AN ACT relating to insurance.

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

➔Section 1. KRS 304.39-020 is amended to read as follows:

As used in this subtitle:

(1) "Added reparation benefits" mean benefits provided by optional added reparation insurance**;** ~~[.]~~

(2) "Basic reparation benefits" mean benefits providing reimbursement for net loss suffered through injury arising out of the operation, maintenance, or use of a motor vehicle, subject, where applicable, to the limits, deductibles, exclusions, disqualifications, and other conditions provided in this subtitle. The maximum amount of basic reparation benefits payable for all economic loss resulting from injury to any one (1) person as the result of one (1) accident shall be ten thousand dollars ($10,000), regardless of the number of persons entitled to such benefits or the number of providers of security obligated to pay such benefits. Basic reparation benefits consist of one (1) or more of the elements defined as "loss~~[.]~~"**;**

(3) "Basic reparation insured" means:

(a) A person identified by name as an insured in a contract of basic reparation insurance complying with this subtitle; and

(b) While residing in the same household with a named insured, the following persons not identified by name as an insured in any other contract of basic reparation insurance complying with this subtitle:

1. A spouse or other relative of a named insured; and

2. A minor in the custody of a named insured or of a relative residing in the same household with the named insured if he usually makes his home in the same family unit, even though he temporarily lives elsewhere**;** ~~[.]~~

(4) "Injury" and "injury to person" mean bodily harm, sickness, disease, or death**;** ~~[.]~~

(5) "Loss" means accrued economic loss consisting only of medical expense, work loss, replacement services loss, and, if injury causes death, survivor's economic loss and survivor's replacement services loss. Noneconomic detriment is not loss. However, economic loss is loss although caused by pain and suffering or physical impairment.

(a) ***1.*** "Medical expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, physical rehabilitation, rehabilitative occupational training, licensed ambulance services, and other remedial treatment and care. "Medical expense" may include non-medical remedial treatment rendered in accordance with a recognized religious method of healing. The term includes a total charge not in excess of ***five thousand dollars ($5,000)***~~[one thousand dollars ($1,000)]~~ per person for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semi-private accommodations, unless intensive care is medically required. ***"***Medical expense***"*** shall include all healing arts professions licensed by the Commonwealth of Kentucky.

2. a. Except as provided in subdivision b.i. of this subparagraph, a medical expense paid by a reparation obligor or its third-party administrator pursuant to this subtitle shall not:

i. Except as provided in subpart ii. of this subdivision, exceed the maximum fee allowed or listed for that expense on the relevant schedule of fees established pursuant to KRS 342.035 that is in effect at the time the medical expense is

incurred; or

ii. Be less than the maximum fee allowed or listed for that expense on the relevant schedule of fees established pursuant to KRS 342.035 that is in effect on the effective date of this Act.

Other requirements, terms, or conditions imposed under or associated with the relevant schedule of fees established pursuant to KRS 342.035 shall not apply to this subtitle.

b. Subdivision a. of this subparagraph shall not:

i. Apply to care, other than outpatient rehabilitative services, that is provided in a hospital or a hospital-owned outpatient facility; or

ii. Be construed as making basic reparation benefits or added reparation benefits primary.

c. As used in this subparagraph, "outpatient rehabilitative services" means physical, occupational, or speech therapy that is provided to a basic or added reparation insured:

i. On an outpatient basis; and

ii. To help the insured restore or improve skills and functioning for daily living that have been lost or impaired due to the covered injury.

3. Solely for the purpose of basic reparation benefits and added reparation benefits, there shall be a presumption that any medical ***expense***~~[bill]~~ submitted ***in accordance with this paragraph*** is reasonable.

(b) "Work loss" means loss of income from work the injured person would probably have performed if he had not been injured, and expenses reasonably

incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him.

(c) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

(d) "Survivor's economic loss" means loss after decedent's death of contributions of things of economic value to his survivors, not including services they would have received from the decedent if he had not suffered the fatal injury, less expenses of the survivors avoided by reason of decedent's death.

(e) "Survivor's replacement services loss" means expenses reasonably incurred by survivors after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if he had not suffered the fatal injury, less expenses of the survivors avoided by reason of the decedent's death and not subtracted in calculating survivor's economic loss**;**~~.~~

(6) "Use of a motor vehicle" means any utilization of the motor vehicle as a vehicle including occupying, entering into, and alighting from it. It does not include:

(a) Conduct within the course of a business of repairing, servicing, or otherwise maintaining motor vehicles unless the conduct occurs off the business premises; or

(b) Conduct in the course of loading and unloading the vehicle unless the conduct occurs while occupying, entering into, or alighting from it**;**~~.~~

(7) "Motor vehicle" means any vehicle which transports persons or property upon the public highways of the Commonwealth, propelled by other than muscular power except road rollers, road graders, farm tractors, vehicles on which power shovels

are mounted, such other construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways, such vehicles as travel exclusively upon rails, and such vehicles as are propelled by electrical power obtained from overhead wires while being operated within any municipality or where said vehicles do not travel more than five (5) miles beyond the said limits of any municipality. "Motor vehicle" shall not mean moped as defined in this section or an electric low-speed scooter as defined in KRS 189.010;~~.~~

(8) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step-through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;~~.~~

(9) "Public roadway" means a way open to the use of the public for purposes of motor vehicle travel;~~.~~

(10) "Net loss" means loss less benefits or advantages, from sources other than basic and added reparation insurance, required to be subtracted from loss in calculating net loss;~~.~~

(11) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damages recoverable under the tort law of this Commonwealth. The term does not include punitive or exemplary damages;~~.~~

(12) "Owner" means a person, other than a lienholder or secured party, who owns or has title to a motor vehicle or is entitled to the use and possession of a motor vehicle subject to a security interest held by another person. The term does not include a lessee under a lease not intended as security;~~.~~

(13) "Reparation obligor" means an insurer, self-insurer, or obligated government providing basic or added reparation benefits under this subtitle**;**~~[.]~~

(14) "Survivor" means a person identified in KRS 411.130 as one entitled to receive benefits by reason of the death of another person**;**~~[.]~~

(15) A "user" means a person who resides in a household in which any person owns or maintains a motor vehicle**;**~~[.]~~

(16) "Maintaining a motor vehicle" means having legal custody, possession or responsibility for a motor vehicle by one other than an owner or operator***; and***~~[.]~~

(17) "Security" means any continuing undertaking complying with this subtitle, for payment of tort liabilities, basic reparation benefits, and all other obligations imposed by this subtitle.

➔Section 2. KRS 304.39-130 is amended to read as follows:

Basic reparation benefits payable for work loss, survivor's economic loss, replacement services loss, and survivor's replacement services loss arising from injury to one (1) person and attributable to the calendar week during which the accident causing injury occurs and to each calendar week thereafter may not exceed ***five hundred dollars ($500)***~~[two hundred dollars ($200)]~~, prorated for any lesser period. If the injured person's earnings or work are seasonal or irregular, the weekly limit shall be equitably adjusted or apportioned on an annual basis.

➔Section 3. KRS 304.39-210 is amended to read as follows:

(1) ***(a)*** Basic and added reparation benefits are payable monthly as loss accrues.

(b) Loss accrues not when injury occurs, but as work loss, replacement services loss, or medical expense is incurred.

(c) Benefits are overdue if not paid within thirty (30) days after the reparation obligor receives reasonable proof of the fact and amount of loss realized, unless the reparation obligor elects to accumulate claims for periods not exceeding thirty-one (31) days after the reparation obligor receives reasonable

proof of the fact and amount of loss realized, and pays them within fifteen (15) days after the period of accumulation.

(d) Notwithstanding any provision of this chapter to the contrary, benefits are not overdue if a reparation obligor has not made payment to a provider of services due to the request of a secured person when the secured person is directing the payment of benefits among the different elements of loss.

(e) If reasonable proof is supplied as to only part of a claim, and the part totals one hundred dollars ($100) or more, the part is overdue if not paid within the time provided by this section.

(f) Medical expense benefits may be paid by the reparation obligor directly to persons supplying products, services, or accommodations to the claimant, if the claimant so designates.

(g) A reparation obligor shall not, in any event, pay a charge for a medical expense that exceeds the maximum fee permitted under subsection (5)(a)2. of Section 1 of this Act.

(h) 1. Except as provided in subparagraph 2. of this paragraph, a person providing a product, service, or accommodation shall submit a statement of the charge for the medical expense within one hundred eighty (180) days of the date the product, service, or accommodation is rendered.

2. Subparagraph 1. of this paragraph shall not apply to:

a. A hospital;

b. Any other provider of emergency care or inpatient services rendered to a basic or added reparation insured in a hospital; or

c. Charges submitted pursuant to KRS 304.39-241.

(i) A person providing a product, service, or accommodation shall not:

1. Knowingly collect, attempt to collect, coerce, or attempt to coerce,

directly or indirectly, the payment of any charge for a medical expense covered by a reparation obligor that exceeds the maximum fee permitted under subsection (5)(a)2. of Section 1 of this Act; or

2. Cause the credit of any basic or added reparation insured to be impaired by reason of the insured's failure or refusal to pay the balance of any charge for a medical expense covered by a reparation obligor that exceeds the maximum fee permitted under subsection (5)(a)2. of Section 1 of this Act.

(2) Overdue payments bear interest at the rate of twelve percent (12%) per annum, except that if delay was without reasonable foundation**,** the rate of interest shall be eighteen percent (18%) per annum.

(3) ***(a)*** A claim for basic or added reparation benefits shall be paid without deduction for the benefits which are to be subtracted pursuant to the provisions on calculation of net loss if these benefits have not been paid to the claimant before the reparation benefits are overdue or the claim is paid.

(b) The reparation obligor is entitled to reimbursement from the person obligated to make the payments or from the claimant who actually receives the payments.

(4) ***(a)*** A reparation obligor may bring an action to recover benefits which are not payable, but are in fact paid, because of an intentional misrepresentation of a material fact, upon which the reparation obligor relies, by the insured or by a person providing an item of medical expense.

(b) The action may be brought only against the person providing the item of medical expense, unless the insured has intentionally misrepresented the facts or knows of the misrepresentation.

(c) An insurer may offset amounts he is entitled to recover from the insured under this subsection against any basic or added reparation benefits otherwise due.

(5) ***(a)*** A reparation obligor who rejects a claim for basic reparation benefits shall give to the claimant prompt written notice of the rejection, specifying the reason.

(b) If a claim is rejected for a reason other than that the person is not entitled to the basic reparation benefits claimed, the written notice shall inform the claimant that he may file his claim with the assigned claims bureau and shall give the name and address of the bureau.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

The Attorney General shall have concurrent jurisdiction with Commonwealth's attorneys and county attorneys in the investigation and prosecution of offenses under Section 5 of this Act.

➔Section 5. KRS 304.47-020 is amended to read as follows:

(1) For the purposes of this subtitle, a person or entity commits a "fraudulent insurance act" if he or she engages in any of the following, including but not limited to matters relating to workers' compensation:

(a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, Special Fund, or any agent thereof:

1. Any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or from a "self-insurer" as defined by KRS Chapter 342, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

2. To the extent not otherwise included under subparagraph 1. of this paragraph, any statement that misrepresents the scope of damages, including repair costs and other expenses, associated with a property,

casualty, or property and casualty insurance claim, including any claim for towing or storage benefits under a property, casualty, or property and casualty insurance policy, except this subparagraph shall not apply to offers or counteroffers by legal counsel representing a plaintiff or defendant in a disputed claim involving bodily injury; or

3. Any statement as part of, or in support of, an application for an insurance policy, for renewal, reinstatement, or replacement of insurance, or in support of an application to a lender for money to pay a premium, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the application;

(b) Knowingly and willfully transacts any contract, agreement, or instrument which violates this title;

(c) Knowingly and with intent to defraud or deceive:

1. Receives money for the purpose of purchasing insurance, and fails to obtain insurance;

2. Fails to make payment or disposition of money or voucher as defined in KRS 304.17A-750, as required by agreement or legal obligation, that comes into his or her possession while acting as a licensee under this chapter;

3. Presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or to the commissioner, any statement, knowing that the statement contains any false, incomplete, or misleading information concerning any material fact or thing, as part of, or in support of one (1) or more of the following:

a. The rating of an insurance policy;

b. The financial condition of an insurer;

c. The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one (1) or more lines of insurance in all or part of this Commonwealth by an insurer; or

d. A document filed with the commissioner; or

4. Engages in any of the following:

a. Solicitation or acceptance of new or renewal insurance risks on behalf of an insolvent insurer; or

b. Removal, concealment, alteration, tampering, or destruction of money, records, or any other property or assets of an insurer;

(d) Issues or knowingly presents fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, insurance binders, or any other documents that purport to evidence insurance;

(e) Makes any false or fraudulent representation as to the death or disability of a policy or certificate holder in any written statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;

(f) Engages in unauthorized insurance, as set forth in KRS 304.11-030; or

(g) Assists, abets, solicits, or conspires with another to commit a fraudulent insurance act in violation of this subtitle.

(2) A person convicted of a violation of subsection (1) of this section shall be guilty of a Class A misdemeanor, unless the aggregate of the claim, benefit, or money referred to in subsection (1) of this section is:

(a) Five hundred dollars ($500) or more but less than ten thousand dollars ($10,000), in which case it is a Class D felony;

(b) Ten thousand dollars ($10,000) or more but less than one million dollars ($1,000,000), in which case it is a Class C felony; or

(c) One million dollars ($1,000,000) or more, in which case it is a Class B felony.

(3) A person, with the purpose to establish or maintain a criminal syndicate or to

facilitate any of its activities, shall be guilty of engaging in organized crime, a Class B felony, if he or she engages in any of the activities set forth in KRS 506.120(1).

(4) A person convicted of a crime established in this section shall be punished by:

(a) Imprisonment for a term:

1. Not to exceed the period set forth in KRS 532.090 if the crime is a Class A misdemeanor; or

2. Within the periods set forth in KRS 532.060 if the crime is a Class D, C, or B felony;

(b) A fine, per occurrence, of:

1. For a misdemeanor, not more than one thousand dollars ($1,000) per individual nor five thousand dollars ($5,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or

2. For a felony, not more than ten thousand dollars ($10,000) per individual nor one hundred thousand dollars ($100,000) per corporation, or twice the amount of gain received as a result of the violation; whichever is greater; or

(c) Both imprisonment and a fine, as set forth in paragraphs (a) and (b) of this subsection.

(5) (a) In addition to imprisonment, the assessment of a fine, or both, a person convicted of a crime established in this section may be ordered to make restitution to any victim who suffered a monetary loss due to any actions by that person which resulted in the adjudication of guilt, and to the division for the cost of any investigation.

(b) The amount of restitution shall equal the monetary value of the actual loss or twice the amount of gain received as a result of the violation, whichever is greater.

(6) Any person damaged as a result of a violation of any provision of this section shall have a cause of action ***in a court of competent jurisdiction*** to recover compensatory damages, plus all reasonable investigation and litigation expenses, including ***attorney's***~~[attorneys']~~ fees~~[, at the trial and appellate courts]~~.

(7) ***(a) The Attorney General shall have concurrent jurisdiction to investigate and prosecute violations of this section in accordance with Section 4 of this Act.***

(b) The Attorney General, a Commonwealth's attorney, or a county attorney shall refer to the commissioner any report, investigation, or discovery of a fraudulent insurance act that is received, initiated, or discovered by the Attorney General, Commonwealth's attorney, or county attorney unless the fraudulent insurance act has been previously reported to the commissioner.

(8) (a) The provisions of this section shall also apply to any agent, unauthorized insurer or its agents or representatives, or surplus lines carrier who, with intent, injures, defrauds, or deceives any claimant with regard to any claim.

(b) The claimant shall have the right to recover the damages provided in subsection (6) of this section.

➔SECTION 6. A NEW SECTION OF SUBTITLE 47 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Notwithstanding KRS 304.47-055, the commissioner shall publish for public distribution on the department's website an annual insurance fraud report that includes but is not limited to the following for the previous calendar year:

(1) The number of insurance fraud reports made to the division;

(2) The number and total dollar amount of cases or claims reported by the division under KRS 304.47-050 for prosecution; and

(3) The number of cases or claims reported by the division under KRS 304.47-050 that were prosecuted and the outcome of the prosecutions.

➔Section 7. Sections 1 to 3 of this Act apply to basic and added reparation

benefits that are issued or renewed on or after the effective date of this Act.