

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

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

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

6 *As used in Sections 1 to 12 of this Act:*

7 *(1) "Goods or services" does not include the creation, dissemination, exhibition, or*
8 *advertisement or similar promotion of a dramatic, literary, musical, political,*
9 *journalistic, or artistic work; and*

10 *(2) "Governmental unit" means a public corporation, government, or government*
11 *subdivision, agency, or instrumentality.*

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

14 *(1) Except as otherwise provided in subsection (2) of this section, Section 1 to 12 of*
15 *this Act applies to a cause of action asserted in a civil action against a person*
16 *based on the person's:*

17 *(a) Communication in a legislative, executive, judicial, administrative, or other*
18 *governmental proceeding;*

19 *(b) Communication on an issue under consideration or review in a legislative,*
20 *executive, judicial, administrative, or other governmental proceeding; or*

21 *(c) Exercise of the right of freedom of speech or of the press, the right to*
22 *assemble or petition, or the right of association, guaranteed by the United*
23 *States Constitution or Kentucky Constitution, on a matter of public*
24 *concern.*

25 *(2) Sections 1 to 12 of this Act does not apply to a cause of action asserted:*

26 *(a) Against a governmental unit or an employee or agent of a governmental*
27 *unit acting or purporting to act in an official capacity;*

1 (b) By a governmental unit or an employee or agent of a governmental unit
2 acting in an official capacity to enforce a law to protect against an
3 imminent threat to public health or safety; or

4 (c) Against a person primarily engaged in the business of selling or leasing
5 goods or services if the cause of action arises out of a communication
6 related to the person's sale or lease of the goods or services.

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

9 No later than sixty (60) days after a party is served with a complaint, crossclaim,
10 counterclaim, third-party claim, or other pleading that asserts a cause of action to
11 which Sections 1 to 12 of this Act applies, or at a later time on a showing of good
12 cause, the party may file a special motion for expedited relief to dismiss the cause of
13 action or part of the cause of action.

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

16 (1) Except as otherwise provided in subsections (4) to (7) of this section, on the filing
17 of a motion under Section 3 of this Act:

18 (a) All other proceedings between the moving party and responding party,
19 including discovery and a pending hearing or motion, are stayed; and

20 (b) On motion by the moving party, the court may stay a hearing or motion
21 involving another party, or discovery by another party, if the hearing or
22 ruling on the motion would adjudicate, or the discovery would relate to, an
23 issue material to the motion under Section 3 of this Act.

24 (2) A stay under subsection (1) of this section remains in effect until entry of an
25 order ruling on the motion under Section 3 of this Act and expiration of the time
26 under Section 9 of this Act for the moving party to appeal the order.

27 (3) Except as otherwise provided in subsection (5), (6), and (7) of this section, if a

1 party appeals from an order ruling on a motion under Section 3 of this Act, all
 2 proceedings between all parties in the action are stayed. The stay remains in
 3 effect until the conclusion of the appeal.

4 (4) During a stay under subsection (1) of this section, the court may allow limited
 5 discovery if a party shows that specific information is necessary to establish
 6 whether a party has satisfied or failed to satisfy a burden under subsection (1) of
 7 Section 7 of this Act and the information is not reasonably available unless
 8 discovery is allowed.

9 (5) A motion under Section 10 of this Act for costs, attorney's fees, and expenses is
 10 not subject to a stay under this section.

11 (6) A stay under this section does not affect a party's ability voluntarily to dismiss a
 12 cause of action or part of a cause of action or move to sever a cause of action.

13 (7) During a stay under this section, the court for good cause may hear and rule on:

14 (a) A motion unrelated to the motion under Section 3 of this Act; and

15 (b) A motion seeking a special or preliminary injunction to protect against an
 16 imminent threat to public health or safety.

17 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
 18 READ AS FOLLOWS:

19 (1) The court shall hear a motion under Section 3 of this Act no later than sixty (60)
 20 days after filing of the motion, unless the court orders a later hearing:

21 (a) To allow discovery under Section 4 of this Act; or

22 (b) For good cause shown.

23 (2) If the court orders a later hearing under subsection (1)(a) of this section, the
 24 court shall hear the motion under Section 3 of this Act no later than sixty (60)
 25 days after the court order allowing discovery, unless the court orders a later
 26 hearing under subsection (1)(b) of this section.

27 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO

1 READ AS FOLLOWS:

2 *In ruling on a motion under Section 3 of this Act, the court shall consider the*
3 *pleadings, the motion, any reply or response to the motion, and any evidence that could*
4 *be considered in ruling on a motion for summary judgment.*

5 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
6 READ AS FOLLOWS:

7 *(1) In ruling on a motion under Section 3 of this Act, the court shall dismiss with*
8 *prejudice a cause of action, or part of a cause of action, if:*

9 *(a) The moving party establishes under subsection (1) of Section 2 of this Act*
10 *that Sections 1 to 12 of this Act applies;*

11 *(b) The responding party fails to establish under subsection (2) of Section 2 of*
12 *this Act that Sections 1 to 12 of this act does not apply; and*

13 *(c) Either:*

14 *1. The responding party fails to establish a prima facie case as to each*
15 *essential element of the cause of action; or*

16 *2. The moving party establishes that:*

17 *a. The responding party failed to state a cause of action upon*
18 *which relief can be granted; or*

19 *b. There is no genuine issue as to any material fact and the moving*
20 *party is entitled to judgment as a matter of law on the cause of*
21 *action or part of the action.*

22 *(2) A voluntary dismissal without prejudice of a responding party's cause of action,*
23 *or part of a cause of action, that is the subject of a motion under Section 3 of this*
24 *Act does not affect a moving party's right to obtain a ruling on the motion and*
25 *seek costs, attorney's fees, and expenses under Section 10 of this Act.*

26 *(3) A voluntary dismissal with prejudice of a responding party's cause of action, or*
27 *part of a cause of action, that is the subject of a motion under Section 3 of this*

1 Act establishes for the purpose of Section 10 of this Act that the moving party
2 prevailed on the motion.

3 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
4 READ AS FOLLOWS:

5 The court shall rule on a motion under Section 3 of this Act no later than sixty (60)
6 days after a hearing under Section 5 of this Act.

7 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
8 READ AS FOLLOWS:

9 A moving party may appeal as a matter of right from an order denying, in whole or in
10 part, a motion under Section 3 of this Act. The appeal must be filed no later than
11 twenty-one (21) days after entry of the order.

12 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
13 READ AS FOLLOWS:

14 On a motion under Section 3 of this Act, the court shall award court costs, reasonable
15 attorney's fees, and reasonable litigation expenses related to the motion:

16 (1) To the moving party if the moving party prevails on the motion; or

17 (2) To the responding party if the responding party prevails on the motion and the
18 court finds that the motion was frivolous or filed solely with the intent to delay
19 the proceeding.

20 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
21 READ AS FOLLOWS:

22 Sections 1 to 12 of this Act shall be broadly construed and applied to protect the
23 exercise of the right of freedom of speech and of the press, the right to assemble and
24 petition, and the right of association, guaranteed by the United States Constitution or
25 Kentucky Constitution.

26 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
27 READ AS FOLLOWS:

1 *In applying and construing this uniform act, consideration must be given to the need to*
2 *promote uniformity of the law with respect to its subject matter among states that enact*
3 *it.*

4 ➔Section 13. This Act may be cited as the Uniform Public Expression Protection
5 Act.