

1 AN ACT relating to emergencies and declaring an emergency.

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) "Executive action" means:*

- 7 *1. All orders and guidelines related to a declared emergency issued by*
8 *the Governor or any state agency, the President of the United States or*
9 *any federal agency, or a local governmental agency; and*
10 *2. Industry-specific guidelines adopted by a state agency that govern the*
11 *industry;*

12 *(b) "Executive action":*

- 13 *1. Does not mean informal or indefinite statements or recommendations*
14 *made by government officials; and*
15 *2. Does not create a duty of care;*

16 *(c) "Health care providers" means:*

- 17 *1. Any health facility as defined in KRS 216B.015;*
18 *2. Any person or entity providing health care or health services,*
19 *including those licensed, certified, or registered under, or subject to,*
20 *KRS 194A.700 to 194A.729 or KRS Chapters 310, 311, 311A, 311B,*
21 *312, 313, 314, 314A, 315, 319, 319A, 319B, 319C, 320, 327, 333, 334A,*
22 *or 335;*
23 *3. The current and former employers, officers, directors, administrators,*
24 *agents, or employees of those entities listed in subparagraphs 1. and 2.*
25 *of this paragraph; or*
26 *4. Any person acting within the course and scope of his or her office,*
27 *employment, or agency relating to a health care provider;*

1 (d) "Owner" means:

2 1. The possessor of a fee simple, reversionary, or easement interest, a
3 tenant, lessee, occupant, or person in control of any premises, and his
4 or her employees and agents; or

5 2. The possessor of an ownership interest, lessee, occupant, or person in
6 control of an automobile, bus, train, boat, or aircraft, whether or not
7 licensed as a common carrier or motor carrier, and his or her
8 employees and agents;

9 (e) "Person" has the same meaning as in KRS 446.010, any other profit or
10 nonprofit institution or legal entity, and any employer or employee;

11 (f) "Political subdivision" has the same meaning as "governmental entity" in
12 KRS 341.069;

13 (g) "Premises" means:

14 1. Private or public roads, walking or cycling paths, sidewalks, hiking or
15 multi-use trails, watercourses, or water ways;

16 2. Buildings and structures, including houses of worship, schools,
17 homes, parks, restaurants, shops, stadiums, arenas, gyms, medical
18 facilities, long-term care facilities, retail facilities, wholesale and
19 manufacturing facilities, and facilities in which individuals charged
20 with or convicted of a crime are incarcerated;

21 3. Aircraft, automobiles, trains, buses, or watercraft, whether or not
22 licensed as a common carrier or motor carrier; or

23 4. Any other location where members of the public may engage in
24 personal, commercial, social, religious, or other activities;

25 (2) Except as provided in subsection (3) of this section, an owner who follows any
26 guidance to prevent the spread of SARS-COV-2 provided by any government
27 agency during the SARS-COV-2 declared emergency and either directly or

1 indirectly invites or permits another person to enter the owner's premises while a
2 SARS-COV-2 pandemic or the declared emergency prompted by the pandemic
3 and affecting the premises remains in effect or continues, does not:

4 (a) Extend any assurance that the premises are safe from any risk of exposure
5 to the SARS-COV-2 virus or to conditions caused by the declared
6 emergency related to SARS-COV-2;

7 (b) Owe a duty to protect from or warn about any risk related to the SARS-
8 COV-2 virus or to conditions caused by the declared emergency; or

9 (c) Assume responsibility, or incur liability, for any alleged injury, loss, or
10 damage to persons or property directly related to the SARS-COV-2 virus.

11 The period of non-liability shall apply to claims or causes of action that accrue
12 from the time an emergency was declared on March 6, 2020, until the emergency
13 declaration is withdrawn, revoked, or lapses.

14 (3) Nothing in this section limits any liability of an owner for wanton, willful,
15 malicious, grossly negligent, or intentional failure to adhere to executive actions
16 related to the SARS-COV-2 pandemic while the pandemic or the SARS-COV-2
17 declared emergency continues.

18 (4) Nothing in this section shall:

19 (a) Create a duty of care or ground of liability for injury to persons or property;

20 (b) Relieve any person entering premises from any obligation that he or she
21 may have in the absence of this section to exercise care in his or her use of
22 the premises, or from the legal consequences of the failure to employ such
23 care;

24 (c) Affect the right of persons to receive benefits to which he or she would
25 otherwise be entitled under KRS Chapter 342, nor does it affect the
26 exclusive application of that chapter; or

27 (d) Affect the applicability of KRS Chapter 338.

- 1 (5) Any liability claim for personal injury made against an owner related to the
2 SARS-COV-2 pandemic or to the declared emergency shall be brought within the
3 time set out in KRS 413.140 if it is a claim for personal injury. Such claim shall
4 be deemed to have accrued at the time the injury is first discovered, or in the
5 exercise of reasonable care should have been discovered. The right to
6 compensation for any personal injury related to the SARS-COV-2 pandemic or to
7 the declared emergency covered by this section shall be forever barred unless the
8 action is filed within two (2) years from the date on which the alleged act or
9 omission is said to have occurred.
- 10 (6) Claims involving motor vehicle accidents related to the SARS-COV-2 pandemic
11 or to the declared emergency shall be governed by the limitation periods in KRS
12 304.39-230.
- 13 (7) Claims involving damage to real property related to the SARS-COV-2 pandemic
14 shall be brought within the time set out in KRS 413.120.
- 15 (8) (a) Any person providing an essential service during the declared emergency of
16 the SARS-COV-2 pandemic shall be considered an agent of the
17 Commonwealth of Kentucky for the limited purpose of providing the
18 essential services and shall not be liable for any act or omission directly
19 arising from SARS-COV-2 that is alleged to have caused injury or death to
20 an individual, damage to property, or any other harm or injury that may be
21 alleged as a result of changes in work environments made in good faith to
22 respond to the declared emergency of the SARS-COV-2 pandemic.
- 23 (b) The period of non-liability shall apply to claims or causes of action that
24 accrue from the time an emergency was declared on March 6, 2020, until
25 the emergency declaration is withdrawn, revoked, or lapses.
- 26 (c) This subsection shall not apply to claims or causes of action alleging
27 willful, grossly negligent, or intentional misconduct.

1 (9) All decisions made by an essential service provider in carrying out executive
2 actions related to the SARS-COV-2 pandemic or to executive actions taken under
3 the SARS-COV-2 emergency declaration shall be considered discretionary.

4 (10) The following businesses and service providers shall be deemed essential service
5 providers for the duration of the SARS-COV-2 declaration of emergency, first
6 entered March 6, 2020:

7 (a) The following service providers identified in Executive Order No. 2020-257
8 dated March 25, 2020:

9 1. Organizations that provide charitable and social services;

10 2. Individuals and businesses needed for transportation;

11 3. Financial institutions;

12 4. Mail, post, shipping, and pick-up services;

13 5. Individuals and businesses that produce, supply, prepare, and sell
14 food;

15 6. Home-based care and services;

16 7. Individuals and businesses that work in the supply chain for critical
17 medical and pharmaceutical products;

18 (b) Health care providers;

19 (c) Medicaid waiver providers;

20 (d) Elementary and secondary schools, and postsecondary education
21 institutions, whether public or private;

22 (e) Child care service providers and facilities;

23 (f) Local government agencies and political subdivisions; and

24 (g) Manufacturers located in the Commonwealth of Kentucky that produced or
25 are producing, or that distributed or are distributing, medical, medicinal,
26 hygienic items such as face masks and hand sanitizers, or other personal
27 protective equipment.

1 **(11) Nothing in KRS Chapters 39A to 39F amends, repeals, or alters any immunity,**
2 **defense, limitation of liability, or procedure available or required under any other**
3 **law or contract.**

4 ➔Section 2. KRS 39A.020 is amended to read as follows:

5 As used in KRS Chapters 39A to 39F, unless the context requires otherwise:

- 6 (1) "Adjutant General" means the executive head of the Department of Military Affairs
7 vested with general direction and control authority for the department and the
8 division of emergency management;
- 9 (2) "Catastrophe" means a disaster or series of concurrent disasters which adversely
10 affect the entire Commonwealth of Kentucky or a major geographical portion
11 thereof;
- 12 (3) "Chief executive officer" means a:
- 13 (a) County judge/executive of a county;
- 14 (b) Mayor of a consolidated local government;
- 15 (c) Mayor of an urban-county government;
- 16 (d) Chief executive officer of a charter county government;
- 17 (e) Chief executive officer of a unified local government; or
- 18 (f) Mayor of a city;
- 19 (4) "Comprehensive emergency management program" means the public safety
20 program developed, organized, implemented, administered, maintained, and
21 coordinated by the Division of Emergency Management and local emergency
22 management agencies created pursuant to the provisions of KRS Chapters 39A to
23 39F, to assess, mitigate, prepare for, respond to, or recover from, an emergency,
24 declared emergency, disaster, or catastrophe, or threat of any of those, as
25 contemplated in KRS 39A.010 or as defined in this section;
- 26 (5) "Coordination" means having and exercising primary state or local executive branch
27 oversight for the purpose of organizing, planning, and implementing;

- 1 (6) "County" means a county, urban-county government, charter county government,
2 consolidated local government, or unified local government;
- 3 (7) "Declared emergency" means any incident or situation declared to be an emergency,
4 disaster, or catastrophe by executive order of the Governor, or a county
5 judge/executive, or a mayor, or the chief executive of other local governments in the
6 Commonwealth pursuant to the provisions of KRS Chapters 39A to 39F;
- 7 (8) "Director" means the director of the Division of Emergency Management of the
8 Department of Military Affairs;
- 9 (9) "Disaster" means any incident or situation declared as such by executive
10 action~~order~~ of the Governor, or the President of the United States, pursuant to
11 federal law;
- 12 (10) "Disaster and emergency response" means the performance of all emergency
13 functions, other than war-related functions for which military forces are primarily
14 responsible, including, but not limited to: direction and control, incident command,
15 or management; communications; fire protection services; police services; medical
16 and health services; ambulance services; rescue; search and rescue or recovery;
17 urban search and rescue; engineering; alerting and warning services; resource
18 management; public works services; nuclear, chemical, biological, or other
19 hazardous material or substance monitoring, containment, decontamination,
20 neutralization, and disposal; emergency worker protection, site safety, site
21 operations and response planning; evacuation of persons; emergency welfare
22 services; emergency transportation; physical plant protection; temporary restoration
23 of public utility services; emergency lighting and power services; emergency public
24 information; incident investigation, hazards analysis, and damage assessment; and
25 other functions related to effective reaction to a disaster or emergency or
26 catastrophe, or the potential, threatened, or impending threat of any disaster or
27 emergency or catastrophe, together with all other activities necessary or incidental

1 to the preparation for and carrying out of the functions set out in this subsection;

2 (11) "Division" means the Division of Emergency Management of the Department of
3 Military Affairs;

4 (12) "Emergency" means any incident or situation which poses a major threat to public
5 safety so as to cause, or threaten to cause, loss of life, serious injury, significant
6 damage to property, or major harm to public health or the environment and which a
7 local emergency response agency determines is beyond its capabilities;

8 (13) (a) "Executive action" means:

9 1. All orders and guidelines related to a declared emergency issued by
10 the Governor or any state agency, the President of the United States or
11 any federal agency, or a local governmental agency; and

12 2. Industry-specific guidelines adopted by a state agency that govern the
13 industry; and

14 (b) "Executive action":

15 1. Does not mean informal or indefinite statements or recommendations
16 made by government officials; and

17 2. Does not create a duty of care;

18 (14) "Integrated emergency management system" means the unified and
19 multidisciplinary disaster and emergency response infrastructure developed in the
20 Commonwealth, under the coordination of the division, using methods which align
21 state or local administrative, organizational, and operational resources, to
22 accomplish the mission, goals, and objectives of the comprehensive emergency
23 management program of the Commonwealth;

24 (15)~~(14)~~ "Local disaster and emergency services organization" means that organization
25 of public and private entities developed to carry out the multiagency disaster and
26 emergency response of a city, county, urban-county or charter county pursuant to
27 KRS Chapters 39A to 39F;

1 ~~(16)~~~~(15)~~ "Local emergency management agency" means the agency created, operated,
2 and maintained to coordinate the local comprehensive emergency management
3 program and disaster and emergency response of a city, county, and urban-county or
4 charter county government pursuant to KRS Chapters 39A to 39F;

5 ~~(17)~~~~(16)~~ "Local emergency management director" or "Local director" means the
6 executive head of the local emergency management agency, appointed pursuant to
7 the provisions of KRS Chapters 39A to 39F;

8 ~~(18)~~~~(17)~~ "State emergency management agency" means the Division of Emergency
9 Management of the Department of Military Affairs; and

10 ~~(19)~~~~(18)~~ "State emergency management director" means the director of the Division of
11 Emergency Management.

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

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

15 (1) To represent the Governor on all matters pertaining to the comprehensive
16 emergency management program and the disaster and emergency response of the
17 Commonwealth;

18 (2) To coordinate the development of a statewide comprehensive emergency
19 management program, and through it, an integrated emergency management system
20 for the disaster and emergency response of the Commonwealth;

21 (3) To promulgate administrative regulations and issue orders, directives, standards,
22 rules, procedures, guidance, or recommended practices necessary to coordinate the
23 development, administration, organization, operation, implementation, and
24 maintenance of the statewide comprehensive emergency management program and
25 the integrated emergency management system of the Commonwealth;

26 (4) To coordinate the development of comprehensive emergency management
27 programs by the cities, counties, and urban-county or charter county governments as

- 1 functional components of the integrated emergency management system of the
2 Commonwealth;
- 3 (5) To supervise the development and maintenance of the Kentucky Emergency
4 Operations Plan, and to review and give concurrence to local emergency operations
5 plans required pursuant to KRS Chapters 39A to 39F;
- 6 (6) To coordinate the comprehensive emergency management program of the
7 Commonwealth with the emergency management or other emergency response-
8 related programs of the federal government, and of other states, to the fullest
9 appropriate extent;
- 10 (7) To advise the Governor and the adjutant general immediately of the occurrence or
11 threatened or impending occurrence of any disaster or emergency, and to
12 recommend to the Governor any emergency executive action~~[actions, written~~
13 ~~orders, emergency powers, or executive orders]~~ that the Governor should execute;
- 14 (8) To serve as the Governor's primary liaison with local officials in the event of the
15 occurrence, or threatened or impending occurrence, of any disaster or emergency in
16 the cities, counties, urban-counties, or charter counties of the Commonwealth;
- 17 (9) To take any other preparedness or response actions deemed necessary for adequate
18 response to a disaster or emergency situation to include: requesting increased
19 readiness activities by state or local agencies in advance of an actual disaster or
20 emergency; requesting implementation of local emergency operations plans or the
21 activation of local emergency operations centers; requesting reports from state or
22 local agencies regarding emergency situations, damage assessments, or the taking of
23 emergency response actions; and requesting the mobilization or deployment of any
24 trained and equipped forces of state or local government for the disaster and
25 emergency response purposes set forth in KRS Chapters 39A to 39F;
- 26 (10) To request and utilize the personnel, equipment, services, and facilities of existing
27 officers and agencies of the Commonwealth and of all political subdivisions and

- 1 special districts. All these officers and agencies shall fully cooperate with and
2 extend their resources to the director as requested to the extent that local public
3 safety is not unreasonably compromised;
- 4 (11) To employ measures and give directions to the state or local boards of health as
5 necessary for the purpose of securing compliance with the provisions of KRS
6 Chapters 39A to 39F, or with the findings or recommendations of the boards of
7 health, because of conditions arising from disasters, emergency situations, national
8 security emergencies, or the threat thereof;
- 9 (12) To request and utilize the services of state and local law enforcement officers for
10 the purpose of securing compliance with the provisions of KRS Chapters 39A to
11 39F, or any order of the Governor pertaining to disaster and emergency response;
- 12 (13) On behalf of this Commonwealth, with the approval of the Governor or act of the
13 General Assembly, to enter into reciprocal aid agreements or compacts with other
14 states and the federal government, either on a statewide, local, county, or city basis,
15 or with other states or a province of a foreign country. The mutual aid agreements
16 shall be limited to the furnishing or exchange of food, clothing, medicine, and other
17 supplies; engineering services; emergency housing; police services; National Guard
18 personnel and resources while under the control of the state; health, medical, and
19 related services; firefighting; rescue; search and rescue or recovery; urban search
20 and rescue; hazardous materials response services, transportation and construction
21 services and equipment; personnel necessary to provide or conduct these services
22 and other supplies, equipment, facilities, personnel, and services as needed; the
23 reimbursement of costs and expenses for equipment, supplies, personnel, and
24 similar items for mobile support units, firefighting, search and rescue, and police
25 units, and health units; and on the terms and conditions deemed necessary;
- 26 (14) To sponsor and develop mutual aid plans and agreements among the urban-county
27 or charter county governments, counties, cities, and other political subdivisions and

- 1 special districts of the Commonwealth, similar to the mutual aid arrangements with
2 other states referred to in subsection (13) of this section;
- 3 (15) To procure motor vehicles, radio and telecommunications equipment, protective
4 clothing, safety equipment, and other necessary supplies and materials to meet the
5 emergency response, operational, and administrative needs of the division;
- 6 (16) To identify deficiencies existing in the emergency management program
7 organization, facilities, and capabilities of the Commonwealth, including but not
8 limited to: personnel and administrative resources; state, sub-state, area, or local
9 emergency operations centers; mobile command posts; emergency
10 telecommunications and computer systems; alerting and warning systems;
11 stockpiles of critical resources; or any other necessary elements, and to recommend
12 to the adjutant general, for consideration by the Governor or the General Assembly
13 or other appropriate funding authority, the administrative or operational funding
14 requirements, and long-range capital construction or improvement projects needed
15 to meet the emergency management infrastructure needs of the Commonwealth;
- 16 (17) To serve as the state coordinating officer and notify the Governor of the
17 appropriations necessary to fund the expected emergency operational or response
18 costs of the division, and the Commonwealth's share of the grants provided by
19 Pub.L.No. 93-288, Title V, Federal Disaster Assistance Programs as amended by
20 Pub.L.No. 100-707, the Robert T. Stafford Disaster Relief and Emergency
21 Assistance Act, or successor acts or titles, and further, take action necessary to
22 ensure entitlement to all other federal relief or assistance programs;
- 23 (18) To cooperate with the President of the United States, the Federal Emergency
24 Management Agency, and other appropriate federal offices and agencies, and the
25 offices and agencies of other states in matters pertaining to the comprehensive
26 emergency management program of the Commonwealth and nation; and in
27 connection with these, to take any measures considered necessary to implement any

1 request of the President and the appropriate federal offices and agencies, for any
2 action requiring effective disaster and emergency response, including the direction
3 or control and mobilization of disaster and emergency response forces; tests and
4 exercises, warnings, and signals for drills or other emergency response activities
5 and the mechanical devices to be used in connection with these; the shutting off of
6 water mains, gas mains, electric power connections, and the suspension of all other
7 utility services; the conduct of civilians and the movement and cessation of
8 movement of pedestrians and vehicular traffic during, prior, and subsequent to a
9 drill, emergency, declared emergency, or disaster; public meetings or gatherings;
10 and the evacuation and sheltering of the civilian population; and

11 (19) To delegate any authority vested in the director under KRS Chapters 39A to 39F
12 and to provide for the subdelegation of any such authority.

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

14 The Governor may make, amend, and rescind any executive action~~[orders]~~ as deemed
15 necessary to carry out the provisions of KRS Chapters 39A to 39F.

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

17 (1) During the threatened or impending happening of a disaster or emergency, the
18 Governor, the Adjutant General, or the Director may authorize the use of public
19 employees, equipment, supplies, materials, funds, or any other publicly owned or
20 supported resources to assist in the mitigation of the potential effects of the disaster
21 or emergency, regardless of whether the use is on public or private property.

22 (2) During the actual happening of and any part of the response phase of a disaster or
23 emergency the Governor, the Adjutant General, or the Director, shall, when
24 necessary or desirable, authorize the use of public employees, equipment, supplies,
25 materials, funds, or any other publicly owned or supported resource to assist in the
26 operations of government, or the private sector, necessary to deal with the disaster
27 or emergency, regardless of whether the use is on public or private property.

1 (3) During the actual happening or any part of the response phase of a disaster or
 2 declared emergency, the Governor or the General Assembly may, by executive
 3 action, legislation, or administrative regulation promulgated under KRS Chapter
 4 13A, declare which of the following services, if any, are essential:

5 (a) Those individuals and business that are necessary to deal with the response
 6 to the disaster or declared emergency or that protect the life and health of
 7 Kentucky citizens;

8 (b) Individuals and business that are engaged in conduct, business, or an
 9 activity that otherwise constitutes a critical infrastructure sector as
 10 determined by the United States Department of Homeland Security's
 11 Cybersecurity and Infrastructure Security Agency, or its successor; or

12 (c) Individuals and businesses that are charged with responsibility for a
 13 governmental function related to a declared emergency;

14 (4) After the active or response phase of the disaster or emergency has passed and the
 15 recovery phase has begun, the Governor, the Adjutant General, or the Director may
 16 authorize the use of public employees, equipment, supplies, funds, or any other
 17 publicly owned or supported resources to assist in the recovery phase of the disaster
 18 or emergency, regardless of whether the use is on public or private property.

19 ~~(5)~~~~(4)~~ A formal declaration of disaster or emergency shall not be necessary to invoke
 20 the provisions of subsection (1) or (2) of this section.

21 ➔Section 6. KRS 39A.280 is amended to read as follows:

22 (1) Disaster and emergency response functions provided by a state or local emergency
 23 management agency, or any emergency management agency-supervised operating
 24 units or personnel officially affiliated with a local disaster and emergency services
 25 organization pursuant to KRS 39B.070, shall not, in itself, be deemed to be the
 26 making of a promise, or the undertaking of a special duty, towards any person for
 27 the services, or any particular level of, or manner of providing, the services; nor

1 shall the provision of or failure to provide these services be deemed to create a
2 special relationship or duty towards any person upon which an action in negligence
3 or other tort might be founded. Specifically:

- 4 (a) The failure to respond to a disaster or other emergency, or to undertake
5 particular inspections or types of inspections, or to maintain any particular
6 level of personnel, equipment, or facilities, shall not be a breach of any duty to
7 persons affected by any disaster or other emergency.
- 8 (b) When a state or local emergency management agency, or local emergency
9 management agency-supervised operating unit officially affiliated with a local
10 disaster and emergency services organization, does undertake to respond to a
11 disaster or other emergency, the failure to provide the same level or manner of
12 service, or equivalent availability or allocation of resources as may or could be
13 provided, shall not be a breach of any duty to persons affected by that disaster
14 or other emergency.
- 15 (c) A state or local emergency management agency, or local emergency
16 management agency-supervised operating unit officially affiliated with a local
17 disaster and emergency services organization shall not have or assume any
18 duty towards any person to adopt, use, or avoid any particular strategy or
19 tactic in responding to a disaster or other emergency.
- 20 (d) A state or local emergency management agency, or local emergency
21 management agency-supervised operating unit officially affiliated with a local
22 disaster and emergency services organization, in undertaking disaster and
23 emergency preparedness or prevention activities including inspections, or in
24 undertaking to respond to a disaster or other emergency, shall not have
25 voluntarily assumed any special duty with respect to any risks which were not
26 created or caused by it, nor with respect to any risks which might have existed
27 even in the absence of that activity or response, nor shall any person have a

1 right to rely on such an assumption of duty.

2 (2) Neither the state nor any political subdivision of the state, nor the agents or
3 representatives of the state or any of its political subdivisions, shall be liable for
4 personal injury or property damage sustained by any person appointed or acting as a
5 volunteer emergency management agency member, or disaster and emergency
6 services member, or disaster and emergency response worker, or member of any
7 agency engaged in any emergency management or disaster and emergency services
8 or disaster and emergency response activity. ~~{The immunity provided by this~~
9 ~~subsection shall not apply to the extent that the state, a political subdivision of the~~
10 ~~state, or a person or organization maintains liability insurance or self insurance for~~
11 ~~an act or omission covered by this subsection. To the extent that the state, a political~~
12 ~~subdivision of the state, or a person or an organization maintains liability insurance~~
13 ~~or self insurance, sovereign immunity shall not be claimed with regard to an act or~~
14 ~~omission covered by this subsection.}~~ This immunity shall not affect the right of any
15 person to receive benefits or compensation to which the person might otherwise be
16 entitled under the Workers' Compensation Law, or this chapter, or any pension law,
17 or any Act of Congress.

18 (3) Subject to subsection (6) of this section, neither the state nor any political
19 subdivision of the state nor, except in cases of **wanton, willful, malicious, grossly**
20 **negligent, or intentional**~~{willful}~~ misconduct, ~~{gross negligence, or bad faith,}~~ the
21 employees, agents, or representatives of the state or any of its political divisions, nor
22 any volunteer or auxiliary emergency management agency or disaster and
23 emergency services organization member or disaster and emergency response
24 worker or member of any agency engaged in any emergency management or
25 disaster and emergency services or disaster and emergency response activity,
26 complying with or reasonably attempting to comply with this chapter or any
27 **executive action**~~{order}~~ or administrative regulation promulgated pursuant to the

1 provisions of this chapter, or other ~~[precautionary]~~ measures enacted by any city
2 ~~or~~ of the state, shall be liable for the death of or injury to persons, or for damage to
3 property, as a result of that activity. ~~[The immunity provided by this subsection~~
4 ~~shall not apply to the extent that the state, a political subdivision of the state, or a~~
5 ~~person or organization maintains liability insurance or self insurance for an act or~~
6 ~~omission covered by this subsection. To the extent that the state, a political~~
7 ~~subdivision of the state, or a person or an organization maintains liability insurance~~
8 ~~or self insurance, sovereign immunity shall not be claimed with regard to an act or~~
9 ~~omission covered by this subsection.]~~

10 (4) Decisions of the director, his subordinates or employees, a local emergency
11 management director, or the local director's subordinates or employees, a rescue
12 chief or the chief's subordinates, concerning the allocation and assignment of
13 personnel and equipment, and the strategies and tactics used, shall be the exercise of
14 a discretionary, policy function for which neither the officer nor the state, county,
15 urban-county, charter county, or city, or local emergency management agency-
16 supervised operating unit formally affiliated with a local disaster and emergency
17 services organization, shall be held liable in the absence of wanton, willful,
18 malicious, grossly negligent, or intentional misconduct ~~[malice or bad faith]~~, even
19 when those decisions are made rapidly in response to the exigencies of an
20 emergency.

21 (5) Any person owning or controlling real estate or other premises who ~~[voluntarily and~~
22 ~~without compensation]~~ grants a license or privilege, or otherwise permits the
23 designation or use of the whole or any part of the real estate or premises for the
24 purpose of sheltering persons during an actual, impending, mock, or practice
25 disaster or emergency, together with his or her successors in interest, shall not be
26 civilly liable for negligently causing the death of, or injury to, any person on or
27 about the real estate or premises for loss of, or damage to, the property of that

1 person. ~~The immunity provided by this subsection shall not apply to the extent that~~
2 ~~the state, a political subdivision of the state, or a person or organization maintains~~
3 ~~liability insurance or self insurance for an act or omission covered by this~~
4 ~~subsection. To the extent that the state, a political subdivision of the state, or a~~
5 ~~person or organization maintains liability insurance or self insurance, sovereign~~
6 ~~immunity shall not be claimed with regard to an act or omission covered by this~~
7 ~~subsection.~~

8 (6) Subsection (3) of this section shall apply to a volunteer or auxiliary disaster and
9 emergency response worker **if the worker is enrolled or registered under KRS**
10 **39A.356,** ~~only if the volunteer or worker is enrolled or registered with a local~~
11 ~~disaster and emergency services organization~~ or with the **political**
12 **subdivision** ~~[division]~~ in accordance with the **political subdivision's** ~~[division's]~~
13 administrative regulations **and as provided in KRS 39F.020.**

14 (7) While engaged in disaster and emergency response activity, volunteers and auxiliary
15 disaster and emergency response workers enrolled or registered with a local disaster
16 and emergency service organization or with the division in accordance with
17 subsection (6) of this section shall have the same degree of responsibility for their
18 actions and enjoy the same immunities as officers and employees of the state and its
19 political subdivisions performing similar work, including the provisions of KRS
20 12.211, 12.212, and 12.215, allowing the Attorney General to provide defense of
21 any civil action brought against a volunteer enrolled or registered ~~[with a local~~
22 ~~disaster or emergency service organization or with the division]~~ due to an act or
23 omission made in the scope and course of a disaster and emergency response
24 activity.

25 (8) (a) ~~[Notwithstanding subsections (3) and (6) of this section,]~~ A licensed
26 professional engineer as defined in KRS 322.010 or an architect licensed
27 under KRS Chapter 323, who ~~[voluntarily and without compensation~~

1 provides architectural, structural, electrical, mechanical, or other professional
2 services at the scene of a declared emergency, disaster, or catastrophe, shall
3 not be liable for any personal injury, wrongful death, property damage, or
4 other loss of any nature related to the licensed professional engineer's or
5 licensed architect's acts, errors, or omissions in the performance of the
6 services carried out:

- 7 1. At the request of or with the approval of a federal, state, or local:
 - 8 a. Emergency management agency official with executive
9 responsibility in the jurisdiction to coordinate disaster and
10 emergency response activity;
 - 11 b. Fire chief or his or her designee; or
 - 12 c. Building inspection official;

13 whom the licensed professional engineer or licensed architect believes to
14 be acting in an official capacity;
- 15 2. Within ninety (90) days following the end of the period for the declared
16 emergency, disaster, or catastrophe, unless extended by the Governor
17 under KRS 39A.100; and
- 18 3. If the professional services arose out of the declared emergency, disaster,
19 or catastrophe and if the licensed professional engineer or licensed
20 architect acted as an ordinary reasonably prudent member of the
21 profession would have acted under the same or similar circumstances.

22 (b) Nothing in this subsection shall provide immunity for wanton, willful, **grossly**
23 **negligent**, or intentional misconduct.

24 ➔Section 7. Whereas the need for the citizens of Kentucky who are providing
25 essential services during the SARS-COV-2 virus pandemic, or who are taking precautions
26 to protect and rehabilitate the Kentucky economy, to immediately be protected from
27 unnecessary legal action is a compelling and immediate requirement, an emergency is

1 declared to exist, and this Act takes effect upon its passage and approval by the Governor
2 or upon its otherwise becoming a law.

3 →Section 8. Whereas Section 1 of this Act provides liability protection and
4 immunity and sets forth the legal requirements for bringing suit against any owner or
5 person providing essential services during an emergency, disaster, or catastrophe, and
6 whereas the SARS-COV-2 virus pandemic appeared in Kentucky in early March 2020,
7 leading to executive actions that altered the relationships and interactions among
8 members of the public beginning with the declaration of an emergency on March 6, 2020,
9 Section 1 this Act shall be retroactive to March 6, 2020.

10 →Section 9. It is the intent of the General Assembly that if any part of this Act be
11 held unconstitutional, the remaining parts shall remain in force.

12 →Section 10. Section 1 of this Act is repealed effective Dec. 31, 2023.

13 →Section 11. This Act shall not be interpreted to limit liability for non-COVID-
14 SARS-2 related motor vehicle accidents, including those negligent acts under the Motor
15 Vehicle Reparations Act.