

Section 1 would require any liability claim for personal injury against an owner related to the SARS-COV-2 pandemic or the emergency should be filed within the statute of limitations set forth in KRS 413.140. The claim arises at the time it is first discovered or should have been discovered. The claim is barred unless brought within two years of the date on which the alleged act or omission allegedly occurred. Claims that involve motor vehicle accidents would be governed by the limitation periods in KRS 304.39-230. Claims involving damage to real property related to the SARS-COV-2 pandemic must be brought within the time set out for real property in the general statute of limitations in KRS 413.120.

Section 1 would also extend certain liability protections to persons providing essential services (except for willful, grossly negligent, or intentional misconduct). Essential services would be those provided as of March 6, 2020 until the emergency declaration is withdrawn revoked, or lapses, and would include charitable and social services providers, transportation businesses, financial institutions, mail/post/shipping/pick-up services, food producers/suppliers/preparers/sellers, home-based care and service providers, medical and pharmaceutical product businesses in the supply chain, health care providers, Medicaid waiver providers, public and private elementary and secondary schools, post secondary education institutions, child care providers, local government agencies and political subdivisions, and manufacturers and distributors of medical/medicinal/hygienic items. In accordance with Section 10 of SB 5 GA, Section 1 would be repealed effective December 31, 2023.

Sections 2 through 6 amend various other sections in the statutory chapter relating to declared states of emergency. These amendments would be *permanent* amendments--not repealed on December 31, 2023. **Section 2** amends “executive action” in the same manner as Section 1, to include orders and guidelines of the Governor, President, federal agency, or local government agency, and state-agency guidelines specific to an industry. **Section 3** clarifies that the Director of the Division of Emergency Management of the Department of Military Affairs would advise the Governor and recommend any emergency “executive action.” **Section 4** allows the Governor to make executive actions. **Section 5** permits the Governor or General Assembly to declare which certain specified services (those dealing with the response to the disaster/emergency, those engaged in critical infrastructure as defined by the US Department of Homeland Security, and those charged with responsibility for a governmental function related to the emergency) are essential during a disaster or declared emergency. **Section 6** deletes the provision that prohibited immunity if the state or other person or organization maintained liability insurance, and deletes the prohibition against the political subdivision asserting a sovereign immunity defense. Immunity would not extend to wanton, willful, malicious, grossly negligent, or intentional misconduct. Immunity is further refined for the state, private persons, volunteers, and professional engineers and architects providing services during an emergency.

Section 11 adds uncodified language expressing intent not to limit liability for non-COVID-SARS-2 related motor vehicle accidents.

The bill would take effect immediately upon becoming law. Section 1 is effective retroactively to March 6, 2020.

SB 5 HCS would likely have a *positive* fiscal impact on local government. SB 5 HCS does not change the fiscal impact. The limitation of liability would result in fewer damage awards in lawsuits arising from declared emergencies.

The Kentucky League of Cities reports that local government liability insurance does not cover damages associated with COVID-19. Local governments would be able to take advantage of any liability protections offered in the bill, but they would still be responsible for the full cost of defending lawsuits that would be filed seeking damages in spite of the bill, and they would be responsible for any award of damages.

The bill would protect local governments from potential damages sought as a result of a government offices open, such as city hall, utility offices, community centers, transit systems, or parks. While potential legal cases could still be a cost, the liability protection and shortening of the statute of limitations would likely reduce the number filed and that result in awards for damages.

According to the Kentucky Association of Counties, most current local government liability insurance policies have a specific pandemic exclusion; accordingly, the impact on premiums would be minimal. The bill does not prohibit lawsuits, which would still have to be defended, but the bill would limit damages. Because there would be a lower risk of direct loss due to savings on uninsured claims, the bill has the potential to benefit all county offices.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II, above, refers to the HCS, and makes the following changes to SB 5 GA:

- Provides liability protection for owners of premises during the SARS-COV-2 pandemic and sets the time limit within which a claim for personal injury must be brought. It specifies the liability for essential services providers, and defines what is an "essential service".
- It amends KRS 39A.020 to define "declared emergency", "disaster", and "executive action".
- It amends KRS 39A.070 and 39A.090 to conform.
- Amends 39A.280 to refine the immunity of the state, private persons, volunteers, professional engineers and architects, and persons providing essential services during an emergency.
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The fiscal impact of SB 5 HCS is unchanged from the fiscal impact of SB 5 GA.

Part II, above, refers to SB 5 GA, which makes the following changes to SB 5 SCS 1:

- requires claims involving damage to real property related to the SARS-COV-2 pandemic to be brought within the time set out for real property in the general statute of limitations in KRS 413.120;
- includes distributors of medical or personal protective equipment as essential services providers;

- clarifies that the General Assembly or Governor may designate which services are essential during an emergency; and
- adds uncodified language expressing intent not to limit liability for non-COVID-SARS-2 related motor vehicle accidents.

The fiscal impact of SB 5 GA is unchanged from the fiscal impact of SB 5 SCS 1.

SB 5 SCS 1 was similar to SB 5 as introduced, except that SB 5 SCS 1 clarified which services are essential and limited certain immunity protections to the SARS-COV-2 pandemic and declared emergency, repealing that part of the bill effective December 31, 2023.

Data Source(s): LRC Staff; Kentucky League of Cities; Kentucky Association of Counties

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