

1 AN ACT relating to governmental emergencies.

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

3 ➔Section 1. KRS 39A.100 is amended to read as follows:

- 4 (1) In the event of the occurrence or threatened or impending occurrence of any of the
5 situations or events contemplated by KRS 39A.010, 39A.020, or 39A.030, the
6 Governor may declare, in writing ***and in accordance with subsection (2) of this***
7 ***section***, that a state of emergency exists. The Governor shall have and may exercise
8 the following emergency powers during the period in which the state of emergency
9 exists:
- 10 (a) To enforce all laws~~[,]~~ and administrative regulations relating to disaster and
11 emergency response and to assume direct operational control of all disaster
12 and emergency response forces and activities in the Commonwealth;
- 13 (b) To require state agencies and to request local governments, local agencies, and
14 special districts to respond to the emergency or disaster in the manner
15 directed;
- 16 (c) To seize, take, or condemn property, excluding firearms and ammunition,
17 components of firearms and ammunition, or a combination thereof, for the
18 protection of the public or at the request of the President, the Armed Forces,
19 or the Federal Emergency Management Agency of the United States,
20 including:
- 21 1. All means of transportation and communication;
- 22 2. All stocks of fuel of whatever nature;
- 23 3. Food, clothing, equipment, materials, medicines, and all supplies; and
- 24 4. Facilities, including buildings and plants;
- 25 (d) To sell, lend, give, or distribute any of the property under paragraph (c) of this
26 subsection among the inhabitants of the Commonwealth and to account to the
27 State Treasurer for any funds received for the property;

- 1 (e) To make compensation for the property seized, taken, or condemned under
2 paragraph (c) of this subsection;
- 3 (f) To exclude all nonessential, unauthorized, disruptive, or otherwise
4 uncooperative personnel from the scene of the emergency, and to command
5 those persons or groups assembled at the scene to disperse. A person who
6 refuses to leave an area in which a written order of evacuation has been issued
7 in accordance with a written declaration of emergency or a disaster may be
8 forcibly removed to a place of safety or shelter, or may, if this is resisted, be
9 arrested by a peace officer. Forcible removal or arrest shall not be exercised as
10 options until all reasonable efforts for voluntary compliance have been
11 exhausted;
- 12 (g) To declare curfews and establish their limits;
- 13 (h) To prohibit or limit the sale or consumption of goods, excluding firearms and
14 ammunition, components of firearms and ammunition, or a combination
15 thereof, or commodities for the duration of the emergency;
- 16 (i) To grant emergency authority to pharmacists pursuant to KRS 315.500, for the
17 duration of the emergency;
- 18 (j) Except as prohibited by this section or other law, to perform and exercise
19 other functions, powers, and duties deemed necessary to promote and secure
20 the safety and protection of the civilian population;
- 21 (k) To request any assistance from agencies of the United States as necessary and
22 appropriate to meet the needs of the people of the Commonwealth; and
- 23 (l) Upon the recommendation of the Secretary of State, to declare by executive
24 order a different time, place, or manner for holding elections in an election
25 area for which a state of emergency has been declared for part or all of the
26 election area. The election shall be held within thirty-five (35) days from the
27 date of the suspended or delayed election. The State Board of Elections shall

1 establish procedures for election officials to follow. Any procedures
2 established under this paragraph shall be subject to the approval of the
3 Secretary of State and the Governor by respective executive orders.

4 (2) *Any declaration of emergency or other exercise of the powers enumerated in this*
5 *chapter shall be void unless the Governor simultaneously calls an immediate*
6 *extraordinary session of the General Assembly. If the Governor calls an*
7 *extraordinary session, the Governor's declaration of emergency shall be effective*
8 *for fifteen (15) days after issuance of the order unless earlier terminated or*
9 *extended by the General Assembly.*

10 (3) *Upon the expiration of the declaration of emergency under this chapter, the*
11 *Governor shall not declare a new emergency based upon the same or*
12 *substantially similar facts and circumstances as the original declaration without*
13 *the approval of the General Assembly.*

14 (4) *Nothing in this chapter shall permit the Governor to suspend statutes or*
15 *administrative regulations the subject matter of which is not enumerated in this*
16 *section.*

17 (5) In the event of the occurrence or threatened or impending occurrence of any of the
18 situations or events contemplated by KRS 39A.010, 39A.020, or 39A.030, which in
19 the judgment of a local chief executive officer is of such severity or complexity as
20 to require the exercise of extraordinary emergency measures, the county
21 judge/executive of a county other than an urban-county government, or mayor of a
22 city or urban-county government, or chief executive of other local governments or
23 their designees as provided by ordinance of the affected county, city, or urban-
24 county may declare in writing that a state of emergency exists, and thereafter,
25 subject to any orders of the Governor, shall have and may exercise for the period as
26 the state of emergency exists or continues, the following emergency powers:

27 (a) To enforce all laws and administrative regulations relating to disaster and

1 emergency response and to direct all local disaster and emergency response
2 forces and operations in the affected county, city, urban-county, or charter
3 county;

4 (b) To exclude all nonessential, unauthorized, disruptive, or uncooperative
5 personnel from the scene of the emergency, and to command persons or
6 groups of persons at the scene to disperse. A person who refuses to leave an
7 area in which a written order of evacuation has been issued in accordance with
8 a written declaration of emergency or a disaster may be forcibly removed to a
9 place of safety or shelter, or may, if this is resisted, be arrested by a peace
10 officer. Forcible removal or arrest shall not be exercised as options until all
11 reasonable efforts for voluntary compliance have been exhausted;

12 (c) To declare curfews and establish their limits;

13 (d) To order immediate purchase or rental of, contract for, or otherwise procure,
14 without regard to procurement codes or budget requirements, the goods and
15 services essential for protection of public health and safety or to maintain or to
16 restore essential public services; and

17 (e) To request emergency assistance from any local government or special district
18 and, through the Governor, to request emergency assistance from any state
19 agency and to initiate requests for federal assistance as are necessary for
20 protection of public health and safety or for continuation of essential public
21 services.

22 ~~(6)~~~~(3)~~ Nothing in this section shall be construed to allow any governmental entity to
23 impose additional restrictions on the lawful possession, transfer, sale, transport,
24 carrying, storage, display, or use of firearms and ammunition or components of
25 firearms and ammunition.

26 ➔Section 2. KRS 39A.280 is amended to read as follows:

27 (1) Disaster and emergency response functions provided by a state or local emergency

1 management agency, or any emergency management agency-supervised operating
2 units or personnel officially affiliated with a local disaster and emergency services
3 organization pursuant to KRS 39B.070, shall not, in itself, be deemed to be the
4 making of a promise, or the undertaking of a special duty, towards any person for
5 the services, or any particular level of, or manner of providing, the services; nor
6 shall the provision of or failure to provide these services be deemed to create a
7 special relationship or duty towards any person upon which an action in negligence
8 or other tort might be founded. Specifically:

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

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

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

25 (d) A state or local emergency management agency, or local emergency
26 management agency-supervised operating unit officially affiliated with a local
27 disaster and emergency services organization, in undertaking disaster and

1 emergency preparedness or prevention activities including inspections, or in
2 undertaking to respond to a disaster or other emergency, shall not have
3 voluntarily assumed any special duty with respect to any risks which were not
4 created or caused by it, nor with respect to any risks which might have existed
5 even in the absence of that activity or response, nor shall any person have a
6 right to rely on such an assumption of duty.

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

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

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

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

24 (5) Any person owning or controlling real estate or other premises who voluntarily and
25 without compensation grants a license or privilege, or otherwise permits the
26 designation or use of the whole or any part of the real estate or premises for the
27 purpose of sheltering persons during an actual, impending, mock, or practice

1 disaster or emergency, together with his or her successors in interest, shall not be
2 civilly liable for negligently causing the death of, or injury to, any person on or
3 about the real estate or premises for loss of, or damage to, the property of that
4 person. The immunity provided by this subsection shall not apply to the extent that
5 the state, a political subdivision of the state, or a person or organization maintains
6 liability insurance or self-insurance for an act or omission covered by this
7 subsection. To the extent that the state, a political subdivision of the state, or a
8 person or organization maintains liability insurance or self-insurance, sovereign
9 immunity shall not be claimed with regard to an act or omission covered by this
10 subsection.

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

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

26 (8) (a) Notwithstanding subsections (3) and (6) of this section, a licensed
27 professional engineer as defined in KRS 322.010 or an architect licensed

1 under KRS Chapter 323, who voluntarily and without compensation provides
 2 architectural, structural, electrical, mechanical, or other professional services
 3 at the scene of a declared emergency, disaster, or catastrophe, shall not be
 4 liable for any personal injury, wrongful death, property damage, or other loss
 5 of any nature related to the licensed professional engineer's or licensed
 6 architect's acts, errors, or omissions in the performance of the services carried
 7 out:

- 8 1. At the request of or with the approval of a federal, state, or local:
 - 9 a. Emergency management agency official with executive
 10 responsibility in the jurisdiction to coordinate disaster and
 11 emergency response activity;
 - 12 b. Fire chief or his or her designee; or
 - 13 c. Building inspection official;

14 whom the licensed professional engineer or licensed architect believes to
 15 be acting in an official capacity;
- 16 2. Within ninety (90) days following the end of the period for the declared
 17 emergency, disaster, or catastrophe, unless extended ~~by the Governor~~
 18 ~~under KRS 39A.100~~; and
- 19 3. If the professional services arose out of the declared emergency, disaster,
 20 or catastrophe and if the licensed professional engineer or licensed
 21 architect acted as an ordinary reasonably prudent member of the
 22 profession would have acted under the same or similar circumstances.

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

25 ➔Section 3. KRS 315.500 is amended to read as follows:

- 26 (1) When the Governor declares a ***valid*** state of emergency pursuant to KRS 39A.100,
 27 the Governor may issue an executive order for a period of up to ***fifteen (15)***~~thirty~~

1 ~~(30)~~ days giving pharmacists emergency authority. The executive order shall
2 designate the geographical area to which it applies. In the executive order, the
3 Governor may vest pharmacists with the authority to:

- 4 (a) Dispense up to a thirty (30) day emergency supply of medication;
- 5 (b) Administer immunizations to children pursuant to protocols established by the
6 Centers for Disease Control and Prevention, the National Institutes of Health,
7 or the National Advisory Committee on Immunization Practices or determined
8 to be appropriate by the commissioner of public health or his or her designee;
- 9 (c) Operate temporarily, a pharmacy in an area not designated on the pharmacy
10 permit; and
- 11 (d) Dispense drugs as needed to prevent or treat the disease or ailment responsible
12 for the emergency pursuant to protocols established by the Centers for Disease
13 Control and Prevention or the National Institutes of Health or determined to
14 be appropriate by the commissioner of public health or his or her designee to
15 respond to the circumstances causing the emergency.

16 (2) The provisions of this section may be extended, in writing, by the Governor ***with***
17 ***approval by the General Assembly*** if necessary to protect the lives or welfare of the
18 citizens.

19 ➔Section 4. KRS 367.374 is amended to read as follows:

- 20 (1) (a) When a Condition Red has been declared by the United States Department of
21 Homeland Security under the Homeland Security Advisory System or the
22 Governor has declared a ***valid*** state of emergency under KRS 39A.100, the
23 Governor may implement this section by executive order for a period of
24 fifteen (15) days from notification of implementation, as required by KRS
25 367.376. The order implementing this section shall be limited to the
26 geographical area indicated in the declaration of emergency. The Governor
27 may terminate or limit the scope of the order at any time ***during the fifteen***

1 day period.

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

6 Goods and services to which this section applies are:

- 7 1. Consumer food items;
- 8 2. Goods or services used for emergency cleanup;
- 9 3. Emergency supplies;
- 10 4. Medical supplies;
- 11 5. Home heating oil;
- 12 6. Building materials;
- 13 7. Housing;
- 14 8. Transportation, freight, and storage services; and
- 15 9. Gasoline or other motor fuels.

16 (c) A person's price does not violate this subsection if it is:

- 17 1. Related to an additional cost imposed by a supplier of a good or other
18 costs of providing the good or service, including an additional cost for
19 labor or materials used to provide a service;
- 20 2. Ten percent (10%) or less above the price prior to the declaration;
- 21 3. Ten percent (10%) or less above the sum of the person's costs and
22 normal markup for a good or service;
- 23 4. Generally consistent with fluctuations in applicable commodity,
24 regional, national, or international markets, or seasonal fluctuations; or
- 25 5. A contract price, or the result of a price formula, established prior to the
26 order implementing this subsection.

27 (d) Whether a price violates this subsection is a question of law. In determining if

1 a violation of this subsection has occurred, the court shall consider all relevant
2 circumstances, including prices prevailing in the locality at that time.

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

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

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