

1 AN ACT relating to service contracts.

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

3 ➔Section 1. KRS 304.5-070 is amended to read as follows:

- 4 (1) "Casualty insurance" includes:
- 5 (a) Vehicle insurance. Insurance against loss of or damage to any land vehicles or
6 aircraft or any draft or riding animal or to property while contained therein or
7 thereon or being loaded or unloaded therein or therefrom, from any hazard or
8 cause, and against any loss, liability, or expense resulting from or incidental to
9 ownership, maintenance, or use of any such vehicle, aircraft, or animal;
10 together with insurance against accidental injury to individuals, irrespective of
11 legal liability of the insured, including the named insured, while in, entering,
12 alighting from, adjusting, repairing, cranking, or caused by being struck by a
13 vehicle, aircraft, or draft or riding animal, if the insurance is issued as an
14 incidental part of insurance on the vehicle, aircraft, or draft or riding animal;
- 15 (b) Liability insurance. Insurance against legal liability for the death, injury, or
16 disability of any human being, or for damage to property; and provision of
17 medical, hospital, surgical, disability benefits to injured persons and funeral
18 and death benefits to dependents, beneficiaries, or personal representatives of
19 persons killed, irrespective of legal liability of the insured, when issued as an
20 incidental coverage with or supplemental to liability insurance;
- 21 (c) Workers' compensation and employer's liability. Insurance of the obligations
22 accepted by, imposed upon, or assumed by employers under law for death,
23 disablement, or injury of employees;
- 24 (d) Burglary and theft. Insurance against loss or damage by burglary, theft,
25 larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation,
26 or wrongful conversion, disposal or concealment, or from any attempt at any
27 of the foregoing; including supplemental coverage for medical, hospital,

- 1 surgical, and funeral expense incurred by the named insured or any other
2 person as a result of bodily injury during the commission of a burglary,
3 robbery, or theft by another; also insurance against loss of or damage to
4 moneys, coins, bullion, securities, notes, drafts, acceptances, or any other
5 valuable papers and documents, resulting from any cause;
- 6 (e) Personal property floater. Insurance upon personal effects against loss or
7 damage from any cause;
- 8 (f) Glass. Insurance against loss or damage to glass, including its lettering,
9 ornamentation, and fittings;
- 10 (g) Boiler and machinery. Insurance against any liability and loss or damage to
11 property or interest resulting from accidents to or explosions of boilers, pipes,
12 pressure containers, machinery, or apparatus, and the inspection of and
13 issuance of certificates of inspection upon boilers, machinery, and apparatus
14 of any kind, whether or not insured;
- 15 (h) Leakage and fire extinguishing equipment. Insurance against loss or damage
16 to any property or interest caused by the breakage or leakage of sprinklers,
17 hoses, pumps and other fire extinguishing equipment or apparatus, water pipes
18 or containers, or by water entering through leaks or openings in buildings, and
19 insurance against loss or damage to sprinklers, hoses, pumps, and other fire
20 extinguishing equipment or apparatus;
- 21 (i) Credit. Insurance, other than mortgage guaranty insurance, against loss or
22 damage resulting from failure of debtors to pay their obligations to the
23 insured;
- 24 (j) Malpractice. Insurance against legal liability of the insured, and against loss,
25 damage, or expense incidental to a claim of such liability, and including
26 medical, hospital, surgical, and funeral benefits to injured persons,
27 irrespective of legal liability of the insured, arising out of the death, injury, or

- 1 disablement of any person, or arising out of damage to the economic interest
- 2 of any person, as the result of negligence in rendering expert, fiduciary, or
- 3 professional service;
- 4 (k) Elevator. Insurance against loss of or damage to any property of the insured,
- 5 resulting from the ownership, maintenance, or use of elevators, except loss or
- 6 damage by fire, and the inspection of and issuance of certificates of inspection
- 7 upon, elevators;
- 8 (l) Congenital defects. Insurance against congenital defects in human beings;
- 9 (m) Livestock. Insurance against loss of or damage to livestock from any cause;
- 10 (n) Entertainments. Insurance indemnifying the producer of any motion picture,
- 11 television, radio, theatrical, sport, spectacle, entertainment, or similar
- 12 production, event, or exhibition against loss from interruption, postponement,
- 13 or cancellation thereof due to death, accidental injury, or sickness of
- 14 performers, participants, directors, or other principals;
- 15 (o) Failure of certain institutions to record documents. Insurance indemnifying
- 16 against loss from failure or omission to record as public records, liens of any
- 17 kind upon personal property, given, held, delivered, or possessed as security
- 18 or collateral for loans, advances, debts, or obligations of all kinds;
- 19 (p) Automobile guaranty. Insurance of the mechanical condition or freedom from
- 20 defective or worn parts of motor vehicles, other than as provided by a
- 21 manufacturer's warranty or as provided by KRS 190.090 to 190.140.
- 22 ~~Provided, however,~~ The making of a service contract by a service contract
- 23 provider that has obtained a reimbursement insurance policy shall not be
- 24 considered a contract of, or for, insurance. As used in this paragraph:
- 25 1. "Reimbursement insurance policy" means a policy of insurance which:
- 26 a. Provides reimbursement to the service contract provider under the
- 27 terms of the service contracts issued or sold by the service contract

- 1 provider or, in the event of the service contract provider's
2 nonperformance, pays on behalf of the service contract provider all
3 covered contractual obligations incurred by the service contract
4 provider under the terms of the service contracts issued or sold by
5 the service contract provider; and
- 6 b. Is issued by an admitted or authorized registered insurer, or
7 properly exported to a nonadmitted insurer by a licensed surplus
8 lines broker, to a service contract provider;
- 9 2. "Service contract" means a contract or agreement given for a separately
10 stated consideration for a specific duration to perform or to provide
11 reimbursement for:
- 12 a. The repair, replacement, or maintenance of a motor vehicle for the
13 operational or structural failure of the motor vehicle due to a defect
14 in materials, workmanship, or normal wear and tear, with or
15 without additional provisions for incidental payment of indemnity
16 under limited circumstances, including but not limited to towing,
17 rental, and emergency road service;
- 18 b. The repair or replacement of tires or wheels on a motor vehicle
19 damaged as a result of coming into contact with road hazards,
20 including but not limited to potholes, rocks, wood debris, metal
21 parts, glass, plastic, curbs, or composite scraps;
- 22 c. The removal of dents, dings, or creases on a motor vehicle that can
23 be repaired using the process of paintless dent removal without
24 affecting the existing paint finish and without replacing vehicle
25 body panels, sanding, bonding, or painting;
- 26 d. The repair of chips or cracks in or the replacement of motor
27 vehicle windshields as a result of damage caused by road hazards,

1 including but not limited to potholes, rocks, wood debris, metal
2 parts, glass, plastic, curbs, or composite scraps; or

3 e. The replacement of a motor vehicle key or key fob if the key or
4 key fob becomes inoperable or is lost or stolen.

5 The term "service contract" does not include a contract for regular
6 maintenance only or a product warranty provided under the Magnuson-
7 Moss Warranty Act, 15 U.S.C. secs. 2301 et seq.; and

8 3. "Service contract provider" means the person who is contractually
9 obligated to the purchaser of a service contract under the terms of the
10 service contract.

11 The requirement that the service contract provider have an insurance policy
12 shall not apply where the service contract provider is a manufacturer or
13 distributor of motor vehicles or a wholly owned subsidiary of a manufacturer
14 or distributor; and

15 (q) Miscellaneous. Insurance against any other kind of loss, damage, or liability
16 properly a subject of insurance and not within any other kind of insurance as
17 defined in this subtitle, if the insurance is not disapproved by the
18 commissioner as being contrary to law or public policy. A service contract to
19 repair, replace, or maintain consumer products shall not be insurance, if the
20 maker of the service contract registers with the commissioner and provides:

21 1. Evidence of a sufficient net worth, as determined by the commissioner,
22 to assure the performance of the duties of the maker created by all of the
23 contracts made by the maker; or

24 2. Evidence of an insurance policy or performance bond with an authorized
25 insurer as defined in KRS 304.1-100, to assure the performance of the
26 duties of the maker created by all of the service contracts made by the
27 maker.

1 As set forth in subparagraph 2. of this paragraph, if the maker of the service
2 contract is unable to perform the duties imposed thereby, the purchaser of the
3 service contract shall then be considered a policyholder of the insurer. The
4 service contract shall conspicuously state the name and address of the licensed
5 underwriting insurer and contain a statement that the holder shall be entitled
6 to make a direct claim against the insurer upon the failure of the maker to pay
7 any claim within sixty (60) days after the claim has been filed with the maker.
8 The requirements of this paragraph shall not apply where the maker is a
9 manufacturer of consumer products. If the maker of the service contract
10 registers with the commissioner and subsequently determines that the
11 information submitted pursuant to subparagraph 1. of this paragraph no longer
12 reflects a sufficient net worth as determined by the commissioner, to assure
13 the performance of the duties of the maker created by all of the contracts made
14 by the maker, the maker shall notify the commissioner of the change in
15 circumstances. Each registration filing with the commissioner shall be filed
16 within thirty (30) calendar days in advance of the selling of service contracts
17 to repair, replace, or maintain consumer goods. The commissioner is
18 authorized to promulgate administrative regulations pursuant to KRS Chapter
19 13A to effectuate this paragraph.

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