

1 AN ACT relating to governmental emergencies and declaring an emergency.

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

3 ➔Section 1. KRS 39A.100 is repealed, reenacted, and amended to read as  
4 follows:

5 (1) In the event of the occurrence or threatened or impending occurrence of any of the  
6 situations or events contemplated by KRS 39A.010, 39A.020, or 39A.030, the  
7 Governor may declare, in writing ***and in accordance with subsection (2) of this***  
8 ***section***, that a state of emergency exists. The Governor shall have and may exercise  
9 the following ***limited*** emergency powers during the period in which the state of  
10 emergency exists:

11 (a) To enforce all laws~~[,]~~ and administrative regulations relating to disaster and  
12 emergency response and to assume direct operational control of all disaster  
13 and emergency response forces and activities in the Commonwealth;

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

17 (c) To seize, take, or condemn property ***for the duration of the emergency***,  
18 excluding firearms and ammunition, components of firearms and ammunition,  
19 or a combination thereof, for the protection of the public or at the request of  
20 the President, the Armed Forces, or the Federal Emergency Management  
21 Agency of the United States, including:

- 22 1. All means of transportation and communication;
- 23 2. All stocks of fuel of whatever nature;
- 24 3. Food, clothing, equipment, materials, medicines, and all supplies; and
- 25 4. Facilities, including buildings and plants.

26 ***The Governor shall make compensation at fair market value for the use,***  
27 ***damage, loss, or destruction of property;***

- 1 (d) To sell, lend, give, or distribute any of the property under paragraph (c) of this  
2 subsection among the inhabitants of the Commonwealth and to account to the  
3 State Treasurer for any funds received for the property;
- 4 (e) To make compensation for the property seized, taken, or condemned under  
5 paragraph (c) of this subsection;
- 6 (f) To exclude all nonessential, unauthorized, disruptive, or otherwise  
7 uncooperative personnel from the scene of the emergency, and to command  
8 those persons or groups assembled at the scene to disperse. A person who  
9 refuses to leave an area in which a written order of evacuation has been issued  
10 in accordance with a written declaration of emergency or a disaster may be  
11 forcibly removed to a place of safety or shelter, or may, if this is resisted, be  
12 arrested by a peace officer. Forcible removal or arrest shall not be exercised as  
13 options until all reasonable efforts for voluntary compliance have been  
14 exhausted;
- 15 (g) To declare curfews and establish their limits;
- 16 (h) To prohibit or limit the sale or consumption of goods, excluding firearms and  
17 ammunition, components of firearms and ammunition, or a combination  
18 thereof, or commodities for the duration of the emergency;
- 19 (i) To grant emergency authority to pharmacists pursuant to KRS 315.500, for the  
20 duration of the emergency;
- 21 (j) Except as prohibited by this section or other law, to perform and exercise  
22 other functions, powers, and duties deemed necessary to promote and secure  
23 the safety and protection of the civilian population;
- 24 (k) To request any assistance from agencies of the United States as necessary and  
25 appropriate to meet the needs of the people of the Commonwealth; and
- 26 (l) Upon the recommendation of the Secretary of State, to declare by executive  
27 order a different time or place~~, or manner~~ for holding elections in an

1 election area for which a state of emergency has been declared for part or all  
2 of the election area. The election shall be held within thirty-five (35) days  
3 from the date of the suspended or delayed election. The State Board of  
4 Elections shall establish procedures for election officials to follow. Any  
5 procedures established under this paragraph shall be subject to the approval of  
6 the Secretary of State and the Governor by respective executive orders.

7 (2) (a) Any declaration of emergency or other exercise of the powers enumerated  
8 in this chapter by the Governor, including but not limited to any executive  
9 order relating to an emergency under this chapter shall not exceed fifteen  
10 (15) days unless extended by the General Assembly in a regular session, or  
11 an extraordinary session convened to consider any and all aspects of the  
12 emergency.

13 (b) Upon termination or expiration of a declaration of emergency under this  
14 chapter, the Governor shall not declare a new emergency based upon the  
15 same or substantially similar facts and circumstances as the original  
16 declaration without the prior approval of the General Assembly.

17 (c) The Governor shall not have the authority to suspend statutes or  
18 administrative regulations unless explicitly authorized by statute.

19 (3) In the event of the occurrence or threatened or impending occurrence of any of the  
20 situations or events contemplated by KRS 39A.010, 39A.020, or 39A.030, which in  
21 the judgment of a local chief executive officer is of such severity or complexity as  
22 to require the exercise of extraordinary emergency measures, the county  
23 judge/executive of a county other than an urban-county government, or mayor of a  
24 city or urban-county government, or chief executive of other local governments or  
25 their designees as provided by ordinance of the affected county, city, or urban-  
26 county may declare in writing that a state of emergency exists. The declaration of  
27 emergency shall be effective for fifteen (15) days unless terminated earlier or

1 extended by the corresponding local legislative body. Upon termination or  
 2 expiration of a declaration of emergency under this chapter, the local chief  
 3 executive officer shall not declare a new emergency based upon the same or  
 4 substantially similar facts and circumstances as the original declaration without  
 5 the prior approval of the corresponding local legislative body. ~~[, and thereafter,~~  
 6 ~~subject to any orders of the Governor,]~~

7 **(4) The local chief executive officer** shall have and may exercise for the period as the  
 8 state of emergency exists or continues, the following emergency powers:

- 9 (a) To enforce all laws and administrative regulations relating to disaster and  
 10 emergency response and to direct all local disaster and emergency response  
 11 forces and operations in the affected county, city, urban-county, or charter  
 12 county;
- 13 (b) To exclude all nonessential, unauthorized, disruptive, or uncooperative  
 14 personnel from the scene of the emergency, and to command persons or  
 15 groups of persons at the scene to disperse. A person who refuses to leave an  
 16 area in which a written order of evacuation has been issued in accordance with  
 17 a written declaration of emergency or a disaster may be forcibly removed to a  
 18 place of safety or shelter, or may, if this is resisted, be arrested by a peace  
 19 officer. Forcible removal or arrest shall not be exercised as options until all  
 20 reasonable efforts for voluntary compliance have been exhausted;
- 21 (c) To declare curfews and establish their limits;
- 22 (d) To order immediate purchase or rental of, contract for, or otherwise procure,  
 23 without regard to procurement codes or budget requirements, the goods and  
 24 services essential for protection of public health and safety or to maintain or to  
 25 restore essential public services; and
- 26 (e) To request emergency assistance from any local government or special district  
 27 and, through the Governor, to request emergency assistance from any state

1 agency and to initiate requests for federal assistance as are necessary for  
 2 protection of public health and safety or for continuation of essential public  
 3 services.

4 ~~(5)~~~~(3)~~ Nothing in this section shall be construed to allow any governmental entity to  
 5 impose additional restrictions on the lawful possession, transfer, sale, transport,  
 6 carrying, storage, display, or use of firearms and ammunition or components of  
 7 firearms and ammunition.

8 **(6) Nothing in this section shall be construed to allow any governmental entity to**  
 9 **impose restrictions on the right of the people to:**

10 **(a) Peaceably assemble; or**

11 **(b) Worship, worship in person, or to act or refuse to act in a manner motivated**  
 12 **by a sincerely held religious belief.**

13 ➔Section 2. KRS 39A.180 is amended to read as follows:

14 (1) The political subdivisions of the state and other agencies designated or appointed by  
 15 the Governor may make, amend, and rescind orders and promulgate administrative  
 16 regulations necessary for disaster and emergency response purposes, and to  
 17 supplement the carrying out of the provisions of this chapter, if not inconsistent  
 18 with any orders or administrative regulations promulgated by the Governor or by  
 19 any state agency exercising a power delegated to it by the Governor.

20 (2) All written orders and administrative regulations promulgated by the Governor, the  
 21 director, or by any political subdivision or other agency authorized by KRS  
 22 Chapters 39A to 39F to make orders and promulgate administrative regulations,  
 23 shall have the full force of law, when, if issued by the Governor, the director, or any  
 24 state agency, a copy is filed with the Legislative Research Commission, or, if  
 25 promulgated by an agency or political subdivision of the state, when filed in the  
 26 office of the clerk of that political subdivision or agency.~~[-All existing laws,~~  
 27 ~~ordinances, and administrative regulations inconsistent with the provisions of KRS~~

1       ~~Chapters 39A to 39F, or of any order or administrative regulation issued under the~~  
2       ~~authority of KRS Chapters 39A to 39F, shall be suspended during the period of time~~  
3       ~~and to the extent that the conflict exists.]~~

4       (3) The law enforcement authorities of the state and of its counties, urban-counties,  
5       charter counties, and cities shall enforce the written orders and administrative  
6       regulations issued pursuant to KRS Chapters 39A to 39F.

7       ➔Section 3. KRS 39A.280 is amended to read as follows:

8       (1) Disaster and emergency response functions provided by a state or local emergency  
9       management agency, or any emergency management agency-supervised operating  
10      units or personnel officially affiliated with a local disaster and emergency services  
11      organization pursuant to KRS 39B.070, shall not, in itself, be deemed to be the  
12      making of a promise, or the undertaking of a special duty, towards any person for  
13      the services, or any particular level of, or manner of providing, the services; nor  
14      shall the provision of or failure to provide these services be deemed to create a  
15      special relationship or duty towards any person upon which an action in negligence  
16      or other tort might be founded. Specifically:

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

21      (b) When a state or local emergency management agency, or local emergency  
22      management agency-supervised operating unit officially affiliated with a local  
23      disaster and emergency services organization, does undertake to respond to a  
24      disaster or other emergency, the failure to provide the same level or manner of  
25      service, or equivalent availability or allocation of resources as may or could be  
26      provided, shall not be a breach of any duty to persons affected by that disaster  
27      or other emergency.

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

6 (d) A state or local emergency management agency, or local emergency  
7 management agency-supervised operating unit officially affiliated with a local  
8 disaster and emergency services organization, in undertaking disaster and  
9 emergency preparedness or prevention activities including inspections, or in  
10 undertaking to respond to a disaster or other emergency, shall not have  
11 voluntarily assumed any special duty with respect to any risks which were not  
12 created or caused by it, nor with respect to any risks which might have existed  
13 even in the absence of that activity or response, nor shall any person have a  
14 right to rely on such an assumption of duty.

15 (2) Neither the state nor any political subdivision of the state, nor the agents or  
16 representatives of the state or any of its political subdivisions, shall be liable for  
17 personal injury or property damage sustained by any person appointed or acting as a  
18 volunteer emergency management agency member, or disaster and emergency  
19 services member, or disaster and emergency response worker, or member of any  
20 agency engaged in any emergency management or disaster and emergency services  
21 or disaster and emergency response activity. The immunity provided by this  
22 subsection shall not apply to the extent that the state, a political subdivision of the  
23 state, or a person or organization maintains liability insurance or self-insurance for  
24 an act or omission covered by this subsection. To the extent that the state, a political  
25 subdivision of the state, or a person or an organization maintains liability insurance  
26 or self-insurance, sovereign immunity shall not be claimed with regard to an act or  
27 omission covered by this subsection. This immunity shall not affect the right of any

1 person to receive benefits or compensation to which the person might otherwise be  
2 entitled under the Workers' Compensation Law, or this chapter, or any pension law,  
3 or any Act of Congress.

4 (3) Subject to subsection (6) of this section, neither the state nor any political  
5 subdivision of the state nor, except in cases of willful misconduct, gross negligence,  
6 or bad faith, the employees, agents, or representatives of the state or any of its  
7 political divisions, nor any volunteer or auxiliary emergency management agency or  
8 disaster and emergency services organization member or disaster and emergency  
9 response worker or member of any agency engaged in any emergency management  
10 or disaster and emergency services or disaster and emergency response activity,  
11 complying with or reasonably attempting to comply with this chapter or any order  
12 or administrative regulation promulgated pursuant to the provisions of this chapter,  
13 or other precautionary measures enacted by any city of the state, shall be liable for  
14 the death of or injury to persons, or for damage to property, as a result of that  
15 activity. The immunity provided by this subsection shall not apply to the extent that  
16 the state, a political subdivision of the state, or a person or organization maintains  
17 liability insurance or self-insurance for an act or omission covered by this  
18 subsection. To the extent that the state, a political subdivision of the state, or a  
19 person or an organization maintains liability insurance or self-insurance, sovereign  
20 immunity shall not be claimed with regard to an act or omission covered by this  
21 subsection.

22 (4) Decisions of the director, his subordinates or employees, a local emergency  
23 management director, or the local director's subordinates or employees, a rescue  
24 chief or the chief's subordinates, concerning the allocation and assignment of  
25 personnel and equipment, and the strategies and tactics used, shall be the exercise of  
26 a discretionary, policy function for which neither the officer nor the state, county,  
27 urban-county, charter county, or city, or local emergency management agency-

1 supervised operating unit formally affiliated with a local disaster and emergency  
2 services organization, shall be held liable in the absence of malice or bad faith, even  
3 when those decisions are made rapidly in response to the exigencies of an  
4 emergency.

5 (5) Any person owning or controlling real estate or other premises who voluntarily and  
6 without compensation grants a license or privilege, or otherwise permits the  
7 designation or use of the whole or any part of the real estate or premises for the  
8 purpose of sheltering persons during an actual, impending, mock, or practice  
9 disaster or emergency, together with his or her successors in interest, shall not be  
10 civilly liable for negligently causing the death of, or injury to, any person on or  
11 about the real estate or premises for loss of, or damage to, the property of that  
12 person. The immunity provided by this subsection shall not apply to the extent that  
13 the state, a political subdivision of the state, or a person or organization maintains  
14 liability insurance or self-insurance for an act or omission covered by this  
15 subsection. To the extent that the state, a political subdivision of the state, or a  
16 person or organization maintains liability insurance or self-insurance, sovereign  
17 immunity shall not be claimed with regard to an act or omission covered by this  
18 subsection.

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

23 (7) While engaged in disaster and emergency response activity, volunteers and auxiliary  
24 disaster and emergency response workers enrolled or registered with a local disaster  
25 and emergency service organization or with the division in accordance with  
26 subsection (6) of this section shall have the same degree of responsibility for their  
27 actions and enjoy the same immunities as officers and employees of the state and its

1 political subdivisions performing similar work, including the provisions of KRS  
2 12.211, 12.212, and 12.215, allowing the Attorney General to provide defense of  
3 any civil action brought against a volunteer enrolled or registered with a local  
4 disaster or emergency service organization or with the division due to an act or  
5 omission made in the scope and course of a disaster and emergency response  
6 activity.

7 (8) (a) Notwithstanding subsections (3) and (6) of this section, a licensed  
8 professional engineer as defined in KRS 322.010 or an architect licensed  
9 under KRS Chapter 323, who voluntarily and without compensation provides  
10 architectural, structural, electrical, mechanical, or other professional services  
11 at the scene of a declared emergency, disaster, or catastrophe, shall not be  
12 liable for any personal injury, wrongful death, property damage, or other loss  
13 of any nature related to the licensed professional engineer's or licensed  
14 architect's acts, errors, or omissions in the performance of the services carried  
15 out:

- 16 1. At the request of or with the approval of a federal, state, or local:
  - 17 a. Emergency management agency official with executive  
18 responsibility in the jurisdiction to coordinate disaster and  
19 emergency response activity;
  - 20 b. Fire chief or his or her designee; or
  - 21 c. Building inspection official;whom the licensed professional engineer or licensed architect believes to  
22 be acting in an official capacity;
- 23 2. Within ninety (90) days following the end of the period for the declared  
24 emergency, disaster, or catastrophe, unless extended ~~by the Governor~~  
25 ~~under KRS 39A.100~~; and
- 26 3. If the professional services arose out of the declared emergency, disaster,  
27

1 or catastrophe and if the licensed professional engineer or licensed  
2 architect acted as an ordinary reasonably prudent member of the  
3 profession would have acted under the same or similar circumstances.

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

6 ➔Section 4. KRS 315.500 is amended to read as follows:

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

12 (a) Dispense up to a thirty (30) day emergency supply of medication;

13 (b) Administer immunizations to children pursuant to protocols established by the  
14 Centers for Disease Control and Prevention, the National Institutes of Health,  
15 or the National Advisory Committee on Immunization Practices or determined  
16 to be appropriate by the commissioner of public health or his or her designee;

17 (c) Operate temporarily, a pharmacy in an area not designated on the pharmacy  
18 permit; and

19 (d) Dispense drugs as needed to prevent or treat the disease or ailment responsible  
20 for the emergency pursuant to protocols established by the Centers for Disease  
21 Control and Prevention or the National Institutes of Health or determined to  
22 be appropriate by the commissioner of public health or his or her designee to  
23 respond to the circumstances causing the emergency.

24 (2) The provisions of this section may be extended, in writing, by the Governor with  
25 prior approval by the General Assembly if necessary to protect the lives or welfare  
26 of the citizens.

27 ➔Section 5. KRS 367.374 is amended to read as follows:

- 1 (1) (a) When a Condition Red has been declared by the United States Department of  
2 Homeland Security under the Homeland Security Advisory System or the  
3 Governor has declared a state of emergency under KRS 39A.100, the  
4 Governor may implement this section by executive order for a period of  
5 fifteen (15) days from notification of implementation, as required by KRS  
6 367.376. The order implementing this section shall be limited to the  
7 geographical area indicated in the declaration of emergency. The Governor  
8 may terminate or limit the scope of the order at any time during the fifteen  
9 (15) day period.
- 10 (b) No person shall sell, rent, or offer to sell or rent, regardless of whether an  
11 actual sale or rental occurs, a good or service listed in this paragraph or any  
12 repair or reconstruction service for a price which is grossly in excess of the  
13 price prior to the declaration and unrelated to any increased cost to the seller.  
14 Goods and services to which this section applies are:
- 15 1. Consumer food items;
  - 16 2. Goods or services used for emergency cleanup;
  - 17 3. Emergency supplies;
  - 18 4. Medical supplies;
  - 19 5. Home heating oil;
  - 20 6. Building materials;
  - 21 7. Housing;
  - 22 8. Transportation, freight, and storage services; and
  - 23 9. Gasoline or other motor fuels.
- 24 (c) A person's price does not violate this subsection if it is:
- 25 1. Related to an additional cost imposed by a supplier of a good or other  
26 costs of providing the good or service, including an additional cost for  
27 labor or materials used to provide a service;

- 1           2. Ten percent (10%) or less above the price prior to the declaration;
- 2           3. Ten percent (10%) or less above the sum of the person's costs and
- 3           normal markup for a good or service;
- 4           4. Generally consistent with fluctuations in applicable commodity,
- 5           regional, national, or international markets, or seasonal fluctuations; or
- 6           5. A contract price, or the result of a price formula, established prior to the
- 7           order implementing this subsection.

8           (d) Whether a price violates this subsection is a question of law. In determining if  
 9           a violation of this subsection has occurred, the court shall consider all relevant  
 10          circumstances, including prices prevailing in the locality at that time.

11       (2) The provisions of this section may be extended ~~[for up to three (3) additional fifteen~~  
 12       ~~(15) day periods ]~~ by the Governor **with prior approval of the General Assembly**, if  
 13       necessary to protect the lives, property, or welfare of the citizens.

14       (3) If a person sold or rented a good or service listed in subsection (1) of this section at  
 15       a reduced price in the thirty (30) days prior to the Governor's implementation of this  
 16       section, the price at which that person usually sells or rents the good or service in  
 17       the area for which the declaration was issued shall be used in determining if the  
 18       person is in violation of this section.

19       (4) If a person did not sell or rent or offer to sell or rent a good or service listed in  
 20       subsection (1) of this section prior to the Governor's implementation of this section,  
 21       the price at which a good or service was generally available in the area for which  
 22       the declaration was issued shall be used in determining if the person is in violation  
 23       of this section.

24       ➔Section 6. Notwithstanding KRS 446.090, the General Assembly finds and  
 25       declares that each section of this Act are essential and inseparable with and dependent on  
 26       each other, and consequently the General Assembly intends that the provisions of this Act  
 27       are nonseverable so that if any court finds any part of this Act contained herein to be

1 unconstitutional, invalid, or unenforceable in any way under federal or state law, the  
2 entire Act shall be declared void and unenforceable.

3       ➔Section 7. Whereas the General Assembly realizes the Commonwealth is  
4 subject at all times to disaster or emergency occurrences which can range from crises  
5 affecting limited areas to widespread catastrophic events, and that response to these  
6 occurrences is a fundamental responsibility of elected government in the Commonwealth,  
7 an emergency is declared to exist, and this Act takes effect upon its passage and approval  
8 by the Governor or upon its otherwise becoming law.