## **UNOFFICIAL COPY**

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) As used in this section,
6	(a) "Claim" means any civil cause of action, including derivative actions,
7	arising from one (1) or more residents' stay in a long-term-care facility, as
8	those terms are defined in KRS 216.510, that alleges:
9	1. Personal injury or wrongful death; or
10	2. Violations of the rights of one (1) or more residents, as those rights
11	are specified in KRS 216.515 to 216.530.
12	(b) "Presuit claims evaluation procedures" means the steps taken by claimants
13	and prospective defendants under the claims process established in this
14	section, after written notice is mailed to a prospective defendant according
15	to subsection (2) of this section, and before a claimant files suit on the claim
16	in a court of law; and
17	(c) "Prospective defendant" means a long-term-care facility, any person or
18	entity that owns, operates, manages, or controls the long-term-care facility,
19	or any other person or entity that could potentially be named as a defendant
20	related to the claim.
21	(2) (a) A claimant may elect to commence presuit claims evaluation procedures by
22	providing written notice, by certified mail with return receipt requested, of
23	the potential claims and alleged injuries to the registered agent of each
24	prospective defendant. If there is no registered agent for a prospective
25	defendant, written notice shall be given by certified mail with return receipt
26	requested to the prospective defendant himself or herself.
27	(b) The notice shall include:

1	1. A description of the alleged claims and injuries intended to be asserted
2	by a claimant against each prospective defendant; and
3	2. A certification signed by the claimant's counsel that counsel's
4	reasonable investigation gave rise to a good-faith belief that grounds
5	exist for each claim and alleged injury asserted against each
6	prospective defendant. If claimant is pro se, claimant shall sign the
7	certification.
8	(c) If the statute of limitations for a claim has not expired when written notice
9	under this subsection is mailed, the statute of limitations as to each
10	prospective defendant shall be tolled for one (1) year from the date notice is
11	mailed. This tolling applies to:
12	1. The claims identified against each prospective defendant as stated in
13	the notice; and
14	2. Any and all claims and alleged injuries not identified in the notice that
15	could not have been discovered by the claimant through the exercise
16	of reasonable due diligence at the time notice was sent.
17	(3) (a) No suit or arbitration proceeding regarding a claim may be filed for a
18	period of seventy-five (75) days after notice is mailed to any prospective
19	<u>defendant or their registered agent. During the seventy-five (75) day period,</u>
20	the prospective defendant shall conduct a good-faith evaluation of the claim
21	to determine liability and to evaluate the damages of the claimants.
22	(b) At or before the end of the seventy-five (75) days, the defendant shall
23	provide the claimant with a written response:
24	1. Rejecting the claim; or
25	2. Making a settlement offer.
26	(c) The response shall be delivered by certified mail with return receipt
27	requested to the claimant's attorney or, if not represented by counsel, to the

1	<u>claimant.</u>
2	(d) Failure of the prospective defendant to reply to the notice within seventy-
3	five (75) days after receipt shall be deemed a rejection of the claim for
4	purposes of this section.
5	(4) If a prospective defendant makes a written settlement offer, the claimant shall
6	have fifteen (15) days from the date of receipt to accept or reject the offer. An
7	offer shall be deemed rejected unless accepted by delivery of a written notice of
8	acceptance.
9	→SECTION 2. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
10	READ AS FOLLOWS:
11	(1) As used in this section:
12	(a) "Claim" means any civil cause of action, including derivative actions,
13	arising from one (1) or more residents' stay in a long-term-care facility, as
14	those terms are defined in KRS 216.510, that alleges:
15	1. Personal injury or wrongful death; or
16	2. Violations of the rights of one (1) or more residents, as those rights
17	are specified in KRS 216.515 to 216.530; and
18	(b) "Passive investor" means a person or entity with a financial ownership
19	interest in a long-term-care facility where a claim is alleged to have
20	occurred that does not perform, have an agreement to perform, or
21	participate in the performance of any of the following functions:
22	1. Providing management, operation, consulting, or administrative
23	services for the long-term-care facility, including through a joint
24	venture or partnership;
25	2. Hiring or firing of the administrator, director of nursing, independent
26	contractors, or other staff working at the long-term-care facility;
27	3. Controlling the budget of the long-term-care facility;

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