

1 AN ACT relating to COVID-19 liability 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 411 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) As used in this section:

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

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

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

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

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

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

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

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

27 (3) The General Assembly affirms that the sovereign immunity of the

1 Commonwealth and the governmental immunity of public educational
2 institutions is preserved for all COVID-19 claims, except those:

3 (a) Expressly waived by statute; or

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

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

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

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

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

27 (8) If any provision of this section or the application thereof to any person or

1 *circumstance is held invalid, the invalidity shall not affect other provisions or*
2 *applications of this section that can be given effect without the invalid provision*
3 *or application, and to this end the provisions of this section are severable.*

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

6 ➔Section 3. Whereas the impact of the state of emergency in response to COVID-
7 19 on the citizens of this Commonwealth is of the utmost importance, an emergency is
8 declared to exist, and this Act takes effect upon its passage and approval by the Governor
9 or upon its otherwise becoming a law.