AN ACT relating to COVID-19 liability and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "COVID-19" means the novel coronavirus identified as SARS-CoV-2, or virus mutating from SARS-CoV-2, or any variant of SARS-CoV-2, and medical conditions associated with the virus;

(b) "COVID-19 claim" means any claim or cause of action for an act or omission arising from COVID-19 that accrued on or after the date the emergency was declared on March 6, 2020;

(c) "Public educational institution" means any public postsecondary institution including any governing board, trustees, officers, employees, or authorized volunteers thereof; and

(d) "Reasonably necessary action" includes but is not limited to:

1. Providing online or remote instruction in lieu of in-person instruction for any period of time;

2. Closing or modifying the provision of facilities, other than housing or dining facilities, on the campus of the public educational institution;

or

3. Pausing or modifying ancillary student activities and services available through the public educational institution.

(2) A public educational institution that takes reasonably necessary action to comply with federal, state, or local guidelines to diminish the impact or prevent the spread of COVID-19 shall be immune from any civil liability, equitable relief, or other remedies arising from a COVID-19 claim.

(3) The General Assembly affirms that the sovereign immunity of the
Commonwealth and the governmental immunity of public educational institutions is preserved for all COVID-19 claims, except those:

(a) Expressly waived by statute; or

(b) Arising solely from a breach of a written contract for which sovereign immunity has been waived.

(4) In any COVID-19 claim against a public educational institution for reimbursement of tuition or fees, any invoices, catalogs, or general publications of the public educational institution shall not be evidence of a written contract for which sovereign or governmental immunity has been waived.

(5) A COVID-19 claim under this section, including a contract claim, against a public educational institution shall be brought in the Circuit Court of the county in which the public educational institution is located and shall be brought no later than four (4) years from the date the claim accrued. For purposes of this subsection, a COVID-19 claim shall be deemed to have accrued at the time of the alleged action of the public educational institution that forms the basis for the claim.

(6) An order of the Circuit Court denying a motion to dismiss any COVID-19 claim brought under this section, including a contract claim, shall be a final and appealable order.

(7) As it is a matter of vital state interest affecting the public health, safety, and welfare of the citizens of this Commonwealth that public educational institutions be able to fulfill their educational missions during the COVID-19 pandemic without exposure to liability for any acts or omissions related to their reasonably necessary actions in compliance with federal, state, or local guidelines to diminish the impact or the spread of COVID-19, this section shall be liberally construed to effectuate this purpose.

(8) If any provision of this section or the application thereof to any person or
circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

Section 2. The provisions of this Act shall apply to all actions commenced on or after March 6, 2020.

Section 3. Whereas the impact of the state of emergency in response to COVID-19 on the citizens of this Commonwealth is of the utmost importance, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.