

1 AN ACT relating to liability protection in emergencies.

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

3 ➔Section 1. KRS 39A.275 (Effective until December 31, 2023) is amended to
4 read as follows:

5 (1) As used in this section:

6 (a) "Arising from COVID-19" means an injury or harm that allegedly occurred on
7 or after the emergency was declared on March 6, 2020, and until the
8 emergency declaration is withdrawn, revoked, or lapses, caused by or resulting
9 from:

- 10 1. The actual, alleged, or possible exposure to, transmission of, or
11 contraction of COVID-19;
- 12 2. Services, treatment, or other action performed to limit or prevent the
13 spread of COVID-19; or
- 14 3. Services performed by an entity outside the normal course of its business
15 in response to COVID-19;

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

19 (c) "COVID-19 claim" means any claim or cause of action for an act or omission
20 arising from COVID-19 that accrued on or after the date the emergency was
21 declared on March 6, 2020, and until the emergency declaration is withdrawn,
22 revoked, or lapses;

23 (d) "Executive action" means:

- 24 1. All orders and guidelines related to a COVID-19 declared emergency
25 issued by the Governor or any state agency, the President of the United
26 States or any federal agency, or a local governmental agency; and
- 27 2. Industry-specific guidelines related to a COVID-19 declared emergency

1 adopted by a state agency that govern the industry;

2 (e) "Executive action":

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

5 2. Does not create a duty of care;

6 (f) "Health care providers" means:

7 1. Any health facility as defined in KRS 216B.015;

8 2. Any person or entity providing health care or health services, including
9 those licensed, certified, or registered under, or subject to, KRS
10 194A.700 to 194A.729 or KRS Chapters 310, 311, 311A, 311B, 312,
11 313, 314, 314A, 315, 319, 319A, 319B, 319C, 320, 327, 333, 334A, or
12 335;

13 3. The current and former employers, officers, directors, administrators,
14 agents, or employees of those entities listed in subparagraphs 1. and 2. of
15 this paragraph; or

16 4. Any person acting within the course and scope of his or her office,
17 employment, or agency relating to a health care provider;

18 (g) "Owner" means:

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

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

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

- 1 (i) "Political subdivision" has the same meaning as "governmental entity" in KRS
2 341.069; and
- 3 (j) "Premises" means:
- 4 1. Private or public roads, walking or cycling paths, sidewalks, hiking or
5 multi-use trails, watercourses, or water ways;
 - 6 2. Buildings and structures, including houses of worship, schools, homes,
7 parks, restaurants, shops, stadiums, arenas, gyms, medical facilities,
8 long-term care facilities, retail facilities, wholesale and manufacturing
9 facilities, and facilities in which individuals charged with or convicted
10 of a crime are incarcerated;
 - 11 3. Aircraft, automobiles, trains, buses, or watercraft, whether or not
12 licensed as a common carrier or motor carrier; or
 - 13 4. Any other location where members of the public may engage in
14 personal, commercial, social, religious, or other activities.
- 15 (2) Except as provided in subsection (3) of this section, an owner who follows any
16 executive action to prevent the spread of COVID-19 during the COVID-19 declared
17 emergency and either directly or indirectly invites or permits another person to enter
18 the owner's premises while a COVID-19 declared emergency affecting the premises
19 remains in effect or continues, does not:
- 20 (a) Extend any assurance that the premises are safe from any risk of exposure to
21 COVID-19 or to conditions caused by the COVID-19 declared emergency;
 - 22 (b) Owe a duty to protect from or warn about any risk related to or caused by
23 COVID-19; or
 - 24 (c) Assume responsibility, or incur liability, for any alleged injury, loss, or
25 damage to persons or property arising from a COVID-19 claim.
- 26 (3) Nothing in this section limits any liability of an owner for gross negligence, or
27 wanton, willful, malicious, or intentional misconduct.

- 1 (4) Nothing in this section shall:
- 2 (a) Create a duty of care or ground of liability for injury to persons or property;
- 3 (b) Relieve any person entering premises from any obligation that he or she may
- 4 have in the absence of this section to exercise care in his or her use of the
- 5 premises, or from the legal consequences of the failure to employ such care;
- 6 (c) Affect the right of persons to receive benefits to which he or she would
- 7 otherwise be entitled under KRS Chapter 342, nor does it affect the exclusive
- 8 application of that chapter; ~~{or}~~
- 9 (d) Affect the applicability of KRS Chapter 338; or
- 10 (e) Entitle an owner to the liability protections afforded by this section, if that
- 11 owner requires his or her employees to receive a vaccination against
- 12 COVID-19 as a condition of employment and an employee develops a
- 13 serious adverse reaction as a result of the vaccination.
- 14 (5) Any COVID-19 claim for personal injury against an owner or essential service
- 15 provider shall be brought within the time set out in KRS 413.140. For purposes of
- 16 this subsection, such claim shall be deemed to have accrued at the time the injury is
- 17 first discovered, or in the exercise of reasonable care should have been discovered.
- 18 (6) Any COVID-19 claim involving motor vehicle accidents shall be governed by the
- 19 limitation periods in KRS 304.39-230.
- 20 (7) Any COVID-19 claim involving damage to real property shall be brought within the
- 21 time set out in KRS 413.120.
- 22 (8) (a) Any essential service provider during the declared emergency of the COVID-
- 23 19 pandemic shall not be liable for any COVID-19 claim.
- 24 (b) Nothing in this subsection limits any liability of an essential service provider
- 25 for gross negligence, or wanton, willful, malicious, or intentional misconduct.
- 26 (9) The following businesses and service providers shall be deemed essential service
- 27 providers and shall be considered an agent of the Commonwealth of Kentucky for

- 1 the limited purpose of providing essential services arising from COVID-19:
- 2 (a) The following service providers identified in Executive Order No. 2020-257
- 3 dated March 25, 2020:
- 4 1. Organizations that provide charitable and social services;
 - 5 2. Individuals and businesses needed for transportation;
 - 6 3. Financial institutions;
 - 7 4. Mail, post, shipping, and pick-up services;
 - 8 5. Individuals and businesses that produce, supply, prepare, and sell food;
 - 9 6. Home-based care and services; and
 - 10 7. Individuals and businesses that work in the supply chain for critical
 - 11 medical and pharmaceutical products;
- 12 (b) Health care providers;
- 13 (c) Medicaid waiver providers;
- 14 (d) Elementary and secondary schools, whether public or private;
- 15 (e) Child care service providers and facilities;
- 16 (f) Funeral directors, morticians, undertakers, and embalmers;
- 17 (g) Local government agencies and political subdivisions; and
- 18 (h) Manufacturers located in the Commonwealth of Kentucky that produced or
- 19 are producing, or that distributed or are distributing, medical, medicinal,
- 20 hygienic items such as face masks and hand sanitizers, or other personal
- 21 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.