

**39A.275 COVID-19 claims -- Immunity and filing limitations -- Essential service providers. (Repealed - Effective until December 31, 2023) (Effective until December 31, 2023)**

(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that allegedly occurred on or after the emergency was declared on March 6, 2020, and until the emergency declaration is withdrawn, revoked, or lapses, caused by or resulting from: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that accrued on or after the date the emergency was declared on March 6, 2020, and until the emergency declaration is withdrawn, revoked, or lapses;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.

**Effective:** April 11, 2021

**History:** Created 2021 Ky. Acts ch. 205, sec. 1, effective April 11, 2021.

**Legislative Research Commission Note** (4/11/2021). 2021 Ky. Acts ch. 205, sec. 8 provides that KRS 39A.275, as created in 2021 Ky. Acts ch. 205, sec. 1 shall be retroactive to March 6, 2020.

**Legislative Research Commission Note** (4/11/2021). 2021 Ky. Acts ch. 205, sec. 10 provides, "Section 1 of this Act [KRS 39A.275] is repealed effective December 31, 2023. Any causes of action that are prohibited or time-barred under this Act will remain so after its repeal."