

1 AN ACT relating to civil justice reform.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO  
4 READ AS FOLLOWS:

5 *(1) In civil actions where comparative fault is or becomes an issue, if a defendant*  
6 *named in an original complaint initiating a suit filed within the applicable statute*  
7 *of limitations, or named in an amended complaint filed within the applicable*  
8 *statute of limitations, alleges in a pleading that a person not a party to the suit*  
9 *caused or contributed to the injury or damage for which the plaintiff seeks*  
10 *recovery, and if the plaintiff's cause or causes of action against that person would*  
11 *be barred by any applicable statute of limitations but for the operation of this*  
12 *section, the plaintiff may, within ninety (90) days of the filing of a pleading*  
13 *alleging that person's fault, either:*

14 *(a) Amend the complaint to add the person as a defendant pursuant to Civil*  
15 *Rule 15 of the Kentucky Rules of Civil Procedure and cause process to be*  
16 *issued for that person; or*

17 *(b) Institute a separate action against that person by filing a summons and*  
18 *complaint. If the plaintiff elects to proceed under this paragraph by filing a*  
19 *separate action, the complaint so filed shall not be considered an original*  
20 *complaint initiating the suit or an amended complaint for purposes of this*  
21 *subsection.*

22 *(2) A cause of action brought within ninety (90) days pursuant to subsection (1) of*  
23 *this section shall not be barred by any statute of limitations. This section shall not*  
24 *extend any applicable statute of repose, nor shall this section permit the plaintiff*  
25 *to maintain an action against a person when such an action is barred by an*  
26 *applicable statute of repose.*

27 *(3) This section shall neither shorten nor lengthen the applicable statute of*

1 limitations for any cause of action, other than as provided in subsection (1) of  
2 this section.

3 (4) This section shall not limit the right of any defendant to allege in an answer or  
4 amended answer that a person not a party to the suit caused or contributed to the  
5 injury for which the plaintiff seeks recovery.

6 (5) Notwithstanding any law to the contrary, this section applies to suits involving  
7 governmental entities.

8 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO  
9 READ AS FOLLOWS:

10 (1) As used in this section,

11 (a) "Claim" means any civil cause of action, including derivative actions,  
12 arising from one (1) or more residents' stay in a long-term-care facility, as  
13 those terms are defined in KRS 216.510, that alleges:

14 1. Personal injury or wrongful death; or

15 2. Violations of the rights of one (1) or more residents, as those rights  
16 are specified in KRS 216.515 to 216.530.

17 (b) "Presuit claims evaluation procedures" means the steps taken by claimants  
18 and prospective defendants under the claims process established in this  
19 section, after written notice is mailed to a prospective defendant according  
20 to subsection (2) of this section, and before a claimant files suit on the claim  
21 in a court of law; and

22 (c) "Prospective defendant" means a long-term-care facility, any person or  
23 entity that owns, operates, manages, or controls the long-term-care facility,  
24 or any other person or entity that could potentially be named as a defendant  
25 related to the claim.

26 (2) (a) A claimant may elect to commence presuit claims evaluation procedures by  
27 providing written notice, by certified mail with return receipt requested, of

1 the potential claims and alleged injuries to the registered agent of each  
2 prospective defendant. If there is no registered agent for a prospective  
3 defendant, written notice shall be given by certified mail with return receipt  
4 requested to the prospective defendant himself or herself.

5 (b) The notice shall include:

- 6 1. A description of the alleged claims and injuries intended to be asserted  
7 by a claimant against each prospective defendant; and
- 8 2. A certification signed by the claimant's counsel that counsel's  
9 reasonable investigation gave rise to a good-faith belief that grounds  
10 exist for each claim and alleged injury asserted against each  
11 prospective defendant. If claimant is pro se, claimant shall sign the  
12 certification.

13 (c) If the statute of limitations for a claim has not expired when written notice  
14 under this subsection is mailed, the statute of limitations as to each  
15 prospective defendant shall be tolled for one (1) year from the date notice is  
16 mailed. This tolling applies to:

- 17 1. The claims identified against each prospective defendant as stated in  
18 the notice; and
- 19 2. Any and all claims and alleged injuries not identified in the notice that  
20 could not have been discovered by the claimant through the exercise  
21 of reasonable due diligence at the time notice was sent.

22 (3) (a) No suit or arbitration proceeding regarding a claim may be filed for a  
23 period of seventy-five (75) days after notice is mailed to any prospective  
24 defendant or their registered agent. During the seventy-five (75) day period,  
25 the prospective defendant shall conduct a good-faith evaluation of the claim  
26 to determine liability and to evaluate the damages of the claimants.

27 (b) At or before the end of the seventy-five (75) days, the defendant shall

1 provide the claimant with a written response:

2 1. Rejecting the claim; or

3 2. Making a settlement offer.

4 (c) The response shall be delivered by certified mail with return receipt  
 5 requested to the claimant's attorney or, if not represented by counsel, to the  
 6 claimant.

7 (d) Failure of the prospective defendant to reply to the notice within seventy-  
 8 five (75) days after receipt shall be deemed a rejection of the claim for  
 9 purposes of this section.

10 (4) If a prospective defendant makes a written settlement offer, the claimant shall  
 11 have fifteen (15) days from the date of receipt to accept or reject the offer. An  
 12 offer shall be deemed rejected unless accepted by delivery of a written notice of  
 13 acceptance.

14 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO  
 15 READ AS FOLLOWS:

16 (1) As used in this section:

17 (a) "Claim" means any civil cause of action, including derivative actions,  
 18 arising from one (1) or more residents' stay in a long-term-care facility, as  
 19 those terms are defined in KRS 216.510, that alleges:

20 1. Personal injury or wrongful death; or

21 2. Violations of the rights of one (1) or more residents, as those rights  
 22 are specified in KRS 216.515 to 216.530; and

23 (b) "Passive investor" means a person or entity with a financial ownership  
 24 interest in a long-term-care facility where a claim is alleged to have  
 25 occurred that does not perform, have an agreement to perform, or  
 26 participate in the performance of any of the following functions:

27 1. Providing management, operation, consulting, or administrative

- 1                    services for the long-term-care facility, including through a joint  
2                    venture or partnership;
- 3                    2. Hiring or firing of the administrator, director of nursing, independent  
4                    contractors, or other staff working at the long-term-care facility;
- 5                    3. Controlling the budget of the long-term-care facility;
- 6                    4. Staffing or determining the level of staff at the long-term-care facility;
- 7                    5. Providing direct care, treatment, or services to the residents of the  
8                    long-term-care facility;
- 9                    6. Making decisions regarding the care, treatment, or services provided  
10                   to residents at the long-term-care facility;
- 11                   7. Adopting, implementing, or enforcing the policies and procedures for  
12                   the long-term-care facility;
- 13                   8. Controlling any bank account of the long-term-care facility;
- 14                   9. Requiring certain census targets at the long-term-care facility; or
- 15                   10. Acting in a manner that would allow a plaintiff to pierce the corporate  
16                   veil pursuant to applicable law.
- 17                   (2) A person or entity that alleges to be a passive investor may, through the filing of a  
18                   motion and sworn affidavit before the court or arbitrator hearing a claim, seek to  
19                   prove passive investor status by a preponderance of the evidence. Once filed,  
20                   either party may move for an evidentiary hearing to determine whether that  
21                   person or entity is a passive investor. The court or arbitrator may in its discretion  
22                   order the evidentiary hearing. If proven, the passive investor shall be dismissed  
23                   from the lawsuit or arbitration proceeding immediately and shall not be liable for  
24                   any claim filed by claimant, subject to subsection (4) of this section.
- 25                   (3) The parties shall be permitted to conduct limited discovery directly related to  
26                   information concerning whether the named defendant is a passive investor.
- 27                   (4) If, after a person is dismissed as a passive investor, a plaintiff discovers and

1        *produces evidence that the person is not a passive investor, the plaintiff may move*  
2        *to amend their complaint to add the person who claimed to be a passive investor*  
3        *as a defendant. The claims against the defendant who claimed to be a passive*  
4        *investor shall relate back to the date of the original complaint and shall not be*  
5        *barred by any statute of limitations.*