

1 AN ACT relating to legal actions concerning the exercise of a person's
2 constitutional rights.

3 WHEREAS, the purpose of this Act is to encourage and safeguard the constitutional
4 rights of persons to petition, to speak freely, to associate freely, and to participate in
5 government to the fullest extent permitted by law and to protect the rights of persons to
6 file meritorious lawsuits for demonstrable injury; and

7 WHEREAS, this Act is consistent with and necessary to implement the rights
8 protected by Section 1 and Section 8 of the Constitution of Kentucky, as well as by the
9 First Amendment to the United States Constitution; and

10 WHEREAS, this Act is intended to provide an additional substantive remedy to
11 protect the constitutional rights of parties and to supplement any remedies which are
12 otherwise available to those parties under common law, statutory law, or constitutional
13 law, or under the Kentucky Rules of Civil Procedure;

14 NOW, THEREFORE,

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

16 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
17 READ AS FOLLOWS:

18 *As used in Sections 1 to 5 of this Act:*

19 *(1) "Communication" means the making or submitting of a statement or document*
20 *in any form or medium, including oral, written, audiovisual, or electronic;*

21 *(2) "Exercise of the right of association" means exercise of the constitutional right*
22 *to join together to take collective action on a matter of public concern that falls*
23 *within the protection of the United States Constitution or the Kentucky*
24 *Constitution;*

25 *(3) "Exercise of the right of free speech" means a communication made in*
26 *connection with a matter of public concern or religious expression that falls*
27 *within the protection of the United States Constitution or the Kentucky*

1 Constitution;

2 (4) "Exercise of the right to petition" means a communication that falls within the
 3 protection of the United States Constitution or the Kentucky Constitution and:

4 (a) Is intended to encourage consideration or review of an issue by a federal,
 5 state, or local legislative, executive, judicial, or other governmental body; or

6 (b) Is intended to enlist public participation in an effort to effect consideration
 7 of an issue by a federal, state, or local legislative, executive, judicial, or
 8 other governmental body;

9 (5) "Legal action" means a claim, cause of action, petition, cross-claim, or
 10 counterclaim or any request for legal or equitable relief initiated against a private
 11 party;

12 (6) "Matter of public concern" includes an issue related to:

13 (a) Healthy or safety;

14 (b) Environmental, economic, or community well-being;

15 (c) The government;

16 (d) A public official or public figure;

17 (e) A good, product, or service in the marketplace;

18 (f) A literary, musical, artistic, political, theatrical, or audiovisual work; or

19 (g) Any other matter deemed by a court to involve a matter of public concern;

20 (7) "Party" does not include a governmental entity, agency, or employee;

21 (8) "Petitioning party" means the party that petitions the court to dismiss a legal
 22 action pursuant to subsection (1) of Section 2 of this Act; and

23 (9) "Responding party" means the party that responds to the petition filed by the
 24 petitioning party.

25 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
 26 READ AS FOLLOWS:

27 (1) If a legal action is filed in response to a party's exercise of the right of free

1 speech, right to petition, or right of association, that party may petition the court
 2 to dismiss the legal action.

3 (2) The petition may be filed within sixty (60) calendar days from the date of service
 4 of the legal action or, in the court's discretion, at any later time that the court
 5 deems proper.

6 (3) A response to the petition, including any opposing affidavits, may be served and
 7 filed by the opposing party no less than five (5) days before the hearing or, in the
 8 court's discretion, at any earlier time that the court deems proper.

9 (4) All discovery in the legal action is stayed upon the filing of a petition under this
 10 section. The stay of discovery remains in effect until the entry of an order ruling
 11 on the petition. The court may allow specified and limited discovery relevant to
 12 the petition upon a showing of good cause.

13 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
 14 READ AS FOLLOWS:

15 (1) The petitioning party has the burden of making a prima facie case that a legal
 16 action against the petitioning party is based on, relates to, or is in response to that
 17 party's exercise of the right to free speech, right to petition, or right of
 18 association.

19 (2) (a) Except as provided in paragraph (b) of this subsection, if the petitioning
 20 party meets the burden outlined in subsection (1) of this section, the court
 21 shall dismiss the legal action unless the responding party establishes a
 22 prima facie case for each essential element of the claim in the legal action.

23 (b) If the petitioning party establishes a valid defense to the claims in the legal
 24 action, the court shall dismiss the legal action.

25 (3) The court may base its decision on whether to dismiss a legal action on
 26 supporting and opposing sworn affidavits stating admissible evidence upon which
 27 the liability or defense is based and on other admissible evidence presented by the

1 parties.

2 (4) If the court dismisses a legal action pursuant to a petition filed under Section 2 of
3 this Act, the legal action is dismissed with prejudice.

4 (5) If the court determines the responding party established a likelihood of prevailing
5 on a claim:

6 (a) The fact that the court made that determination and the substance of the
7 determination may not be admitted into evidence later in the case; and

8 (b) The determination does not affect the burden or standard of proof in the
9 proceeding.

10 (6) The court's order dismissing or refusing to dismiss a legal action pursuant to a
11 petition filed under Section 2 of this Act is immediately appealable as a matter of
12 right to the Court of Appeals.

13 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
14 READ AS FOLLOWS:

15 (1) If the court dismisses a legal action pursuant to a petition filed under Section 2 of
16 this Act, the court shall award to the petitioning party:

17 (a) Court costs, reasonable attorney's fees, discretionary costs, and other
18 expenses incurred in filing and prevailing upon the petition; and

19 (b) Any additional relief, including sanctions, that the court determines
20 necessary to deter repetition of the conduct by the party who brought the
21 legal action or by others similarly situated.

22 (2) If the court finds that a petition filed under Section 2 of this Act was frivolous or
23 was filed solely for the purpose of unnecessary delay, and makes specific written
24 findings and conclusions establishing that finding, the court may award to the
25 responding party court costs and reasonable attorney's fees incurred in opposing
26 the petition.

27 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO

1 READ AS FOLLOWS:

2 *Nothing in Sections 1 to 5 of this Act:*

3 *(1) Applies to an enforcement action that is brought in the name of the state or a*
4 *political subdivision of this state by the Attorney General, or a county or*
5 *Commonwealth's attorney;*

6 *(2) Can result in findings or determinations that are admissible in evidence at any*
7 *later stage of the underlying legal action or in any subsequent legal action;*

8 *(3) Affects or limits the authority of a court to award sanctions, costs, attorney's fees,*
9 *or any other relief available under any other statute, court rule, or other*
10 *authority;*

11 *(4) Affects, limits, or precludes the right of any party to assert any defense, remedy,*
12 *immunity, or privilege otherwise authorized by law;*

13 *(5) Affects the substantive law governing any asserted claim;*

14 *(6) Creates a private right of action; or*

15 *(7) Creates any cause of action for any government entity, agency, or employee.*

16 ➔Section 6. This Act may be cited as the Kentucky Public Participation Act.