

1 AN ACT relating to damages to small businesses resulting from executive orders.

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

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

5 *(1) As used in this section:*

6 *(a) "Emergency order" means:*

7 *1. Any state of emergency declared under this chapter;*

8 *2. Any executive powers exercised under KRS 39A.100, 194A.025,*
9 *214.020, 241.090, or 244.120; or*

10 *3. Any executive powers exercised under a similar statute or provision*
11 *issued in response to an public emergency, disease outbreak, public*
12 *health threat, or similar occurrence, which has the effect of shutting*
13 *down business, seizing property, or otherwise infringing on any rights*
14 *guaranteed by the United States Constitution or Kentucky*
15 *Constitution, or any other statute; and*

16 *(b) "Small business" means a business entity organized for profit, including a*
17 *sole proprietorship, partnership, limited partnership, corporation, limited*
18 *liability company, joint venture, association, or cooperative that has fifty*
19 *(50) or fewer full time employees or has gross annual sales of less than one*
20 *million dollars (\$1,000,000).*

21 *(2) Any owner of a small business adversely effected by an emergency order may*
22 *bring an action for damages against the Commonwealth in the Circuit Court in*
23 *the county in which the person resides or in which the person's affected business*
24 *is located.*

25 *(3) An owner of a small business may seek damages under subsection (2) of this*
26 *section for:*

27 *(a) Lost income during, and for a reasonable period of time after, a temporary*

- 1 *partial or complete closure of the business that would not have occurred but*
2 *for compliance with the emergency order;*
3 *(b) Loss of going concern, including loss of real property, if the closure of the*
4 *business results in the owner going out of business and the owner would not*
5 *have gone out of business but for compliance with the emergency order;*
6 *and*
7 *(c) Fees and costs incurred in bringing the action.*
8 *(4) The owner of the small business has the burden of proving that the loss is due to*
9 *the emergency order.*
10 *(5) An action under this section shall be commenced within one (1) year of the*
11 *expiration of the emergency order that resulted in the closure.*