

1 AN ACT relating to privacy protection.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 189 IS CREATED TO
4 READ AS FOLLOWS:

5 **(1) As used in this section:**

6 **(a) "Automated license plate reader" or "ALPR" means a system of one (1) or**
7 **more mobile or fixed high-speed cameras combined with computer**
8 **algorithms to convert images of license plates into data that is readable by a**
9 **computer system; and**

10 **(b) "Entity" means any law enforcement agency, unit of local government, or**
11 **homeowner's association that deploys and maintains ALPRs.**

12 **(2) An entity may retain license plate data captured by an ALPR for no more than**
13 **ninety (90) days, except for when the data:**

14 **(a) Is being used as evidence in a felony prosecution;**

15 **(b) Has become subject to a subpoena duces tecum; or**

16 **(c) Is being used for toll collection activities on highways and bridges.**

17 **(3) An entity shall not sell any recorded images or data captured by an ALPR for any**
18 **purpose and shall not make the data available except:**

19 **(a) To a law enforcement officer or agency; or**

20 **(b) In response to a subpoena duces tecum.**

21 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 183 IS CREATED TO
22 READ AS FOLLOWS:

23 **(1) As used in this section, unless the context otherwise requires:**

24 **(a) "Agency" has the same meaning as in KRS 15.391;**

25 **(b) "Image" means a record of thermal, infrared, ultraviolet, visible light, or**
26 **other electromagnetic waves; sound waves; or other physical phenomena**
27 **which captures conditions existing on or about real property or an**

1 individual located on that property;

2 (c) "Imaging device" means a mechanical, digital, or electronic viewing
3 device; still camera; camcorder; motion picture camera; or any other
4 instrument, equipment, or format capable of recording, storing, or
5 transmitting an image;

6 (d) "Surveillance" means:

7 1. With respect to an owner, tenant, occupant, invitee, or licensee of
8 privately owned real property, the observation of such persons with
9 sufficient visual clarity to be able to obtain information about their
10 identity, habits, conduct, movements, or location; or

11 2. With respect to privately owned real property, the observation of such
12 property's physical improvements with sufficient visual clarity to be
13 able to determine unique identifying features or its occupancy by one
14 (1) or more persons; and

15 (e) "Unmanned aircraft system" has the same meaning as in KRS 446.010.

16 (2) An agency may not use an unmanned aircraft system to gather evidence or other
17 information except as provided in subsection (4) of this section.

18 (3) (a) A person, agency, or political subdivision shall not use an unmanned
19 aircraft system equipped with an imaging device to record an image of
20 privately owned real property or of the owner, tenant, occupant, invitee, or
21 licensee of such property with the intent to conduct surveillance on the
22 individual or property captured in the image in violation of the person's
23 reasonable expectation of privacy without his or her written consent.

24 (b) For purposes of this section, a person is presumed to have a reasonable
25 expectation of privacy on his or her privately owned real property if he or
26 she is not observable by persons located at ground level in a place where
27 they have a legal right to be, regardless of whether he or she is observable

1 from the air with the use of an unmanned aircraft system.

2 (4) This section does not prohibit the use of an unmanned aircraft system:

3 (a) To counter a high risk of a terrorist attack by a specific individual or
4 organization if the United States Secretary of Homeland Security
5 determines that credible intelligence indicates that there is such a risk;

6 (b) If the agency first obtains a search warrant signed by a judge authorizing
7 the use of an unmanned aircraft system;

8 (c) If the agency possesses reasonable suspicion that, under particular
9 circumstances, swift action is needed to prevent imminent danger to life or
10 serious damage to property, to forestall the imminent escape of a suspect or
11 the destruction of evidence, or to achieve purposes including, but not limited
12 to, facilitating the search for a missing person;

13 (d) 1. By a person or an entity engaged in a business or profession licensed
14 by the state, or by an agent, employee, or contractor thereof, if the
15 unmanned aircraft system is used only to perform reasonable tasks
16 within the scope of practice or activities permitted under such person's
17 or entity's license.

18 2. This exception shall not apply to a profession in which the licensee's
19 authorized scope of practice includes obtaining information about the
20 identity, habits, conduct, movements, whereabouts, affiliations,
21 associations, transactions, reputation, or character of any society,
22 person, or group of persons;

23 (e) By an employee or a contractor of a property appraiser who uses an
24 unmanned aircraft system solely for the purpose of assessing property for
25 ad valorem taxation, with the express, prior, written permission of the
26 owner, tenant, occupant, invitee, or licensee of the privately owned real
27 property;

1 (f) To capture images by or for an electric, water, or natural gas utility:

2 1. For operations and maintenance of utility facilities, including
 3 facilities used in the generation, transmission, or distribution of
 4 electricity, gas, or water, for the purpose of maintaining utility system
 5 reliability and integrity;

6 2. For inspecting utility facilities, including pipelines, to determine
 7 construction, repair, maintenance, or replacement needs before,
 8 during, and after construction of such facilities;

9 3. For assessing vegetation growth for the purpose of maintaining
 10 clearances on utility rights-of-way;

11 4. For utility routing, siting, and permitting for the purpose of
 12 constructing utility facilities or providing utility service; or

13 5. For conducting environmental monitoring, as provided by federal,
 14 state, or local law, rule, or permit;

15 (g) For aerial mapping, if the person or entity using an unmanned aircraft
 16 system for this purpose is operating in compliance with Federal Aviation
 17 Administration regulations;

18 (h) To deliver cargo, if the person or entity using an unmanned aircraft system
 19 for this purpose is operating in compliance with Federal Aviation
 20 Administration regulations; or

21 (i) To capture images necessary for the safe operation or navigation of an
 22 unmanned aircraft system that is being used for a purpose allowed under
 23 federal or Kentucky law.

24 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
 25 READ AS FOLLOWS:

26 The owner, tenant, occupant, invitee, or licensee of privately owned real property may
 27 initiate a civil action in a court of competent jurisdiction against any person, agency,

or political subdivision that violates Section 2 of this Act and may seek:

(1) Appropriate injunctive relief;

(2) Actual damages;

(3) Punitive damages;

(4) Court costs; and

(5) Reasonable attorney's fees.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 413 IS CREATED TO READ AS FOLLOWS:

An action filed pursuant to Section 3 of this Act shall be commenced within seven (7) years after the cause of action accrued.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, unless the context otherwise requires:

(a) "Consent" means the consent to transmission of a deep fake to a specific recipient or recipients;

(b) "Deep fake" means any video recording, motion picture film, audio recording, electronic image, or photograph, or any technological representation of speech or conduct substantially derivative thereof:

1. That appears to authentically depict any speech or conduct of an individual who did not in fact engage in such speech or conduct;

2. That is so realistic that a reasonable person would believe it depicts speech or conduct of an individual who did not in fact engage in such speech or conduct; and

3. The production of which was substantially dependent upon technical means, rather than the ability of another individual to physically or verbally impersonate such individual;

(c) "Depicted individual" means an individual who, as a result of digitization

1 or by means of digital manipulation, appears in whole or in part in a deep
2 fake and who is identifiable by virtue of the person's face, likeness, voice, or
3 other distinguishing characteristic, or from information displayed in
4 connection with the deep fake; and

5 (d) "Personal information" has the same meaning as in KRS 61.931.

6 (2) It shall be unlawful for any person to willfully and knowingly disseminate a deep
7 fake of a depicted individual without the express, written consent of the depicted
8 individual.

9 (3) Any person who violates subsection (2) of this section shall be personally liable
10 for:

11 (a) Appropriate injunctive relief;

12 (b) Actual damages;

13 (c) Punitive damages;

14 (d) Court costs; and

15 (e) Reasonable attorney's fees.

16 (4) A claim brought pursuant to this section may be asserted in any court of
17 competent jurisdiction.

18 (5) Consent to the creation of a deep fake does not, by itself, constitute consent to its
19 distribution.

20 (6) No person shall be found liable under this section when:

21 (a) The dissemination is made for the purpose of a criminal investigation or
22 prosecution that is otherwise lawful;

23 (b) The dissemination is for the purpose of, or in connection with, the reporting
24 of unlawful conduct;

25 (c) The dissemination is made in the course of seeking or receiving medical or
26 mental health treatment, and the image is protected from further
27 dissemination;

(d) The deep fake was obtained in a commercial setting for the purpose of the legal sale of goods or services, including the creation of artistic products for sale or display, and the depicted individual knew, or should have known, that a deep fake would be created and disseminated;

(e) The deep fake relates to a matter of public interest and dissemination serves a lawful public purpose;

(f) The dissemination is for legitimate scientific research or educational purposes; or

(g) The dissemination is made for legal proceedings and is consistent with common practice in civil proceedings necessary for the proper functioning of the criminal justice system, or protected by court order which prohibits any further dissemination.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 413 IS CREATED TO READ AS FOLLOWS:

An action filed pursuant to Section 5 of this Act shall be commenced within seven (7) years after the cause of action accrued.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Identification device" means any item, application, or product that is passively or actively capable of transmitting personal information, including but not limited to devices using radio frequency technology or any electronic device used to track, harass, or download information without permission;

(b) "Introduction" means subcutaneous injection, inhalation, ingestion, or placement on or within the human body by other means;

(c) "Personal information" means any of the following data elements to the

extent they are alone or in conjunction with any other information that can identify an individual:

1. E-mail, Internet protocol, or website address;

2. Date of birth;

3. Operator's license number or personal identification card number;

4. Any unique personal identifier number contained or encoded in an operator's license or personal identification card issued;

5. Bank, credit card, or other financial institution account number;

6. Any unique personal identifier contained or encoded in a health insurance, health benefit, or benefit card, or record issued in conjunction with any government-supported aid program;

7. Religion;

8. Ethnicity or nationality;

9. Photograph;

10. Fingerprint or other biometric identifier;

11. Social Security number;

12. Name; or

13. Any other unique personal identifier;

(d) "Require, coerce, or compel" means use any physical violence, threat, intimidation, or retaliation, or the conditioning of any private or public benefit or care on consent to implantation, including employment, promotion, or other employment benefit, or any means that cause a reasonable person of ordinary susceptibilities to acquiesce to implantation when he or she otherwise would not, but does not include legitimate medical uses for which the patient or his or her guardian or parent has consented; and

(e) "Subcutaneous" means existing, performed, or introduced under the skin.

(2) No person shall:

(a) Require, coerce, or compel any other individual to undergo the introduction of an identification device; or

(b) Introduce an identification device without the consent of the person to whom the identification device is introduced.

(3) A person to whom an identification device is introduced in violation of subsection (2) of this section may bring a civil action in a court of competent jurisdiction for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. The court may also grant a prevailing plaintiff reasonable attorney's fees and litigation costs, including but not limited to expert witness fees and expenses as part of the costs.

(4) In addition to the damages and relief authorized in subsection (3) of this section, punitive damages may also be awarded upon proof of the defendant's malice, oppression, fraud, or duress in requiring, coercing, or compelling the plaintiff to undergo the introduction of an identification device.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 413 IS CREATED TO READ AS FOLLOWS:

An action filed pursuant to Section 7 of this Act shall be commenced within seven (7) years after the cause of action accrued.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 519 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Deep fake" has the same meaning as in Section 5 of this Act; and

(b) "Depicted individual" has the same meaning as in Section 5 of this Act.

(2) A person is guilty of disseminating a deep fake when he or she discloses or threatens to disclose a deep fake:

(a) 1. With the intent to harass, annoy, threaten, alarm, or cause substantial

- 1 harm to the finances or reputation of the depicted individual; or
2 2. With actual knowledge or reckless disregard for whether such
3 disclosure or threatened disclosure will cause physical, emotional,
4 reputational, or economic harm to the depicted individual; and
5 (b) Whose creation, reproduction, or distribution could be reasonably expected
6 to affect the conduct of any administrative, legislative, or judicial
7 proceeding, including the administration of an election.
8 (3) Disseminating a deep fake is a Class D felony.