



COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
FRANKFORT, KENTUCKY

Advisory Opinion
2016-02

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.

TO: All Insurers Authorized to Transact Business in Kentucky, the Independent Insurance Agents of Kentucky, Inc., the Professional Insurance Agents of Kentucky, all Agents Licensed to Transact Business in Kentucky

FROM: H. Brian Maynard, Commissioner, Kentucky Department of Insurance

RE: Alternative Compensation under KRS 304.11-042

DATE: March 3, 2016

The purpose of this Advisory Opinion is to clarify inquiries received by the Department of Insurance ("Department") regarding the effect of KRS 304.11-042, which was enacted in 2008. This Advisory Opinion also supplements Advisory Opinion 2003-01.

KRS 304.11-042 is titled "Disclosure agreement for compensation received by an agent from an insurer or client for placement of insurance and service rendered to client." KRS 304.11-042 addresses the types of compensation that may be received by an agent and on what terms. KRS 304.11-042(2) provides:

(2) An agent may receive from an insurer or client, compensation in any amount agreed to by the agent and the insurer or client for placement of insurance and for a service rendered on behalf of the client if, prior to the placement of the insurance, the provision of a service as a result of the placement, or for the provision of any other service, the agent and the client enter into a written disclosure agreement. A disclosure agreement shall:

- (a) Include a description of the services to be provided pursuant to the agreement, specify if any policy or service is exempt from the agreement, and specify the compensation to be received by the agent from the insurer or client;
- (b) Be signed by the client prior to the placement of insurance or provision of services; and
- (c) Be retained by the agent for a period of five (5) years from the date the agreement expires or is otherwise terminated.

KRS 304.11-042 does not authorize the sharing of any portion of an agent's commission with a "client." This means that agents may not rebate to the "client" any portion of the agent's commission. Likewise, an agent may not provide any other unlawful incentive to place insurance, which would include quoting reduced "net of commission" premiums. These practices are prohibited by KRS 304.12-090 and 304.12-110, among other statutes. The exemption provided in KRS 304.12-100(1) does not remove the prohibition on unlawful trade practices but only reiterates that certain compensation provided to an agent under "a written disclosure agreement" is lawful. Premiums must continue to be paid by the "client" to the insurer at the same rates on file with the Department.

KRS 304.11-042 applies to a very narrow class of insureds defined as a "client." The Department advises agents to consult the definition of "client" within KRS 304.11-042(1)(b) to determine whether a given transaction is covered by KRS 304.11-042.

This Advisory Opinion has been issued industry-wide and is intended as notice to all insurers and agents of the Department's interpretation of KRS 304.11-042. Insurers are charged with notifying their appointed agents of the Department's interpretation. Professional associations are charged with notifying their memberships. The Department does not provide legal advice. The position provided herein has been offered to clarify and reiterate the Department's interpretation of KRS 304.11-042 relative to the Department's regulatory authority pursuant to KRS 304.2-100.

/s/ H. Brian Maynard
Commissioner
Kentucky Department of Insurance
On this 3rd day of March 2016