

COMMONWEALTH OF KENTUCKY  
DEPARTMENT OF INSURANCE  
Frankfort, Kentucky

BULLETIN 2010 - 05

INSURANCE LEGISLATION ADOPTED BY THE  
2010 KENTUCKY GENERAL ASSEMBLY (REGULAR SESSION)

May 10, 2010

THIS BULLETIN IS FOR INFORMATION PURPOSES ONLY. IT DOES NOT AMEND OR INTERPRET PROVISIONS OF THE KENTUCKY REVISED STATUTES OR THE KENTUCKY ADMINISTRATIVE REGULATIONS. THE COMPLETE AND ACCURATE TEXT OF THE LAW CAN BE SECURED WHEN THE 2010 ACTS OF THE KENTUCKY GENERAL ASSEMBLY ARE PUBLISHED IN THE SUMMER OF 2010. UNLESS OTHERWISE NOTED, THE EFFECTIVE DATE OF THE LEGISLATION IS JULY 15, 2010.

*(Bills as enacted are available on the LRC Web site at [www.lrc.ky.gov/record/10rs/record.htm](http://www.lrc.ky.gov/record/10rs/record.htm))*

**Senate Bill 7 – Kentucky Life and Health Insurance Guaranty Fund**

This bill amends KRS 304.42-030 to increase the claims limits available to be recovered by Kentuckians as the result of the insolvency of a life insurance company or a health insurance company. The limits were amended as follows:

- The benefits for health insurance were restructured to have separate limits for hospital, medical and surgical, and major medical insurance; disability; and long-term care.
- Claim limits were increased to:
  - \$300,000 for disability insurance and \$300,000 for long term care insurance [increased from \$100,000];
  - \$500,000 for basic hospital, medical and surgical insurance or major medical insurance [increased from \$100,000];
  - \$250,000 for annuities [increased from \$100,000];
  - \$500,000 in the aggregate for basic hospital, medical and surgical insurance and major medical insurance [increased from \$300,000]; and
  - \$5,000,000 for one owner of multiple nongroup policies of life insurance [increased from \$1,000,000].

Additionally, the bill excludes Medicare Part C (Medicare Advantage) and Medicare Part D (prescription drug coverage) from coverage through the state guaranty fund.

Contact: *Financial Standards and Examination Division*  
(502) 564-6082

**Senate Bill 18 – Health Care Services Provided in Clinical Trials for the Treatment of Cancer**

This bill creates a new statute in KRS 304 Subtitle 17A to prohibit a health benefit plan from excluding coverage for routine patient healthcare costs incurred in the course of a cancer clinical trial if the health benefit plan would otherwise cover the routine healthcare. The bill clarifies that routine patient healthcare is subject to all terms and conditions under the health benefit plan, and that health benefit plans are not required to offer cancer clinical trial services by a participating provider.

Contact: *Health and Life Division*  
(502) 564-6088

**Senate Bill 77 – Self-Insurance Groups**

This bill amends various statutes related to liability self-insurance groups and workers' compensation self-insured groups to provide technical clarifications to existing statutes in accordance with current practices and to bring parity between the statutes governing these self-insurance groups.

Specifically, this bill includes amendments to the following statutes:

- Amends KRS 304.33-020, 304.48-250 to clarify that liability self-insurance groups fall under the scope of the rehabilitation and liquidation statutes in the Kentucky Insurance Code rather than bankruptcy proceedings should a group become insolvent;
- Amends KRS 304.48-090 to allow liability self-insurance groups the same investment capabilities afforded to workers' comp self-insured groups;
- Amends KRS 304.48-140 to require the board of trustees of a liability self-insurance group to establish a formal conflict-of-interest policy in the same manner required of workers' compensation self-insurance groups and to prohibit trustees of liability self-insurance groups formed by governmental entities from being employees, officers or agents of administrators or service organizations;
- Amends KRS 304.48-170 to require liability self-insurance groups to file quarterly financial statements in the same manner as workers' compensation self-insurance

groups and to require liability self-insurance groups to provide a copy of an annual financial statement to a member, upon request;

- Amends KRS 304.48-180 to clarify that the rates, underwriting guidelines and evidences of coverage are to be filed, reviewed and approved in accordance with KRS 304.13-051 and 304.14-120;
- Amends KRS 304.48-240, 304.48-260 and creates a new statute in KRS 304 Subtitle 48 to clarify that liability self-insurance groups are subject to the provisions of KRS 304 Subtitle 12 regarding unfair trade practices; and
- Amends KRS 304.50-155 to clarify that workers' compensation self-insured groups are subject to the provisions of KRS 304 Subtitle 12 regarding unfair trade practices.

Contact: *Financial Standards and Examination Division*  
(502) 564-6082

### **House Bill 79 – Operation of Golf Carts on Public Roads**

This bill amends KRS 189.286 to delete the radius requirement, thereby allowing a local government to authorize the operation of a golf cart on any public roadway under its jurisdiction, not just those that are within five road miles of an entrance to a golf course.

Contact: *Property and Casualty Division*  
(502) 564-6046

### **House Bill 126 – Financial Examination of Insurers; Disclosure Requirements for Life Insurance**

With regard to the financial examination of insurers, this bill amends the following statutes:

- KRS 304.2-210(2) is amended to allow for the examination of each domestic insurer not less than every five (5) years rather than every three (3) years;
- KRS 304.2-320 is amended to require entities seeking a merger, acquisition or other change of control to be responsible for the cost of the public hearing notice;
- KRS 304.3-242 is amended to adopt the updates to the NAIC Property and Casualty Actuarial Opinion Model Law. The primary updates include the requirement that insurers file an actuarial opinion summary in addition to the statement of actuarial opinion; and
- KRS 304.3-180 is amended to require insurers to rotate accountants every five (5) years as opposed to seven (7) years.

Additionally, this bill creates a new statute in KRS 304, Subtitle 15 to require life insurance companies to provide a disclosure to insureds who are at least 60 years old and insureds that are known by the insurer to be chronically or terminally ill when:

- An owner of a life insurance policy requests to surrender or accelerate a death benefit under the life insurance policy, or
- The life insurance company sends a notice of lapse to the owner.

The Department of Insurance is required to develop the notice through an administrative regulation. The notice is required to:

- State that life insurance is a critical part of a broader financial plan;
- Inform the consumer that alternatives to lapse or surrender of the policy exist;
- Provide the consumer with a general description of life settlements and state that life settlements are a regulated transaction in Kentucky;
- Provide the consumer with a general description of common products and services available to owners of life insurance policies prior to lapse or surrender of a policy; and
- Include a statement that advises the consumer that the products or services described in the notice may or may not be available to the recipient depending on a number of circumstances and to encourage the consumer to contact his or her financial advisor for further assistance or advice.

The bill also permits the Department of Insurance to promulgate a regulation to exempt life insurance policies of less than \$100,000 from the notice requirements.

*Contact: Financial Standards and Examination Division  
(502) 564-6082*

*Health and Life Division  
(502) 564-6088*

### **House Bill 159 – Behavioral Disorders**

This bill establishes a license and an oversight board for behavior analysts and assistant behavior analysts. Additionally, the bill requires coverage in health benefit plans for the diagnosis and treatment of autism spectrum disorders.

With regard to large group health benefit plans, including the state employee health plan, the bill creates a new statute in KRS 304, Subtitle 17A to:

- Require a maximum annual benefit of \$50,000 per individual for individuals between the ages of 1 through 6, and a maximum annual benefit of \$1,000 monthly per individual for individuals between the ages of 7 through 21;
- Prohibit an insurer from refusing to issue coverage or from terminating or nonrenewing coverage to an individual solely because the individual is diagnosed with or has received treatment for any of the autism spectrum disorders;
- Prohibit coverage limits for the number of visits an individual may make to an autism services provider;
- Allow an insurer to request a utilization review of that treatment annually, unless the insurer and health care provider agree to a more frequent review; and
- Allow copayments, coinsurance and deductibles that are the same as other medical services.

The bill specifies that an insurer is not required to:

- Provide benefits for services included in an individualized family service plan, an individualized education program, an individualized service plan or other publicly funded programs; and
- Reimburse for services, supplies or equipment for services
  - for which the insured has no legal obligation to pay in the absence of insurance;
  - provided by a publicly funded program;
  - performed by a relative for which no charge would be made in the absence of insurance; and
  - provided by persons who are not licensed as required by law.

These provisions become effective for policies issued or renewed 30 days after the effective date of the bill, January 1, 2011.

For individual and small group health benefit plans, this bill amends KRS 304.17A-143 to:

- Increase the monthly benefit from \$500 to \$1,000;
- Expand the age from individuals 2 through 21 to 1 through 21;
- Require the following coverage for the treatment of autism spectrum disorders:
  - Pharmacy care, if the plan includes pharmacy coverage;
  - Psychiatric care;
  - Psychological care;
  - Therapeutic care;
  - Applied behavior analysis; and
  - Habilitative and rehabilitative; and

- Repeal the requirement for coverage for respite care.

Finally, the bill defines numerous terms related to all market segments including:

- Applied behavior analysis;
- Autism services provider;
- Autism spectrum disorders;
- Diagnosis of autism spectrum disorders;
- Habilitative or rehabilitative care;
- Medicare care;
- Pharmacy care;
- Psychiatric care;
- Psychological care;
- Therapeutic care; and
- Treatment for autism spectrum disorders.

Contact: *Health and Life Division*  
*(502) 564-6088*

#### **House Bill 165 – Kentucky Access/Contribution rates in employer-sponsored plans**

This bill makes various changes to the statutes governing Kentucky Access.

Specifically, this bill:

- Amends KRS 304.17B-015 (4) to clarify that HIPAA eligible individuals cannot be eligible for other group coverage but could be eligible for other individual coverage;
- Amends KRS 304.17B-015 (2) to clarify that dependents of HIPAA eligible individuals are required to have current residency and not twelve (12) months of residency;
- Amends KRS 304.17B-015(4) to remove a loophole that allows dependents to be eligible for Kentucky Access even if the group coverage has been waived and to clarify those individuals who are permitted to pay or reimburse, directly or indirectly, for a member's Kentucky Access premium in accordance with the intent of the program as a market of last resort for individuals; and
- Amends KRS 304.17B-019 to remove the requirement that one plan shall be the standard health benefit plan.

Additionally, this bill amends KRS 344.040 to allow employers to charge smokers a higher rate for an employer-sponsored health plan and to offer incentives for smoking cessation.

Contact: Kentucky Access Division  
(502) 573-1026

### **House Bill 233 – Insurance Agent and Insurance Adjuster Licensing**

This proposal includes changes to the insurance producer licensing requirements and the insurance adjuster licensing requirements to bring Kentucky's statutes into conformity with model licensing requirements being adopted nationwide.

The bill makes the following specific changes:

- Amends various definitions to:
  - Move the definitions for Rental Vehicle Agent and Rental Vehicle Agent Managing Employee from KRS 304.9-501 to the general definitions statute; and
  - Update the definitions of agent; apprentice, public, independent and staff adjusters; catastrophe and negotiate to reflect the new uniform definitions;
- Amends KRS 304.9-105 to clarify that a license will “terminate” rather than be revoked if a producer fails to provide proof of financial responsibility;
- Amends KRS 304.9-133 to remove the requirement that business entities file an annual report of all designated individuals who were not terminated on or prior to December 31;
- Amends KRS 304.9-150 to remove the requirement that an application be accompanied by:
  - A certificate issued by the Secretary of State, if the applicant is a business entity; and
  - A certificate of an assumed name;
- Amends KRS 304.9-230 to add rental vehicle as a limited line of authority;
- Amends KRS 304.9-260 to:
  - Add independent and public adjusters to the requirements to demonstrate proof of completion of continuing education requirements in conjunction with a license renewal; and
  - Remove language to clarify that:
    - a penalty for failure to comply with the renewal procedures will be assessed from the first day after expiration; and
    - the producer will have a sixty (60) day grace period before the license will expire to provide continuing education compliance documentation, renewal fee, and penalty fee;
- Amends KRS 304.9-280 to clarify that the subsection applies to termination without cause;

- Amends KRS 304.9-295 to:
  - Remove the requirement that twelve (12) of the twenty-four (24) required continuing education hours be classroom hours;
  - Require independent and public adjusters to complete twenty-four (24) hours of continuing education, including three (3) hours in ethics, beginning July 31, 2012; and
  - Clarify that a license will expire rather than terminate for noncompliance with the continuing education requirements;
- Amends KRS 304.9-421 to remove the requirement that an individual receiving override commissions be licensed;
- Amends KRS 304.9-430 to adopt uniform provisions for the licensing of adjusters to:
  - Add uniform definitions for independent adjuster; staff adjuster and public adjuster;
  - Establish licensing requirements for an individual license and a business entity license;
  - Require public adjusters to file proof of financial responsibility with the Department in the form of a \$20,000 surety bond or cash bond;
  - Remove the requirement for independent, staff and apprentice adjusters to file proof of financial responsibility with the Department;
  - Set forth the lines of authority applicable to an independent or staff adjuster and the lines of authority applicable to a public adjuster;
  - Set forth exceptions to licensure for an independent adjuster and for a public adjuster;
  - Create a process for temporary registration for emergency independent or staff adjusters during a declared catastrophe; and
  - Establish the process for the licensing of a nonresident independent, staff or public adjuster;
- Creates two new statute in KRS Chapter 304, Subtitle 9 to set forth:
  - Specific provisions that must be contained in all contracts for services between a public adjuster and an insured;
  - Limitations on compensation for a public adjuster;
  - Disclosures that must be provided to the insured;
  - Rescission rights for the insured;
  - Requirements for the establishment of an escrow or trust account for funds received toward the settlement of a claim;
  - Record keeping requirements for a public adjuster and an independent adjuster; and

- Amends KRS 304.9-432 to establish licensing requirements for an apprentice adjuster and set forth limitations for an apprentice adjuster license;
- Amends KRS 304.9-505 and 304.9-507 to provide conforming changes in that rental vehicle agents will now be governed by general statutes related to limited lines of authority; and
- Repeals the following statutes as they are no longer necessary in that their contents have been incorporated into other, general statutes related to limited lines of authority;
  - KRS 304.9-070 – “Adjuster” defined;
  - KRS 304.9-485 – Licensing of specialty credit insurance producers; authorization of employees or representatives; rights and limitations;
  - KRS 304.9-501 – Definitions for KRS 304.9-501 to 304.9-513;
  - KRS 304.9-503 – License to act as rental vehicle agent; registration for each business location; application for license; and
  - KRS 304.9-513 – Penalties; educational materials to be provided to executive director; commissions and other compensation; renewal of licenses; administrative regulations.

*Contact: Agent Licensing Division  
(502) 564-6004*

### **House Bill 241 – Captive Insurers**

This bill contains the following amendments to Kentucky’s captive insurer law:

- Amends various definitions in KRS 304.49-010;
- Amends KRS 304.49-040 to provide for a two tier minimum capitalization structure of \$250,000 and \$500,000 (the Commissioner may require additional capital);
- Amends KRS 304.49-050 to provide the Department with options for administrative action if a dividend is paid in a manner inconsistent with an approved plan;
- Amends KRS 304.49-060 to adopt coordinating amendments to the 2007 changes to Kentucky corporation, LLC and LLP statutes to:
  - Provide that all captives may form as a LLC, LLP or business trust;
  - Provide that captives may enter into mergers and other corporate transactions permitted by the Kentucky corporation laws; and
  - Require one incorporator rather than three;

- Amends KRS 304.49-070 to incorporate various minor changes for streamlining financial filings and clarifying optional filings and reporting requirements for captives with non-traditional fiscal year accounting schedules;
- Amends KRS 304.49-100 to require captives to have a written investment plan that is filed with the Department;
- Amends KRS 304.49-110 and 304.9-130 to expand reinsurance options for captives and risk retention groups;
- Amends KRS 304.49-170 to allow the promulgation of administrative regulations establishing standards to ensure control of any controlled unaffiliated business to be insured by a pure captive insurer;
- Amends KRS 304.49-220 to create a deadline for the transfer of a percentage of premium tax revenue paid by captive insurers from the Department of Revenue to the Department of Insurance; and
- Amends KRS 304.49-226 to require loans to parents and affiliates to be pre-approved.

*Contact: Financial Standards and Examination Division  
(502) 564-6082*

**House Bill 268 – Mine Subsidence**

This bill amends KRS 304.44-030 and KRS 304.44-050 to:

- Increase the reinsurance limits for damages to structures due to mine subsidence from \$100,000 to \$300,000; and
- Add coverage of up to \$25,000 for living expenses incurred by the owners of a residence who has been temporarily displaced as the direct result of damage to the residence caused by mine subsidence.

*Contact: Property and Casualty Division  
(502) 564-6046*

**House Bill 278 – Local Government Premium Taxes**

This bill makes technical clarifications to HB 524 enacted during the 2008 Regular Session. Specifically, the bill:

- Amends KRS 91A.0804 to clarify that the exclusive remedy began on July 15, 2008 (the effective date of HB 524);
- Amends KRS 91A.0810 to clarify that the disclosure notice is applicable to new business in addition to renewal business; and
- Amends KRS 304.10-180 to make the disclosure requirements applicable to surplus lines brokers.

Additionally, the bill includes language to exempt from local government premium taxes premiums paid by non-profit self-insurance groups whose membership consists of cities, counties, charter county governments, urban-county governments, consolidated local governments, school districts, or any other political subdivisions of the Commonwealth. This exemption is applicable for the fiscal year beginning July 1, 2010 and expires June 30, 2012.

*Contact: Consumer Protection Division  
(502) 564-6034*

### **House Bill 284 – Department of Insurance Housekeeping**

This bill includes various technical corrections and clarifications to Kentucky's Insurance Code. Specifically, this bill:

- Amends KRS 304.11-020, subsection (2)(d) and (e) to clarify that the statute does apply to exempt commercial policyholders;
- Repeals subsection (1) and (2) of KRS 304.13-053 regarding the mandated workers' compensation rate adjustments as these subsections are obsolete following the enactment of HB 1 in 1996;
- Amends KRS 304.14-435 to clarify that all forms, not just applications, can be translated in a language other than English;
- Amends KRS 304.14-545, 304.14-622 and 304.17-415 to remove the word "individual" because "individual" is listed after "individually marketed";
- Amends KRS 304.14-615 to add the inadvertently omitted word "costs" in the disclosure requirements in subsection (9)(d)2;
- Amends KRS 304.15-350 to correct a cross-reference;
- Amends KRS 304.15-717(7) to clarify that an antifraud plan is required to be filed with the Department;
- Repeals KRS 304.17A-071 relating to the Kentucky Health Purchasing Alliance as this statute is now obsolete;
- Amends subsection (9)(a) of KRS 304.33-430 to reference subsections (3) through (7) rather than (2) through (7);
- Amends KRS 304.39-060 to remove the requirement to file a no-fault rejection form with each policy offered to a prospective applicant;
- Amends KRS 304.40-075 to require requests for medical malpractice premium reimbursement to be submitted no later than one (1) year from the expiration of the policy for which the reimbursement is being requested;
- Amends KRS 304.45-050 to correct a reference; and
- Amends KRS 304.47-020 to raise the felony amount from \$300 to \$500. (Other felony amounts were raised in 2009 in HB 369.)

Additionally, this bill amends KRS 342.817 to require the Kentucky Employers Mutual Insurance Authority to file rates individually for the voluntary market and the market of last resort with the Department of Insurance. The bill requires the Department of Insurance to specify the forms for rate filing through an administrative regulation.

*Contact: Health and Life Division  
(502) 564-6088*

*Property and Casualty Division  
(502) 564-6046*

*Insurance Fraud Investigation Division  
(502) 564-1461*

### **House Bill 393 – Public Protection Cabinet Reorganization**

This bill ratified Executive Order 2009-535, which created the Department of Insurance, headed by a Commissioner, and abolished the Office of Insurance, headed by an Executive Director.

*Contact: Commissioner's Office  
(502) 564-6026*

### **House Bill 415 – Use of Personal Communication Device While Operating a Motor Vehicle**

This bill creates a new statute in KRS Chapter 189 to prohibit a person from writing, sending or reading text-based communication, including communications referred to as a text message, instant message or electronic mail, while operating a motor vehicle that is in motion on the traveled portion of a roadway. The bill includes the following exceptions:

- The use of a GPS feature of a personal communication device;
- The reading, selecting or entering of a telephone number or name in a personal communication device for the purpose of making a phone call;
- An operator of an emergency or public safety vehicle, when the use of the personal communication device is an essential function of the operator's official duties; or
- Writing a text message on a personal communication device to report illegal activity, summon medical help, summon a law enforcement or public safety agency, or prevent injury to a person or property.

The bill further prohibits any person under the age of eighteen (18) from using a personal communication device while operating a motor vehicle, motorcycle or moped that is in motion on the traveled portion of the roadway. Exceptions are allowed to summon medical help or a law enforcement or public safety agency in an emergency situation. The bill clarifies that a personal communication device does not include a stand-alone GPS, an in-vehicle security, diagnostics and communications system, a citizens band radio or an amateur radio. But, it does include manually entering information into the GPS of a personal communication device.

Contact: *Property and Casualty Division*  
(502) 564-6046

**Additional Legislation of Interest**

House Bill 395 – Workers’ Compensation Funding Commission

This bill amends KRS 342.122 to extend the payoff date for the workers’ compensation special fund to December 31, 2029.

Signature on file with original document

Sharon P. Clark  
Commissioner  
Kentucky Department of Insurance

5-10-10  
Date