

304.9-280 Termination of licensee's appointment -- Notice requirements -- Civil immunity -- Confidential and privileged information -- Commissioner's use of information.

- (1) Subject to the agent contract rights of a rental vehicle agent, rental vehicle managing employee, managing general agent, or agent, if any, an insurer may terminate an appointment at any time. However, if any appointment is not terminated on or prior to December 31, then on January 1 the fees designated shall be due for submission as provided in KRS 304.9-270.
- (2) An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with a licensee shall notify the commissioner within thirty (30) days following the effective date of the termination, using a form or a format prescribed by the commissioner, if the reason for termination is one (1) of the reasons set forth in KRS 304.9-440 or if the insurer has knowledge the licensee was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in KRS 304.9-440. Termination under this subsection shall be deemed termination for cause. Upon the written request of the commissioner the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the licensee.
- (3) An insurer or authorized representative of the insurer that terminates the appointment of a licensee for any reason not set forth in subsection (2) of this section, shall notify the commissioner within thirty (30) days following the effective date of the termination, using a form or a format prescribed by the commissioner. Termination under this subsection shall be deemed termination without cause. Upon written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.
- (4) The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a form or a format acceptable to the commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner in accordance with subsection (2) of this section had the insurer known of its existence.
- (5)
 - (a) Within fifteen (15) days after making the notification required for termination without cause, the insurer shall mail a notice of the termination to the licensee at his or her last known address by first-class mail. The notice of termination shall include and indicate the reasons for termination provided to the commissioner.
 - (b) Within fifteen (15) days after making the notification required for termination for cause, the insurer shall provide a copy of the form to the licensee at his or her last known address by certified mail, return receipt requested, postage prepaid, or by overnight delivery using a nationally recognized carrier.
 - (c) Within thirty (30) days after the licensee has received a copy of the form, the licensee may file written comments concerning the substance of the notification with the commissioner. The licensee shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's file

and accompany every copy of a report distributed or disclosed for any reason about the licensee as permitted under subsection (7)(c) of this section.

- (6) (a) 1. In the absence of actual malice, an insurer, the authorized representative of the insurer, a licensee, the commissioner, or their respective representatives or employees, or an organization of which the commissioner is a member and that compiles the information and makes it available to other insurance commissioners or regulatory or law enforcement agencies, shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these individuals, entities, or their respective representatives or employees as a result of:
 - a. Any statement or information required by or provided in accordance with this section;
 - b. Any information relating to any statement that may be requested in writing from an insurer or licensee by the commissioner; or
 - c. A statement by a terminating insurer or licensee to an insurer or licensee that is limited solely and exclusively to whether a termination for cause under subsection (2) of this section was reported to the commissioner.
 2. The propriety of any termination for cause under subsection (2) of this section shall be certified in writing by an officer or authorized representative of the insurer or licensee terminating the relationship.
 - (b) In any action brought against an individual, business entity, or organization that may have immunity under paragraph (a) of this subsection for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that paragraph (a) of this subsection does not apply because the individual, business entity, or organization making the statement, or providing the information did so with actual malice.
 - (c) Paragraph (a) or (b) of this subsection shall not abrogate or modify any existing statutory or common law privileges or immunities.
- (7) (a) 1. Any document, material, or other information in the control or possession of the department that is furnished by an insurer, licensee, or an employee or representative acting on behalf of the insurer or licensee, or obtained by the commissioner in an investigation in accordance with this section:
 - a. Shall be confidential by law and privileged;
 - b. Shall not be subject to subpoena; or
 - c. Shall not be subject to discovery or admissible in evidence in any private civil action.

Notwithstanding subdivisions a., b., and c. of this subparagraph, any document, material, or other information that is furnished by an insurer, licensee, or an employee or representative acting on behalf

of the insurer or licensee, or obtained by the commissioner in an investigation in accordance with this section, that is used in a formal administrative proceeding or enforcement action in accordance with KRS Chapter 13B shall be subject to the Kentucky Open Records Act.

2. However, the commissioner is authorized to use the documents, materials, or other information referred to in paragraph (a)1. of this subsection in the furtherance of any regulatory or legal action brought to carry out the commissioner's duties.
- (b) Neither the commissioner nor any individual 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 paragraph (a) of this subsection.
- (c) In order to assist in the performance of the commissioner's duties, as set forth in KRS 304.2-100, the commissioner:
1. May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to paragraph (a) of this subsection, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates, or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or other information;
 2. May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, materials, 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 documents, materials, or information; and
 3. May enter into agreements governing sharing and use of information consistent with this subsection.
- (d) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner or of sharing as authorized in this subsection.
- (e) The commissioner shall release only final, adjudicated actions, including for-cause terminations that are open to public inspection in accordance with the Kentucky Open Records Act, KRS 61.870 to 61.884.
- (f) As part of the nonresident license certification process, the department shall release only final adjudicated actions on licensees identified in subsection (1) of this section.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1064, effective July 15, 2010; and ch. 83, sec. 7, effective July 15, 2010. -- Amended 2005 Ky. Acts ch. 143,

sec. 13, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 393, sec. 22, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 485, sec. 3, effective July 15, 1998. -- Created 1970 Ky. Acts ch. 301, subtit. 9, sec. 28, effective June 18, 1970.

Legislative Research Commission Note (7/15/2010). This section was amended by 2010 Ky. Acts chs. 24 and 83, which do not appear to be in conflict and have been codified together.