

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
FRANKFORT, KENTUCKY

BULLETIN
2019-1

The following Bulletin is to advise the reader of the current position of the Kentucky Department of Insurance ("Department"), on the specified issue.

TO: ALL INSURERS LICENSED BY THE KENTUCKY DEPARTMENT OF INSURANCE
FROM: NANCY G. ATKINS, COMMISSIONER
RE: POLICY PROVISIONS CONTAINING ARBITRATION AGREEMENTS
DATE: JANUARY 25, 2019

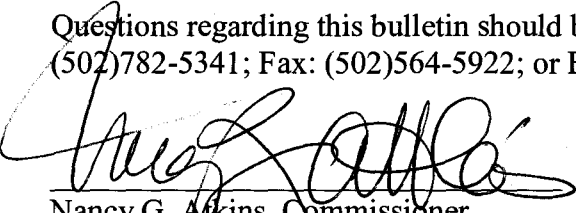
The Department has experienced a recent increase in form filings containing various references to "arbitration" or other procedures for out-of-court dispute resolution between an insurer and its policyholder.

Consistent with KRS § 417.050 ("Validity of arbitration agreement – Exempt agreements") and controlling court decisions, the Department will reject insurance policy forms that require arbitration of a dispute ("mandatory arbitration") as void and misleading *per se*. Surety contracts containing arbitration provisions are specifically exempt from this prohibition under the authority of *Buck Run Baptist Church, Inc. v. Cumberland Sur. Ins. Co.*, 983 S.W.2d 501 (Ky. 1998).

Policy provisions offering – but not explicitly requiring – arbitration ("voluntary arbitration") will be subject to disapproval if they contain misleading or ambiguous language or headings. Additionally, Kentucky's Uniform Arbitration Act does not recognize "non-binding arbitration." Therefore, policy forms containing this term may be subject to disapproval under KRS § 304.14-130 ("Grounds for disapproval").

The commissioner's approval of a policy form does not insulate an insurance provision from judicial review. *Bishop v. Allstate Ins. Co.*, 623 S.W.2d 865, 867 (Ky. 1981). Insurers are encouraged to review their own policy forms for compliance with applicable law.

Questions regarding this bulletin should be directed to Amy Folker, Insurance Program Manager: Phone (502)782-5341; Fax: (502)564-5922; or Email: Amy.Folker@ky.gov


Nancy G. Atkins, Commissioner
Kentucky Department of Insurance

Date 1/25/19