

304.6-171 Requirement for actuarial opinion as to appropriate computation of reserves and related items and compliance with state law -- Opinions to be submitted annually -- Form and substance of opinions -- Administrative regulations.

- (1) Subsections (2) to (5) of this section shall become operative at the end of the first full calendar year following the year of enactment and shall be applicable prior to the operative date of the valuation manual.
- (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.
- (6) Unless a company is exempt under KRS 304.6-134, subsections (7) to (10) of this section shall become operative after the operative date of the valuation manual.

- (7) Every company with outstanding life insurance, accident and health insurance, or deposit-type contracts in this state, subject to regulation by the commissioner, shall annually submit the opinion of the appointed actuary stating whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The valuation manual shall prescribe the specifics of this opinion, including any items deemed necessary to its scope.
- (8) Every company with outstanding life insurance, accident and health insurance, or deposit-type contracts in this state, subject to regulation by the commissioner, except as exempted in the valuation manual, shall also annually include in the opinion required by subsection (7) of this section an opinion of the same appointed actuary stating whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered with respect to the assets held by the company, 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, making 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.
- (9) Each opinion required by subsection (8) of this section shall be governed by the following provisions:
 - (a) A memorandum, in the form and substance specified in the valuation manual, and acceptable to the commissioner, 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 in the valuation manual, or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the valuation manual, 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 required by the commissioner.
- (10) Every opinion required by subsections (7) and (8) of this section shall be governed by the following provisions:
 - (a) The opinion shall be in the form and contain the substance specified in the valuation manual and acceptable to the commissioner;
 - (b) The opinion shall be submitted with the annual statement reflecting the valuation of the reserve liability for each year ending on or after the operative date of the valuation manual;
 - (c) The opinion shall apply to all policies and contracts subject to subsection (8) of this section, plus other actuarial liabilities as may be specified in the valuation manual;

- (d) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board or its successor, and on such additional standards as may be prescribed in the valuation manual;
- (e) 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;
- (f) Except in cases of fraud or willful misconduct, the appointed 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 appointed actuary's opinion; and
- (g) Disciplinary action by the commissioner against the company or the appointed actuary shall be established by administrative regulation, promulgated by the commissioner.

Effective: June 24, 2015

History: Amended 2015 Ky. Acts ch. 57, sec. 14, effective June 24, 2015. -- Amended 2010 Ky. Acts ch. 24, sec. 1006, effective July 15, 2010. -- Created 1996 Ky. Acts ch. 289, sec. 4, effective July 15, 1996.