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What is a “Life–Sustaining Retail Business?” Kentucky Issues Statewide Order for Residents to remain “Healthy at Home”

On Sunday, March 22, Kentucky Governor Andy Beshear signed Executive Order 2020–246 closing all “in–person retail businesses that are not life–sustaining.” Kentucky joins a growing list of states to close businesses with a statewide executive order, joining California, Connecticut, Illinois, Louisiana, Nevada, New Jersey, New York, Ohio, Pennsylvania, and Texas in issuing restrictions on a statewide level. If you would like to learn more about the specific nuances applicable to Kentucky, [you can read the full text of the order here](#).

Kentucky’s Order

While the Department of Homeland Security has issued the Cybersecurity and Infrastructure Security Agency’s (CISA) publication for determining critical infrastructure, Kentucky’s order focuses on in–person retail businesses. “Life–sustaining retail businesses include grocery stores, pharmacies, banks, hardware stores, and other businesses that provide staple goods.” The full list of categories that may remain open contained with the order includes:

- Automotive parts, repair, accessories, and tire stores
- Auto, truck and van rental
- Building material and garden equipment and supplies dealers
- Banks, credit unions, check cashing, wire transfer, and other financial services
- Food and beverage stores (including beer, wine, and liquor stores)
- Pharmacies and drug stores
- Gas stations and convenience stores

- General merchandise stores, including warehouse clubs and supercenters
- Pet and pet supplies stores

However, the following businesses have been excluded from those life-sustaining retail establishments, and must close beginning March 23 at 8:00 p.m.

- Automobile and other motor vehicle dealers must close their showrooms, though they may provide repair, parts, and service
- Furniture and home furnishings stores
- Electronics and appliance stores
- Cosmetics, beauty supplies, and perfume stores
- Optical goods stores
- Other health and personal care stores
- Clothing and clothing accessories stores, including shoe, jewelry, luggage, and leather goods
- Sporting goods, hobby, musical instrument, and book stores
- Department stores
- Florists
- Office supplies, stationery, and gift stores
- Used merchandise stores
- All other miscellaneous store retailers

Kentucky's order does provide that retail businesses that are not life-sustaining may provide local delivery and curbside service of online or telephone orders.

Social Distancing and Hygiene Guidance

Those retail businesses that are permitted to remain open "must follow, to the fullest extent practicable, social distancing and hygiene guidance from the CDC and the Kentucky Department of Health." The order specifically includes:

- Ensuring physical separation of employees and customers by at least six feet when possible

- Ensuring employees practice appropriate hygiene measures, including regular, thorough handwashing
- Regularly cleaning and disinfecting frequently touched objects and surfaces
- Ordering sick individuals to leave the premises

Failure to adhere to the above guidance is a violation of the order, and “could subject said business to closure.” Nothing in this order changes the Governor’s previous order of March 16 that restaurants and bars limit their service to carry-out, delivery, drive-through food and beverage sales. Additionally, the order specifically provides that the lawful sale of firearms and ammunition may continue, though those businesses must also adhere to the same social distancing and hygiene guidelines described above.

Authorization to Travel

Many essential businesses around the country are providing their employees with an “Authorization to Travel.” It is a one-page document that employees can keep with them in transit to and from work in the event they are restricted from travel by a local authority. If you are confident that you are a life-sustaining retail business in Kentucky, we suggest you provide your employees with such a document adapted to your business that explains how you fall within the order.

Our Coronavirus Response Team is Ready to Help

Frost Brown Todd has been helping clients across the country respond to similar orders so that they can balance the health and well-being of their workforce while sustaining critical supply chains and business operations that America needs. Whether you need help determining whether your company is permitted to remain open or just want to discuss your own communications with your employees in this fast-changing time, we can help. We are in this fight with you.

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