

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 paragraphs (a) and (b)*  
25 *of this subsection; 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 either directly  
26        or indirectly invites or permits another person to enter the owner's premises while  
27        a SARS-COV-2 pandemic or the declared emergency prompted by the pandemic

- 1 and affecting the premises remains in effect or continues, does not:
- 2 (a) Extend any assurance that the premises are safe from any risk of exposure
- 3 to the SARS-COV-2 virus or to conditions caused by the declared
- 4 emergency related to SARS-COV-2;
- 5 (b) Owe a duty to protect from or warn about any risk related to the SARS-
- 6 COV-2 virus or to conditions caused by the declared emergency; or
- 7 (c) Assume responsibility, or incur liability, for any alleged injury, loss, or
- 8 damage to persons or property related to the SARS-COV-2 virus or to
- 9 conditions that are the subject of, or caused by, the SARS-COV-2 declared
- 10 emergency.
- 11 (3) Nothing in this section limits any liability of an owner for wanton, willful,
- 12 malicious, grossly negligent, or intentional failure to adhere to executive actions
- 13 related to the SARS-COV-2 pandemic while the pandemic or the SARS-COV-2
- 14 declared emergency continues.
- 15 (4) Nothing in this section shall:
- 16 (a) Create a duty of care or ground of liability for injury to persons or property;
- 17 (b) Relieve any person entering premises from any obligation that he or she
- 18 may have in the absence of this section to exercise care in his or her use of
- 19 the premises, or from the legal consequences of the failure to employ such
- 20 care;
- 21 (c) Affect the right of persons to receive benefits to which he or she would
- 22 otherwise be entitled under KRS Chapter 342, nor does it affect the
- 23 exclusive application of that chapter; or
- 24 (d) Affect the applicability of KRS Chapter 338.
- 25 (5) Any liability claim for personal injury made against an owner related to the
- 26 SARS-COV-2 pandemic or to the declared emergency shall be brought within the
- 27 time set out in KRS 413.140 if it is a claim for personal injury. Such claim shall

1 be deemed to have accrued at the time the injury is first discovered, or in the  
2 exercise of reasonable care should have been discovered. The right to  
3 compensation for any personal injury related to the SARS-COV-2 pandemic or to  
4 the declared emergency covered by this section shall be forever barred unless the  
5 action is filed within two (2) years from the date on which the alleged act or  
6 omission is said to have occurred.

7 (6) Claims involving motor vehicle accidents related to the SARS-COV-2 pandemic  
8 or to the declared emergency shall be governed by the limitation periods in KRS  
9 304.39-230.

10 (7) Those persons providing essential services related to, or impacted by, the SARS-  
11 COV-2 pandemic and the declared emergency related to the pandemic during the  
12 period from when an emergency was declared on March 6, 2020 until one (1)  
13 year after the emergency declaration is withdrawn, revoked, or lapses, shall not,  
14 except in cases of willful, grossly negligent, or intentional misconduct, be liable  
15 for an act or omission related directly to the provision of an essential service that  
16 results in:

17 (a) The death of or injury to an individual;

18 (b) Damage to property; or

19 (c) Any other harm or injury alleged to have resulted from, or that is related to,  
20 in whole or in part, the facilities, premises, or work of an essential services  
21 provider or changes in the medical, manufacturing, or educational  
22 environment made in response to the SARS-COV-2 pandemic or the SARS-  
23 COV-2 declared emergency.

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

27 (9) The following businesses and service providers shall be deemed essential service

1 providers for the duration of the SARS-COV-2 declaration of emergency, first  
 2 entered March 6, 2020:

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

5 1. Organizations that provide charitable and social services;

6 2. Individuals and businesses needed for transportation;

7 3. Financial institutions;

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

9 5. Individuals and businesses that produce, supply, prepare, and sell  
 10 food;

11 6. Home-based care and services;

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

14 (b) Health care providers;

15 (c) Medicaid waiver providers;

16 (d) Elementary and secondary schools, whether public or private;

17 (e) Child care service providers and facilities;

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

19 (g) Manufacturers located in the Commonwealth of Kentucky that produced or  
 20 are producing medical, medicinal, hygienic items such as face masks and  
 21 hand sanitizers, or other personal protective equipment.

22 (10) Nothing in KRS Chapters 39A to 39F amends, repeals, or alters any immunity,  
 23 defense, limitation of liability, or procedure available or required under any other  
 24 law or contract.

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

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

27 (1) "Adjutant General" means the executive head of the Department of Military Affairs

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

- 1 (8) "Director" means the director of the Division of Emergency Management of the  
2 Department of Military Affairs;
- 3 (9) "Disaster" means any incident or situation declared as such by executive  
4 ~~action~~order of the Governor, or the President of the United States, pursuant to  
5 federal law;
- 6 (10) "Disaster and emergency response" means the performance of all emergency  
7 functions, other than war-related functions for which military forces are primarily  
8 responsible, including, but not limited to: direction and control, incident command,  
9 or management; communications; fire protection services; police services; medical  
10 and health services; ambulance services; rescue; search and rescue or recovery;  
11 urban search and rescue; engineering; alerting and warning services; resource  
12 management; public works services; nuclear, chemical, biological, or other  
13 hazardous material or substance monitoring, containment, decontamination,  
14 neutralization, and disposal; emergency worker protection, site safety, site  
15 operations and response planning; evacuation of persons; emergency welfare  
16 services; emergency transportation; physical plant protection; temporary restoration  
17 of public utility services; emergency lighting and power services; emergency public  
18 information; incident investigation, hazards analysis, and damage assessment; and  
19 other functions related to effective reaction to a disaster or emergency or  
20 catastrophe, or the potential, threatened, or impending threat of any disaster or  
21 emergency or catastrophe, together with all other activities necessary or incidental  
22 to the preparation for and carrying out of the functions set out in this subsection;
- 23 (11) "Division" means the Division of Emergency Management of the Department of  
24 Military Affairs;
- 25 (12) "Emergency" means any incident or situation which poses a major threat to public  
26 safety so as to cause, or threaten to cause, loss of life, serious injury, significant  
27 damage to property, or major harm to public health or the environment and which a

1 local emergency response agency determines is beyond its capabilities;

2 (13) **(a) "Executive action" means:**

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

6 **2. Industry-specific guidelines adopted by a state agency that govern the**  
 7 **industry; and**

8 **(b) "Executive action":**

9 **1. Does not mean informal or indefinite statements or recommendations**  
 10 **made by government officials; and**

11 **2. Does not create a duty of care;**

12 **(14)** "Integrated emergency management system" means the unified and  
 13 multidisciplinary disaster and emergency response infrastructure developed in the  
 14 Commonwealth, under the coordination of the division, using methods which align  
 15 state or local administrative, organizational, and operational resources, to  
 16 accomplish the mission, goals, and objectives of the comprehensive emergency  
 17 management program of the Commonwealth;

18 **(15)**~~(14)~~ "Local disaster and emergency services organization" means that organization  
 19 of public and private entities developed to carry out the multiagency disaster and  
 20 emergency response of a city, county, urban-county or charter county pursuant to  
 21 KRS Chapters 39A to 39F;

22 **(16)**~~(15)~~ "Local emergency management agency" means the agency created, operated,  
 23 and maintained to coordinate the local comprehensive emergency management  
 24 program and disaster and emergency response of a city, county, and urban-county or  
 25 charter county government pursuant to KRS Chapters 39A to 39F;

26 **(17)**~~(16)~~ "Local emergency management director" or "Local director" means the  
 27 executive head of the local emergency management agency, appointed pursuant to



1 the provisions of KRS Chapters 39A to 39F;

2 ~~(18)~~~~(17)~~ "State emergency management agency" means the Division of Emergency  
3 Management of the Department of Military Affairs; and

4 ~~(19)~~~~(18)~~ "State emergency management director" means the director of the Division of  
5 Emergency Management.

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

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

9 (1) To represent the Governor on all matters pertaining to the comprehensive  
10 emergency management program and the disaster and emergency response of the  
11 Commonwealth;

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

15 (3) To promulgate administrative regulations and issue orders, directives, standards,  
16 rules, procedures, guidance, or recommended practices necessary to coordinate the  
17 development, administration, organization, operation, implementation, and  
18 maintenance of the statewide comprehensive emergency management program and  
19 the integrated emergency management system of the Commonwealth;

20 (4) To coordinate the development of comprehensive emergency management  
21 programs by the cities, counties, and urban-county or charter county governments as  
22 functional components of the integrated emergency management system of the  
23 Commonwealth;

24 (5) To supervise the development and maintenance of the Kentucky Emergency  
25 Operations Plan, and to review and give concurrence to local emergency operations  
26 plans required pursuant to KRS Chapters 39A to 39F;

27 (6) To coordinate the comprehensive emergency management program of the

- 1 Commonwealth with the emergency management or other emergency response-  
2 related programs of the federal government, and of other states, to the fullest  
3 appropriate extent;
- 4 (7) To advise the Governor and the adjutant general immediately of the occurrence or  
5 threatened or impending occurrence of any disaster or emergency, and to  
6 recommend to the Governor any emergency executive action~~[actions, written  
7 orders, emergency powers, or executive orders]~~ that the Governor should execute;
- 8 (8) To serve as the Governor's primary liaison with local officials in the event of the  
9 occurrence, or threatened or impending occurrence, of any disaster or emergency in  
10 the cities, counties, urban-counties, or charter counties of the Commonwealth;
- 11 (9) To take any other preparedness or response actions deemed necessary for adequate  
12 response to a disaster or emergency situation to include: requesting increased  
13 readiness activities by state or local agencies in advance of an actual disaster or  
14 emergency; requesting implementation of local emergency operations plans or the  
15 activation of local emergency operations centers; requesting reports from state or  
16 local agencies regarding emergency situations, damage assessments, or the taking of  
17 emergency response actions; and requesting the mobilization or deployment of any  
18 trained and equipped forces of state or local government for the disaster and  
19 emergency response purposes set forth in KRS Chapters 39A to 39F;
- 20 (10) To request and utilize the personnel, equipment, services, and facilities of existing  
21 officers and agencies of the Commonwealth and of all political subdivisions and  
22 special districts. All these officers and agencies shall fully cooperate with and  
23 extend their resources to the director as requested to the extent that local public  
24 safety is not unreasonably compromised;
- 25 (11) To employ measures and give directions to the state or local boards of health as  
26 necessary for the purpose of securing compliance with the provisions of KRS  
27 Chapters 39A to 39F, or with the findings or recommendations of the boards of

- 1 health, because of conditions arising from disasters, emergency situations, national  
2 security emergencies, or the threat thereof;
- 3 (12) To request and utilize the services of state and local law enforcement officers for  
4 the purpose of securing compliance with the provisions of KRS Chapters 39A to  
5 39F, or any order of the Governor pertaining to disaster and emergency response;
- 6 (13) On behalf of this Commonwealth, with the approval of the Governor or act of the  
7 General Assembly, to enter into reciprocal aid agreements or compacts with other  
8 states and the federal government, either on a statewide, local, county, or city basis,  
9 or with other states or a province of a foreign country. The mutual aid agreements  
10 shall be limited to the furnishing or exchange of food, clothing, medicine, and other  
11 supplies; engineering services; emergency housing; police services; National Guard  
12 personnel and resources while under the control of the state; health, medical, and  
13 related services; firefighting; rescue; search and rescue or recovery; urban search  
14 and rescue; hazardous materials response services, transportation and construction  
15 services and equipment; personnel necessary to provide or conduct these services  
16 and other supplies, equipment, facilities, personnel, and services as needed; the  
17 reimbursement of costs and expenses for equipment, supplies, personnel, and  
18 similar items for mobile support units, firefighting, search and rescue, and police  
19 units, and health units; and on the terms and conditions deemed necessary;
- 20 (14) To sponsor and develop mutual aid plans and agreements among the urban-county  
21 or charter county governments, counties, cities, and other political subdivisions and  
22 special districts of the Commonwealth, similar to the mutual aid arrangements with  
23 other states referred to in subsection (13) of this section;
- 24 (15) To procure motor vehicles, radio and telecommunications equipment, protective  
25 clothing, safety equipment, and other necessary supplies and materials to meet the  
26 emergency response, operational, and administrative needs of the division;
- 27 (16) To identify deficiencies existing in the emergency management program

- 1 organization, facilities, and capabilities of the Commonwealth, including but not  
2 limited to: personnel and administrative resources; state, sub-state, area, or local  
3 emergency operations centers; mobile command posts; emergency  
4 telecommunications and computer systems; alerting and warning systems;  
5 stockpiles of critical resources; or any other necessary elements, and to recommend  
6 to the adjutant general, for consideration by the Governor or the General Assembly  
7 or other appropriate funding authority, the administrative or operational funding  
8 requirements, and long-range capital construction or improvement projects needed  
9 to meet the emergency management infrastructure needs of the Commonwealth;
- 10 (17) To serve as the state coordinating officer and notify the Governor of the  
11 appropriations necessary to fund the expected emergency operational or response  
12 costs of the division, and the Commonwealth's share of the grants provided by  
13 Pub.L.No. 93-288, Title V, Federal Disaster Assistance Programs as amended by  
14 Pub.L.No. 100-707, the Robert T. Stafford Disaster Relief and Emergency  
15 Assistance Act, or successor acts or titles, and further, take action necessary to  
16 ensure entitlement to all other federal relief or assistance programs;
- 17 (18) To cooperate with the President of the United States, the Federal Emergency  
18 Management Agency, and other appropriate federal offices and agencies, and the  
19 offices and agencies of other states in matters pertaining to the comprehensive  
20 emergency management program of the Commonwealth and nation; and in  
21 connection with these, to take any measures considered necessary to implement any  
22 request of the President and the appropriate federal offices and agencies, for any  
23 action requiring effective disaster and emergency response, including the direction  
24 or control and mobilization of disaster and emergency response forces; tests and  
25 exercises, warnings, and signals for drills or other emergency response activities  
26 and the mechanical devices to be used in connection with these; the shutting off of  
27 water mains, gas mains, electric power connections, and the suspension of all other

1 utility services; the conduct of civilians and the movement and cessation of  
 2 movement of pedestrians and vehicular traffic during, prior, and subsequent to a  
 3 drill, emergency, declared emergency, or disaster; public meetings or gatherings;  
 4 and the evacuation and sheltering of the civilian population; and

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

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

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

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

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

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

22 (3) **During the actual happening or any part of the response phase of a disaster or**  
 23 **declared emergency, the Governor or the General Assembly may, by executive**  
 24 **action, legislation, or administrative regulation promulgated under KRS Chapter**  
 25 **13A, declare which of the following services, if any, may remain open and**  
 26 **operating:**

27 **(a) Those individuals and business that are necessary to deal with the response**

1 to the disaster or declared emergency or that protect the life and health of  
 2 Kentucky citizens;

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

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

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

14 ~~(5)~~~~(4)~~ A formal declaration of disaster or emergency shall not be necessary to invoke  
 15 the provisions of subsection (1) or (2) of this section.

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

17 (1) Disaster and emergency response functions provided by a state or local emergency  
 18 management agency, or any emergency management agency-supervised operating  
 19 units or personnel officially affiliated with a local disaster and emergency services  
 20 organization pursuant to KRS 39B.070, shall not, in itself, be deemed to be the  
 21 making of a promise, or the undertaking of a special duty, towards any person for  
 22 the services, or any particular level of, or manner of providing, the services; nor  
 23 shall the provision of or failure to provide these services be deemed to create a  
 24 special relationship or duty towards any person upon which an action in negligence  
 25 or other tort might be founded. Specifically:

26 (a) The failure to respond to a disaster or other emergency, or to undertake  
 27 particular inspections or types of inspections, or to maintain any particular

1 level of personnel, equipment, or facilities, shall not be a breach of any duty to  
2 persons affected by any disaster or other emergency.

3 (b) When a state or local emergency management agency, or local emergency  
4 management agency-supervised operating unit officially affiliated with a local  
5 disaster and emergency services organization, does undertake to respond to a  
6 disaster or other emergency, the failure to provide the same level or manner of  
7 service, or equivalent availability or allocation of resources as may or could be  
8 provided, shall not be a breach of any duty to persons affected by that disaster  
9 or other emergency.

10 (c) A state or local emergency management agency, or local emergency  
11 management agency-supervised operating unit officially affiliated with a local  
12 disaster and emergency services organization shall not have or assume any  
13 duty towards any person to adopt, use, or avoid any particular strategy or  
14 tactic in responding to a disaster or other emergency.

15 (d) 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, in undertaking disaster and  
18 emergency preparedness or prevention activities including inspections, or in  
19 undertaking to respond to a disaster or other emergency, shall not have  
20 voluntarily assumed any special duty with respect to any risks which were not  
21 created or caused by it, nor with respect to any risks which might have existed  
22 even in the absence of that activity or response, nor shall any person have a  
23 right to rely on such an assumption of duty.

24 (2) Neither the state nor any political subdivision of the state, nor the agents or  
25 representatives of the state or any of its political subdivisions, shall be liable for  
26 personal injury or property damage sustained by any person appointed or acting as a  
27 volunteer emergency management agency member, or disaster and emergency

1 services member, or disaster and emergency response worker, or member of any  
2 agency engaged in any emergency management or disaster and emergency services  
3 or disaster and emergency response activity. ~~[The immunity provided by this~~  
4 ~~subsection shall not apply to the extent that the state, a political subdivision of the~~  
5 ~~state, or a person or organization maintains liability insurance or self insurance for~~  
6 ~~an act or 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.]~~ This immunity shall not affect the right of any  
10 person to receive benefits or compensation to which the person might otherwise be  
11 entitled under the Workers' Compensation Law, or this chapter, or any pension law,  
12 or any Act of Congress.

13 (3) Subject to subsection (6) of this section, neither the state nor any political  
14 subdivision of the state nor, except in cases of **wanton, willful, malicious, grossly**  
15 **negligent, or intentional**~~[willful]~~ misconduct, ~~[gross negligence, or bad faith,]~~ the  
16 employees, agents, or representatives of the state or any of its political divisions, nor  
17 any volunteer or auxiliary emergency management agency or disaster and  
18 emergency services organization member or disaster and emergency response  
19 worker or member of any agency engaged in any emergency management or  
20 disaster and emergency services or disaster and emergency response activity,  
21 complying with or reasonably attempting to comply with this chapter or any  
22 **executive action**~~[order]~~ or administrative regulation promulgated pursuant to the  
23 provisions of this chapter, or other ~~[precautionary]~~ measures enacted by any city  
24 **or**~~[of]~~ the state, shall be liable for the death of or injury to persons, or for damage to  
25 property, as a result of that activity.~~[ The immunity provided by this subsection~~  
26 ~~shall not apply to the extent that the state, a political subdivision of the state, or a~~  
27 ~~person or organization maintains liability insurance or self insurance for an act or~~



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

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

16 (5) Any person owning or controlling real estate or other premises who ~~[voluntarily and~~  
 17 ~~without compensation]~~ grants a license or privilege, or otherwise permits the  
 18 designation or use of the whole or any part of the real estate or premises for the  
 19 purpose of sheltering persons during an actual, impending, mock, or practice  
 20 disaster or emergency, together with his or her successors in interest, shall not be  
 21 civilly liable for negligently causing the death of, or injury to, any person on or  
 22 about the real estate or premises for loss of, or damage to, the property of that  
 23 person. ~~[The immunity provided by this subsection shall not apply to the extent that~~  
 24 ~~the state, a political subdivision of the state, or a person or organization maintains~~  
 25 ~~liability insurance or self insurance for an act or omission covered by this~~  
 26 ~~subsection. To the extent that the state, a political subdivision of the state, or a~~  
 27 ~~person or organization maintains liability insurance or self insurance, sovereign~~

1 ~~immunity shall not be claimed with regard to an act or omission covered by this~~  
2 ~~subsection.]~~

3 (6) Subsection (3) of this section shall apply to a volunteer or auxiliary disaster and  
4 emergency response worker **if the worker is enrolled or registered under KRS**  
5 **39A.356,** ~~only if the volunteer or worker is enrolled or registered with a local~~  
6 ~~disaster and emergency services organization]~~ or with the **political**  
7 **subdivision** ~~[division]~~ in accordance with the **political subdivision's** ~~[division's]~~  
8 administrative regulations **and as provided in KRS 39F.020.**

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

20 (8) (a) ~~[Notwithstanding subsections (3) and (6) of this section, ]~~A licensed  
21 professional engineer as defined in KRS 322.010 or an architect licensed  
22 under KRS Chapter 323, who ~~[voluntarily and without compensation~~  
23 ~~]provides architectural, structural, electrical, mechanical, or other professional~~  
24 services at the scene of a declared emergency, disaster, or catastrophe, shall  
25 not be liable for any personal injury, wrongful death, property damage, or  
26 other loss of any nature related to the licensed professional engineer's or  
27 licensed architect's acts, errors, or omissions in the performance of the

1 services carried out:

- 2 1. At the request of or with the approval of a federal, state, or local:
- 3 a. Emergency management agency official with executive
- 4 responsibility in the jurisdiction to coordinate disaster and
- 5 emergency response activity;
- 6 b. Fire chief or his or her designee; or
- 7 c. Building inspection official;
- 8 whom the licensed professional engineer or licensed architect believes to
- 9 be acting in an official capacity;
- 10 2. Within ninety (90) days following the end of the period for the declared
- 11 emergency, disaster, or catastrophe, unless extended by the Governor
- 12 under KRS 39A.100; and
- 13 3. If the professional services arose out of the declared emergency, disaster,
- 14 or catastrophe and if the licensed professional engineer or licensed
- 15 architect acted as an ordinary reasonably prudent member of the
- 16 profession would have acted under the same or similar circumstances.

17 (b) Nothing in this subsection shall provide immunity for wanton, willful, **grossly**

18 **negligent**, or intentional misconduct.

19 ➔Section 7. Whereas the need for the citizens of Kentucky who are providing

20 essential services during the SARS-COV-2 virus pandemic, or who are taking precautions

21 to protect and rehabilitate the Kentucky economy, to immediately be protected from

22 unnecessary legal action is a compelling and immediate requirement, an emergency is

23 declared to exist, and this Act takes effect upon its passage and approval by the Governor

24 or upon its otherwise becoming a law.

25 ➔Section 8. Whereas Section 1 of this Act provides liability protection and

26 immunity and sets forth the legal requirements for bringing suit against any owner or

27 person providing essential services during an emergency, disaster, or catastrophe, and

1    whereas the SARS-COV-2 virus pandemic appeared in Kentucky in early March 2020,  
2    leading to executive actions that altered the relationships and interactions among  
3    members of the public beginning with the declaration of an emergency on March 6, 2020,  
4    Section 1 this Act shall be retroactive to March 6, 2020.

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

7           ➔Section 10. Section 1 of this Act is repealed effective Dec. 31, 2023.