

1 AN ACT relating to emergencies.

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

3 ➔Section 1. KRS 39A.090 is amended to read as follows:

4 **(1)** The Governor may make, amend, and rescind any executive orders as deemed
5 necessary to carry out the provisions of KRS Chapters 39A to 39F.

6 **(2)** ***Executive orders or other directives issued under this chapter by the Governor***
7 ***shall be in effect no longer than thirty (30) days unless an extension is approved***
8 ***by the General Assembly.***

9 **(3)** ***Upon the expiration of the executive order declaring an emergency or other***
10 ***implementation of powers under this chapter, the Governor shall not declare a***
11 ***new emergency or continue to implement any of the powers enumerated in this***
12 ***chapter based upon the same or substantially similar facts and circumstances as***
13 ***the original declaration or implementation without the approval of the General***
14 ***Assembly.***

15 ➔Section 2. KRS 39A.100 is amended to read as follows:

16 (1) In the event of the occurrence or threatened or impending occurrence of any of the
17 situations or events contemplated by KRS 39A.010, 39A.020, or 39A.030, the
18 Governor may declare, in writing, that a state of emergency exists. The Governor
19 shall have and may exercise the following emergency powers during the period in
20 which the state of emergency exists:

21 (a) To enforce all laws, and administrative regulations relating to disaster and
22 emergency response and to assume direct operational control of all disaster
23 and emergency response forces and activities in the Commonwealth;

24 (b) To require state agencies and to request local governments, local agencies, and
25 special districts to respond to the emergency or disaster in the manner
26 directed;

27 (c) To seize, take, or condemn property, excluding firearms and ammunition,

1 components of firearms and ammunition, or a combination thereof, for the
2 protection of the public or at the request of the President, the Armed Forces,
3 or the Federal Emergency Management Agency of the United States,
4 including:

- 5 1. All means of transportation and communication;
- 6 2. All stocks of fuel of whatever nature;
- 7 3. Food, clothing, equipment, materials, medicines, and all supplies; and
- 8 4. Facilities, including buildings and plants;

9 (d) To sell, lend, give, or distribute any of the property under paragraph (c) of this
10 subsection among the inhabitants of the Commonwealth and to account to the
11 State Treasurer for any funds received for the property;

12 (e) To make compensation for the property seized, taken, or condemned under
13 paragraph (c) of this subsection;

14 (f) To exclude all nonessential, unauthorized, disruptive, or otherwise
15 uncooperative personnel from the scene of the emergency, and to command
16 those persons or groups assembled at the scene to disperse. A person who
17 refuses to leave an area in which a written order of evacuation has been issued
18 in accordance with a written declaration of emergency or a disaster may be
19 forcibly removed to a place of safety or shelter, or may, if this is resisted, be
20 arrested by a peace officer. Forcible removal or arrest shall not be exercised as
21 options until all reasonable efforts for voluntary compliance have been
22 exhausted;

23 (g) To declare curfews and establish their limits;

24 (h) To prohibit or limit the sale or consumption of goods, excluding firearms and
25 ammunition, components of firearms and ammunition, or a combination
26 thereof, or commodities for the duration of the emergency;

27 (i) To grant emergency authority to pharmacists pursuant to KRS 315.500, for the

- 1 duration of the emergency;
- 2 (j) Except as prohibited by this section or other law, to perform and exercise
3 other functions, powers, and duties deemed necessary to promote and secure
4 the safety and protection of the civilian population;
- 5 (k) To request any assistance from agencies of the United States as necessary and
6 appropriate to meet the needs of the people of the Commonwealth; and
- 7 (l) Upon the recommendation of the Secretary of State, to declare by executive
8 order a different time, place, or manner for holding elections in an election
9 area for which a state of emergency has been declared for part or all of the
10 election area. The election shall be held within thirty-five (35) days from the
11 date of the suspended or delayed election. **The executive order shall remain**
12 **in effect until the date of the suspended or delayed election regardless of the**
13 **time limitations in Section 1 of this Act and shall not be changed except by**
14 **action of the General Assembly.** The State Board of Elections shall establish
15 procedures for election officials to follow. Any procedures established under
16 this paragraph shall be subject to the approval of the Secretary of State and the
17 Governor by respective executive orders.
- 18 (2) In the event of the occurrence or threatened or impending occurrence of any of the
19 situations or events contemplated by KRS 39A.010, 39A.020, or 39A.030, which in
20 the judgment of a local chief executive officer is of such severity or complexity as
21 to require the exercise of extraordinary emergency measures, the county
22 judge/executive of a county other than an urban-county government, or mayor of a
23 city or urban-county government, or chief executive of other local governments or
24 their designees as provided by ordinance of the affected county, city, or urban-
25 county may declare in writing that a state of emergency exists, and thereafter,
26 subject to any orders of the Governor, shall have and may exercise for the period as
27 the state of emergency exists or continues, the following emergency powers:

- 1 (a) To enforce all laws and administrative regulations relating to disaster and
2 emergency response and to direct all local disaster and emergency response
3 forces and operations in the affected county, city, urban-county, or charter
4 county;
- 5 (b) To exclude all nonessential, unauthorized, disruptive, or uncooperative
6 personnel from the scene of the emergency, and to command persons or
7 groups of persons at the scene to disperse. A person who refuses to leave an
8 area in which a written order of evacuation has been issued in accordance with
9 a written declaration of emergency or a disaster may be forcibly removed to a
10 place of safety or shelter, or may, if this is resisted, be arrested by a peace
11 officer. Forcible removal or arrest shall not be exercised as options until all
12 reasonable efforts for voluntary compliance have been exhausted;
- 13 (c) To declare curfews and establish their limits;
- 14 (d) To order immediate purchase or rental of, contract for, or otherwise procure,
15 without regard to procurement codes or budget requirements, the goods and
16 services essential for protection of public health and safety or to maintain or to
17 restore essential public services; and
- 18 (e) To request emergency assistance from any local government or special district
19 and, through the Governor, to request emergency assistance from any state
20 agency and to initiate requests for federal assistance as are necessary for
21 protection of public health and safety or for continuation of essential public
22 services.
- 23 (3) Nothing in this section shall be construed to allow any governmental entity to
24 impose additional restrictions on the lawful possession, transfer, sale, transport,
25 carrying, storage, display, or use of firearms and ammunition or components of
26 firearms and ammunition.

27 ➔Section 3. KRS 39A.180 is amended to read as follows:

- 1 (1) The political subdivisions of the state and other agencies designated or appointed by
2 the Governor may make, amend, and rescind orders and promulgate administrative
3 regulations necessary for disaster and emergency response purposes, and to
4 supplement the carrying out of the provisions of this chapter, if not inconsistent
5 with any orders or administrative regulations promulgated by the Governor or by
6 any state agency exercising a power delegated to it by the Governor.
- 7 (2) All written orders and administrative regulations promulgated by the Governor, the
8 director, or by any political subdivision or other agency authorized by KRS
9 Chapters 39A to 39F to make orders and promulgate administrative regulations,
10 shall have the full force of law, when, if issued by the Governor, the director, or any
11 state agency, a copy is filed with the Legislative Research Commission, or, if
12 promulgated by an agency or political subdivision of the state, when filed in the
13 office of the clerk of that political subdivision or agency. All existing laws,
14 ordinances, and administrative regulations inconsistent with the provisions of KRS
15 Chapters 39A to 39F, or of any order or administrative regulation issued under the
16 authority of KRS Chapters 39A to 39F, shall be suspended during the period of time
17 and to the extent that the conflict exists. All written orders and administrative
18 regulations promulgated under KRS Chapter 13A pursuant to this section shall
19 be valid for thirty (30) days unless an extension is approved by the General
20 Assembly under Section 1 of this Act.
- 21 (3) The law enforcement authorities of the state and of its counties, urban-counties,
22 charter counties, and cities shall enforce the written orders and administrative
23 regulations issued pursuant to KRS Chapters 39A to 39F.
- 24 ➔Section 4. KRS 39A.280 is amended to read as follows:
- 25 (1) Disaster and emergency response functions provided by a state or local emergency
26 management agency, or any emergency management agency-supervised operating
27 units or personnel officially affiliated with a local disaster and emergency services

1 organization pursuant to KRS 39B.070, shall not, in itself, be deemed to be the
2 making of a promise, or the undertaking of a special duty, towards any person for
3 the services, or any particular level of, or manner of providing, the services; nor
4 shall the provision of or failure to provide these services be deemed to create a
5 special relationship or duty towards any person upon which an action in negligence
6 or other tort might be founded. Specifically:

7 (a) The failure to respond to a disaster or other emergency, or to undertake
8 particular inspections or types of inspections, or to maintain any particular
9 level of personnel, equipment, or facilities, shall not be a breach of any duty to
10 persons affected by any disaster or other emergency.

11 (b) When a state or local emergency management agency, or local emergency
12 management agency-supervised operating unit officially affiliated with a local
13 disaster and emergency services organization, does undertake to respond to a
14 disaster or other emergency, the failure to provide the same level or manner of
15 service, or equivalent availability or allocation of resources as may or could be
16 provided, shall not be a breach of any duty to persons affected by that disaster
17 or other emergency.

18 (c) A state or local emergency management agency, or local emergency
19 management agency-supervised operating unit officially affiliated with a local
20 disaster and emergency services organization shall not have or assume any
21 duty towards any person to adopt, use, or avoid any particular strategy or
22 tactic in responding to a disaster or other emergency.

23 (d) A state or local emergency management agency, or local emergency
24 management agency-supervised operating unit officially affiliated with a local
25 disaster and emergency services organization, in undertaking disaster and
26 emergency preparedness or prevention activities including inspections, or in
27 undertaking to respond to a disaster or other emergency, shall not have

1 voluntarily assumed any special duty with respect to any risks which were not
2 created or caused by it, nor with respect to any risks which might have existed
3 even in the absence of that activity or response, nor shall any person have a
4 right to rely on such an assumption of duty.

5 (2) Neither the state nor any political subdivision of the state, nor the agents or
6 representatives of the state or any of its political subdivisions, shall be liable for
7 personal injury or property damage sustained by any person appointed or acting as a
8 volunteer emergency management agency member, or disaster and emergency
9 services member, or disaster and emergency response worker, or member of any
10 agency engaged in any emergency management or disaster and emergency services
11 or disaster and emergency response activity. The immunity provided by this
12 subsection shall not apply to the extent that the state, a political subdivision of the
13 state, or a person or organization maintains liability insurance or self-insurance for
14 an act or omission covered by this subsection. To the extent that the state, a political
15 subdivision of the state, or a person or an organization maintains liability insurance
16 or self-insurance, sovereign immunity shall not be claimed with regard to an act or
17 omission covered by this subsection. This immunity shall not affect the right of any
18 person to receive benefits or compensation to which the person might otherwise be
19 entitled under the Workers' Compensation Law, or this chapter, or any pension law,
20 or any Act of Congress.

21 (3) Subject to subsection (6) of this section, neither the state nor any political
22 subdivision of the state nor, except in cases of willful misconduct, gross negligence,
23 or bad faith, the employees, agents, or representatives of the state or any of its
24 political divisions, nor any volunteer or auxiliary emergency management agency or
25 disaster and emergency services organization member or disaster and emergency
26 response worker or member of any agency engaged in any emergency management
27 or disaster and emergency services or disaster and emergency response activity,

1 complying with or reasonably attempting to comply with this chapter or any order
2 or administrative regulation promulgated pursuant to the provisions of this chapter,
3 or other precautionary measures enacted by any city of the state, shall be liable for
4 the death of or injury to persons, or for damage to property, as a result of that
5 activity. The immunity provided by this subsection shall not apply to the extent that
6 the state, a political subdivision of the state, or a person or organization maintains
7 liability insurance or self-insurance for an act or omission covered by this
8 subsection. To the extent that the state, a political subdivision of the state, or a
9 person or an organization maintains liability insurance or self-insurance, sovereign
10 immunity shall not be claimed with regard to an act or omission covered by this
11 subsection.

12 (4) Decisions of the director, his subordinates or employees, a local emergency
13 management director, or the local director's subordinates or employees, a rescue
14 chief or the chief's subordinates, concerning the allocation and assignment of
15 personnel and equipment, and the strategies and tactics used, shall be the exercise of
16 a discretionary, policy function for which neither the officer nor the state, county,
17 urban-county, charter county, or city, or local emergency management agency-
18 supervised operating unit formally affiliated with a local disaster and emergency
19 services organization, shall be held liable in the absence of malice or bad faith, even
20 when those decisions are made rapidly in response to the exigencies of an
21 emergency.

22 (5) Any person owning or controlling real estate or other premises who voluntarily and
23 without compensation grants a license or privilege, or otherwise permits the
24 designation or use of the whole or any part of the real estate or premises for the
25 purpose of sheltering persons during an actual, impending, mock, or practice
26 disaster or emergency, together with his or her successors in interest, shall not be
27 civilly liable for negligently causing the death of, or injury to, any person on or

1 about the real estate or premises for loss of, or damage to, the property of that
2 person. The immunity provided by this subsection shall not apply to the extent that
3 the state, a political subdivision of the state, or a person or organization maintains
4 liability insurance or self-insurance for an act or omission covered by this
5 subsection. To the extent that the state, a political subdivision of the state, or a
6 person or organization maintains liability insurance or self-insurance, sovereign
7 immunity shall not be claimed with regard to an act or omission covered by this
8 subsection.

9 (6) Subsection (3) of this section shall apply to a volunteer or auxiliary disaster and
10 emergency response worker only if the volunteer or worker is enrolled or registered
11 with a local disaster and emergency services organization or with the division in
12 accordance with the division's administrative regulations.

13 (7) While engaged in disaster and emergency response activity, volunteers and auxiliary
14 disaster and emergency response workers enrolled or registered with a local disaster
15 and emergency service organization or with the division in accordance with
16 subsection (6) of this section shall have the same degree of responsibility for their
17 actions and enjoy the same immunities as officers and employees of the state and its
18 political subdivisions performing similar work, including the provisions of KRS
19 12.211, 12.212, and 12.215, allowing the Attorney General to provide defense of
20 any civil action brought against a volunteer enrolled or registered with a local
21 disaster or emergency service organization or with the division due to an act or
22 omission made in the scope and course of a disaster and emergency response
23 activity.

24 (8) (a) Notwithstanding subsections (3) and (6) of this section, a licensed
25 professional engineer as defined in KRS 322.010 or an architect licensed
26 under KRS Chapter 323, who voluntarily and without compensation provides
27 architectural, structural, electrical, mechanical, or other professional services

1 at the scene of a declared emergency, disaster, or catastrophe, shall not be
 2 liable for any personal injury, wrongful death, property damage, or other loss
 3 of any nature related to the licensed professional engineer's or licensed
 4 architect's acts, errors, or omissions in the performance of the services carried
 5 out:

6 1. At the request of or with the approval of a federal, state, or local:

7 a. Emergency management agency official with executive
 8 responsibility in the jurisdiction to coordinate disaster and
 9 emergency response activity;

10 b. Fire chief or his or her designee; or

11 c. Building inspection official;

12 whom the licensed professional engineer or licensed architect believes to
 13 be acting in an official capacity;

14 2. Within ninety (90) days following the end of the period for the declared
 15 emergency, disaster, or catastrophe, unless extended under Section 1 of
 16 this Act~~by the Governor under KRS 39A.100~~; and

17 3. If the professional services arose out of the declared emergency, disaster,
 18 or catastrophe and if the licensed professional engineer or licensed
 19 architect acted as an ordinary reasonably prudent member of the
 20 profession would have acted under the same or similar circumstances.

21 (b) Nothing in this subsection shall provide immunity for wanton, willful, or
 22 intentional misconduct.

23 ➔Section 5. KRS 214.020 is amended to read as follows:

24 When the Cabinet for Health and Family Services believes that there is a probability that
 25 any infectious or contagious disease will invade this state, it shall take such action and
 26 adopt and enforce such administrative~~rules and~~ regulations promulgated under KRS
 27 Chapter 13A as it deems efficient in preventing the introduction or spread of such

1 infectious or contagious disease or diseases within this state, and to accomplish these
2 objects shall establish and strictly maintain quarantine and isolation at such places as it
3 deems proper. **Any administrative regulations promulgated under this section shall be**
4 **in effect no longer than thirty (30) days unless an extension is approved by the General**
5 **Assembly under Section 1 of this Act.**

6 →Section 6. KRS 241.090 is amended to read as follows:

7 State administrators and all investigators shall have the full police powers of peace
8 officers, and their jurisdiction shall be coextensive with the state. They may inspect any
9 premises where alcoholic beverages are manufactured, sold, stored, or otherwise
10 trafficked in, without first obtaining a search warrant. They may confiscate any
11 contraband property. **The jurisdiction and police powers of state administrators and all**
12 **investigators during an emergency declared under KRS Chapter 39A shall be subject to**
13 **the limitations of Section 1 of this Act.**

14 →Section 7. KRS 315.500 is amended to read as follows:

15 (1) When the Governor declares a state of emergency pursuant to KRS 39A.100, the
16 Governor may issue an executive order for a period of up to thirty (30) days giving
17 pharmacists emergency authority. The executive order shall designate the
18 geographical area to which it applies. In the executive order, the Governor may vest
19 pharmacists with the authority to:

- 20 (a) Dispense up to a thirty (30) day emergency supply of medication;
- 21 (b) Administer immunizations to children pursuant to protocols established by the
22 Centers for Disease Control and Prevention, the National Institutes of Health,
23 or the National Advisory Committee on Immunization Practices or determined
24 to be appropriate by the commissioner of public health or his or her designee;
- 25 (c) Operate temporarily, a pharmacy in an area not designated on the pharmacy
26 permit; and
- 27 (d) Dispense drugs as needed to prevent or treat the disease or ailment responsible

1 for the emergency pursuant to protocols established by the Centers for Disease
2 Control and Prevention or the National Institutes of Health or determined to
3 be appropriate by the commissioner of public health or his or her designee to
4 respond to the circumstances causing the emergency.

5 (2) The provisions of this section may be extended, in writing, by the Governor if
6 necessary to protect the lives or welfare of the citizens.

7 **(3) Nothing in this section shall be affected by the requirements of Section 1 of this**
8 **Act.**

9 ➔Section 8. KRS 367.374 is amended to read as follows:

10 (1) (a) When a Condition Red has been declared by the United States Department of
11 Homeland Security under the Homeland Security Advisory System or the
12 Governor has declared a state of emergency under KRS 39A.100, the
13 Governor may implement this section by executive order for a period of
14 fifteen (15) days from notification of implementation, as required by KRS
15 367.376. The order implementing this section shall be limited to the
16 geographical area indicated in the declaration of emergency. The Governor
17 may terminate or limit the scope of the order at any time.

18 (b) No person shall sell, rent, or offer to sell or rent, regardless of whether an
19 actual sale or rental occurs, a good or service listed in this paragraph or any
20 repair or reconstruction service for a price which is grossly in excess of the
21 price prior to the declaration and unrelated to any increased cost to the seller.

22 Goods and services to which this section applies are:

- 23 1. Consumer food items;
- 24 2. Goods or services used for emergency cleanup;
- 25 3. Emergency supplies;
- 26 4. Medical supplies;
- 27 5. Home heating oil;

- 1 6. Building materials;
- 2 7. Housing;
- 3 8. Transportation, freight, and storage services; and
- 4 9. Gasoline or other motor fuels.
- 5 (c) A person's price does not violate this subsection if it is:
- 6 1. Related to an additional cost imposed by a supplier of a good or other
- 7 costs of providing the good or service, including an additional cost for
- 8 labor or materials used to provide a service;
- 9 2. Ten percent (10%) or less above the price prior to the declaration;
- 10 3. Ten percent (10%) or less above the sum of the person's costs and
- 11 normal markup for a good or service;
- 12 4. Generally consistent with fluctuations in applicable commodity,
- 13 regional, national, or international markets, or seasonal fluctuations; or
- 14 5. A contract price, or the result of a price formula, established prior to the
- 15 order implementing this subsection.
- 16 (d) Whether a price violates this subsection is a question of law. In determining if
- 17 a violation of this subsection has occurred, the court shall consider all relevant
- 18 circumstances, including prices prevailing in the locality at that time.
- 19 (2) The provisions of this section may be extended for up to three (3) additional fifteen
- 20 (15) day periods by the Governor, if necessary to protect the lives, property, or
- 21 welfare of the citizens.
- 22 (3) If a person sold or rented a good or service listed in subsection (1) of this section at
- 23 a reduced price in the thirty (30) days prior to the Governor's implementation of this
- 24 section, the price at which that person usually sells or rents the good or service in
- 25 the area for which the declaration was issued shall be used in determining if the
- 26 person is in violation of this section.
- 27 (4) If a person did not sell or rent or offer to sell or rent a good or service listed in

1 subsection (1) of this section prior to the Governor's implementation of this section,
2 the price at which a good or service was generally available in the area for which
3 the declaration was issued shall be used in determining if the person is in violation
4 of this section.

5 **(5) Nothing in this section shall be affected by the requirements of Section 1 of this**
6 **Act.**