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I. THE COMMONWEALTH OF KENTUCKY



A. *FREQUENTLY CITED KENTUCKY STATUTES*

1. **Automobile Insurance**

K.R.S. § 304.20-020

Uninsured Vehicle Coverage; Insolvency of Insurer

No automobile insurance policy shall be issued unless it provides coverage for injuries caused by the owners or operators of uninsured motor vehicles. An insured shall have the right to reject such coverage in writing. The term “uninsured motor vehicle” shall be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured due to insolvency.

If an insurer becomes insolvent within one year after an accident, the insured’s uninsured motorist coverage is protected against such insolvency. Further, nothing in the statute may prevent an insured from pursuing the more favorable terms and conditions provided in his/her policy than what is provided in the statute. The insurer required to pay under this provision is entitled to the settlement proceeds recoverable from the assets of the insolvent insurer, if any.

K.R.S. § 304.39-010 - K.R.S. § 304.39-220

Personal Injury Protection / No-Fault Coverage

Unless specifically waived by the purchaser of automobile insurance, every purchaser in Kentucky is entitled to basic reparation payments to be paid without proof of fault for automobile accident injuries. The maximum amount of benefits to be paid out under the coverage is \$10,000.00 per accident. The amount will be allocated to cover economic losses that are attributable to: medical expenses, work loss, replacement service loss, survivor’s economic loss, and survivor’s replacement service loss.

Once the limits of the no-fault coverage have been met, an injured party may pursue a third-party claim against the tortfeasor. The threshold requirements in order to pursue such a claim are that the damages either exceed \$1,000.00, or that the injury sustained is a permanent disfigurement, a fracture to the bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent loss of bodily function, or death.

K.R.S. § 304.39-320

Underinsured Motorist Coverage

A tortfeasor’s liability insurance is the primary coverage and the underinsured motorist coverage insurance is the secondary or excess coverage. Therefore, UIM coverage is payable only to the extent that judgment exceeds the tortfeasor’s liability coverage. *Kentucky Farm Bureau Mut. Ins. Co. v. Rogers*, 179 S.W.3d 815, 818 (Ky. 2005).

- (1) Every insurer shall make available upon request to its insureds underinsured motorist coverage.

- (2) If an injured person agrees to settle a claim with the liability insurer and the settlement would not fully satisfy the claim for personal injuries so as to create an uninsured motorist claim, then written notice of the proposed settlement must be submitted by certified or registered mail to all underinsured motorist insurers that provide coverage.
- (3) The underinsured motorist insurer then has a period of thirty (30) days to consent to the settlement or retention of subrogation rights.
- (4) The underinsured motorist insurer is entitled to a credit against total damages in the amounts of the limits of the underinsured motorist liability policies in all cases. Nothing, however, including any payments or credits, reduces or affects the total amount of underinsured motorist coverage available to the injured party.

2. Negligence, Other Torts and Contribution

K.R.S. § 49.060

Legislative intent as to Sovereign Immunity in Negligence Claims

It is the intent of the General Assembly to preserve the sovereign immunity of the commonwealth, except in limited situations set forth in the statute. Except as specifically indicated otherwise, the commission shall have exclusive jurisdiction to hear claims for damages against the Commonwealth. This renumbered statute has been changed to allow multiple Commonwealth entities to assert immunity simultaneously and reflect the change in name of the “Board of Claims” to simply the “commission.”

K.R.S. § 186.590

Minor's Negligence Imputed to Person Signing Application or Allowing Him to Drive

Any negligence of a minor under the age of eighteen (18), who has been licensed upon an application as provided by K.R.S. 186.470, will be imputed to the person who signs the application and they will be held jointly and severally liable for any damages caused by the minor's negligence. However, if the minor deposits or someone deposits on his behalf, a proof financial responsibility, the person who signed his application is not subject to liability. Motor vehicle owners who cause or knowingly permit a minor under age eighteen (18) to drive the vehicle on the highway, or who furnish a vehicle to the minor, will be jointly and severally liable for the damage caused by the minor.

K.R.S. § 405.025

Parent or Guardian Liable for Willful Damage to Property Caused by Minor

The parent or guardian of any minor, in his care and custody, against whom judgment has been rendered for the willful marking upon, defacing or damaging of any property, shall be liable for the payment of that judgment up to an amount not to exceed \$2,500.00 and with cumulative damages not to exceed \$10,000.

K.R.S. § 411.182

Comparative Negligence (“Allocation of fault in tort actions; award of damages; effect of release”)

Under an action brought in tort, Kentucky apportions liability for a sustained injury in relation to each party’s degree of fault. As between the parties, the jury is required determine how much at fault each party was, and then apportion damages accordingly (i.e. pure comparative negligence). Comparative negligence will not bar an entire recovery by the plaintiff, but will reduce the total amount of the plaintiff’s award in proportion to their degree of fault. Parties can settle and discharge from liability in tort actions.

K.R.S. § 411.186

Assessment of Punitive Damages

In any civil action where claims for punitive damages are included, the jury, or judge if the jury trial has been waived, shall determine concurrently with all the other issues presented whether punitive damages may be assessed.

The trier of fact should consider the following factors when determining the amount of punitive damages to assess:

- (1) The likelihood at the relevant time that serious harm would arise from the defendant’s misconduct;
- (2) The degree of the defendant’s awareness of that likelihood;
- (3) The profitability of the misconduct to the defendant;
- (4) The duration of the misconduct and any concealment of it by the defendant; and
- (5) Actions by the defendant to remedy the misconduct once it became known to the defendant.

K.R.S. § 411.190

Obligations of Owner to Persons Using Land for Recreation

An owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for such purposes.

Nothing in this section limits in any way any liability which otherwise exists for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

K.R.S. § 411.310

Presumptions in product liability actions

- (1) There is a presumption that a product was not defective in product liability actions if the injury occurs more than five years after the date of sale to the first customer, or more than eight years after manufacture.
- (2) The same presumption exists if the design, methods of manufacture and testing conform 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.

K.R.S. § 413.241

Limitation on liability of licensed sellers or servers of intoxicating beverages; Liability of intoxicated person.

- (1) The General Assembly finds and declares that the consumption of intoxicating beverages, rather than the serving, furnishing, or sale of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or another person.
- (2) Any other law to the contrary notwithstanding, no person holding a permit to serve intoxicating beverages shall be held liable to that person or any other person unless a reasonable person under the same or similar circumstances should know that the person served is already intoxicated at the time of serving.
- (3) The intoxicated person shall be primarily liable with respect to injuries suffered by third persons.
- (4) No protection exists for persons who cause consumption of alcoholic beverages by force or by falsely representing that a beverage contains no alcohol.
- (5) This section shall not apply to civil actions filed prior to July 15, 1988.

3. Insurance Fraud

K.R.S. § 227.220

Duties of State Fire Marshal and Chief State Building Official Relating to Fire Loss (Only effective until January 1, 2019)

This provision details the State Fire Marshal's required actions and authorizations in the event of a fire loss. This provision also provides for the responsibility of the chief state building official.

K.R.S. § 227.250

Duty of Insurers to Report Losses from Fire, Lightning, Hazardous Materials, Flammable Liquids or Explosions

Insurers must report to the State Fire Marshal loss or damage caused by fire, lightning, hazardous materials, and flammable liquids or explosions that occur in or on property insured by the insurer in a manner prescribed by the State Fire Marshal. The State Fire Marshal may waive the reporting if, in his discretion, the losses are unimportant due to the small amount involved and to save time and expense.

K.R.S. § 227.260

Records of Fire Inspections, Investigations and Losses

State Fire Marshal shall keep a record of all fire inspections, investigations and fire losses occurring in this state and of facts concerning them. The records shall be public except for limited circumstances.

K.R.S. § 227.370Inspection of Property by Fire Chief or Other Department Personnel - Inspection and Investigation Reports

Fire department is authorized to inspect all property for the purpose of ascertaining and causing to be corrected any conditions likely to cause fire loss, or determining the cause or origin of any fire loss, or discovering any violation of a law or ordinance relating to fire prevention and protection. A written report shall be made of the inspections.

K.R.S. § 304.12-230Unfair Claims Settlement Practices

This statute imposes duties on insurers on both first-party and third-party insurance claims. Under the statute, claims are to be paid within thirty (30) days upon notice and proof of claim unless the insurer is able to demonstrate why the claim cannot or should not be paid. The statute imposes interest at an annual rate of twelve percent (12%) after the expiration of the thirty (30) day period. The statute also allows an insured to recover attorneys' fees for violations of this statute. However, this statute is limited by *Milby v. Liberty Life Assurance Company of Boston*, 102 F. Supp. 3d 922 (W.D. Ky. 2015), in which the court ruled that claims made under this statute are preempted when they are based on an ERISA-regulated plan.

K.R.S. § 304.14-100Application as Evidence

If the insurer does not furnish a copy of the insurance application to the insured within thirty (30) days after the insurer has received written demand from the insured, then the application of insurance is not admissible in evidence in any action between the insured and the insurer that arises out of the policy. This provision does not apply to industrial life insurance policies.

K.R.S. § 304.14-110Representations in Applications

All statements and descriptions in any application for an insurance policy will be deemed representations and not warranties. Misrepresentations, omissions, and incorrect statements will not prevent a recovery under the policy unless they are fraudulent, material to the acceptance of the risk or to the hazard assumed by the insurer, or if the insurer in good faith would not have issued the policy, issued it at a different premium rate, not have issued a policy in as a large amount, or would not have provided coverage for the hazard resulting in the loss if insurer had been informed of the true facts.

K.R.S. § 304.14-270Forms for Proof of Loss Furnished

Upon written request by any person claiming to have a loss under any insurance contract, the insurer must provide forms of proof of loss to the insured. The insurer has no responsibility or liability for the completion of the proof of loss forms.

K.R.S. § 304.14-280

Claims Administration Not Waiver

Acknowledgment of the receipt of notice of loss or claim under the insurance policy, furnishing forms for reporting a loss or claim and receiving any such forms or proofs completed or uncompleted, investigating any loss or claim or engaging in negotiations for a possible settlement of a loss or claim, and making advance or partial payments under insurance policies, does not constitute a waiver of any provision of a policy or of any defense the insurer may assert.

K.R.S. § 304.20-160

Power of Authorized Agency to Require Insurer to Furnish Information Concerning Fire Loss

An authorized agency may require an insurer to release information or evidence in the insurer's possession deemed important to the investigation of a fire loss of suspicious origin. Such information may include, but is not limited to:

- (1) Pertinent insurance policy information pertaining to such fire loss and any application for such a policy;
- (2) Policy premium payment records;
- (3) History of previous claims made by the insured;
- (4) Material relating to such loss or potential loss.

Furthermore, when an insurer has reason to believe a fire loss may be of other than accidental cause, the insurer shall notify, in writing, an authorized agency.

Any insurer, or person acting in its behalf, or authorized agency who in good faith releases information in compliance with this section, shall not be held civilly or criminally liable.

K.R.S. § 304.47-060

Immunity for Cooperation with Law Enforcement

Under this statute an insurer is immune from civil liability if it notifies law enforcement authorities of suspected insurance fraud.

K.R.S. § 304.47-080

Insurers to Maintain Investigative Units

All insurers licensed in Kentucky must have a special investigative unit to investigate possible insurance fraud. The unit may be staffed either by employees of the insurer or individuals specifically contracted by the insurer to investigate.

4. Miscellaneous Statutes

K.R.S. § 304.1-090

“Principal Office” Defined

This statute defines “principal office” as the office from which the general affairs of the insurer are directed or managed.

K.R.S. § 304.14-060

Insurable Interest, Property

“Insurable interest” means any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment. Contracts of insurance of property or of any interest in or arising from property are only enforceable for the benefit of those who have an insurable interest in the things insured at the time of the loss. This section does not apply to life, health or title insurance.

K.R.S. § 304.14-360

Construction of Policies

Every insurance contract will be construed according to the entirety of its terms and conditions as set forth in the policy, and as amplified, extended, or modified by any rider, endorsement, or application attached to and made a part of the policy.

K.R.S. § 304.14-380

Venue of Suits Against Insurers

Suits based on causes of action against an insurer upon an insurance contract must be brought in the county where the cause of action arose or in the county where the policy holder resides.

K.R.S. § 304.20-050

Arbitration Provision Not Binding

A provision agreeing to arbitrate any or all disputes contained in an automobile liability or motor vehicle liability insurance policy delivered, issued for delivery or renewed in Kentucky, is not binding upon the named insured or person claiming under him.

K.R.S. § 329A.070

Adjuster Licenses

The provisions of KRS 329A.010 to 329A.090 do not apply to:

- (5) An insurance company, licensed insurance agent, staff or independent adjuster if authorized to do business in Kentucky, or an individual employed by an insurance company or licensed insurance agent to investigate suspected fraudulent insurance claims, but who does not adjust losses or determine claims payments, performing investigative duties limited to matters strictly pertaining to an insurance transaction; [referencing insurance adjusters].

K.R.S. § 342.690

Exclusiveness of Workers’ Compensation Remedy

If an employer secures payments of Workers’ Compensation for his employees, the liability of the employer shall be limited to such Workers’ Compensation payments and shall be exclusive and in place of all other liability.

K.R.S. § 405.025

Parent or Guardian Liable for Willful Damage to Property Caused by Minor

The parent or guardian of any minor, in his care and custody, against whom judgment has been rendered for the willful marking upon, defacing or damaging of any property, shall be liable for the payment of that judgment up to an amount not to exceed \$2,500.00 and not to exceed \$10,000.00 in a cumulative amount. However, negligence may be imputed and a person may still be liable for damages exceeding this amount if the person gives the minor an operator's license to drive a motor vehicle and the minor causes such damages.

K.R.S. § 411.182

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

In tort actions when more than one party is at fault, the court will instruct the jury to answer interrogatories, and if no jury, will make findings indicating the amount of damages each claimant would be entitled if contributory fault is disregarded, and the percentage of total fault of all parties. In determining the percentage of fault, the trier of fact will consider the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed and the court will also determine the award of damages to each claimant in accordance with the findings and determine and state in the judgment each party's equitable share of the obligation to each claimant. A release, covenant not to sue, or other agreement between the claimant and a liable person, will discharge the liable person from all liability for contribution but will not discharge the liability of other liable persons unless it so provides and the claim of the releasing person against other persons will be reduced by the released persons' equitable share of the obligation.

K.R.S. § 411.184

Definitions - Punitive Damages - Proof of Punitive Damages

Punitive damages include exemplary damages and are damages other than compensatory and nominal damage. They are awarded to punish and to discourage the defendant and others from similar conduct in the future. The plaintiff must prove by clear and convincing evidence that the defendant acted toward the plaintiff with oppression, fraud, and malice. Punitive damages will not be assessed against a principal or employer for the act of an agent or employee unless they authorized, ratified, or should have anticipated the conduct. Punitive damages are not available for a breach of contract. Under *Williams v. Wilson*, 972 S.W.2d 260, 269 (Ky. 1998), the Supreme Court of Kentucky held that the definition of "malice" as provided in the statute is in violation with the jural rights doctrine and is therefore, unconstitutional. However, this case was treated negatively by *In re Air Crash at Lexington, Kentucky*, August 27, 2006, 5:06-CV-316-KSF, 2008 WL 2369785 (E.D. Ky. June 6, 2008).

K.R.S. § 413.120

Actions to be Brought Within Five (5) Years

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 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.