

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. KRS 189.125 is amended to read as follows:

4 (1) Except as otherwise provided in this section, "motor vehicle" as used in this section
5 means every vehicle designed to carry fifteen (15) or fewer passengers and used for
6 the transportation of persons, but the term does not include:

7 (a) Motorcycles;

8 (b) Motor-driven cycles; or

9 (c) Farm trucks registered for agricultural use only and having a gross weight of
10 one (1) ton or more.

11 (2) A person shall not sell any new motor vehicle in this state ~~or~~^[nor shall any person]
12 make application for registering a new motor vehicle in this state unless the front or
13 forward seat or seats have adequate anchors or attachments secured to the floor
14 ~~[and/or sides, or both the floor and sides,~~ to the rear of the seat or seats to which
15 seat belts may be secured.

16 (3) (a) Any driver of a motor vehicle, when transporting a child of forty (40) inches
17 in height or less in a motor vehicle operated on the roadways, streets, and
18 highways of this state, shall have the child properly secured in a child restraint
19 system of a type meeting federal motor vehicle safety standards.

20 (b) Any driver of a motor vehicle, when transporting a child under the age of
21 eight (8) years who is between forty (40) inches and fifty-seven (57) inches in
22 height in a motor vehicle operated on the roadways, streets, and highways of
23 this state, shall have the child properly secured in a child booster seat. A child
24 of any age who is greater than fifty-seven (57) inches in height shall not be
25 required to be secured in a child booster seat under this section.

26 (4) As used in this section:

27 (a) "Child restraint system" means any device manufactured to transport children

1 in a motor vehicle which conforms to all applicable federal motor vehicle
2 safety standards; and

3 (b) "Child booster seat" means a child passenger restraint system that meets the
4 standards set forth in 49 C.F.R. Part 571 that is designed to elevate a child to
5 properly sit in a federally approved lap-and-shoulder belt system.

6 (5) **In the trial of any civil action:**

7 (a) Failure to use a child passenger restraint system or a child booster seat shall
8 not be considered as comparative~~or contributory~~ negligence of the child, nor
9 shall the~~such~~ failure to use a child passenger restraint system or booster seat
10 be admissible as evidence as a defense in a claim based on the negligence of
11 the child~~in the trial of any civil action~~.

12 (b) Failure of any person to wear a seat belt or wear a seat belt properly shall not:

13 1. Constitute negligence per se; or

14 2. Be admissible as evidence of negligence, comparative negligence, or
15 failure to mitigate damages, unless:

16 a. The party seeking to admit the evidence provides admissible
17 evidence that the failure to wear or properly wear a seat belt was
18 a substantial factor in contributing to or enhancing the
19 claimant's injuries; and

20 b. The court determines, pursuant to applicable court rules, that the
21 evidence is admissible.

22 (c) The driver of the motor vehicle shall not be required to be a party to the civil
23 action for this evidence to be admissible.

24 (6) A person shall not operate a motor vehicle manufactured after 1981 on the public
25 roadways of this state unless the driver and all passengers are wearing a properly
26 adjusted and fastened seat belt, unless the passenger is a child who is secured as
27 required in subsection (3) of this section. The provisions of this subsection shall not

1 apply to:

2 (a) A person who has in his or her possession at the time of the conduct in
3 question a written statement from a physician, advanced practice registered
4 nurse, or licensed chiropractor that he or she is unable, for medical or
5 physical reasons, to wear a seat belt; or

6 (b) A letter carrier of the United States postal service while engaged in the
7 performance of his or her duties.

8 (7) A conviction for a violation of subsection (6) of this section shall not be transmitted
9 by the court to the Transportation Cabinet. The Transportation Cabinet shall not
10 include a conviction for a violation of subsection (6) of this section as part of any
11 person's driving history record.

12 (8) The provisions of subsection (6) of this section shall supersede any existing local
13 ordinance involving the use of seat belts. No ordinance contrary to subsection (6) of
14 this section may be enacted by any unit of local government.

15 ➔Section 2. KRS 304.12-230 is amended to read as follows:

16 (1) It is an unfair claims settlement practice for any insurer[person] to commit or
17 perform any of the following acts or omissions:

18 (a)[(1)] Misrepresenting pertinent facts or insurance policy provisions relating to
19 coverages at issue;

20 (b)[(2)] Failing to acknowledge and act reasonably promptly upon
21 communications with respect to claims arising under insurance policies;

22 (c)[(3)] Failing to adopt and implement reasonable standards for the prompt
23 investigation of claims arising under insurance policies;

24 (d)[(4)] Refusing to pay claims without conducting a reasonable investigation
25 based upon all available information;

26 (e)[(5)] Failing to affirm or deny coverage of claims within a reasonable time
27 after proof of loss statements have been completed;

1 or for the offer of a compromise settlement;

2 **(o)** Failing to comply with the decision of an independent review entity to
3 provide coverage for a covered person as a result of an external review in
4 accordance with KRS 304.17A-621, 304.17A-623, and 304.17A-625;

9 (2) An action shall not be brought against an insurer by a third-party claimant for a
10 violation of this section, and any assignment of a cause of action arising from
11 this section against an insurer shall be void.

12 ➔ SECTION 3. A NEW SECTION OF SUBTITLE 40 OF KRS CHAPTER 304
13 IS CREATED TO READ AS FOLLOWS:

14 Notwithstanding any provision of the Kentucky Rules of Evidence:

15 (1) Evidence shall not be admitted or received in any civil action, whether of a
16 substantive nature or for impeachment purposes, relating to any witness
17 presenting testimony as a similarly situated health care provider or of any
18 defendant concerning:

19 (a) *Professional liability insurance;*

20 (b) A professional liability insurance carrier; or

21 (c) Any interest in an insurer that insured medical or other professional
22 liability; and

23 (2) The limits of liability insurance coverage available to a health care provider shall
24 not be discoverable in any action for injury, wrongful death, or damages, whether
25 in contract or tort, against a health care provider for an alleged breach of the
26 standard of care.

27 ➤Section 4. KRS 364.130 is amended to read as follows:

1 (1) Except as provided in subsections (2) and (4) of this section, any person, regardless
2 of state of mind or whether the person believes to be authorized or not, who cuts or
3 saws down, or causes to be cut or sawed down to convert to his or her own use,
4 timber growing upon the land of another without legal right or without color of title
5 in himself or herself to the timber or to the land upon which the timber was
6 growing shall pay:

7 (a) To the rightful owner of the timber:

8 1. Three (3) times the stumpage value of the timber; and

9 2. Any legal costs incurred; and [shall pay]

10 (b) To the rightful owner of the property, three (3) times the cost of any damages
11 to the property [as well as any legal costs incurred by the owner of the
12 timber].

13 (2) (a) If a defendant can certify that prior to cutting:

14 1. A signed statement was obtained from the person whom the defendant
15 believed to be the owner of all trees scheduled to be cut that:

16 a. All of the trees to be cut were on his or her property and that none
17 were on the property of another; and

18 b. The person [He] has given his or her permission, in writing, for
19 the trees on the person's [his] property to be cut; and

20 2. Either:

21 a. A written agreement was made with owners of the land adjacent to
22 the cut that the trees to be cut were not on their property; or

23 b. Owners of the land adjacent to the cut were notified in writing,
24 delivered by certified mail, restricted delivery, and return receipt
25 requested, of the pending cut and they raised no objection; [;]

26 the court may render a judgment for no more than the reasonable value of the
27 timber, actual damages caused to the property, and any legal costs incurred by

1 the owner of the timber.

2 (b) [With respect to paragraph (a)2.b. of this subsection,] If no written objection
3 was received from the persons notified under paragraph (a)2.b. of this
4 subsection within seven (7) days from the date of the signed receipt of mail, it
5 shall be presumed, for the purposes of setting penalties only, that the notified
6 owner had no objection to the proposed cut.

7 (3) This section shall not be construed as repealing any of the provisions of KRS
8 514.030, ~~of the Kentucky Revised Statutes~~ and any penalties provided by this
9 chapter shall be considered as additional to any other penalty provided by
10 law[thereto].

11 (4) A residential property owner or farmland owner maintaining his or her fence row
12 who unintentionally cuts, saws down, or otherwise removes the timber of an
13 adjoining property owner as the result of a good-faith mistake in the location of an
14 unmarked boundary line between the properties shall only be liable to the adjoining
15 property owner for the reasonable value of the timber, the actual damages caused to
16 the property, and any legal costs incurred by the adjoining property owner if the
17 cutting of the timber is later found to be unauthorized by a court of competent
18 jurisdiction.

19 (5) (a) As used in this subsection, "utility" has the same meaning as in KRS
20 **278.010.**

21 (b) The liability provisions in this section shall not apply to a utility that cuts,
22 saws down, or otherwise removes timber of a property owner when the
23 cutting or removal is done based upon a good-faith belief that the action is:

24 1. Within the authority of the utility for the creation or maintenance of
25 the right-of-way clearing for its lines and equipment;
26 2. Appropriate for clearances or other protection of its lines; or
27 3. Within authorized permission to perform the action on the property.

1 (c) If a court of competent jurisdiction finds that a utility cut, sawed down, or
2 otherwise removed timber from a property owner in violation of paragraph
3 (b)1. to 3. of this subsection based upon a good-faith mistake, the utility
4 shall only be liable to the property owner for the reasonable value of the
5 timber and any actual damages caused to the property.

6 → Section 5. KRS 367.220 is amended to read as follows:

7 (1) Any person who purchases or leases goods or services primarily for personal,
8 family or household purposes and [thereby] suffers any ascertainable loss of money
9 or property, real or personal, as a result of the use or employment by another person
10 of a method, act or practice declared unlawful by KRS 367.170, may bring a civil
11 cause of [an] action under the Rules of Civil Procedure and in accordance with
12 subsection (2) of this section to recover actual damages.

13 (2) (a) At least sixty (60) days prior to filing a civil action under this section, a
14 consumer shall provide written notice to the prospective defendant;

15 (b) The notice shall state the:

16 1. Alleged violation;
17 2. Facts supporting the claim; and
18 3. Damages sought; and

19 (c) The giving of notice shall toll the statute of limitations during the sixty (60)
20 day period.

21 (3) The action authorized in subsection (1) of this section shall be brought in the
22 Circuit Court of the county:

23 (a) In which the seller or lessor resides or has his or her principal place of
24 business or is doing business; [or in the Circuit Court]
25 (b) In which the purchaser or lessee of goods or services resides; [or]
26 (c) Where the transaction in question occurred, to recover actual damages. The
27 court may, in its discretion, award actual damages and may provide such

1 ~~equitable relief as it deems necessary or proper. Nothing in this subsection~~
2 ~~shall be construed to limit a person's right to seek punitive damages where~~
3 ~~appropriate].~~

4 (4)[(2)] A court shall dismiss without prejudice any action filed under this section
5 that is not in compliance with the notice requirement in subsection (2) of this
6 section.

7 (5) Upon commencement of any action brought under subsection (1) of this section, the
8 clerk of the court shall mail a copy of the complaint or other initial pleading to the
9 Attorney General~~[and, upon entry of any judgment or decree in the action, shall~~
10 ~~mail a copy of such judgment or decree to the Attorney General].~~

11 (6) The court may, in its discretion, award actual damages and may provide equitable
12 relief as it deems necessary or proper, and this subsection shall not be construed
13 to limit a person's right to seek punitive damages where appropriate.

14 (7) Upon entry of any judgment or decree under this section, the court shall mail a
15 copy of the judgment or decree to the Attorney General.

16 (8)[(3)] In any action brought by a person under this section, the court may award[, to
17 the prevailing party, in addition to the relief provided in this section, reasonable
18 attorney's fees and costs.

19 (9)[(4)] Any permanent injunction, judgment, or order of the court made under KRS
20 367.190 shall be prima facie evidence in an action brought under this section that
21 the respondent used or employed a method, act, or practice declared unlawful by
22 KRS 367.170.

23 (10)[(5)] Except as provided in subsection 2 of this section, any person bringing an
24 action under this section shall commence the[must bring such] action within one
25 (1) year after any action of the Attorney General has been terminated, or within two
26 (2) years after the violation of KRS 367.170, whichever is later.

27 ➔ SECTION 6. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO

1 READ AS FOLLOWS:

2 *As used in Sections 6 to 10 of this Act, unless the context otherwise requires:*

3 *(1) "Contracting entity" means the Commonwealth, or any city, county, urban-*
4 *county government, consolidated local government, unified local government, or*
5 *charter county government;*

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

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

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

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

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

21 ➔ SECTION 7. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
22 READ AS FOLLOWS:

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

25 *(a) Followed the plans and specifications of the contracting entity; and*
26 *(b) Satisfied the contractor's responsibility to the contracting entity.*

27 *(2) A contractor entitled to the rebuttable presumption established under subsection*

1 (1) of this section shall not be liable for any damages alleged to arise out of the
2 work performed on the project in any civil cause of action unless it is established
3 by clear and convincing evidence that the physical injury, property damage, or
4 death was proximately caused by either of the following:

5 (a) A failure of the contractor to follow the plans and specifications, resulting
6 in a dangerous condition; or
7 (b) A latent defect which creates a dangerous condition that is the result of the
8 work of the contractor.

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

11 (1) In any action for injury, damages, or wrongful death, whether in contract or in
12 tort, against a contracting entity or its contractor arising from any negligent act
13 or omission in the construction or maintenance of a public highway, road, bridge,
14 or street:

15 (a) The plaintiff shall include in the complaint or other initiating document
16 filed in the action a detailed specification and factual description of each act
17 and omission alleged by the plaintiff and shall include, when feasible, the
18 date, time, and place of the act or acts;

19 (b) The plaintiff shall amend the complaint or other initiating document timely
20 upon ascertainment of new or different acts or omissions upon which the
21 claim is based, in conformity with the Kentucky Rules of Civil Procedure;
22 and

23 (c) Failure to comply with paragraph (a) of this subsection shall be subject to
24 dismissal for failure to state a claim upon which relief may be granted.

25 (2) The provisions of subsection (1) of this section shall not apply to claims by the
26 contracting entity or contractor when filed against each other.

27 (3) In any action for injury, damages, or wrongful death, whether in contract or in

1 tort, against a contracting entity or its contractor arising from any negligent act
2 or omission in the construction or maintenance of a public highway, road, bridge,
3 or street, when it is established by a preponderance of the evidence that:
4 (a) The operator of the vehicle engaged in conduct that would have supported a
5 violation of KRS 189A.010 or 189.292; or
6 (b) The vehicle was traveling at a rate of twenty-five (25) or more miles per
7 hour over the applicable speed limit;
8 there shall be a rebuttable presumption that the prohibited conduct was the
9 proximate cause of the injury, damages, or wrongful death.

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

12 A contractor shall bear no civil liability for:

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

18 (a) Contracts in whole or in part to design the project or to provide professional
19 engineering services as to the design of the project; or
20 (b) Undertakes to provide design or professional engineering services as to the
21 project; or

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

25 (a) The contractor contracts to design in whole or in part the project or to
26 provide engineering services related to the design of the project; or
27 (b) The contractor undertakes to provide services related to the project that are

1 outside the scope of the project or that are in excess of any requirement of
2 the governing plans and specifications.

3 ➔ SECTION 10. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
4 READ AS FOLLOWS:

5 Sections 6 to 10 of this Act shall:

- 6 (1) Apply to any claim that arises on or after the effective date of this Act;
- 7 (2) Prevail over any conflicting law otherwise applicable to the claim or cause of
8 action;
- 9 (3) Not bar or limit any claim or defense otherwise available, except as otherwise
10 provided in Sections 6 to 10 of this Act; and
- 11 (4) Not create a new theory upon which liability may be based.

12 ➔ SECTION 11. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
13 READ AS FOLLOWS:

14 (1) Any person, or that person's authorized agent, asserting a potential claim for
15 medical malpractice or health care liability shall provide written notice of the
16 potential claim to each health care provider that will be named as a defendant at
17 least sixty (60) days prior to filing a complaint in any court of this
18 Commonwealth.

19 (2) The notice shall include:

- 20 (a) The full name and date of birth of the patient whose treatment is at issue;
- 21 (b) The name and address of the claimant authorizing the notice and the
22 relationship to the patient, if the notice is not sent by the patient;
- 23 (c) The name and address of the attorney sending the notice, if applicable;
- 24 (d) A list of the names and addresses of all providers being sent a notice;
- 25 (e) A brief description of the alleged wrongful act or omission;
- 26 (f) The type of injury claimed; and
- 27 (g) A medical authorization that complies with the federal Health Insurance

1 Portability and Accountability Act, Pub. L. No. 104-191, permitting the
2 provider receiving the notice to obtain complete medical records from each
3 other provider being sent a notice.

4 (3) The requirement of service of written notice prior to suit under subsection (1) of
5 this section shall be deemed satisfied if:

6 (a) Within the statutes of limitation and statutes of repose applicable to the
7 provider, one (1) of the following occurs:

8 1. Personal delivery of the notice to the health care provider, which shall
9 be established by an affidavit stating the date and time notice was
10 personally delivered and the identity of the person who delivered the
11 notice; or

12 2. Mailing the notice, certified mail, return receipt requested, to:

13 a. An individual health care provider at:

14 i. Both the address listed for the provider on the website of
15 the Cabinet for Health and Family Services and the
16 provider's current business address, if different from the
17 address maintained by the cabinet; or

18 ii. If the mailings are returned undelivered from both
19 addresses, within five (5) business days after receipt of the
20 second undelivered letter, the provider's office or business
21 address at the location where the provider last provided a
22 medical service to the patient; or

23 b. A healthcare provider that is a corporation or other business
24 entity at:

25 i. Both the addresses for the agent for service of process, and
26 the provider's current business address, if different from
27 that of the agent for service of process; or

ii. If the mailings are returned undelivered from both addresses, within five (5) business days after receipt of the second undelivered letter, the provider's office or business address at the location where the provider last provided a medical service to the patient; and

(b) Proof of service of the written notice is filed with the complaint. As used in this paragraph, proof of service shall be established by filing:

1. The required affidavit with a copy of the notice served, if personal service was made under paragraph (a)1. of this subsection; or

2. A certificate of mailing from the United States Postal Service stamped with the date of mailing and an affidavit of the party mailing the notice establishing that the notice under paragraph (a)2. of this subsection was timely mailed by certified mail, return receipt requested, with a copy of the notice sent attached to the affidavit. It shall not be necessary that the addressee of the notice sign or return the return receipt card that accompanies a notice sent by certified mail for service to be effective.

18 (4) Any person, entity, or health care provider who receives notice of a potential
19 claim for medical malpractice or health care liability pursuant to subsection (1)
20 of this section shall, within thirty (30) days of receiving the notice, based upon
21 reasonable knowledge and information available, provide written notice to the
22 potential claimant of any other person, entity, or health care provider who may be
23 a properly named defendant.

(5) Any complaint filed in a court in this Commonwealth alleging a claim for medical malpractice or health care liability shall state whether each party has complied with subsections (1) to (4) of this section and shall provide the documentation required in subsection (3) of this section. The court may require

1 additional evidence of compliance to determine if the provisions of this section
2 have been met and may excuse compliance with the requirements in subsections
3 (1) to (4) of this section in its discretion upon extraordinary cause shown.

4 (6) (a) 1. When notice is given to a provider as required under this section, the
5 applicable statutes of limitations and repose shall be extended for a
6 period of one hundred twenty (120) days from the date of expiration of
7 the statute of limitations or statute of repose applicable to that
8 provider.

9 2. Personal service shall be effective on the date of that service.

10 3. Service by mail shall be effective on the first day that service by mail is
11 made in compliance with subsection (3)(a)2. of this section.

12 (b) Except as provided in paragraph (a) of this subsection, this subsection shall
13 not:

14 1. Otherwise operate to shorten or otherwise extend the statutes of
15 limitation or repose applicable to any action asserting a claim for
16 medical malpractice or health care liability; or

17 2. Allow more than one (1) extension to be applicable to any provider.

18 (7) Once a complaint is filed in a court in this Commonwealth alleging a claim for
19 medical malpractice or health care liability, the notice requirements of this
20 section shall not apply to any person or entity that is joined by a defendant as a
21 party.

22 (8) (a) All parties to an action filed under this section shall be entitled to obtain a
23 complete copy of the claimant's medical records from any other provider
24 receiving notice of the potential claim under subsection (2) of this section.
25 The HIPAA-compliant medical authorization of the plaintiff required to
26 accompany the notice under subsection (2)(g) of this section shall constitute
27 authorization for release of the records.

1 **(b) A party shall provide a copy of the claimant's medical records within thirty**
2 **(30) days of receipt of a legally authorized written request.**

3 **(c) A provider may comply with this subsection by:**

- 4 **1. Mailing a copy of the requested portions of the records with a**
5 **statement for the cost of duplication of the records to the individual**
6 **requesting the records;**
- 7 **2. Informing the individual requesting the records in writing within**
8 **twenty (20) days after receiving the request that the records shall be**
9 **provided only upon advance payment for the records as provided in**
10 **Section 15 of this Act, and providing the records within three (3)**
11 **business days after receipt of the payment; or**
- 12 **3. Fulfilling the request under terms agreed to in writing by the**
13 **individual requesting the records and the provider.**

14 **(d) Any records produced under this subsection shall be confidential and used**
15 **only by the parties, their counsel, and their consultants.**

16 **(9) If a complaint is filed in good-faith reliance on the extension of the statute of**
17 **limitations or repose granted by subsection (6)(a)1. of this section and it is later**
18 **determined that the claim is not a medical malpractice claim or health care**
19 **liability claim, the extension of the statute of limitations or repose shall still apply.**

20 **(10) Upon the filing of any medical malpractice action, any named defendant may**
21 **petition the court for a qualified protective order allowing the defendant or**
22 **defendants and their attorneys the right to obtain protected health information**
23 **during interviews with the relevant patient's treating physicians and health care**
24 **providers as defined in KRS 304.17A-005 conducted outside the presence of the**
25 **plaintiff or plaintiff's counsel, and the petition shall be granted under the**
26 **following conditions:**

27 **(a) The petition identifies the treating health care provider or providers for**

1 whom the defendant or defendants seek a qualified protective order to
2 conduct an interview;

3 (b) The plaintiff has the right to file an objection seeking to limit or prohibit the
4 defendant or the defendants or defendants' counsel from conducting the
5 interviews, which may be granted upon a showing of good cause that a
6 treating health care provider does not possess relevant information as
7 determined under the Kentucky Rules of Civil Procedure; and

8 (c) The qualified protective order expressly:

9 1. Limits the dissemination of any protected health information to the
10 litigation pending before the court and requires the defendant or
11 defendants who conduct the interview to return to the health care
12 provider or to destroy any protected health information obtained in the
13 course of the interview, including copies, at the conclusion of the
14 litigation; and

15 2. Provides that participation in any interview by a treating health care
16 provider is voluntary.

17 (11) The disclosure of relevant information by a health care provider under this
18 section in response to a court order, including:

19 (a) Protected health information;

20 (b) Opinions as to the standard of care of any defendant;

21 (c) Compliance with or breach of the standard of care; and

22 (d) Causation of the alleged injury;

23 shall be deemed a permissible disclosure under the laws of this Commonwealth.

24 (12) This section shall not be construed to restrict in any way the right of a defendant
25 or defendant's counsel to conduct interviews outside the presence of the plaintiff
26 or plaintiff's counsel with the defendant's own present or former employees,
27 partners, or owners concerning a medical malpractice claim.

1 **(13) Any filed action that fails to comply with the requirements of this section shall be**
2 **dismissed without prejudice.**

3 ➔Section 12. KRS 411.167 is amended to read as follows:

4 (1) A claimant commencing any action identified in KRS 413.140(1)(e) **against a**
5 **health care provider as defined in KRS 304.17A-005**, or against a long-term-care
6 facility as defined in KRS 216.510, alleging that the **health care provider or** long-
7 term-care facility failed to provide proper care to one (1) or more residents of the
8 facility, shall file a certificate of merit with the complaint in the court in which the
9 action is commenced.

10 (2) "Certificate of merit" means an affidavit or declaration that:

11 (a) The claimant has reviewed the facts of the case and has **obtained the written**
12 **opinion of**~~consulted with~~ at least one (1) expert qualified pursuant to the
13 Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence who
14 is qualified to give expert testimony as to the standard of care or negligence
15 and who the claimant or his or her counsel reasonably believes is
16 knowledgeable in the relevant issues involved in the particular action, and has
17 concluded on the basis of review and consultation that there is reasonable
18 basis to commence the action;

19 (b) The claimant was unable to obtain the **written opinion**~~consultation~~ required
20 by paragraph (a) of this subsection because a limitation of time established by
21 KRS Chapter 413 would bar the action and that the **written**
22 **opinion**~~consultation~~ could not reasonably be obtained before that time
23 expired. An affidavit or declaration executed pursuant to this paragraph shall
24 be supplemented by an affidavit or declaration pursuant to paragraph (a)~~of~~
25 ~~this subsection~~ or~~paragraph~~ (c) of this subsection within sixty (60) days
26 after service of the complaint or the suit shall be dismissed unless the court
27 grants an extension for good cause; or

1 (c) The claimant was unable to obtain the written opinion[consultation] required
2 by paragraph (a) of this subsection because the claimant or his or her counsel
3 had made at least three (3) separate good-faith attempts with three (3)
4 different experts to obtain a written opinion[consultation] and that none of
5 those contacted would agree to a written opinion[consultation]; so long as
6 none of those contacted gave an opinion that there was no reasonable basis to
7 commence the action.

8 (3) A single certificate of merit is required for an action even if more than one (1)
9 defendant has been named in the complaint or is subsequently named, unless the
10 claimant's cause of action alleges deviation from an alternate standard of care
11 for one (1) or more defendants.

12 (4) A certificate of merit is not required where the claimant intends to rely solely on
13 one (1) or more causes of action for which expert testimony is not required,
14 including claims of res ipsa loquitur and lack of informed consent, in which case
15 the complaint shall be accompanied by an affidavit or declaration that no cause of
16 action is asserted for which expert testimony is required.

17 (5) If a request by the claimant for the records of the claimant's medical treatment by
18 the defendants has been made and the records have not been produced, the claimant
19 shall not be required to file a certificate of merit under this section until ninety (90)
20 days after the records have been produced. For purposes of this section, "records"
21 includes but is not limited to paper or electronic copies of dictations, video
22 recordings, fetal heart monitor strips, and imaging studies.

23 (6) The identity and statements of an expert relied upon in subsection (2) of this section
24 above are not discoverable, except:
25 (a) When a claim is made under subsection (2)(c) of this section that the claimant
26 was unable to obtain the required consultation with an expert, the court, upon
27 the request of a defendant made prior to compliance by the claimant with this

1 section, may require the claimant to divulge to the court, in camera and
2 without disclosure by the court to any other party, the names of the physicians
3 refusing to consult; or

4 (b) If any party to an action under this section or subsection (1)(e) of Section 14
5 of this Act[hereto] prevails on the basis of the failure of an opposing party to
6 offer any competent expert testimony, the court shall[may], upon motion:
7 1. For good cause shown, compel the opposing party or party's counsel to
8 provide to the court the name of any expert consulted and any written
9 materials relied upon in executing the certificate; and

10 2. Award the prevailing party reasonable attorney's fees, costs, and
11 expenses, including expert witness fees, incurred in obtaining the
12 prevailing judgment, and shall be entered against:

13 a. The nonprevailing party if the nonprevailing party is not
14 represented by counsel at the time of the judgment; or
15 b. Counsel for the nonprevailing party if the nonprevailing party is
16 represented by counsel at the time of the judgment.

17 (7) The claimant, in lieu of serving a certificate of merit, may provide the defendant or
18 defendants with expert information in the form required by the Kentucky Rules of
19 Civil Procedure. This section does not require[Nothing in this section requires] the
20 disclosure of any "consulting" or nontrial expert, except as expressly stated in this
21 section.

22 ➔Section 13. KRS 411.182 is amended to read as follows:

23 (1) In all tort actions, including products liability actions, involving fault of more than
24 one (1) party to the action, including third-party defendants and persons who have
25 been released under subsection (4) of this section, the court, unless otherwise
26 agreed by all parties, shall instruct the jury to answer interrogatories or, if there is
27 no jury, shall make findings indicating:

1 (a) The amount of damages each claimant would be entitled to recover if
2 contributory fault is disregarded; and

3 (b) The percentage of the total fault of all the parties to each claim that is
4 allocated to each claimant, defendant, third-party defendant, and person who
5 has been released from liability under subsection (4) of this section.

6 (2) (a) In determining the percentages of fault, the trier of fact shall consider both the
7 nature of the conduct of each party at fault and the extent of the causal
8 relation between the conduct and the damages claimed.

9 (b) *Notwithstanding this section or any other law to the contrary, a claimant*
10 *shall not be entitled to recover any damages if the claimant is fifty percent*
11 *(50%) or more responsible for the injury or damages claimed. In cases of*
12 *multiple tortfeasors, a claimant shall be entitled to recovery if the claimant's*
13 *fault is less than the combined fault of all tortfeasors.*

14 (3) The court shall determine the award of damages to each claimant in accordance
15 with the findings, subject to any reduction under *subsection*~~[subsection]~~ (4) *to* (6)
16 of this section, and shall determine and state in the judgment each party's equitable
17 share of the obligation to each claimant in accordance with the respective
18 percentages of fault.

19 (4) A release, covenant not to sue, or similar agreement entered into by a claimant and
20 a person liable, shall discharge that person from all liability for contribution, but it
21 shall not be considered to discharge any other persons liable upon the same claim
22 unless it so provides. However, the claim of the releasing person against other
23 persons shall be reduced by the amount of the released persons' equitable share of
24 the obligation, determined in accordance with~~[the provisions of]~~ this section.

25 (5) (a) *Evidence offered to prove the reasonable value of a claim for medical or*
26 *healthcare treatment that has been incurred shall be in the form of amounts*
27 *actually paid to the claimant's healthcare providers or, if the claimant's*

1 healthcare providers have not yet been paid, the amounts actually necessary
2 to satisfy the financial obligations for the medical services or treatment
3 provided to the claimant.

4 (b) Evidence under paragraph (a) of this subsection shall not include:

5 1. Any sums that exceed the amount for which unpaid charges could be
6 satisfied if submitted to any health insurance covering the claimant or
7 any public or government-sponsored healthcare benefit program for
8 which the claimant is eligible, regardless of whether the incurred but
9 not yet satisfied charges have been or will be submitted to the
10 claimant's health insurance or public or government-sponsored
11 healthcare benefit program; or

12 2. Any amounts corresponding to reductions or adjustments required by
13 federal or state law.

14 (6) (a) Evidence offered to prove the reasonable value of a claim for any medical
15 or healthcare treatment that within reasonable medical probability will be
16 incurred in the future shall be in the form of amounts actually necessary to
17 satisfy the financial obligations for the future treatments.

18 (b) The evidence described in paragraph (a) of this subsection shall not
19 include:

20 1. Any sums that exceed the amount for which future charges of
21 healthcare providers could be satisfied if submitted to any health
22 insurance covering the claimant or any public or government-
23 sponsored healthcare benefit program for which the claimant is
24 eligible; or

25 2. Any amounts corresponding to reductions or adjustments required by
26 federal or state law.

27 (7) (a) Notwithstanding this section or any other law to the contrary, the trier of

1 fact may consider the degree or percentage of fault of a public entity entitled
2 to immunity or of a person not a party to the action, based upon evidence of
3 that fault, which shall be admissible, in determining the degree or
4 percentage of fault of those persons who are parties to the action;

5 (b) Negligence or fault of a nonparty may be considered if:

- 6 1. The plaintiff entered into a settlement agreement with the nonparty; or
- 7 2. The defending party raises the defense that a nonparty was wholly or
8 partially at fault;

9 (c) The burden of proof of establishing fault upon a nonparty shall be upon the
10 defendant, who shall affirmatively plead the defense; and

11 (d) Any finding of a degree or percentage of fault of a nonparty shall not
12 constitute a presumptive or conclusive finding as to the nonparty for
13 purpose of a prior or subsequent action involving the nonparty.

14 ➔ Section 14. KRS 413.140 is amended to read as follows:

15 (1) The following actions shall be commenced within one (1) year after the cause of
16 action accrued:

- 17 (a) An action for an injury to the person of the plaintiff[,] or his or her spouse[of
18 her husband, his wife], child, ward, apprentice, or servant;
- 19 (b) An action for injuries to persons, cattle, or other livestock by railroads or
20 other corporations, with the exception of hospitals licensed pursuant to KRS
21 Chapter 216;
- 22 (c) An action for malicious prosecution, conspiracy, arrest, seduction, criminal
23 conversation, or breach of promise of marriage;
- 24 (d) An action for libel or slander;
- 25 (e) An action against a physician, surgeon, dentist, or hospital licensed pursuant
26 to KRS Chapter 216, for negligence or malpractice;
- 27 (f) A civil action[,] arising out of any act or omission in rendering, or failing to

1 render, professional services for others, whether brought in tort or contract,
2 against a real estate appraiser holding a certificate or license issued under
3 KRS Chapter 324A or a real estate broker or sales associate holding a license
4 issued under KRS Chapter 324;

5 (g) An action for the escape of a prisoner, arrested or imprisoned on civil process;

6 (h) An action for the recovery of usury paid for the loan or forbearance of money
7 or other thing, against the loaner or forbearer or assignee of either;

8 (i) An action for the recovery of stolen property, by the owner of the
9 property[thereof] against any person having the property[same] in his or her
10 possession;

11 (j) An action for the recovery of damages or the value of stolen property, against
12 the thief or any accessory;

13 (k) An action arising out of a detention facility disciplinary proceeding, whether
14 based upon state or federal law;

15 (l) An action for damages arising out of a deficiency, defect, omission, error, or
16 miscalculation in any survey or plat, whether brought in tort or contract,
17 against a licensed professional land surveyor holding a license under KRS
18 Chapter 322;

19 (m) An action for violating KRS 311.782; and

20 (n) An action for violating KRS 311.731.

21 (2) An action under subsection (1)(e)[In respect to the action referred to in paragraph
22 (e) of subsection (1)] of this section[, the cause of action] shall be deemed to accrue
23 at the time the injury is first discovered or in the exercise of reasonable care should
24 have been discovered[,] provided that the[such] action shall be commenced within
25 five (5) years from the date on which the alleged negligent act or omission is said to
26 have occurred.

27 (3) An action under subsection (1)(f) or (l)[In respect to the action referred to in

1 paragraph (f) or (l) of subsection (1) of this section[, the cause of action] shall be
2 deemed to accrue within one (1) year from the date of the occurrence or from the
3 date when the cause of action was, or reasonably should have been, discovered by
4 the party injured.

5 (4) **An action under subsection (1)(h)** [In respect to the action referred to in paragraph
6 (h) of subsection (1) of this section[, the cause of action] shall be deemed to accrue
7 at the time of payment. This limitation shall apply to all payments made on all
8 demands, whether evidenced by writing or existing only in parol.

9 (5) **An action under subsection (1)(i)** [In respect to the action referred to in paragraph
10 (i) of subsection (1) of this section[, the cause of action] shall be deemed to accrue
11 at the time the property is found by its owner.

12 (6) **An action under subsection (1)(j)** [In respect to the action referred to in paragraph
13 (j) of subsection (1) of this section[, the cause of action] shall be deemed to accrue
14 at the time of discovery of the liability.

15 (7) **An action under subsection (1)(k)** [In respect to the action referred to in paragraph
16 (k) of subsection (1) of this section[, the cause of action] shall be deemed to accrue
17 on the date an appeal of the disciplinary proceeding is decided by the institutional
18 warden.

19 (8) **An action under** [In respect to the action referred to in] subsection (1)(m) **or** [and]
20 (n) of this section[, the cause of action] shall be deemed to accrue after the
21 performance or inducement or attempt to perform or induce the abortion.

22 (9) (a) **Any person asserting a claim to recover damages for personal injury shall**
23 **provide written notice of the intent to file suit to each prospective defendant**
24 **at least sixty (60) days prior to filing a complaint in any court in this**
25 **Commonwealth.**

26 (b) **The notice shall include:**

27 1. **The claimant's name and address:**

- 1 2. The patient's name and address if the patient is not the claimant;
- 2 3. The time and place of the alleged incident;
- 3 4. A brief description of the alleged wrongful act or omission; and
- 4 5. The type of injury claimed.

5 (c) Service of the notice under paragraph (a) of this subsection shall toll the
6 running of the applicable statute of limitations for a period of sixty (60)
7 days.

8 (d) Any filed action that does not comply with the requirements of paragraphs
9 (a) and (b) of this subsection shall be dismissed without prejudice.

10 ➔ Section 15. KRS 422.317 is amended to read as follows:

11 (1) (a) A party requesting a patient's record from a healthcare provider shall be
12 responsible to the healthcare provider for the reasonable costs of copying
13 and mailing the requested patient's records.

14 (b) Except as provided in KRS Chapter 342 and in subsection (3) of this
15 section, reasonable costs shall not exceed twenty dollars (\$20) for medical
16 records consisting of five (5) pages or less in length and shall not exceed
17 one dollar (\$1) per page for each page copied after the first five (5) pages.
18 Reasonable costs shall also include the actual cost of mailing.

19 (c) The permitted charges under paragraph (b) of this subsection shall apply to
20 third-party providers for copying and related services.

21 (d) 1. Payment of the costs under paragraph (b) of this subsection may be
22 required by the provider prior to the records being furnished; and

23 2. Upon payment of the costs, the patient or the patient's authorized
24 representative shall have the right to receive the medical records
25 without delay.

26 (2) No healthcare provider shall charge a fee for copying, notarizing, or otherwise
27 certifying a medical record requested by a governmental agency for purposes of

1 investigating a complaint against the healthcare provider or related to any
2 governmental inspection or survey.

3 (3) A healthcare provider or a third-party provider of record copying and related
4 services shall consider waiving or reducing the charges for the first copy of
5 patient's medical record if the patient attests, in writing, that the records are
6 being requested for the patient's own use and the charges will cause an undue
7 financial hardship upon the patient~~Upon a patient's written request, a hospital~~
8 ~~licensed under KRS Chapter 216B or a health care provider shall provide, without~~
9 ~~charge to the patient, a copy of the patient's medical record. A copying fee, not to~~
10 ~~exceed one dollar (\$1) per page, may be charged by the health care provider for~~
11 ~~furnishing a second copy of the patient's medical record upon request either by the~~
12 ~~patient or the patient's attorney or the patient's authorized representative~~~~].~~

13 ~~(4)~~~~(2)~~ The Department of Corrections shall not be considered~~as~~ a
14 healthcare~~health care~~ provider under this section.~~;~~ However, the department
15 may make the medical records of an individual inmate available to that individual
16 inmate unless the department, through its designee, determines that the provision of
17 the records~~record~~ is subject to~~the provisions of~~ KRS 197.025.

18 ➔Section 16. KRS 304.45-110 is amended to read as follows:

19 (1) A risk retention group doing business in this state shall be subject to all applicable
20 unfair claims settlement practices laws and regulations as provided in KRS 304.3-
21 200~~, 304.12-220,~~ and 304.12-230.

22 (2) (a) The commissioner is authorized to~~make~~ use~~of~~ any of the powers
23 established under the insurance statutes and regulations of this state to enforce
24 the laws of this state provided~~so long as~~ those powers are not specifically
25 preempted by the Product Liability Risk Retention Act of 1981 (P.L. 97-45)
26 and the Liability Risk Retention Act of 1986 (P.L. 99-563), 15 U.S.C. secs.
27 3901 et seq.:

1 **(b) The authority under paragraph (a) of this subsection** [This] includes[,] but is
2 not limited to[,] the commissioner's administrative authority to:

3 1. Investigate;[.]
4 2. Issue subpoenas;[.]
5 3. Conduct depositions and hearings;[.]
6 4. Issue orders;[.] and
7 5. Impose penalties; and[.]

8 **(c)** Without regard to any investigation, administrative proceedings, or litigation,
9 the commissioner may[can] rely on the procedural law and regulations of the
10 state.

11 (3) The injunctive authority of the commissioner in regard to risk retention groups is
12 restricted by the requirement that any injunction be issued by a court of competent
13 jurisdiction.

14 ➔ Section 17. If any provision of this Act or the application thereof to any person
15 or circumstance is held invalid, the invalidity shall not affect other provisions or
16 applications of the Act that can be given effect without the invalid provision or
17 application, and to this end the provisions of this Act are severable.

18 ➔ Section 18. The following KRS section is repealed:

19 304.12-220 Definition.