

# Kentucky

## Property & Casualty

### Laws

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## DEFINITIONS

### Types of Insurer Authority

Domestic insurer- an insurer formed under the laws of Kentucky.

Foreign insurer- an insurer formed under the laws of any state other than Kentucky.

Alien insurer- an insurer formed under the laws of any country other than a state of the United States. **(304.1-070)**

### Kinds of Insurers

A **stock insurer** is an incorporated insurer with its capital divided into shares and owned by its shareholders.

A **mutual insurer** is an incorporated insurer without permanent capital stock, and the governing body of which is elected by its policyholders or those policyholders specified in its charter, or by any other reasonable method.

## INSURANCE COMMISSIONER

The commissioner is the head of the Kentucky Department of Insurance. The Commissioner is appointed by the Governor with the consent of the Senate, for a term not to exceed four years on the basis of his or her merit and fitness to perform the duties of the office.

### Address Change

All persons holding licenses or certificates of authority from the Commissioner must maintain current residence, business, home office, and administrative addresses, as applicable, on file with the Commissioner. Licensees must inform the Commissioner in writing of any change in addresses or legal name within 30 days of change. As a condition to holding a license or certificate of authority from the Commissioner, persons holding licenses or certificates of authority are deemed to have consented to service of notices and orders of the Commissioner at their addresses on file with the Commissioner and any notice or order of the Commissioner mailed or delivered to the address on file with Commissioner constitutes valid service of notice or order. **(304.2-120)**

### Qualifications for Agent License

An individual applying for an agent license will make application to the Commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge or belief. Before approving the application, the Commissioner must find that the applicant:

- Is at least 18 years of age
- Has fulfilled residence requirements or is a nonresident who is not eligible for a nonresident license based on reciprocity;
- Has not committed any act that is a ground for denial, suspension, or revocation;
- Is trustworthy, reliable, and of good reputation, evidence of which will be determined through an investigation by the Commissioner.

## **CONSULTANT LICENSE**

### **Qualifications for Consultant License**

For the protection of the people of this Commonwealth the Commissioner will not issue any license as consultant except in compliance with this subtitle, or as to any person not qualified therefore as follows:

- Must be an individual of 25 years or more years of age
- Must have had not less than five years of actual experience as a licensed agent with respect to the kinds of insurance and contracts to be covered by the license, or other special experience, education or training, all of sufficient content and duration reasonably necessary for competence in fulfilling the responsibility of a consultant;
- Must have a thorough knowledge of insurance and annuity contracts, of the kinds proposed to be covered under the license;
- Must satisfy the Commissioner by written examination, or otherwise of his or her qualification for the license;
- Must be competent, trustworthy under highest fiduciary standards, financially responsible, and of good personal and business reputation; and
- Must have filed the bond required by Section 304.9-330. **(304.9-320)**

### **Apprentice Adjuster**

An applicant for an adjuster's license who meets all the requirements except the experience, special education or training requirement may be issued a temporary license as an apprentice adjuster for up to 12 months without passing the written examination.

A temporary license as an apprentice adjuster is subject to the following terms and conditions:

- An individual holding a temporary license as apprentice adjuster will have all of the privileges and obligations of a licensed adjuster
- An individual holding a temporary license as an apprentice adjuster must at all times be a full-time salaried employee of an insurer or an adjuster and subject to training, direction, and control by a licensed adjuster acting in the same capacity as that for which the applicant applied
- A temporary license as apprentice adjuster is subject to suspension, revocation or conditions in accordance with the laws relating to licensed adjusters; and
- An individual may hold only one temporary license as an apprentice adjuster. **(304.9-432)**

## **Controlled Business**

The purpose of a license issued under this subtitle to an insurance producer is to authorize and enable the licensee actively and in good faith to engage in the business of insurance with respect to the general public, and to facilitate the public supervision of such activities in the public interest, and not for the purpose of enabling the licensee to receive a rebate of premium in the form of “commission” or other compensation upon his or her own interest or upon those of other persons with whom he or she is closely associated in capacities other than as an insurance producer.

The Commissioner will not grant, renew, continue, or permit to exist any license of an insurance producer if he or she finds that the license has been or is being or will probably be used by the applicant or licensee principally for the purpose of writing “controlled business” that is:

- Insurance on his or her own interest or those of his or her family or of his or her employee
- Insurance or annuity contracts covering himself or herself or members of his or her family, or the officers, directors, stockholders, partners, employees or debtors of a partnership, association, or corporation of which he or she or a member of his or her family is an officer, director, stockholder, partner, associate, or employee.

## **Exemptions from Pre-licensing Education and Examination Requirements**

The pre-licensing education requirement and the written examination requirements do not apply to:

- An individual licensee who allows his or her license to lapse if the license renewal fee is paid within 12 months from the due date of the license renewal fee. However, a penalty in the amount of double the unpaid renewal fee will be imposed. The Department will issue a license with the same lines of authority as the lapsed license.
- Any applicant for license covering any line of authority to which the applicant was licensed under a similar license in Kentucky, other than a temporary license, within the 12 months next preceding date of application. An applicant is not eligible for this exemption if the previous license was revoked or suspended by the Commissioner for reasons other than failure to maintain financial responsibility or meeting continuing education requirements;
- An individual who applies for an insurance producer license in Kentucky who was previously licensed for the same lines of authority in another state will not be required to complete any pre-licensing education or examination. This exemption is only available if the applicant is currently licensed in the other state or if the application is received within 90 days of the cancellation of the applicant’s previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state’s database records, maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries, indicate that the insurance producer is or was licensed in good standing for the line of authority requested;

- An individual licensed as an insurance producer in another state within the last 12 months who moves to Kentucky will make application within 90 days of establishing legal residence to become a resident licensee. No pre-licensing education or examination will be required of that applicant to obtain a license for any line of authority previously held in the prior home state except as determined by the Commissioner.
- An applicant for an insurance producer's license who is currently licensed in Kentucky as a consultant as to the same line of authority, or has been so licensed within 12 months next preceding the date of application for the license, unless the previous license was revoked or suspended or continuation thereof refused by the Commissioner for reasons other than failure to maintain financial responsibility; and
- Any applicant for license covering the same line of authority as to which that applicant will have held a valid license issued in accordance with this section or other applicable Kentucky law which was surrendered in order to accept employment with the Department of Insurance, provided, however, that the applicant must apply for re-licensing within 12 months of the date of termination of his or her employment with the Department of Insurance. **(304.9-170)**

### **Continuing Education for Agents**

Licensees who are not exempt must satisfactorily complete a minimum of 24 hours of continuing education courses, of which 12 will be classroom hours, during each continuing education biennium.

### **Temporary Licenses**

The Commissioner may issue a temporary license for a period not to exceed 180 days without requiring examination or pre-licensing course study if the Commissioner deems that a temporary license is necessary for the servicing of an insurance business in the following cases:

- To the surviving spouse or court appointed personal representative of a licensed agent who dies or becomes mentally or physically disable, to allow adequate time for the sale:
  - Sale of the insurance business owned by the agent
  - Recovery or return of the agent to the business; or
  - Training and licensing of new personnel to operate the agent's business
- To a member or employee of a business entity licensed as an agent, upon the death or disability of the sole individual designated in the business entity application or the license;
- To the designee of a licensed agent entering upon active service in the armed forces of the United States; or
- In any other circumstance where the Commissioner deems that the public interest will best be served by the issuance of this license.

## **Record Retention**

Every individual and business entity issued a license with Kentucky as the home state must have and maintain a place of business in Kentucky accessible to the public, and where the licensee principally conducts transactions. This does not prohibit maintaining a place of business in an insurer's office in the licensee's residence.

The licenses of the licensee must be conspicuously displayed in a part of the place of business customarily open to the public.

The licensee must keep at his or her place of business complete records of transactions under his or her license. For an insurance producer, the records must show, as to each insurance policy or contract placed or countersigned by or through the licensee, the names of the insurer and insured, the number and expiration date of, and premium payable as to, the policy or contract, and such other information as the Commissioner may reasonably require. The records must be kept available for inspections by the Commissioner for a period of at least five years after completion of respective transactions. **(304.9-390)**

## **Revocation or Suspension of License**

The Commissioner may place on probation, suspend, or may impose conditions upon the continuance of a license for not more than 12 months, revoke or refuse to issue or renew any license issued under this section or any surplus lines broker license, or may levy a civil penalty, or any combination of actions for any one or more of the following causes:

- Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- Violating any insurance laws, or violating any administrative regulations, subpoena, or order of the Commissioner or of another state's Insurance Commissioner;
- Obtaining or attempting to obtain a license through misrepresentation or fraud;
- Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business;
- Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- Having been convicted of any felony;
- Having admitted or been found to have committed any unfair insurance trade practice or insurance fraud;
- Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility; or being a source of injury or loss to the public in the conduct of business in this state or elsewhere;
- Having any insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

- Surrendering or otherwise terminating any other license issued by the state or by any other jurisdiction, under threat of disciplinary actions, denial, or refusal of the issuance of or renewal of any other license issued by this state or by any other jurisdiction; or revocation or suspension of any other license held by the licensee issued by this state or by any other jurisdiction;
- Forgery in relation to insurance;
- Cheating on an examination for an insurance license;
- Knowingly accepting insurance business from an individual who is not licensed, but who is required to be licensed under this section;
- Failing to comply with an administrative or court order imposing a child support obligation;
- Failing to pay state income tax or to comply with any administrative or court order directing payment of state income tax;
- Having been convicted of a misdemeanor for which restitution is ordered in excess of \$300, or of any misdemeanor involving dishonesty, breach of trust, or moral turpitude, or;
- Any other cause for which issuance of the license could have been refused, had it then existed and been known to the Commissioner.

### **Actions Following License Suspension/Revocation**

Upon suspension or revocation of any license the Commissioner will immediately notify the licensee either in person or by mail addressed to the licensee at his or her last address of record. Notice by mail will be considered to be effective when mailed. The Commissioner will also give notice to the insurer represented by the agent, in the case of an agent's license.

The Commissioner will not issue a new license under this code to any person (meaning an individual or business entity) whose license has been revoked until after one year has expired and until the person qualifies again in accordance with the applicable provision of this code. A person whose license has been revoked twice is not eligible for any license under this code under any circumstance.

If the license of a business entity is suspended or revoked, no member, officer, or director of the business entity can be licensed or be designated as to any license during the period of suspension or revocation, unless the Commissioner determines upon *substantial evidence* that the member, officer, or director was not personally at fault and did not acquiesce in the matter in regard to which the license was suspended or revoked.

In the event of non-renewal or denial of an application for a license, the Commissioner must notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or non-renewal. The applicant or licensee may request, in writing, a hearing. **(304.9-450)**

## **HIV Testing**

In the underwriting of an insurance contract regarding human immunodeficiency virus infection and health conditions derived from such infection, the insurer must utilize medical tests which are reliable predictors of risk. Only a test which is recommended by the Centers for Disease Control or by the Food and Drug Administration is deemed to be reliable for the purposes of this section.

Prior to testing, the insurer must disclose in writing its intent to test the applicant for human immunodeficiency virus infection or for a specific health condition derived therefrom and must obtain the applicant's written informed consent to administer the test.

Written informed consent must include a fair explanation of the test, including its purpose, potential uses and limitations, the meaning of its results, and the right to confidential treatment of information.

An applicant must be notified of a positive test result by a physician designated by the applicant, or, in the absence of such designation, by the Cabinet for Human Resources.

A medical test for HIV infection or for a health condition derived from the infection may only be required for an insurance contract on the basis of the applicant's health condition or health history, on the basis of the amount of insurance applied for, or if the test is required of all applicants.

An insurer may ask whether an applicant for an insurance contract has tested positive for HIV infection or other health conditions derived from such infection. Insurers may not inquire whether the applicant has been tested for or has received a negative result from a specific test for HIV infection or for a health condition derived from such infection.

Insurers must maintain strict confidentiality of the results of tests for HIV infection or a specific health condition derived from HIV infection. Information regarding specific test results may be disclosed only as required by law or pursuant to a written request or authorization by the applicant.

## **Advertising Files; Reporting Requirements**

Every insurer must maintain at its home or principal office a complete file containing every printed, published, or prepared advertisement of individual policies and typical printed, published or prepared advertisements of blanket, franchise and group policies disseminated in any state, with a notification attached to each advertisement indicating the manner and extent of distribution and the form number of any policy advertised. The file is subject to regular and periodical inspection by the Department of Insurance. All advertisements must be maintained in the file for at least three years.

Each insurer required to file an annual statement and which is subject to the advertisement regulations must file with the Department together with the annual statement, a certificate executed by an authorized officer of the insurer stating that to the best of his or her

knowledge, information and belief the advertisements which were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of the insurance laws of Kentucky.

The use of advertising material previously filed with and approved by the Department does not subject the filer to any disciplinary action or penalty by the Department, as long as the prior approval remains in effect. **(Reg. 806.12-010.18 and .19)**

### **Financial Statements**

No person shall file with any public official or make or disseminate any statement of financial condition of any insurer with intent to deceive. No person shall make any false entry in any record, report or statement of any insurer or other person required to have records under this code, with intent to deceive the Commissioner or any examiner lawfully appointed to examine into its affairs, or willfully omit to make a true entry of any material fact pertaining to its business. **(304.12-040)**

### **Illegal Inducements**

No insurance producer may, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, sell, buy, or offer or promise to buy, sell, give, promise, or allow to the insured or prospective insured or to any other person on his or her behalf in any manner whatsoever:

- Any employment
- Any shares of stock or other securities issued or at any time to be issued or any interest therein or rights thereto.
- Any advisory board contract, or any similar contract, agreement or understanding, offering, providing for, or promising any profits or special returns or special dividends.
- Any prizes, goods, ware, merchandise, or property of an aggregate value in excess of \$25. **(304.12-120)**

### **Life and Health- Unfair Claims Settlement Practices**

Every insurer upon receiving notice of a claim must, within 15 days of the notification, provide necessary claims forms, instructions, and reasonable assistance so the insured can properly comply with the filing requirements.

Upon receipt of proof of loss from a claimant, the insurer shall begin any necessary investigation of the claim within 15 days.

The insurer shall affirm or deny any liability on any claim within a reasonable time and shall offer payment within 30 days of receipt of due process of loss.

With each claim payment, the insurer shall provide an explanation of benefits which must include the name of the provider of health care services covered, dates of service and a reasonable explanation of the computation of benefits.

If a claim remains unresolved for 30 days from receipt of due proof of loss, the insurer must provide a written explanation of delay.

If a claim is denied, the insurer must provide a written explanation for the denial within 15 days of the determination. The notice must refer to the specifics of the policy.

Each insurers claims files are subject to examination by the Commissioner. The insurer must:

- Maintain claim data that are accessible and retrievable for the examination;
- Maintain documentation for each claim file for reconstructions purposes; and
- Maintain the dates received, dates processed and dates mailed for each claim file.
- Claim files must be maintained for the current year and the five preceding years. **(Reg. 806.12-092)**

### **Insurable Interest- Person**

An insurer is entitled to rely on the statements and representations made by an applicant concerning the existence of an insurable interest and has no liability beyond that provided by the policy relying on those statements of good faith. **(304.14-040)**

### **Power to Contract Insurance; Purchase by Minors**

Any person of competent legal capacity may contract for insurance.

Any minor not less than 15 years of age may, notwithstanding his or her minority, contract for or own annuities, or insurance upon his or her own life, body, health, property, liabilities or other interests, or on the person of another in whom the minor has an insurable interest. Such a minor shall, notwithstanding such minority, be deemed competent to exercise all rights and powers with respect to or under:

- Any contract for annuity or for insurance upon his or her own life, body or health, or
- Any contract such minor effect upon his or her own property, liabilities or other interests, or
- Any contract effected or owned by the minor on the person of another, as might be exercised by a person of full legal age, and may at any time surrender his or her interest in any such contract and give valid discharge for any benefit accruing or money payable thereunder. Such a minor shall not, by reasons of his or her minority, be entitled to rescind, avoid or repudiate the contract, nor to rescind, avoid or repudiate any exercise of a right or privilege thereunder, except that such a minor not otherwise emancipated, shall not be bound by any unperformed agreement to pay by promissory note or otherwise, any premium on any such annuity or insurance contract.

Any annuity contract or policy of life or health insurance procured by or for a minor shall be made payable either to the minor or his or her estate or to a person having an insurable interest in the life of a minor. **(304.14-070)**

# INSURANCE FRAUD

## Definition of Insurance Fraud

A person or entity commits a “fraudulent insurance act” if he or she:

- Knowingly and with intent to defraud or deceive presents (or prepares with knowledge or belief that it will be presented) to an insurer, Board of Claims, Special Fund, self-insurer, or any agent thereof, any written oral statement in regard to a claim for payment or other benefit pursuant to an insurance policy or from a self-insurer, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;
- Knowingly and with intent to defraud or deceive presents (or prepares with knowledge or belief that it will be presents to an insurer, Board of Claims, or any agent thereof, any written or oral statement in regard to an application for an insurance policy, knowing that this statement contains any false, incomplete, or misleading information concerning any fact or thing material to the application;
- Knowingly and willfully transacts any contract, agreement, or instrument which violates this title;
- Knowingly and with intent to deceive, received money for the purpose of purchasing insurance and fails to obtain it;
- Knowingly and with intent to defraud or deceive, fails to make payment or disposition of money or voucher, as required by agreement or legal obligation, that comes into his or her possession while acting as a licensee under this chapter;
- Issues fake or counterfeit insurance policies, certificated of insurance, insurance identification cards, or insurance binders;
- Make any false or fraudulent representation as to the death or disability of a policy or certificate holder in any written statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;
- Engages in unauthorized insurance; or
- Knowingly and with intent to defraud or deceive, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or to the Commissioner, any statement, knowing that the statement contains any false, incomplete, or misleading information concerning any material fact or thing, as part of, or in support of one or more of the following:
  - The rating of an insurance policy
  - The financial condition of an insurer;
  - The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one or more lines of insurance in all or part of this Commonwealth by an insurer, or
  - A document filed with the Commissioner;
- Knowingly and with intent to defraud or deceive, engages in any of the following:
  - Solicitation or acceptance of new or renewal insurance risks on behalf of an insolvent insurer; or
  - Removal, concealment, alteration, tampering, or destruction of money, records, or any other property or assets of an insurer; or

- Assists, abets, solicits, or conspires with another to commit a fraudulent insurance act in violation of this section.

A person convicted of a violation of this section shall be guilty of a misdemeanor where the aggregate of the claim, benefit, or money referred to in this section is less than or equal to \$300, and shall be punished by:

1. Imprisonment for not more than one year;
2. A fine, per occurrence, of not more than \$1,000 per individual nor \$5,000 per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or
3. Both imprisonment and a fine as set forth in this paragraph.

## **PENALTIES FOR VIOLATION**

### **General Penalties**

In addition to or in lieu of the specific penalties provided for by this code, any person who violates any provision of this code or who knowingly violates any proper order of the Commissioner shall, upon conviction by a court of competent jurisdiction, be fined not less than \$100 or twice the amount of the gain from the commission of the violation, whichever is greater, be subject to revocation of certificate of authority or license, or both. **(304.99-010)**

### **Civil Penalties**

For any violation of this code where the Commissioner has the power to revoke or suspend a license or certificate of authority he or she may in lieu thereof or in addition to such revocation or suspension impose a civil penalty against the violator in the case of an insurer, a fraternal benefit society, nonprofit hospital, medical-surgical, dental, and health service corporation, health maintenance organization of up to \$10,000 per violation; in the case of an adjuster, administrator, or consultant of not more than \$2,000 per violation. **(304.99-020)**

### **Consultants**

In addition to any applicable suspension, revocation, or refusal to continue the consultant's license, violation of the statutes governing consultants' commissions, upon conviction, is punishable by a fine of not more than \$5,000 or by imprisonment up to one year, or by both. **(304.99-025)**

### **Coercion**

Any conviction of coercion under the insurance code shall be punished by a fine of not more than \$250 or by imprisonment of not more than 90 days, or both; and if the convicted party holds a license from the Commissioner, he or she shall forfeit the same. **(304.99-110)**

## **HIV Testing and Disclosure Procedures**

Any person who violated the HIV testing and disclosure procedures of the insurance code shall be fined at least \$50 and not more than \$100. Each violation constitutes a separate offense. **(304.99-115)**

## **SURPLUS LINES**

### **Conditions for Placement**

If certain insurance coverages cannot be procured from authorized insurers, designated “surplus lines” may be procured from unauthorized insurers subject to the following conditions:

- The insurance must be procured through a licensed surplus lines broker.
- The full amount of insurance required must not be procurable, after diligent effort has been made to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in this state, and the amount of insurance exported may be only the excess over the amount procurable from authorized insurers.
- The insurance must not be so exported for the purpose of securing advantages either as to:
  - A lower premium rate than would be accepted by an authorized insurer; or
  - Terms of the insurance contract. **(304.10-040)**

### **Broker’s Bond**

Prior to issuance of a license as a surplus lines broker, the applicant must file with the Commissioner and keep in force both of the following items.

1. Evidence of financial responsibility in the sum of not less than \$1,000,000 per occurrence, and the sum of \$2,000,000 in the aggregate, for all occurrences within one year, either in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or any combination. Such policy, bond, deposit or combination must not be terminated unless at least 30 days’ prior written notice is given to the licensee and the Commissioner.
2. A bond in favor of the state of Kentucky in the penal sum of \$50,000, with an authorized corporate surety, guaranteeing that he or she will conduct business under the license in accordance with the provision of this subtitle that he or she will promptly remit the required taxes. No bond may be terminated unless at least 30 days prior written notice is given to the licensee and filed with the Commissioner.

## **BINDERS**

Binders or other contracts for temporary insurance may be made orally or in writing, and will be deemed to include all the usual terms of the policy as to which the binder was given together with such applicable endorsements as are designated in the binder, except as superseded by the clear and express terms of the binder.

No binder shall be valid beyond the issuance of the policy with respect to which it was given, or beyond 90 days from its effective date, whichever is shorter.

If the policy has not been issued a binder may be extended or renewed beyond 90 days with the written approval of the Commissioner. **(304.14-220)**

If the policy has not been issued covering any property or casualty risk within the Commonwealth of Kentucky unless a proper premium is charged, and no such coverage may be cancelled flat. In every case, the agent must charge the proper pro rata or short premium rate for the period of risk. Binders in effect less than fifteen days, however, may be cancelled flat as "not taken" without premium charge, subject to the approval of the company; provided the cancelled binder is received by the insuring company within fifteen days of its effective date.

When a policy is issued in the same company, the date of commencement of the policy must be the same as the binder unless a pro rate earned premium is charged for the period of the binder. **(Reg. 806.14-020)**

### **Policy Deductible**

Each insurer, including those participating in a residual market mechanism, authorized to write workers' compensation insurance in the Commonwealth must offer optional deductibles to the employer policyholder for the payment of workers' compensation benefits as a part of the policy or as an optional endorsement to the policy.

Deductible amounts offered pursuant to this section must be fully disclosed to the employer policyholder in writing and may range in amounts from \$10 to \$10,000 per compensable occurrence. The employer policyholder exercising the deductible option must choose only one deductible amount.

If the employer policyholder chooses a deductible policy, the insurer must pay the deductible amount initially and the employer policyholder must be liable to the insurer, at the time and in the manner prescribed by the insurer, for the amount of the deductible paid by the insurer for benefits paid. **(304.13-400)**

### **Settlement Standards Applicable to All Insurers**

An insurer must affirm or deny any liability on claims within a reasonable time and must offer any payment due within **30 calendar days** of receipt of due proof of loss. If claims involve multiple coverages, payments which are not in dispute must be tendered within **30 calendar days** of receipt of due proof of loss. The insurer is relieved of these requirements if there is a reasonable basis supported by specific information available for review by the Commissioner for suspect that a claimant has fraudulently caused or contributed to the loss, but the insurer must advise the first-party claimant of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

## **PROPERTY AND CASUALTY CONTRACTS- DECLINATIONS, CANCELLATIONS AND NONRENEWALS**

### **Permissible Reasons for Cancellation**

After property and casualty coverage has been in effect more than 60 days or after the effective date of a renewal policy, a notice of cancellation may not be issued unless it is based on at least one of the following reasons:

- Nonpayment of premium
- Discovery of fraud or material misrepresentation made by or with the named insurer's knowledge in obtaining the policy, continuing the policy, or presenting claim under the policy
- Discovery of willful or reckless acts or omissions by the named insured which increase any hazard insured against
- The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued or renewed
- A violation of any local fire, health, safety, building, or construction regulation or ordinance with respect to any insured property or its occupancy which substantially increases any hazard insured against
- The insurer is unable to reinsure the risk covered by the policy
- A determination by the Commissioner that the continuation of the policy would place the insurer in violation of the Kentucky Insurance Code or regulations of the Commissioner. **(304.20-330)**

### **Procedural Requirements – Declinations and Cancellations**

Insurers must comply with the following procedural requirements when effecting any declination, cancellation, non-renewal, or premium increase of a property or casualty insurance policy.

**Declinations** An applicant may request in writing an explanation of a declination, and the insurer must provide a prompt written response to such inquiries.

**Cancellations** A notice of cancellation of insurance by an insurer must:

- Be in writing
- Be delivered to the names insured or mailed to the named insured at the last known address of the named insured
- State the effective date of the cancellation, and
- Be accompanied by a written explanation of the specific reason or reasons for the cancellation

The notice of cancellation must be mailed or delivered by the insurer to the named insured at least 14 days before the effective date of the cancellation if the cancellation is for nonpayment of premium or occurs within 60 days of the date of issuance of the policy. The notice must be mailed or delivered by the insurer to the name insured at least 75 days before the effective date of the cancellation if the policy has been in effect more than 60 days. Proof

of mailing of notice or reasons for cancellation to the named insured at the address shown in the policy is sufficient proof of notice.

## **AUTOMOBILE INSURANCE-NO-FAULT LAW**

### **Definitions**

The following definitions apply under the Kentucky no-fault law.

**Basic reparation benefits** mean benefits providing reimbursement for net loss suffered through injury arising out of the operation, maintenance or use of a motor vehicle, subject to the limits, deductibles, exclusions, disqualifications, and other conditions provided in the no-fault law. The maximum amount of basic reparation benefits payable for all economic loss resulting from injury to any one person as the result of one accident is \$10,000, regardless of the number of persons entitled to such benefits or the number of persons of security obligated to pay such benefits.

**Medical expense** means reasonable charges incurred for reasonably needed products, service, and accommodations, including those for medical care, physical rehabilitation, rehabilitative occupational training, licensed ambulance services, and other remedial treatment and care. Medical expense may include nonmedical remedial treatment rendered in accordance with a recognized religious method of healing. The term includes a total charge up **\$1,000** per person for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semi-private accommodations, unless intensive care is medically required. Medical expense includes all healing arts professions licensed by the Commonwealth of Kentucky. There is a presumption that any medical bill submitted is reasonable.

**Noneconomic detriment** means pain, suffering, inconvenience, physical impairment, and other no pecuniary damages recoverable under the tort law of Kentucky. The term does **not** include punitive or exemplary damages.

**Reparation obligor** means an insurer, self-insurer, or obligated government providing basic or added reparation benefits under the no-fault law. **(304.39-020)**

### **Required Liability Coverage**

The requirement of security for payment of tort liabilities is fulfilled by providing either:

- Split limits liability coverage of at least **\$25,000** for all damages arising out of bodily injury sustained by any one person and at least **\$50,000** for all damages arising out of bodily injury sustained by all persons injured as a result of any one accident, plus liability coverage of at least **\$10,000** for all damages arising out of damage to or destruction of property, including loss of use, as a result of any one accident, or

- Single limits liability coverage of at least **\$60,000** for all damages whether arising out of bodily injury or damage to property as a result of any one accident

Coverage must also be provided for **basic reparation benefits**, and the liability coverage must apply to accidents that occur during the contract period in a territorial area that includes at least the United States, its territories and possessions, and Canada.

The requirement of security for payment of tort liabilities may be met by a contract providing coverage that is secondary or excess to other applicable valid and collectible liability insurance. To the extent the secondary or excess coverage applies to liability within the required minimum security, it must be subject to conditions consistent with the system of required liability insurance established by the no-fault law. **(304.39-110)**

## **PERSONAL AUTO POLICIES- DECLINATION, NONRENEWAL AND CANCELLATION**

### **Permissible Reasons for Cancellation**

A notice of cancellation of a policy is effective only if it is based on one or more of the following reasons:

- Nonpayment of premium;
- The driver's license or motor vehicle registration of the name insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date;
- Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured obtaining the policy, continuing the policy, or in presenting a claim under the policy;
- Discovery of willful acts or omissions on the part of the named insured that increase any hazard insured against; or
- A determination by the Commissioner that the continuation of the policy would place the insurer in violation of this chapter or the rules or administrative regulations of the Commissioner.

This subsection shall not apply to any policy or coverage which has been in less than 60 days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding \$100 shall not be deemed a cancellation of the coverage or of the policy.

This subsection shall not apply to nonrenewal. **(304.20-040.2)**

## **Notice of Cancellation**

No notice of cancellation of a policy shall be effective unless mailed or delivered by the insurer to the named insured at least 20 days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium at least 14 days' notice of cancellation accompanied by the reason thereof shall be given. This subsection shall not apply to renewals. **(304.20-040.3)**

## **Non-renewals**

No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least 75 days' advance notice of its intention to not renew.

If notice is not provided, coverage will be deemed to be renewed for the ensuing policy, period upon payment of the policy of the appropriate payment under the same terms and conditions, until the named insured has accepted replacement coverage, with another insurer, or until the named insured has agreed to the non-renewal.

The transfer of a policyholder between companies within the same insurance group will be considered a non-renewal. Renewal of a policy will not constitute a waiver or estoppels with respect to grounds for a cancellation which existed before the effective date of the renewal.

## **UNINSURED AND UNDERSINSURED MOTORIST COVERAGE**

### **Uninsured Motor Vehicle Coverage**

No automobile liability policy insuring against loss resulting from liability for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle may be delivered or issued in Kentucky with respect to any motor vehicle registered or principally garaged in this state unless uninsured motorist coverage is provided. The coverage must satisfy the coverage limits prescribed for bodily injury or death in the motor vehicle reparations (no fault) law. The named insured has the right to reject in writing such coverage, and unless the named insured requests such coverage in writing, the coverage need not be provided in a renewal policy if the named insured had rejected the coverage in connection with a policy previously issued by the same insurer.

### **Underinsured Motorist Coverage**

Every insurer must make available upon request to its insureds underinsured motorist coverage. Underinsured motorist coverage provides that the insurance company agrees to pay its own insured for any damages (up to the underinsurance policy limits) he or she may recover for injury due to a motor vehicle accident that are uncompensated because the judgment recovered against the owner of the other vehicle exceed the vehicle's liability policy limits.

**Underinsured motorist** means a party with motor vehicle liability insurance coverage in an amount less than a judgment recovered against that party for damages on account of injury due to a motor vehicle accident. **(304.39-320)**

### **Anti-Theft Devices and Rates**

For motor vehicle insurance rates, whether in a competitive market or a non-competitive market, appropriate reductions in premium charges for comprehensive coverage must be applied to those motor vehicles equipped with an anti-theft device which has been approved by the Commissioner. The discounts must be granted to both commercial and private passenger risks.

All insurers issuing comprehensive motor vehicle insurance coverage must provide written notice to insureds or prospective insureds of the right to apply for a discount for anti-theft devices. Notice to prospective insureds must be given no later than the time of the delivery of the policy.

Insurers may, at their option, provide their insureds an anti-theft device as a service to reduce the risk of loss. This means that insurers may provide an anti-theft device which is itself a service (for example, a window identification system) or pay for the labor expenses of installation of anti-theft device which is a mechanical device. Pursuant to Section 304.12-110 (4), insurers cannot give an insured or prospective insured any mechanical anti-theft device which is worth more than \$10.

If an insurer provided an anti-theft device to its insureds and receives a properly completed application for a discount, the insurer may either withhold the first year's discount to assist in paying for the anti-theft device or grant the discount in accordance with this regulation. **(304.13-065; Reg. 806.13-100)**

### **Payment of Claims**

The Association is obligated to the extent of any covered claims existing prior to the order of liquidation and arising within 30 days after the order of liquidation, or before the policy expiration date if less than 30 days after the order of liquidation, or before the insured replaces the policy or on request effects cancellation, if the insured does so within 30 days of the order of liquidation.

The Association's obligations on covered claims are as follows:

- The **full amount** of a covered claim for benefits arising from a workers' compensation insurance policy
- No more than **\$10,000** per policy for a covered claim for the return of unearned premium
- No more than **\$300,000** per claimant for all other covered claims

The Association is not obligated to pay a claimant any more than the obligation of the insolvent insurer of the insolvent insurer under the policy or coverage from which the claim

arises. The Association's obligation ceases upon the Association's payment of an amount equal to the lesser of the Association's covered claim obligation limit or applicable policy limit.

Except for claims for benefits under workers' compensation coverage, the Association's obligation to all persons ceases when **\$10,000,000** is paid in total by the Association and any associations of other states (or any property/casualty security fund) on behalf of any insured on covered claims under the policies of any one insolvent insurer. **(304.36-080)**