

1 AN ACT relating to basic and added reparation benefits.

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

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

4 As used in this subtitle:

5 (1) "Added reparation benefits" mean benefits provided by optional added reparation  
6 insurance;~~[-]~~

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

16 (3) "Basic reparation insured" means:

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

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

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

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

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

27 (5) "Loss" means accrued economic loss consisting only of medical expense, work loss,

1 replacement services loss, and, if injury causes death, survivor's economic loss and  
 2 survivor's replacement services loss. Noneconomic detriment is not loss. However,  
 3 economic loss is loss although caused by pain and suffering or physical impairment.

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

19 2. a. Except as provided in subdivision b.i. of this subparagraph, a  
 20 medical expense paid pursuant to this subtitle shall not exceed the  
 21 maximum fee allowed or listed for that expense on the relevant  
 22 schedule of fees established pursuant to KRS 342.035 that is in  
 23 effect at the time the medical expense is incurred. Other  
 24 requirements, terms, or conditions imposed under or associated  
 25 with the relevant schedule of fees established pursuant to KRS  
 26 342.035 shall not apply to this subtitle.

27 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<sup>[bill]</sup> 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

1 expenses of the survivors avoided by reason of decedent's death.

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

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

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

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

14 (7) "Motor vehicle" means any vehicle which transports persons or property upon the  
 15 public highways of the Commonwealth, propelled by other than muscular power  
 16 except road rollers, road graders, farm tractors, vehicles on which power shovels are  
 17 mounted, such other construction equipment customarily used only on the site of  
 18 construction and which is not practical for the transportation of persons or property  
 19 upon the highways, such vehicles as travel exclusively upon rails, and such vehicles  
 20 as are propelled by electrical power obtained from overhead wires while being  
 21 operated within any municipality or where said vehicles do not travel more than five  
 22 (5) miles beyond the said limits of any municipality. "Motor vehicle" shall not mean  
 23 moped as defined in this section or an electric low-speed scooter as defined in KRS  
 24 189.010;[.]

25 (8) "Moped" means either a motorized bicycle whose frame design may include one (1)  
 26 or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a  
 27 motorized bicycle with a step-through type frame which may or may not have pedals

- 1 rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty  
 2 (50) cubic centimeters, an automatic transmission not requiring clutching or shifting  
 3 by the operator after the drive system is engaged, and capable of a maximum speed  
 4 of not more than thirty (30) miles per hour;[.]
- 5 (9) "Public roadway" means a way open to the use of the public for purposes of motor  
 6 vehicle travel;[.]
- 7 (10) "Net loss" means loss less benefits or advantages, from sources other than basic and  
 8 added reparation insurance, required to be subtracted from loss in calculating net  
 9 loss;[.]
- 10 (11) "Noneconomic detriment" means pain, suffering, inconvenience, physical  
 11 impairment, and other nonpecuniary damages recoverable under the tort law of this  
 12 Commonwealth. The term does not include punitive or exemplary damages;[.]
- 13 (12) "Owner" means a person, other than a lienholder or secured party, who owns or has  
 14 title to a motor vehicle or is entitled to the use and possession of a motor vehicle  
 15 subject to a security interest held by another person. The term does not include a  
 16 lessee under a lease not intended as security;[.]
- 17 (13) "Reparation obligor" means an insurer, self-insurer, or obligated government  
 18 providing basic or added reparation benefits under this subtitle;[.]
- 19 (14) "Survivor" means a person identified in KRS 411.130 as one entitled to receive  
 20 benefits by reason of the death of another person;[.]
- 21 (15) A "user" means a person who resides in a household in which any person owns or  
 22 maintains a motor vehicle;[.]
- 23 (16) "Maintaining a motor vehicle" means having legal custody, possession or  
 24 responsibility for a motor vehicle by one other than an owner or operator; and[.]
- 25 (17) "Security" means any continuing undertaking complying with this subtitle, for  
 26 payment of tort liabilities, basic reparation benefits, and all other obligations imposed  
 27 by this subtitle.

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

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

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

- 10        (1) (a) Basic and added reparation benefits are payable monthly as loss accrues.
- 11        (b) Loss accrues not when injury occurs, but as work loss, replacement services  
 12        loss, or medical expense is incurred.
- 13        (c) Benefits are overdue if not paid within thirty (30) days after the reparation  
 14        obligor receives reasonable proof of the fact and amount of loss realized, unless  
 15        the reparation obligor elects to accumulate claims for periods not exceeding  
 16        thirty-one (31) days after the reparation obligor receives reasonable proof of the  
 17        fact and amount of loss realized, and pays them within fifteen (15) days after  
 18        the period of accumulation.
- 19        (d) Notwithstanding any provision of this chapter to the contrary, benefits are not  
 20        overdue if a reparation obligor has not made payment to a provider of services  
 21        due to the request of a secured person when the secured person is directing the  
 22        payment of benefits among the different elements of loss.
- 23        (e) If reasonable proof is supplied as to only part of a claim, and the part totals one  
 24        hundred dollars (\$100) or more, the part is overdue if not paid within the time  
 25        provided by this section.
- 26        (f) Medical expense benefits may be paid by the reparation obligor directly to  
 27        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.

- 1 (3) (a) A claim for basic or added reparation benefits shall be paid without deduction  
 2 for the benefits which are to be subtracted pursuant to the provisions on  
 3 calculation of net loss if these benefits have not been paid to the claimant before  
 4 the reparation benefits are overdue or the claim is paid.
- 5 (b) The reparation obligor is entitled to reimbursement from the person obligated  
 6 to make the payments or from the claimant who actually receives the payments.
- 7 (4) (a) A reparation obligor may bring an action to recover benefits which are not  
 8 payable, but are in fact paid, because of an intentional misrepresentation of a  
 9 material fact, upon which the reparation obligor relies, by the insured or by a  
 10 person providing an item of medical expense.
- 11 (b) The action may be brought only against the person providing the item of  
 12 medical expense, unless the insured has intentionally misrepresented the facts  
 13 or knows of the misrepresentation.
- 14 (c) An insurer may offset amounts he is entitled to recover from the insured under  
 15 this subsection against any basic or added reparation benefits otherwise due.
- 16 (5) (a) A reparation obligor who rejects a claim for basic reparation benefits shall give  
 17 to the claimant prompt written notice of the rejection, specifying the reason.
- 18 (b) If a claim is rejected for a reason other than that the person is not entitled to the  
 19 basic reparation benefits claimed, the written notice shall inform the claimant  
 20 that he may file his claim with the assigned claims bureau and shall give the  
 21 name and address of the bureau.
- 22 ➔Section 4. This Act applies to basic and added reparation benefits that are issued  
 23 or renewed on or after the effective date of this Act.