

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 claimant.

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   (2) 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   (3) The parties shall be permitted to conduct limited discovery directly related to
- 21   information concerning whether the named defendant is a passive investor.
- 22   (4) 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.