

304.11-042 Disclosure agreement for compensation received by an agent from an insurer or client for placement of insurance and service rendered to client.

- (1) As used in this section, unless the context requires otherwise:
- (a)
 - 1. "Agent" means an agent as defined in KRS 304.9-020;
 - 2. "Agent" does not include the following:
 - a. A managing general agent;
 - b. A surplus lines broker;
 - c. A licensed insurance agent who is employed by an insurer; or
 - d. An exclusive agent under contract with one (1) insurer or a group of affiliated insurers who receives his sole compensation from the insurer;
 - (b) "Client" means a person that purchases insurance covering the business operations and exposures to loss of that person, and that has entered into an agreement with an agent pursuant to a written disclosure agreement as provided in subsection (2) of this section, and:
 - 1. For the purpose of health insurance as defined in KRS 304.5-040, life insurance as defined in KRS 304.5-020, but only as it relates to group life contracts, and ancillary employee benefits, the person meets or exceeds at least one (1) of the following measures from subdivisions a. and b. of this subparagraph and one (1) from subdivisions c. and d. of this subparagraph for the size of the business for the most recent fiscal year end closed:
 - a. Total assets of the business of at least twenty-five million dollars (\$25,000,000); or
 - b. Total sales or revenue of at least twenty-five million dollars (\$25,000,000) per year; and
 - c. Total number of eligible employees of at least one hundred (100); or
 - d. Annual health and employee benefits premiums of at least five hundred thousand dollars (\$500,000);
 - 2. A person whose health benefit plan is procured through an employer-organized association as defined in KRS 304.17A-005;
 - 3. For the purposes of property insurance as defined in KRS 304.5-050 and casualty insurance as defined in KRS 304.5-070, the person meets or exceeds at least one (1) of the following measures from subdivisions a. and b. of this subparagraph and one (1) from subdivisions c. and d. of this subparagraph for the size of the business for the most recent fiscal year end closed:
 - a. Total assets of the business of at least twenty-five million dollars (\$25,000,000); or
 - b. Total sales or revenue of at least twenty-five million dollars (\$25,000,000) per year; and
 - c. Total number of eligible employees of at least one hundred

(100); or

- d. Annual property and casualty policy premiums of at least four hundred thousand dollars (\$400,000); or
 - 4. A person purchasing an unbundled insurance program either with fixed costs exceeding one hundred thousand dollars (\$100,000) or with a deductible relative to any one (1) line of coverage of at least one hundred thousand dollars (\$100,000);
 - (c) "Compensation" means any commissions or payments received by an agent from an insurer or a client for the sale of insurance or any other service rendered on behalf of the client;
 - (d) "Written disclosure agreement" means a written document signed by an agent and a client that describes the compensation arrangement agreed to between the agent and the insurer or the client, the method of payment of the compensation, and the services to be provided for the compensation, and that otherwise complies with this section;
 - (e) "Service" means any assistance or programs provided by the agent to the client that is intended to reduce the future cost of insurance of the client or the probability or severity of loss and means any assistance or programs designed to assist in the efficient administration of the client's insurance program or to assist the client in complying with any state or federal law; and
 - (f) "Unbundled insurance program" means a large account where the insurer provides the insurance coverage and related underwriting services for the insured, then the insured obtains claim adjustment services from another entity engaged in the business of providing such services and not from the insurer itself.
- (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.
- (3) The agent shall verify, prior to the sale, solicitation, or negotiation with the client, that the person qualifies as a client under subsection (1)(b) of this section. The agent shall retain sufficient documentation in the agent's files to show the client meets the qualification criteria in subsection (1)(b) of this section.
- (4) An agent, when operating under a written disclosure agreement with a client

under this section, may:

- (a) Use an authorized property and casualty insurer;
 - (b) Use an unauthorized property and casualty insurer if the business is exported in accordance with Subtitle 10 of this chapter; and
 - (c) Use only an authorized life, health, or workers' compensation insurer.
- (5) (a) Any insurer writing business in accordance with this section shall comply with applicable rate and form filing requirements.
- (b) Notwithstanding applicable rate and form filing requirements, an agent placing business for a client may provide for alternative compensation in a written disclosure agreement as provided in subsection (2) of this section.
- (6) This section shall not apply to personal lines of insurance issued for personal or family protection to a person.

Effective: July 15, 2008

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