

1 AN ACT relating to health insurance coverage by out-of-state insurers.

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

3 ➔Section 1. KRS 304.11-020 is amended to read as follows:

4 (1) Other than KRS 304.11-050, the provisions of KRS 304.11-020 to 304.11-050,  
5 shall not apply to any insurance company or underwriter issuing contracts of  
6 insurance to industrial insureds, government entity insureds, and exempt  
7 commercial policyholders, nor to any contract of insurance issued to any one (1) or  
8 more industrial insureds.

9 (2) For the purpose of this section:

10 (a) An "industrial insured" is:

- 11 1. An insured who procures the insurance of any risk or risks other than  
12 life and annuity contracts by use of the services of a full-time employee  
13 acting as an insurance manager or buyer or the services of a regularly  
14 and continuously retained qualified insurance consultant; and
- 15 2. An insured whose aggregate annual premiums for insurance on all risks  
16 total at least twenty-five thousand dollars (\$25,000); and
- 17 3. An insured having at least twenty-five (25) full-time employees; and
- 18 4. All entities that have qualified as industrial insureds as of July 1, 1999;

19 (b) A "government entity insured" is an insured:

- 20 1. That is a government entity, municipal corporation, or public agency  
21 located in a city or county having a population of less than fifty  
22 thousand (50,000); and
- 23 2. That procures the insurance of any risk or risks, other than life and  
24 annuity contracts, by use of the services of a full-time employee acting  
25 as an insurance manager or buyer, or by the use of the services of a  
26 regularly and continuously retained qualified insurance consultant; and
- 27 3. Whose aggregate annual premiums for insurance on all risks total at

1 least one hundred thousand dollars (\$100,000), exclusive of life, health,  
2 medical, or annuity premiums; and

3 4. That has at least fifty (50) full-time employees; and

4 5. That satisfies the criteria the commissioner promulgates by  
5 administrative regulation;~~[-and]~~

6 (c) 1. An "exempt commercial policyholder" means an insured that employs  
7 the services of an insurance agent or broker, procures commercial  
8 insurance with the services of a full-time risk manager, or a licensed  
9 insurance consultant, pursuant to Subtitle 9 of this chapter and:

10 a. Is a city, county, or urban-county with a population of at least fifty  
11 thousand (50,000) persons, or the Commonwealth, or a not-for-  
12 profit organization or a public entity with an annual budget of at  
13 least twenty-five million dollars (\$25,000,000) or assets of at least  
14 twenty-five million dollars (\$25,000,000) in the preceding fiscal  
15 year; or

16 b. Certifies that it meets all four (4) of the following criteria:

17 i. Possesses a net worth of more than twenty-five million  
18 dollars (\$25,000,000) at the time the policy of insurance is issued;

19 ii. Generated net revenue or sales of more than fifty million  
20 dollars (\$50,000,000) in the preceding fiscal year;

21 iii. Employs more than one hundred (100) employees per  
22 individual company or two hundred (200) employees per holding  
23 company aggregate at the time the policy of insurance is issued;  
24 and

25 iv. Paid annual aggregate insurance premiums of more than five  
26 hundred thousand dollars (\$500,000) in the preceding fiscal year.

27 2. As used in this subsection, "risk manager" means a person qualified to

1 assess an exempt commercial policyholder's insurance needs and  
2 analyze and negotiate a policy of insurance on behalf of an exempt  
3 commercial policyholder. A risk manager shall be:

4 a. A full-time employee of an exempt commercial policyholder who  
5 holds a professional designation relevant to the type of insurance  
6 to be purchased by the exempt commercial policyholder; or

7 b. A person retained by an exempt commercial policyholder who  
8 holds a professional designation relevant to the type of insurance  
9 to be purchased by the exempt commercial policyholder; and

10 (d) "Territory of the United States" includes America Samoa, Puerto Rico,  
11 Guam, the Northern Mariana Islands, and the United States Virgin Islands.

12 (3) (a) Policies issued to industrial insureds, government entity insureds, and exempt  
13 commercial policyholders are exempt from the rate and policy form  
14 requirements of this chapter.

15 (b) Policies issued to industrial insureds, government entity insureds, and exempt  
16 commercial policyholders shall contain a disclaimer in language similar to the  
17 following: "The rate provided for in this policy is exempt from the filing and  
18 approval requirements of Subtitle 13 of KRS Chapter 304. The forms which  
19 make up this policy contract are exempt from the filing and approval  
20 requirements of Subtitle 14 of KRS Chapter 304."

21 (c) The exemption of commercial policyholders under this section shall not apply  
22 to Subtitle 39 of this chapter, KRS Chapter 342, sections in Subtitle 13 of this  
23 chapter that pertain to workers' compensation insurance, and KRS 304.12-  
24 230.

25 (4) All industrial insureds, government entity insureds, and exempt commercial  
26 policyholders shall reapply to the commissioner for their respective insured status  
27 every three (3) years, on a form the commissioner shall promulgate by

1 administrative regulation.

2 (5) KRS 304.11-020 to 304.11-050, inclusive, shall not apply to:

3 (a) Any life insurance company organized and operated, without profit to any  
4 private shareholder or individual, exclusively for the purpose of aiding  
5 educational or scientific institutions organized and operated without profit to  
6 any private shareholder or individual by issuing insurance and annuity  
7 contracts directly from the home office of the company and without agents or  
8 representatives in this state only to or for the benefit of such institutions and to  
9 individuals engaged in the services of such institutions, nor to any policy or  
10 contract which it issues. ~~The~~[-, but this] exemption authorized in this  
11 paragraph shall be conditioned upon any such company complying with the  
12 following requirements:

13 ~~1. (a)~~ Payment of an annual registration fee;

14 ~~2. (b)~~ Filing a copy of any policy or contract issued to Kentucky  
15 residents with the commissioner;

16 ~~3. (c)~~ Filing a copy of its annual statement prepared pursuant to the laws  
17 of its state of domicile, as well as such other financial material as may  
18 be requested, with the commissioner; and

19 ~~4. (d)~~ Providing, in such form as may be acceptable for the appointment  
20 of the Secretary of State as its true and lawful attorney upon whom may  
21 be served all lawful process in any action or proceeding against such  
22 company arising out of any policy or contract it has issued to, or which  
23 is currently held by, a Kentucky citizen and process so served against  
24 such company shall have the same force and validity as if served upon  
25 the company; or

26 (b) 1. Any foreign insurer that issues or delivers an individual or group  
27 health insurance policy, certificate, plan, or contract in this state. The

1 exemption authorized in this paragraph shall be conditioned upon the  
2 foreign insurer complying with the following requirements:

3 a. Securing regulatory approval from the relevant regulatory  
4 authority of any territory of the United States to issue or deliver  
5 the individual or group health insurance policy, certificate, plan,  
6 or contract;

7 b. Submitting to the department all documentation, which may  
8 include:

9 i. Financial statements and solvency documents;

10 ii. Forms, including applications for coverage, contracts, and  
11 riders;

12 iii. Rates, including actuarial certifications; and

13 iv. Documentation of provider networks;

14 that the insurer's territorial regulatory authority requires;

15 c. Incorporating into the terms of the individual or group health  
16 insurance policy, certificate, plan, or contract:

17 i. All requirements and consumer protections that the  
18 insurer's relevant territorial regulatory authority requires  
19 for the policy, certificate, plan, or contract; and

20 ii. The insurer's consent to have courts in this state enforce  
21 all requirements and consumer protections required by the  
22 insurer's relevant territorial regulatory authority for the  
23 policy, certificate, plan, or contract; and

24 d. Displaying prominently on all marketing materials, applications,  
25 and contracts that the laws of the relevant territory of the United  
26 States, and not the laws of this state, govern the policy,  
27 certificate, plan, or contract.

1           2. A person in this state who is affected by a foreign insurer's failure to  
2           comply with a requirement or consumer protection imposed by the  
3           insurer's relevant territorial regulatory authority for a policy,  
4           certificate, plan, or contract issued or delivered under this paragraph  
5           may file an action in a court of competent jurisdiction in this state to  
6           obtain an order requiring compliance with the requirement or  
7           consumer protection.

8   (6) For any policy, certificate, plan, or contract issued in compliance with subsection  
9   (5)(b) of this section, a foreign insurer shall be exempt from:

10   (a) All other requirements of this chapter, including but not limited to:

11           1. Rate, policy form, and reporting requirements; and

12           2. Taxes, assessments, surcharges, fees, and other charges; and

13   (b) Any other insurance-specific taxes, assessments, surcharges, fees, and other  
14   charges imposed or allowed by this state, or imposed by a local government  
15   of this state, including but not limited to in Section 2 of this Act and KRS  
16   Chapter 136.

17   ➔Section 2. KRS 91A.080 is amended to read as follows:

18   (1) The legislative body of each local government which elects to impose and collect  
19   license fees or taxes upon insurance companies for the privilege of engaging in the  
20   business of insurance may, except as provided in subsection (10) of this section,  
21   enact or change its license fee or rate of tax to be effective July 1 of each year on a  
22   prospective basis only and shall file with the commissioner of insurance at least one  
23   hundred (100) days prior to the effective date, a copy of all ordinances and  
24   amendments which impose a license fee or tax. No less than eighty-five (85) days  
25   prior to the effective date, the commissioner of insurance shall promptly notify each  
26   insurance company engaged in the business of insurance in the Commonwealth of  
27   those local governments which have elected to impose the license fees or taxes and

1 the current amount of the license fee or rate of tax.

2 (2) Any license fee or tax imposed by a local government upon an insurance company  
3 with respect to life insurance policies may be based upon the first year's premiums,  
4 and, if so based, shall be applied to the amount of the premiums actually collected  
5 within each calendar quarter upon the lives of persons residing within the corporate  
6 limits of the local government.

7 (3) Any license fee or tax imposed by a local government upon any insurance company  
8 with respect to any policy which is not a life insurance policy shall be based upon  
9 the premiums actually collected by the insurance company within each calendar  
10 quarter on risks located within the corporate limits of the local government on those  
11 classes of business which the insurance company is authorized to transact, less all  
12 premiums returned to policyholders. In determining the amount of license fee or tax  
13 to be collected and to be paid to the local government, the insurance company shall  
14 use the tax rate effective on the first day of the policy term. When an insurance  
15 company collects a premium as a result of a change in the policy during the policy  
16 term, the tax rate used shall be the rate in effect on the effective date of the policy  
17 change. With respect to premiums returned to policyholders, the license fee or tax  
18 shall be returned by the insurance company to the policyholder pro rata on the  
19 unexpired amount of the premium at the same rate at which it was collected and  
20 shall be taken as a credit by the insurance company on its next quarterly report to  
21 the local government.

22 (4) The Department of Insurance shall, by administrative regulation, provide for a  
23 reasonable collection fee to be retained by the insurance company or its agent as  
24 compensation for collecting the tax, except that the collection fee shall not be more  
25 than fifteen percent (15%) of the fee or tax collected and remitted to the local  
26 government or two percent (2%) of the premiums subject to the tax, whichever is  
27 less. To facilitate computation, collection, and remittance of the fee or tax and

1 collection fee provided in this section, the fees or taxes set out in subsection (1), (2),  
2 or (3) of this section, together with the collection fee in this section, may be  
3 rounded off to the nearest dollar amount.

4 (5) Pursuant to KRS 304.3-270, if any other state retaliates against any Kentucky  
5 domiciliary insurer because of the requirements of this section, the commissioner of  
6 insurance shall impose an equal tax upon the premiums written in this state by  
7 insurers domiciled in the other state.

8 (6) Accounting and reporting procedures for collection and reporting of the fees or  
9 taxes and the collection fee herein provided shall be determined by administrative  
10 regulations promulgated by the Department of Insurance.

11 (7) (a) Upon written request of the legislative body of any local government, at the  
12 expense of the requesting local government, which shall be paid in advance  
13 by the local government to the Department of Insurance, the Department of  
14 Insurance shall audit, or cause to be audited by contract with qualified  
15 auditors, the books or records of the insurance companies or agents subject to  
16 the fee or tax to determine whether the fee or tax is being properly collected  
17 and remitted, and the findings of the audit shall be reported to the local  
18 government and the insurance company subject to the audit. An insurance  
19 company may appeal the findings of the audit conducted under this subsection  
20 and any assessment issued pursuant to the audit findings in accordance with  
21 the provisions of KRS 91A.0804(5).

22 (b) Willful failure to properly collect and remit the fee or tax imposed by a local  
23 government pursuant to the authority granted by this section shall constitute  
24 grounds for the revocation of the license issued to an insurance company or  
25 agent under the provisions of KRS Chapter 304.

26 (c) If the Department of Insurance finds that an insurance company has willfully  
27 engaged in a pattern of business conduct that fails to properly collect and



1            remit the fee or tax imposed by a local government pursuant to the authority  
2            granted by this section, the Department of Insurance may assess the  
3            responsible insurance company an appropriate penalty fee no greater than ten  
4            percent (10%) of the additional license fees or taxes determined to be owed to  
5            the local government. The penalty fee shall be paid to the local government  
6            owed the license fee or tax less any administrative costs of the Department of  
7            Insurance in enforcing this section. Any insurance company or agent held  
8            responsible for a penalty fee may request a hearing with the Department of  
9            Insurance to be conducted pursuant to KRS 304.2-310 to 304.2-370 regarding  
10          the finding of a willful violation and the subsequent penalty fee.

11    (8)    The license fees or taxes provided for by subsections (2) and (3) of this section shall  
12          be due thirty (30) days after the end of each calendar quarter. Annually, by March  
13          31, each insurance company shall furnish each local government to which the tax or  
14          fee is remitted with a breakdown of all collections in the preceding calendar year  
15          for the following categories of insurance:

- 16          (a)    Casualty;
- 17          (b)    Automobile;
- 18          (c)    Inland marine;
- 19          (d)    Fire and allied perils;
- 20          (e)    Health; and
- 21          (f)    Life.

22    (9)    Any license fee or tax not paid on or before the due date shall bear interest at the tax  
23          interest rate as defined in KRS 131.010(6) from the date due until paid. Such  
24          interest payable to the local government is separate of penalties provided for in  
25          subsection (7) of this section. In addition, the local government may assess a ten  
26          percent (10%) penalty for a tax or fee not paid within thirty (30) days after the due  
27          date.

- 1 (10) No license fee or tax imposed under this section shall apply to premiums:
- 2 (a) Received on policies of group health insurance provided for state employees
- 3 under KRS 18A.225;
- 4 (b) Received on policies insuring employers against liability for personal injuries
- 5 to their employees or the death of their employees caused thereby, under the
- 6 provisions of KRS Chapter 342;
- 7 (c) Received on health insurance policies issued to individuals;
- 8 (d) Received on policies issued through Kentucky Access created in Subtitle 17B
- 9 of KRS Chapter 304;
- 10 (e) Received on policies for high deductible health plans as defined in 26 U.S.C.
- 11 sec. 223(c)(2);
- 12 (f) Received on multistate surplus lines, defined as non-admitted insurance as
- 13 provided in Title V, Subtitle B, the Non-Admitted and Reinsurance Reform
- 14 Act of 2010, of the Dodd-Frank Wall Street Reform and Consumer Protection
- 15 Act, Pub. L. No. 111-203;
- 16 (g) Received on policies, certificates, plans, or contracts exempted under
- 17 subsection (6) of Section 1 of this Act;
- 18 (h) Paid to insurance companies or surplus lines brokers by nonprofit self-
- 19 insurance groups or self-insurance entities whose membership consists of
- 20 school districts; or
- 21 (i)~~(h)~~ Paid to insurance companies or surplus lines brokers by nonprofit self-
- 22 insurance groups or self-insurance entities whose membership consists of
- 23 cities, counties, charter county governments, urban-county governments,
- 24 consolidated local governments, unified local governments, school districts,
- 25 or any other political subdivisions of the Commonwealth.
- 26 (11) No county may impose the tax authorized by this section upon the premiums
- 27 received on policies issued to public service companies which pay ad valorem

1 taxes.

2 (12) Insurance companies which pay license fees or taxes pursuant to this section shall  
3 credit city license fees or taxes against the same license fees or taxes levied by the  
4 county, when the license fees or taxes are levied by the county on or after July 13,  
5 1990. For purposes of this subsection, a consolidated local government, urban-  
6 county government, charter county government, or unified local government shall  
7 be considered a county.

8 (13) No license fee or tax imposed under this section shall apply to premiums paid to  
9 insurers of municipal bonds, leases, or other debt instruments issued by or on behalf  
10 of a city, county, charter county government, urban-county government,  
11 consolidated local government, special district, nonprofit corporation, or other  
12 political subdivision of the Commonwealth. However, this exemption shall not  
13 apply if the bonds, leases, or other debt instruments are issued for profit or on  
14 behalf of for-profit or private organizations.

15 (14) A county may impose a license fee or tax covering the entire county or may limit  
16 the application of the fee or tax to the unincorporated portions of the county.

17 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO  
18 READ AS FOLLOWS:

19 *A foreign insurer shall be exempt from any tax, assessment, surcharge, fee, or other*  
20 *charge set forth in this chapter that is imposed upon or measured by the premiums paid*  
21 *to or received by the insurer for any policy, certificate, plan, or contract exempted*  
22 *under subsection (6) of Section 1 of this Act.*