

39A.280 Nature of disaster and emergency response functions provided by state or local management agency, licensed professional engineer, or licensed architect -- Immunity, exceptions.

- (1) Disaster and emergency response functions provided by a state or local emergency management agency, or any emergency management agency-supervised operating units or personnel officially affiliated with a local disaster and emergency services organization pursuant to KRS 39B.070, shall not, in itself, be deemed to be the making of a promise, or the undertaking of a special duty, towards any person for the services, or any particular level of, or manner of providing, the services; nor shall the provision of or failure to provide these services be deemed to create a special relationship or duty towards any person upon which an action in negligence or other tort might be founded. Specifically:
 - (a) The failure to respond to a disaster or other emergency, or to undertake particular inspections or types of inspections, or to maintain any particular level of personnel, equipment, or facilities, shall not be a breach of any duty to persons affected by any disaster or other emergency.
 - (b) When a state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, does undertake to respond to a disaster or other emergency, the failure to provide the same level or manner of service, or equivalent availability or allocation of resources as may or could be provided, shall not be a breach of any duty to persons affected by that disaster or other emergency.
 - (c) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization shall not have or assume any duty towards any person to adopt, use, or avoid any particular strategy or tactic in responding to a disaster or other emergency.
 - (d) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, in undertaking disaster and emergency preparedness or prevention activities including inspections, or in undertaking to respond to a disaster or other emergency, shall not have voluntarily assumed any special duty with respect to any risks which were not created or caused by it, nor with respect to any risks which might have existed even in the absence of that activity or response, nor shall any person have a right to rely on such an assumption of duty.
- (2) Neither the state nor any political subdivision of the state, nor the agents or representatives of the state or any of its political subdivisions, shall be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer emergency management agency member, or disaster and emergency services member, or disaster and emergency response worker, or member of any agency engaged in any emergency management or disaster and emergency services or disaster and emergency response activity. This

immunity shall not affect the right of any person to receive benefits or compensation to which the person might otherwise be entitled under the Workers' Compensation Law, or this chapter, or any pension law, or any Act of Congress.

- (3) Subject to subsection (6) of this section, neither the state nor any political subdivision of the state nor, except in cases of gross negligence or wanton, willful, malicious, or intentional misconduct, the employees, agents, or representatives of the state or any of its political divisions, nor any volunteer or auxiliary emergency management agency or disaster and emergency services organization member or disaster and emergency response worker or member of any agency engaged in any emergency management or disaster and emergency services or disaster and emergency response activity, complying with or reasonably attempting to comply with this chapter or any executive action or administrative regulation promulgated pursuant to the provisions of this chapter, or other measures enacted by any city or the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of that activity.
- (4) Decisions of the director, his or her subordinates or employees, a local emergency management director, or the local director's subordinates or employees, a rescue chief or the chief's subordinates, concerning the allocation and assignment of personnel and equipment, and the strategies and tactics used, shall be the exercise of a discretionary, policy function for which neither the officer nor the state, county, urban-county, charter county, or city, or local emergency management agency-supervised operating unit formally affiliated with a local disaster and emergency services organization, shall be held liable in the absence of gross negligence or wanton, willful, malicious, or intentional misconduct, even when those decisions are made rapidly in response to the exigencies of an emergency.
- (5) Any person owning or controlling real estate or other premises who grants a license or privilege, or otherwise permits the designation or use of the whole or any part of the real estate or premises for the purpose of sheltering persons during an actual, impending, mock, or practice disaster or emergency, together with his or her successors in interest, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about the real estate or premises for loss of, or damage to, the property of that person.
- (6) Subsection (3) of this section shall apply to a volunteer or auxiliary disaster and emergency response worker if the worker is enrolled or registered under KRS 39A.356, or with the political subdivision in accordance with the political subdivision's administrative regulations and as provided in KRS 39F.020.
- (7) While engaged in disaster and emergency response activity, volunteers and auxiliary disaster and emergency response workers enrolled or registered with a local disaster and emergency service organization or with the division in accordance with subsection (6) of this section shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the state and its political subdivisions performing similar work, including the provisions of KRS 12.211, 12.212, and 12.215, allowing the Attorney General to provide defense of any civil action brought against a

volunteer enrolled or registered due to an act or omission made in the scope and course of a disaster and emergency response activity.

- (8) (a) A licensed professional engineer as defined in KRS 322.010 or an architect licensed under KRS Chapter 323, who provides architectural, structural, electrical, mechanical, or other professional services at the scene of a declared emergency, disaster, or catastrophe, shall not be liable for any personal injury, wrongful death, property damage, or other loss of any nature related to the licensed professional engineer's or licensed architect's acts, errors, or omissions in the performance of the services carried out:
1. At the request of or with the approval of a federal, state, or local:
 - a. Emergency management agency official with executive responsibility in the jurisdiction to coordinate disaster and emergency response activity;
 - b. Fire chief or his or her designee; or
 - c. Building inspection official;whom the licensed professional engineer or licensed architect believes to be acting in an official capacity;
 2. Within ninety (90) days following the end of the period for the declared emergency, disaster, or catastrophe. If the emergency is extended under KRS 39A.090, the ninety (90) days shall run from the end date of the last extension; and
 3. If the professional services arose out of the declared emergency, disaster, or catastrophe and if the licensed professional engineer or licensed architect acted as an ordinary reasonably prudent member of the profession would have acted under the same or similar circumstances.
- (b) Nothing in this subsection shall provide immunity for gross negligence or wanton, willful, or intentional misconduct.

Effective: April 11, 2021

History: Amended 2021 Ky. Acts ch. 6, sec. 5, effective February 2, 2021; and ch. 205, sec. 6, effective April 11, 2021. -- Amended 2014 Ky. Acts ch. 129, sec. 1, effective July 15, 2014. -- Created 1998 Ky. Acts ch. 488, sec. 2, effective July 15, 1998, superseding 1998 Ky. Acts ch. 226, sec. 24, effective July 15, 1998.

Legislative Research Commission Note (4/11/2021). This statute was amended by 2021 Ky. Acts. chs. 6 and 205, which do not appear to be in conflict and have been codified together.