

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 10 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 10 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 10 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 10 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 10 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, including but not limited to situations where a witness may
 5 be unavailable or records may have been destroyed.

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

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

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

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

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

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

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

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

19 (b) For good cause shown.

20 (2) If the court orders a later hearing under subsection (1)(a) of this section, the
 21 court shall hear the motion under Section 3 of this Act no later than sixty (60)
 22 days after the court order allowing limited discovery, unless the court orders a
 23 later hearing under subsection (1)(b) of this section, in which case the hearing
 24 shall be scheduled in an expedited manner.

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

27 In ruling on a motion under Section 3 of this Act, the court shall consider the

1 pleadings, the motion, any reply or response to the motion, and any evidence that could
2 be considered in ruling on a motion for summary judgment.

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

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

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

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

11 (c) Either:

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

14 2. The moving party establishes that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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