



## 2018 General Assembly Session: A Brief Update

By: Stephen F. Soltis

The Kentucky General Assembly is currently in the midst of its 2018 regular session, and has introduced several pieces of legislation that have the potential to impact the litigation and subrogation landscape in Kentucky. We have identified several bills that have been introduced this session that are either likely to pass, or may be indicative of trends for future bills to come in this, or subsequent, legislative sessions. Generally, these bills relate to potential caps for personal injury damages, extending jurisdiction over non-residents, immunizing rescuers of trapped animals, wage and pregnancy discrimination, protecting successor corporations in asbestos litigation, and expanding the reach of ULIBA to policies in effect before ULIBA's passage.

### Proposed Constitutional Amendment

Currently, Kentucky finds itself in the minority of states whose constitutions expressly prohibit caps on damages for personal injuries. Senate Bill 2 is an attempt to remove Kentucky from this minority by amending the Constitution of Kentucky to allow Kentucky's General Assembly the power and authority to limit the amount recoverable for injuries to persons and property, and limit the amount recoverable for injuries resulting in death. Further, the proposed constitutional amendment would permit the General Assembly to create a uniform statute of limitations for civil actions resulting from death, personal injuries, or property damage.

While it appears Senate Bill 2 has stalled in committee this session, it is worth noting that this legislation, or a close copy, may be introduced again in another legislative session in an effort to bring Kentucky in line with the majority of states that do not have constitutional prohibitions against damage caps.

### An Effort to Expand Jurisdiction over Non-Residents

Personal jurisdiction over non-residents is currently governed by KRS 454.210, which contains an exhaustive list of categories under which a Kentucky court may exercise personal jurisdiction over

a non-resident. KRS 454.210 grants courts authority over an individual when the cause of action arises from that individual: 1) transacting business in the Commonwealth, 2) contracting to supply goods and/or services, 3) causing a tortious injury in the Commonwealth; 4) causing a tortious injury outside the Commonwealth if the tortious conduct arises out of his or her contacts with the Commonwealth; 5) breaches a warranty when the seller knew the individual would use or consume the product in Kentucky; 6) having an interest in real property, so long as the claim arises from the property itself; 7) contracts to insure any person, property, or risk in the Commonwealth; 8) commits sexual intercourse in Kentucky that causes childbirth when the mother or father is domiciled in Kentucky; and 9) makes a telephone solicitation into Kentucky. Whenever jurisdiction over an individual is derived from one of the above categories, only claims arising from that individual's acts "enumerated in this section may be asserted against him."

House Bill 49, as originally introduced, sought to streamline by removing the nine categories of jurisdiction and replacing them with a single sentence stating that non-residents are subject to personal jurisdiction to the extent provided by the Constitutions of Kentucky and the United States. However, through the committee process this streamlined language was removed, and the original nine categories remain.

Importantly, however, the committee removed the requirement that claims against non-residents must be based solely upon one of the nine categories. Therefore, if a claimant in Kentucky was able to bring suit against a non-resident under any of the enumerated categories of jurisdiction, that claimant could then assert any additional claim against the non-resident even if it was not contained within the statute.

House Bill 49, with the committee's substitutions, passed the vote in the House and is currently under review in the Senate.

#### Civil Immunity for Individuals that Damage Vehicles

As the weather slowly warms, the news cycle eventually becomes dotted with stories of individuals leaving their household pets in hot, parked cars. Likely in response to this issue, the Senate introduced Senate Bill 8 relating to the safety of canines and felines. Under this legislation, which has passed the Senate and moved to the House, individuals who break into cars for the purpose of rescuing animals are granted civil immunity for the damage caused to the passenger car or truck.

For an individual to avail himself or herself of this immunity, he or she must 1) make a reasonable effort to locate the animal's owner; 2) contact law enforcement or first responders, and 3) have a reasonable, good faith belief that the animal is in imminent danger of death. Additionally, the individual must remain reasonably close to the vehicle after freeing the animal, unless emergent

conditions dictate otherwise, and cannot use more force than is reasonably necessary to free the animal.

Under this proposed statute, a vehicle owner's inability to seek recovery from the individual causing damage may lead to the owner to file a claim with his or her insurance carrier, depending upon the extent of the damage caused by the rescuer. In such circumstances, the carrier would be unable to seek subrogation from the wrong-doer, as the wrong-doer would be immunized from any liability. Should a situation such as this arise, it will be necessary to closely evaluate the statute compared to the rescuer's actions to determine whether the rescuer complied with the requirements of the law.

### Limiting Liability to Successor Companies in Asbestos Litigation

Over the years various asbestos manufacturers were purchased by, or otherwise merged with, other successor corporations. Problems arose when individuals developed asbestos related illnesses and brought suit against the successor corporations.

The Kentucky General Assembly introduced the Successor Corporation Asbestos-Related Liability Fairness Act on January 25, 2018. The Act would limit the liabilities of a successor corporation to the "fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation." Importantly, if the original transferring corporation maintained liability insurance the terms, conditions, and limits of the insurance policy would not be affected.

Accordingly, the Act appears designed to primarily protect the assets of the merged corporation by limiting its exposure to the value of the assets it obtained from the potentially liable corporation.

### Discrimination

#### Pregnancy Discrimination Bill Stalled in Committee, but expect a resurgence

While it has not progressed past committee as of yet, Senate Bill 38 may mark a trend toward clarifying employment discrimination as it relates to pregnant women. Specifically, Senate Bill 38 would amend the definition of "reasonable accommodation" to require employers to give employees "affected by pregnancy, childbirth, or related medical conditions" more or longer breaks, time off to recover from childbirth, accommodations with new or modified equipment, transfer to a less strenuous and/or hazardous position, and private space for breastfeeding.

However, employers could avoid these accommodations if the accommodation would result in "undue hardship." In determining whether undue hardship exists, courts would look to the duration of the requested accommodation, as well as whether the employer offers similar accommodations for any other employee for any reason.

While Senate Bill 38 looks to have stalled during this session, the trend across the country demonstrates that more legislatures are adopting statutory protections for pregnant women and new mothers. Employers, and their insurers, should keep a close eye on a bill similar to, if not identical to, Senate Bill 38 reappearing at some later date.

### Wage Discrimination

Under KRS 337.420, et seq., the General Assembly previously enacted legislation prohibiting wage discrimination due to an individual's gender. In short, employers could not pay an employee a lower wage than a comparable employee based upon that employee's sex. Senate Bill 99, introduced on January 22, 2018, would expand the protections for employees.

Senate Bill 99 would make it a discriminatory and unlawful action for an employer to commit an adverse employment action against any employee because that employee discussed, disclosed, or compared his or her wages. Additionally, an employer would be subject to a claim for discrimination for requiring an employee to sign or otherwise agree to not disclose his or her wages as part of his or her employment. Notably, the new provision does not require any showing that the discrimination was based upon gender. Rather, the broad language of this bill would result in a violation if any employee, male or female, discusses his or her wages and is terminated or suffers some other adverse employment action.

If enacted, this addition to KRS 337.423 could potentially open employers to additional liability from claimants seeking to recover after an adverse employment action.

### Uniform Life Insurance Benefits Act Application to Existing Policies

When the Unclaimed Life Insurance Benefits Act (KRS 304.15-420) was first enacted in 2013, it required insurers to compare an insured's in-force life insurance policies against the Death Master File on a semiannual basis. For potential matches the insurer was required to make a good faith effort to confirm the death of the insured, determine whether benefits are due, and locate the beneficiaries. Failure to comply with the statutory provisions, including those relating to unclaimed property, with such frequency so as to constitute a general business practice would be violations of Kentucky's unfair trade practices.

Currently, the ULIBA is only proactive, meaning that insurers are only required to search the Death Master File for those policies in place after the effective date of the Act. (January 1, 2013). House Bill 224, if enacted, would make ULIBA's requirements retroactive, thereby requiring insurers to search the Death Master File for insureds who purchased policies before ULIBA's enactment. Consequently, if House Bill 224 is enacted, insurers who may be subject to ULIBA's provisions will need to review all policies it has issued in the Commonwealth to determine whether any of its insureds are potential matches on the Death Master File.

It is important to note that the General Assembly's session is still in its infancy and, as such, the status of the above legislation is in a constant state of flux. The General Assembly convenes until April 13, 2018, at which time we will have a clearer picture of which of the above bills, as well as any bills that have not been introduced, are going to become law.