

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) (a) As used in this section, "notice of non-party at possible fault" or "notice"
6 means a notification provided by a party to a civil action, which discloses:

7 1. The identity of a person or entity not currently or formerly named as a
8 party who is alleged to be, or alleged to potentially be, wholly or partly
9 at fault in the action;

10 2. The last known location of the person or entity allegedly at fault; and

11 3. The facts supporting the allegation of possible fault.

12 (b) 1. If the party which provided the notice learns that the notice was or has
13 become materially incomplete or incorrect, and if the additional or
14 corrective information has not otherwise been disclosed to the other
15 parties through discovery or in writing, a notice of non-party at
16 possible fault shall be supplemented or corrected by the party which
17 provided the notice.

18 2. The party which provided the notice shall supplement or correct the
19 notice in a timely manner, but in no event later than thirty (30) days
20 after that party learns or should have learned that the notice is
21 materially incomplete or incorrect.

22 (2) Subsection (3) of this section shall apply when a plaintiff brings an original
23 complaint or amends a complaint where comparative fault is or becomes an
24 issue, if:

25 (a) 1. The action involves any claim for personal injury or wrongful death,
26 including uninsured and underinsured motorist claims; or

27 2. The action alleges a violation of the rights of a resident of a long-

1 term-care facility as those rights are specified in KRS 216.515 to
2 216.530;

3 (b) An initial notice of non-party at possible fault has been served on all other
4 parties:

5 1. No later than one hundred eighty (180) days after the filing of an
6 answer to a complaint; or

7 2. More than one hundred eighty (180) days after the filing of an answer
8 to a complaint if the late notice was approved by the court or
9 arbitrator following a motion showing good cause, reasonable
10 diligence, and lack of unfair prejudice to all other parties;

11 (c) If necessary, the notice has been supplemented or corrected as provided in
12 subsection (1)(b) of this section; and

13 (d) The complaint was brought within the applicable statute of limitations.

14 (3) (a) Within ninety (90) days of a party serving an original, supplemented, or
15 corrected notice of non-party at possible fault, the plaintiff may:

16 1. Make a motion for leave of the court or arbitrator to amend the
17 plaintiff's complaint to add that person as a defendant pursuant to
18 Rule 15 of the Kentucky Rules of Civil Procedure, which shall be
19 freely given when justice requires, and cause process to be issued for
20 that person. If the court or arbitrator has not ruled on the motion for
21 leave to amend the complaint within the ninety (90) days provided in
22 this subsection, an amended complaint filed pursuant to this
23 paragraph shall still be considered timely so long as the amended
24 complaint is filed within five (5) days of the entry of the court's or
25 arbitrator's order granting the motion for leave to amend the
26 complaint; or

27 2. Initiate a separate action against the non-party at possible fault by

1 filing a summons and complaint or by instituting an arbitration
2 proceeding.

3 (b) If the plaintiff meets the requirements of paragraph (a) of this subsection,
4 the filing of a motion to amend to add non-parties, the initiation of an
5 arbitration proceeding, or the initiation of a separate action against non-
6 parties shall relate back to the date of the original complaint and shall not
7 be barred by any statute of limitations.

8 (4) This section shall not:

9 (a) Shorten or lengthen the applicable statute of limitations for any cause of
10 action, other than as provided in this section;

11 (b) Limit the right of any defendant to allege in an answer or amended answer
12 any other defenses available to them under law; or

13 (c) Allow the trier of fact to allocate any percentage of fault to any person or
14 entity not enumerated in KRS 411.182, except on stipulation of all the
15 parties.

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

18 (1) As used in this section,

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

22 1. Personal injury or wrongful death; or

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

25 (b) "Presuit claims evaluation procedures" means the steps taken by claimants
26 and prospective defendants under the claims process established in this
27 section, after written notice is mailed to a prospective defendant according

1 to subsection (2) of this section, and before a claimant files suit on the claim
2 in a court of law; and

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

7 (2) (a) A claimant may elect to commence presuit claims evaluation procedures by
8 providing written notice, by certified mail with return receipt requested, of
9 the potential claims and alleged injuries to the registered agent of each
10 prospective defendant. If there is no registered agent for a prospective
11 defendant, written notice shall be given by certified mail with return receipt
12 requested to the prospective defendant himself or herself.

13 (b) The notice shall include:

14 1. A description of the alleged claims and injuries intended to be asserted
15 by a claimant against each prospective defendant; and

16 2. A certification signed by the claimant's counsel that counsel's
17 reasonable investigation gave rise to a good-faith belief that grounds
18 exist for each claim and alleged injury asserted against each
19 prospective defendant. If claimant is pro se, claimant shall sign the
20 certification.

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

25 1. The claims identified against each prospective defendant as stated in
26 the notice; and

27 2. Any and all claims and alleged injuries not identified in the notice that

1 could not have been discovered by the claimant through the exercise
2 of reasonable due diligence at the time notice was sent.

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

8 (b) At or before the end of the seventy-five (75) days, the defendant shall
9 provide the claimant with a written response:

- 10 1. Rejecting the claim; or
- 11 2. Making a settlement offer.

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

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

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

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

24 (1) As used in this section:

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

- 1 1. Personal injury or wrongful death; or
2 2. Violations of the rights of one (1) or more residents, as those rights
3 are specified in KRS 216.515 to 216.530; and
4 (b) "Passive investor" means a person or entity with a financial ownership
5 interest in a long-term-care facility where a claim is alleged to have
6 occurred that does not perform, have an agreement to perform, or
7 participate in the performance of any of the following functions:
8 1. Providing management, operation, consulting, or administrative
9 services for the long-term-care facility, including through a joint
10 venture or partnership;
11 2. Hiring or firing of the administrator, director of nursing, independent
12 contractors, or other staff working at the long-term-care facility;
13 3. Controlling the budget of the long-term-care facility;
14 4. Staffing or determining the level of staff at the long-term-care facility;
15 5. Providing direct care, treatment, or services to the residents of the
16 long-term-care facility;
17 6. Making decisions regarding the care, treatment, or services provided
18 to residents at the long-term-care facility;
19 7. Adopting, implementing, or enforcing the policies and procedures for
20 the long-term-care facility;
21 8. Controlling any bank account of the long-term-care facility;
22 9. Requiring certain census targets at the long-term-care facility; or
23 10. Acting in a manner that would allow a plaintiff to pierce the corporate
24 veil pursuant to applicable law.
25 (2) A person or entity that alleges to be a passive investor may, through the filing of a
26 motion and sworn affidavit before the court or arbitrator hearing a claim, seek to
27 prove passive investor status by a preponderance of the evidence. Once filed,

- 1 either party may move for an evidentiary hearing to determine whether that
2 person or entity is a passive investor. The court or arbitrator may in its discretion
3 order the evidentiary hearing. If proven, the passive investor shall be dismissed
4 from the lawsuit or arbitration proceeding immediately and shall not be liable for
5 any claim filed by claimant, subject to subsection (4) of this section.
- 6 (3) The parties shall be permitted to conduct limited discovery directly related to
7 information concerning whether the named defendant is a passive investor.
- 8 (4) If, after a person is dismissed as a passive investor, a plaintiff discovers and
9 produces evidence that the person is not a passive investor, the plaintiff may move
10 to amend their complaint to add the person who claimed to be a passive investor
11 as a defendant. The claims against the defendant who claimed to be a passive
12 investor shall relate back to the date of the original complaint and shall not be
13 barred by any statute of limitations.