

304.6-171 Requirement for actuarial opinion as to appropriate computation of reserves and related items and compliance with state law.

- (1) This section shall become operative at the end of the first full calendar year following the year of enactment.
- (2) Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by administrative regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commissioner by administrative regulation shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.
- (3)
 - (a) Every life insurance company, except as exempted by or pursuant to administrative regulation, shall also annually include in the opinion required by subsection (2) of this section, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by administrative regulation, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.
 - (b) The commissioner may provide by administrative regulation for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.
- (4) Each opinion required by subsection (2) of this section shall be governed by the following provisions:
 - (a) A memorandum, in form and substance acceptable to the commissioner as specified by administrative regulation, shall be prepared to support each actuarial opinion; and
 - (b) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by administrative regulation or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the administrative regulations or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum as is required by the commissioner.
- (5) Every opinion shall be governed by the following provisions:
 - (a) The opinion shall be submitted with the annual statement reflecting the valuation of reserve liabilities for each year ending on or after December 31,

1996;

- (b) The opinion shall apply to business in force including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by administrative regulation;
- (c) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the commissioner may by administrative regulation prescribe;
- (d) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state;
- (e) For the purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in administrative regulations;
- (f) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion;
- (g) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in administrative regulations by the commissioner; and
- (h) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection therewith, shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by administrative regulations promulgated hereunder. The memorandum or other material may otherwise be released by the commissioner with the written consent of the company or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing, or is cited before any governmental agency other than a state insurance department or office, or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1006, effective July 15, 2010. -- Created 1996 Ky. Acts ch. 289, sec. 4, effective July 15, 1996.