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Kentucky's Product Liability Act and Related Statutes

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Kentucky's Product Liability Act

General Provisions

Definitions

KRS § 411.300.

- As used in KRS 411.310 to 411.340, a "product liability action" shall include any action brought for or on account of personal injury, death or property damage caused by or resulting from the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instructing, marketing, advertising, packaging or labeling of any product.
- As used in KRS 411.310 to 411.340, a "plaintiff" shall mean a person asserting a claim and, if said claim is asserted on behalf of an estate, "plaintiff" shall include plaintiff's decedent.

Short Title

KRS § 411.350.

KRS 411.300 to 411.340 shall be known as the “Product Liability Act of Kentucky.”

Product Liability Actions

Presumptions in Product Liability Actions

KRS § 411.310.

- In any product liability action, it shall be presumed, until rebutted by a preponderance of the evidence to the contrary, that the subject product was not defective if the injury, death or property damage occurred either more than five (5) years after the date of sale to the first consumer or more than eight (8) years after the date of manufacture.
- In any product liability action, it shall be presumed, until rebutted by a preponderance of the evidence to the contrary, that the product was not defective if the design, methods of manufacture, and testing conformed to the generally recognized and prevailing standards or the state of the art in existence at the time the design was prepared, and the product was manufactured.

Circumstances Under Which Defendant is Liable

KRS § 411.320.

- In any product liability action, a manufacturer shall be liable only for the personal injury, death or property damage that would have occurred if the product had been used in its original, unaltered and unmodified condition. For the purpose of this section, product alteration or modification shall include failure to observe routine care and maintenance but shall not include ordinary wear and tear. This section shall apply to alterations or modifications made by any person or entity, except those made in accordance with specifications or instructions furnished by the manufacturer.
- In any product liability action, if the plaintiff performed an unauthorized alteration or an unauthorized modification, and

such alteration or modification was a substantial cause of the occurrence that caused injury or damage to the plaintiff, the defendant shall not be liable whether or not said the defendant was at fault or the product was defective.

- In any product liability action, if the plaintiff failed to exercise ordinary care in the circumstances in his use of the product, and such failure was a substantial cause of the occurrence that caused injury or damage to the plaintiff, the defendant shall not be liable whether or not said defendant was at fault or the product was defective.

When Wholesalers, Distributor or Retailer to be Held Liable
KRS § 411.340.

In any product liability action, if the manufacturer is identified and subject to the jurisdiction of the court, a wholesaler, distributor, or retailer who distributes or sells a product, upon his showing by a preponderance of the evidence that said product was sold by him in its original manufactured condition or package, or in the same condition such product was in when received by said wholesaler, distributor or retailer, shall not be liable to the plaintiff for damages arising solely from the distribution or sale of such product, unless such wholesaler, distributor or retailer, breached an express warranty or knew or should have known at the time of distribution or sale of such product that the product was in a defective condition, unreasonably dangerous to the user or consumer.

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Kentucky Tort Claims

Statute of Limitations

Actions to be Brought Within Five (5) Years
KRS § 413.120.

The following actions shall be commenced within five (5) years after the cause of action accrued:

- An action upon a contract not in writing, express or implied.

- An action upon a liability created by statute, when no other time is fixed by the statute creating the liability.
- An action for a penalty or forfeiture when no time is fixed by the statute prescribing it.
- An action for trespass on real or personal property.
- An action for the profits of or damages for withholding real or personal property.
- An action for an injury by a trustee to the rights of a beneficiary of a trust.
- An action for an injury to the rights of the plaintiff, not arising on contract and not otherwise enumerated.
- An action upon a bill of exchange, check, draft or order, or any endorsement thereof, or upon a promissory note, placed upon the footing of a bill of exchange.
- An action to enforce the liability of a steamboat or other vessel.
- An action upon a merchant's account for goods sold and delivered, or any article charged in such store account.
- An action upon an account concerning the trade of merchandise, between merchant and merchant or their agents.
- An action for relief or damages on the ground of fraud or mistake.
- An action to enforce the liability of bail.
- An action for personal injuries suffered by any person against the builder of a home or other improvements. This cause of action shall be deemed to accrue at the time of original occupancy of the improvements which the builder caused to be erected.

Actions Relating to Personal Property to be Brought Within Two (2) Years

KRS § 413.125.

An action for the taking, detaining or injuring of personal property, including an action for specific recovery shall be commenced within two (2) years from the time the cause of action accrued.

Actions to be Brought Within One (1) Year

KRS § 413.140.

- The following actions shall be commenced within one (1) year after the cause of action accrued:
 - An action for an injury to the person of the plaintiff, or of her husband, his wife, child, ward, apprentice, or servant
 - ...

Limitations of Actions in KRS 413.090 to 413.160 do not Run Until Removal of Disability or Death

KRS § 413.170.

- If a person entitled to bring any action mentioned in KRS 413.090 to 413.160, except for a penalty or forfeiture, was, at the time the cause of action accrued, an infant or of unsound mind, the action may be brought within the same number of years after the removal of the disability or death of the person, whichever happens first, allowed to a person without the disability to bring the action after the right accrued.
- The right of action upon the official bond of a guardian, personal representative, curator, of the sheriff, or the officer acting as personal representative, or of any other person receiving and holding money to be distributed to a ward, distributee or devisee, under the order of court or by authority of law, of a ward, distributee, devisee or other person entitled, who was an infant when the bond was executed, shall not be deemed to have accrued, unless otherwise expressed in the bond, before the plaintiff attained the age of twenty-one (21) years. Where there are several wards, or several distributees or devisees or other beneficiaries secured by the same bond, who, or some of whom, were infants when the bond was given, the right of action of each one (1) of such infants shall not be deemed to have accrued before he attained the age of twenty-one (21) years.

Action by or Against Personal Representative Under KRS 413.090 to 413.160

KRS § 413.180.

- If a person entitled to bring any action mentioned in KRS 413.090 to 413.160 dies before the expiration of the time-limited for its commencement and the cause of action survives, the action may be brought by his personal representative after the expiration of that time, if commenced within one (1) year after the qualification of the representative.
- If a person dies before the time at which the right to bring any action mentioned in KRS 413.090 to 413.160 would have accrued to him if he had continued alive, and there is an interval of more than one (1) year between his death and the qualification of his personal representative, that representative, for purposes of this chapter, shall be deemed to have qualified on the last day of the one-year period.

Asbestos

Rebuttable presumption in asbestos cleanup lawsuits

KRS § 338.195.

In any personal injury or property damage lawsuit arising from the cleanup of asbestos, the demonstration that acts or omissions of a party to the lawsuit during the party's involvement in cleanup of asbestos were in accordance with generally accepted practice and state-of-the-art scientific knowledge and utilized the best technology reasonably available to the party at the time the asbestos cleanup was performed shall create a rebuttable legal presumption that the acts or omissions were not negligent.

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Kentucky's Comparative Fault Provisions

Allocation of Fault in Tort Actions – Award of Damages – Effect of Release

KRS § 411.182.

- In all tort actions, including products liability actions, involving fault of more than one (1) party to the action, including third-party defendants and persons who have been released under

subsection (4) of this section, the court, unless otherwise agreed by all parties, shall instruct the jury to answer interrogatories or, if there is no jury, shall make findings indicating:

- The amount of damages each claimant would be entitled to recover if contributory fault is disregarded; and
 - The percentage of the total fault of all the parties to each claim that is allocated to each claimant, defendant, third-party defendant, and person who has been released from liability under subsection (4) of this section.
- In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed.
 - The court shall determine the award of damages to each claimant in accordance with the findings, subject to any reduction under subsection (4) of this section, and shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault.
 - A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable, shall discharge that person from all liability for contribution, but it shall not be considered to discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing person against other persons shall be reduced by the amount of the released persons' equitable share of the obligation, determined in accordance with the provisions of this section.

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Kentucky's Punitive Damages Provisions

Definitions – Punitive damages – Proof of Punitive Damages

KRS § 411.184

- As used in this section and KRS 411.186, unless the context requires otherwise:
 - “Oppression” means conduct which is specifically intended by the defendant to subject the plaintiff to cruel and unjust hardship.
 - “Fraud” means an intentional misrepresentation, deceit, or concealment of material fact known to the defendant and made with the intention of causing injury to the plaintiff.
 - “Malice” means either conduct which is specifically intended by the defendant to cause tangible or intangible injury to the plaintiff or conduct that is carried out by the defendant both with a flagrant indifference to the rights of the plaintiff and with a subjective awareness that such conduct will result in human death or bodily harm.
 - “Plaintiff” means any party claiming punitive damages.
 - “Defendant” means any party against whom punitive damages are sought.
 - “Punitive damages” includes exemplary damages and means damages, other than compensatory and nominal damages, awarded against a person to punish and to discourage him and others from similar conduct in the future.
- A plaintiff shall recover punitive damages only upon proving, by clear and convincing evidence, that the defendant from whom such damages are sought acted toward the plaintiff with oppression, fraud or malice.
- In no case shall punitive damages be assessed against a principal or employer for the act of an agent or employee unless such principal or employer authorized or ratified or should have anticipated the conduct in question.
- In no case shall punitive damages be awarded for breach of contract.
- This statute is applicable to all cases in which punitive damages are sought and supersedes any and all existing

statutory or judicial law insofar as such law is inconsistent with the provisions of this statute.

Assessment of Punitive Damages

KRS § 411.186.

- In any civil action where claims for punitive damages are included, the jury or judge if jury trial has been waived, shall determine concurrently with all other issues presented, whether punitive damages may be assessed.
- If the trier of fact determines that punitive damages should be awarded, the trier of fact shall then assess the sum of punitive damages. In determining the amount of punitive damages to be assessed, the trier of fact should consider the following factors:
 - The likelihood at the relevant time that serious harm would arise from the defendant's misconduct;
 - The degree of the defendant's awareness of that likelihood;
 - The profitability of the misconduct to the defendant;
 - The duration of the misconduct and any concealment of it by the defendant; and
 - Any actions by the defendant to remedy the misconduct once it became known to the defendant.
- KRS 411.184 and this section are applicable to all cases in which punitive damages are sought.

Supersedeas Bond for Punitive Damages on Appeal – Limit – Rescission of Limit if Assets Diverted or Dissipated

KRS § 411.187.

- In any civil action brought under any legal theory, the amount of a supersedeas bond necessary to stay execution of a judgment granting legal, equitable, or any other relief during the entire course of all appeals or discretionary reviews of the judgment by all appellate courts shall be set in accordance with applicable law, except that the total amount of the supersedeas bonds that are required collectively of all

appellants during the appeal of a civil action may not exceed one hundred million dollars (\$100,000,000) in the aggregate, regardless of the amount of the judgment that is appealed.

- If the appellee proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond requirement has been limited, is purposefully dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding ultimate payment of the judgment, the limitation granted under subsection (1) of this section shall be rescinded and a court may require the appellant to post a bond in an amount up to the full amount of the judgment pursuant to the Kentucky Rules of Civil Procedure.

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Actions for Wrongful Death

*Action for Wrongful Death – Personal Representative to Prosecute
– Distribution of Amount Recovered*

KRS § 411.130.

- Whenever the death of a person results from an injury inflicted by the negligence or wrongful act of another, damages may be recovered for the death from the person who caused it, or whose agent or servant caused it. If the act was willful or the negligence gross, punitive damages may be recovered. The action shall be prosecuted by the personal representative of the deceased.
- The amount recovered, less funeral expenses and the cost of administration and costs of recovery including attorney fees, not included in the recovery from the defendant, shall be for the benefit of and go to the kindred of the deceased in the following order:
 - If the deceased leaves a widow or husband, and no children or their descendants, then the whole to the widow or husband.

- If the deceased leaves a widow and children or a husband and children, then one-half (1/2) to the widow or husband and the other one-half (1/2) to the children of the deceased.
- If the deceased leaves a child or children, but no widow or husband, then the whole to the child or children.
- If the deceased leaves no widow, husband or child, then the recovery shall pass to the mother and father of the deceased, one (1) moiety each, if both are living; if the mother is dead and the father is living, the whole thereof shall pass to the father; and if the father is dead and the mother living, the whole thereof shall go to the mother. In the event the deceased was an adopted person, "mother" and "father" shall mean the adoptive parents of the deceased.
- If the deceased leaves no widow, husband or child, and if both father and mother are dead, then the whole of the recovery shall become a part of the personal estate of the deceased, and after the payment of his debts the remainder, if any, shall pass to his kindred more remote than those above named, according to the law of descent and distribution.

Joinder of Wrongful Death and Personal Injury Actions

KRS § 411.133.

It shall be lawful for the personal representative of a decedent who was injured by reason of the tortious acts of another, and later dies from such injuries, to recover in the same action for both the wrongful death of the decedent and for the personal injuries from which the decedent suffered prior to death, including a recovery for all elements of damages in both a wrongful death action and a personal injury action.

Damages in Action for Wrongful Death of Minor

KRS § 411.135.

In a wrongful death action in which the decedent was a minor child, the surviving parent, or parents, may recover for loss of affection and companionship that would have been derived from such child

during its minority, in addition to all other elements of the damage usually recoverable in a wrongful death action.

Limitation on Right to Recover for Wrongful Death of Child if Parent Has Abandoned Care and Maintenance

KRS § 411.137.

- A parent who has willfully abandoned the care and maintenance of his or her child shall not have a right to maintain a wrongful death action for that child and shall not have a right otherwise to recover for the wrongful death of that child, unless:
 - The abandoning parent had resumed the care and maintenance at least one (1) year prior to the death of the child and had continued the care and maintenance until the child's death; or
 - The parent had been deprived of the custody of his or her child under an order of a court of competent jurisdiction and the parent had substantially complied with all orders of the court requiring contribution to the support of the child.
- This section may be cited as Mandy Jo's Law.

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Survival of Actions

What Action Shall Survive

KRS § 411.140.

No right of action for personal injury or for injury to real or personal property shall cease or die with the person injuring or injured, except actions for slander, libel, criminal conversation, and so much of the action for malicious prosecution as is intended to recover for the personal injury. For any other injury, an action may be brought or revived by the personal representative, or against the personal representative, heir or devisee, in the same manner as causes of action founded on contract.

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Other Damages Calculations

Damages for Loss of Consortium

KRS § 411.145.

- As used in this section “consortium” means the right to the services, assistance, aid, society, companionship and conjugal relationship between husband and wife, or wife and husband.
- Either a wife or husband may recover damages against a third person for loss of consortium, resulting from a negligent or wrongful act of such third person.

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Kentucky Collateral Source Statute

Notification of Parties Holding Subrogation Rights – Collateral Source Payments and Subrogation Rights Admissible

KRS § 411.188.

- This section shall apply to all actions for damages, whether in contract or tort, commenced after July 15, 1988.
- At the commencement of an action seeking to recover damages, it shall be the duty of the plaintiff or his attorney to notify, by certified mail, those parties believed by him to hold subrogation rights to any award received by the plaintiff as a result of the action. The notification shall state that a failure to assert subrogation rights by intervention, pursuant to Kentucky Civil Rule 24, will result in a loss of those rights with respect to any final award received by the plaintiff as a result of the action.
- Collateral source payments, except life insurance, the value of any premiums paid by or on behalf of the plaintiff for same, and known subrogation rights shall be an admissible fact in any civil trial.
- A certified list of the parties notified pursuant to subsection (2) of this section shall also be filed with the clerk of the court at the commencement of the action.

Kentucky's Seat Belt Statute

Requirements of Use of Seat Belts, Child Restraint Systems, and Child Booster Seats – Exceptions

KRS § 189.125.

- Except as otherwise provided in this section, “motor vehicle” as used in this section means every vehicle designed to carry ten (10) or fewer passengers and used for the transportation of persons, but the term does not include:
 - Motorcycles;
 - Motor-driven cycles; or
 - Farm trucks registered for agricultural use only and having a gross weight of one (1) ton or more.
- A person shall not sell any new motor vehicle in this state nor shall any person make application for registering a new motor vehicle in this state unless the front or forward seat or seats have adequate anchors or attachments secured to the floor and/or sides to the rear of the seat or seats to which seat belts may be secured.
- (a) Any driver of a motor vehicle, when transporting a child of forty (40) inches in height or less in a motor vehicle operated on the roadways, streets, and highways of this state shall have the child properly secured in a child restraint system of a type meeting federal motor vehicle safety standards.(b) Any driver of a motor vehicle, when transporting a child under the age of seven (7) years who is between forty (40) inches and fifty (50) inches in height in a motor vehicle operated on the roadways, streets, and highways of this state, shall have the child properly secured in a child booster seat.
- As used in this section:
 - “Child restraint system” means any device manufactured to transport children in a motor vehicle which conforms to all applicable federal motor vehicle safety standards; and

- “Child booster seat” means a child passenger restraint system that meets the standards set forth in 49 C.F.R. Part 571 that is designed to elevate a child to properly sit in a federally approved lap-and-shoulder belt system.
- Failure to use a child passenger restraint system or a child booster seat shall not be considered as contributory negligence, nor shall such failure to use a passenger restraint system or booster seat be admissible as evidence in the trial of any civil action. Failure of any person to wear a seat belt shall not constitute negligence per se.
- A person shall not operate a motor vehicle manufactured after 1981 on the public roadways of this state unless the driver and all passengers are wearing a properly adjusted and fastened seat belt unless the passenger is a child who is secured as required in subsection (3) of this section. The provisions of this subsection shall not apply to:
 - A person who has in his possession at the time of the conduct in question a written statement from a physician or licensed chiropractor that he is unable, for medical or physical reasons, to wear a seat belt; or
 - A letter carrier of the United States postal service while engaged in the performance of his duties.
- A conviction for a violation of subsection (6) of this section shall not be transmitted by the court to the Transportation Cabinet. The Transportation Cabinet shall not include a conviction for a violation of subsection (6) of this section as part of any person’s driving history record.
- The provisions of subsection (6) of this section shall supersede any existing local ordinance involving the use of seat belts. No ordinance contrary to subsection (6) of this section may be enacted by any unit of local government.

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