

1 AN ACT relating to religion.

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, that a state of emergency exists. The Governor
7 shall have and may exercise the following emergency powers during the period in
8 which the state of emergency exists:
- 9 (a) To enforce all laws, and administrative regulations relating to disaster and
10 emergency response and to assume direct operational control of all disaster
11 and emergency response forces and activities in the Commonwealth;
 - 12 (b) To require state agencies and to request local governments, local agencies, and
13 special districts to respond to the emergency or disaster in the manner
14 directed;
 - 15 (c) To seize, take, or condemn property, excluding firearms and ammunition,
16 components of firearms and ammunition, or a combination thereof, for the
17 protection of the public or at the request of the President, the Armed Forces,
18 or the Federal Emergency Management Agency of the United States,
19 including:
 - 20 1. All means of transportation and communication;
 - 21 2. All stocks of fuel of whatever nature;
 - 22 3. Food, clothing, equipment, materials, medicines, and all supplies; and
 - 23 4. Facilities, including buildings and plants, ***but excluding houses of***
24 ***worship***;
 - 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) 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, which in
6 the judgment of a local chief executive officer is of such severity or complexity as
7 to require the exercise of extraordinary emergency measures, the county
8 judge/executive of a county other than an urban-county government, or mayor of a
9 city or urban-county government, or chief executive of other local governments or
10 their designees as provided by ordinance of the affected county, city, or urban-
11 county may declare in writing that a state of emergency exists, and thereafter,
12 subject to any orders of the Governor, shall have and may exercise for the period as
13 the state of emergency exists or continues, the following emergency powers:

14 (a) To enforce all laws and administrative regulations relating to disaster and
15 emergency response and to direct all local disaster and emergency response
16 forces and operations in the affected county, city, urban-county, or charter
17 county;

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

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

27 (d) To order immediate purchase or rental of, contract for, or otherwise procure,

1 without regard to procurement codes or budget requirements, the goods and
2 services essential for protection of public health and safety or to maintain or to
3 restore essential public services; and

4 (e) To request emergency assistance from any local government or special district
5 and, through the Governor, to request emergency assistance from any state
6 agency and to initiate requests for federal assistance as are necessary for
7 protection of public health and safety or for continuation of essential public
8 services.

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

13 **(4) (a) A governmental entity shall not prohibit a religious organization from**
14 **operating or engaging in religious services during a declared emergency to**
15 **the same or greater extent that other organizations or businesses that**
16 **provide essential services necessary and vital to the health and welfare of**
17 **the public are permitted to operate.**

18 **(b) Paragraph (a) of this subsection shall not prohibit the Governor from**
19 **requiring religious organizations to comply with neutral health, safety, or**
20 **occupancy requirements that are applicable to all organizations and**
21 **businesses that provide essential services. However, no health, safety, or**
22 **occupancy requirement may impose a substantial burden on a religious**
23 **organization or its services unless applying the burden to the religion or**
24 **religious service in the particular instance is essential to further a**
25 **compelling governmental interest and is the least-restrictive means of**
26 **furthering that compelling governmental interest.**

27 **(c) A governmental entity shall not take any discriminatory action against a**

1 religious organization wholly or partially on the basis that such
2 organization is religious, operates or seeks to operate during a state of
3 emergency, or engages in the exercise of religion as protected under the
4 First Amendment to the Constitution of the United States.

5 (5) As used in this section:

6 (a) "Discriminatory action" means any action taken by a governmental entity
7 to:

8 1. Alter in any way the tax treatment of, cause any tax, penalty or
9 payment to be assessed against, or deny, delay, or otherwise make
10 unavailable an exemption from taxation;

11 2. Disallow, deny, or otherwise make unavailable a deduction for state
12 tax purposes of any charitable contribution made to or by a religious
13 organization;

14 3. Impose, levy, or assess a monetary fine, fee, civil or criminal penalty,
15 damages award, or injunction; or

16 4. Withhold, reduce, exclude, terminate, materially alter the terms or
17 conditions of, or otherwise make unavailable or deny any:

18 a. State grant, contract, subcontract, cooperative agreement,
19 guarantee, loan, scholarship, or other similar benefit from or to
20 a religious organization;

21 b. Entitlement or benefit under a state benefit program from or to a
22 religious organization; or

23 c. License, certification, accreditation, recognition, or other similar
24 benefit, position, or status from or to any religious organization;

25 (b) "Governmental entity" means:

26 1. The Commonwealth or any of its political subdivisions;

27 2. Any agency of the state described in KRS 12.020;

- 1 3. Any person acting under color of state law; and
2 4. Any private person suing under or attempting to enforce a law, rule,
3 or administrative regulation adopted by the state or any of its political
4 subdivisions;

5 (c) "Religious organization" means:

- 6 1. A house of worship, including churches, synagogues, shrines,
7 mosques, and temples;
8 2. A religious group, corporation, association, educational institution,
9 ministry, order, society, or similar entity, regardless of whether it is
10 integrated or affiliated with a church or other house of worship; or
11 3. Any officer, owner, employee, manager, religious leader, clergy, or
12 minister of an entity or organization described in this paragraph; and

13 (d) "Religious services" means a meeting, gathering, or assembly of two (2) or
14 more persons organized by a religious organization for the purpose of
15 worship, teaching, training, providing educational services, conducting
16 religious rituals, or other activities that are deemed necessary by the
17 religious organization for the exercise of religion.

18 (6) A religious organization may assert a violation of this section as a claim against a
19 governmental entity in any judicial or administrative proceeding or as a defense
20 in any judicial or administrative proceeding without regard to whether the
21 proceeding is brought by or in the name of the governmental entity, any private
22 person, or any other party. Sovereign, governmental, and qualified immunity are
23 waived and abolished to the extent of liability created under this section. An
24 action asserting a violation of this section may be commenced, and relief may be
25 granted, without regard to whether the religious organization commencing the
26 action has sought or exhausted administrative remedies.

27 (7) Remedies available to a religious organization under this section against a

1 governmental entity include:

2 (a) Declaratory relief;

3 (b) Injunctive relief to prevent or remedy a violation of this section or Section 1
4 of this Act or the effects of such violation;

5 (c) Compensatory damages for pecuniary and non-pecuniary losses;

6 (d) Reasonable attorneys' fees and costs; and

7 (e) Any other appropriate relief.

8 (8) Remedies available to a religious organization under this section against a person
9 not acting under color of state law shall be limited to declaratory and injunctive
10 relief.

11 (9) This section:

12 (a) Shall be construed in favor of a broad protection of free exercise of
13 religion;

14 (b) Shall be in addition to the protections provided under state and federal laws
15 and constitutions. Nothing in this section shall be construed to:

16 1. Preempt or repeal any state law or local ordinance that is equally or
17 more protective of free exercise of religion; or

18 2. Narrow the meaning or application of any state law or local ordinance
19 protecting free exercise of religion; and

20 (c) Applies to, and in cases of conflict, supersedes:

21 1. Each statute of the Commonwealth that infringes upon the free
22 exercise of religion protected by this section, unless a conflicting
23 statute is expressly made exempt from the application of this section;
24 and

25 2. Any ordinance, rule, administrative regulation, order, opinion,
26 decision, practice, or other exercise of a governmental entity's
27 authority that infringes upon the free exercise of religion protected by

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this section.

(10) A religious organization shall bring an action to assert a claim under this section no later than two (2) years from the date the person knew or should have known that a discriminatory action or other violation of this section was taken against that religious organization.