

CHAPTER 96

(HB 417)

AN ACT relating to motor vehicle liens.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 190.090 is amended to read as follows:

As used in KRS 190.090 to 190.140 unless the context or subject matter otherwise requires:

- (1) "Person" means an individual, partnership, corporation, association, and any other group however organized.
- (2) "Retail installment sale" means any sale for other than *agricultural*, business or commercial use evidenced by a retail installment contract wherein retail buyer agrees to buy and retail seller agrees to sell a motor vehicle at a time sale price payable in two (2) or more installments. The cash sale price of the motor vehicle, the amount, if any, included for insurance and other benefits, official fees and the finance charge, shall together constitute the time sale price.
- (3) "Retail installment contract" means any agreement, entered into in this state, evidencing a retail installment sale of a motor vehicle, other than for the purpose of resale, pursuant to which title to, or a lien upon the motor vehicle is retained by the retail seller as security for the retail buyer's obligation. This term includes a mortgage, conditional sale contract or any contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to the time sale price of the motor vehicle and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming *for no additional consideration or for nominal additional consideration*, the owner of such motor vehicle.
- (4) "Motor vehicle" means any device in, upon, or by which any person or property is, or may be transported or drawn upon a highway. The term does not include self-propelled wheelchairs and invalid tricycles, tractors, power shovels, road machinery, implements of husbandry and other agricultural machinery, or other machinery not designed primarily for highway transportation but which may incidentally transport persons or property on a highway, or devices which move upon or are guided by a track or travel through the air. A moped as defined in KRS 190.010 shall be subject to the same requirements as a motor vehicle under this section.
- (5) "Retail seller" or "seller" means a person who sells or agrees to sell a motor vehicle under a retail installment contract to a retail buyer.
- (6) "Retail buyer" or "buyer" means a person who buys or agrees to buy a motor vehicle from a retail seller not for the purpose of resale and who executes a retail installment contract in connection therewith.
- (7) "Sales finance company" means a person engaged in the business of creating and holding or purchasing or acquiring retail installment contracts from a retail seller. The term includes a bank, trust company, private banker, industrial bank, investment company or national bank, if so engaged.
- (8) "Cash sale price" means, *for purposes of KRS 190.090 to 190.140 only, and not for purposes of KRS 138.455 to 138.470*, the price at which the seller would in good faith sell to the buyer, and the buyer would in good faith buy from the seller, the motor vehicle which is the subject matter of the retail installment contract, if such sale were a sale for cash, instead of a retail installment sale. The cash sale price may include:
 - (a) Any taxes, registration fees, certificate of title fees, *and* if any, license fees:~~;~~
 - (b) Charges for delivery, servicing, repairing, or improving the motor vehicle, including accessories and their installation;
 - (c) *Charges for a service contract, mechanical breakdown insurance, a maintenance agreement, a vehicle protection product, and any other goods or services related to the sale that the buyer agrees to purchase from the seller; and*
 - (d) *Any processing fee.*
- (9) "Official fees" means the fees prescribed by law for filing, recording or otherwise perfecting and releasing or satisfying a retained title or a lien created by a retail installment contract.

- (10) "Finance charge" means that part of the time sale price by which it exceeds the aggregate of the cash sale price, the amount, if any, included for insurance and other benefits and official fees included in the retail installment sale.
- (11) *"Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance and parts related to such maintenance. A maintenance agreement shall not be considered a contract of, or for, insurance.*
- (12) *"Service contract" means a contract or agreement given for consideration in addition to the purchase price of a new or used motor vehicle to provide for repair or replacement service or indemnification for that service for the operation or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, but does not include mechanical breakdown insurance or maintenance agreements. A service contract shall not be considered a contract of, or for, insurance.*
- (13) *"Truth in Lending Act" means Title I of Pub.L. No. 90-321, codified at 15 U.S.C. secs. 1601 to 1667f, as may be amended from time to time.*
- (14) *"United States Rule" means that in partial payments on a debt, each payment is applied first to the finance charge and any remainder reduces the principal. Under this rule, accrued but unpaid finance charges cannot be added to the principal and interest cannot be compounded.*
- (15) *"Vehicle protection product" means a vehicle protection device, system, or service that is installed on or applied to a vehicle that is designed to deter the theft of the vehicle, and includes a written warranty that provides that if the product fails to deter the theft of the vehicle, the warranty holder shall be paid specified incidental costs by the warrantor as a result of the failure of the device, system, or service to perform pursuant to the terms of the warranty. Vehicle protection products include but are not limited to window etch products and body part marking products. A vehicle protection product shall not be considered a contract of, or for, insurance.*
- (16) Words in the singular include the plural and vice versa.

➔Section 2. KRS 190.100 is amended to read as follows:

- (1) (a) Every retail installment contract shall:
1. ~~Be~~ be in writing in at least eight (8) point type~~;~~;
 2. ~~shall~~ Contain all the agreements of the parties~~;~~;
 3. ~~shall~~ Be signed by the retail buyer~~;~~; and
 4. **Require** a copy thereof ~~to~~~~shall~~ be furnished to ~~the~~~~such~~ retail buyer at the time of the execution of the contract;
- (b) *A retail installment contract need not appear on a single page and a contract that includes a provision incorporating agreements that appear after the buyer's signature, including without limitation, terms, and conditions on the back or on subsequent pages, shall be deemed in compliance with KRS 446.060(1)*~~[No provision of a retail installment contract which purports to provide for the inclusion of title to or a lien upon any goods other than the motor vehicle, accessories and special or auxiliary equipment used in connection therewith which either are the subject of the retail installment sale or are substitution in whole or in part therefor, as security for payment of such time sale price shall be valid or enforceable; but the other provisions of the retail installment contract shall not be affected thereby];~~
- (c) No provisions for confession of judgment, power of attorney therefor, or wage assignment contained in any retail installment contract shall be valid or enforceable;
- (d) ~~[If the finance charge applicable to a retail installment contract has been determined by a pre-computed method,]~~The holder of a retail installment contract may collect a delinquency and collection charge on each installment in arrears for a period not less than ten (10) days in an amount not in excess of five percent (5%) of each installment or **fifteen dollars (\$15)**~~[five dollars (\$5)]~~, whichever is **greater**~~[the less]~~. In addition to such delinquency and collection charge, the retail installment contract may provide for the payment of **reasonable** attorneys' fees~~[not exceeding fifteen percent (15%) of the amount due and payable under such contract]~~ where such contract is referred to an attorney not a salaried employee of the holder of the contract for collection, plus the court costs;

- (e) Unless notice has been given to the retail buyer of actual or intended assignment of a retail installment contract, payment thereunder or tender thereof made by the retail buyer to the last known holder of such contract shall be binding upon all subsequent holders or assignees; and
 - (f) Upon written request from the retail buyer, the holder of the retail installment contract shall give or forward to the retail buyer a written statement of the total amount unpaid under such contract. A retail buyer shall be given a written receipt for any payment when made in cash.
- (2) The retail installment contract shall contain the following:
- (a) The cash sale price of the motor vehicle which is the subject matter of the retail installment sale;
 - (b) The amount of the retail buyer's down payment, whether made in money or goods, or partly in money or partly in goods;
 - (c) The difference between paragraphs (a) and (b) of this subsection;
 - (d) 1. Amount, if any, included for insurance and other benefits; and
2. Types of coverage and benefits;
 - (e) Official fees as defined in KRS 190.090; ~~and~~
 - (f) *Any amounts eligible for inclusion in the cash price as defined in Section 1 of this Act that the seller elects to separately itemize; and*
 - (g) Principal balance, which is the sum of paragraphs (c), (d), and (e) of this subsection.
- (3) *A retail installment contract is deemed in compliance with subsection (2) of this section if it satisfies the requirements of the Truth in Lending Act that would apply to a retail installment contract within the Truth in Lending Act's scope, regardless of whether the Truth in Lending Act would apply to the retail installment sale at issue.* ~~The retail installment contract shall contain a definite statement in twelve (12) point bold type or larger, that the insurance, if any included in the retail installment sale provides or does not provide coverage for personal liability and property damage caused to others, as the case may be.~~
- (4) The amount, if any, included for insurance, shall not exceed the premiums chargeable in accordance with applicable rate filings made with the commissioner of insurance. Every retail seller or sales finance company, if insurance on the motor vehicle is included in a retail installment contract shall within thirty (30) days after execution of the retail installment contract send or cause to be sent to the retail buyer a policy or policies or certificate of insurance, which insurance shall be written by a company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance and the scope of the coverage and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of the insurance. The buyer of a motor vehicle under a retail installment contract shall have the privilege of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the seller; provided, however, that the inclusion of the insurance premium in the retail installment contract when the buyer selects the agent, broker or company, shall be optional with the seller. If any such policy is canceled, the unearned insurance premium refund received by the holder of the contract shall be credited to the final maturing installments of the retail installment contract. For purposes of this subsection, single interest insurance insuring the retail seller or sales finance company shall not be considered insurance on the motor vehicle. Neither a copy of the policy nor a certificate of insurance of this type of insurance shall be sent to the retail buyer.
- (5) Any sales finance company hereunder may purchase or acquire from any retail seller any retail installment contract on such terms and conditions as may be agreed upon between them. No filing of the assignment, no notice to the retail buyer of the assignment, and no requirement that the retail seller shall be deprived of dominion over the payments thereunder or the goods covered thereby if repossessed by the retail seller shall be necessary to the validity of a written assignment of a retail installment contract as against creditors, subsequent purchasers, pledgees, mortgagees, and lien claimants of the retail seller.
- (6) An acknowledgment in the body of the retail installment contract by the retail buyer of the delivery of a copy thereof shall be conclusive proof of delivery in any action or proceeding by or against any assignee of a retail installment contract.
- (7) (a) A "debt cancellation agreement" is a written provision in a retail installment contract, or separate addendum thereto, which provides for cancellation of all or part of an obligation of the buyer or obligor upon the occurrence of a specified event.

- (b) In accordance with subsection (2)(d) of this section, a debt cancellation agreement shall be itemized by type on the retail installment contract and considered an "other benefit" for which the seller, sales finance company, or other holder may charge the buyer or obligor.
- (c) A debt cancellation agreement shall not be considered a contract of, or for, insurance.

➔Section 3. KRS 190.110 is amended to read as follows:

- (1) The finance charge *allowed by this subsection may be precomputed by using an add-on method. If the finance charge* in a retail installment sale *is precomputed it* shall not exceed the following rates:
 - Class 1. Any new or used motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made -- eleven dollars (\$11) per one hundred dollars (\$100) *of principal balance, as determined pursuant to subsection (2) of Section 2 of this Act, per year of the contract.*
 - Class 2. Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of one (1) or two (2) years prior to the year in which the sale is made -- thirteen dollars (\$13) per one hundred dollars (\$100) *of principal balance, as determined pursuant to subsection (2) of Section 2 of this Act, per year of the contract.*
 - Class 3. All other motor vehicles not in class 1 or 2 -- fifteen dollars (\$15) per one hundred dollars (\$100) *of principal balance, as determined pursuant to subsection (2) of Section 2 of this Act, per year of the contract.*
- (2) *If the finance charge applicable to a retail installment sale is precomputed and the retail installment contract provides for successive monthly payments, substantially equal in amount, the maximum finance charge computed pursuant to subsection (1) of this section for a partial year occurring at the beginning of a contract with a term of less than one (1) year or at the end of a contract with a remaining term greater than a year shall be the prorated at the annual maximum amount of finance charge computed under subsection (1) of this section, based on the number of months in the partial year*~~[Such finance charge shall be computed on the principal balance as determined under KRS 190.100 (2) on contracts payable in successive monthly payments substantially equal in amount extending for a period of one (1) year. On contracts providing for installment payments extending for a period less than or greater than one (1) year, the finance charge shall be computed proportionately].~~
- (3) *If the finance charge applicable to a retail installment sale is precomputed and the retail installment contract*~~[When a retail installment contract]~~ provides for unequal or irregular installment payments, the *maximum finance rate of the* finance charge shall be at the effective rate provided in subsection (1) of this section, having due regard for the schedule of payment.
- (4) ~~[The finance charge allowed by this section may be precomputed by using an add-on method.]~~Alternatively, the seller may, at his option, compute the finance charge *in a retail installment sale* on a simple interest basis, *taking into account the actual number of days between payments under the contract using*~~[at]~~ a fixed or variable rate *not to exceed the effective rate of finance charge permitted under subsection (1) of this section*~~[, but in such case the amount of finance charge that the seller may collect shall not exceed the amount that could be collected if the finance charge were precomputed].~~
- (5) *For the purposes of subsections (3) and (4) of this section, the effective rate of the finance charge permitted by subsection (1) of this section shall be the rate computed in accordance with the actuarial method or the United States Rule method for a retail installment contract that provides for:*
 - (a) *The total finance charge permitted under subsections (1) and (2) of this section;*
 - (b) *Successive monthly payments substantially equal in amount; and*
 - (c) *The purchase of a vehicle of the same vehicle class over the same term as the unequal or irregular installment payment contract subject to subsection (3) of this section or the simple interest basis contract subject to subsection (4) of this section. In computing the effective rate, the seller may make any assumptions and use any method that the Truth in Lending Act and the regulations promulgated thereunder would permit in computing the annual percentage rate.*

➔Section 4. KRS 190.120 is amended to read as follows:

- (1) If the finance charge applicable to the retail installment contract has been determined by a precomputed method, the retail buyer may pay in full at any time before the stated maturity date and upon such prepayment in full the retail buyer shall receive a refund of a portion of the finance charge *not less than the refund*

computed in accordance with the Rule of 78's. An acquisition cost of twenty-five dollars (\$25) shall be deducted from the finance charge before computation of the refund. Where the refund is less than one dollar (\$1) no refund need be made and acceleration of the balance by the seller, caused by the default of the buyer or otherwise, shall not affect the date of computation. Any balance remaining unpaid as of the stated maturity date shall then be subject to accumulation of additional finance charges at the rate specified in the contract.

- (2) If the finance charge applicable to the retail installment contract has or will be determined by a simple interest method, the retail buyer may pay in full at any time before the stated maturity date without penalty, except that the holder may collect and receive a minimum finance charge of twenty-five dollars (\$25) in any event.

➔Section 5. KRS 304.5-070 is amended to read as follows:

- (1) "Casualty insurance" includes:

- (a) Vehicle insurance. Insurance against loss of or damage to any land vehicles or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, from any hazard or cause, and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any such vehicle, aircraft, or animal; together with insurance against accidental injury to individuals, irrespective of legal liability of the insured, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if the insurance is issued as an incidental part of insurance on the vehicle, aircraft, or draft or riding animal;
- (b) Liability insurance. Insurance against legal liability for the death, injury, or disability of any human being, or for damage to property; and provision of medical, hospital, surgical, disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;
- (c) Workers' compensation and employer's liability. Insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees;
- (d) Burglary and theft. Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal or concealment, or from any attempt at any of the foregoing; including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause;
- (e) Personal property floater. Insurance upon personal effects against loss or damage from any cause;
- (f) Glass. Insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;
- (g) Boiler and machinery. Insurance against any liability and loss or damage to property or interest resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus, and the inspection of and issuance of certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured;
- (h) Leakage and fire extinguishing equipment. Insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus, water pipes or containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus;
- (i) Credit. Insurance, other than mortgage guaranty insurance, against loss or damage resulting from failure of debtors to pay their obligations to the insured;
- (j) Malpractice. Insurance against legal liability of the insured, and against loss, damage, or expense incidental to a claim of such liability, and including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service;

- (k) Elevator. Insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance, or use of elevators, except loss or damage by fire, and the inspection of and issuance of certificates of inspection upon, elevators;
- (l) Congenital defects. Insurance against congenital defects in human beings;
- (m) Livestock. Insurance against loss of or damage to livestock from any cause;
- (n) Entertainments. Insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors, or other principals;
- (o) Failure of certain institutions to record documents. Insurance indemnifying against loss from failure or omission to record as public records, liens of any kind upon personal property, given, held, delivered, or possessed as security or collateral for loans, advances, debts, or obligations of all kinds;
- (p) Automobile guaranty. Insurance of the mechanical condition or freedom from defective or worn parts of motor vehicles, other than as provided by manufacturer's warranty *or as provided by KRS 190.090 to 190.140*. Provided, however, the making of a contract covering only defects in material and workmanship in exchange for a separately stated charge where it is merely incidental to the business of selling or leasing motor vehicles, shall not be deemed insurance, provided, that the maker of the contract has an insurance policy with an authorized motor vehicle insurer as defined in KRS 304.1-100 to assure the performance of the duties of the maker created by each on all of the contracts made by the maker. In the event that the maker of the contract is unable to perform the duties imposed thereby, the purchaser of the contract shall then be considered a policyholder of the insurer. The policy shall include a loss payee endorsement that provides coverage to any lending institution as its interest may appear. In addition, the contract shall conspicuously state the name and address of the licensed underwriting insurer and contain a statement that the holder shall be entitled to make a direct claim against that insurer upon the failure of the maker to pay any claim within sixty (60) days after proof of loss has been filed with the maker. The requirements that the maker of the contract have an insurance policy with an authorized motor vehicle insurer as defined in KRS 304.1-100 shall not apply where the maker is a manufacturer, distributor, or importer of motor vehicles. As used in this paragraph, the term "maker" shall include a warranty service company which issues automobile guaranties through a motor vehicle dealer, in which the motor vehicle dealer is not an obligor under the contract. The commissioner is authorized to promulgate regulations to interpret this paragraph; and
- (q) Miscellaneous. Insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this subtitle, if the insurance is not disapproved by the commissioner as being contrary to law or public policy. A service contract to repair, replace, or maintain consumer products shall not be insurance, if the maker of the service contract registers with the commissioner and provides:
 1. Evidence of a sufficient net worth, as determined by the commissioner, to assure the performance of the duties of the maker created by all of the contracts made by the maker; or
 2. Evidence of an insurance policy or performance bond with an authorized insurer as defined in KRS 304.1-100, to assure the performance of the duties of the maker created by all of the service contracts made by the maker.

As set forth in subparagraph 2. of this paragraph, if the maker of the service contract is unable to perform the duties imposed thereby, the purchaser of the service contract shall then be considered a policyholder of the insurer. The service contract shall conspicuously state the name and address of the licensed underwriting insurer and contain a statement that the holder shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker. The requirements of this paragraph shall not apply where the maker is a manufacturer of consumer products. If the maker of the service contract registers with the commissioner and subsequently determines that the information submitted pursuant to subparagraph 1. of this paragraph no longer reflects a sufficient net worth as determined by the commissioner, to assure the performance of the duties of the maker created by all of the contracts made by the maker, the maker shall notify the commissioner of the change in circumstances. Each registration filing with the commissioner shall be filed within thirty (30) calendar days in advance of the selling of service

contracts to repair, replace, or maintain consumer goods. The commissioner is authorized to promulgate administrative regulations pursuant to KRS Chapter 13A to effectuate this paragraph.

- (2) Provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death or injury, as incidental to and part of other insurance as stated under paragraphs (a) (vehicle), (b) (liability), (d) (burglary), (g) (boiler machinery), (j) (malpractice), and (k) (elevator) of subsection (1) of this section shall for all purposes be deemed to be the same kind of insurance to which it is so incidental, and shall not be subject to provisions of this code applicable to life and health insurances.

Signed by Governor April 11, 2012.