

1 AN ACT relating to civil causes of action.

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 *As used in Sections 1 to 5 of this Act, unless the context otherwise requires:*

6 *(1) "Contracting entity" means the Commonwealth, or any city, county, urban-*
7 *county government, consolidated local government, unified local government, or*
8 *charter county government;*

9 *(2) "Contractor" means any individual, corporation, limited liability company,*
10 *partnership, or other legal entity, and any subcontractor, director, officer, or*
11 *employee of the individual or legal entity that contracts with a contracting entity;*

12 *(3) "Dangerous condition" means a condition that is not reasonably safe for the*
13 *intended use of the roadway and is capable of causing an individual physical*
14 *injury or death under the anticipated use of the roadway;*

15 *(4) "Latent defect" means a defect or omission resulting from the work performed or*
16 *materials provided by the contractor under the contract that was not discoverable,*
17 *visible, or apparent;*

18 *(5) "Project" means the construction, repair, or maintenance by a contractor of a*
19 *section of highway, road, bridge, or street together with all appurtenances, as*
20 *specified in a contract with a contracting entity; and*

21 *(6) "Specifications" means plans, traffic control requirements, communication*
22 *requirements, drawings, bid documents, or any other written or electronically*
23 *stored requirements and details the contractor agrees to perform.*

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

26 *(1) Acceptance of a project by the contracting entity shall create a rebuttable*
27 *presumption that the contractor has:*

1 (a) Followed the plans and specifications of the contracting entity; and

2 (b) Satisfied the contractor's responsibility to the contracting entity.

3 (2) A contractor entitled to the rebuttable presumption established under subsection
 4 (1) of this section shall not be liable for any claims for property damage, physical
 5 injury, or death alleged to arise out of the work performed on the project in any
 6 civil cause of action unless it is established by a preponderance of the evidence
 7 that:

8 (a) A failure of the contractor to follow the plans and specifications, resulting
 9 in a dangerous condition; or

10 (b) A latent defect creating a dangerous condition that is the result of the work
 11 of the contractor;

12 was a substantial factor in causing the alleged property damage, physical injury,
 13 or death.

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

16 In any action for injury, damages, or wrongful death, whether in contract or in tort,
 17 against a contracting entity or its contractor arising from any negligent act or omission
 18 in the construction or maintenance of a public highway, road, bridge, or street, when it
 19 is established by a preponderance of the evidence that:

20 (1) The operator of the vehicle engaged in conduct that would have supported a
 21 violation of KRS 189A.010 or 189.292; or

22 (2) The vehicle was traveling at a rate of twenty-five (25) or more miles per hour over
 23 the applicable speed limit;

24 there shall be a rebuttable presumption that the prohibited conduct was a substantial
 25 factor in causing the injury, damages, or wrongful death.

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

1 *A contractor shall bear no civil liability for:*

2 *(1) Any alleged property damage, personal injury, death, or other civil claims made*
3 *by a noncontractual third party arising from the design decisions or professional*
4 *engineering judgment, including decisions relating to the proper scope or*
5 *inspection of the project, of the contracting entity. This subsection shall not apply*
6 *when the contractor either:*

7 *(a) Contracts in whole or in part to design the project or to provide professional*
8 *engineering services related to the design of the project; or*

9 *(b) Undertakes to provide design or professional engineering services as to the*
10 *project; or*

11 *(2) Any dangerous condition that is outside the scope of the project or that is in*
12 *excess of any requirement of the governing plans and specifications provided by*
13 *the contracting entity, except when:*

14 *(a) The contractor contracts to design in whole or in part the project or to*
15 *provide engineering services related to the design of the project; or*

16 *(b) The contractor undertakes to provide services related to the project that are*
17 *outside the scope of the project or that are in excess of any requirement of*
18 *the governing plans and specifications.*

19 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
20 READ AS FOLLOWS:

21 *Sections 1 to 5 of this Act shall:*

22 *(1) Apply to any claim that arises on or after the effective date of this Act;*

23 *(2) Not bar or limit any claim or defense otherwise available, except as otherwise*
24 *provided in Sections 1 to 5 of this Act; and*

25 *(3) Not create a new theory upon which liability may be based.*