

HOUSE OF REPRESENTATIVES

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2020 REGULAR SESSION
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Amend printed copy of **HB 322**

From page 1, line 4 to page 6, line 22, delete Sections 1 to 4 in their entirety and insert in lieu thereof:

"➔Section 1. KRS 39A.100 is amended to read as follows:

(1) **Except as provided in Section 2 of this Act,** 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, 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, 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;

Amendment No. HFA 3

Rep. Rep. Savannah Maddox

Committee Amendment _____

Signed: _____

Floor Amendment _____

LRC Drafter: _____

Adopted: _____

Date: _____

Rejected: _____

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2. All stocks of fuel of whatever nature;
 3. Food, clothing, equipment, materials, medicines, and all supplies; and
 4. Facilities, including buildings and plants;
- (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, 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;

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- (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
- (l) 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 State Board of Elections shall establish procedures for election officials to follow. **In the event an executive order is issued pursuant to this subsection, all other associated election deadlines, including filing for office, signature petition deadlines, and deadlines for filing certificates of nomination, shall also be extended for the same period named in the executive order.**
- (2) **Except as provided in Section 2 of this Act,** 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

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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.
- (3) Nothing in this section shall be construed to allow any governmental entity to impose additional restrictions on the lawful possession, transfer, sale, transport, carrying, storage, display, or use of firearms and ammunition or components of firearms and ammunition.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "emergency order" shall mean:

(a) Any state of emergency declared under this chapter;

(b) Any executive powers exercised under KRS 194A.025, KRS 214.020, KRS 241.090, KRS 244.120; or

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- (c) Any executive powers exercised under a similar statute or provision issued in response to an public emergency, disease outbreak, public health threat, or similar occurrence, which has the effect of restraining personal liberty, shutting down business, seizing property, or otherwise infringing on any rights guaranteed by the United States Constitution or Kentucky Constitution, or any other statute.
- (2) Any emergency order issued under this section shall be:
- (a) Narrowly tailored towards meeting the exigencies of the emergency;
- (b) No broader or burdensome than is necessary to meet the exigencies of the emergency;
- (c) Not be underinclusive;
- (d) Actually issued in response to an emergency or immediate threat of an emergency;
- (e) Give due regard in its scope and duration for the impact of such order on the public at large, public safety, and the long term economic impact upon the Commonwealth of Kentucky and its citizens; and
- (f) Be in effect no longer than is necessary to meet the exigency giving rise to the emergency. No emergency order shall close Kentucky courts to filings or foreclose immediate or emergency relief sought by any person, including relief under this section, nor fail to give redress for injuries as required under the Kentucky Constitution.
- (3) Any person adversely effected by an emergency order may bring an action, individually or as a class action, for declaratory and injunctive relief, in the Circuit Court in the county in which the person resides or in which the person's affected business is located, to seek judicial review of the emergency order as provided in this section. The Circuit Court shall have jurisdiction under this statute and shall review the matter de novo, without deference to the actions of the ordering official. Any similarly situated person

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shall be permitted to intervene in any such action.

(4) The Circuit Court shall hold a hearing upon an action filed under subsection (3) of this section within seven (7) days of the filing of the action.

(5) In any action brought under subsection (3) of this section, the burden shall be on the Commonwealth to prove, by clear and convincing evidence:

(a) The existence of a emergency, disease outbreak, public health threat, or similar occurrence;

(b) The need for the emergency order;

(c) The narrow tailoring of the order;

(d) That the order was no broader than necessary to meet the exigencies of the emergency;

(e) That the order is not underinclusive to meet the exigencies of the emergency;

(f) That due regard was given for the impact of such orders on the public at large, public safety, and the long term economic impact upon the Commonwealth of Kentucky and its citizens; and

(g) That the order was in effect or is to be in effect no longer than necessary to meet the exigency giving rise to the emergency.

(6) Should the Commonwealth meet its burden any aggrieved person may prove by a preponderance of the evidence that the impacts on the person or the person's business warrant relief, in whole or part, from the emergency order or that the emergency order is unreasonable as applied to that person. Such proof may include:

(a) That their personal or business activities do not in fact present a substantial risk of furthering the emergency;

(b) That the personal or economic impacts of the emergency order to the aggrieved person, or similarly situated aggrieved person are more severe than the impacts of

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- the emergency or possible emergency on the public as a whole warranting relief; or*
- (c) That the emergency order is otherwise unreasonable as applied to them.*
- (7) (a) If the Commonwealth should fail to meet its burden under subsection (5) of this statute, the Circuit Court shall either:*
- 1. Vacate the emergency order; or*
 - 2. Modify the Emergency Order in a manner to make it less burdensome so as to meet the requirements under subsection (5).*
- (b) If an aggrieved person should meet his or her burden under subsection (6) of this statute, the Circuit Court shall award appropriate relief to the aggrieved person from the emergency order, including, if warranted, complete exemption from the requirements of the emergency order.*
- (8) Any order issued under this section granting or denying relief shall include in the record detailed findings of fact and conclusions of law, and be immediately appealable to the Kentucky Court of Appeals. Any judicial officer granting or denying relief under this statute shall provide a copy any such order to the Legislative Research Commission within thirty (30) days of the issuance of the order.*
- (9) Any person who prevails against the Commonwealth because the Commonwealth fails to meet its burden under subsections (2) or (5) of this section shall be awarded reasonable attorney and expert fees and costs. Nothing in this paragraph shall preclude further relief from the Kentucky Claims Commission.*
- ➔Section 3. KRS 39A.990 is amended to read as follows:
- (1) Except for a violation of Section 2 of this Act,* 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 guilty of a Class A misdemeanor.
- (2) Any public official, including any judicial officer, who intentionally or knowingly*

violates, ignores, or fails to enforce Section 2 of this Act, shall be guilty of a Class A misdemeanor, and the violation shall constitute a misdemeanor in office under Section 68 of Kentucky's Constitution for the purposes of impeachment.

➔Section 4. KRS 214.020 is amended to read as follows:

Subject to the requirements of Section 2 of this Act, when the Cabinet for Health and Family Services believes that there is a probability that any infectious or contagious disease will invade this state, it shall take such action and adopt and enforce such rules and regulations as it deems efficient in preventing the introduction or spread of such infectious or contagious disease or diseases within this state, and to accomplish these objects shall establish and strictly maintain quarantine and isolation at such places as it deems proper.

➔Section 5. Whereas, ensuring basic due process, liberty, and the constitutional and statutory rights of Kentucky citizens is a compelling and immediate need, 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."