

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 *thirty (30) days, except for when the data:*

14 *(a) Is being used as evidence in a criminal or insurance claim investigation;*

15 *(b) Has become subject to a subpoena duces tecum or preservation of evidence*
16 *notification; or*

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

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

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

21 *(b) In response to a subpoena duces tecum; or*

22 *(c) To the National Insurance Crime Bureau or its successor organization.*

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

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

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

27 *(b) "Image" means a record of thermal, infrared, ultraviolet, visible light, or*

1 other electromagnetic waves; sound waves; or other physical phenomena
2 which captures conditions existing on or about real property or an
3 individual located on that property;

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

8 (d) "Surveillance" means:

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

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

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

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

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

26 (b) For purposes of this section, a person is presumed to have a reasonable
27 expectation of privacy on his or her privately owned real property if he or

1 she is not observable by persons located at ground level in a place where
2 they have a legal right to be, regardless of whether he or she is observable
3 from the air with the use of an unmanned aircraft system.

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

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

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

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

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

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

25 (e) By an employee or a contractor of a property appraiser who uses an
26 unmanned aircraft system solely for the purpose of assessing property for
27 ad valorem taxation, with the express, prior, written permission of the

1 owner, tenant, occupant, invitee, or licensee of the privately owned real
2 property;

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

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

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

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

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

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

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

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

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

26 (j) For any recreational or professional use if:

27 1. The person or entity using the unmanned aircraft system has no intent

1 to conduct surveillance on private property; and
 2 2. There is no unauthorized use or publication of images of any
 3 individual or area of private property in violation of a person's
 4 reasonable expectation of privacy under subsection (3) of this section;
 5 or
 6 (k) By an insurance company or a person acting on behalf of an insurance
 7 company for purposes of underwriting an insurance risk or investigating
 8 damage to insured property.

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

11 The owner, tenant, occupant, invitee, or licensee of privately owned real property may
 12 initiate a civil action in a court of competent jurisdiction against any person, agency,
 13 or political subdivision that violates Section 2 of this Act and may seek:

- 14 (1) Appropriate injunctive relief;
- 15 (2) Actual damages;
- 16 (3) Punitive damages;
- 17 (4) Court costs; and
- 18 (5) Reasonable attorney's fees.

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

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

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

- 25 (1) As used in this section:
- 26 (a) "Consent" means the consent to transmission of a deep fake to a specific
 27 recipient or recipients;

- 1 (b) "Deep fake" means any video recording, motion picture film, audio
2 recording, electronic image, or photograph, or any technological
3 representation of speech or conduct substantially derivative thereof:
4 1. That appears to authentically depict any speech or conduct of an
5 individual who did not in fact engage in such speech or conduct;
6 2. That is so realistic that a reasonable person would believe it depicts
7 speech or conduct of an individual who did not in fact engage in such
8 speech or conduct; and
9 3. The production of which was substantially dependent upon technical
10 means, rather than the ability of another individual to physically or
11 verbally impersonate such individual;
12 (c) "Depicted individual" means an individual who, as a result of digitization
13 or by means of digital manipulation, appears in whole or in part in a deep
14 fake and who is identifiable by virtue of the person's face, likeness, voice, or
15 other distinguishing characteristic;
16 (d) "Information content provider" means any person or entity that is
17 responsible, in whole or in part, for the creation or development of
18 information provided through the internet or any other interactive computer
19 service; and
20 (e) "Interactive computer service" means any information service, system, or
21 access software provider that provides or enables computer access by
22 multiple users to a computer server, including specifically a service or
23 system that provides access to the internet and such services offered or
24 systems operated by libraries or educational institutions.
25 (2) It shall be unlawful for any natural person to willfully and knowingly
26 disseminate a deep fake of a depicted individual without the express, written
27 consent of the depicted individual.

- 1 (3) Any natural person who violates subsection (2) of this section shall be personally
2 liable for:
- 3 (a) Appropriate injunctive relief;
4 (b) Actual damages;
5 (c) Punitive damages;
6 (d) Court costs; and
7 (e) Reasonable attorney's fees.
- 8 (4) A claim brought pursuant to this section may be asserted in any court of
9 competent jurisdiction.
- 10 (5) Consent to the creation of a deep fake does not, by itself, constitute consent to its
11 distribution.
- 12 (6) No person shall be found liable under this section when:
- 13 (a) The dissemination is made for the purpose of a criminal investigation or
14 prosecution that is otherwise lawful;
- 15 (b) The dissemination is for the purpose of, or in connection with, the reporting
16 of unlawful conduct;
- 17 (c) The dissemination is made in the course of seeking or receiving medical or
18 mental health treatment, and the image is protected from further
19 dissemination;
- 20 (d) The deep fake was obtained in a commercial setting for the purpose of the
21 legal sale of goods or services, including the creation, dissemination, or
22 distribution of artistic works for sale or display, and the depicted individual
23 knew, or should have known, that a deep fake would be created and
24 disseminated;
- 25 (e) The deep fake relates to a matter of public interest and dissemination serves
26 a lawful public purpose;
- 27 (f) The dissemination is for legitimate scientific research or educational

1 purposes;

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

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

8 1. For visual media, the text of the disclosure shall appear in a size easily
9 readable by the average viewer for the duration of the video; or

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

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

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

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

21 (10) This section shall not apply to:

22 (a) A radio or television broadcasting station, including a cable or satellite
23 television operator, programmer, or producer, that broadcasts material
24 containing deep fakes prohibited by this section as part of a bona fide
25 newscast, news interview, news documentary, or on-the-spot coverage of a
26 bona fide news event, if the broadcast clearly acknowledges through context
27 or a disclosure, in a manner that can be easily heard or read by the average

1 listener or viewer, that there are questions about the authenticity of the
2 audio or visual media containing the deep fakes;

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

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

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

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

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

19 (1) As used in this section:

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

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

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

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

3 1. Email, internet protocol, or website address;

4 2. Date of birth;

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

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

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

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

12 7. Religion;

13 8. Ethnicity or nationality;

14 9. Photograph;

15 10. Fingerprint or other biometric identifier;

16 11. Social Security number;

17 12. Name; or

18 13. Any other unique personal identifier;

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

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

1 (2) No person shall:

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

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

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

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

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

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

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

22 (1) As used in this section:

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

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

25 (2) A natural person is guilty of disseminating a deep fake when he or she discloses
 26 or threatens to disclose a deep fake that has not been previously disclosed to the
 27 public:

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

9 (3) Disseminating a deep fake is a Class D felony.

10 ➔Section 10. KRS 508.152 is amended to read as follows:

11 (1) As used in this section:

12 (a) "Motor vehicle" has the same meaning as "vehicle" in KRS 186.010(8)(a);

13 (b) "Protective order" has the same meaning as in KRS 508.130; and

14 (c) "Tracking device" means an electronic or mechanical device that is designed
 15 or intended to allow a person to remotely determine or track the position or
 16 movement of another person or an object, regardless of whether that
 17 information is recorded.

18 (2) A person is guilty of unlawful use of a tracking device when he or she intentionally:

19 (a) Installs or places a tracking device, or causes a tracking device to be installed
 20 or placed; ~~or,~~

21 1. In or on a motor vehicle without the knowledge and consent of the
 22 owner of the motor vehicle; ~~or,~~

23 2. ~~if the motor vehicle is leased,~~ In or on a leased motor vehicle without
 24 the knowledge and consent of either the lessee or authorized operator
 25 of the motor vehicle; or

26 3. On the person or property of another without knowledge and consent.

27 (b) Tracks the location of;

- 1 1. A motor vehicle with a tracking device without the knowledge and
 2 consent of either the owner or the authorized operator of the motor
 3 vehicle;~~[-or,]~~
- 4 2. ~~if the motor vehicle is leased,]~~A leased motor vehicle without the
 5 knowledge and consent of either the lessee or authorized operator of the
 6 motor vehicle;or
- 7 3. Another person without the other person's knowledge and consent.
- 8 (c) While being the restrained party under a protective order, uses a tracking
 9 device to track the location of a motor vehicle operated or occupied by an
 10 individual protected under the order;~~[-or]~~
- 11 (d) While on probation or parole for a crime defined in KRS Chapter 508, uses a
 12 tracking device to track the location of a motor vehicle operated or occupied
 13 by a victim of the crime or by a family member of the victim of the crime
 14 without the knowledge and consent of the victim or family member;~~[-]~~
- 15 (e) Installs or places a tracking device. or causes a tracking device to be
 16 installed or placed, on the person or property of another without the other
 17 person's knowledge and consent; or
- 18 (f) Tracks the location of another person with a tracking device without the
 19 other person's knowledge and consent.
- 20 (3) Unlawful use of a tracking device is a Class A misdemeanor.
- 21 (4) Subsection (2) of this section does not apply to the installation or use of any:
- 22 (a) Device providing vehicle tracking for purposes of providing mechanical,
 23 operational, directional, navigation, weather, or traffic information to the
 24 operator of the vehicle;
- 25 (b) Device for providing emergency assistance to the operator or passengers of
 26 the vehicle under the terms and conditions of a subscription service, including
 27 any trial period of that subscription service;

- 1 (c) Device for providing missing vehicle assistance for the benefit of the owner or
2 operator of the vehicle;
- 3 (d) Device providing diagnostic services regarding the mechanical operation of a
4 vehicle under the terms and conditions of a subscription service, including any
5 trial period of the subscription service;
- 6 (e) Device or service providing the lessee of the vehicle with clear notice that the
7 vehicle may be tracked. For a lessor who installs a tracking device subsequent
8 to the original vehicle manufacture, the notice shall be provided in writing
9 with an acknowledgment signed by the lessee, regardless of whether the
10 tracking device is original equipment, a retrofit, or an aftermarket product.
11 The requirement for written acknowledgment placed upon the lessor is not
12 imposed upon the manufacturer of the tracking device or the manufacturer of
13 the vehicle;
- 14 (f) Tracking device by the parent or guardian of a minor on any vehicle owned or
15 leased by that parent or guardian of the minor, and operated by the minor;~~or~~
- 16 (g) Tracking device by a police officer while lawfully performing his or her
17 duties as a police officer;or
- 18 **(h) Tracking device by the parent or guardian of a minor on the person or**
19 **property of the minor.**