

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 11 of this Act:*

7 *(1) "Cause of action" does not include:*

8 *(a) A procedural action taken or motion made in an action that does not amend*  
9 *or add a claim for legal, equitable, or declaratory relief; or*

10 *(b) Post-judgment enforcement actions;*

11 *(2) "Goods or services" does not include the creation, dissemination, exhibition, or*  
12 *advertisement or similar promotion of a dramatic, literary, musical, political,*  
13 *journalistic, or artistic work;*

14 *(3) "Governmental unit" means a public corporation, government, or government*  
15 *subdivision, agency, or instrumentality;*

16 *(4) "Matter of public concern" means a statement or activity regarding:*

17 *(a) A public official, public figure, or other person who has drawn substantial*  
18 *public attention due to the person's official acts, fame, notoriety, or*  
19 *celebrity;*

20 *(b) A matter of political, social, or other interest to the community; or*

21 *(c) A subject of concern to the public; and*

22 *(5) "Person" means an individual, estate, trust, partnership, business or nonprofit*  
23 *entity, governmental unit, or other legal entity.*

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

26 *(1) Except as otherwise provided in subsection (2) of this section, Sections 1 to 11 of*  
27 *this Act apply to a cause of action asserted against a person based on the*

1 person's:

2 (a) Communication in a legislative, executive, judicial, administrative, or other  
3 governmental proceeding;

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

6 (c) Exercise of the right of freedom of speech or of the press, the right to  
7 assemble or petition, or the right of association, as guaranteed by the United  
8 States Constitution or Kentucky Constitution, on a matter of public  
9 concern.

10 (2) (a) Except as provided in paragraph (b) of this subsection, Sections 1 to 11 of  
11 this Act shall not apply to a cause of action asserted:

12 1. Against a governmental unit or an employee or agent of a  
13 governmental unit acting or purporting to act in an official capacity;

14 2. By a governmental unit or an employee or agent of a governmental  
15 unit acting in an official capacity to enforce a law to protect against  
16 an imminent threat to public health or safety;

17 3. Against a person primarily engaged in the business of selling or  
18 leasing goods or services if the cause of action arises out of a  
19 communication or lack of communication related to the person's sale  
20 or lease of the goods or services;

21 4. Against a person named in a civil suit brought to establish or declare  
22 real property possessory rights, use of real property, recovery of real  
23 property, quiet title to real property, or other claims relating to real  
24 property;

25 5. Seeking recovery for bodily injury, wrongful death, or survival, or to  
26 statements made regarding that legal action;

27 6. Under the Kentucky Insurance Code or arising out of an insurance

- 1                   contract;
- 2                   7. Based on a common law fraud claim;
- 3                   8. Under KRS Chapters 401 to 407;
- 4                   9. Under KRS Chapter 337, 338, 339, 342, 344, or 345, including claims
- 5                   of negligent supervision, retention, or infliction of emotional distress;
- 6                   wrongful discharge in violation of public policy; whistleblowing,
- 7                   including KRS 61.101 to 61.103; or enforcement of employee rights
- 8                   under civil service, collective bargaining, or handbooks and policies;
- 9                   or
- 10                  10. Under the Kentucky Consumer Protection Act, KRS 367.110 to
- 11                  367.300.

12                  (b) Sections 1 to 11 of this Act apply to a cause of action asserted under

13                  paragraph (a) of this subsection when the cause of action is:

- 14                  1. An action against a person arising from any act of that person,
- 15                  whether public or private, related to the gathering, receiving, posting,
- 16                  or processing of information for communication to the public,
- 17                  whether or not the information is actually communicated to the
- 18                  public, for the creation, dissemination, exhibition, or advertisement or
- 19                  other similar promotion of a dramatic, literary, musical, political,
- 20                  journalistic, or otherwise artistic work, including audio-visual work
- 21                  regardless of the means of distribution, a motion picture, a television
- 22                  or radio program, or an article published in a newspaper, Web site,
- 23                  magazine, or other platform, no matter the method or extent of
- 24                  distribution; or
- 25                  2. An action against a person related to the communication, gathering,
- 26                  receiving, posting, or processing of consumer opinions or
- 27                  commentary, evaluation of consumer complaints, or reviews or ratings

1                   of businesses.

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

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

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

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

13 (a) All other proceedings between the moving party and responding party,  
14 including discovery and any pending hearing or motion, shall be stayed;  
15 and

16 (b) On motion by the moving party, the court may stay a hearing or motion  
17 involving another party, or discovery by another party, if the hearing or  
18 ruling on the motion would adjudicate, or the discovery would relate to, an  
19 issue material to the motion.

20 (2) A stay under subsection (1) of this section shall remain in effect until entry of an  
21 order ruling on the motion under Section 3 of this Act and expiration of the time  
22 under Section 9 of this Act for the moving party to appeal the order.

23 (3) Except as otherwise provided in subsections (5), (6), and (7) of this section, if a  
24 party appeals from an order ruling on a motion under Section 3 of this Act, all  
25 proceedings between all parties in the action shall be stayed. The stay shall  
26 remain in effect until the conclusion of the appeal.

27 (4) During a stay under subsection (1) of this section, the court shall allow limited

1 discovery if a party shows that specific information is necessary to establish  
 2 whether a party has satisfied or failed to satisfy a burden under subsection (1) of  
 3 Section 7 of this Act and the information is not reasonably available unless  
 4 discovery is allowed.

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

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

9 (7) During a stay under this section, the court for good cause may hear and rule on:  
 10 (a) A motion unrelated to the motion under Section 3 of this Act; and  
 11 (b) A motion seeking a special or preliminary injunction to protect against an  
 12 imminent threat to public health or safety.

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

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

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

18 (b) For good cause shown.

19 (2) If the court orders a later hearing under subsection (1)(a) of this section, the  
 20 court shall hear the motion under Section 3 of this Act no later than sixty (60)  
 21 days after the court order allowing limited discovery, unless the court orders a  
 22 later hearing under subsection (1)(b) of this section.

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

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

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

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

5       *(a) The moving party establishes under subsection (1) of Section 2 of this Act*  
6       *that Sections 1 to 11 of this Act apply;*

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

9       *(c) Either:*

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

12       *2. The moving party establishes that:*

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

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

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

22       *(3) A voluntary dismissal with prejudice of a responding party's cause of action, or*  
23       *part of a cause of action, that is the subject of a motion under Section 3 of this*  
24       *Act establishes for the purpose of Section 10 of this Act that the moving party*  
25       *prevailed on the motion.*

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

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

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

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

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

10 *(1) On a motion under Section 3 of this Act, the court shall award court costs,*  
11 *reasonable attorney's fees, and reasonable litigation expenses related to the*  
12 *motion:*

13 *(a) To the moving party if the moving party prevails on the motion; or*

14 *(b) To the responding party if the responding party prevails on the motion and*  
15 *the court finds that the motion was frivolous or filed solely with the intent to*  
16 *delay the proceeding.*

17 *(2) If the court orders dismissal of a compulsory counterclaim, the court may award*  
18 *to the moving party reasonable attorney's fees incurred in defending against the*  
19 *counterclaim if the court finds that the counterclaim is frivolous or solely*  
20 *intended for delay.*

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

23 *Sections 1 to 11 of this Act shall be broadly construed and applied to protect the*  
24 *exercise of the right of freedom of speech and of the press, the right to assemble and*  
25 *petition, and the right of association, as guaranteed by the United States Constitution*  
26 *or Kentucky Constitution.*

27       ➔Section 12. This Act may be cited as the Uniform Public Expression Protection

1 Act.