

304.25-050 Powers of the commissioner.

- (1) Designate additional acting directors. If at any time during an acute emergency, the number of directors or acting directors of a domestic insurance organization who are capable of acting shall be less than three (3), as determined by the commissioner after a reasonable investigation, the commissioner shall have the power to designate additional acting directors in such number as will bring to three (3) the number of directors and acting directors who are capable of acting.
- (2) Resolve controversies. To resolve controversy as to the power of any group of persons purporting to act as an emergency board of directors so to act, the commissioner shall, upon a determination that such action will tend to promote the safe and sound and orderly conduct of the business of any domestic insurance organization, have power to issue orders declaring that any such group shall or shall not have the powers of an emergency board of directors, or confirming, modifying or vacating in whole or in part any action taken or purportedly taken by any such group or by removing any acting director.
- (3)
 - (a) Declare provisions of law operative or inoperative. At any time after an attack, upon his determination that such action will tend to promote certainty as to the powers of insurance organizations or individuals pursuant to this subtitle or that such action is desirable to enable insurance organizations to take preparatory precautions prior to the occurrence of an acute emergency, the commissioner shall have power to declare that any provision of this subtitle which he may specify shall be operative with respect to any domestic insurance organization or to the Kentucky business of any other insurance organization which he may designate. Upon such declaration such organization and its directors, officers, acting directors, and acting officers shall have all powers conferred by this subtitle. The failure of the commissioner so to declare shall not be deemed to limit the powers of any organization or its directors, officers, acting directors, or acting officers where an acute emergency exists in fact.
 - (b) At any time after the commencement of an acute emergency or after the commissioner shall have declared any provision of this subtitle operative under this subsection upon his determination that an insurance organization is able, in whole or in part, to carry on its business in compliance with its charter and the laws, other than this subtitle, the commissioner shall have power to declare that any provision of this subtitle which he may specify shall be inoperative with respect to any domestic insurance organization or to the Kentucky business of any other insurance organization which he may designate. Upon such declaration, such organization shall be governed by its charter and the provisions of law other than this subtitle, except insofar as they remain inoperative.
- (4) Possession of business and property. Upon the determination that, as a result of an acute emergency, the business and affairs of an insurance organization cannot otherwise be conducted in a safe and sound manner, the commissioner may forthwith take possession of the business and property of the insurance organization within this state or, if a domestic insurance organization, its

business and property wherever situated. This subtitle shall be applicable in any case in which the commissioner takes possession of an insurance organization under this subsection as though the insurance organization were an insurer of which the commissioner had taken possession under this subtitle, except that no such provision shall be applicable which the commissioner shall have declared inapplicable under this subsection. The commissioner shall have power to declare inapplicable any such provision upon his determination that the same is inappropriate or unnecessary to protect the interest of the public or the stockholders or creditors of the insurance organization, in view of the acute emergency and the nature of the organization.

- (5) When powers exercised. The powers given the commissioner by subsections (2) and (4) of this section shall be exercised by him only in the event that there is no court of competent jurisdiction available to which an application can be made for an order permitting him to exercise such powers with respect to a particular insurance organization. The powers conferred by subsection (4) of this section shall not be exercised in a case of an insurance organization which is not insolvent within the meaning of this subtitle, unless the commissioner finds that such insurance organization lacks personnel able to manage its business in the interest of the public, stockholders, and policyholders.
- (6) Regulations. The commissioner shall have power to issue general and specific regulations, directives, and orders consistent with and in furtherance of the purpose of this subtitle.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1365, effective July 15, 2010. --
Created 1970 Ky. Acts ch. 301, subtit. 25, sec. 5, effective June 18, 1970.