

1 AN ACT relating to emergencies and declaring an emergency.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this chapter, "emergency order" means any order issued in response*
6 *to an emergency contemplated by KRS 39A.010, 39A.020, or 39A.030; or any*
7 *similar statute issued in response to a public emergency, disease outbreak, public*
8 *health threat, or similar occurrence, that has the effect of restraining personal*
9 *liberty, shutting down business, seizing property, or otherwise infringing on any*
10 *rights guaranteed by the Constitution of the United States or the Constitution of*
11 *Kentucky.*

12 *(2) An emergency order issued by the government under this section shall:*

13 *(a) Be narrowly tailored to meet the exigencies of the emergency;*

14 *(b) Be no broader or burdensome than is necessary to meet the exigencies of*
15 *the emergency or immediate threat of an emergency;*

16 *(c) Not be underinclusive;*

17 *(d) Be issued in response to an actual emergency or immediate threat of an*
18 *emergency;*

19 *(e) Give due regard in its scope and duration for the impact upon the*
20 *Commonwealth of Kentucky and its citizens; and*

21 *(f) Be in effect no longer than is necessary to meet the exigency giving rise to*
22 *the emergency.*

23 *(4) In the event any person, including the Attorney General, brings an action for*
24 *declaratory relief or injunctive relief to enforce this section, the burden of proof*
25 *shall be on the government to prove, by clear and convincing evidence,:*

26 *(a) The existence of an emergency;*

27 *(b) The need for the emergency order issued;*

- 1 (c) The narrow tailoring of the emergency order;
- 2 (d) That the emergency order was no broader than necessary to meet the
- 3 exigencies of the emergency;
- 4 (e) That the emergency order is not underinclusive;
- 5 (f) That due regard was given for the impact on the Commonwealth in the
- 6 emergency order on the public at large, public safety, and the long term
- 7 economic impact on the Commonwealth and its citizens; and
- 8 (g) That the emergency order was or is in effect no longer than is necessary to
- 9 meet the exigency giving rise to the emergency.
- 10 (5) In any action brought by a private person to enforce this section, in addition to
- 11 declaratory or injunctive relief, the person may seek damages by proving that:
- 12 (a) Their personal or business activities do not present a substantial risk of
- 13 furthering the emergency;
- 14 (b) The personal or economic impact of the emergency order to the person are
- 15 more severe than the impacts of the emergency to the public as a whole; or
- 16 (c) The emergency order is otherwise unreasonable as applied to the person.
- 17 (6) If a private person prevails in an action against the government under
- 18 subsections (4) and (5) of this section, the court shall award reasonable attorney
- 19 fees and costs to the private person.

20 ➔Section 2. KRS 39A.090 is amended to read as follows:

21 The Governor may make, amend, and rescind any executive orders as deemed necessary

22 to carry out the provisions of KRS Chapters 39A to 39F. Such executive orders shall be

23 deemed emergency orders under Section 1 of this Act.

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

25 (1) In the event of the occurrence or threatened or impending occurrence of any of the

26 situations or events contemplated by KRS 39A.010, 39A.020, or 39A.030, the

27 Governor may issue an emergency order under Section 1 of this Act to declare, in

1 writing, that a state of emergency exists. *The emergency order shall contain an*
2 *expiration date that may only be extended under subsection (3) of this section.*

3 The Governor shall have and may exercise the following emergency powers during
4 the period in which the state of emergency exists:

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

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

11 (c) To seize, take, or condemn property, excluding firearms and ammunition,
12 components of firearms and ammunition, or a combination thereof, for the
13 protection of the public or at the request of the President, the Armed Forces,
14 or the Federal Emergency Management Agency of the United States,
15 including:

16 1. All means of transportation and communication;

17 2. All stocks of fuel of whatever nature;

18 3. Food, clothing, equipment, materials, medicines, and all supplies; and

19 4. Facilities, including buildings and plants;

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

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

25 (f) To exclude all nonessential, unauthorized, disruptive, or otherwise
26 uncooperative personnel from the scene of the emergency, and to command
27 those persons or groups assembled at the scene to disperse. A person who

1 refuses to leave an area in which a written order of evacuation has been issued
2 in accordance with a written declaration of emergency or a disaster may be
3 forcibly removed to a place of safety or shelter, or may, if this is resisted, be
4 arrested by a peace officer. Forcible removal or arrest shall not be exercised as
5 options until all reasonable efforts for voluntary compliance have been
6 exhausted;

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

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

11 (i) To grant emergency authority to pharmacists pursuant to KRS 315.500, for the
12 duration of the emergency;

13 (j) Except as prohibited by this section or other law, to perform and exercise
14 other functions, powers, and duties deemed necessary to promote and secure
15 the safety and protection of the civilian population;

16 (k) To request any assistance from agencies of the United States as necessary and
17 appropriate to meet the needs of the people of the Commonwealth; and

18 (l) Upon the recommendation of the Secretary of State, to declare by executive
19 order a different time, place, or manner for holding elections in an election
20 area for which a state of emergency has been declared for part or all of the
21 election area. The election shall be held within thirty-five (35) days from the
22 date of the suspended or delayed election. The State Board of Elections shall
23 establish procedures for election officials to follow. Any procedures
24 established under this paragraph shall be subject to the approval of the
25 Secretary of State and the Governor by respective executive orders. **In the**
26 **event a declaration is made moving the date of the election, all other**
27 **associated election deadlines shall be similarly extended.**

1 **Nothing in this subsection shall be construed to permit the suspension of any law.**

2 (2) In the event of the occurrence or threatened or impending occurrence of any of the
 3 situations or events contemplated by KRS 39A.010, 39A.020, or 39A.030, which in
 4 the judgment of a local chief executive officer is of such severity or complexity as
 5 to require the exercise of extraordinary emergency measures, the county
 6 judge/executive of a county other than an urban-county government, or mayor of a
 7 city or urban-county government, or chief executive of other local governments or
 8 their designees as provided by ordinance of the affected county, city, or urban-
 9 county may **issue an emergency order under Section 1 of this Act to** declare in
 10 writing that a state of emergency exists. **The emergency order shall contain an**
 11 **expiration date no more than fourteen (14) days after the emergency order date**
 12 **and may only be extended by the legislative body of the local government.**~~], and~~
 13 ~~Thereafter,]~~ Subject to any orders of the Governor, **the chief executive of the local**
 14 **government** shall have and may exercise for the period as the state of emergency
 15 exists or continues, the following emergency powers:

- 16 (a) To enforce all laws and administrative regulations relating to disaster and
 17 emergency response and to direct all local disaster and emergency response
 18 forces and operations in the affected county, city, urban-county, or charter
 19 county;
- 20 (b) To exclude all nonessential, unauthorized, disruptive, or uncooperative
 21 personnel from the scene of the emergency, and to command persons or
 22 groups of persons at the scene to disperse. A person who refuses to leave an
 23 area in which a written order of evacuation has been issued in accordance with
 24 a written declaration of emergency or a disaster may be forcibly removed to a
 25 place of safety or shelter, or may, if this is resisted, be arrested by a peace
 26 officer. Forcible removal or arrest shall not be exercised as options until all
 27 reasonable efforts for voluntary compliance have been exhausted;

- 1 (c) To declare curfews and establish their limits;
- 2 (d) To order immediate purchase or rental of, contract for, or otherwise procure,
3 without regard to procurement codes or budget requirements, the goods and
4 services essential for protection of public health and safety or to maintain or to
5 restore essential public services; and
- 6 (e) To request emergency assistance from any local government or special district
7 and, through the Governor, to request emergency assistance from any state
8 agency and to initiate requests for federal assistance as are necessary for
9 protection of public health and safety or for continuation of essential public
10 services.
- 11 (3) *Any declaration of emergency made under subsection (1) of this section shall not*
12 *exceed fourteen (14) days unless:*
- 13 *(a) The General Assembly is in session, in which case the declaration of*
14 *emergency may remain in effect until the General Assembly adjourns sine*
15 *die or sooner terminates or extends the emergency order; or*
- 16 *(b) The Governor issues a call for a special session for the purpose of*
17 *undertaking legislative action related to the emergency within fourteen (14)*
18 *days of the emergency order declaring the emergency, and convenes the*
19 *special session within twenty-eight (28) days of the date of the emergency*
20 *order declaring the emergency. The emergency order may remain in effect*
21 *during the special session until the General Assembly adjourns sine die,*
22 *until the call is canceled, or until the General Assembly sooner terminates*
23 *or extends the emergency order.*
- 24 (4) Nothing in this section shall be construed to allow any governmental entity to
25 impose additional restrictions on the lawful possession, transfer, sale, transport,
26 carrying, storage, display, or use of firearms and ammunition or components of
27 firearms and ammunition.

1 **(5) Nothing in this section shall be construed to permit any governmental entity to**
2 **prohibit or severely limit in-person worship, or to treat in-person worship in any**
3 **disparate manner to any secular activities that are remotely related.**

4 ➔Section 4. KRS 194A.025 is amended to read as follows:

5 (1) The secretary for health and family services and the secretary's designated
6 representatives in the discharge of the duties of the secretary may administer oaths
7 and affirmations, take depositions, certify official acts, and issue subpoenas to
8 compel the attendance of witnesses and production of books, papers,
9 correspondence, memoranda, and other records considered necessary and relevant
10 as evidence at hearings held in connection with the administration of the cabinet.

11 (2) The secretary may delegate any duties of the office of secretary to employees of the
12 cabinet as the secretary deems necessary and appropriate, unless otherwise
13 prohibited by statutes.

14 (3) The secretary may enter into any contracts and agreements with individuals,
15 colleges, universities, associations, corporations, municipalities, and other units of
16 government as may be deemed necessary to carry out the general intent and
17 purposes of the cabinet.

18 **(4) The secretary shall not take any action contrary to the requirements of Section 5**
19 **of this Act.**

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

21 **(1)** When the Cabinet for Health and Family Services believes that there is a probability
22 that any infectious or contagious disease will invade this state, it shall take such
23 action and adopt and enforce such rules and regulations as it deems efficient in
24 preventing the introduction or spread of such infectious or contagious disease or
25 diseases within this state, and to accomplish these objects shall establish and strictly
26 maintain quarantine and isolation at such places as it deems proper.

27 **(2) Any action, orders, or administrative regulations taken or adopted under this**

1 section shall be limited in effect to twenty-one (21) days. No additional actions,
2 orders, or administrative regulations that are similar or related may be taken to
3 circumvent the time limitation, and any similar actions, orders, or administrative
4 regulations shall be considered one action, order, or administrative regulation
5 made on the first date that the first action, order, or administrative regulation is
6 made. The action, order, or administrative regulation taken or adopted under this
7 section may be extended beyond twenty-one (21) days if:

8 (a) The General Assembly is in session, in which case the action, order, or
9 administrative regulation may remain in effect until the General Assembly
10 adjourns sine die or sooner terminates or extends the action, order, or
11 administrative regulation; or

12 (b) The Governor issues a call for a special session for the purpose of
13 undertaking legislative action related to the disease outbreak if the special
14 session convenes within twenty-eight (28) days of the date of the first date of
15 the action, order, or administrative regulation. The emergency order may
16 then remain in effect during the special session until the General Assembly
17 adjourns sine die, the call is canceled, or the General Assembly sooner
18 terminates or extends the emergency order.

19 ➔Section 6. This Act shall be known as the "Ensuring Basic Checks and Balances
20 and Basic Liberties During Emergencies Act."

21 ➔Section 7. Whereas, ensuring basic checks and balances on the executive branch
22 of government to help ensure basic due process, liberty, and the constitutional and
23 statutory rights of Kentucky citizens is a compelling and immediate need, an emergency
24 is declared to exist, and this Act takes effect upon its passage and approval by the
25 Governor or upon its otherwise becoming a law.