

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 48 IS CREATED TO  
4 READ AS FOLLOWS:

5 *Notwithstanding any other provisions of this chapter, no budget unit shall employ or*  
6 *use governmental funds in contravention of the provisions in KRS Chapters 39A to*  
7 *39F.*

8 ➔Section 2. KRS 39A.090 is amended to read as follows:

9 The Governor may make, amend, and rescind any executive orders as deemed necessary  
10 to carry out the provisions of KRS Chapters 39A to 39F, *subject to the limitations in*  
11 *Section 3 of this Act.*

12 ➔Section 3. KRS 39A.100 is amended to read as follows:

13 (1) In the event of the occurrence or threatened or impending occurrence of any of the  
14 situations or events *enumerated in*~~contemplated by~~ KRS 39A.010, 39A.020, or  
15 39A.030, the Governor may declare, in writing, *and in strict compliance with the*  
16 *limitations contained in subsections (2), (3), (4), and (9) of this section,* that a  
17 state of emergency exists. The Governor shall have and may exercise the following  
18 *limited* emergency powers during the period in which the state of emergency exists:

- 19 (a) To enforce all laws, and administrative regulations relating to disaster and  
20 emergency response and to assume direct operational control of all disaster  
21 and emergency response forces and activities in the Commonwealth;
- 22 (b) To require state agencies and to request local governments, local agencies, and  
23 special districts to respond to the emergency or disaster in the manner  
24 directed;
- 25 (c) To seize, take, or condemn property, *for the duration of the emergency, and*  
26 *only for public use as defined in KRS 416.675,* excluding firearms and  
27 ammunition, components of firearms and ammunition, or a combination

1           thereof, for the protection of the public or at the request of the President, the  
2           Armed Forces, or the Federal Emergency Management Agency of the United  
3           States, including:

- 4           1. All means of transportation and communication;
- 5           2. All stocks of fuel of whatever nature;
- 6           3. Food, clothing, equipment, materials, medicines, and all supplies; and
- 7           4. Facilities, including buildings and plants.

8           Compensation for property seized, taken, or condemned under this  
9           paragraph shall be determined using the process in KRS 416.540 to 416.670  
10          to determine value;

11          (d) To sell, lend, give, or distribute any of the property under paragraph (c) of this  
12          subsection among the inhabitants of the Commonwealth and to account to the  
13          State Treasurer for any funds received for the property;

14          (e) To make compensation for the property seized, taken, or condemned under  
15          paragraph (c) of this subsection;

16          (f) To exclude all nonessential, unauthorized, disruptive, or otherwise  
17          uncooperative personnel from the scene of the emergency, and to command  
18          those persons or groups assembled at the scene to disperse. A person who  
19          refuses to leave an area in which a written order of evacuation has been issued  
20          in accordance with a written declaration of emergency or a disaster may be  
21          forcibly removed to a place of safety or shelter, or may, if this is resisted, be  
22          arrested by a peace officer. Forcible removal or arrest shall not be exercised as  
23          options until all reasonable efforts for voluntary compliance have been  
24          exhausted;

25          (g) To declare curfews and establish their limits;

26          (h) To prohibit or limit the sale or consumption of goods in the event of a  
27          shortage of goods, excluding firearms and ammunition, components of

- 1 firearms and ammunition, or a combination thereof, or commodities for the  
 2 duration of the emergency;
- 3 (i) To grant emergency authority to pharmacists pursuant to KRS 315.500, for the  
 4 duration of the emergency;
- 5 (j) ~~[Except as prohibited by this section or other law, to perform and exercise  
 6 other functions, powers, and duties deemed necessary to promote and secure  
 7 the safety and protection of the civilian population;~~
- 8 ~~(k)~~ To request any assistance from agencies of the United States as necessary and  
 9 appropriate to meet the needs of the people of the Commonwealth; and
- 10 ~~(k)~~<sup>(4)</sup> Upon the recommendation of the Secretary of State, to declare by  
 11 executive order a different time or~~[,]~~ place~~[, or manner]~~ for holding elections  
 12 in an election area for which a state of emergency has been declared for part or  
 13 all of the election area. The election shall be held within thirty-five (35) days  
 14 from the date of the suspended or delayed election. The State Board of  
 15 Elections shall establish procedures for election officials to follow. Any  
 16 procedures established under this paragraph shall be subject to the approval of  
 17 the Secretary of State and the Governor by respective executive orders.
- 18 (2) **Within thirty (30) days of a declared emergency, and every thirty (30) days**  
 19 **thereafter, the Governor shall report to the General Assembly, if in session, or to**  
 20 **the Legislative Research Commission if the General Assembly is not in session,**  
 21 **on a form provided by the Commission detailing:**
- 22 **(a) All expenditures relating to contracts issued during the emergency under**  
 23 **KRS 45A.085 or 45A.095, or under any provision for which a state agency**  
 24 **does not solicit bids or proposals for a contract; and**
- 25 **(b) All revenues received from the federal government in response to the**  
 26 **declared emergency, any expenditures or expenditure plan for the federal**  
 27 **funds by federal program, the state agency or program that was allocated**

1           the federal funds, and any state fund expenditures required to match the  
2           federal funds.

3       (3) (a) Any declaration of emergency or other exercise of the powers enumerated  
4           in this chapter by the Governor, including any executive order relating to an  
5           emergency under this chapter, shall not exceed a period of fifteen (15) days  
6           unless extended by the General Assembly in a regular session, or an  
7           extraordinary session convened to consider any and all aspects of the  
8           emergency;

9           (b) The Governor shall not declare a new emergency or otherwise circumvent  
10           the time limitations contained in paragraph (a) of this subsection based  
11           upon the same or similar events, facts, or circumstances as the original  
12           declaration without the prior approval of the General Assembly; and

13           (c) The Governor may suspend a statute by executive order if required by an  
14           emergency declared under KRS Chapter 39A, but only in strict accordance  
15           with this subsection and the following provisions:

16           1. The statute being suspended shall be specifically enumerated by the  
17           Governor in the executive order;

18           2. The suspension is subject to the time and other limitations set out in  
19           paragraphs (a) and (b) of this subsection; and

20           3. Notwithstanding any other provision of law, the Governor may not  
21           suspend KRS 446.350, 527.020, 311.710 to 311.820, or any statutes in  
22           KRS Chapter 13A or Chapter 39A.

23       (4) Any executive order or other exercise of the powers enumerated in this chapter  
24           shall:

25           (a) Be narrowly tailored to meet the exigencies of the emergency;

26           (b) Be no broader or more burdensome than necessary to meet the exigencies  
27           of the emergency or immediate threat of an emergency;

- 1        (c) Not be under-inclusive;
- 2        (d) Be issued in response to an actual emergency or immediate threat of an
- 3                emergency;
- 4        (e) Give due regard in its scope and duration for the impact upon the
- 5                Commonwealth and its citizens; and
- 6        (f) Be in effect no longer than is necessary to meet the exigency giving rise to
- 7                the emergency.
- 8        (5) In the event any person, including the Attorney General, brings an action for
- 9                declaratory relief or injunctive relief to enforce this section, the burden of proof
- 10                shall be on the government official defending the order to prove, by clear and
- 11                convincing evidence:
- 12                (a) The existence of the emergency;
- 13                (b) The need for the issuance of an executive order relating to an emergency
- 14                under this chapter;
- 15                (c) The narrow tailoring of the executive order relating to an emergency under
- 16                this chapter;
- 17                (d) That the executive order was no broader than necessary to meet the
- 18                exigencies of the emergency;
- 19                (e) That the executive order relating to an emergency under this chapter is not
- 20                under-inclusive;
- 21                (f) That due regard was given for the impact of the executive order relating to
- 22                the emergency on:
- 23                        1. The Commonwealth;
- 24                        2. The public at large;
- 25                        3. Public safety; and
- 26                        4. The long-term economic impact on the Commonwealth and its
- 27                        citizens; and

1        (g) That the executive order relating to an emergency was or is in effect no  
2        longer than necessary to meet the exigency giving rise to the emergency.

3        (6) (a) Any person injured as a result of a violation of this section shall have an  
4        action for declaratory or injunctive relief against the Commonwealth in the  
5        county in which he or she resides or in which he or she suffered the injury;  
6        and

7        (b) If a person prevails in an action against the Commonwealth under this  
8        subsection, the court shall award reasonable attorney fees and costs to the  
9        person.

10       (7) The Commonwealth waives immunity for declaratory and prospective equitable  
11       relief only under the Eleventh Amendment to the Constitution of the United  
12       States, for cases brought against it in federal jurisdiction under KRS 446.350 or  
13       to enforce the provisions of this section for emergencies declared under KRS  
14       Chapters 39A to 39F.

15       (8) In the event of the occurrence or threatened or impending occurrence of any of the  
16       situations or events ~~enumerated in~~ ~~contemplated by~~ KRS 39A.010, 39A.020, or  
17       39A.030, which in the judgment of a local chief executive officer is of such severity  
18       or complexity as to require the exercise of extraordinary emergency measures, the  
19       county judge/executive of a county other than an urban-county government, or  
20       mayor of a city or urban-county government, or chief executive of other local  
21       governments or their designees as provided by ordinance of the affected county,  
22       city, or urban-county may declare in writing that a state of emergency exists. The  
23       declaration of emergency shall be in effect for no more than fifteen (15) days  
24       unless terminated earlier or extended by the corresponding local legislative body.  
25       The local chief executive officer shall not declare a new emergency or otherwise  
26       circumvent the time limitations contained in this section, based on the same or  
27       substantially similar facts and circumstances as the original declaration without

1        *the prior approval of the corresponding local legislative body. The local chief*  
2        *executive officer* ~~and thereafter, subject to any orders of the Governor,~~ shall have  
3        and may exercise for the period as the state of emergency exists or continues, the  
4        following emergency powers:

5        (a) To enforce all laws and administrative regulations relating to disaster and  
6        emergency response and to direct all local disaster and emergency response  
7        forces and operations in the affected county, city, urban-county, or charter  
8        county;

9        (b) To exclude all nonessential, unauthorized, disruptive, or uncooperative  
10       personnel from the scene of the emergency, and to command persons or  
11       groups of persons at the scene to disperse. A person who refuses to leave an  
12       area in which a written order of evacuation has been issued in accordance with  
13       a written declaration of emergency or a disaster may be forcibly removed to a  
14       place of safety or shelter, or may, if this is resisted, be arrested by a peace  
15       officer. Forcible removal or arrest shall not be exercised as options until all  
16       reasonable efforts for voluntary compliance have been exhausted;

17       (c) To declare curfews and establish their limits;

18       (d) To order immediate purchase or rental of, contract for, or otherwise procure,  
19       without regard to procurement codes or budget requirements, the goods and  
20       services essential for protection of public health and safety or to maintain or to  
21       restore essential public services; and

22       (e) To request emergency assistance from any local government or special district  
23       and, through the Governor, to request emergency assistance from any state  
24       agency and to initiate requests for federal assistance as are necessary for  
25       protection of public health and safety or for continuation of essential public  
26       services.

27       (2) ~~(3)~~ Nothing in this section shall be construed to allow any governmental entity to

1 impose additional restrictions on:

2 (a) The lawful possession, transfer, sale, transport, carrying, storage, display, or  
3 use of firearms and ammunition or components of firearms and ammunition;

4 (b) *The right of the people to exercise freedom of speech or freedom of the*  
5 *press, to petition their government for redress of injuries, or to peaceably*  
6 *assemble;*

7 (c) *The right of the people to worship in-person, or to act or refuse to act in a*  
8 *manner motivated by a sincerely held religious belief; or*

9 (d) *The protections afforded to citizens by the Constitutions of Kentucky and of*  
10 *the United States, and the life, liberty, and property of the civilian*  
11 *population.*

12 (10) *Notwithstanding any other law to the contrary, no governmental entity shall*  
13 *employ or use any governmental funds in contravention of any provision of this*  
14 *section or Section 10 of this Act.*

15 ➔Section 4. KRS 39A.180 is amended to read as follows:

16 (1) The political subdivisions of the state and other agencies designated or appointed by  
17 the Governor may make, amend, and rescind orders and promulgate administrative  
18 regulations necessary for disaster and emergency response purposes, and to  
19 supplement the carrying out of the provisions of this chapter, if not inconsistent  
20 with any orders or administrative regulations promulgated by the Governor or by  
21 any state agency exercising a power delegated to it by the Governor.

22 (2) All written orders and administrative regulations promulgated by the Governor, the  
23 director, or by any political subdivision or other agency authorized by KRS  
24 Chapters 39A to 39F to make orders and promulgate administrative regulations,  
25 shall have the full force of law, when, if issued by the Governor, the director, or any  
26 state agency, a copy is filed with the Legislative Research Commission, or, if  
27 promulgated by an agency or political subdivision of the state, when filed in the

1 office of the clerk of that political subdivision or agency.~~[All existing laws,~~  
2 ~~ordinances, and administrative regulations inconsistent with the provisions of KRS~~  
3 ~~Chapters 39A to 39F, or of any order or administrative regulation issued under the~~  
4 ~~authority of KRS Chapters 39A to 39F, shall be suspended during the period of time~~  
5 ~~and to the extent that the conflict exists.]~~

6 (3) The law enforcement authorities of the state and of its counties, urban-counties,  
7 charter counties, and cities shall enforce the written orders and administrative  
8 regulations issued pursuant to KRS Chapters 39A to 39F.

9 ➔Section 5. KRS 39A.280 is amended to read as follows:

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

19 (a) The failure to respond to a disaster or other emergency, or to undertake  
20 particular inspections or types of inspections, or to maintain any particular  
21 level of personnel, equipment, or facilities, shall not be a breach of any duty to  
22 persons affected by any disaster or other emergency.

23 (b) When a state or local emergency management agency, or local emergency  
24 management agency-supervised operating unit officially affiliated with a local  
25 disaster and emergency services organization, does undertake to respond to a  
26 disaster or other emergency, the failure to provide the same level or manner of  
27 service, or equivalent availability or allocation of resources as may or could be

1 provided, shall not be a breach of any duty to persons affected by that disaster  
2 or other emergency.

3 (c) 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 shall not have or assume any  
6 duty towards any person to adopt, use, or avoid any particular strategy or  
7 tactic in responding to a disaster or other emergency.

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

17 (2) Neither the state nor any political subdivision of the state, nor the agents or  
18 representatives of the state or any of its political subdivisions, shall be liable for  
19 personal injury or property damage sustained by any person appointed or acting as a  
20 volunteer emergency management agency member, or disaster and emergency  
21 services member, or disaster and emergency response worker, or member of any  
22 agency engaged in any emergency management or disaster and emergency services  
23 or disaster and emergency response activity. ~~{The immunity provided by this~~  
24 ~~subsection shall not apply to the extent that the state, a political subdivision of the~~  
25 ~~state, or a person or organization maintains liability insurance or self insurance for~~  
26 ~~an act or omission covered by this subsection. To the extent that the state, a political~~  
27 ~~subdivision of the state, or a person or an organization maintains liability insurance~~

1 ~~or self insurance, sovereign immunity shall not be claimed with regard to an act or~~  
2 ~~omission covered by this subsection. ]~~This immunity shall not affect the right of any  
3 person to receive benefits or compensation to which the person might otherwise be  
4 entitled under the Workers' Compensation Law, or this chapter, or any pension law,  
5 or any Act of Congress.

6 (3) Subject to subsection (6) of this section, neither the state nor any political  
7 subdivision of the state nor, except in cases of willful misconduct, gross negligence,  
8 or bad faith, the employees, agents, or representatives of the state or any of its  
9 political divisions, nor any volunteer or auxiliary emergency management agency or  
10 disaster and emergency services organization member or disaster and emergency  
11 response worker or member of any agency engaged in any emergency management  
12 or disaster and emergency services or disaster and emergency response activity,  
13 complying with or reasonably attempting to comply with this chapter or any order  
14 or administrative regulation promulgated pursuant to the provisions of this chapter,  
15 or other precautionary measures enacted by any city of the state, shall be liable for  
16 the death of or injury to persons, or for damage to property, as a result of that  
17 activity. The immunity provided by this subsection shall not apply to the extent that  
18 the state, a political subdivision of the state, or a person or organization maintains  
19 liability insurance or self-insurance for an act or omission covered by this  
20 subsection. To the extent that the state, a political subdivision of the state, or a  
21 person or an organization maintains liability insurance or self-insurance, sovereign  
22 immunity shall not be claimed with regard to an act or omission covered by this  
23 subsection.

24 (4) Decisions of the director, his subordinates or employees, a local emergency  
25 management director, or the local director's subordinates or employees, a rescue  
26 chief or the chief's subordinates, concerning the allocation and assignment of  
27 personnel and equipment, and the strategies and tactics used, shall be the exercise of

1 a discretionary, policy function for which neither the officer nor the state, county,  
2 urban-county, charter county, or city, or local emergency management agency-  
3 supervised operating unit formally affiliated with a local disaster and emergency  
4 services organization, shall be held liable in the absence of wanton, willful,  
5 malicious, grossly negligent, or intentional misconduct~~[malice or bad faith]~~, even  
6 when those decisions are made rapidly in response to the exigencies of an  
7 emergency.

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

22 (6) Subsection (3) of this section shall apply to a volunteer or auxiliary disaster and  
23 emergency response worker only if the volunteer or worker is enrolled or registered  
24 with a local disaster and emergency services organization or with the division in  
25 accordance with the division's administrative regulations.

26 (7) While engaged in disaster and emergency response activity, volunteers and auxiliary  
27 disaster and emergency response workers enrolled or registered with a local disaster

1 and emergency service organization or with the division in accordance with  
2 subsection (6) of this section shall have the same degree of responsibility for their  
3 actions and enjoy the same immunities as officers and employees of the state and its  
4 political subdivisions performing similar work, including the provisions of KRS  
5 12.211, 12.212, and 12.215, allowing the Attorney General to provide defense of  
6 any civil action brought against a volunteer enrolled or registered with a local  
7 disaster or emergency service organization or with the division due to an act or  
8 omission made in the scope and course of a disaster and emergency response  
9 activity.

10 (8) (a) Notwithstanding subsections (3) and (6) of this section, a licensed  
11 professional engineer as defined in KRS 322.010 or an architect licensed  
12 under KRS Chapter 323, who voluntarily and without compensation provides  
13 architectural, structural, electrical, mechanical, or other professional services  
14 at the scene of a declared emergency, disaster, or catastrophe, shall not be  
15 liable for any personal injury, wrongful death, property damage, or other loss  
16 of any nature related to the licensed professional engineer's or licensed  
17 architect's acts, errors, or omissions in the performance of the services carried  
18 out:

19 1. At the request of or with the approval of a federal, state, or local:

20 a. Emergency management agency official with executive  
21 responsibility in the jurisdiction to coordinate disaster and  
22 emergency response activity;

23 b. Fire chief or his or her designee; or

24 c. Building inspection official;

25 whom the licensed professional engineer or licensed architect believes to  
26 be acting in an official capacity;

27 2. Within ninety (90) days following the end of the period for the declared

1 emergency, disaster, or catastrophe, unless extended by the Governor  
2 under KRS 39A.100; and

3 3. If the professional services arose out of the declared emergency, disaster,  
4 or catastrophe and if the licensed professional engineer or licensed  
5 architect acted as an ordinary reasonably prudent member of the  
6 profession would have acted under the same or similar circumstances.

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

9 ➔Section 6. KRS 39A.990 is amended to read as follows:

10 Any person violating any provision of this chapter or any administrative regulation or  
11 order promulgated pursuant to this chapter for which another penalty is not specified shall  
12 be guilty of a **violation and shall be subject to a fine not to exceed one hundred dollars**  
13 **(\$100) for a first offense, and not to exceed five hundred dollars (\$500) for each**  
14 **subsequent offense following a final conviction for a first offense**~~[Class A~~  
15 ~~misdemeanor]~~.

16 ➔Section 7. KRS 39D.040 is amended to read as follows:

17 (1) As used in this section, unless the context clearly requires otherwise:

18 (a) "Emergency interim successor" means a person designated under this section,  
19 if an officer is unavailable, to exercise the powers and discharge the duties of  
20 that office until a successor is appointed or elected and qualified as provided  
21 by law, or until the lawful incumbent is able to resume the exercise of the  
22 powers and discharge the duties of the office.

23 (b) "Office" includes all state and local offices, the powers and duties of which  
24 are defined by law, except the office of Governor **and any other office whose**  
25 **vacancy is filled by a provision of the Constitution of Kentucky**, and except  
26 those in the General Assembly and the judiciary. An "officer" is a person who  
27 holds an office.

- 1 (c) "Political subdivision" includes counties, urban-counties, charter counties,  
2 cities, special districts, authorities, and other public corporations and entities  
3 whether organized and existing under charter or general law.
- 4 (d) "Unavailable" means that during a state of emergency either:
- 5 1. A vacancy in office exists and there is no deputy authorized to exercise  
6 all of the powers and discharge the duties of the office; or
  - 7 2. That the lawful incumbent of the office and any duly authorized deputy  
8 are absent or unable to exercise the powers and discharge the duties of  
9 the office.
- 10 (2) Subject to administrative regulations of the Governor, all state officers, shall, in  
11 addition to any deputy authorized to exercise all of the powers and discharge the  
12 duties of the office, designate by title emergency interim successors and specify  
13 their order of succession. The officer shall review and revise, as necessary,  
14 designations made pursuant to this section to ensure their current status. The officer  
15 shall designate a sufficient number of emergency interim successors so that there  
16 will be not fewer than three (3) nor more than seven (7) deputies or emergency  
17 interim successors or any combination thereof, at any time. If any state officer is  
18 unavailable following an emergency, and if a deputy, if any, is also unavailable, the  
19 powers of office shall be exercised and the duties of office shall be discharged by  
20 any designated emergency interim successors in the order specified. The emergency  
21 interim successors shall exercise the powers and discharge the duties only until such  
22 time as the Governor under the Constitution or authority other than this section, or  
23 other official authorized under the Constitution or this section to exercise the  
24 powers and discharge the duties of the office of Governor has, where a vacancy  
25 exists, appointed a successor to fill the vacancy, or until a successor is otherwise  
26 appointed, or elected and qualified as provided by law, or until an officer or any  
27 deputy or a preceding named emergency interim successor becomes available to

1 exercise, or resume the exercise and discharge of, the powers and duties of the  
2 office.

3 (3) Each cabinet and each department of state government, and each agency of state  
4 government shall appoint not fewer than three (3) nor more than seven (7)  
5 emergency interim successors for each position specified in the Kentucky  
6 Emergency Operations Plan and the internal emergency operations procedures for  
7 that department or agency. Emergency interim successors in the order of the  
8 succession shall have the full power to exercise all powers of their department or  
9 agency and to commit its resources during a time of emergency or disaster if the  
10 person normally exercising the position becomes unavailable. If the preceding  
11 emergency successor becomes unavailable he or she shall resume all duties from the  
12 emergency interim successor, unless he or she chooses to permit the emergency  
13 interim successor to remain in the position until relieved.

14 (4) The local legislative bodies of cities, counties, urban-counties, and charter counties  
15 shall enact ordinances or orders governing the manner in which vacancies in offices  
16 and employment shall be filled, and for the prompt filling thereof during times of  
17 disaster and emergency, if the filling of these vacancies is not otherwise provided  
18 for by law or the Constitution of Kentucky. The legislative bodies shall enact  
19 ordinances providing for the appointment of not fewer than three (3) nor more than  
20 seven (7) emergency interim successors for each local office, department, and  
21 agency specified in the Kentucky Emergency Operations Plan and local emergency  
22 operations plans and annexes thereto. Emergency interim successors, in the order of  
23 their successions, shall have the full power to exercise all powers of the office,  
24 department, or agency and to commit its resources during a time of emergency or  
25 disaster if the person normally exercising the position is unavailable. If the  
26 preceding emergency successor becomes available, he or she shall resume the duties  
27 being performed by the emergency interim successor, unless he or she chooses to

1 permit the emergency interim successor to remain in the position until relieved. The  
2 administrative orders and ordinances shall not be inconsistent with this section.

3 (5) This section applies to officers of all special districts and political subdivisions not  
4 included in subsection (4) of this section. The officers, subject to such  
5 administrative regulations as the executive head of the political subdivision  
6 promulgates, shall designate by title, if feasible, or by named person, emergency  
7 interim successors and specify their order of succession. The officer shall review  
8 and revise, as necessary, designations made pursuant to this section to ensure their  
9 current status. The officer shall designate a sufficient number of persons so that  
10 there will be not fewer than three (3) nor more than seven (7) deputies or emergency  
11 interim successors or any combination thereof at any time. If any officer of any  
12 political subdivision or any deputy provided for pursuant to law is unavailable, the  
13 powers of the office shall be exercised and duties shall be discharged by the  
14 designated emergency interim successors in the order specified. The emergency  
15 interim successor shall exercise the powers and discharge the duties of the office to  
16 which designated until the time a vacancy which exists is filled in accordance with  
17 law~~[the Constitution or the KRS]~~, or until the officer, a deputy, or a preceding  
18 emergency interim successor again becomes available to exercise the powers and  
19 discharge the duties of the office.

20 (6) No person shall be designated or serve as an emergency interim successor unless he  
21 or she is eligible under the Constitution and statutes to hold the office to which he  
22 or she is designated to succeed, but no statutory provision prohibiting local or state  
23 officials from holding another office shall be applicable to an emergency interim  
24 successor.

25 (7) Emergency interim successors shall take the oath required to exercise the powers  
26 and discharge the duties of the office to which they may succeed. No person, as a  
27 prerequisite to the exercise of the powers or discharge of the duties of an office to

1 which he or she succeeds, shall be required to comply with any other provision of  
2 law relative to taking office.

3 (8) Officials authorized to act as ~~[-Governor pursuant to this section, and -]~~ emergency  
4 interim successors **other than those whose successors are provided for by the**  
5 **Constitution of Kentucky** are empowered to exercise the powers and discharge the  
6 duties of an office only during the continuance of an emergency. The General  
7 Assembly, by joint resolution, may at any time terminate the authority of the  
8 emergency interim successors to exercise the powers and discharge the duties of  
9 office.

10 (9) Until the persons designated as emergency interim successors shall exercise the  
11 powers and discharge the duties of an office in accordance with this section, the  
12 persons shall serve in their designated capacities at the pleasure of the designating  
13 authority.

14 (10) Any dispute concerning a question of fact arising under this section with respect to  
15 an office in the executive division of the state government, except a dispute of fact  
16 relative to the office of Governor, shall be adjudicated by the Governor or other  
17 official authorized under the Constitution to exercise the powers and discharge the  
18 duties of the office of Governor, and the decision reached shall be final.

19 ➔Section 8. KRS 315.500 is amended to read as follows:

20 (1) When the Governor declares a state of emergency pursuant to KRS 39A.100, the  
21 Governor may issue an executive order for a period of up to thirty (30) days giving  
22 pharmacists emergency authority. The executive order shall designate the  
23 geographical area to which it applies. In the executive order, the Governor may vest  
24 pharmacists with the authority to:

25 (a) Dispense up to a thirty (30) day emergency supply of medication;

26 (b) Administer immunizations to children pursuant to protocols established by the  
27 Centers for Disease Control and Prevention, the National Institutes of Health,

- 1 or the National Advisory Committee on Immunization Practices or determined  
2 to be appropriate by the commissioner of public health or his or her designee;
- 3 (c) Operate temporarily, a pharmacy in an area not designated on the pharmacy  
4 permit; and
- 5 (d) Dispense drugs as needed to prevent or treat the disease or ailment responsible  
6 for the emergency pursuant to protocols established by the Centers for Disease  
7 Control and Prevention or the National Institutes of Health or determined to  
8 be appropriate by the commissioner of public health or his or her designee to  
9 respond to the circumstances causing the emergency.

- 10 (2) The provisions of this section may be extended, in writing, by the Governor if  
11 necessary to protect the lives or welfare of the citizens upon the prior approval of  
12 the General Assembly under Section 3 of this Act.

13 ➔Section 9. KRS 367.374 is amended to read as follows:

- 14 (1) (a) When a Condition Red has been declared by the United States Department of  
15 Homeland Security under the Homeland Security Advisory System or the  
16 Governor has declared a state of emergency under KRS 39A.100, the  
17 Governor may implement this section by executive order for a period of  
18 fifteen (15) days from notification of implementation, as required by KRS  
19 367.376. The order implementing this section shall be limited to the  
20 geographical area indicated in the declaration of emergency. The Governor  
21 may terminate or limit the scope of the order at any time during the fifteen  
22 (15) day time period or any extension thereof as described in Section 3 of  
23 this Act.
- 24 (b) No person shall sell, rent, or offer to sell or rent, regardless of whether an  
25 actual sale or rental occurs, a good or service listed in this paragraph or any  
26 repair or reconstruction service for a price which is grossly in excess of the  
27 price prior to the declaration and unrelated to any increased cost to the seller.

1 Goods and services to which this section applies are:

- 2 1. Consumer food items;
- 3 2. Goods or services used for emergency cleanup;
- 4 3. Emergency supplies;
- 5 4. Medical supplies;
- 6 5. Home heating oil;
- 7 6. Building materials;
- 8 7. Housing;
- 9 8. Transportation, freight, and storage services; and
- 10 9. Gasoline or other motor fuels.

11 (c) A person's price does not violate this subsection if it is:

- 12 1. Related to an additional cost imposed by a supplier of a good or other  
13 costs of providing the good or service, including an additional cost for  
14 labor or materials used to provide a service;
- 15 2. Ten percent (10%) or less above the price prior to the declaration;
- 16 3. Ten percent (10%) or less above the sum of the person's costs and  
17 normal markup for a good or service;
- 18 4. Generally consistent with fluctuations in applicable commodity,  
19 regional, national, or international markets, or seasonal fluctuations; or
- 20 5. A contract price, or the result of a price formula, established prior to the  
21 order implementing this subsection.

22 (d) Whether a price violates this subsection is a question of law. In determining if  
23 a violation of this subsection has occurred, the court shall consider all relevant  
24 circumstances, including prices prevailing in the locality at that time.

25 (2) The provisions of this section may be extended for up to three (3) additional fifteen  
26 (15) day periods by the Governor **with prior approval of the General Assembly**  
27 **under Section 3 of this Act**, if necessary to protect the lives, property, or welfare of

1 the citizens.

2 (3) If a person sold or rented a good or service listed in subsection (1) of this section at  
3 a reduced price in the thirty (30) days prior to the Governor's implementation of this  
4 section, the price at which that person usually sells or rents the good or service in  
5 the area for which the declaration was issued shall be used in determining if the  
6 person is in violation of this section.

7 (4) If a person did not sell or rent or offer to sell or rent a good or service listed in  
8 subsection (1) of this section prior to the Governor's implementation of this section,  
9 the price at which a good or service was generally available in the area for which  
10 the declaration was issued shall be used in determining if the person is in violation  
11 of this section.

12 ➔Section 10. KRS 194A.025 is amended to read as follows:

13 (1) The secretary for health and family services and the secretary's designated  
14 representatives in the discharge of the duties of the secretary may administer oaths  
15 and affirmations, take depositions, certify official acts, and issue subpoenas to  
16 compel the attendance of witnesses and production of books, papers,  
17 correspondence, memoranda, and other records considered necessary and relevant  
18 as evidence at hearings held in connection with the administration of the cabinet.

19 (2) The secretary may delegate any duties of the office of secretary to employees of the  
20 cabinet as the secretary deems necessary and appropriate, unless otherwise  
21 prohibited by statutes.

22 (3) The secretary may enter into any contracts and agreements with individuals,  
23 colleges, universities, associations, corporations, municipalities, and other units of  
24 government as may be deemed necessary to carry out the general intent and  
25 purposes of the cabinet.

26 **(4) The secretary shall not take any action contrary to the requirements of Section 3**  
27 **of this Act.**

1           ➔Section 11. Whereas the General Assembly realizes the Commonwealth is  
2 subject at all times to disaster or emergency occurrences which can range from crises  
3 affecting limited areas to widespread catastrophic events, and that response to these  
4 occurrences is a fundamental responsibility of elected government in the Commonwealth,  
5 an emergency is declared to exist, and this Act takes effect upon its passage and approval  
6 by the Governor or upon its otherwise becoming law.

7           ➔Section 12. If any section, subsection, or any provision of this Act is found by a  
8 court of competent jurisdiction in a final, unappealable order to be invalid or  
9 unconstitutional, the decision of the courts shall not affect or impair any of the remaining  
10 sections, subsections, or provisions of this Act. The General Assembly specifically states  
11 its intention that it would have enacted the Act, or any section or subsection of this Act,  
12 without the severed part. The General Assembly specifically states its intention that it  
13 would enact the time limitations contained in Section 3 of this Act, including, without  
14 limitation, the fifteen (15) day limitation on declarations of emergencies and the  
15 prohibition against renewals of emergencies, for the same or similar circumstances,  
16 irrespective of whether or not the General Assembly or local legislative body could  
17 extend, limit, or terminate them.

18           ➔Section 13. This Act shall be known as the "Ensuring Basic Checks and  
19 Balances and Basic Liberties During Emergencies Act."