

1 AN ACT relating to civil actions.

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

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

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

6 *(1) "Abusive civil action" means a civil action in which:*

7 *(a) The plaintiff and defendant share a civil action party relationship;*

8 *(b) The party who is filing, initiating, advancing, or continuing the litigation*  
9 *has been found by a court to have abused, stalked, strangled or sexually*  
10 *assaulted the other party, pursuant to:*

11 *1. A protective order entered pursuant to KRS Chapter 403 or 456;*

12 *2. A foreign protective order, as defined in KRS 403.720 or 456.010;*

13 *3. A final order for child support or child custody, entered pursuant to*  
14 *KRS Chapter 403;*

15 *4. A criminal conviction or a guilty plea, in this state or any other*  
16 *jurisdiction, for a sex offense, assault, strangulation, or stalking;*

17 *5. A pending criminal charge, in this state or any other jurisdiction, of*  
18 *domestic violence, wherein the court has imposed criminal conditions*  
19 *of release pertaining to the safety of the victim; or*

20 *6. A signed affidavit from a domestic violence or sexual assault advocate*  
21 *or counselor working on behalf of an agency that assists victims of*  
22 *domestic violence and sexual assault; and*

23 *(c) The primary purpose of the litigation is to abuse, harass, intimidate,*  
24 *threaten, or maliciously injure the other party, or to maintain contact with*  
25 *the other party;*

26 *(2) "Civil action" means the same as in Rule 2 of the Kentucky Rules of Civil*  
27 *Procedure;*

- 1 (3) "Civil action party relationship" means the plaintiff commencing a civil action  
2 and the defendant fall within one (1) or more of the following categories:
- 3 (a) Adults who are current or former spouses;  
4 (b) Adults who live together or who have lived together;  
5 (c) Adults who are dating or who have dated, or who have or had a sexual  
6 relationship;  
7 (d) Adults related by blood or adoption;  
8 (e) Adults who are related, or were formerly related, by marriage;  
9 (f) Adult children of a person in a relationship that is described in paragraphs  
10 (a) to (e) of this subsection; or  
11 (g) A court has found one (1) of the parties liable for an act of strangulation,  
12 stalking, or sexual assault against the other party;
- 13 (4) "Filing restriction" means an abusive civil action plaintiff is unable to file a civil  
14 action against the civil action defendant for the period of time set by the court  
15 pursuant to Section 5 of this Act; and
- 16 (5) "Harass or maliciously injure" means the civil action was filed with the intent to:
- 17 (a) Exhaust, deplete, impair, or adversely impact the defendant's financial  
18 resources, unless:
- 19 1. Punitive damages are requested and appropriate; or  
20 2. A change in the circumstances of the parties provides a good-faith  
21 basis to seek a change to spousal maintenance, child support, or  
22 disposition of property;
- 23 (b) Prevent or interfere with the ability of the defendant to raise a child or  
24 children for whom the defendant has legal custody unless the plaintiff has a  
25 lawful right to interfere and a good faith basis for doing so;
- 26 (c) Force, coerce, or attempt to force or coerce the defendant to agree to or  
27 make adverse concessions concerning financial, custodial, support, or other

1 issues when the issues in question have previously been litigated and  
 2 decided in favor of the defendant;

3 (d) Force, coerce, or attempt to force or coerce the defendant to alter, engage  
 4 in, or refrain from engaging in conduct when the conduct is lawful and is  
 5 conduct in which the defendant has the right to engage;

6 (e) Impair or attempt to impair the health or well-being of the defendant or a  
 7 dependent of the defendant;

8 (f) Prevent, interfere, or adversely impact the ability of the defendant to pursue  
 9 or maintain a livelihood or lifestyle at the same or better standard as the  
 10 defendant enjoyed prior to the filing of the civil action; or

11 (g) Impair, diminish, or tarnish the defendant's reputation in the community or  
 12 alienate the defendant's friends, colleagues, attorneys, or professional  
 13 associates by subjecting parties without knowledge of or not reasonably  
 14 relevant to the civil action to unreasonably or unnecessarily complex,  
 15 lengthy, or intrusive interrogatories or depositions.

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

18 (1) If a civil action is filed and the defendant to the action believes that it is an  
 19 abusive civil action, the claim may be raised by the defendant by petitioning the  
 20 court to restrict abusive litigation:

21 (a) In the answer to the civil action; or

22 (b) By motion made at any time during the civil action.

23 (2) The court may, on its own motion, conduct a hearing pursuant to Section 3 of  
 24 this Act to determine whether the civil action is an abusive civil action.

25 (3) The Administrative Office of the Courts shall establish a form application to be  
 26 used in filing a petition for an order restricting abusive litigation.

27 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO

1 READ AS FOLLOWS:

- 2 (1) If the defendant to a civil action alleges, either by answer to the civil action or by  
3 motion made at any time the action is pending, that the action constitutes an  
4 abusive civil action, the court shall conduct a hearing to determine the merits of  
5 the defendant's allegations.
- 6 (2) At the time set for the hearing on the alleged abusive civil action, the court shall  
7 hear all relevant testimony and may require any affidavits, documentary  
8 evidence, or other records the court deems necessary.
- 9 (3) Upon the filing of a motion under Section 2 of this Act, the court may order a  
10 stay of discovery until entry of an order ruling on the motion.

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

13 At the hearing conducted pursuant to Section 3 of this Act, any of the following  
14 evidence creates a rebuttable presumption that the civil action is an abusive civil  
15 action:

- 16 (1) The same or substantially similar issues between the same or substantially similar  
17 civil action parties that are the subject of the alleged abusive civil action have  
18 been litigated against the defendant within the past five (5) years in the current  
19 judicial district or another judicial district, and the actions were dismissed on the  
20 merits or with prejudice against the plaintiff;
- 21 (2) The alleged abusive civil action plaintiff has used the same or substantially  
22 similar issues that are the subject of the current civil action as the basis for an  
23 adverse complaint against the defendant to an administrative board, and the  
24 administrative board dismissed the complaint after a hearing in compliance with  
25 KRS Chapter 13B; or
- 26 (3) The alleged abusive civil action plaintiff has been sanctioned under Rule 11 of  
27 the Kentucky Rules of Civil Procedure or a similar rule or law in another state or

1 the federal government for filing one (1) or more frivolous or abusive civil  
2 actions within the past ten (10) years of filing the current civil action alleged to be  
3 abusive and the previous frivolous or abusive civil actions involved the same or  
4 substantially similar issues between the same or substantially similar civil action  
5 parties.

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

8 (1) If the court finds by a preponderance of the evidence that a person filing a civil  
9 action is an abusive civil action plaintiff, and that the civil action is an abusive  
10 civil action, the civil action shall be dismissed.

11 (2) In addition to dismissal of any pending abusive civil action within the jurisdiction  
12 of the court, the court shall:

13 (a) Tax all costs of any abusive civil action pending in the court at the time of  
14 the court's finding pursuant to subsection (1) of this section against the  
15 abusive civil action plaintiff;

16 (b) Award the civil action defendant reasonable attorney's fees and all  
17 reasonable costs of defending the abusive civil action; and

18 (c) Impose filing restrictions upon the abusive civil action plaintiff for a period  
19 of no less than forty-eight (48) months and no more than seventy-two (72)  
20 months.

21 (3) If a defendant alleges that a claim is an abusive civil action and the court finds by  
22 a preponderance of the evidence that the action was not an abusive civil action,  
23 the court may:

24 (a) Grant to the plaintiff such remedies as may be just, including granting  
25 judgment in favor of the plaintiff, granting partial judgment in favor of the  
26 plaintiff, or allowing factual interpretations in favor of the plaintiff;

27 (b) Tax all costs related to litigating the issue of whether the action is an

1           abusive civil action or whether the plaintiff is an abusive civil action  
2           plaintiff, against the defendant who made the claim; and  
3           (c) Award the civil action plaintiff reasonable attorney's fees and all reasonable  
4           costs of defending the claim that the action was an abusive civil action.

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

7           (1) An abusive civil action plaintiff may seek permission to file a civil action against  
8           a civil action defendant using the procedure set out in subsection (2) of this  
9           section.

10          (2) (a) An abusive civil action plaintiff who wishes to institute a civil action in a  
11          court of record during the time the abusive civil action plaintiff is under  
12          filing restrictions shall first appear before the court that imposed the filing  
13          restrictions to make application for permission to institute the civil action.

14          (b) The court may examine witnesses, including the abusive civil action  
15          plaintiff and the civil action defendant, to determine whether the proposed  
16          civil action is or is not an abusive civil action and whether there are  
17          reasonable and legitimate grounds upon which the complaint is based.

18          (c) 1. If the court that imposed the filing restrictions believes that the civil  
19          action the abusive civil action plaintiff is making application to file  
20          will be an abusive civil action, the application shall be denied.

21          2. If the court reasonably finds that the civil action the abusive civil  
22          action plaintiff is making application to file will not be an abusive civil  
23          action, the court may grant the application and issue an order  
24          permitting the filing of the civil action. The order shall be attached to  
25          the front of the complaint when the abusive civil action plaintiff files  
26          the civil action with the clerk. The defendant to the action shall be  
27          served with a copy of the order at the same time the complaint is

1                    served.

2                    (d) The findings of the court shall be reduced to writing and made a part of the  
3                    record in the matter. If the abusive civil action plaintiff disputes the finding  
4                    of the court, the abusive civil action plaintiff may appeal.

5                    (3) If the application for the filing of a civil action is granted pursuant to this section,  
6                    the period of time commencing with the filing of the application requesting  
7                    permission to file the action and ending with the issuance of an order permitting  
8                    filing of the action shall not be computed as a part of an applicable period of  
9                    limitations within which the civil action must be instituted.

10                    (4) If after an abusive civil action plaintiff has made application and been granted  
11                    permission to file a civil action pursuant to this section, the court with  
12                    jurisdiction over the action determines that the person is attempting to add  
13                    parties, amend the complaint, or is otherwise attempting to alter the parties and  
14                    issues involved in the civil action in a manner that the court reasonably believes  
15                    would make the action an abusive civil action, the court may order a continuance  
16                    or dismissal of the action.

17                    (5) (a) If a civil action defendant is served with a complaint from an abusive civil  
18                    action plaintiff who filed a civil action in a judicial district in which the  
19                    person has not been determined to be an abusive civil action plaintiff, and  
20                    the complaint does not have an attached order from the judge who imposed  
21                    the filing restrictions, the civil action defendant shall obtain a certified copy  
22                    of the order finding the person to be an abusive civil action plaintiff in  
23                    another jurisdiction and send it to the court where the new civil action was  
24                    filed and to the court that imposed the filing restrictions.

25                    (b) If it is brought to the attention of the court, or on the court's own motion,  
26                    that an abusive civil action plaintiff has filed a civil action or continued a  
27                    legal proceeding in the sanctioning court's judicial district or in another

1           judicial district without application to do so being granted by the  
2           sanctioning court pursuant to this section, or the abusive civil action  
3           plaintiff has attempted to file an abusive civil action through another party,  
4           the court in which the civil action is pending shall dismiss the action or  
5           revoke the continuance. The sanctioning court may take whatever action  
6           against the abusive civil action plaintiff deemed necessary for a violation of  
7           the court's order.