GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2016 REGULAR SESSION

SENATE BILL NO. 58

TUESDAY, FEBRUARY 9, 2016

The following bill was reported to the House from the Senate and ordered to be printed.

RECEIVED AND FILED
DATE April 8, 2016
2:32pm
ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

1 AN ACT relating to automobile service contract insurance.

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
21 manufacturer's warranty or as provided by KRS 190.090 to 190.140. Provided,
22 however, the making of a ***service contract by a service contract provider that***
23 ***has obtained a reimbursement insurance policy shall not be considered a***
24 ***contract of or for insurance. As used in this paragraph:***
25 ***1. "Reimbursement insurance policy" means a policy of insurance***
26 ***which:***
27 ***a. Provides reimbursement to the service contract provider under***

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

1 ***vehicle windshields as a result of damage caused by road***
2 ***hazards including but not limited to potholes, rocks, wood debris,***
3 ***metal parts, glass, plastic, curbs, or composite scraps; or***
4 ***e. The replacement of a motor vehicle key or key-fob if the key or***
5 ***key-fob becomes inoperable or is lost or stolen.***
6 ***The term "service contract" does not include a contract for regular***
7 ***maintenance only or a product warranty provided under the***
8 ***Magnuson-Moss Warranty Act, 15 U.S.C. sec. 2301 et seq; and***
9 ***3. "Service contract provider" means the person who is contractually***
10 ***obligated to the purchaser of a service contract under the terms of the***
11 ***service contract.***
12 ***The requirement that the service contract provider have an insurance policy***
13 ***shall not apply where the service contract provider is a manufacturer or***
14 ***distributor of motor vehicles or a wholly owned subsidiary of a***
15 ***manufacturer or distributor***[~~contract covering only defects in material and~~
16 ~~workmanship in exchange for a separately stated charge where it is merely~~
17 ~~incidental to the business of selling or leasing motor vehicles, shall not be~~
18 ~~deemed insurance, provided, that the maker of the contract has an insurance~~
19 ~~policy with an authorized motor vehicle insurer as defined in KRS 304.1-100~~
20 ~~to assure the performance of the duties of the maker created by each on all of~~
21 ~~the contracts made by the maker. In the event that the maker of the contract is~~
22 ~~unable to perform the duties imposed thereby, the purchaser of the contract~~
23 ~~shall then be considered a policyholder of the insurer. The policy shall include~~
24 ~~a loss payee endorsement that provides coverage to any lending institution as~~
25 ~~its interest may appear. In addition, the contract shall conspicuously state the~~
26 ~~name and address of the licensed underwriting insurer and contain a statement~~
27 ~~that the holder shall be entitled to make a direct claim against that insurer~~

1 ~~upon the failure of the maker to pay any claim within sixty (60) days after~~
2 ~~proof of loss has been filed with the maker. The requirements that the maker~~
3 ~~of the contract have an insurance policy with an authorized motor vehicle~~
4 ~~insurer as defined in KRS 304.1-100 shall not apply where the maker is a~~
5 ~~manufacturer, distributor, or importer of motor vehicles. As used in this~~
6 ~~paragraph, the term "maker" shall include a warranty service company which~~
7 ~~issues automobile guaranties through a motor vehicle dealer, in which the~~
8 ~~motor vehicle dealer is not an obligor under the contract. The commissioner is~~
9 ~~authorized to promulgate regulations to interpret this paragraph~~]; and
10 (q) Miscellaneous. Insurance against any other kind of loss, damage, or liability
11 properly a subject of insurance and not within any other kind of insurance as
12 defined in this subtitle, if the insurance is not disapproved by the
13 commissioner as being contrary to law or public policy. A service contract to
14 repair, replace, or maintain consumer products shall not be insurance, if the
15 maker of the service contract registers with the commissioner and provides:
16 1. Evidence of a sufficient net worth, as determined by the commissioner,
17 to assure the performance of the duties of the maker created by all of the
18 contracts made by the maker; or
19 2. Evidence of an insurance policy or performance bond with an authorized
20 insurer as defined in KRS 304.1-100, to assure the performance of the
21 duties of the maker created by all of the service contracts made by the
22 maker.
23 As set forth in subparagraph 2. of this paragraph, if the maker of the service
24 contract is unable to perform the duties imposed thereby, the purchaser of the
25 service contract shall then be considered a policyholder of the insurer. The
26 service contract shall conspicuously state the name and address of the licensed
27 underwriting insurer and contain a statement that the holder shall be entitled

1 to make a direct claim against the insurer upon the failure of the maker to pay
2 any claim within sixty (60) days after the claim has been filed with the maker.
3 The requirements of this paragraph shall not apply where the maker is a
4 manufacturer of consumer products. If the maker of the service contract
5 registers with the commissioner and subsequently determines that the
6 information submitted pursuant to subparagraph 1. of this paragraph no longer
7 reflects a sufficient net worth as determined by the commissioner, to assure
8 the performance of the duties of the maker created by all of the contracts made
9 by the maker, the maker shall notify the commissioner of the change in
10 circumstances. Each registration filing with the commissioner shall be filed
11 within thirty (30) calendar days in advance of the selling of service contracts
12 to repair, replace, or maintain consumer goods. The commissioner is
13 authorized to promulgate administrative regulations pursuant to KRS Chapter
14 13A to effectuate this paragraph.
15 (2) Provision of medical, hospital, surgical, and funeral benefits and of coverage
16 against accidental death or injury, as incidental to and part of other insurance as
17 stated under paragraphs (a) (vehicle), (b) (liability), (d) (burglary), (g) (boiler
18 machinery), (j) (malpractice), and (k) (elevator) of subsection (1) of this section
19 shall for all purposes be deemed to be the same kind of insurance to which it is so
20 incidental, and shall not be subject to provisions of this code applicable to life and
21 health insurances.
22 ➔Section 2. KRS 190.090 is amended to read as follows:
23 As used in KRS 190.090 to 190.140, unless the context or subject matter otherwise
24 requires:
25 (1) "Person" means an individual, partnership, corporation, association, and any other
26 group however organized;
27 (2) "Retail installment sale" means any sale for other than agricultural, business, or

1 commercial use evidenced by a retail installment contract wherein retail buyer
2 agrees to buy and retail seller agrees to sell a motor vehicle at a time sale price
3 payable in two (2) or more installments. The cash sale price of the motor vehicle,
4 the amount, if any, included for insurance and other benefits, official fees and the
5 finance charge, shall together constitute the time sale price;
6 (3) "Retail installment contract" means any agreement, entered into in this state,
7 evidencing a retail installment sale of a motor vehicle, other than for the purpose of
8 resale, pursuant to which title to, or a lien upon the motor vehicle is retained by the
9 retail seller as security for the retail buyer's obligation. This term includes a
10 mortgage, conditional sale contract or any contract for the bailment or leasing of a
11 motor vehicle by which the bailee or lessee contracts to pay as compensation for its
12 use a sum substantially equivalent to the time sale price of the motor vehicle and by
13 which it is agreed that the bailee or lessee is bound to become, or has the option of
14 becoming for no additional consideration or for nominal additional consideration,
15 the owner of such motor vehicle;
16 (4) "Motor vehicle" means any device in, upon, or by which any person or property is,
17 or may be transported or drawn upon a highway. The term does not include self-
18 propelled wheelchairs and invalid tricycles, tractors, power shovels, road
19 machinery, implements of husbandry and other agricultural machinery, or other
20 machinery not designed primarily for highway transportation but which may
21 incidentally transport persons or property on a highway, or devices which move
22 upon or are guided by a track or travel through the air. A moped as defined in KRS
23 190.010 and a recreational vehicle shall be subject to the same requirements as a
24 motor vehicle under this section;
25 (5) "Retail seller" or "seller" means a person who sells or agrees to sell a motor vehicle
26 under a retail installment contract to a retail buyer;
27 (6) "Retail buyer" or "buyer" means a person who buys or agrees to buy a motor vehicle

1 from a retail seller not for the purpose of resale and who executes a retail
2 installment contract in connection therewith;
3 (7) "Sales finance company" means a person engaged in the business of creating and
4 holding or purchasing or acquiring retail installment contracts from a retail seller.
5 The term includes a bank, trust company, private banker, industrial bank,
6 investment company or national bank, if so engaged;
7 (8) "Cash sale price" means, for purposes of KRS 190.090 to 190.140 only, and not for
8 purposes of KRS 138.455 to 138.470, the price at which the seller would in good
9 faith sell to the buyer, and the buyer would in good faith buy from the seller, the
10 motor vehicle which is the subject matter of the retail installment contract, if such
11 sale were a sale for cash, instead of a retail installment sale. The cash sale price may
12 include:
13 (a) Any taxes, registration fees, certificate of title fees, and, if any, license fees;
14 (b) Charges for delivery, servicing, repairing, or improving the motor vehicle,
15 including accessories and their installation;
16 (c) Charges for a service contract, mechanical breakdown insurance, a
17 maintenance agreement, a vehicle protection product, and any other goods or
18 services related to the sale that the buyer agrees to purchase from the seller;
19 and
20 (d) Any processing fee;
21 (9) "Official fees" means the fees prescribed by law for filing, recording, or otherwise
22 perfecting and releasing or satisfying a retained title or a lien created by a retail
23 installment contract;
24 (10) "Finance charge" means that part of the time sale price by which it exceeds the
25 aggregate of the cash sale price, the amount, if any, included for insurance and other
26 benefits and official fees included in the retail installment sale;
27 (11) "Maintenance agreement" means a contract of limited duration that provides for

1 scheduled maintenance and parts related to such maintenance. A maintenance
2 agreement shall not be considered a contract of, or for, insurance;
3 (12) "Service contract" ***has the same meaning as in subsection (1)(p) of Section 1 of***
4 ***this Act***[~~means a contract or agreement given for consideration in addition to the~~
5 ~~purchase price of a new or used motor vehicle to provide for repair or replacement~~
6 ~~service or indemnification for that service for the operation or structural failure of a~~
7 ~~motor vehicle due to a defect in materials or skill of work or normal wear and tear,~~
8 ~~but does not include mechanical breakdown insurance or maintenance agreements.~~
9 ~~A service contract shall not be considered a contract of, or for, insurance~~];
10 (13) "Truth in Lending Act" means Title I of Pub. L. No. 90-321, codified at 15 U.S.C.
11 secs. 1601 to 1667f, as may be amended from time to time;
12 (14) "United States Rule" means that in partial payments on a debt, each payment is
13 applied first to the finance charge and any remainder reduces the principal. Under
14 this rule, accrued but unpaid finance charges cannot be added to the principal and
15 interest cannot be compounded;
16 (15) "Vehicle protection product" means a vehicle protection device, system, or service
17 that is installed on or applied to a vehicle that is designed to deter the theft of the
18 vehicle, and includes a written warranty that provides that if the product fails to
19 deter the theft of the vehicle, the warranty holder shall be paid specified incidental
20 costs by the warrantor as a result of the failure of the device, system, or service to
21 perform pursuant to the terms of the warranty. Vehicle protection products include
22 but are not limited to window etch products and body part marking products. A
23 vehicle protection product shall not be considered a contract of, or for, insurance;
24 and
25 (16) Words in the singular include the plural and vice versa.

Speaker-House of Representatives

President of Senate

Attest: Chief Clerk of House of Representatives

Approved Governor

Date 8 APRIL 2016