.
- 15 ➔Section 13. KRS 304.9-140 is amended to read as follows:
- 16 (1) ~~[Unless denied a license in accordance with KRS 304.9-440,]~~A nonresident
17 individual or business entity shall receive the applicable insurance producer license
18 if:
- 19 (a) The applicant is currently licensed as a resident and in good standing in his or
20 her home state;
- 21 (b) The applicant has submitted the proper request for license and has paid the
22 fees required by KRS 304.4-010 and administrative regulations;
- 23 (c) The applicant has submitted or transmitted to the commissioner the
24 application for a license that the applicant submitted to his or her home state
25 or a completed uniform individual application or uniform business entity
26 application;~~[and]~~
- 27 (d) The applicant's home state awards nonresident licenses to residents of this

1 state on the same basis; and

2 (e) The applicant is not denied a license in accordance with KRS 304.9-440.

3 (2) The commissioner may verify the applicant's license status through the database
4 maintained by the National Association of Insurance Commissioners, its affiliates,
5 or subsidiaries.

6 (3) A nonresident licensee who changes his or her home state to a state other than
7 Kentucky shall file a change of address and provide certification from the new
8 home state within thirty (30) days of the change of home state. No fee or license
9 application is required.

10 (4) Notwithstanding any other provisions of this chapter, ~~on or after July 1, 2002,~~ an
11 individual licensed as a surplus lines broker in his or her home state shall receive a
12 nonresident surplus lines broker license by meeting the requirements of subsection
13 (1) of this section. Except as provided in ~~to~~ subsection (1) of this section, nothing
14 in this section otherwise amends or supersedes any provision of Subtitle 10 of this
15 chapter.

16 (5) Notwithstanding any other provision of this subtitle, an individual licensed as a
17 limited lines agent in his or her home state shall receive a nonresident limited lines
18 agent license in accordance with subsection (1) of this section, granting the same
19 scope of authority as granted under the license issued by the agent's home state.

20 (6) Notwithstanding any other provision of this subtitle, an individual licensed as an
21 agent with a limited line of authority in his or her home state shall:

22 (a) Receive a nonresident major line of authority in accordance with subsection
23 (1) of this section if the limited line of authority in the individual's home
24 state is not offered in this state; and

25 (b) Only have authority to place business under the nonresident license with a
26 major line of authority in this state to the extent permitted, and as limited,
27 for an individual agent in the individual's home state with the limited line of

1 authority.

2 (7) The commissioner shall waive any requirements for a nonresident insurance
3 producer license applicant with a valid license from his or her home state, except
4 the requirements imposed by subsection (1) of this section, if the applicant's home
5 state awards nonresident insurance producer licenses to residents of Kentucky on
6 the same basis.

7 ~~(8)(7)~~ (a) As a condition to or in connection with the continuation of an insurance
8 producer license issued under this section, the licensee must maintain the
9 applicable license in his or her home state.

10 (b) The insurance producer license issued under this section shall terminate ~~and~~
11 ~~be surrendered to the commissioner~~ if and when the licensee's applicable
12 home state license terminates for any reason.

13 ➔Section 14. KRS 304.9-170 is amended to read as follows:

14 ~~[No]~~Prelicensing education or examination shall not be required of:

15 (1) (a) An individual licensee who allows his or her license to lapse if the license
16 renewal fee is paid within twelve (12) months from the due date of the license
17 renewal fee, except~~[- However,]~~ a penalty in the amount of double the unpaid
18 renewal fee shall be imposed.

19 (b) The department shall issue a license with the same lines of authority as the
20 lapsed license;~~[-]~~

21 ~~(2)(b)~~ Any applicant for a license covering any line of authority to which the
22 applicant was licensed under a similar license in Kentucky, other than a temporary
23 license, within the twelve (12) months next preceding the date of application,
24 except~~[-]~~ the applicant is not eligible for this exemption if the previous license was
25 revoked or suspended by the commissioner for reasons other than failure to~~[-~~
26 ~~maintain financial responsibility or to~~ meet continuing education requirements as
27 required by KRS~~[- 304.9-105 and]~~ 304.9-295;~~[-]~~

1 ~~(3)(e)~~ A licensed insurance agent operating as a life settlement broker pursuant to
2 KRS 304.15-700(2)(b);~~;~~

3 ~~(4)(2)~~ (a) An individual who applies for an insurance producer license in
4 Kentucky who was previously licensed for the same lines of authority in
5 another state ~~shall not be required to complete any prelicensing education or~~
6 ~~examination~~.

7 (b) This exemption is only available if:

8 1. The applicant is currently licensed in the other state; ~~or if~~

9 2. a. The application is received within ninety (90) days of the
10 cancellation of the applicant's previous license; ~~and if~~

11 b. The prior state issues a certification that, at the time of
12 cancellation;~~;~~

13 i. The applicant was in good standing in that state; ~~or~~

14 ii. The state's database records, maintained by the National
15 Association of Insurance Commissioners, its affiliates, or
16 subsidiaries, indicate that the insurance producer is or was
17 licensed in good standing for the line of authority
18 requested;~~;~~

19 ~~(5)(3)~~ *Except as otherwise established by the commissioner in an administrative*
20 *regulation,* an individual who:

21 (a) Was licensed as a resident~~an~~ insurance producer in another state within the
22 last twelve (12) months; ~~who~~

23 (b) Moves to Kentucky; ~~and shall make~~

24 (c) Makes an application within ninety (90) days of establishing legal residence
25 in Kentucky to become a resident licensee in accordance with KRS 304.9-
26 105~~. No prelicensing education or examination shall be required of that~~
27 ~~applicant to obtain a license~~ for any line of authority previously held in the

1 prior home state within the last twelve (12) months;~~[except where the~~
2 ~~commissioner determines otherwise by administrative regulation.]~~

3 ~~(6)~~~~[(4)]~~ An applicant for an insurance producer's license who is currently licensed in
4 Kentucky as a consultant as to the same line of authority, or has been so licensed
5 within twelve (12) months next preceding the date of application for the license,
6 unless the previous license was revoked or suspended or continuation thereof
7 refused by the commissioner for reasons other than failure to maintain financial
8 responsibility as required by KRS 304.9-330; or~~[-]~~

9 ~~(7)~~~~[(5)]~~ Any applicant for a license covering the same line of authority as to which
10 that applicant~~[- shall have]~~ held a valid license issued in accordance with this
11 subtitle or other applicable Kentucky law which was surrendered, in accordance
12 with KRS 304.2-080 or other applicable law, in order to accept employment with
13 the Department of Insurance, except~~[provided, however, that]~~ the applicant shall
14 apply for relicensing within twelve (12) months of the date of termination of his or
15 her employment with the Department of Insurance.

16 ➔Section 15. KRS 304.9-200 is amended to read as follows:

17 **For licenses**~~[(1) The license]~~ issued under this subtitle or to a surplus lines broker, life
18 settlement broker, or life settlement provider;

19 **(1) The license** shall contain the licensee's name, city and state of principal place of
20 business address, personal identification number, and the date of issuance, the lines
21 of authority, and any other information the commissioner deems necessary;~~[-]~~

22 (2) The licensee shall inform the commissioner in writing in a format acceptable to the
23 commissioner of a change of address or change of legal name within thirty (30)
24 days of the change;~~[-]~~

25 (3) **(a)** After completion of application for a license, completion of any prelicensing
26 education required under this chapter, payment of applicable fees, and the
27 taking and passing of any examination required under this chapter, the

1 commissioner shall promptly consider the application.

2 **(b)** If the commissioner finds that the applicant has fully met the requirements for
3 licensure, the commissioner shall promptly issue the license to the applicant;
4 otherwise, the commissioner shall refuse to issue the license and promptly
5 notify the applicant of the refusal, stating the grounds thereof.~~;~~

6 (4) ~~If a license is refused, the commissioner shall promptly refund any appointment~~
7 ~~fee tendered with the license application.]~~ All **application and examination**~~[other]~~
8 ~~fees[for application for license or examination]~~ shall be deemed earned when paid
9 and shall not be refundable **if a license is refused; and**~~;~~

10 (5) In order to assist in the performance of the commissioner's duties, the commissioner
11 may contract with nongovernmental entities, including the National Association of
12 Insurance Commissioners or its affiliate or subsidiary, to perform ministerial
13 functions, including the collection of fees or data related to licensing.

14 ➔Section 16. KRS 304.9-230 is amended to read as follows:

15 (1) The commissioner may issue, in accordance with KRS 304.9-080, an agent's license
16 with the limited line of authority as follows:

17 (a) **Preneed funeral**~~[Surety]~~;

18 (b) Travel;

19 (c) Limited line credit;

20 (d) Crop;

21 (e) Rental vehicle;

22 (f) Self-service storage space; or

23 (g) Other limited lines, as specified by the commissioner through the
24 promulgation of administrative regulations.

25 (2) The commissioner shall promulgate administrative regulations to establish the
26 requirements, if any, for prelicensing courses of instruction and examination for
27 each limited line of authority.

(3) ~~{On and after July 15, 2002, }~~The commissioner shall not issue an agent license with a limited line of authority for motor vehicle physical damage or for mechanical breakdown insurance. However, an agent license with a limited line of authority for motor vehicle physical damage or for mechanical breakdown insurance in effect on July 15, 2002, shall continue in effect until surrendered or otherwise terminated in accordance with this subtitle.

➔Section 17. KRS 304.9-260 is amended to read as follows:

(1) (a) As used in this subsection, "license" means a:

1. ~~{Each }~~License issued under this subtitle;~~{, }~~
2. Surplus lines broker license;~~{, }~~
3. Life settlement broker license;~~or {, and }~~
4. Life settlement provider license.

(b) Each license shall continue in force until expired, suspended, revoked, or otherwise terminated.

(c) License renewal fees shall be received on or before the applicable due date for the license as stated in KRS 304.4-010.

(d) ~~{Beginning January 1, 2003, }~~A request for license renewal shall be on a form or in a format prescribed by the commissioner.~~{and made as follows: }~~

(e)~~{(a)}~~ At least thirty (30) days before the license renewal request and fees are due from each respective~~{the }~~ licensee, the department shall make available to the~~{each respective }~~ licensee a list of his or her licenses to be renewed during that calendar year.~~{With the licensee's written consent, an insurer or the licensee's employer may request that the department send the renewal list to the insurer or to the employer. The department may distribute the renewal list to the requesting insurer or employer instead of to the licensee; }~~

(f)~~{(b)}~~ In conjunction with license renewal, the following individuals shall show proof of compliance with continuing education requirements

established in Section 19 of this Act:~~[an individual holding a]~~

1. Resident:~~[license for agent, independent or public adjuster, and life settlement broker shall show proof of compliance with continuing education pursuant to KRS 304.9-295]~~

a. Agents;

b. Independent adjusters;

c. Public adjusters; and

d. Life settlement brokers; and

2. Nonresident:

a. Independent adjusters; and

b. Public adjusters;

that designate Kentucky as their home state.

(g) 1. An individual licensee whose birth date is in an even-numbered year shall submit the license renewal request, continuing education course completion documentation pursuant to KRS 304.9-295, and fees to the commissioner by the last day of the licensee's birth month in the next even-numbered year after the date the license is issued, and each subsequent even-numbered year thereafter;

2. [(c)] ~~[In conjunction with license renewal, an individual holding a resident license for agent, independent or public adjuster, and life settlement broker shall show proof of compliance with continuing education pursuant to KRS 304.9-295.]~~ An individual licensee whose birth date is in an odd-numbered year shall submit the license renewal request, continuing education course completion documentation pursuant to KRS 304.9-295, and fees to the commissioner by the last day of the licensee's birth month in the next odd-numbered year after the date the license is issued, and each subsequent odd-numbered year

1 thereafter;

2 ~~3.[(d)]~~ A business entity that is issued a license in an even-numbered year
3 shall submit the license renewal request and fees to the commissioner by
4 March 31 of the next even-numbered year, and each subsequent even-
5 numbered year thereafter; and

6 ~~4.[(e)]~~ A business entity that is issued a license in an odd-numbered year
7 shall submit the license renewal request and fees to the commissioner by
8 March 31 of the next odd-numbered year, and each subsequent odd-
9 numbered year thereafter.

10 (2) (a) Any license referred to in subsection (1) of this section for which the request
11 for renewal, any required continuing education course completion
12 documentation, if applicable, and fee are not received by the commissioner
13 shall be deemed to have expired at midnight on the last day of the birth month
14 for individuals and on March 31 for business entities.~~[-]~~

15 (b) Any renewal request and fees received by the commissioner within sixty (60)
16 days after the date of expiration~~[-]~~ may be accepted with no interruption in
17 license if accompanied by a penalty as provided in Section 33 of this
18 ~~Act, [Subtitle 99 of this chapter, and]~~

19 (c) 1. Completion of the required continuing education course, if applicable,
20 shall be on or before the expiration date, which is deemed as the last day
21 of the birth month of the licensee during the applicable odd or even year
22 on a biennial basis.

23 2. Proof of compliance shall be received by the commissioner within sixty
24 (60) days after the expiration date.

25 (3) A licensee who is unable to comply with the license renewal procedures of this
26 section due to military service, long-term medical disability, or some other
27 extenuating circumstance may make a written request for a waiver of those

1 procedures. The licensee may also make a written request for a waiver of any
2 examination requirement, fine, or other sanction imposed for failure to comply with
3 these renewal procedures.

4 (4) As a condition to or in connection with the continuation of any insurance producer
5 license, the commissioner may require the licensee to file with him or her
6 information relative to use made of the license during the next preceding calendar
7 year and especially as to whether the license has been used principally for the
8 writing of controlled business, as defined in KRS 304.9-100.

9 (5) As a condition to or in connection with the continuation of any license referred to
10 in subsection (1) of this section, the commissioner shall require continuous
11 demonstration of continuing education course completion to sustain the license, and
12 any license shall terminate~~and be surrendered to the commissioner~~ if and when
13 the demonstration becomes impaired.

14 (6) This section does not apply to temporary licenses issued under KRS 304.9-300, and
15 licensees not licensed for one (1) full year prior to the end of the applicable biennial
16 renewal year.

17 ➔Section 18. KRS 304.9-270 is amended to read as follows:

18 (1) (a) Each insurer appointing an agent~~, including managing general agent, rental~~
19 ~~vehicle agent, rental vehicle managing employee, specialty credit producer,~~
20 ~~and specialty credit managing employee,~~ in this state shall obtain approval of
21 the appointment from the commissioner by:

22 1. Filing with the commissioner the notice of appointment, specifying the
23 lines of authority to be transacted by the agent for the insurer;~~;~~ and

24 2. Submitting~~submit~~ the appointment fee, as specified in KRS 304.4-010.

25 (b) Each insurer shall notify the commissioner of additional lines of authority for
26 which an agent~~a licensee~~ is deemed authorized to transact business, after the
27 initial appointment, in a format prescribed by the commissioner.

- 1 (2) Prior to appointment of an agent, the insurer shall satisfy itself through
2 investigation that the named applicant has not been convicted of any felony offense
3 involving dishonesty or a breach of trust and has not been convicted of a fraudulent
4 insurance act under Subtitle 47 of this chapter, unless the named applicant has
5 received written consent from the commissioner that specifically refers to KRS
6 304.47-025(3).
- 7 (3) No agent shall claim to be an agent or representative of, or in any way imply a
8 contractual relationship with, a particular insurer, or place applications for
9 insurance with an insurer unless:
- 10 (a) The agent becomes an appointed agent of the insurer; and
11 (b) The agent's appointment has been approved by the commissioner.
- 12 (4) (a) An agent may act as a representative of and place insurance with an insurer
13 without first obtaining approval of the appointment by the commissioner for a
14 period of fifteen (15) days from the date the first insurance application is
15 executed by the agent.
- 16 (b) If the agent does not obtain confirmation that the agent's appointment has
17 been approved by the commissioner within fifteen (15) days from the date the
18 first insurance application is executed, the agent shall immediately
19 discontinue acting as an agent on behalf of the insurer until confirmation is
20 received.
- 21 (5) (a) The insurer shall, no later than fifteen (15) days from the date the agent
22 contract is executed or the first insurance application is submitted by an agent,
23 whichever is earlier, file with the commissioner a notice of appointment on a
24 form or in a format prescribed by the commissioner.
- 25 (b) If there is no executed agent contract, the insurer shall also mail to the agent,
26 within the same fifteen (15) day period specified in paragraph (a) of this
27 subsection, a copy of the notice of appointment form filed with the

1 commissioner.

2 (6) (a) Within fifteen (15) days of receipt of the notice of appointment of an agent,
3 the commissioner shall determine and notify the insurer whether the agent is
4 eligible for appointment.

5 (b) If the agent's license is in good standing and no other grounds exist to deny
6 the appointment, the commissioner shall approve the appointment.

7 (7) Subject to renewal by the insurer as provided in subsection (8) of this section, each
8 appointment of an agent shall remain in effect until the earliest of the following:

9 (a) The commissioner revokes or otherwise terminates the agent's~~insurer's~~
10 ~~producer's~~ license;

11 (b) The commissioner suspends, revokes, or otherwise terminates the
12 appointment; or

13 (c) The insurer terminates the appointment as provided in KRS 304.9-280.

14 (8) (a) Biennially, before January 31, the department shall distribute to each insurer a
15 listing of the names and individual identification numbers of that insurer's
16 agents whose appointments were in effect during the preceding calendar year
17 and who were not terminated on or prior to December 31 of that calendar
18 year.

19 (b) Any appointment not expressly terminated shall remain in effect as to the
20 lines of authority thereof for which the respective agents are currently
21 appointed, and subject to the fees specified under KRS 304.4-010.

22 (c) On or before March 31, each insurer shall submit the renewal of appointment
23 fee as specified in KRS 304.4-010 for each appointment not terminated on or
24 prior to December 31 of the preceding calendar year.

25 (9) (a) Any appointment as to which the request for renewal and fees are not received
26 by the commissioner by March 31 shall be deemed to have expired at
27 midnight on March 31.

1 **(b)** Any appointment renewal request and fees received by the commissioner after
2 March 31 and prior to the next following June 30 may be accepted by the
3 commissioner, in his or her discretion, and the expired appointment may be
4 reinstated as of March 31 if the late request and fees are accompanied by a
5 penalty as provided in KRS 304.99-100.

6 **(10) As used in this section, "agent" includes a managing general agent, a rental**
7 **vehicle agent, and a rental vehicle agent managing employee.**

8 ➔Section 19. KRS 304.9-295 is amended to read as follows:

9 (1) This section shall apply to individuals who hold licenses or lines of authority
10 requiring continuing education each biennium.

11 (2) The continuing education biennial compliance date for an individual resident
12 licensee shall be as follows:

13 (a) A licensee whose birth date is in an even-numbered year shall satisfy
14 continuing education requirements on or before the last day of the licensee's
15 birth month in the even-numbered year. A licensee shall show proof of
16 compliance to the commissioner within sixty (60) days after the continuing
17 education biennial compliance date. If the licensee has not held the license for
18 one (1) year, the compliance date is adjusted to the next even-numbered year
19 and each subsequent even-numbered year thereafter. If the license becomes
20 inactive and reissued within a twelve (12) month period, the compliance date
21 shall remain the same; **and**

22 (b) A licensee whose birth date is in an odd-numbered year shall satisfy
23 continuing education requirements and show proof of compliance to the
24 commissioner on or before the last day of the licensee's birth month in the
25 odd-numbered year. A licensee shall show proof of compliance to the
26 commissioner within sixty (60) days after the continuing education biennial
27 compliance date. If the licensee has not held the license for one (1) year, the

1 compliance date is adjusted to the next odd-numbered year and each
2 subsequent odd-numbered year thereafter. If the license becomes inactive and
3 reissued within a twelve (12) month period, the compliance date shall remain
4 the same.

5 (3) This section shall not apply to:

- 6 (a) Limited lines of authority under agent licenses, as exempted by the
7 commissioner in accordance with KRS 304.9-230;
- 8 (b) Licensees not licensed for one (1) full year prior to the end of the applicable
9 continuing education biennium;
- 10 (c) Licensees holding nonresident licenses who have met the continuing
11 education requirements of their home state and whose home state gives credit
12 to Kentucky resident licensees on the same basis; or
- 13 (d) Licensees maintaining their licenses for the sole purpose of receiving
14 renewals or deferred commissions and providing the department with a
15 supporting affidavit.

16 (4) A licensee, who holds an agent license and who is not exempt under subsection (3)
17 of this section, shall satisfactorily complete a minimum of twenty-four (24) hours of
18 continuing education courses, of which three (3) hours shall have a course
19 concentration in ethics, during each continuing education biennium.

20 (5) (a) ~~[Beginning July 31, 2012,]~~ An individual who holds an independent or public
21 adjuster license, **including a nonresident independent or public adjuster that**
22 **designates Kentucky as his or her home state,** and who is not exempt under
23 KRS 304.9-430(10) or (11), shall satisfactorily complete a minimum of
24 twenty-four (24) hours of continuing education courses, of which three (3)
25 hours shall have a course concentration in ethics in accordance with
26 subsection (4) of this section.

27 (b) Continuing education hours shall be reported to the commissioner on a

1 biennial basis in conjunction with the licensee's renewal in accordance with
2 subsection (10) of this section.

3 (6) (a) Only continuing education courses approved by the commissioner shall be
4 used to satisfy the continuing education requirements~~requirement~~ of
5 ~~subsection (4) of~~ this section and any other continuing education requirement
6 of this chapter.

7 (b)~~(a)~~ The continuing education courses which meet the commissioner's
8 standards for continuing education requirements are:

- 9 1. Any part of the Life Underwriter Training Council life course
10 curriculum;
- 11 2. Any part of the Health Underwriter Training Council health course
12 curriculum;
- 13 3. Any part of the American College Chartered Life Underwriter diploma
14 curriculum;
- 15 4. Any part of the American Institute for Property and Liability
16 Underwriters' chartered property and casualty underwriter profession
17 designation program;
- 18 5. Any part of the Insurance Institute of America's programs;
- 19 6. Any part of the certified insurance counselor program;
- 20 7. Any insurance related course taught at an accredited college or
21 university, if the course is approved by the commissioner;
- 22 8. Any course of instruction or seminar developed or sponsored by any
23 authorized insurer, recognized agent association, recognized insurance
24 trade association, or any independent program of instruction, if
25 approved by the commissioner;
- 26 9. Any correspondence course approved by the commissioner; and
- 27 10. Any course in accordance with provisions of reciprocal agreements the

1 commissioner enters with other states.

2 ~~(c)(b)~~ 1. The commissioner shall prescribe the number of hours of
3 continuing education credit for each continuing education course
4 approved in accordance with this subsection.

5 2. Continuing education courses submitted in accordance with a reciprocal
6 agreement shall be approved according to the provisions of the
7 reciprocal agreement.

8 ~~(d)(e)~~ If a continuing education course requires successful completion of a
9 written examination, no continuing education credit shall be given to licensees
10 who do not successfully complete the written examination.

11 ~~(e)(d)~~ The fee for filing continuing education courses for approval by the
12 commissioner shall be as specified in Subtitle 4 of KRS Chapter 304.

13 ~~(f)(e)~~ For continuing education courses of reciprocal states, continuing
14 education providers shall be approved in accordance with the provisions of
15 the reciprocal agreements.

16 (7) An individual teaching any~~[-approved]~~ continuing education course approved by
17 the commissioner shall qualify for the same number of hours of continuing
18 education credit as would be granted to a licensee taking and satisfactorily
19 completing the course.

20 (8) Excess credit hours accumulated during any continuing education biennium may be
21 carried forward. The commissioner may, by administrative regulation, limit the
22 number of hours carried forward.

23 (9) (a) For good cause shown, the commissioner may grant an extension of time
24 during which the continuing education requirement of subsection (2) of this
25 section may be completed, but the extension of time shall not exceed two (2)
26 years.

27 (b) What constitutes good cause for the extension of time rests within the

1 discretion of the commissioner.

2 (10) (a) Every licensee subject to this section shall furnish to the commissioner written
3 certification as to the continuing education courses satisfactorily completed by
4 the licensee.

5 (b) The certification shall:

6 1. Be signed by or on behalf of the provider sponsoring the continuing
7 education course; and

8 2. Contain an attestation signed by the licensee.

9 (c) The certification shall be on a form prescribed by the commissioner.

10 (d) A licensee is responsible for ensuring that a certification submitted by the
11 licensee under this subsection:

12 1. Contains the correct license identification number; and

13 2. Is applied to the licensee's license record.

14 (11) (a) The provider shall furnish to the commissioner certification as to the
15 continuing education courses satisfactorily completed by each licensee.

16 (b) The certification shall be signed or authenticated by or on behalf of the
17 provider sponsoring the continuing education course.

18 (c) The certification shall be on a form or in a format prescribed by the
19 commissioner.

20 (12) The license or line of authority requiring continuing education shall expire if the
21 individual holding the license or line of authority:

22 (a) Fails to comply with the continuing education requirement; and

23 (b) Has not been granted an extension of time to comply in accordance with
24 subsection (9) of this section. ~~If the license has expired, the license shall be~~
25 ~~promptly surrendered to the commissioner without demand. If the line of~~
26 ~~authority has terminated but another line of authority not requiring continuing~~
27 ~~education is still in effect, the license shall be promptly delivered to the~~

1 ~~commissioner for reissuance as to the line of authority still in effect.]~~

2 (13) ~~[The license of any individual subject to the continuing education requirement shall~~
3 ~~be suspended or revoked, a civil penalty imposed, or both, in accordance with KRS~~
4 ~~304.9-440,]If an[the] individual submits to the commissioner a false or fraudulent~~
5 ~~certification[certificate] of compliance with a[the] continuing education~~
6 ~~requirement, the commissioner shall, in accordance with KRS 304.9-440, suspend~~
7 ~~or revoke the license of the individual, impose a civil penalty, or both.~~

8 (14) (a) The commissioner may withdraw approval of a continuing education
9 provider, course, or instructor for good and just cause.

10 (b) In addition to or in lieu of withdrawal of approval, the commissioner may
11 impose a civil penalty of not more than one thousand dollars (\$1,000) per
12 violation of this chapter by a provider or an instructor.

13 ➔SECTION 20. KRS 304.9-436 IS REPEALED AND REENACTED TO READ
14 AS FOLLOWS:

15 *An authorized insurer shall not do business in Kentucky with a person that is*
16 *unlicensed in violation of this subtitle.*

17 ➔Section 21. KRS 304.13-346 is amended to read as follows:

18 (1) As used in this section:

19 (a) "Cost to upgrade the single-family dwelling" means the cost required to
20 upgrade the roof structure of the single-family dwelling to meet or exceed~~[~~
21 ~~the construction standards required for the dwelling to comply with]~~ the most
22 recent version of the~~[any applicable]~~ FORTIFIED Home roof structure
23 construction standards published by the Insurance Institute for Business and
24 Home Safety or a successor entity; and

25 (b) "Non-FORTIFIED dwelling" means a dwelling whose roof structure~~[that]~~
26 does not comply with the most recent version of the~~[any applicable]~~
27 FORTIFIED Home roof structure construction standards published by the

1 Insurance Institute for Business and Home Safety or a successor entity.

2 (2) All insurance companies writing property insurance for personal risks that provides
3 coverage of any single-family dwelling located in Kentucky that is a non-
4 FORTIFIED dwelling shall offer an optional rider, endorsement, or supplemental
5 policy provision that provides the insured a right to receive claim payments for the
6 cost to upgrade the single-family dwelling for any claim that:

7 (a) Is covered under the insurance policy or contract; and

8 (b) Requires replacement of the covered dwelling's roof as defined by the
9 insurance policy or contract.

10 ➔Section 22. KRS 304.13-400 is amended to read as follows:

11 (1) Each insurer, including those participating in a residual market mechanism,
12 authorized to write workers' compensation insurance in the Commonwealth shall
13 offer, as a part of the policy or as an optional endorsement to the policy, deductibles
14 optional to the employer policyholder for the payment of workers' compensation
15 benefits pursuant to KRS Chapter 342.

16 (2) (a) Deductible amounts offered pursuant to subsection (1) of this section shall be
17 fully disclosed to the employer policyholder in writing~~[- and shall range in~~
18 ~~amounts from one hundred dollars (\$100) to ten thousand dollars (\$10,000)~~
19 ~~per compensable occurrence under KRS Chapter 342].~~

20 (b) The employer policyholder exercising the deductible option shall choose only
21 one (1) deductible amount.

22 (3) (a) If the employer policyholder chooses a deductible policy pursuant to
23 subsections (1) and (2) of this section, the insurer shall pay the deductible
24 amount initially and the employer policyholder shall be liable to the insurer, at
25 the time and in the manner prescribed by the insurer, for the amount of the
26 deductible paid by the insurer for benefits paid pursuant to KRS Chapter 342.

27 (b) Failure by the employer policyholder to reimburse the insurer as required by

1 this subsection shall:

2 1. Be treated by the insurer in the same manner as non-payment of
3 premiums; ~~and~~ ~~[- In addition, failure of the employer policyholder to~~
4 ~~reimburse the insurer as required shall]~~

5 2. Constitute noncompliance with KRS 342.340 for purposes of KRS
6 342.402.

7 ➔Section 23. KRS 304.14-120 is amended to read as follows:

8 (1) (a) Except as otherwise provided in this section, a basic insurance policy or
9 annuity contract form, or application form where written application is
10 required and is to be made a part of the policy or contract, or printed rider or
11 indorsement form or form of renewal certificate, shall not be delivered, or
12 issued for delivery in this state, unless the form has been filed with and
13 approved by the commissioner.

14 (b) This subsection shall not apply to:

- 15 1. Any rates filed under Subtitle 17A of this chapter;
16 2. Surety bonds;
17 3. Specially rated inland marine risks; or
18 4. Policies, riders, indorsements, or forms of unique character:
19 a. Designed for and used with relation to insurance upon a particular
20 subject; or
21 b. Which relate to the manner or distribution of benefits or to the
22 reservation of rights and benefits under life or health insurance
23 policies and are used at the request of the individual policyholder,
24 contract holder, or certificate holder.

25 (c) As to group insurance policies issued and delivered to an association outside
26 this state but covering persons resident in this state, all or substantially all of
27 the premiums for which are payable by the insured members, the group

1 certificates to be delivered or issued for delivery in this state shall be filed
2 with and approved by the commissioner.

3 (d) 1. As to forms for use in property, inland marine~~[(other than wet marine~~
4 ~~and transportation insurance)]~~, casualty, and surety insurance coverages
5 (other than accident and health), the filing required by this subsection
6 may be made by advisory organizations or form providers on behalf of
7 their members and subscribers.

8 2. This paragraph shall not be construed to prohibit any member or
9 subscriber of an advisory organization or form provider from filing any
10 forms on its own behalf.

11 (e) Every advisory organization and form provider shall file with the
12 commissioner for approval every property and casualty policy form and
13 endorsement before distribution to members, subscribers, customers, or
14 others.

15 (f) Every property and casualty insurer shall file with the commissioner notice of
16 adoption before use of any approved form filed by an advisory organization or
17 form provider or filed by the insurer pursuant to paragraph (d) of this
18 subsection.

19 (2) (a) Every filing required under this section shall be made not less than sixty (60)
20 days in advance of any delivery of the form in this state.

21 (b) At the expiration of sixty (60) days, the form so filed shall be deemed
22 approved unless prior thereto it has been affirmatively approved or
23 disapproved by order of the commissioner.

24 (c) Approval of any filing by the commissioner under this section shall constitute
25 a waiver of any unexpired portion of the waiting period established under this
26 subsection.

27 (d) The commissioner may extend the waiting period established under paragraph

- 1 (a) of this subsection by not more than a thirty (30) day period, within which
2 time he or she may affirmatively approve or disapprove any filing, by giving
3 notice to the insurer of the extension before expiration of the initial sixty (60)
4 day period.
- 5 (e) At the expiration of any period extended under paragraph (d) of this
6 subsection, and in the absence of a prior affirmative approval or disapproval,
7 the filing shall be deemed approved.
- 8 (f) The commissioner may at any time, after notice and for cause shown,
9 withdraw approval of any filing.
- 10 (3) (a) Any order of the commissioner disapproving any filing, or any notice of the
11 commissioner withdrawing a previous approval, shall state the grounds
12 therefor and the particulars thereof in such detail as reasonably to inform the
13 insurer.
- 14 (b) Any withdrawal of a previously approved filing shall be effective not less than
15 thirty (30) days after the insurer receives notice of the withdrawal, as the
16 commissioner shall in such notice prescribe.
- 17 (4) Except as provided in subsection (6) of this section, the commissioner may, by
18 order, exempt from the requirements of this section, for so long as he or she deems
19 proper, any insurance document or form or type thereof, as specified in the
20 commissioner's order, to which, in his or her opinion:
- 21 (a) This section may not practicably be applied; or
22 (b) The filing and approval of are not desirable or necessary for the protection of
23 the public.
- 24 (5) Appeals from orders of the commissioner disapproving any filing or withdrawing a
25 previous approval shall be taken as provided in Subtitle 2 of this chapter.
- 26 (6) The commissioner shall:
- 27 (a) Review every filing relating to a health plan, as defined in KRS 304.17A-591,

1 for compliance with KRS 304.17A-591 to 304.17A-599; and

2 (b) Not approve any filing referenced in paragraph (a) of this subsection that does
3 not comply with KRS 304.17-591 to 304.17A-599.

4 (7) As used in this section, unless the context requires otherwise:

5 (a) "Advisory organization" has the same meaning as in KRS 304.13-011; and

6 (b) "Form provider" has the same meaning as in KRS 304.13-011.

7 ➔Section 24. KRS 304.15-365 is amended to read as follows:

8 (1) This section shall be known as the "Standard Nonforfeiture Law for Individual
9 Deferred Annuities of 2005."

10 (2) (a) This section shall not apply to any reinsurance group annuity purchased under
11 a retirement plan or plan of deferred compensation established or maintained
12 by an employer, including a partnership or sole proprietorship, or by an
13 employee organization, or by both, other than a plan providing individual
14 retirement accounts or individual retirement annuities under Section 408 of
15 the Internal Revenue Code, as now or hereafter amended, premium deposit
16 fund, variable annuity, investment annuity, immediate annuity, any deferred
17 annuity contract after annuity payments have commenced, or reversionary
18 annuity, nor to any contract which shall be delivered outside this state through
19 an agent or other representative of the insurer issuing the contract.

20 (b) However, to the extent that a variable annuity contract provides benefits that
21 do not, before the maturity date, vary in accordance with the investment
22 performance of any separate account or accounts maintained by the insurer as
23 to such contract, as provided for in KRS 304.15-390, the contract shall
24 contain provisions that satisfy the requirements of this section and shall not
25 otherwise be subject to this section.

26 (3) (a) In the case of contracts issued on or after July 1, 2006, no contract of annuity,
27 except as provided in subsection (2) of this section, shall be delivered or

1 issued for delivery in this state unless it contains in substance the following
2 provisions, or corresponding provisions which in the opinion of the
3 commissioner are at least as favorable to the contract holder, upon cessation
4 of payment of considerations under the contract:

5 ~~1.(a)}~~ That upon cessation of payment of considerations under a contract,
6 or upon the written request of the contract owner, the insurer shall grant
7 a paid-up annuity benefit on a plan stipulated in the contract of such
8 value as is specified in subsections (8), (9), (10), (11), and (13) of this
9 section;

10 ~~2.(b)}~~ If a contract provides for a lump sum settlement at maturity, or at
11 any other time, that upon surrender of the contract at or prior to the
12 commencement of any annuity payments, the insurer shall pay, in lieu of
13 any paid-up annuity benefit, a cash surrender benefit of such amount as
14 is specified in subsections (8), (9), (10), (11), and (13) of this section.
15 The insurer may reserve the right to defer the payment of this cash
16 surrender benefit for a period not to exceed six (6) months after demand
17 therefor with surrender of the contract after making written request and
18 receiving written approval of the commissioner. The request shall
19 address the necessity and equitability to all policyholders of the deferral;

20 ~~3.(c)}~~ A statement of the mortality table, if any, and interest rates used in
21 calculating any minimum paid-up annuity, cash surrender or death
22 benefits that are guaranteed under the contract, together with sufficient
23 information to determine the amounts of such benefits; and

24 ~~4.(d)}~~ A statement that any paid-up annuity, cash surrender or death
25 benefits that may be available under the contract are not less than the
26 minimum benefits required by any statute of the state in which the
27 contract is delivered and an explanation of the manner in which these

1 benefits are altered by the existence of any additional amounts credited
2 by the insurer to the contract, any indebtedness to the insurer on the
3 contract, or any prior withdrawals from or partial surrenders of the
4 contract.

5 (b) Notwithstanding the requirements of this subsection, any deferred annuity
6 contract may provide that if no considerations have been received under a
7 contract for a period of two (2) full years and the portion of the paid-up
8 annuity benefit at maturity on the plan stipulated in the contract arising from
9 considerations paid prior to that period would be less than twenty dollars
10 (\$20) monthly, the insurer may at its option terminate the contract by payment
11 in cash of the then-present value of such portion of the paid-up annuity
12 benefit, calculated on the basis of the mortality table, if any, and interest rate
13 specified in the contract for determining the paid-up annuity benefit, and by
14 this payment shall be relieved of any further obligation under such contract.

15 (4) (a) The minimum values as specified in subsections (8), (9), (10), (11), and (13)
16 of this section of any paid-up annuity, cash surrender, or death benefits
17 available under an annuity contract shall be based upon minimum
18 nonforfeiture amounts as defined in this section.

19 (b)~~(a)~~ The minimum nonforfeiture amount at any time at or prior to the
20 commencement of any annuity payments shall be equal to an accumulation up
21 to that time at rates of interest as indicated in subsection (5) of this section of
22 the net considerations, as defined in paragraph (c)~~(b)~~ of this subsection, paid
23 prior to that time, decreased by the sum of:

- 24 1. Any prior withdrawals from or partial surrenders of the contract
25 accumulated at a rate of interest as indicated in subsection (5) of this
26 section;
- 27 2. An annual contract charge of fifty dollars (\$50) accumulated at rates of

1 interest as indicated in subsection (5) of this section; and

2 3. The amount of any indebtedness to the insurer on the contract, including
3 interest due and accrued.

4 ~~(c)(b)~~ The net considerations for a given contract year used to define the
5 minimum nonforfeiture amount shall be an amount equal to eighty-seven and
6 one-half percent (87.5%) of gross considerations credited to the contract
7 during that contract year.

8 (5) The interest rate used in determining minimum nonforfeiture amounts shall be an
9 annual rate of interest determined as the lesser of three percent (3%) per annum and
10 the following, which shall be specified in the contract if the interest rate will be
11 reset:

12 (a) The five (5) year Constant Maturity Treasury Rate reported by the Federal
13 Reserve as of a date or average over a period rounded to the nearest one-
14 twentieth of one percent (0.05%), specified in the contract no longer than
15 fifteen (15) months prior to the contract issue date or redetermination date
16 under paragraph (d) of this subsection;

17 (b) Reduced by one hundred twenty-five (125) basis points;

18 (c) Where the resulting interest rate is not less than one percent (1%); and

19 (d) The interest rate shall apply for an initial period and may be redetermined for
20 additional periods. The redetermination date basis and period, if any, shall be
21 stated in the contract. The basis is the date or average over a specified period
22 that produces the value of the five (5) year Constant Maturity Treasury Rate
23 to be used at each redetermination date.

24 (6) (a) During the period or term that a contract provides substantive participation in
25 an equity indexed benefit, it may increase the reduction described in
26 subsection (5)(b) of this section up to an additional one hundred (100) basis
27 points to reflect the value of the equity index benefit.

1 **(b)** The present value at the contract issue date and at each redetermination date
2 thereafter of the additional reduction shall not exceed the market value of the
3 benefit.

4 **(c)** The commissioner may require a demonstration that the present value of the
5 additional reduction does not exceed the market value of the benefit.

6 **(d)** Lacking such demonstration that is acceptable to the commissioner, the
7 commissioner may disallow or limit the additional reduction.

8 (7) The commissioner may promulgate administrative regulations in accordance with
9 KRS Chapter 13A **that:**

10 **(a)** ~~**Implement**~~~~**Implementing**~~ the provisions of subsection (6) of this section;
11 and

12 **(b)** ~~[To]~~ Provide for further adjustments to the calculation of minimum
13 nonforfeiture amounts for:

14 **1.** Contracts that provide substantive participation in an equity index
15 benefit; and~~[for]~~

16 **2.** Other contracts for which the commissioner determines adjustments are
17 justified.

18 (8) **(a)** Any paid-up annuity benefit available under a contract shall be such that its
19 present value on the date annuity payments are to commence is at least equal
20 to the minimum nonforfeiture amount on that date.

21 **(b)** This present value shall be computed using the mortality table, if any, and the
22 interest rates specified in the contract for determining the minimum paid-up
23 annuity benefits guaranteed in the contract.

24 (9) **(a)** For contracts which provide cash surrender benefits, the cash surrender
25 benefits available prior to maturity shall not be less than the present value as
26 of the date of surrender of that portion of the maturity value of the paid-up
27 annuity benefit which would be provided under the contract at maturity

1 arising from considerations paid prior to the time of cash surrender reduced by
2 the amount appropriate to reflect any prior withdrawals from or partial
3 surrenders of the contract, the present value being calculated on the basis of
4 an interest rate not more than one percent (1%) higher than the interest rate
5 specified in the contract for accumulating the net considerations to determine
6 the maturity value, decreased by the amount of any indebtedness to the insurer
7 on the contract, including interest due and accrued, and increased by any
8 existing additional amounts credited by the insurer to the contract.

9 (b) In no event shall any cash surrender benefit be less than the minimum
10 nonforfeiture amount at that time.

11 (c) The death benefit under the contracts shall be at least equal to the cash
12 surrender benefit.

13 (10) (a) For contracts which do not provide cash surrender benefits, the present value
14 of any paid-up annuity benefit available as a nonforfeiture option at any time
15 prior to maturity shall not be less than the present value of that portion of the
16 maturity value of the paid-up annuity benefit provided under the contract
17 arising from considerations paid prior to the time the contract is surrendered
18 in exchange for, or changed to, a deferred paid-up annuity, the present value
19 being calculated for the period prior to the maturity date on the basis of the
20 interest rate specified in the contract for accumulating the net considerations
21 to determine the maturity value, and increased by any existing additional
22 amounts credited by the insurer to the contract.

23 (b) For contracts which do not provide any death benefits prior to the
24 commencement of any annuity payments, the present values shall be
25 calculated on the basis of the interest rate and the mortality table specified in
26 the contract for determining the maturity value of the paid-up annuity benefit.

27 (c) However, in no event shall the present value of a paid-up annuity benefit be

1 less than the minimum nonforfeiture amount at that time.

2 (11) For the purpose of determining the benefits calculated under subsections (9) and
3 (10) of this section, in the case of annuity contracts under which an election may be
4 made to have annuity payments commence at optional maturity dates, the maturity
5 date shall be deemed to be the latest date for which election shall be permitted by
6 the contract, but shall not be deemed to be later than the anniversary of the contract
7 next following the annuitant's seventieth birthday or the tenth anniversary of the
8 contract, whichever is later.

9 (12) Any contract which does not provide cash surrender benefits or does not provide
10 death benefits at least equal to the minimum nonforfeiture amount prior to the
11 commencement of any annuity payments shall include a statement in a prominent
12 place in the contract that such benefits are not provided.

13 (13) Any paid-up annuity, cash surrender or death benefits available at any time, other
14 than on the contract anniversary under any contract with fixed scheduled
15 considerations, shall be calculated with allowance for the lapse of time and the
16 payment of any scheduled considerations beyond the beginning of the contract year
17 in which cessation of payment of considerations under the contract occurs.

18 (14) (a) For any contract which provides, within the same contract by rider or
19 supplemental contract provision, both annuity benefits and life insurance
20 benefits that are in excess of the greater of cash surrender benefits or a return
21 of the gross considerations with interest, the minimum nonforfeiture benefits
22 shall be equal to the sum of the minimum nonforfeiture benefits for the
23 annuity portion and the minimum nonforfeiture benefits, if any, for the life
24 insurance portion computed as if each portion were a separate contract.

25 (b) Notwithstanding the provisions of subsections (8), (9), (10), (11), and (13) of
26 this section, additional benefits payable:

27 1. ~~(a)~~ In the event of total and permanent disability;

1 ~~2.[(b)]~~ As reversionary annuity or deferred reversionary annuity benefits;
2 or
3 ~~3.[(c)]~~ As other policy benefits additional to life insurance, endowment
4 and annuity benefits, and considerations for all such additional benefits;
5 shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-
6 up annuity, cash surrender and death benefits that may be required by this
7 section. The inclusion of these additional benefits shall not be required in any
8 paid-up benefits, unless these additional benefits separately would require
9 minimum nonforfeiture amounts, paid-up annuity, cash surrender and death
10 benefits.

11 **(15) Any optional maturity date offered for an annuity contract issued pursuant to this**
12 **section shall:**

13 **(a) Not impose a surrender charge that is longer than ten (10) years beyond the**
14 **optional maturity date agreed to by the annuitant and the insurer; and**

15 **(b) Be offered to an annuitant before the annuitant attains seventy (70) years of**
16 **age.**

17 ~~(16) [(15)]~~ (a) After August 1, 2005, any insurer may file with the commissioner a
18 written notice of its election to apply the provisions of this section on a
19 contract-form by contract-form basis to annuity contracts issued by the insurer
20 during the period from the date of the election through June 30, 2006.

21 (b) Insurers shall apply the provisions of this section to annuity contracts issued
22 on or after July 1, 2006.

23 ➔Section 25. KRS 304.17A-600 is amended to read as follows:

24 As used in KRS 304.17A-600 to 304.17A-633:

25 (1) ~~[(a)]~~ "Adverse **benefit** determination":

26 **(a) Has the same meaning as in 29 C.F.R. sec. 2560.503-1, as amended; and**

27 **(b) Includes:**

1 1. ~~{means}~~ A determination by an insurer or its designee that the health
 2 care services furnished or proposed to be furnished to a covered person
 3 are:

4 a. ~~{1.}~~ Not medically necessary, as determined by the insurer~~{,}~~ or its
 5 designee; or

6 b. Experimental or investigational, as determined by the insurer~~{,}~~ or
 7 its designee; and

8 2. A coverage denial ~~{Benefit coverage is therefore denied, reduced, or~~
 9 ~~terminated.~~

10 ~~(b) "Adverse determination" does not mean a determination by an insurer or its~~
 11 ~~designee that the health care services furnished or proposed to be furnished to~~
 12 ~~a covered person are specifically limited or excluded in the covered person's~~
 13 ~~health benefit plan};~~

14 (2) "Authorized person" means a parent, guardian, or other person authorized to act on
 15 behalf of a covered person with respect to health care decisions;

16 (3) "Concurrent review" means utilization review conducted during a covered person's
 17 course of treatment or hospital stay;

18 (4) "Coverage denial" means a determination that a service, procedure, treatment,
 19 drug, supply, or device is specifically limited or excluded under a covered
 20 person's health benefit plan;

21 ~~(5){(4)}~~ "Covered person" means a person covered under a health benefit plan;

22 ~~(6){(5)}~~ "External review" means a review that is conducted by an independent review
 23 entity which meets specified criteria as established in Section 29 of this Act and
 24 KRS 304.17A-623, 304.17A-625, and 304.17A-627;

25 ~~(7){(6)}~~ "Health benefit plan" has the same meaning as in KRS 304.17A-005, except
 26 that for purposes of KRS 304.17A-600 to 304.17A-633, the term includes short-
 27 term coverage policies;

1 ~~(8)~~~~(7)~~ "Independent review entity" means an individual or organization certified by
2 the department to perform external reviews under Section 29 of this Act and KRS
3 304.17A-623, 304.17A-625, and 304.17A-627;

4 ~~(9)~~~~(8)~~ "Insurer" means any of the following entities ~~that~~~~authorized to~~ issue or
5 provide health benefit plans~~as defined in subsection (6) of this section~~;

6 (a) An insurance company;~~;~~

7 (b) Health maintenance organization;

8 (c) Self-insurer or multiple employer welfare arrangement not exempt from state
9 regulation by ERISA;

10 (d) Provider-sponsored integrated health delivery network;

11 (e) Self-insured employer-organized association;

12 (f) Nonprofit hospital, medical-surgical, or health service corporation; or

13 (g) Any other entity authorized to transact health insurance business in Kentucky;

14 ~~(10)~~~~(9)~~ "Internal appeals process" means a formal appeals process, as set forth in
15 KRS 304.17A-617, established and maintained by the insurer, its designee, or
16 private review agent~~whereby the covered person, an authorized person, or a~~
17 ~~provider may contest an adverse determination rendered by the insurer, its designee,~~
18 ~~or private review agent~~;

19 ~~(11)~~~~(10)~~ "Nationally recognized accreditation organization":

20 (a) Means a private nonprofit entity that:

- 21 1. Sets national utilization review and internal appeal standards; and
22 2. Conducts review of insurers, agents, or independent review entities for
23 the purpose of accreditation or certification; and

24 (b) Shall include the Accreditation Association for Ambulatory Health Care
25 (AAAHHC), the National Committee for Quality Assurance (NCQA), the
26 American Accreditation Health Care Commission (URAC), the Joint
27 Commission, or any other organization identified by the department;

1 ~~(12)~~~~((11))~~ "Private review agent" or "agent":

2 (a) Means a person or entity performing utilization review that is either affiliated
3 with, under contract with, or acting on behalf of any insurer or other person
4 providing or administering health benefits to citizens of this Commonwealth;
5 and

6 (b) Does not include an independent review entity ~~that~~~~[which]~~ performs external
7 ~~reviews~~~~[review of adverse determinations]~~;

8 ~~(13)~~~~((12))~~ "Prospective review":

9 (a) Means a utilization review that is conducted prior to the provision of health
10 care services; ~~and~~~~["Prospective review" also]~~

11 (b) Includes any insurer's or agent's requirement that a covered person or provider
12 notify the insurer or agent prior to providing a health care service, including
13 but not limited to prior authorization, step therapy protocol, preadmission
14 review, pretreatment review, utilization, and case management;

15 ~~(14)~~~~((13))~~ "Qualified personnel" means licensed physician, registered nurse, licensed
16 practical nurse, medical records technician, or other licensed medical personnel
17 who through training and experience shall render consistent decisions based on the
18 review criteria;

19 ~~(15)~~~~((14))~~ "Registration" means an authorization issued by the department to an insurer
20 or a private review agent to conduct utilization review;

21 ~~(16)~~~~((15))~~ "Retrospective review":

22 (a) Means utilization review that is conducted after health care services have been
23 provided to a covered person; and

24 (b) Does not include the review of a claim that is limited to an evaluation of
25 reimbursement levels, or adjudication of payment;

26 ~~(17)~~~~((16))~~ ~~((a))~~ "Urgent health care services":

27 (a) Means health care or treatment with respect to which the application of the

time periods for making a nonurgent determination:

1. Could seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function; or
2. In the opinion of a physician with knowledge of the covered person's medical condition, would subject the covered person to severe pain that cannot be adequately managed without the care or treatment that is the subject of the utilization review; and ~~[-]~~

(b) Includes ~~Urgent health care services include~~ all requests for hospitalization and outpatient surgery;

(18) ~~(17)~~ "Utilization review" means a review of the medical necessity and appropriateness of hospital resources and medical services given or proposed to be given to a covered person for purposes of determining the availability of payment.

Areas of review include concurrent, prospective, and retrospective review; and

(19) ~~(18)~~ "Utilization review plan" means a description of the procedures governing utilization review activities performed by an insurer or a private review agent.

➔Section 26. KRS 304.17A-607 is amended to read as follows:

(1) An insurer or private review agent shall not provide or perform utilization reviews without being registered with the department.

(2) A registered insurer or private review agent shall:

(a) Have available the services of sufficient numbers of registered nurses, medical records technicians, or similarly qualified persons supported by licensed physicians with access to consultation with other appropriate physicians to carry out its utilization review activities;

(b) Ensure that ~~[-, for any contract entered into on or after January 1, 2020,]~~ for the provision of utilization review services, only licensed physicians, who are of the same or similar specialty and subspecialty, when possible, as the ordering provider, shall:

- 1 1. Make a utilization review decision to:
 - 2 a. Deny, reduce, limit, or terminate a health care benefit; ~~or to~~
 - 3 b. Deny, or reduce payment for, a health care service because that
 - 4 service is not medically necessary, experimental, or
 - 5 investigational;
 - 6 except in the case of a health care service rendered by a chiropractor or
 - 7 optometrist where the denial shall be made respectively by a
 - 8 chiropractor or optometrist duly licensed in Kentucky; and
- 9 2. Supervise qualified personnel conducting case reviews;
- 10 (c) Have available the services of sufficient numbers of practicing physicians in
- 11 appropriate specialty areas to assure the adequate review of medical and
- 12 surgical specialty and subspecialty cases;
- 13 (d) Not disclose or publish individual medical records or any other confidential
- 14 medical information in the performance of utilization review activities except
- 15 as provided in the Health Insurance Portability and Accountability Act,
- 16 Subtitle F, secs. 261 to 264 and 45 C.F.R. ~~pts.~~ ~~[secs.]~~ 160 to 164 and other
- 17 applicable laws and administrative regulations;
- 18 (e) Provide a toll-free telephone line for covered persons, authorized persons, and
- 19 providers to contact the insurer or private review agent and be accessible to
- 20 covered persons, authorized persons, and providers for forty (40) hours a
- 21 week during normal business hours in this state;
- 22 (f) Where an insurer, its agent, or private review agent provides or performs
- 23 utilization review, be available to conduct utilization review during normal
- 24 business hours and extended hours in this state on Monday and Friday through
- 25 6:00 p.m., including federal holidays;
- 26 (g) Provide decisions to covered persons, authorized persons, and all providers on
- 27 appeals of adverse benefit determinations ~~[and coverage denials]~~ of the

insurer or private review agent, in accordance with this section and administrative regulations promulgated in accordance with KRS 304.17A-609;

(h) Except for retrospective review of an emergency admission where the covered person remains hospitalized at the time the review request is made, which shall be considered a concurrent review, or as otherwise provided in this subtitle, provide a utilization review decision in accordance with the timeframes in paragraph (i) of this subsection and 29 C.F.R. ~~pt.~~~~[Part]~~ 2560, including written notice of the decision;

- (i) 1. Render a utilization review decision concerning urgent health care services, and notify the covered person, authorized person, or provider of that decision no later than twenty-four (24) hours after obtaining all necessary information to make the utilization review decision; and
2. If the insurer or agent requires a utilization review decision of nonurgent health care services, render a utilization review decision and notify the covered person, authorized person, or provider of the decision within five (5) days of obtaining all necessary information to make the utilization review decision.

For purposes of this paragraph, "necessary information" is limited to:

- a. The results of any face-to-face clinical evaluation;
- b. Any second opinion that may be required; and
- c. Any other information determined by the department to be necessary to making a utilization review determination;

(j) 1. Provide written notice of review decisions to the covered person, authorized person, and providers.

2. The written notice may be provided in an electronic format, including email or facsimile, if the covered person, authorized person, or provider

1 has agreed in advance in writing to receive the notices electronically.

2 3. An insurer or agent that denies a step therapy exception, as defined in
3 KRS 304.17A-163, or denies coverage or reduces payment for a
4 treatment, procedure, drug that requires prior approval, or device shall
5 include in the written notice:

6 a.~~[1.]~~ A statement of the specific medical and scientific reasons for
7 denial or reduction of payment or identifying that provision of the
8 schedule of benefits or exclusions that demonstrates that coverage
9 is not available;

10 b.~~[2.]~~ The title of the reviewer making the decision, except that a written
11 notice provided to a provider shall also include, if applicable, the
12 medical license number of the reviewer making the decision;

13 c.~~[3.]~~ Except for retrospective review, a description of alternative
14 benefits, services, or supplies covered by the health benefit plan, if
15 any; and

16 d.~~[4.]~~ Instructions for initiating or complying with the insurer's internal
17 appeal procedure, as set forth in KRS 304.17A-617, stating, at a
18 minimum:~~[5.]~~

19 i. Whether the appeal shall be in writing;~~[6.] and~~

20 ii. Any specific filing procedures, including any applicable time
21 limitations or schedules;~~[7.]~~ and

22 iii. The position and phone number of a contact person who can
23 provide additional information;

24 (k) Afford participating physicians an opportunity to review and comment on all
25 medical and surgical and emergency room protocols, respectively, of the
26 insurer and afford other participating providers an opportunity to review and
27 comment on all of the insurer's protocols that are within the provider's legally

1 authorized scope of practice; and

2 (l) Comply with its own policies and procedures on file with the department or, if
3 accredited or certified by a nationally recognized accrediting entity, comply
4 with the utilization review standards of that accrediting entity where they are
5 comparable and do not conflict with state law.

6 ~~(3)(2)~~ (a) The insurer's or private review agent's failure to make a determination
7 and provide written notice within the time frames set forth in this section shall
8 be deemed to be a prior authorization for the health care services or benefits
9 subject to the review.

10 (b) This ~~subsection~~~~provision~~ shall not apply where the failure to make the
11 determination or provide the notice results from circumstances which are
12 documented to be beyond the insurer's control.

13 ~~(4)(3)~~ (a) An insurer or private review agent shall submit a copy of any changes to
14 its utilization review policies or procedures to the department.

15 (b) No change to utilization review policies and procedures shall be effective or
16 used until after it has been filed with and approved by the commissioner.

17 ~~(5)(4)~~ (a) A private review agent shall provide to the department the names of the
18 entities for which the private review agent is performing utilization review in
19 this state.

20 (b) Notice shall be provided to the department within thirty (30) days of any
21 change.

22 ➔Section 27. KRS 304.17A-617 is amended to read as follows:

23 (1) (a) Every insurer shall have an internal appeal process for adverse benefit
24 determinations that is:

25 1. ~~to be~~ Utilized by the insurer or its designee, consistent with this
26 section and KRS 304.17A-619; and ~~which shall be~~

27 2. Disclosed to covered persons in accordance with KRS 304.17A-

1 505(1)(g).

2 (b) An insurer shall disclose the availability of the internal appeal process to the
3 covered person in the insured's timely notice of an adverse benefit
4 determination~~[or notice of a coverage denial]~~ which meets the requirements
5 in KRS 304.17A-607(2)~~[(1)]~~(j).

6 (c) ~~[For purposes of this section, "coverage denial" means an insurer's~~
7 ~~determination that a service, treatment, drug, or device is specifically limited~~
8 ~~or excluded under the covered person's health benefit plan.~~

9 ~~(d)~~ Where a coverage denial is involved, in addition to stating the reason for the
10 coverage denial, the required notice shall contain instructions for filing a
11 request for internal appeal.

12 (2) The internal appeals process may be initiated by the covered person, an authorized
13 person, or a provider acting on behalf of the covered person.

14 (3) The internal appeals process shall include adequate and reasonable procedures for
15 review and resolution of appeals concerning adverse benefit determinations~~[made~~
16 ~~under utilization review and of coverage denials]~~, including procedures for
17 reviewing appeals from covered persons whose medical conditions require
18 expedited review.

19 **(4)** At a minimum, ~~the~~~~[these]~~ procedures **required under subsection (3) of this section**
20 shall include the following:

21 (a) Except as provided in KRS 304.17A-163~~1~~~~;~~:

22 ~~1.~~~~—~~ insurers or their designees shall provide decisions to covered persons,
23 authorized persons, and providers on internal appeals~~;~~~~[of adverse~~
24 ~~determinations or coverage denials]~~

25 **1.** Within thirty (30) days of receipt of the request for internal appeal,
26 **except as provided in subparagraph 2. of this paragraph; or**~~[and]~~

27 **2.** ~~[Insurers or their designees shall render a decision.]~~ Not later than three

- 1 (3) business days after receipt of ~~a~~~~the~~ request for an expedited appeal
2 of ~~either~~ an adverse **benefit** determination ~~or a coverage denial~~. An
3 expedited appeal is deemed necessary when a covered person is
4 hospitalized or, in the opinion of the treating provider, review under a
5 standard time frame could, in the absence of immediate medical
6 attention, result in any of the following:
- 7 a. Placing the health of the covered person or, with respect to a
8 pregnant woman, the health of the covered person or the unborn
9 child in serious jeopardy;
- 10 b. Serious impairment to bodily functions; or
- 11 c. Serious dysfunction of a bodily organ or part;
- 12 (b) Internal appeal of an adverse **benefit** determination, **other than a coverage**
13 **denial**, shall only be conducted by a licensed physician who did not
14 participate in the initial review and denial, **except** ~~However,~~ in the case of a
15 review involving a medical or surgical specialty or subspecialty, the insurer or
16 agent shall, upon request by a covered person, authorized person, or provider,
17 utilize a board-eligible or certified physician in the appropriate specialty or
18 subspecialty area to conduct the internal appeal;
- 19 (c) Those portions of the medical record that are relevant to the internal appeal, if
20 authorized by the covered person and in accordance with state or federal law,
21 shall be considered and providers given the opportunity to present additional
22 information; and
- 23 (d) In addition to any previous notice required under KRS 304.17A-
24 607~~(2)~~~~(4)~~(j), and to facilitate expeditious handling of a request for external
25 review ~~of an adverse determination~~ or **review of** a coverage denial **under**
26 **subsection (5) of this section**, an insurer or agent that denies, limits, reduces,
27 or terminates coverage for a **service**, treatment, procedure, drug, **supply**, or

device for a covered person shall provide the covered person, authorized person, or provider acting on behalf of the covered person with an internal appeal determination letter that includes~~[shall include]~~:

1. A statement of the specific medical and scientific reasons for denying coverage or identifying that provision of the schedule of benefits or exclusions that demonstrates that coverage is not available;

2. As applicable, the state of licensure and the title of the person making the decision, except that an internal appeal determination letter provided to a provider acting on behalf of the covered person shall also include the medical license number of the person making the decision;

3. Except for retrospective review, a description of alternative benefits, services, or supplies covered by the health benefit plan, if any; and

4. Instructions for:

a. Initiating an external review;~~[of an adverse determination,] or~~

b. For coverage denials, filing a request for review with the department under subsection (5) of this section~~[if a coverage denial is upheld by the insurer on internal appeal]~~.

~~(5)~~~~(4)~~ (a) The department shall establish and maintain a system for receiving and reviewing requests for review of coverage denials from covered persons, authorized persons, and providers.

(b) For purposes of this subsection, "coverage denials" shall not include~~[an adverse determination as defined in KRS 304.17A-600 or]~~ subsequent denials arising from an adverse benefit determination that is not a coverage denial.

(c) On receipt of a written request for review of a coverage denial from a covered person, authorized person, or provider, the department shall:

1. Notify the insurer that~~[which]~~ issued the denial of the request for review; and~~[shall]~~

- 1 2. Call for the insurer to respond to the department regarding the request
2 for review within ten (10) business days of receipt of notice to the
3 insurer.
- 4 (d) Within ten (10) business days of receiving the notice of the request for review
5 from the department, the insurer shall provide to the department the following
6 information:
- 7 1. Confirmation as to whether the person who received or sought the
8 ~~health~~ service, procedure, treatment, drug, supply, or device for which
9 coverage was denied was a covered person under a health benefit plan
10 issued by the insurer on the date the service, procedure, treatment,
11 drug, supply, or device was sought or denied;
- 12 2. Confirmation as to whether the covered person, authorized person, or
13 provider has exhausted his or her rights under the insurer's internal
14 appeal process under this section; and
- 15 3. The reason for the coverage denial, including the specific limitation or
16 exclusion of the health benefit plan demonstrating that coverage is not
17 available.
- 18 (e) In addition to the information described in paragraph (d) of this subsection,
19 the insurer and the covered person, authorized person, or provider shall
20 provide to the department any information requested by the department that is
21 germane to its review.
- 22 (f) 1. On the receipt of the information described in paragraphs (d) and (e) of
23 this subsection, unless the department is not able to do so because
24 making a determination requires resolution of a medical issue, it shall
25 determine whether the service, procedure, treatment, drug, supply, or
26 device is specifically limited or excluded under the terms of the covered
27 person's health benefit plan.

- 1 2. If the department determines that the service, procedure, treatment,
2 ~~[service,]~~ drug, supply, or device is not specifically limited or excluded,
3 it shall so notify the insurer, and the insurer shall either cover the
4 service, procedure, treatment, drug, supply, or device or afford the
5 covered person an opportunity for external review~~[under KRS 304.17A-~~
6 ~~621, 304.17A-623, and 304.17A-625]~~, where the conditions precedent to
7 the review are present.
- 8 3. If the department notifies the insurer that the service, procedure,
9 treatment,~~[service,]~~ drug, supply, or device is specifically limited or
10 excluded in the health benefit plan, the insurer is not required to cover
11 the service, procedure, treatment, drug, supply, or device or afford the
12 covered person an external review.
- 13 (g) An insurer shall be required to cover the service, procedure, treatment,~~[~~
14 ~~service,]~~ drug, supply, or device that was denied or provide notification of the
15 right to external review in accordance with paragraph (f) of this subsection
16 whether the covered person has disenrolled or remains enrolled with the
17 insurer.
- 18 (h) If the covered person has disenrolled with the insurer, the insurer shall only be
19 required to provide the service, procedure, treatment,~~[service,]~~ drug, supply,
20 or device that was denied for a period not to exceed thirty (30) days or
21 provide the covered person the opportunity for external review.
- 22 ➔Section 28. KRS 304.17A-619 is amended to read as follows:
- 23 (1) (a) If the covered person, authorized person, or provider has new clinical
24 information regarding the covered person's internal appeal, he or she shall
25 provide that information to the insurer prior to the initiation of the external
26 review process.
- 27 (b) The insurer shall have five (5) business days from the date of the receipt of

1 the information to render a decision based on the new information.

2 **(c)** If new information is provided in accordance with this ~~subsection~~^{section},
3 the sixty (60) day time frame for commencing an external review as set forth
4 in KRS 304.17A-623(4), shall not begin to run, until the insurer or its
5 designee renders a decision regarding the new information.

6 (2) The insurer's failure to make a determination or provide a written notice within the
7 time frames set forth in KRS 304.17A-617 shall be deemed to be an adverse **benefit**
8 determination, **other than a coverage denial**, by the insurer for the purpose of
9 initiating an external review as set forth in KRS 304.17A-623.

10 ➔Section 29. KRS 304.17A-621 is amended to read as follows:

11 The Independent External Review Program is hereby established in the department. The
12 program shall provide covered persons with a formal, independent review to address
13 disagreements between the covered person and the covered person's insurer~~[regarding an~~
14 ~~adverse determination made by the insurer, its designee, or a private review agent]~~. This
15 section and KRS 304.17A-623, ~~[and]~~ 304.17A-625, **and 304.17A-627** establish
16 requirements and procedures governing external review and independent review entities.

17 ➔Section 30. KRS 304.17A-623 is amended to read as follows:

18 (1) (a) Every insurer shall have an external review process to be utilized by the
19 insurer or its designee, consistent with this section and which shall be
20 disclosed to covered persons in accordance with KRS 304.17A-505(1)(g).

21 (b) An insurer, its designee, or agent shall disclose the availability of the external
22 review process to the covered person in the insured's timely notice of an
23 adverse **benefit** determination, **other than**~~[or notice of]~~ a coverage denial, as
24 set forth in KRS 304.17A-607~~(2)~~⁽²⁾~~(1)~~⁽¹⁾(j) and in the denial letter required in
25 KRS 304.17A-617(1) and ~~(4)~~⁽⁴⁾~~(3)~~⁽³⁾(d).~~[~~

26 ~~(c) For purposes of this section, "coverage denial" means an insurer's~~
27 ~~determination that a service, treatment, drug, or device is specifically limited~~

1 ~~or excluded under the covered person's health benefit plan.]~~

2 (2) A covered person, an authorized person, or a provider acting on behalf of and with
3 the consent of the covered person, may request an external review of an adverse
4 benefit determination, other than a coverage denial, rendered by an insurer, its
5 designee, or agent.

6 (3) Except as provided in KRS 304.17A-163, the insurer shall provide~~[for]~~ an external
7 review~~[of an adverse determination]~~ if the following criteria are met:

8 (a) The insurer, its designee, or agent has rendered an adverse benefit
9 determination, other than a coverage denial;

10 (b) The covered person has completed the insurer's internal appeal process~~[,]~~ or
11 the insurer has failed to make a timely determination or notification as set
12 forth in KRS 304.17A-619(2). The insurer and the covered person may,
13 however, jointly agree to waive the internal appeal requirement;

14 (c) The covered person was enrolled in the health benefit plan on the date of
15 service or, if a prospective denial, the covered person was enrolled and
16 eligible to receive covered benefits under the health benefit plan on the date
17 the proposed health care service was requested; and

18 (d) The entire course of treatment or service will cost the covered person at least
19 one hundred dollars (\$100) if the covered person had no insurance.

20 (4) (a) The covered person, an authorized person, or a provider with consent of the
21 covered person shall submit a request for external review to the insurer within
22 sixty (60) days, except as set forth in KRS 304.17A-619(1), of receiving
23 notice that an adverse benefit determination, other than a coverage denial,
24 has been timely rendered under the insurer's internal appeal process.

25 (b) As part of the request, the covered person shall provide to the insurer or its
26 designee written consent authorizing the independent review entity to obtain
27 all necessary medical records from both the insurer and any provider utilized

1 for review purposes regarding the determination~~[decision to deny, limit,~~
2 ~~reduce or terminate coverage]~~.

3 (5) (a) The covered person shall be assessed a one (1) time filing fee of twenty-five
4 dollars (\$25) that:

5 1. Shall~~[to]~~ be paid to the independent review entity; and~~[which]~~

6 2. May be waived if the independent review entity determines that the fee
7 creates a financial hardship on the covered person.

8 (b) The fee shall be refunded if the independent review entity finds in favor of the
9 covered person.

10 (6) A covered person shall not be afforded an external review~~[of an adverse~~
11 ~~determination]~~ if:

12 (a) The subject of the covered person's external review request~~[adverse~~
13 ~~determination]~~ has previously gone through the external review process and
14 the independent review entity found in favor of the insurer; and

15 (b) No relevant new clinical information has been submitted to the insurer since
16 the independent review entity found in favor of the insurer.

17 (7) (a) The department shall establish a system for each insurer to be assigned an
18 independent review entity for external reviews.

19 (b) The system established by the department shall:

20 1. Be prospective; and~~[shall]~~

21 2. Require insurers to utilize independent review entities on a rotating basis
22 so that an insurer does not have the same independent review entity for
23 two (2) consecutive external reviews.

24 (c) The department shall contract with no less than two (2) independent review
25 entities.

26 (8) (a) If a dispute arises between an insurer and a covered person regarding the
27 covered person's right to an external review, the covered person may file a

1 complaint with the department.

2 **(b)** Within five (5) days of receipt of the complaint, the department:

3 **1.** Shall render a decision; and

4 **2.** May direct the insurer to submit the dispute to an independent review
5 entity for an external review if it finds:

6 ~~1. The dispute involves denial of coverage based on medical necessity or~~
7 ~~the service being experimental or investigational; and~~

8 ~~2. } all of the requirements of subsection (3) of this section have been met.~~

9 **(c)**~~**(b)**~~ The complaint process established in this section shall:

10 **1.** Be separate and distinct from, and ~~shall~~ in no way limit, other
11 grievance or complaint processes available to consumers under other
12 provisions of the ***Kentucky Revised Statutes***~~[KRS]~~ or duly promulgated
13 administrative regulations; **and**~~. This complaint process shall }~~

14 **2.** Not limit, alter, or supplant the mechanisms for appealing coverage
15 denials established in KRS 304.17A-617.

16 (9) The external review process shall be confidential and shall not be subject to KRS
17 61.805 to 61.850 and KRS 61.870 to 61.884.

18 (10) External reviews shall be conducted in an expedited manner by the independent
19 review entity if:

20 **(a)** The covered person is hospitalized; ~~} or { if, }~~

21 **(b)** In the opinion of the treating provider, review under the standard time frame
22 could, in the absence of immediate medical attention, result in any of the
23 following:

24 ~~**1.**~~~~**(a)**~~ Placing the health of the covered person or, with respect to a
25 pregnant woman, the health of the covered person or her unborn child in
26 serious jeopardy;

27 ~~**2.**~~~~**(b)**~~ Serious impairment to bodily functions; or

1 ~~3.1(c)}~~ Serious dysfunction of a bodily organ or part.

2 (11) Requests for expedited external review~~[,]~~ shall be forwarded by the insurer to the
3 independent review entity within twenty-four (24) hours of receipt by the insurer.

4 (12) (a) For expedited external review, a determination shall be made by the
5 independent review entity within twenty-four (24) hours from the receipt of
6 all information required from the insurer.

7 (b) An extension of up to twenty-four (24) hours may be allowed if the covered
8 person and the insurer or its designee agree.

9 (c) The insurer or its designee shall provide notice to the independent review
10 entity and to the covered person, by same-day communication, that the
11 external review request~~[adverse determination]~~ has been assigned to an
12 independent review entity for expedited review.

13 (13) (a) External reviews which are not expedited shall be conducted by the
14 independent review entity and a determination made within twenty-one (21)
15 calendar days from the receipt of all information required from the insurer.

16 (b) An extension of up to fourteen (14) calendar days may be allowed if the
17 covered person and the insurer are in agreement.

18 ➔Section 31. KRS 304.17A-625 is amended to read as follows:

19 (1) In making its decision, an independent review entity conducting the external review
20 shall take into account all of the following:

21 (a) Information submitted by the insurer, the covered person, the authorized
22 person, and the covered person's provider, including the following:

23 1. The covered person's medical records;
24 2. The standards, criteria, and clinical rationale used by the insurer to make
25 its decision; and

26 3. The insurer's health benefit plan;

27 (b) Findings, studies, research, and other relevant documents of government

- 1 agencies and nationally recognized organizations, including the National
2 Institutes of Health, or any board recognized by the National Institutes of
3 Health, the National Cancer Institute, the National Academy of Sciences, and
4 the United States Food and Drug Administration, the Centers for Medicare &
5 Medicaid Services of the United States Department of Health and Human
6 Services, and the Agency for Health Care Research and Quality; and
- 7 (c) Relevant findings in peer-reviewed medical or scientific literature, published
8 opinions of nationally recognized medical specialists, and clinical guidelines
9 adopted by relevant national medical societies.
- 10 (2) (a) The independent review entity shall base its decision on the information
11 submitted under subsection (1) of this section.
- 12 (b) In making its decision, the independent review entity shall consider safety,
13 appropriateness, and cost effectiveness.
- 14 (3) (a) The insurer shall provide any coverage determined by the independent review
15 entity to be medically necessary.
- 16 (b) The independent review entity shall not be permitted to allow coverage for a
17 service, procedure, treatment, drug, supply, or device that is^[services]
18 specifically limited or excluded by the insurer in its health benefit plan.
- 19 (c) The decision shall apply only to the individual covered person's external
20 review.
- 21 (4) Nothing in this section shall be construed as requiring an insurer to provide
22 coverage for out of network services, procedures, or tests, except as set forth in
23 KRS 304.17A-515(1)(c) and 304.17A-550.
- 24 (5) The insurer shall be responsible for the cost of the external review.
- 25 (6) The independent review entity shall provide to the covered person, treating
26 provider, insurer, and the department a decision which shall include:
- 27 (a) The findings for either the insurer or covered person regarding each issue

1 under review;

2 (b) The proposed service, procedure, treatment, drug, device, or supply for which
3 the review was performed;

4 (c) The relevant provisions in the insurer's health benefit plan and how applied;
5 and

6 (d) The relevant provisions of any nationally recognized and peer-reviewed
7 medical or scientific documents used in the external review.

8 (7) The decision of the independent review entity shall not be made solely for the
9 convenience of the insurer, the covered person, or the provider.

10 (8) (a) Consistent with the rules of evidence, a written decision prepared by an
11 independent review entity shall be admissible in any civil action related to the
12 insurer's~~adverse~~ determination.

13 (b) The independent review entity's decision shall be presumed to be a
14 scientifically valid and accurate description of the state of medical knowledge
15 at the time it was written.

16 (9) (a) The decision of the independent review entity shall be binding on the insurer
17 with respect to that covered person.

18 (b) Failure of the insurer to provide coverage as required by the independent
19 review entity shall:

20 1.~~(a)~~ Be a violation of the insurance code of a nature sufficient to
21 warrant the commissioner revoking or suspending the insurer's license
22 or certificate of authority; and

23 2.~~(b)~~ Constitute an unfair claims settlement practice as set forth in KRS
24 304.12-230.

25 (10) (a) Failure to provide coverage as required by the independent review entity shall
26 also:

27 1. Subject the insurer to the provisions of KRS 304.99-010 and 304.99-

1 020; and

2 2. Require the insurer to pay the claim that was the subject of the external
3 review, without need for the covered person or authorized person to
4 further establish a right as to the payment amount.

5 (b) Reasonable attorney fees associated with the actions of the insured necessary
6 to collect amounts owed the covered person shall be assessed against and
7 borne by the insurer.

8 (11) The insurer shall implement the decision of the independent review entity whether
9 the covered person has disenrolled or remains enrolled with the insurer.

10 (12) If the covered person has been disenrolled with the insurer, the insurer shall only be
11 required to provide the treatment, procedure, service, drug, supply, or device that
12 was previously denied by the insurer, its agent, or designee and later approved by
13 the independent review entity for a period not to exceed thirty (30) days.

14 (13) Within thirty (30) days of the decision in favor of the covered person by the
15 independent review entity, the insurer shall provide written notification to the
16 department that the decision has been implemented in accordance with this section.

17 (14) (a) An independent review entity and any medical specialist the entity utilizes in
18 conducting an external review shall not be liable in damages in a civil action
19 for injury, death, or loss to person or property and is not subject to
20 professional disciplinary action for making, in good faith, any finding,
21 conclusion, or determination required to complete the external review.

22 (b) This subsection does not grant immunity from civil liability or professional
23 disciplinary action to an independent review entity or medical specialist for an
24 action that is outside the scope of authority granted in KRS 304.17A-621,
25 304.17A-623, and 304.17A-625.

26 (15) Nothing in KRS 304.17A-600 to 304.17A-633 shall be construed to create a cause
27 of action against any of the following:

- 1 (a) An employer that provides health care benefits to employees through a health
2 benefit plan;
- 3 (b) A medical expert, private review agent, or independent review entity that
4 participates in the utilization review, internal appeal, or external review
5 addressed in KRS 304.17A-600 to 304.17A-633; or
- 6 (c) An insurer or provider acting in good faith and in accordance with any
7 finding, conclusion, or determination of an Independent Review Entity acting
8 within the scope of authority set forth in KRS 304.17A-621, 304.17A-623,
9 and 304.17A-625.
- 10 (16) (a) The covered person, insurer, or provider in the external review may submit
11 written complaints to the department regarding any independent review
12 entity's actions believed to be an inappropriate application of the requirements
13 set forth in KRS 304.17A-621, 304.17A-623, and 304.17A-625.
- 14 (b) The department shall promptly review the complaint, and if the department
15 determines that the actions of the independent review entity were
16 inappropriate, the department shall take corrective measures, including
17 decertification or suspension of the independent review entity from further
18 participation in external reviews.
- 19 (c) The department's actions shall be subject to the powers and administrative
20 procedures set forth in Subtitle 17A of KRS Chapter 304.
- 21 ➔Section 32. KRS 304.99-020 is amended to read as follows:
- 22 (1) For any violation of this code where the commissioner has the power to revoke or
23 suspend a license or certificate of authority, the commissioner may in lieu thereof or
24 in addition to such revocation or suspension impose a civil penalty against the
25 violator of not more than the following:
- 26 (a) In the case of an insurer, a fraternal benefit society, nonprofit hospital,
27 medical-surgical, dental, and health service corporation, or health

1 maintenance organization, ~~of not more than~~ ten thousand dollars (\$10,000)
2 per violation;

3 **(b)** In the case of an agent, surplus lines broker, rental vehicle agent, ~~or~~ **rental**
4 **vehicle agent** managing employee, ~~specialty credit producer or managing~~
5 ~~employee,~~ or reinsurance intermediary broker or manager, ~~of not more than~~
6 one thousand dollars (\$1,000) per violation; **and**

7 **(c)** In the case of an adjuster, administrator, life settlement broker, life settlement
8 provider, or consultant, ~~of not more than~~ two thousand dollars (\$2,000) per
9 violation.

10 (2) **The civil penalties authorized under subsection (1) of this section** ~~Such civil~~
11 ~~penalty~~ may be recovered in an action brought ~~thereon~~ in the name of the
12 Commonwealth of Kentucky in any court of appropriate jurisdiction.

13 (3) In any court action with respect to a civil penalty, the court may review the penalty
14 as to both liability and reasonableness of amount.

15 ➔Section 33. KRS 304.99-100 is amended to read as follows:

16 (1) The appointment of an agent, including **a** rental vehicle agent **and**, ~~rental vehicle~~
17 **agent** managing employee, ~~specialty credit producer, and specialty credit~~
18 ~~managing employee,~~ may be renewed by an insurer under KRS 304.9-270(9) if the
19 request and late payment for renewal is accompanied by a penalty equal to the
20 amount of the biennial renewal fee specified in Subtitle 4 of this chapter.

21 (2) A license issued under Subtitle 9 of this chapter, surplus lines broker license, life
22 settlement broker license, and life settlement provider license may be reissued
23 under KRS 304.9-260(2) if the request and late payment for reissue are
24 accompanied by a penalty equal to the amount of the biennial renewal fee specified
25 in Subtitle 4 of this chapter.