



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.

**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, 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, child care providers, local government agencies and political subdivisions, and manufacturers of medical/medicinal/hygienic items. In accordance with Section 10 of SB 5 SCS, Section 1 would be repealed effective December 31, 2023.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 These amendments would be *permanent* amendments--not repealed on December 31, 2023.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) may remain open and operating 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.

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

**SB 5 SCS 1 would likely have a *positive* fiscal impact on local government.** SB 5 SCS 1 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 SB 5 SCS 1. SB 5 SCS 1 is similar to SB 5, except that SB 5 SCS 1 clarifies which services are essential and limits 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

**Preparer:** Robert Jenkins **Reviewer:** KHC **Date:** 2/9/21