

HOUSE OF REPRESENTATIVES

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2022 REGULAR SESSION
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Amend printed copy of **HB 222/HCS 1**

On page 1, starting on line 4, delete the bill in its entirety and insert in lieu thereof:

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

As used in Sections 1 to 10 of this Act:

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

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

(b) Post-judgment enforcement actions;

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

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

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

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

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

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

Amendment No. HFA 1

Rep. Rep. C. Ed Massey

Committee Amendment _____

Floor Amendment _____

Adopted: _____

Rejected: _____

Signed: _____

LRC Drafter: _____

Date: _____

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

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

(1) Except as otherwise provided in subsection (2) of this section, Sections 1 to 10 of this Act apply to a cause of action asserted against a person based on the person's:

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

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

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

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

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

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

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

4. Against a person named in a civil suit brought to establish or declare real

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- property possessory rights, use of real property, recovery of real property, quiet title to real property, or other claims relating to real property;
5. Seeking recovery for bodily injury, wrongful death, or survival, or to statements made regarding that legal action;
6. Under the Kentucky Insurance Code or arising out of an insurance contract;
7. Based on a common law fraud claim;
8. Under KRS Chapters 401 to 407;
9. Under KRS Chapter 337, 338, 339, 342, 344, or 345, including claims of negligent supervision, retention, or infliction of emotional distress; wrongful discharge in violation of public policy; whistleblowing, including KRS 61.101 to 61.103; or enforcement of employee rights under civil service, collective bargaining, or handbooks and policies; or
10. Under the Kentucky Consumer Protection Act, KRS 367.110 to 367.300.
- (b) Sections 1 to 10 of this Act apply to a cause of action asserted under paragraph (a) of this subsection when the cause of action is:
1. An action against a person arising from any act of that person, whether public or private, related to the gathering, receiving, posting, or processing of information for communication to the public, whether or not the information is actually communicated to the public, for the creation, dissemination, exhibition, or advertisement or other similar promotion of a dramatic, literary, musical, political, journalistic, or otherwise artistic work, including audio-visual work regardless of the means of distribution, a motion picture, a television or radio program, or an article published in a newspaper, Web site, magazine, or other platform, no matter the method or extent of distribution; or

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2. An action against a person related to the communication, gathering, receiving, posting, or processing of consumer opinions or commentary, evaluation of consumer complaints, or reviews or ratings of businesses.

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

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

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

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

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

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

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

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

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- (4) During a stay under subsection (1) of this section, the court shall allow limited discovery if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy a burden under subsection (1) of Section 7 of this Act and the information is not reasonably available unless discovery is allowed, including but not limited to situations where a witness may be unavailable or records may have been destroyed.
- (5) A motion under Section 10 of this Act for costs, attorney's fees, and expenses shall not be subject to a stay under this section.
- (6) A stay under this section shall not affect a party's ability to voluntarily dismiss a cause of action or part of a cause of action or a motion to sever a cause of action.
- (7) During a stay under this section, the court for good cause may hear and rule on:
- (a) A motion unrelated to the motion under Section 3 of this Act; and
 - (b) A motion seeking a special or preliminary injunction to protect against an imminent threat to public health or safety.

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

- (1) The court shall hear a motion under Section 3 of this Act no later than sixty (60) days after filing of the motion, unless the court orders a later hearing:
- (a) To allow limited discovery under Section 4 of this Act; or
 - (b) For good cause shown.
- (2) If the court orders a later hearing under subsection (1)(a) of this section, the court shall hear the motion under Section 3 of this Act no later than sixty (60) days after the court order allowing limited discovery, unless the court orders a later hearing under subsection (1)(b) of this section, in which case the hearing shall be scheduled in an expedited manner.

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

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

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

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

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

(b) The responding party fails to establish under subsection (2) of Section 2 of this Act that Sections 1 to 10 of this act do not apply; and

(c) Either:

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

2. The moving party establishes that:

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

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

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

fees, and expenses under Section 10 of this Act.

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

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

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

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

Any party may appeal as a matter of right from an order granting or denying, in whole or in part, a motion under Section 3 of this Act. The appeal shall be filed in accordance with the Kentucky Rules of Civil Procedure.

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

On a motion under Section 3 of this Act, or the appeal of an order granting or denying a motion under Section 3 of this Act, the court shall award court costs, reasonable attorney's fees, and reasonable litigation expenses related to the motion:

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

(2) To the responding party if the responding party prevails on the motion and the court finds that the motion was brought without good cause.

→Section 11. This Act shall be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, as guaranteed by the United States Constitution and the Constitution of Kentucky.

→Section 12. This Act may be cited as the Uniform Public Expression Protection Act."