

**Local Government Mandate Statement  
Kentucky Legislative Research Commission  
2022 Regular Session**

**Part I: Measure Information**

**Bill Request #:** 211

**Bill #:** HB 43 GA

**Document ID #:** 6848

**Bill Subject/Title:** AN ACT relating to religious freedom during a declared emergency.

**Sponsor:** Representative Shane Baker

Unit of Government: X X X Urban-County  
Unified Local  
X Charter County X Consolidated Local X Government

Office(s) Impacted: All executive offices

Requirement: X Mandatory     Optional

Effect on  
Powers & Duties: X Modifies Existing     Adds New     Eliminates Existing

**Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government**

KRS Chapter 39A gives broad powers to the Governor, county judge/executive, mayor, and HB 43 GA would amend KRS 39A.100 to limit the powers of a governmental entity to act during a state of emergency where religious organizations and religious services are concerned. The term “governmental entity” would include the Commonwealth, its agencies and political subdivisions (cities and counties), and any person acting under color of state law.

HB 43 GA would amend KRS 39A.100 to prohibit the government seizing, taking, or condemning houses of worship during an emergency, unless such houses have become unsafe to the point they could be condemned in the absence of a state of emergency. The bill would require that religious services be treated as “essential services” during a state of emergency, necessary to the health and welfare of the public. Neutral health, safety, or occupancy requirements imposed on other organizations and businesses that provide essential services may be imposed on religious organizations so long as the requirements do not impose a substantial burden on a religious organization or its services, unless the

requirements in the emergency situation are essential to furthering a compelling governmental interest and are the least restrictive means of furthering that interest. A governmental entity is prohibited from taking any discriminatory action against a religious organization.

**Section 1 (6)(a)** of the bill would prohibit a governmental entity from prohibiting or restricting religious services during a declared emergency to the same or any greater extent than other organizations providing essential services are prohibited or restricted.

“Discriminatory action” would include taking any discriminatory action against a religious organization on the basis that the organization is religious, operates or seeks to operate during a state of emergency, or engages in religious exercise protected by the First Amendment to the United States Constitution to:

1. Adversely alter the tax treatment of the religious organization;
2. Disallow a state tax deduction for charitable contributions to the organization;
3. Impose a monetary fine, fee, civil or criminal penalty, etc. on the organization, or to
4. Terminate or materially alter the terms or conditions of a state contract, entitlement, license or certification issued to the organization.

“Governmental entity” means:

1. The Commonwealth or its political subdivisions;
2. Any agency of the Commonwealth described in KRS 12.020;
3. Any person acting under state law; and
4. A private person suing under or attempting to enforce a law, rule or regulation adopted by the state or its political subdivisions.

“Religious organization” means:

1. A house of worship including churches, synagogues, shrines, mosques, and temples;
2. A religious group, corporation, association, educational institution, ministry, order, society or similar entity, whether or not affiliated with a church or other house of worship;
3. An officer, owner, employee, manager, religious leader, clergy or minister of an entity described above.

“Religious services” means any assembly of 2 or more persons organized by a religious organization for the purpose of worship, teaching, training, providing educational services, conducting religious rituals, or other activities deemed necessary by the organization to exercise their religion.

HB 43 GA would allow a religious organization to sue a governmental entity for its violation and would waive sovereign, governmental, and qualified immunity as a defense to a claim of violation. A successful litigant could, among other relief, recover both monetary and non-monetary compensatory damages, attorneys’ fees and costs of litigation.

The bill requires that it be broadly construed to protect the free exercise of religion. Its provisions would supersede any conflicting state or local law, regulation, ordinance, etc. that infringes on the free exercise of religion.

**The fiscal impact of HB 43 GA on local governments is indeterminable due to the uncertainty of the number of claims that might arise under it and the outcome of any litigation.** Potentially, this legislation could result in more local governments having to expend resources to defend against such claims as well as to pay out money as compensation to a successful litigant. Successful litigation of any sort would likely have a moderate to significant fiscal impact on a local government.

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

Part II applies to the GA version of HB 43. HB 43 GA includes HCS 1, House Committee Amendment 1 (Title), and House Floor Amendment 1 which were all passed by committee and the House. The GA version does not change the fiscal impact of HB 43 as introduced.

HB 43 GA makes the following changes to HB 43 HCS 1:

1. House Committee Amendment 1 amending the title to read "AN ACT relating to religious freedom during a declared emergency."
2. House Floor Amendment 1 deleting language from Section 1(6)(c) and inserting the same language in Section 1 (7)(a).

The HCS 1 makes the following changes to HB 43 as introduced:

1. Adds language at pg. 1, Section 1(1)(c) that excludes seizure, taking, or condemnation of houses of worship from the emergency powers of the governor unless the house is unsafe to the extent condemnation would be justified outside a state of emergency;
2. Adds language at pg. 5, Section 1(6)(a) to the effect that, in addition to not being allowed to prohibit a religious organization from operating or engaging in religious services during an emergency, neither may a governmental entity **restrict** such activities during an emergency;
3. Adds "adversely" at pg. 6, Section 1(7)(a) to the prohibition on altering the tax treatment of religious organizations or churches;
4. Adds language at p. 7, Section 1(8) specifying that a violation of subsections (4)(c), 5(b), or (6) of the bill by a governmental entity would constitute a claim or defense in an action against the governmental entity.

**Data Source(s):** Kentucky League of Cities; LRC staff

**Preparer:** Mary Stephens (wfb) **Reviewer:** KHC **Date:** 3/7/22