

CHAPTER 6**(SB 1)**

AN ACT relating to emergencies and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 39A.020 is amended to read as follows:

As used in KRS Chapters 39A to 39F, unless the context requires otherwise:

- (1) "Adjutant general" means the executive head of the Department of Military Affairs vested with general direction and control authority for the department and the division of emergency management;
- (2) "Catastrophe" means a disaster or series of concurrent disasters which adversely affect the entire Commonwealth of Kentucky or a major geographical portion thereof;
- (3) "Chief executive officer" means a:
 - (a) County judge/executive of a county;
 - (b) Mayor of a consolidated local government;
 - (c) Mayor of an urban-county government;
 - (d) Chief executive officer of a charter county government;
 - (e) Chief executive officer of a unified local government; or
 - (f) Mayor of a city;
- (4) "Comprehensive emergency management program" means the public safety program developed, organized, implemented, administered, maintained, and coordinated by the Division of Emergency Management and local emergency management agencies created pursuant to the provisions of KRS Chapters 39A to 39F, to assess, mitigate, prepare for, respond to, or recover from, an emergency, declared emergency, disaster, or catastrophe, or threat of any of those, as contemplated in KRS 39A.010 or as defined in this section;
- (5) "Coordination" means having and exercising primary state or local executive branch oversight for the purpose of organizing, planning, and implementing;
- (6) "County" means a county, urban-county government, charter county government, consolidated local government, or unified local government;
- (7) "Declared emergency" means any incident or situation declared to be an emergency by executive order of the Governor, or a county judge/executive, or a mayor, or the chief executive of other local governments in the Commonwealth pursuant to the provisions of KRS Chapters 39A to 39F;
- (8) "Director" means the director of the Division of Emergency Management of the Department of Military Affairs;
- (9) "Disaster" means any incident or situation declared as such by executive order of the Governor, or the President of the United States, pursuant to federal law;
- (10) "Disaster and emergency response" means the performance of all emergency functions, other than war-related functions for which military forces are primarily responsible, including, but not limited to: direction and control, incident command, or management; communications; fire protection services; police services; medical and health services; ambulance services; rescue; search and rescue or recovery; urban search and rescue; engineering; alerting and warning services; resource management; public works services; nuclear, chemical, biological, or other hazardous material or substance monitoring, containment, decontamination, neutralization, and disposal; emergency worker protection, site safety, site operations and response planning; evacuation of persons; emergency welfare services; emergency transportation; physical plant protection; temporary restoration of public utility services; emergency lighting and power services; emergency public information; incident investigation, hazards analysis, and damage assessment; and other functions related to effective reaction to a disaster or emergency or catastrophe, or the potential, threatened, or impending threat of any disaster or emergency or catastrophe, together with all other activities necessary or incidental to the preparation for and carrying out of the functions set out in this subsection;

- (11) "Division" means the Division of Emergency Management of the Department of Military Affairs;
- (12) "Emergency" means any incident or situation which poses a major threat to public safety so as to cause, or threaten to cause, loss of life, serious injury, significant damage to property, or major harm to public health or the environment ~~and which a local emergency response agency determines is beyond its capabilities~~;
- (13) "Integrated emergency management system" means the unified and multidisciplinary disaster and emergency response infrastructure developed in the Commonwealth, under the coordination of the division, using methods which align state or local administrative, organizational, and operational resources, to accomplish the mission, goals, and objectives of the comprehensive emergency management program of the Commonwealth;
- (14) "Local disaster and emergency services organization" means that organization of public and private entities developed to carry out the multiagency disaster and emergency response of a city, county, urban-county or charter county pursuant to KRS Chapters 39A to 39F;
- (15) "Local emergency management agency" means the agency created, operated, and maintained to coordinate the local comprehensive emergency management program and disaster and emergency response of a city, county, and urban-county or charter county government pursuant to KRS Chapters 39A to 39F;
- (16) "Local emergency management director" or "Local director" means the executive head of the local emergency management agency, appointed pursuant to the provisions of KRS Chapters 39A to 39F;
- (17) "State emergency management agency" means the Division of Emergency Management of the Department of Military Affairs; and
- (18) "State emergency management director" means the director of the Division of Emergency Management.

➔Section 2. KRS 39A.090 is amended to read as follows:

- (1) The Governor may make, amend, and rescind any executive orders as deemed necessary to carry out the provisions of KRS Chapters 39A to 39F.
- (2) (a) *Executive orders, administrative regulations, or other directives issued under this chapter by the Governor shall be in effect no longer than thirty (30) days unless an extension, modification, or termination is approved by the General Assembly prior to the extension of any executive order or directive that:*
1. *Places restrictions on the in-person meeting or places restrictions on the functioning of the following:*
 - a. *Elementary, secondary, or postsecondary educational institutions;*
 - b. *Private businesses or nonprofit organizations;*
 - c. *Political, religious, or social gatherings;*
 - d. *Places of worship; or*
 - e. *Local governments; or*
 2. *Imposes mandatory quarantine or isolation requirements.*
- (b) *All other executive orders, administrative regulations, or directives that are not described in paragraph (a) of this subsection may exceed thirty (30) days if requested by a chief executive officer or a legislative body of a local government only for that local government and only for the period of time requested by the chief executive officer or a legislative body. The chief executive officer or a legislative body may make a written request for extensions or early termination of the executive order.*
- (3) *Upon the expiration of an executive order or other directive described in subsection (2)(a) of this section declaring an emergency or other implementation of powers under this chapter, the Governor shall not declare a new emergency or continue to implement any of the powers enumerated in this chapter based upon the same or substantially similar facts and circumstances as the original declaration or implementation without the prior approval of the General Assembly.*
- (4) *The General Assembly, by joint resolution, may terminate a declaration of emergency at any time.*
- (5) *The Commonwealth waives immunity for prospective equitable and declaratory relief only, under the Eleventh Amendment to the Constitution of the United States for cases brought against it in federal*

jurisdictions pursuant to KRS 446.350 during emergencies declared under KRS Chapters 39A to 39F. No award of monetary damages, costs, or attorney fees is waived or authorized under this subsection.

➔Section 3. KRS 39A.100 is amended to read as follows:

- (1) In the event of the occurrence or threatened or impending occurrence of any of the situations or events **enumerated in**~~contemplated by~~ KRS 39A.010, 39A.020, or 39A.030, the Governor may declare, in writing, that a state of emergency exists. The Governor shall have and may exercise the following emergency powers during the period in which the state of emergency exists:
- (a) To enforce all laws~~;~~ and administrative regulations relating to disaster and emergency response and to assume direct operational control of all disaster and emergency response forces and activities in the Commonwealth;
 - (b) To require state agencies and to request local governments, local agencies, and special districts to respond to the emergency or disaster in the manner directed;
 - (c) To seize, take, or condemn property, **for the duration of the emergency, and only for public use as defined in KRS 416.675**, excluding firearms and ammunition, components of firearms and ammunition, or a combination thereof, for the protection of the public or at the request of the President, the Armed Forces, or the Federal Emergency Management Agency of the United States, including:
 - 1. All means of transportation and communication;
 - 2. All stocks of fuel of whatever nature;
 - 3. Food, clothing, equipment, materials, medicines, and all supplies; and
 - 4. Facilities, including buildings and plants.~~;~~

Compensation for property seized, taken, or condemned under this paragraph shall be determined using the process in KRS 416.540 to 416.670 to determine value;

- (d) To sell, lend, give, or distribute any of the property under paragraph (c) of this subsection among the inhabitants of the Commonwealth and to account to the State Treasurer for any funds received for the property;
- (e) To make compensation for the property seized, taken, or condemned under paragraph (c) of this subsection;
- (f) To exclude all nonessential, unauthorized, disruptive, or otherwise uncooperative personnel from the scene of the emergency, and to command those persons or groups assembled at the scene to disperse. A person who refuses to leave an area in which a written order of evacuation has been issued in accordance with a written declaration of emergency or a disaster may be forcibly removed to a place of safety or shelter, or may, if this is resisted, be arrested by a peace officer. Forcible removal or arrest shall not be exercised as options until all reasonable efforts for voluntary compliance have been exhausted;
- (g) To declare curfews and establish their limits;
- (h) To prohibit or limit the sale or consumption of goods, **in the event of a shortage of goods**, excluding firearms and ammunition, components of firearms and ammunition, or a combination thereof, or commodities for the duration of the emergency;
- (i) To grant emergency authority to pharmacists pursuant to KRS 315.500, for the duration of the emergency;
- ~~(j) Except as prohibited by this section or other law, to perform and exercise other functions, powers, and duties deemed necessary to promote and secure the safety and protection of the civilian population;~~
- ~~(k)~~ To request any assistance from agencies of the United States as necessary and appropriate to meet the needs of the people of the Commonwealth;~~and~~
- ~~(k)~~~~(4)~~ Upon the recommendation of the Secretary of State, to declare by executive order a different time~~;~~ or place~~;~~ or manner~~;~~ for holding elections in an election area for which a state of emergency has been declared for part or all of the election area. The election shall be held within thirty-five (35) days from the date of the suspended or delayed election. ***The executive order shall remain in effect until the***

date of the suspended or delayed election regardless of the time limitations in Section 2 of this Act and shall not be changed except by action of the General Assembly. The State Board of Elections shall establish procedures for election officials to follow. Any procedures established under this paragraph shall be subject to the approval of the Secretary of State and the Governor by respective executive orders; *and*

- (l) *Except as prohibited by this section or other law, to take action necessary to execute those powers enumerated in paragraphs (a) to (k) of this subsection.*
- (2) *Within thirty (30) days of a declared emergency, and every thirty (30) days thereafter, the Governor shall report to the General Assembly, if in session, or to the Legislative Research Commission if the General Assembly is not in session, on a form provided by the Commission detailing:*
 - (a) *All expenditures relating to contracts issued during the emergency under KRS 45A.085 or 45A.095, or under any provision for which a state agency does not solicit bids or proposals for a contract; and*
 - (b) *All revenues received from the federal government in response to the declared emergency, any expenditures or expenditure plan for the federal funds by federal program, the state agency or program that was allocated the federal funds, and any state fund expenditures required to match the federal funds.*
- (3) In the event of the occurrence or threatened or impending occurrence of any of the situations or events contemplated by KRS 39A.010, 39A.020, or 39A.030, which in the judgment of a local chief executive officer is of such severity or complexity as to require the exercise of extraordinary emergency measures, the county judge/executive of a county other than an urban-county government, or mayor of a city or urban-county government, or chief executive of other local governments or their designees as provided by ordinance of the affected county, city, or urban-county may declare in writing that a state of emergency exists, and thereafter, subject to any orders of the Governor, shall have and may exercise for the period as the state of emergency exists or continues, the following emergency powers:
 - (a) To enforce all laws and administrative regulations relating to disaster and emergency response and to direct all local disaster and emergency response forces and operations in the affected county, city, urban-county, or charter county;
 - (b) To exclude all nonessential, unauthorized, disruptive, or uncooperative personnel from the scene of the emergency, and to command persons or groups of persons at the scene to disperse. A person who refuses to leave an area in which a written order of evacuation has been issued in accordance with a written declaration of emergency or a disaster may be forcibly removed to a place of safety or shelter, or may, if this is resisted, be arrested by a peace officer. Forcible removal or arrest shall not be exercised as options until all reasonable efforts for voluntary compliance have been exhausted;
 - (c) To declare curfews and establish their limits;
 - (d) To order immediate purchase or rental of, contract for, or otherwise procure, without regard to procurement codes or budget requirements, the goods and services essential for protection of public health and safety or to maintain or to restore essential public services; and
 - (e) To request emergency assistance from any local government or special district and, through the Governor, to request emergency assistance from any state agency and to initiate requests for federal assistance as are necessary for protection of public health and safety or for continuation of essential public services.
- ~~(4)~~~~(3)~~ Nothing in this section shall be construed to allow any governmental entity to impose additional restrictions on:
 - (a) The lawful possession, transfer, sale, transport, carrying, storage, display, or use of firearms and ammunition or components of firearms and ammunition;
 - (b) *The right of the people to exercise free speech, freedom of the press, to petition their government for redress of injuries, or to peaceably assemble; or*
 - (c) *The right of the people to worship, worship in person, or to act or refuse to act in a manner motivated by a sincerely held religious belief.*
- (5) *Nothing in this section shall be construed to allow any governmental entity to impose restrictions on the right of the people to:*

- (a) *Peaceably assemble; or*
- (b) *Worship, worship in person, or to act or refuse to act in a manner motivated by a sincerely held religious belief.*

➔Section 4. KRS 39A.180 is amended to read as follows:

- (1) The political subdivisions of the state and other agencies designated or appointed by the Governor may make, amend, and rescind orders and promulgate administrative regulations necessary for disaster and emergency response purposes, and to supplement the carrying out of the provisions of this chapter, if not inconsistent with any orders or administrative regulations promulgated by the Governor or by any state agency exercising a power delegated to it by the Governor.
- (2)
 - (a) All written orders and administrative regulations promulgated by the Governor, the director, or by any political subdivision or other agency authorized by KRS Chapters 39A to 39F to make orders and promulgate administrative regulations, shall have the full force of law ***and, if promulgated as administrative regulations, shall follow the requirements for promulgating administrative regulations under KRS Chapter 13A. All written orders authorized by KRS Chapters 39A to 39F shall be***~~[-, when, if issued by the Governor, the director, or any state agency, a copy is] filed with the Legislative Research Commission~~~~[-, or, if promulgated by an agency or political subdivision of the state, when filed in the office of the clerk of that political subdivision or agency. All existing laws, ordinances, and administrative regulations inconsistent with the provisions of KRS Chapters 39A to 39F, or of any order or administrative regulation issued under the authority of KRS Chapters 39A to 39F, shall be suspended during the period of time and to the extent that the conflict exists].~~
 - (b) *The Governor may suspend a statute by executive order when an emergency is declared under KRS Chapter 39A if:*
 - 1. *The statute is specifically enumerated by the Governor in the executive order; and*
 - 2. *The executive order specifying the suspension is approved by the Attorney General in writing.*
 - (c) *A statute suspension authorized in paragraph (b) of this subsection shall only be in effect while the emergency executive order is in effect.*
 - (d) *Any existing administrative regulation that conflicts with a written order issued under this chapter shall be amended, withdrawn, or repealed in accordance with KRS Chapter 13A to conform with the written order.*
 - (e) *When a written order ends, any administrative regulation promulgated under the authority of this section shall:*
 - 1. *Become void; and*
 - 2. *Be withdrawn, amended, or repealed in accordance with KRS Chapter 13A.*
- (3) *Notwithstanding subsection (2) of this section, the Governor shall not suspend any laws in KRS Chapters 39A to 39F, Chapter 13A, 446.350, 527.020, 311.710 to 311.820, or any other statutes related to abortion.*
- ~~(4)(3)~~ The law enforcement authorities of the state and of its counties, urban-counties, charter counties, and cities shall enforce the written orders and administrative regulations issued pursuant to KRS Chapters 39A to 39F.

➔Section 5. KRS 39A.280 is amended to read as follows:

- (1) Disaster and emergency response functions provided by a state or local emergency management agency, or any emergency management agency-supervised operating units or personnel officially affiliated with a local disaster and emergency services organization pursuant to KRS 39B.070, shall not, in itself, be deemed to be the making of a promise, or the undertaking of a special duty, towards any person for the services, or any particular level of, or manner of providing, the services; nor shall the provision of or failure to provide these services be deemed to create a special relationship or duty towards any person upon which an action in negligence or other tort might be founded. Specifically:
 - (a) The failure to respond to a disaster or other emergency, or to undertake particular inspections or types of inspections, or to maintain any particular level of personnel, equipment, or facilities, shall not be a breach of any duty to persons affected by any disaster or other emergency.

- (b) When a state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, does undertake to respond to a disaster or other emergency, the failure to provide the same level or manner of service, or equivalent availability or allocation of resources as may or could be provided, shall not be a breach of any duty to persons affected by that disaster or other emergency.
 - (c) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization shall not have or assume any duty towards any person to adopt, use, or avoid any particular strategy or tactic in responding to a disaster or other emergency.
 - (d) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, in undertaking disaster and emergency preparedness or prevention activities including inspections, or in undertaking to respond to a disaster or other emergency, shall not have voluntarily assumed any special duty with respect to any risks which were not created or caused by it, nor with respect to any risks which might have existed even in the absence of that activity or response, nor shall any person have a right to rely on such an assumption of duty.
- (2) Neither the state nor any political subdivision of the state, nor the agents or representatives of the state or any of its political subdivisions, shall be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer emergency management agency member, or disaster and emergency services member, or disaster and emergency response worker, or member of any agency engaged in any emergency management or disaster and emergency services or disaster and emergency response activity. The immunity provided by this subsection shall not apply to the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self-insurance for an act or omission covered by this subsection. To the extent that the state, a political subdivision of the state, or a person or an organization maintains liability insurance or self-insurance, sovereign immunity shall not be claimed with regard to an act or omission covered by this subsection. This immunity shall not affect the right of any person to receive benefits or compensation to which the person might otherwise be entitled under the Workers' Compensation Law, or this chapter, or any pension law, or any Act of Congress.
 - (3) Subject to subsection (6) of this section, neither the state nor any political subdivision of the state nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any of its political divisions, nor any volunteer or auxiliary emergency management agency or disaster and emergency services organization member or disaster and emergency response worker or member of any agency engaged in any emergency management or disaster and emergency services or disaster and emergency response activity, complying with or reasonably attempting to comply with this chapter or any order or administrative regulation promulgated pursuant to the provisions of this chapter, or other precautionary measures enacted by any city of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of that activity. The immunity provided by this subsection shall not apply to the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self-insurance for an act or omission covered by this subsection. To the extent that the state, a political subdivision of the state, or a person or an organization maintains liability insurance or self-insurance, sovereign immunity shall not be claimed with regard to an act or omission covered by this subsection.
 - (4) Decisions of the director, his subordinates or employees, a local emergency management director, or the local director's subordinates or employees, a rescue chief or the chief's subordinates, concerning the allocation and assignment of personnel and equipment, and the strategies and tactics used, shall be the exercise of a discretionary, policy function for which neither the officer nor the state, county, urban-county, charter county, or city, or local emergency management agency-supervised operating unit formally affiliated with a local disaster and emergency services organization, shall be held liable in the absence of malice or bad faith, even when those decisions are made rapidly in response to the exigencies of an emergency.
 - (5) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part of the real estate or premises for the purpose of sheltering persons during an actual, impending, mock, or practice disaster or emergency, together with his or her successors in interest, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about the real estate or premises for loss of, or damage to, the property of that person. The immunity provided by this subsection shall not apply to the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self-insurance for an act or omission covered by this subsection. To the extent that the state, a political subdivision of the state,

or a person or organization maintains liability insurance or self-insurance, sovereign immunity shall not be claimed with regard to an act or omission covered by this subsection.

- (6) Subsection (3) of this section shall apply to a volunteer or auxiliary disaster and emergency response worker only if the volunteer or worker is enrolled or registered with a local disaster and emergency services organization or with the division in accordance with the division's administrative regulations.
- (7) While engaged in disaster and emergency response activity, volunteers and auxiliary disaster and emergency response workers enrolled or registered with a local disaster and emergency service organization or with the division in accordance with subsection (6) of this section shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the state and its political subdivisions performing similar work, including the provisions of KRS 12.211, 12.212, and 12.215, allowing the Attorney General to provide defense of any civil action brought against a volunteer enrolled or registered with a local disaster or emergency service organization or with the division due to an act or omission made in the scope and course of a disaster and emergency response activity.
- (8) (a) Notwithstanding subsections (3) and (6) of this section, a licensed professional engineer as defined in KRS 322.010 or an architect licensed under KRS Chapter 323, who voluntarily and without compensation provides architectural, structural, electrical, mechanical, or other professional services at the scene of a declared emergency, disaster, or catastrophe, shall not be liable for any personal injury, wrongful death, property damage, or other loss of any nature related to the licensed professional engineer's or licensed architect's acts, errors, or omissions in the performance of the services carried out:
 1. At the request of or with the approval of a federal, state, or local:
 - a. Emergency management agency official with executive responsibility in the jurisdiction to coordinate disaster and emergency response activity;
 - b. Fire chief or his or her designee; or
 - c. Building inspection official;
 whom the licensed professional engineer or licensed architect believes to be acting in an official capacity;
 2. Within ninety (90) days following the end of the period for the declared emergency, disaster, or catastrophe. ***If the emergency is, unless, extended under Section 2 of this Act, the ninety (90) days shall run from the end date of the last extension***~~[by the Governor under KRS 39A.100];~~ and
 3. If the professional services arose out of the declared emergency, disaster, or catastrophe and if the licensed professional engineer or licensed architect acted as an ordinary reasonably prudent member of the profession would have acted under the same or similar circumstances.
- (b) Nothing in this subsection shall provide immunity for wanton, willful, or intentional misconduct.

➔Section 6. KRS 39A.990 is amended to read as follows:

Any person violating any provision of this chapter or any administrative regulation or order promulgated pursuant to this chapter for which another penalty is not specified shall be ***fined an amount not to exceed one hundred dollars (\$100) for a first offense and not to exceed two hundred fifty dollars (\$250) for each subsequent offense***~~[guilty of a Class A misdemeanor].~~

➔Section 7. KRS 241.090 is amended to read as follows:

State administrators and all investigators shall have the full police powers of peace officers, and their jurisdiction shall be coextensive with the state. They may inspect any premises where alcoholic beverages are manufactured, sold, stored, or otherwise trafficked in, without first obtaining a search warrant. They may confiscate any contraband property. ***The jurisdiction and police powers of state administrators and all investigators during an emergency declared under KRS Chapter 39A shall be subject to the limitations of Section 2 of this Act.***

➔Section 8. KRS 315.500 is amended to read as follows:

- (1) When the Governor declares a state of emergency pursuant to KRS 39A.100, the Governor may issue an executive order for a period of up to thirty (30) days giving pharmacists emergency authority. The executive

order shall designate the geographical area to which it applies. In the executive order, the Governor may vest pharmacists with the authority to:

- (a) Dispense up to a thirty (30) day emergency supply of medication;
 - (b) Administer immunizations to children pursuant to protocols established by the Centers for Disease Control and Prevention, the National Institutes of Health, or the National Advisory Committee on Immunization Practices or determined to be appropriate by the commissioner of public health or his or her designee;
 - (c) Operate temporarily, a pharmacy in an area not designated on the pharmacy permit; and
 - (d) Dispense drugs as needed to prevent or treat the disease or ailment responsible for the emergency pursuant to protocols established by the Centers for Disease Control and Prevention or the National Institutes of Health or determined to be appropriate by the commissioner of public health or his or her designee to respond to the circumstances causing the emergency.
- (2) The provisions of this section may be extended, in writing, by the Governor if necessary to protect the lives or welfare of the citizens.

(3) ***Nothing in this section shall be affected by the requirements of Section 2 of this Act.***

➔Section 9. KRS 367.374 is amended to read as follows:

- (1) (a) When a Condition Red has been declared by the United States Department of Homeland Security under the Homeland Security Advisory System or the Governor has declared a state of emergency under KRS 39A.100, the Governor may implement this section by executive order for a period of fifteen (15) days from notification of implementation, as required by KRS 367.376. The order implementing this section shall be limited to the geographical area indicated in the declaration of emergency. The Governor may terminate or limit the scope of the order at any time.
- (b) No person shall sell, rent, or offer to sell or rent, regardless of whether an actual sale or rental occurs, a good or service listed in this paragraph or any repair or reconstruction service for a price which is grossly in excess of the price prior to the declaration and unrelated to any increased cost to the seller. Goods and services to which this section applies are:
 - 1. Consumer food items;
 - 2. Goods or services used for emergency cleanup;
 - 3. Emergency supplies;
 - 4. Medical supplies;
 - 5. Home heating oil;
 - 6. Building materials;
 - 7. Housing;
 - 8. Transportation, freight, and storage services; and
 - 9. Gasoline or other motor fuels.
- (c) A person's price does not violate this subsection if it is:
 - 1. Related to an additional cost imposed by a supplier of a good or other costs of providing the good or service, including an additional cost for labor or materials used to provide a service;
 - 2. Ten percent (10%) or less above the price prior to the declaration;
 - 3. Ten percent (10%) or less above the sum of the person's costs and normal markup for a good or service;
 - 4. Generally consistent with fluctuations in applicable commodity, regional, national, or international markets, or seasonal fluctuations; or
 - 5. A contract price, or the result of a price formula, established prior to the order implementing this subsection.

- (d) Whether a price violates this subsection is a question of law. In determining if a violation of this subsection has occurred, the court shall consider all relevant circumstances, including prices prevailing in the locality at that time.
- (2) The provisions of this section may be extended for up to three (3) additional fifteen (15) day periods by the Governor, if necessary to protect the lives, property, or welfare of the citizens.
- (3) If a person sold or rented a good or service listed in subsection (1) of this section at a reduced price in the thirty (30) days prior to the Governor's implementation of this section, the price at which that person usually sells or rents the good or service in the area for which the declaration was issued shall be used in determining if the person is in violation of this section.
- (4) If a person did not sell or rent or offer to sell or rent a good or service listed in subsection (1) of this section prior to the Governor's implementation of this section, the price at which a good or service was generally available in the area for which the declaration was issued shall be used in determining if the person is in violation of this section.
- (5) ***Nothing in this section shall be affected by the requirements of Section 2 of this Act.***

➔Section 10. It is the intent of the General Assembly that if any part of this Act be held unconstitutional, the remaining parts shall remain in force.

➔Section 11. Whereas the impact of the state of emergency declared in response to COVID-19 on Kentucky's citizens and businesses is of the utmost importance, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Veto overridden February 2, 2021.