

**304.3-242 Property and casualty insurers to annually submit statement of actuarial opinion and supporting documentation -- Opinion to be available for public inspection -- Confidentiality of supporting documentation -- Exemptions to filing requirement.**

- (1) Every insurer authorized to transact property or casualty insurance, unless otherwise exempt in accordance with subsection (7) of this section, shall annually submit the opinion of an appointed actuary entitled "Statement of Actuarial Opinion," which shall be provided with the annual statement required by KRS 304.3-240 and 304.3-241.
- (2) Every insurer authorized to transact property or casualty insurance that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary written by the company's appointed actuary, which shall be provided with the annual statement required by KRS 304.3-240 and 304.3-241 and considered as a document supporting the statement of actuarial opinion.
- (3) An actuarial report and underlying workpapers shall be prepared to support each statement of actuarial opinion.
- (4) The commissioner may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and prepare the supporting actuarial report or workpapers if:
  - (a) The insurer fails to provide a supporting actuarial report or workpapers at the request of the commissioner; or
  - (b) The commissioner determines that the supporting actuarial report or workpapers provided by the insurer are otherwise unacceptable to the commissioner.
- (5) The appointed actuary shall not be liable for damages to any person other than the insurer and the commissioner for any act, error, omission, decision, or conduct with respect to the actuary's opinion, except in cases of gross negligence, fraud, or willful misconduct on the part of the appointed actuary.
- (6)
  - (a) The statement of actuarial opinion shall be provided with the annual statement prepared in accordance with KRS 304.3-240 and 304.3-241 and shall be available for public inspection.
  - (b) Documents, materials, or other information in the possession or control of the department that are considered an actuarial report, workpapers, or actuarial opinion summary provided in support of the opinion, and any other material provided by the insurer to the commissioner in connection with the actuarial report, workpapers, or actuarial opinion summary, shall be confidential and privileged. The confidentiality and privilege protections contained in this paragraph shall not extend to any nonregulatory person or entity holding the documents, materials, or other information.
  - (c) Paragraph (b) of this subsection shall not be construed to limit the commissioner's authority to:
    1. Release the documents to the Actuarial Board for Counseling and Discipline if the material is required for the purpose of professional

disciplinary proceedings and the Actuarial Board for Counseling and Discipline establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents; or

2. Use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.
- (d) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to this subsection.
- (e) In order to assist in the performance of his or her duties as set forth in KRS 304.2-100, the commissioner may:
1. Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to this subsection, with other state, federal, and international regulatory agencies and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information and has the legal authority to maintain confidentiality;
  2. Receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information, from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and
  3. Enter into agreements governing the sharing and use of information consistent with this subsection.
- (f) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph (e) of this subsection.
- (7) It shall not be necessary to file the actuarial report required by this section in the following instances:
- (a) An insurer that has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year, or that has less than one thousand (1,000) policyholders or certificate holders at the end of a calendar year. An insurer which intends to utilize this exemption shall submit a letter of intent to the insurance regulatory official in its domiciliary state no later than December 1 of the calendar year for which the exemption is to be claimed;

- (b) An insurer which is under rehabilitation, liquidation, or any other delinquency proceeding ordered pursuant to a statutory provision, unless ordered to make the report by the insurance regulatory official in its domiciliary state;
- (c) An insurer writing property insurance only if the exemption is agreed to by the insurance regulatory official in the insurer's domiciliary state; or
- (d) Filing the report would constitute financial hardship, which is presumed to exist if the projected reasonable cost of the report would exceed the lesser of:
  - 1. One percent (1%) of the insurer's capital and surplus reflected in the insurer's annual statement for the calendar year for which the exemption is sought; or
  - 2. Three percent (3%) of the insurer's net direct plus assumed premiums written during the calendar year for which the exemption is sought as reflected in the insurer's annual statement filed with the insurance regulator official in its domiciliary state.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 975, effective July 15, 2010; and ch. 25, sec. 4, effective July 15, 2010. -- Created 1992 Ky. Acts ch. 386, sec. 2, effective July 14, 1992.

**Legislative Research Commission Note (7/15/2010).** References to the "executive director" and "office" of insurance in this section, as amended by 2010 Ky. Acts ch. 25, sec. 4, have been changed in codification to the "commissioner" and "department" of insurance to reflect the reorganization of certain parts of the Executive Branch, as set forth in Executive Order 2009-535-1086 and confirmed by the General Assembly in 2010 Ky. Acts ch. 24. These changes were made by the Reviser of Statutes pursuant to 2010 Ky. Acts ch. 24, sec. 1938.

**Legislative Research Commission Note (7/15/2010).** This section was amended by 2010 Ky. Acts chs. 24 and 25, which are in conflict. Under KRS 446.250, Acts ch. 25, which was last enacted by the General Assembly, prevails.