

1 AN ACT relating to governmental immunity.

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

3 ➔Section 1. KRS 39A.280 is amended to read as follows:

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

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

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

24 (c) A state or local emergency management agency, or local emergency
25 management agency-supervised operating unit officially affiliated with a local
26 disaster and emergency services organization shall not have or assume any
27 duty towards any person to adopt, use, or avoid any particular strategy or

1 tactic in responding to a disaster or other emergency.

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

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

27 (3) Subject to subsection (6) of this section, neither the state nor any political

1 subdivision of the state nor, except in cases of willful misconduct, gross negligence,
2 or bad faith, the employees, agents, or representatives of the state or any of its
3 political divisions, nor any volunteer or auxiliary emergency management agency or
4 disaster and emergency services organization member or disaster and emergency
5 response worker or member of any agency engaged in any emergency management
6 or disaster and emergency services or disaster and emergency response activity,
7 complying with or reasonably attempting to comply with this chapter or any order
8 or administrative regulation promulgated pursuant to the provisions of this chapter,
9 or other precautionary measures enacted by any city of the state, shall be liable for
10 the death of or injury to persons, or for damage to property, as a result of that
11 activity.~~[The immunity provided by this subsection shall not apply to the extent
12 that the state, a political subdivision of the state, or a person or organization
13 maintains liability insurance or self insurance for an act or omission covered by this
14 subsection. To the extent that the state, a political subdivision of the state, or a
15 person or an organization maintains liability insurance or self insurance, sovereign
16 immunity shall not be claimed with regard to an act or omission covered by this
17 subsection.]~~

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

- 1 (5) Any person owning or controlling real estate or other premises who voluntarily and
2 without compensation grants a license or privilege, or otherwise permits the
3 designation or use of the whole or any part of the real estate or premises for the
4 purpose of sheltering persons during an actual, impending, mock, or practice
5 disaster or emergency, together with his or her successors in interest, shall not be
6 civilly liable for negligently causing the death of, or injury to, any person on or
7 about the real estate or premises for loss of, or damage to, the property of that
8 person.~~[The immunity provided by this subsection shall not apply to the extent that~~
9 ~~the state, a political subdivision of the state, or a person or organization maintains~~
10 ~~liability insurance or self insurance for an act or omission covered by this~~
11 ~~subsection. To the extent that the state, a political subdivision of the state, or a~~
12 ~~person or organization maintains liability insurance or self insurance, sovereign~~
13 ~~immunity shall not be claimed with regard to an act or omission covered by this~~
14 ~~subsection.]~~
- 15 (6) Subsection (3) of this section shall apply to a volunteer or auxiliary disaster and
16 emergency response worker only if the volunteer or worker is enrolled or registered
17 with a local disaster and emergency services organization or with the division in
18 accordance with the division's administrative regulations.
- 19 (7) While engaged in disaster and emergency response activity, volunteers and auxiliary
20 disaster and emergency response workers enrolled or registered with a local disaster
21 and emergency service organization or with the division in accordance with
22 subsection (6) of this section shall have the same degree of responsibility for their
23 actions and enjoy the same immunities as officers and employees of the state and its
24 political subdivisions performing similar work, including the provisions of KRS
25 12.211, 12.212, and 12.215, allowing the Attorney General to provide defense of
26 any civil action brought against a volunteer enrolled or registered with a local
27 disaster or emergency service organization or with the division due to an act or

1 omission made in the scope and course of a disaster and emergency response
2 activity.

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

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

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

27 (b) Nothing in this subsection shall provide immunity for wanton, willful, or

1 intentional misconduct.