

## CHAPTER 205

( SB 5 )

AN ACT relating to emergencies and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Arising from COVID-19" means an injury or harm that allegedly occurred on or after the emergency was declared on March 6, 2020, and until the emergency declaration is withdrawn, revoked, or lapses, caused by or resulting from:*
- 1. The actual, alleged, or possible exposure to, transmission of, or contraction of COVID-19;*
  - 2. Services, treatment, or other action performed to limit or prevent the spread of COVID-19; or*
  - 3. Services performed by an entity outside the normal course of its business in response to COVID-19;*
- (b) *"COVID-19" means the novel coronavirus identified as SARS-CoV-2, or a virus mutating from SARS-CoV-2, or any variant of SARS-CoV-2, and medical conditions associated with the virus;*
- (c) *"COVID-19 claim" means any claim or cause of action for an act or omission arising from COVID-19 that accrued on or after the date the emergency was declared on March 6, 2020, and until the emergency declaration is withdrawn, revoked, or lapses;*
- (d) *"Executive action" means:*
- 1. All orders and guidelines related to a COVID-19 declared emergency issued by the Governor or any state agency, the President of the United States or any federal agency, or a local governmental agency; and*
  - 2. Industry-specific guidelines related to a COVID-19 declared emergency adopted by a state agency that govern the industry;*
- (e) *"Executive action":*
- 1. Does not mean informal or indefinite statements or recommendations made by government officials; and*
  - 2. Does not create a duty of care;*
- (f) *"Health care providers" means:*
- 1. Any health facility as defined in KRS 216B.015;*
  - 2. Any person or entity providing health care or health services, including those licensed, certified, or registered under, or subject to, KRS 194A.700 to 194A.729 or KRS Chapters 310, 311, 311A, 311B, 312, 313, 314, 314A, 315, 319, 319A, 319B, 319C, 320, 327, 333, 334A, or 335;*
  - 3. The current and former employers, officers, directors, administrators, agents, or employees of those entities listed in subparagraphs 1. and 2. of this paragraph; or*
  - 4. Any person acting within the course and scope of his or her office, employment, or agency relating to a health care provider;*
- (g) *"Owner" means:*
- 1. The possessor of a fee simple, reversionary, or easement interest, a tenant, lessee, occupant, or person in control of any premises, and his or her employees and agents; or*
  - 2. The possessor of an ownership interest, lessee, occupant, or person in control of an automobile, bus, train, boat, or aircraft, whether or not licensed as a common carrier or motor carrier, and his or her employees and agents;*
- (h) *"Person" has the same meaning as in KRS 446.010, any other profit or nonprofit institution or legal entity, and any employer or employee;*

- (i) *"Political subdivision" has the same meaning as "governmental entity" in KRS 341.069; and*
- (j) *"Premises" means:*
  - 1. *Private or public roads, walking or cycling paths, sidewalks, hiking or multi-use trails, watercourses, or water ways;*
  - 2. *Buildings and structures, including houses of worship, schools, homes, parks, restaurants, shops, stadiums, arenas, gyms, medical facilities, long-term care facilities, retail facilities, wholesale and manufacturing facilities, and facilities in which individuals charged with or convicted of a crime are incarcerated;*
  - 3. *Aircraft, automobiles, trains, buses, or watercraft, whether or not licensed as a common carrier or motor carrier; or*
  - 4. *Any other location where members of the public may engage in personal, commercial, social, religious, or other activities.*
- (2) *Except as provided in subsection (3) of this section, an owner who follows any executive action to prevent the spread of COVID-19 during the COVID-19 declared emergency and either directly or indirectly invites or permits another person to enter the owner's premises while a COVID-19 declared emergency affecting the premises remains in effect or continues, does not:*
  - (a) *Extend any assurance that the premises are safe from any risk of exposure to COVID-19 or to conditions caused by the COVID-19 declared emergency;*
  - (b) *Owe a duty to protect from or warn about any risk related to or caused by COVID-19; or*
  - (c) *Assume responsibility, or incur liability, for any alleged injury, loss, or damage to persons or property arising from a COVID-19 claim.*
- (3) *Nothing in this section limits any liability of an owner for gross negligence, or wanton, willful, malicious, or intentional misconduct.*
- (4) *Nothing in this section shall:*
  - (a) *Create a duty of care or ground of liability for injury to persons or property;*
  - (b) *Relieve any person entering premises from any obligation that he or she may have in the absence of this section to exercise care in his or her use of the premises, or from the legal consequences of the failure to employ such care;*
  - (c) *Affect the right of persons to receive benefits to which he or she would otherwise be entitled under KRS Chapter 342, nor does it affect the exclusive application of that chapter; or*
  - (d) *Affect the applicability of KRS Chapter 338.*
- (5) *Any COVID-19 claim for personal injury against an owner or essential service provider shall be brought within the time set out in KRS 413.140. For purposes of this subsection, such claim shall be deemed to have accrued at the time the injury is first discovered, or in the exercise of reasonable care should have been discovered.*
- (6) *Any COVID-19 claim involving motor vehicle accidents shall be governed by the limitation periods in KRS 304.39-230.*
- (7) *Any COVID-19 claim involving damage to real property shall be brought within the time set out in KRS 413.120.*
- (8)
  - (a) *Any essential service provider during the declared emergency of the COVID-19 pandemic shall not be liable for any COVID-19 claim.*
  - (b) *Nothing in this subsection limits any liability of an essential service provider for gross negligence, or wanton, willful, malicious, or intentional misconduct.*
- (9) *The following businesses and service providers shall be deemed essential service providers and shall be considered an agent of the Commonwealth of Kentucky for the limited purpose of providing essential services arising from COVID-19:*
  - (a) *The following service providers identified in Executive Order No. 2020-257 dated March 25, 2020:*

1. *Organizations that provide charitable and social services;*
  2. *Individuals and businesses needed for transportation;*
  3. *Financial institutions;*
  4. *Mail, post, shipping, and pick-up services;*
  5. *Individuals and businesses that produce, supply, prepare, and sell food;*
  6. *Home-based care and services; and*
  7. *Individuals and businesses that work in the supply chain for critical medical and pharmaceutical products;*
- (b) *Health care providers;*
  - (c) *Medicaid waiver providers;*
  - (d) *Elementary and secondary schools, whether public or private;*
  - (e) *Child care service providers and facilities;*
  - (f) *Funeral directors, morticians, undertakers, and embalmers;*
  - (g) *Local government agencies and political subdivisions; and*
  - (h) *Manufacturers located in the Commonwealth of Kentucky that produced or are producing, or that distributed or are distributing, medical, medicinal, hygienic items such as face masks and hand sanitizers, or other personal protective equipment.*
- (10) *Nothing in KRS Chapters 39A to 39F amends, repeals, or alters any immunity, defense, limitation of liability, or procedure available or required under any other law or contract.*

➔Section 2. 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, *disaster, or catastrophe* 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 ~~action~~~~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~~ 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) (a) **"Executive action" means:**
1. **All orders and guidelines related to a COVID-19 declared emergency issued by the Governor or any state agency, the President of the United States or any federal agency, or a local governmental agency; and**
  2. **Industry-specific guidelines related to a COVID-19 declared emergency adopted by a state agency that govern the industry; and**
- (b) **"Executive action":**
1. **Does not mean informal or indefinite statements or recommendations made by government officials; and**
  2. **Does not create a duty of care;**
- (14) "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;
- ~~(15)~~~~(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;
- ~~(16)~~~~(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;
- ~~(17)~~~~(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;
- ~~(18)~~~~(17)~~ "State emergency management agency" means the Division of Emergency Management of the Department of Military Affairs; and
- ~~(19)~~~~(18)~~ "State emergency management director" means the director of the Division of Emergency Management.

➔Section 3. KRS 39A.070 is amended to read as follows:

The director, with the approval of the adjutant general, shall exercise the following powers, responsibilities, and duties:

- (1) To represent the Governor on all matters pertaining to the comprehensive emergency management program and the disaster and emergency response of the Commonwealth;
- (2) To coordinate the development of a statewide comprehensive emergency management program, and through it, an integrated emergency management system for the disaster and emergency response of the Commonwealth;
- (3) To promulgate administrative regulations and issue orders, directives, standards, rules, procedures, guidance, or recommended practices necessary to coordinate the development, administration, organization, operation, implementation, and maintenance of the statewide comprehensive emergency management program and the integrated emergency management system of the Commonwealth;
- (4) To coordinate the development of comprehensive emergency management programs by the cities, counties, and urban-county or charter county governments as functional components of the integrated emergency management system of the Commonwealth;
- (5) To supervise the development and maintenance of the Kentucky Emergency Operations Plan, and to review and give concurrence to local emergency operations plans required pursuant to KRS Chapters 39A to 39F;
- (6) To coordinate the comprehensive emergency management program of the Commonwealth with the emergency management or other emergency response-related programs of the federal government, and of other states, to the fullest appropriate extent;
- (7) To advise the Governor and the adjutant general immediately of the occurrence or threatened or impending occurrence of any disaster or emergency, and to recommend to the Governor any emergency *executive action*~~{actions, written orders, emergency powers, or executive orders}~~ that the Governor should execute;
- (8) To serve as the Governor's primary liaison with local officials in the event of the occurrence, or threatened or impending occurrence, of any disaster or emergency in the cities, counties, urban-counties, or charter counties of the Commonwealth;
- (9) To take any other preparedness or response actions deemed necessary for adequate response to a disaster or emergency situation to include: requesting increased readiness activities by state or local agencies in advance of an actual disaster or emergency; requesting implementation of local emergency operations plans or the activation of local emergency operations centers; requesting reports from state or local agencies regarding emergency situations, damage assessments, or the taking of emergency response actions; and requesting the mobilization or deployment of any trained and equipped forces of state or local government for the disaster and emergency response purposes set forth in KRS Chapters 39A to 39F;
- (10) To request and utilize the personnel, equipment, services, and facilities of existing officers and agencies of the Commonwealth and of all political subdivisions and special districts. All these officers and agencies shall fully cooperate with and extend their resources to the director as requested to the extent that local public safety is not unreasonably compromised;
- (11) To employ measures and give directions to the state or local boards of health as necessary for the purpose of securing compliance with the provisions of KRS Chapters 39A to 39F, or with the findings or recommendations of the boards of health, because of conditions arising from disasters, emergency situations, national security emergencies, or the threat thereof;
- (12) To request and utilize the services of state and local law enforcement officers for the purpose of securing compliance with the provisions of KRS Chapters 39A to 39F, or any order of the Governor pertaining to disaster and emergency response;
- (13) On behalf of this Commonwealth, with the approval of the Governor or act of the General Assembly, to enter into reciprocal aid agreements or compacts with other states and the federal government, either on a statewide, local, county, or city basis, or with other states or a province of a foreign country. The mutual aid agreements shall be limited to the furnishing or exchange of food, clothing, medicine, and other supplies; engineering services; emergency housing; police services; National Guard personnel and resources while under the control of the state; health, medical, and related services; firefighting; rescue; search and rescue or recovery; urban search and rescue; hazardous materials response services, transportation and construction services and equipment; personnel necessary to provide or conduct these services and other supplies, equipment, facilities, personnel, and services as needed; the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items for mobile support units, firefighting, search and rescue, and police units, and health units; and on the terms and conditions deemed necessary;

- (14) To sponsor and develop mutual aid plans and agreements among the urban-county or charter county governments, counties, cities, and other political subdivisions and special districts of the Commonwealth, similar to the mutual aid arrangements with other states referred to in subsection (13) of this section;
- (15) To procure motor vehicles, radio and telecommunications equipment, protective clothing, safety equipment, and other necessary supplies and materials to meet the emergency response, operational, and administrative needs of the division;
- (16) To identify deficiencies existing in the emergency management program organization, facilities, and capabilities of the Commonwealth, including but not limited to: personnel and administrative resources; state, sub-state, area, or local emergency operations centers; mobile command posts; emergency telecommunications and computer systems; alerting and warning systems; stockpiles of critical resources; or any other necessary elements, and to recommend to the adjutant general, for consideration by the Governor or the General Assembly or other appropriate funding authority, the administrative or operational funding requirements, and long-range capital construction or improvement projects needed to meet the emergency management infrastructure needs of the Commonwealth;
- (17) To serve as the state coordinating officer and notify the Governor of the appropriations necessary to fund the expected emergency operational or response costs of the division, and the Commonwealth's share of the grants provided by Pub.L.No. 93-288, Title V, Federal Disaster Assistance Programs as amended by Pub.L.No. 100-707, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or successor acts or titles, and further, take action necessary to ensure entitlement to all other federal relief or assistance programs;
- (18) To cooperate with the President of the United States, the Federal Emergency Management Agency, and other appropriate federal offices and agencies, and the offices and agencies of other states in matters pertaining to the comprehensive emergency management program of the Commonwealth and nation; and in connection with these, to take any measures considered necessary to implement any request of the President and the appropriate federal offices and agencies, for any action requiring effective disaster and emergency response, including the direction or control and mobilization of disaster and emergency response forces; tests and exercises, warnings, and signals for drills or other emergency response activities and the mechanical devices to be used in connection with these; the shutting off of water mains, gas mains, electric power connections, and the suspension of all other utility services; the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior, and subsequent to a drill, emergency, declared emergency, or disaster; public meetings or gatherings; and the evacuation and sheltering of the civilian population; and
- (19) To delegate any authority vested in the director under KRS Chapters 39A to 39F and to provide for the subdelegation of any such authority.

➔Section 4. KRS 39A.090 is amended to read as follows:

The Governor may make, amend, and rescind any executive **actions**~~orders~~ as deemed necessary to carry out the provisions of KRS Chapters 39A to 39F.

➔Section 5. KRS 39A.270 is amended to read as follows:

- (1) During the threatened or impending happening of a disaster or emergency, the Governor, the Adjutant General, or the Director may authorize the use of public employees, equipment, supplies, materials, funds, or any other publicly owned or supported resources to assist in the mitigation of the potential effects of the disaster or emergency, regardless of whether the use is on public or private property.
- (2) During the actual happening of and any part of the response phase of a disaster or emergency the Governor, the Adjutant General, or the Director, shall, when necessary or desirable, authorize the use of public employees, equipment, supplies, materials, funds, or any other publicly owned or supported resource to assist in the operations of government, or the private sector, necessary to deal with the disaster or emergency, regardless of whether the use is on public or private property.
- (3) ***During the actual happening or any part of the response phase of a disaster or declared emergency, the Governor or the General Assembly may, by executive action, legislation, or administrative regulation promulgated under KRS Chapter 13A, declare which of the following services, if any, are essential:***
  - (a) ***Those individuals and businesses that are necessary to deal with the response to the disaster or declared emergency or that protect the life and health of Kentucky citizens;***

- (b) *Individuals and businesses that are engaged in conduct, business, or an activity that otherwise constitutes a critical infrastructure sector as determined by the United States Department of Homeland Security's Cybersecurity and Infrastructure Security Agency, or its successor; or*
  - (c) *Individuals and businesses that are charged with responsibility for a governmental function related to a declared emergency or that is not in the ordinary course of conduct or business, including responsibilities that require changes to the medical, manufacturing, or educational environment in which they typically operate.*
- (4) After the active or response phase of the disaster or emergency has passed and the recovery phase has begun, the Governor, the Adjutant General, or the Director may authorize the use of public employees, equipment, supplies, funds, or any other publicly owned or supported resources to assist in the recovery phase of the disaster or emergency, regardless of whether the use is on public or private property.
- (5)~~(4)~~ A formal declaration of disaster or emergency shall not be necessary to invoke the provisions of subsection (1) or (2) of this section.

➔Section 6. 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 **gross negligence or wanton, willful, malicious, or intentional**~~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 **executive action**~~order~~ or administrative regulation promulgated pursuant to the provisions of this chapter, or other ~~precautionary~~ measures enacted by any city ~~or~~ 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 **gross negligence or wanton, willful, malicious, or intentional misconduct**~~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 **if the worker is enrolled or registered under KRS 39A.356**, ~~only if the volunteer or worker is enrolled or registered with a local disaster and emergency services organization~~ or with the **political subdivision**~~division~~ in accordance with the **political subdivision's**~~division's~~ administrative regulations **and as provided in KRS 39F.020**.
- (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, unless extended 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 *gross negligence or* wanton, willful, or intentional misconduct.

→Section 7. Whereas the need for the citizens of Kentucky who are providing essential services during the COVID-19 pandemic, or who are taking precautions to protect and rehabilitate the Kentucky economy, to immediately be protected from unnecessary legal action is a compelling and immediate requirement, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

→Section 8. Whereas Section 1 of this Act provides liability protection and immunity and sets forth the legal requirements for bringing suit against any owner or person providing essential services during an emergency, disaster, or catastrophe, and whereas the COVID-19 pandemic appeared in Kentucky in early March 2020, leading to executive actions that altered the relationships and interactions among members of the public beginning with the declaration of an emergency on March 6, 2020, Section 1 of this Act shall be retroactive to March 6, 2020.

→Section 9. 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 10. Section 1 of this Act is repealed effective Dec. 31, 2023. Any causes of action that are prohibited or time-barred under this Act will remain so after its repeal.

→Section 11. This Act shall not be interpreted to limit liability for non-COVID-19 related motor vehicle accidents, including those negligent acts under the Motor Vehicle Repairs Act.

**Became law without Governor's signature April 12, 2021.**