

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 filed by a plaintiff against a defendant*
7 *with whom the plaintiff shares a civil action party relationship primarily to*
8 *harass or maliciously injure the defendant and at least one (1) of the following*
9 *factors are applicable:*

10 *(a) Claims, allegations, and other legal contentions made in the civil action are*
11 *not warranted by existing law or by a reasonable argument for the*
12 *extension, modification, or reversal of existing law, or the establishment of*
13 *new law;*

14 *(b) Allegations and other factual contentions made in the civil action are*
15 *without the existence of evidentiary support; or*

16 *(c) One (1) or more issues that are the basis of the civil action have previously*
17 *been filed in one (1) or more other courts or jurisdictions, and the actions*
18 *have been litigated and disposed of unfavorably to the plaintiff;*

19 *(2) "Abusive civil action plaintiff" means a person who filed a civil action that a*
20 *court of record has determined to be an abusive civil action and against whom*
21 *filing restrictions have been imposed pursuant to Section 5 of this Act;*

22 *(3) "Civil action" means the same as in Rule 2 of the Kentucky Rules of Civil*
23 *Procedure;*

24 *(4) "Civil action defendant" means one (1) or more persons against whom a civil*
25 *action has been filed that a court of record has determined to be an abusive civil*
26 *action;*

27 *(5) "Civil action party relationship" means the plaintiff commencing a civil action*

1 and the defendant fall within one (1) or more of the following categories:

2 (a) Adults who are current or former spouses;

3 (b) Adults who live together or who have lived together;

4 (c) Adults who are dating or who have dated, or who have or had a sexual
5 relationship;

6 (d) Adults related by blood or adoption;

7 (e) Adults who are related, or were formerly related, by marriage; or

8 (f) Adult children of a person in a relationship that is described in paragraphs
9 (a) to (e) of this subsection;

10 (6) "Filing restriction" means an abusive civil action plaintiff is unable to file a civil
11 action against the civil action defendant for the period of time set by the court
12 pursuant to Section 5 of this Act; and

13 (7) "Harass or maliciously injure" means the civil action was filed with the intent to:

14 (a) Exhaust, deplete, impair, or adversely impact the defendant's financial
15 resources unless:

16 1. Punitive damages are requested and appropriate; or

17 2. A change in the circumstances of the parties provides a good faith
18 basis to seek a change to spousal maintenance, child support, or
19 disposition of property;

20 (b) Prevent or interfere with the ability of the defendant to raise a child or
21 children for whom the defendant has legal custody unless the plaintiff has a
22 lawful right to interfere and a good faith basis for doing so;

23 (c) Force, coerce, or attempt to force or coerce the defendant to agree to or
24 make adverse concessions concerning financial, custodial, support, or other
25 issues when the issues in question have previously been litigated and
26 decided in favor of the defendant;

27 (d) Force, coerce, or attempt to force or coerce the defendant to alter, engage

- 1 in, or refrain from engaging in conduct when the conduct is lawful and is
 2 conduct in which the defendant has the right to engage;
 3 (e) Impair or attempt to impair the health or well-being of the defendant or a
 4 dependent of the defendant;
 5 (f) Prevent, interfere, or adversely impact the ability of the defendant to pursue
 6 or maintain a livelihood or lifestyle at the same or better standard as the
 7 defendant enjoyed prior to the filing of the civil action; or
 8 (g) Impair, diminish, or tarnish the defendant's reputation in the community or
 9 alienate the defendant's friends, colleagues, attorneys, or professional
 10 associates by subjecting parties without knowledge of or not reasonably
 11 relevant to the civil action to unreasonably or unnecessarily complex,
 12 lengthy, or intrusive interrogatories or depositions.

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

- 15 (1) If a civil action is filed and the defendant to the action believes that it is an
 16 abusive civil action, the claim may be raised by the defendant:
 17 (a) In the answer to the civil action; or
 18 (b) By motion made at any time during the civil action.
 19 (2) The court may, on its own motion, conduct a hearing pursuant to Section 3 of
 20 this Act to determine whether the civil action is an abusive civil action.

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

- 23 (1) If the defendant to a civil action alleges, either by answer to the civil action or by
 24 motion made at any time the action is pending, that the action constitutes an
 25 abusive civil action, the court shall conduct a hearing to determine the merits of
 26 the defendant's allegations.
 27 (2) At the time set for the hearing on the alleged abusive civil action, the court shall

1 hear all relevant testimony and may require any affidavits, documentary
2 evidence, or other records the court deems necessary.

3 (3) Upon the filing of a motion under Section 2 of this Act, the court may order a
4 stay of discovery until entry of an order ruling on the motion.

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

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

10 (1) The same or substantially similar issues between the same or substantially
11 similar civil action parties that are the subject of the alleged abusive civil action
12 have been litigated against the defendant within the past five (5) years in the
13 current judicial district or another judicial district, and the actions were
14 dismissed on the merits or with prejudice against the plaintiff;

15 (2) The alleged abusive civil action plaintiff has used the same or substantially
16 similar issues that are the subject of the current civil action as the basis for an
17 adverse complaint against the defendant to an administrative board, and the
18 administrative board dismissed the complaint after a hearing in compliance with
19 KRS Chapter 13B; or

20 (3) The alleged abusive civil action plaintiff has been sanctioned under Rule 11 of
21 the Kentucky Rules of Civil Procedure or a similar rule or law in another state or
22 the federal government for filing one (1) or more frivolous or abusive civil
23 actions within the past ten (10) years of filing the current civil action alleged to be
24 abusive and the previous frivolous or abusive civil actions involved the same or
25 substantially similar issues between the same or substantially similar civil action
26 parties.

27 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO

1 READ AS FOLLOWS:

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

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

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

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

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

15 (3) If a defendant alleges that a claim is an abusive civil action and the court finds by
16 a preponderance of the evidence that the action was not an abusive civil action
17 the court may:

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

21 (b) Tax all costs related to litigating the issue of whether the action is an
22 abusive civil action or whether the plaintiff is an abusive civil action
23 plaintiff, against the defendant who made the claim; and

24 (c) Award the civil action plaintiff reasonable attorney's fees and all reasonable
25 costs of defending the claim that the action was an abusive civil action.

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

27 READ AS FOLLOWS:

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

4 (2) (a) An abusive civil action plaintiff who wishes to institute a civil action in a
5 court of record during the time the abusive civil action plaintiff is under
6 filing restrictions must first appear before the court that imposed the filing
7 restrictions to make application for permission to institute the civil action.

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

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

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

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

26 (3) If the application for the filing of a civil action is granted pursuant to this section,
27 the period of time commencing with the filing of the application requesting

1 permission to file the action and ending with the issuance of an order permitting
2 filing of the action shall not be computed as a part of an applicable period of
3 limitations within which the civil action must be instituted.

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

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

19 (b) If it is brought to the attention of the court, or on the court's own motion,
20 that an abusive civil action plaintiff has filed a civil action or continued a
21 legal proceeding in the sanctioning court's judicial district or in another
22 judicial district without application to do so being granted by the
23 sanctioning court pursuant to this section, or the abusive civil action
24 plaintiff has attempted to file an abusive civil action through another party,
25 the court in which the civil action is pending shall dismiss the action or
26 revoke the continuance. The sanctioning court may take whatever action
27 against the abusive civil action plaintiff deemed necessary for a violation of

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the court's order.