



COMMONWEALTH OF KENTUCKY  
OFFICE OF INSURANCE  
FRANKFORT, KENTUCKY

**ADVISORY OPINION 2013-03**

***The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance (the "Department") on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.***

TO: ALL INSURERS, ADMINISTRATIVE OBLIGORS, MOTOR VEHICLE  
DEALERS AND INTERESTED PARTIES OF MOTOR VEHICLE SERVICE  
CONTRACTS

FROM: SHARON P. CLARK, COMMISSIONER

RE: MOTOR VEHICLE SERVICE CONTRACTS

DATE: MARCH 15, 2013

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The Department continues to receive numerous inquiries regarding the repeal of 806 KAR 5:050 and the inconsistencies of KRS 304.5-070(1)(p) brought about through amendments to KRS 190.090 [House Bill 417 (2012) effective July 12, 2012]. This advisory opinion is being issued to clarify the Department's position regarding the requirements of vehicle service contract providers and providers of other products related to vehicle service contracts.

KRS 190.090(12) was amended to define 'service contract' to mean:

a contract or agreement given for consideration in addition to the purchase price of a new or used motor vehicle to provide for repair or replacement service or indemnification for that service for the operation or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, but does not include mechanical breakdown insurance or maintenance agreements'.  
A service contract shall not be considered a contract of, or for, insurance.

KRS 190.090(11) was amended to define ‘*maintenance agreement*’ to mean:  
a contract of limited duration that provides for scheduled maintenance and parts related to such maintenance’. A maintenance agreement shall not be considered a contract of, or for, insurance.

KRS 190.090(15) was amended to define ‘*vehicle protection product*’ to mean:  
a vehicle protection device, system, or service that is installed on or applied to a vehicle that is designed to deter the theft of the vehicle, and includes a written warranty that provides that if the product fails to deter the theft of the vehicle, the warranty holder shall be paid specified incidental costs by the warrantor as a result of the failure of the device, system, or service to perform pursuant to the terms of the warranty’. Vehicle protection products include but are not limited to window etch products and body part marking products. A vehicle protection product shall not be considered a contract of, or for, insurance.

KRS 304.5-070(1)(p) was amended to define ‘*automobile guaranty*’ as:  
insurance of the mechanical condition or freedom from defective or worn parts of motor vehicles, other than as provided by manufacturer's warranty *or as provided by KRS 190.090 to 190.140*.

In light of these changes, the Department concluded that the exemption from being considered insurance set forth in KRS 304.5-070(1)(p) was no longer conditioned upon the contract covering defects in material and workmanship nor on the requirement that the maker hold an insurance policy to assure the performance of their duties. Therefore, 806 KAR 5:050 was repealed so registration with the Department of Insurance is no longer required.

Nothing in this advisory opinion should be construed to affect the requirements set forth in KRS 304.5-070(1)(q) regarding service contracts to repair, replace, or maintain consumer products. These service contracts are not insurance if the maker of the service contract registers with and maintains registration with the Commissioner pursuant to 806 KAR 5:060.

If you have any questions about this Advisory Opinion, please contact the Department’s Property and Casualty Division at (502) 564-3630.

/s/ Sharon P. Clark  
Sharon P. Clark, Commissioner  
Kentucky Department of Insurance  
On this 6th day of March, 2013