

BULLETIN 97-5

TO: All Agents and Companies Licensed in the Commonwealth of Kentucky

FROM: George Nichols III
Commissioner

DATE: November 14, 1997

RE: Acting as an Agent

The Department has investigated several complaints recently involving persons acting as agents without being licensed as such. The Department would like to re-emphasize what it considers to be acting as an agent, requiring the appropriate license.

KRS 304.9-020 defines an agent as:

An "agent" is an individual, firm or corporation appointed by an insurer to solicit applications for insurance or annuity contracts or to negotiate insurance or annuity contracts on its behalf, and if authorized to do so by the insurer, to effectuate and countersign insurance contracts.

Also, Attorney General Opinion, 1956 OAG 38.760 concluded an automobile dealership that ". . . aids and assists prospective purchasers in the selection of insurance and filling out applications of insurance, and further who for the finance factor or insurer secures the payment of insurance premiums or charges, and (either directly or indirectly remits same to the finance factor or insurer) . . ." was acting as an agent.

KRS 304.9-090 provides exceptions to the definition of an agent. The exceptions are as follows:

- (1) Salaried employees in the office of a general lines agent, which employees devote full time to clerical and administrative services, with incidental taking of insurance applications and receiving premiums in the office of the employer agent if the employee does not receive any commissions on such applications and his compensation is not varied by the volume of applications or premiums taken or received by such employee;
- (2) The supervising managing general agent (except as defined in KRS 304.9-085) or supervising officer or employee of an insurer who solicits only with duly licensed resident agents of the insurer;
- (3) Newsboys and managers of newspaper distribution offices who incidentally take applications of so-called "newspaper accident insurance" and receive premiums in connection therewith;
- (4) Employees or other representatives of a group policyholder engaged in enrolling certificate holders and performing other activities in the administration of the group policy.

The Department considers a person engaged in any of the following activities to be acting as an agent: 1) collecting or even holding premium in any manner; 2) explaining coverage's or benefits to insured's or prospective insiders; 3) quoting rates; 4) actively seeking insureds for a particular insurer; or 5) taking/filling out applications. Anyone found to be engaging in one or more of the named activities is in violation of KRS 304.9-020, unless that person is excepted from the definition of an agent pursuant to KRS 304.9-090. Bulletin 86-11 clarifies the exception found in KRS 304.9-090(4). In that Bulletin the

Department stated that the exception is a narrow one. A distinction was made between, ". . . the term 'enroll,' which means 'to register; to make a record; to enter on the rolls of a court; to transcribe (Black's Law Dictionary, 475, 5th ed. 1979) and solicitation which requires a discussion of the terms and conditions of the product with the prospective certificate holder." However, this Bulletin is only clarifying the exception found in the statute. It should be noted that Bulletin 97-5 further explains the definition of solicitation found in Bulletin 86-11 and applies it to every instance not involving KRS 304.9-090(4). The definition of solicitation includes the five activities listed above.

If an insurer accepts insurance from a person violating KRS 304.9-020, the insurer is in violation of KRS 304.9-080(5); and the insurer is subject to a penalty pursuant to KRS 304.3-200 and 304.99-020.

An unlicensed person may refer someone who inquires about insurance to a licensed agent. However, if a referral fee is paid, the following conditions must be met: 1) the referral fee is paid regardless of whether insurance is sold; 2) the referral compensation is a fixed amount; 3) the referral fee is not directly or indirectly charged to the insured or prospective insured in any manner; and 4) the referral fee is part of a program offering referral fees for other noninsurance products or services. A referral fee not paid in the prescribed manner would constitute illegal sharing of commission and payment of commission to or receipt of commission by an unlicensed person in violation of KRS 304.9-421 and 304.9-425, respectively.

Please note that the Department is stepping up its investigation of unlicensed agent activity due to the increasing number of complaints.

OCCASIONAL BUSINESS

There have also been some questions raised concerning occasional business. KRS 304.9-410(1)(a) allows a general lines agent to, "[o]ccasionally place an insurance coverage with an insurer as to which he is not then appointed as an agent, and such insurer may accept such business only when placed through a licensed resident agent, of the insurer."

Similarly, KRS 304.9-410(2) provides:

A life or health insurance agent may, occasionally, place with another insurer as to which he is not licensed as agent, a particular risk or portion thereof which has been rejected by the insurers as to which the agent is licensed or is known to the agent to be unacceptable to such insurers, and without then being licensed as to such other insurer. (Emphasis added).

This exception to the appointment requirement is limited to risks which are unacceptable to all of the agent's companies. And it is only these unacceptable risks which the agent may occasionally place with companies with which the agent has no appointments.

806 KRS 9:200 defines what "occasionally" is pursuant to KRS 304.9-410(1)(a) and (2). 806 KAR 9:200 Section 2 (1) states, "A general lines agent shall not place insurance with a premium of more than twenty (20) percent of the agent's total premium for the preceding calendar year with insurers for which the agent holds no appointment."

Also, 806 KAR 9:200 Section 2(2) limits a life and health agent to placing no more than twenty (20) percent of the agent's total premium with insurers in which the agent does not hold appointments.

Any agent violating the 20% limit is subject to sanction pursuant to KRS 304.9-440(1)(b) and KRS 304.99-020(1).

This Bulletin has been issued industry-wide and is intended as notice to all insurers and agents that such practices will not be tolerated. Insurers are charged with notifying each of their appointed agents of this Departmental policy. Professional associations are charged with notifying their memberships. Any questions concerning these matters should be directed to the Counsel for the Department.