

CHAPTER 82

(HB 43)

AN ACT relating to religious freedom during a declared emergency.

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

➔Section 1. 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 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, *but excluding houses of worship, except to the extent that such houses have become unsafe to a degree that would justify condemnation in the absence of a state of emergency.*

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) To request any assistance from agencies of the United States as necessary and appropriate to meet the needs of the people of the Commonwealth;

- (k) Upon the recommendation of the Secretary of State, to declare by executive order a different time or place 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 KRS 39A.090 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) 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.
- (6) (a) *A governmental entity shall not prohibit or restrict a religious organization from operating or engaging in religious services during a declared emergency to the same or any greater extent than other organizations or businesses that provide essential services necessary and vital to the health and welfare of the public are prohibited or restricted.*
- (b) *Paragraph (a) of this subsection shall not prohibit the Governor from requiring religious organizations to comply with neutral health, safety, or occupancy requirements that are applicable to all organizations and businesses that provide essential services. However, no health, safety, or occupancy requirement may impose a substantial burden on a religious organization or its services unless applying the burden to the religion or religious service in the particular instance is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.*
- (c) *A governmental entity shall not take any discriminatory action against a religious organization.*
- (7) *As used in this section:*
- (a) *"Discriminatory action" includes any action taken by a governmental entity wholly or partially on the basis that such organization is religious, operates or seeks to operate during a state of emergency, or engages in the exercise of religion as protected under the First Amendment to the Constitution of the United States to:*
 1. *Adversely alter in any way the tax treatment of, cause any tax, penalty, or payment to be assessed against, or deny, delay, or otherwise make unavailable an exemption from taxation;*
 2. *Disallow, deny, or otherwise make unavailable a deduction for state tax purposes of any charitable contribution made to or by a religious organization;*
 3. *Impose, levy, or assess a monetary fine, fee, civil or criminal penalty, damages award, or injunction; or*
 4. *Withhold, reduce, exclude, terminate, adversely alter the terms or conditions of, or otherwise make unavailable or deny any:*
 - a. *State grant, contract, subcontract, cooperative agreement, guarantee, loan, scholarship, or other similar benefit from or to a religious organization;*
 - b. *Entitlement or benefit under a state benefit program from or to a religious organization; or*
 - c. *License, certification, accreditation, recognition, or other similar benefit, position, or status from or to any religious organization;*
 - (b) *"Governmental entity" means:*
 1. *The Commonwealth or any of its political subdivisions;*
 2. *Any agency of the state described in KRS 12.020;*
 3. *Any person acting under color of state law; and*
 4. *Any private person suing under or attempting to enforce a law, rule, or administrative regulation adopted by the state or any of its political subdivisions;*
 - (c) *"Religious organization" means:*
 1. *A house of worship, including churches, synagogues, shrines, mosques, and temples;*
 2. *A religious group, corporation, association, educational institution, ministry, order, society, or similar entity, regardless of whether it is integrated or affiliated with a church or other house of worship; or*

3. *Any officer, owner, employee, manager, religious leader, clergy, or minister of an entity or organization described in this paragraph; and*
- (d) *"Religious services" means a meeting, gathering, or assembly of two (2) or more persons organized by a religious organization for the purpose of worship, teaching, training, providing educational services, conducting religious rituals, or other activities that are deemed necessary by the religious organization for the exercise of religion.*
- (8) *A religious organization may assert a violation of subsection (4)(c), (5)(b), or (6) of this section as a claim against a governmental entity in any judicial or administrative proceeding or as a defense in any judicial or administrative proceeding without regard to whether the proceeding is brought by or in the name of the governmental entity, any private person, or any other party. Sovereign, governmental, and qualified immunity are waived to the extent of liability created under this section. An action asserting a violation of this section may be commenced, and relief may be granted, without regard to whether the religious organization commencing the action has sought or exhausted administrative remedies.*
- (9) *Remedies available to a religious organization under this section against a governmental entity include:*
- (a) *Declaratory relief;*
- (b) *Injunctive relief to prevent or remedy a violation of this section or the effects of such violation;*
- (c) *Compensatory damages for pecuniary and nonpecuniary losses;*
- (d) *Reasonable attorneys' fees and costs; and*
- (e) *Any other appropriate relief.*
- (10) *Remedies available to a religious organization under this section against a person not acting under color of state law shall be limited to declaratory and injunctive relief.*
- (11) *This section:*
- (a) *Shall be construed in favor of a broad protection of free exercise of religion;*
- (b) *Shall be in addition to the protections provided under state and federal laws and constitutions. Nothing in this section shall be construed to:*
1. *Preempt or repeal any state law or local ordinance that is equally or more protective of free exercise of religion; or*
2. *Narrow the meaning or application of any state law or local ordinance protecting free exercise of religion; and*
- (c) *Applies to, and in cases of conflict, supersedes:*
1. *Each statute of the Commonwealth that infringes upon the free exercise of religion protected by this section, unless a conflicting statute is expressly made exempt from the application of this section; and*
2. *Any ordinance, rule, administrative regulation, order, opinion, decision, practice, or other exercise of a governmental entity's authority that infringes upon the free exercise of religion protected by this section.*
- (12) *A religious organization shall bring an action to assert a claim under this section no later than two (2) years from the date the person knew or should have known that a discriminatory action or other violation of this section was taken against that religious organization.*

Signed by Governor April 5, 2022.