

Changing Tort Reform In Kentucky

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By changing its current No-Fault and Tort law options, Kentucky could; 1) Reduce the number of lawsuits filed, 2) Thus reducing insurance company payouts and, 3) Ultimately reducing insurance premiums for the consumer.

Enacted in 1975, Kentucky's No-Fault Act, also known as Kentucky's Motor Vehicle Reparations Act, KRS 304.39, has two sections. The first section of the law references PIP, also known as Personal Injury Protection coverage. The second section references an individual's tort rights or their right to sue.

PIP

The history of the PIP statute, also referred to as Kentucky's Motor Vehicle Reparations Act was enacted in 1975. Kentucky requires basic PIP coverage to be obtained and kept current on all motor vehicles. Basic PIP coverage is to be provided by the insurance carrier for the vehicle in which the injured person is occupying at the time of the accident. PIP is also designed to cover pedestrians that are struck by a covered motor vehicle. Regardless of who is at fault for the accident, basic PIP coverage provides up to \$10,000 per person, per accident for medical expenses incurred. The law also recognizes lost wages up to a specified limit of \$200 per week, unless additional coverage is purchased. In the instance a death occurs, \$1,000 of the \$10,000 benefit is available for funeral expenses, while the

remaining \$9,000 is available for the survivor's economic loss when proof of such loss is provided by the requesting party. Some carriers may offer deductibles and higher limits for PIP coverage to the insured. These additional PIP limits are optional.

Liability Limits

Section two of Kentucky's No-Fault Act discusses limitations on an individual's rights to sue, also referred to as a party's "tort rights". Anyone who registers, operates, maintains or uses a motor vehicle in the state of Kentucky is deemed to have accepted their limitations on their tort rights. Individuals are required to carry minimum liability limits of \$25,000 per person for bodily injury coverage/ \$50,000 per accident/ and \$10,000 for property damage to others.

Tort is a legal term meaning a wrongful civil act for which damages can be recovered by the injured party. In order for a person to be entitled to recover damages under the act, they must meet a monetary threshold of \$1,000. The second qualification is met when an individual sustains a specific type of injury qualified under the law, such as a broken bone, permanent disfigurement, scarring or other permanent injury. The final threshold qualification is when a death occurs. When one of the three thresholds are met, the injured party can sue to recover medical expenses, lost wages, other related expenses, and pain and suffering from the person at fault for the accident. This law under KRS 304.39-060, reads:

**“304.39-060: Acceptance or rejection of partial abolition of tort liability
--Exceptions.**

(1) Any person who registers, operates, maintains or uses a motor vehicle on the public roadways of this Commonwealth shall, as a condition of such registration, operation, maintenance or use of such motor vehicle and use of the public roadways, be deemed to have accepted the provisions of this subtitle, and in particular those provisions which are contained in this section.

(2) (a) Tort liability with respect to accidents occurring in this Commonwealth and arising from the ownership, maintenance, or use of a motor vehicle is "abolished" for damages because of bodily injury, sickness or disease to the extent the basic reparation benefits provided in this subtitle are payable therefor, or that would be payable but for any deductible authorized by this subtitle, under any insurance policy or other method of security complying with the requirements of this subtitle, except to the extent noneconomic detriment qualifies under paragraph (b) of this subsection.

(b) In any action of tort brought against the owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required in this subtitle, or against any person or organization legally responsible for his or her acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish and inconvenience because of bodily injury, sickness or disease arising out of the ownership, maintenance, operation or use of such motor vehicle only in the event that the benefits which are payable for such injury as "medical expense" or which would be payable but for any exclusion or deductible authorized by this subtitle exceed one thousand dollars (\$1,000), or the injury or disease consists in whole or in part of permanent disfigurement, a fracture to a bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of bodily function or death. Any person who is entitled to receive free medical and surgical benefits shall be deemed in compliance with the requirements of this subsection upon a showing that the medical treatment received has an equivalent value of at least one thousand dollars (\$1,000).” (Kentucky Revised Statutes)

No-Fault Rejection

An individual has the right to reject the limitations on their tort rights. In order to reject this right, a written rejection on a special form must be filed with the Department of Insurance before the rejection becomes effective. If an individual chooses to file a

rejection, they are not entitled to receive basic PIP benefits. If all members of the household reject the limitations on the right to sue or be sued, the law requires that the individuals carry Guest PIP on their policy to cover any guest passengers that are in the vehicle or a pedestrian that may become injured should an accident occur. It is to protect the innocent party. Anyone who wishes to reject the limitations on their tort rights will be advised in writing by the Kentucky Department of Insurance of the following:

“ADVISORY CAUTION!

BEFORE SIGNING THE ATTACHED KENTUCKY NO-FAULT REJECTION FORM, READ THE FOLLOWING AS WELL AS THE REJECTION FORM CAREFULLY:

1. Kentucky law requires anyone who uses, owns, or maintains a motor vehicle in this state to have insurance. The minimum required insurance is:

(a) Liability Coverage of Bodily Injury \$25,000 per person/\$50,000 per accident, and Property Damage \$10,000 per accident, or \$60,000 combined Liability Coverage.

(b) Uninsured Motorist Coverage equal to the minimum Bodily Injury limits, unless you reject this in a separate writing; and

(c) Basic No-Fault Coverage (often called Personal Injury Protection (PIP) or Basic Reparations Benefits (BRB)) of \$10,000 per person.

2. Basic No-Fault Coverage provides prompt payment of medical expenses, lost wages up to \$200 per week, replacement services and survivor’s benefits due to bodily injury arising out of a motor vehicle accident. These payments are made to covered injured persons who usually include occupants of the covered vehicle and pedestrians struck by the covered vehicle. Additional amounts of No-Fault coverage may be purchased as optional coverage.

3. If you have No-Fault coverage, your right to sue the at-fault party is limited unless your injury involves a broken bone, permanent disfigurement, medical expenses over \$1,000, permanent injury, or death. With these injuries that exceed the No-

Fault thresholds, you retain your right to sue for pain and suffering and expenses not included by No-Fault coverage.

4. You may reject No-Fault Coverage and the limitations on your right to sue. If you reject:

(a) Your rejection will apply to you in any motor vehicle, whether owned by you or others. There is no exception for a rejection signed as a condition of employment. The only exception is that an owner or operator of a motorcycle may file a rejection that applies only to the motorcycle.

(b) Your rejection will be effective upon receipt by the Department of Insurance and it will remain effective until revoked in writing, except for rejections on behalf of minors. Upon reaching the age of majority, the rejection on behalf of the minor is no longer effective.

(c) You will not be entitled to receive No-Fault Benefits, unless you “buy-back” the Coverage. You also will still be required to purchase liability insurance. Your premium may be higher due to your rejection of No-Fault, as others will have the same right to sue you for injuries which do not reach the No-Fault thresholds, even if they did not reject.

(d) If every member of your household rejects, you must buy Guest No-Fault to provide Basic No-Fault Coverage to your passengers.

5. You will have to prove the other party was at fault before you can recover. Your recovery will be reduced by any degree of fault on your part.”(KY Department of Insurance, 2014)

If a no-fault rejection is filed, liability premiums for that individual may be higher due to the no-fault rejection, since others will still maintain their right to sue the rejector for injuries. If a no-fault rejection form is filed with the Department of Insurance, the rejection will remain in effect until the Department of Insurance is notified in writing of a change. The Department of Insurance can respond to a written request for status.

So in summary, individuals who register, operate, maintain, and use a motor vehicle in the state of Kentucky are required to carry insurance for that vehicle with minimum state limits

of \$10,000 in PIP coverage, unless coverage is rejected. Minimum liability limits of \$25,000/\$50,000 for bodily injury, and \$10,000 for property damage to others is required even if No-Fault Benefits have been rejected.

Now that we have a clear understanding of how the No-Fault law is structured and the idea behind the No-Fault law, it is important to consider why there are so many law suits filed, why insurance companies are paying large settlement amounts and why insurance premiums continue to increase at a steady rate each year.

Based on information published by the Commonwealth of Kentucky on Kentucky Traffic Collisions in 2012, the top contributing factors to auto accidents are inattention, aggressive driving, alcohol involvement, and young drivers.

Inattention would be defined as use of cell phones or texting while driving. Federal legislation has already adopted a policy to take a stand on text messaging while driving. The Kentucky Transportation reports,

“Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company owned or rented vehicles, Government owned, leased or rented vehicles, or privately owned when on official Government business or when performing any

work on behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.”

Aggressive driving is generally defined as actions by drivers that disregard the safety of other drivers and contribute to crashes by failing to yield the right of way, following too closely, driving too fast for conditions, disregarding traffic controls, exceeding the speed limit, improper passing and weaving in and out of traffic.

Alcohol-related collisions are any collision where the driver has been determined to have been under the influence of alcohol. Based on the 2012 Kentucky Collision Report, “4,671 alcohol-related collisions were reported during 2012. 3% of the alcohol-related collisions were fatal, 35% were injury collisions, and 62% were property damage only.”

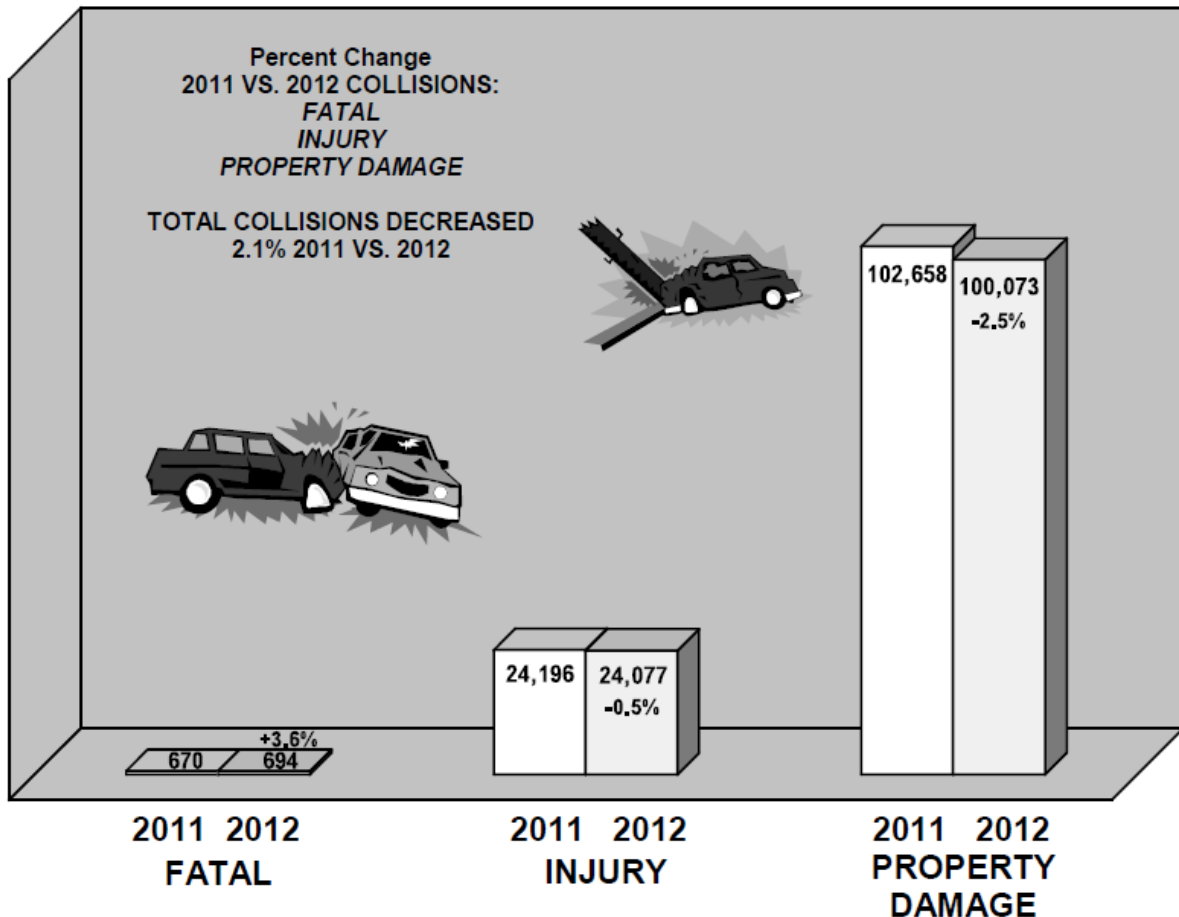
The 2012 Kentucky Collision Report provides additional statistics on collisions involving young drivers or teenage drivers. “Licensed teenage drivers represent 7.3% of Kentucky drivers and this percentage includes those with a learner’s permit. 16% of all collisions, or 19,396 accidents in 2012, involved a teenage driver. An additional 72 accidents involved fatalities”.

2012 COLLISION SUMMARY

| TYPE COLLISION REPORTED | 2011 | 2012 | PERCENT CHANGE |
|--------------------------------------|---------|---------|----------------|
| FATAL (Public Roads) | 670 | 694 | +3.6 |
| NONFATAL INJURY (Public Roads) | 24,196 | 24,077 | -0.5 |
| PROPERTY DAMAGE ONLY (Public Roads) | 102,658 | 100,073 | -2.5 |
| TOTAL NUMBER REPORTED (Public Roads) | 127,524 | 124,844 | -2.1 |
| PARKING LOTS / PRIVATE PROPERTY | 22,754 | 22,994 | +1.1 |
| TOTAL ALL REPORTED | 150,278 | 147,838 | -1.6 |
| FATAL (Total) | *681 | **706 | +3.7 |

* Includes 11 fatal collisions on parking lots / private property
 ** Includes 12 fatal collisions on parking lots / private property

NOTE: Beginning with the 2000 Kentucky Traffic Collision Facts report, these statistics were tabulated under modified formats. Data from parking lots and private property are reported but summarized separately from collisions on public roads. Civilian report data are not included. **UNLESS OTHERWISE NOTED, THE DATA ARE FOR PUBLIC ROADS ONLY.**



Based on information provided in the above 2012 Collision Summary, prepared by the National Highway Traffic Safety Administration, and the Kentucky Transportation Cabinet, and Kentucky Office of Highway Safety, there were 147,838 accidents reported in the state in 2012. Of this number, 706 were fatalities.

This number is based on data analysis conducted by the Highway Safety Office. The Kentucky Transportation Office uses the data collected from data analysis to develop two documents on an annual basis: 1) Analysis of Traffic Crash Data in Kentucky and 2) Traffic Collision Facts. These documents contain the most comprehensive and published collection analysis of statewide crash data available including; 1) who is involved in crashes, 2) what types of crashes, vehicles and roadways are involved, 3) where crashes are taking place, 4) when the crashes are taking place and 5) why the crashes are occurring. With 147,838 number of crashes in Kentucky each year, with both non-fatal injuries and with fatalities, the injured parties are going to be seeking protection under the No-Fault law provided by the state for assistance in paying medical expenses, along with all other special and general damages associated with their accident.

When a person becomes injured in an auto accident they have several options to seek compensation. First, they can work directly with the insurance company for payment of medical expenses and claim settlement. Second, they may retain counsel to assist them in the process. Counsel retention does not mean that a lawsuit gets filed or the case goes to trial. Many cases are settled outside of the court room. Sometimes suit is filed and cases are settled through form of Alternative Dispute Resolution, such as mediation or

arbitration. Finally, cases that cannot find resolution will go to trial. Trial verdicts are published and tracked each year.

Based on the 2012 publication by the Kentucky Trial Court Review:

“The combined verdict summary for 2012 indicates 39 cases were taken to trial asking for recovery of injury, both special and general damages. The aggregate awards for these cases totaled \$7,094,700.00. The average plaintiff collected \$ 272,873 per case and the average verdict was \$181,915.00.”

In addition, The Kentucky Trial Court Review publishes injury multipliers that display suffering award averages. The 2012 Kentucky Trial Court Review states;

“We have generated injury Multipliers for each type of claimed injury in all cases in 2012. The injury multiplier factor works as follows: for soft-tissue injury cases, the injury multiplier factor was 1.686, such that on average, for all cases, pain and suffering awards in soft-tissue cases equaled 1.686 times the claimed medical expense. The award only encompasses the suffering award, not including lost wages, impairment or other damage elements. For instance, in soft-tissue cases, and across fourteen years and 700 verdicts, while the generic multiplier was 1.686, the average suffering award for plaintiff was \$13,1380.”

These example are just jury verdicts, these totals do not include the number of claimants represented each year by an attorney who settle their cases outside of the court room. Nor do these totals indicate the number of injury settlements that take place directly between an injured party and insurance company without attorney representation. Although we must consider that many of these accidents are serious injuries due to accounts of negligence there are other reasons to consider.

For one example let's consider the advertisements you see on television. Let's take the commercials and advertisements from law firms such as Daryl Isaacs and Morgan and Morgan. These advertisements tell people to "get what they deserve" and "did you know with attorney representation you will get three times the settlement award than if you negotiate your claim without an attorney". These types of ads steer injury victims towards attorney representation because they are given a sense of entitlement. The advertisements also create a sense of distrust by alluding to the injured party that they are not going to be treated fair by the insurance company.

The idea behind the creation of the No-Fault law was to allow injured individuals to seek prompt payment for medical bills as they are incurred after an auto accident, regardless of fault. The law requires that a medical provider be paid in full for their services with no offsets or reduction in payments like we see in health insurance. Payment of medical bills in full becomes a very relevant issue when considering the total amount paid each year for injuries claims. This will be discussed in detail later in this article. A recent report issued by the Insurance Institute of Kentucky states:

"PIP costs in Kentucky have been increasing at an unacceptable rate for a decade because costs are not managed and current law prevents any real oversight of PIP medical bills. When medical bills are paid under other types of medical coverage such as workers' compensation, health insurance, Medicare, or Medicaid health care providers must comply with fee schedules or negotiated rates that limit the amount that they may be reimbursed. There is no similar requirement for PIP

coverage in Kentucky.” (IHK)

With the current cost of medical expenses, it doesn't take long for a person to incur medical expenses over the \$1,000 monetary threshold allowing them to qualify for a bodily injury settlement. Once a person meets the threshold and qualifies for a bodily injury settlement, this is when lawsuits come into play. Most injured people turn to attorneys for representation for their injury case. Although negotiations take place throughout the settlement process, sometimes liability disputes and/or a dispute over the amount of damages being claimed causes disagreement among the parties. Suit is often filed in attempts to take the case to trial seeking resolution and a jury verdict. In some instances, lawsuits are filed in order to protect the statute of limitations. Either way, attorney fees and court costs can be very costly.

It is expensive for an insurance carrier to defend a claim and defense costs can dramatically increase claims expenses. Costly court cases and large claim settlements ultimately affect the premiums that Kentuckians pay for automobile insurance. Based on information provided by the Department of Insurance, Kentuckians spent, “\$1,606,975,000.00 in premiums for No-Fault and Liability in 2012, \$1,535,648,000.00 in 2011, and \$1,465,509,000.00 in 2010”. Statistics from the Kentucky Department of Insurance show, premiums increased 5% each year and this is a result of increased claims expenses and settlements.

Claim settlements that are reduced through change in legislation would ultimately have an impact on the overall premiums paid by consumers each year.

When taking into consideration the number of lawsuits filed in the state of Kentucky, the amount of insurance company payouts based on jury verdicts and the increase in insurance premiums placed on the consumer, it is necessary to see if adopting tort reform from another state would help Kentucky with these rising problems. I researched the Full and Limited Tort Option for Pennsylvania and how this law enacted in 1990 has had an impact on their state.

In the 1980's, the State of Pennsylvania saw an increasing number of lawsuits being filed for damages sustained in auto accidents. Pennsylvania enacted legislation changes to their mandatory motor vehicle insurance law. In 1990, full tort and limited tort automobile insurance coverage options were introduced to the state. The states goal was to minimize the number of pain and suffering lawsuits in Pennsylvania courts. In addition, Pennsylvania enacted mandatory PIP insurance coverage in the attempt to reduce the number of lawsuits resulting from automobile accidents. PIP is a No-Fault coverage that allows for payment of medical bills for vehicle occupants involved in an accident.

Pennsylvania's idea behind the creation of PIP insurance was that it would reduce the number of lawsuits for pain and suffering or other forms of loss, thereby reducing insurance company payouts and ultimately reducing insurance premiums. Individuals who purchase insurance in Pennsylvania choose either "limited tort" or "full tort."

Pennsylvania Statute states:

“TITLE 75

1705. Election of tort options.

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(a) Financial responsibility requirements.--

(1) Each insurer, not less than 45 days prior to the first renewal of a private passenger motor vehicle liability insurance policy on and after July 1, 1990, shall notify in writing each named insured of the availability of two alternatives of full tort insurance and limited tort insurance described in subsections (c) and (d). The notice shall be a standardized form adopted by the commissioner and shall include the following language:

NOTICE TO NAMED INSUREDS

A. "Limited Tort" Option--The laws of the Commonwealth of Pennsylvania give you the right to choose a form of insurance that limits your right and the right of members of your household to seek financial compensation for injuries caused by other drivers. Under this form of insurance, you and other household members covered under this policy may seek recovery for all medical and other out-of-pocket expenses, but not for pain and suffering or other nonmonetary damages unless the injuries suffered fall within the definition of "serious injury" as set forth in the policy or unless one of several other exceptions noted in the policy applies.

B. "Full Tort" Option--The laws of the Commonwealth of Pennsylvania also give you the right to choose a form of insurance under which you maintain an unrestricted right for you and the members of your household to seek financial compensation for injuries caused by other drivers. Under this form of insurance, you and other household members covered under this policy may seek recovery for all medical and other out-of-pocket and may also seek financial compensation for pain and suffering and other nonmonetary damages as a result of injuries caused by other drivers."

In Pennsylvania, insurance companies offer full tort coverage. Full Tort coverage provides an individual the ability under Pennsylvania State law to file a lawsuit in court for any damages arising out of an accident, including both special and general damages.

The limited tort coverage option places a limit on an individual's ability to sue for general damages or pain and suffering.

Both full and limited tort coverage options only apply in situations where the driver or

passengers have been injured in an accident that is not the fault of the driver of the vehicle which they occupied. Once the driver has been deemed not at fault for the accident, any individual in that non-negligent driver's vehicle then has the option of bringing a claim against the at-fault driver for unpaid medical bills, property damage, loss of income, pain, and suffering.

Limited tort coverage is less expensive as it reduces an individual's insurance premium approximately 15% - 30% annually. However, by choosing the limited tort option, the individual chooses to decline their right to sue for "pain and suffering", or general damages, in the event they are injured in an auto accident.

Based on statistics reported by the Pennsylvania Department of Insurance, In 2012 consumers paid a total of \$ 19,504,415 in auto insurance premiums.

In 2003, after enacting the full and limited tort options, the Pennsylvania Department of Insurance analyzed data to see if the legislative change had made a difference. The Pennsylvania Department of Insurance released a publication calculating the tort differential by stating:

"The Department has obtained and analyzed data indicating that selection of the limited tort option results in reduced loss costs of approximately 40% for bodily injury, first party benefits, and uninsured/underinsured motorist coverages over full tort selectors."

(PA DOI; Pa.B. Doc. No. 03-1869, 2003).

As we can see, the change in legislation for Pennsylvania reduced the number of law suits, insurance company payouts based on jury verdicts on average of 40%, and, reduced insurance premiums between 15% to 30% for consumers when purchasing insurance options.

Based on the research of the 1990 tort reform in Pennsylvania, it appears that tort reform for a state that was facing similar issues as Kentucky, could potentially be a role model for Kentucky's future legislation.

Works Cited:

Kentucky Department of Insurance; <http://insurance.ky.gov/Documents> (2014)

Insurance Institute of Kentucky; http://www.iiky.org/issues/pip_reform.html (2014)

The Pennsylvania Bulletin; <http://www.pabulletin.com> (2014)

The Pennsylvania Department of Insurance; <http://www.insurance.pa.gov>

The Pennsylvania Legislature; <http://www.legis.state.pa.us/cfdocs>

National Highway Traffic Safety Administration; <http://www.nhtsa.gov>

Kentucky Transportation Cabinet and the Kentucky Office of Highway Safety;
<http://Transportation.ky.gov> (2014)

Commonwealth of Kentucky Traffic Collision Facts 2012;
http://www.ktc.uky.edu/files/2013/09/2012_Kentucky_Traffic_Collision_Facts.pdf
(2012)