

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 411 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) As used in this section:

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

8 (b) "Deep fake" means any video recording, motion picture film, audio
9 recording, electronic image, or photograph:

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

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

15 3. That does not contain adequate labeling or disclaimers such that a
16 reasonable person would understand that it is not real speech or
17 conduct; and

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

21 (c) "Depicted individual" means an individual who, as a result of digitization
22 or by means of digital manipulation, appears in whole or in part in a deep
23 fake and who is identifiable by virtue of the person's face, likeness, voice, or
24 other distinguishing characteristic;

25 (d) "Information content provider" means any person or entity that is
26 responsible, in whole or in part, for the creation or development of
27 information provided through the internet or any other interactive computer

1 service; and

2 (e) "Interactive computer service" means any information service, system, or
3 access software provider that provides or enables computer access by
4 multiple users to a computer server, including specifically a service or
5 system that provides access to the internet and such services offered or
6 systems operated by libraries or educational institutions.

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

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

12 (a) Appropriate injunctive relief;

13 (b) Actual damages;

14 (c) Punitive damages;

15 (d) Court costs; and

16 (e) Reasonable attorney's fees.

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

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

21 (6) A person shall not be found liable under this section when:

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

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

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

1 dissemination;

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

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

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

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

15 (h) The deep fake was made for the purpose of parody, satire, or entertainment
16 and includes a disclosure made in the following manner:

17 1. For visual media, the text of the disclosure shall be clear,
18 conspicuous, and in a prominent location; or

19 2. If the media consists of audio only and a visual disclosure is not
20 feasible, the disclosure shall be read in a clearly spoken manner and
21 in a pitch that can be easily heard by the average listener, at the
22 beginning of the audio and the end of the audio.

23 (7) A provider or user of an interactive computer service shall not be treated as the
24 publisher or speaker of any information provided by another information content
25 provider.

26 (8) This section shall not be construed to impose liability on an interactive computer
27 service when acting in its capacity as a provider of those services.

1 (9) This section shall not be construed to alter or negate any rights, obligations, or
2 immunities of an interactive computer service provider under 47 U.S.C. sec. 230.

3 (10) This section shall not apply to:

4 (a) A radio or television broadcasting station, including a cable or satellite
5 television operator, programmer, or producer, that broadcasts material
6 containing deep fakes prohibited by this section as part of a bona fide
7 newscast, news interview, news documentary, or on-the-spot coverage of a
8 bona fide news event, if the broadcast clearly acknowledges through context
9 or a disclosure, in a manner that can be easily heard or read by the average
10 listener or viewer, that there are questions about the authenticity of the
11 audio or visual media containing the deep fakes;

12 (b) A radio or television broadcasting station, including a cable or satellite
13 television operator, programmer, or producer, when it is paid to broadcast
14 material containing deep fakes; or

15 (c) An internet website or a regularly published newspaper, magazine, or other
16 periodical of general circulation, including an internet or electronic
17 publication, that routinely carries news and commentary of general interest,
18 and that publishes material containing deep fakes prohibited by this section,
19 if the publication clearly states that the material containing the deep fake
20 does not accurately represent the speech or conduct of the person portrayed
21 in the deceptive audio or visual media.

22 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 413 IS CREATED TO
23 READ AS FOLLOWS:

24 An action filed pursuant to Section 1 of this Act shall be commenced within three (3)
25 years after the cause of action accrued.

26 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 519 IS CREATED TO
27 READ AS FOLLOWS:

- 1 (1) As used in this section:
- 2 (a) "Deep fake" has the same meaning as in Section 1 of this Act; and
- 3 (b) "Depicted individual" has the same meaning as in Section 1 of this Act.
- 4 (2) A natural person is guilty of disseminating a deep fake when he or she discloses
- 5 or threatens to disclose a deep fake that has not been previously disclosed to the
- 6 public:
- 7 (a) With the intent to harass, threaten, alarm, or cause substantial harm to the
- 8 finances or reputation of the depicted individual;
- 9 (b) With actual knowledge or reckless disregard for whether such disclosure or
- 10 threatened disclosure will cause physical, emotional, reputational, or
- 11 economic harm to the depicted individual; or
- 12 (c) Whose creation, reproduction, or distribution could be reasonably expected
- 13 to affect the conduct of any administrative, legislative, or judicial
- 14 proceeding, including the administration or outcome of an election.
- 15 (3) Disseminating a deep fake is a Class D felony.
- 16 (4) A person is not guilty of disseminating a deep fake if any of the conditions set
- 17 forth in subsection (6) of Section 1 of this Act are met.