

1 AN ACT relating to property and casualty insurance and declaring an emergency.

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

3 ➔SECTION 1. A NEW SECTION OF SUBTITLE 20 OF KRS CHAPTER 304
4 IS CREATED TO READ AS FOLLOWS:

5 (1) As used in this section:

6 (a) "Insured" means a person that is entitled, or may be entitled, to receive
7 first-party benefits or payments under an insurance policy;

8 (b) "Person" includes:

9 1. A natural person;

10 2. Any type or form of corporation, company, partnership,
11 proprietorship, association, or other legal entity; and

12 3. A government, governmental subdivision or agency, or other body
13 politic; and

14 (c) "Rights or benefits under the policy" includes the insured's right to receive
15 any and all post-loss benefits or payments available or payable under the
16 policy, including but not limited to claim payments.

17 (2) An insured under a property, casualty, or property and casualty insurance policy
18 shall not, either prior to or after a claimed or covered loss, assign or otherwise
19 transfer, in whole or in part, to any other person the insured's:

20 (a) Duties under the policy; or

21 (b) Rights or benefits under the policy.

22 (3) Any contract entered in violation of this section shall be void and unenforceable.

23 (4) Nothing in this section shall be construed to prohibit an insured from:

24 (a) Directing the payment of benefits under KRS 304.39-241;

25 (b) Authorizing or directing payment to, or paying, a person for services,
26 materials, or any other thing which may be, or is, covered under an
27 insurance policy; or

1 (c) Assigning rights to seek damages related to a personal injury or tort case,
2 arising from a verdict or judgment against the insured that is in excess of
3 the insured's liability insurance coverage.

4 ➔Section 2. KRS 304.20-060 is amended to read as follows:

5 (1) As used in this section: [,-]

6 (a) "Advanced driver assistance system" means any motor vehicle electronic
7 safety system, as outlined in the most recent version of SAE International's
8 SAE J3016 Levels of Driving Automation, that is designed to support the
9 driver and motor vehicle in a manner intended to:

- 10 1. Increase motor vehicle safety; and
- 11 2. Reduce losses associated with motor vehicle crashes;

12 (b) "Motor vehicle glass" means the following on any motor vehicle:

- 13 1. The glass and non-glass parts associated with the replacement of the
14 glass used in the windshield, doors, or windows; and
- 15 2. The glass, plastic, or other material used in the lights required by KRS
16 Chapter 189;

17 (c) "Motor vehicle glass repair shop" means any person, including the person's
18 employees and agents, that for consideration engages in the repair or
19 replacement of damaged motor vehicle glass;

20 (d) "Person" includes:

- 21 1. A natural person;
- 22 2. Any type or form of corporation, company, partnership,
23 proprietorship, association, or other legal entity; and
- 24 3. A government, governmental subdivision or agency, or other body
25 politic; and

26 (e) "Repair or replacement of damaged motor vehicle glass" includes:

- 27 1. Inspecting, repairing, restoring, or replacing damaged motor vehicle

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glass; and

2. Calibrating or recalibrating an advanced driver assistance system when an incident requires the replacement of damaged motor vehicle glass["Safety equipment" shall mean only the glass used in the windshield, doors, and windows, and the glass, plastic, or other material used in the lights required by KRS Chapter 189 on any automobile].

(2) Any motor vehicle[automobile] insurance policy issued by an admitted or nonadmitted carrier that provides comprehensive coverage or other than collision coverage, whether designated as such[,] or included within a broader coverage, shall, when the claim is for motor vehicle glass only, provide complete coverage for repair or replacement of damaged motor vehicle glass[safety equipment,] without regard to any deductible or minimum amount.

(3) (a) An insured that makes a first-party claim for a repair or replacement of damaged motor vehicle glass under a motor vehicle insurance policy shall not be required to use a particular motor vehicle glass repair shop to receive claim payments or other benefits under the policy[This section shall apply to all policies issued after January 1, 1979].

(b) This subsection shall not be construed to:

1. Prohibit an insurer, insurance agent, insurance adjuster, or any person acting on behalf of an insurer, insurance agent, or insurance adjuster from providing an explanation to an insured of the coverage available, and any applicable liability limit, under any insurance policy;

2. Prohibit an insurer from maintaining a network of motor vehicle glass repair shops; or

3. Create a private right of action.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) As used in this section:

3 (a) The following have the same meaning as in Section 2 of this Act:

- 4 1. "Advanced driver assistance system";
- 5 2. "Motor vehicle glass";
- 6 3. "Motor vehicle glass repair shop";
- 7 4. "Person"; and
- 8 5. "Repair or replacement of damaged motor vehicle glass"; and

9 (b) "Insured" means a person that:

- 10 1. Has made a first-party claim for a repair or replacement of damaged
- 11 motor vehicle glass under a motor vehicle insurance policy; and
- 12 2. Is entitled to insurance benefits or payments as a result of the claim
- 13 referenced under subparagraph 1. of this paragraph.

14 (2) A motor vehicle glass repair shop, or any other person who is compensated for
15 the solicitation of insurance claims, shall not offer a rebate, gift, gift card, cash,
16 coupon, fee, prize, bonus, payment, incentive, inducement, or any other thing of
17 value to any insured, insurance producer as defined in KRS 304.9-020, or other
18 person in exchange for directing or making a claim under a motor vehicle
19 insurance policy for a repair or replacement of damaged motor vehicle glass.

20 (3) A motor vehicle glass repair shop shall not contract with a person for a repair or
21 replacement of damaged motor vehicle glass until:

22 (a) All of the following are satisfied:

- 23 1. The person has made a first-party claim for the repair or replacement
- 24 of damaged motor vehicle glass under a motor vehicle insurance
- 25 policy;
- 26 2. The motor vehicle glass repair shop has received a claim or referral
- 27 number for the claim referenced under subparagraph 1. of this

- 1 paragraph; and
- 2 3. The requirements of subsection (4) of this section are satisfied; or
- 3 (b) The person either:
- 4 1. States, in writing, that the person does not have first-party motor
- 5 vehicle insurance coverage for the repair or replacement of damaged
- 6 motor vehicle glass; or
- 7 2. Declines, in writing, to make a first-party claim for the repair or
- 8 replacement of damaged motor vehicle glass under a motor vehicle
- 9 insurance policy.
- 10 (4) Prior to contracting with an insured for a repair or replacement of damaged
- 11 motor vehicle glass, a motor vehicle glass repair shop shall:
- 12 (a) Notify the insured:
- 13 1. Whether the motor vehicle has an advanced driver assistance system;
- 14 2. If the motor vehicle has an advanced driver assistance system:
- 15 a. Whether calibration or recalibration of the motor vehicle's
- 16 advanced driver assistance system is required to:
- 17 i. Make the advanced driver assistance system operable; and
- 18 ii. Ensure that the repair or replacement of damaged motor
- 19 vehicle glass is performed in a manner that meets the
- 20 motor vehicle manufacturer's specifications;
- 21 b. Whether the motor vehicle glass repair shop can calibrate or
- 22 recalibrate the advanced driver assistance system in a manner
- 23 that meets the motor vehicle manufacturer's specifications; and
- 24 c. If the motor vehicle glass repair shop is not capable of
- 25 performing a calibration or recalibration referenced in
- 26 subdivision b. of this subparagraph, that the motor vehicle
- 27 should be taken to the vehicle manufacturer's certified

1 dealership or a qualified specialist capable of performing the
2 calibration or recalibration; and

3 3. If calibration or recalibration of the motor vehicle's advanced driver
4 assistance system is performed, that the motor vehicle glass repair
5 shop will provide written notice to the insured:

6 a. As to whether the calibration or recalibration was successful;
7 and

8 b. If the calibration or recalibration was not successful, that the
9 motor vehicle should be taken to the vehicle manufacturer's
10 certified dealership or a qualified specialist capable of
11 performing the calibration or recalibration; and

12 (b) Provide the insured an invoice, which shall, at a minimum, include:

13 1. An estimate of the fees and costs that are anticipated to be charged to
14 the insured by the motor vehicle glass repair shop for the repair or
15 replacement of damaged motor vehicle glass;

16 2. The shop's standard fees and costs for a repair or replacement of
17 damaged motor vehicle glass; and

18 3. Notice that the motor vehicle glass repair shop is prohibited under
19 subsection (5)(a) of this section from charging higher fees and costs to
20 an insured for a repair or replacement of damaged motor vehicle glass
21 than are reasonable and customarily charged in Kentucky.

22 (5) A motor vehicle glass repair shop:

23 (a) Shall not charge higher fees and costs to an insured for a repair or
24 replacement of damaged motor vehicle glass than are reasonable and
25 customarily charged in Kentucky;

26 (b) Upon completion of a repair or replacement of damaged motor vehicle
27 glass, shall provide an insured:

- 1 1. A receipt; and
- 2 2. For any calibration or recalibration of an advanced driver assistance
- 3 system, a notice that states whether the advanced driver assistance
- 4 system is in working order; and
- 5 (c) Shall not knowingly:
- 6 1. Submit false, misleading, or incomplete documentation or information
- 7 to an insured or an insured's insurer, including any agent of the
- 8 insured or insurer, for a repair or replacement of damaged motor
- 9 vehicle glass;
- 10 2. With respect to an insured's claim, or potential claim, for a repair or
- 11 replacement of damaged motor vehicle glass, do the following, which
- 12 results, or would result, in a higher insurance payment or a change of
- 13 insurance coverage status:
- 14 a. Indicate that work was performed in a geographical area that
- 15 was not the geographical area where the work occurred; or
- 16 b. Advise an insured to falsify the date of damage;
- 17 3. Falsely sign a work order or other insurance-related form relating to
- 18 an insured's claim, or potential claim, for a repair or replacement of
- 19 damaged motor vehicle glass;
- 20 4. Misrepresent to an insured or the insured's insurer, including any
- 21 agent of the insured or insurer, the price of a proposed repair or
- 22 replacement of damaged motor vehicle glass;
- 23 5. State that an insured's insurer has approved a repair or replacement
- 24 of damaged motor vehicle glass without:
- 25 a. Verifying coverage directly with, or obtaining approval directly
- 26 from, the insurer or the insurer's agent; and
- 27 b. Obtaining confirmation of the coverage or approval by facsimile,

- 1 email, or other written or recorded communication;
- 2 6. State that a repair or replacement of damaged motor vehicle glass will
- 3 be paid for entirely by an insurer and at no cost to the insured unless
- 4 the coverage has been verified by the insurer or the insurer's agent; or
- 5 7. With respect to an insured's claim, or potential claim, for a repair or
- 6 replacement of damaged motor vehicle glass:
- 7 a. Damage, or encourage an insured to damage, the motor vehicle
- 8 in order to increase the scope of the repair or replacement of
- 9 damaged motor vehicle glass;
- 10 b. Perform work that is clearly and substantially beyond the level of
- 11 work necessary to restore the motor vehicle to a safe pre-
- 12 damaged condition in accordance with accepted or approved
- 13 reasonable and customary techniques for the repair or
- 14 replacement of damaged motor vehicle glass; or
- 15 c. Misrepresent the motor vehicle glass repair shop's relationship
- 16 to an insurer or the insurer's agent.
- 17 (6) It may be presumed that a motor vehicle glass repair shop is acting knowingly in
- 18 violation of subsection (5)(c) of this section if the motor vehicle glass repair shop
- 19 engages in a regular and consistent pattern of the prohibited activity.
- 20 (7) Any notice or invoice required under this section shall be in at least twelve (12)
- 21 point font.
- 22 (8) (a) An insurer or insured may institute an action in any court of competent
- 23 jurisdiction against any motor vehicle glass repair shop or other person
- 24 alleged to have violated this section.
- 25 (b) In any action brought under this subsection, if the court finds that the
- 26 motor vehicle glass repair shop or other person has violated this section, the
- 27 plaintiff may:

1 1. Obtain an injunction to enjoin a continuance of any act in violation of
 2 this section;

3 2. Recover damages at two (2) times the amount of any actual economic
 4 damages sustained; and

5 3. Be awarded reasonable attorney's fees and costs.

6 (c) It shall not be necessary that actual damages be alleged or proved in order
 7 to recover injunctive relief or attorney's fees and costs.

8 (9) All of the remedies, powers, and duties delegated to the Attorney General by KRS
 9 367.110 to 367.300, and the penalties provided in KRS 367.990, pertaining to acts
 10 and practices declared unlawful by KRS 367.170, shall apply with equal force
 11 and effect to acts and practices declared unlawful in this section.

12 (10) (a) The remedies and penalties prescribed in this section shall be cumulative.

13 (b) Nothing in this section shall be construed to limit or restrict the powers,
 14 duties, remedies, or penalties available to the Attorney General, the
 15 Commonwealth, or any other person under any other statutory or common
 16 law.

17 (11) The Attorney General may promulgate any administrative regulations necessary
 18 to effectuate, or as an aid to the effectuation of, the proper enforcement of this
 19 section.

20 ➔Section 4. KRS 304.39-320 is amended to read as follows:

21 (1) As used in this section, "underinsured motorist" means a party with motor vehicle
 22 liability insurance coverage in an amount less than a judgment recovered against
 23 that party for damages on account of injury due to a motor vehicle accident.

24 (2) Every insurer shall make available, upon request, to its insureds underinsured
 25 motorist coverage, whereby, subject to the terms and conditions of ~~the~~^[such]
 26 coverage not inconsistent with this section, the insurance company agrees to pay its
 27 own insured for such uncompensated damages as he or she may recover on account

1 of injury due to a motor vehicle accident because the judgment recovered against
2 the owner of the other vehicle exceeds the liability policy limits thereon, to the
3 extent of the underinsurance policy limits on the vehicle of the party recovering.

4 (3) (a) If an injured person or, in the case of death, the personal representative, agrees
5 to settle a claim with a liability insurer and its insured, and the settlement
6 would not fully satisfy the claim for personal injuries or wrongful death so as
7 to create an underinsured motorist claim, then written notice of the proposed
8 settlement ~~shall~~~~must~~ be submitted by certified or registered mail to all
9 underinsured motorist insurers that provide coverage.

10 (b) The underinsured motorist insurer then has a period of thirty (30) days to
11 consent to the settlement or retention of subrogation rights.

12 (c) An injured person, or in the case of death, the personal representative, may
13 agree to settle a claim with a liability insurer and its insured for less than the
14 underinsured motorist's full liability policy limits.

15 (d) If an underinsured motorist insurer consents to settlement or fails to respond
16 as required by subsection (4) of this section to the settlement request within
17 the thirty (30) day period, the injured party may proceed to:

18 1. Execute a full release in favor of the underinsured motorist's liability
19 insurer and its insured; and

20 2. Finalize the proposed settlement without prejudice to any underinsured
21 motorist claim.

22 (4) If an underinsured motorist insurer chooses to preserve its subrogation rights by
23 refusing to consent to settle, the underinsured motorist insurer ~~shall~~~~must~~, within
24 thirty (30) days after receipt of the notice of the proposed settlement, pay to the
25 injured party the amount of the written offer from the underinsured motorist's
26 liability insurer. Thereafter, upon final resolution of the underinsured motorist
27 claim, the underinsured motorist insurer is entitled to seek subrogation against:

1 (a) The liability insurer to the extent of its limits of liability insurance; ~~and~~

2 (b) The underinsured motorist for the amounts paid to the injured party.

3 (5) (a) ***Except as provided in paragraph (b) of this subsection,*** the underinsured
 4 motorist insurer is entitled to a credit against total damages in the amount of
 5 the limits of the underinsured motorist's liability policies in all cases to which
 6 this section applies, even if the settlement with the underinsured motorist
 7 under subsection (3) of this section or the payment by the underinsured
 8 motorist insurer under subsection (4) of this section is for less than the
 9 underinsured motorist's full liability policy limits. ~~[The term "total damages"~~
 10 ~~as used in this section means the full amount of damages determined to have~~
 11 ~~been sustained by the injured party, regardless of the amount of underinsured~~
 12 ~~motorist coverage. Nothing in this section, including any payment or credit~~
 13 ~~under this subsection, reduces or affects the total amount of underinsured~~
 14 ~~motorist coverage available to the injured party.]~~

15 (b) ***If the full liability limits of the underinsured motorist's liability coverage are***
 16 ***paid to multiple injured persons, including, in the case of death, the***
 17 ***personal representative, pursuant to a reasonable settlement with the***
 18 ***injured persons that is based on a pro rata distribution of the underinsured***
 19 ***motorist's liability coverage in proportion to the injured persons' total***
 20 ***damages, the credit to which the underinsured motorist insurer is entitled***
 21 ***under paragraph (a) of this subsection shall be limited to the amount paid to***
 22 ***the injured party.***

23 ➔Section 5. KRS 304.14-250 is amended to read as follows:

24 Except as provided in KRS 304.17A-265 ***and Section 1 of this Act:***

25 (1) A policy may be assignable or not assignable, as provided by its terms;

26 (2) Subject to its terms relating to assignability, a life or health insurance policy,
 27 regardless of when it was issued, under the terms of which the beneficiary may be

1 changed upon the sole request of the insured or owner, may be assigned either by
2 pledge or transfer of title, by an assignment executed by the insured or owner alone
3 and delivered to the insurer, whether or not the pledgee or assignee is the insurer;

4 (3) Any assignment of a policy which is otherwise lawful and of which the insurer has
5 received notice shall entitle the insurer to deal with the assignee as the owner or
6 pledgee of the policy in accordance with the terms of the assignment, until the
7 insurer has received at its principal office written notice of the termination of the
8 assignment or pledge or written notice by or on behalf of some interest in the policy
9 in conflict with the assignment; and

10 (4) (a) Any individual insured under a group insurance policy or group annuity
11 contract shall have the right, unless expressly prohibited under the terms of
12 the policy or contract, to assign to any other person his rights and benefits
13 under the policy or contract, including but not limited to the right to designate
14 the beneficiary or beneficiaries and the rights as to conversion provided for in
15 KRS 304.16-180 to 304.16-200, inclusive.

16 (b) While the assignment is in effect, and regardless of when it was made, the
17 insurer shall be entitled to deal with the assignee as the owner of the rights
18 and benefits in accordance with the terms of the assignment and without
19 prejudice to the insurer on account of any lawful action taken or payment
20 made by the insurer prior to receipt by the insurer at its principal office of
21 written notice of the assignment or of the termination thereof.

22 (c) This subsection acknowledges, confirms, and codifies the existing right of
23 assignment of interests under group life insurance policies.

24 ➔Section 6. This Act applies to insurance policies issued or renewed on or after
25 the effective date of this Act.

26 ➔Section 7. Whereas there is a significant and legitimate need to eliminate trade
27 practices that result in unnecessary delays in payment to insureds and unreasonable

- 1 financial loss for both insureds and insurers, an emergency is declared to exist, and this
- 2 Act takes effect upon its passage and approval by the Governor or upon its otherwise
- 3 becoming a law.