

**CHAPTER 50****( HB 71 )**

AN ACT relating to distribution of sexually explicit images without the consent of the person depicted.

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

➔Section 1. KRS 531.010 is amended to read as follows:

As used in this chapter:

- (1) "Distribute" means to transfer possession of, whether with or without consideration.
- (2) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, live image transmitted over the Internet or other electronic network, or other pictorial representation or any statue or other figure, or any recording transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines, or materials.
- (3) "Obscene" means:
  - (a) To the average person, applying contemporary community standards, the predominant appeal of the matter, taken as a whole, is to prurient interest in sexual conduct; and
  - (b) The matter depicts or describes the sexual conduct in a patently offensive way; and
  - (c) The matter, taken as a whole, lacks serious literary, artistic, political, or scientific value.
- (4) *"Private erotic matter" means an obscene visual image, including a photograph, film, video recording, or digital reproduction, of an identifiable person, depicting sexual conduct or the exposure of uncovered human genitals, buttocks, or nipple of the female breast. A person may be identifiable from the image itself or from information distributed in connection with the visual image.*
- (5) "Sexual conduct" means acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse; or physical contact with the genitals, flagellation, or excretion for the purpose of sexual stimulation or gratification.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 531 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of distribution of sexually explicit images without consent when:*
  - (a) *He or she intentionally distributes to any third party private erotic matter without the written consent of the person depicted, and does so with the intent to profit, or to harm, harass, intimidate, threaten, or coerce the person depicted; and*
  - (b) *The disclosure would cause a reasonable person to suffer harm.*
- (2) *This section shall not apply to:*
  - (a) *Images involving voluntary nudity or sexual conduct in public, commercial settings, or in a place where a person does not have a reasonable expectation of privacy;*
  - (b) *Disclosures made in the public interest, including the reporting of unlawful conduct, or lawful and common practices of law enforcement, criminal reporting, corrections, legal proceedings, or medical treatment;*
  - (c) *Disclosures of materials that constitute a matter of public concern; or*
  - (d) *Internet service providers or telecommunications services, or interactive computer services, as defined in 47 U.S.C. sec. 230(f)(2), for content solely provided by another person.*
- (3) *A person who maintains an Internet Web site, online service, online application, or mobile application that distributes private erotic matter shall remove any such image if requested by a person depicted, and shall not solicit or accept a fee or other consideration to remove the visual image.*
- (4) *Distribution of sexually explicit images without consent is a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense, unless the person distributes the private erotic matter for profit*

*or gain, in which case it is a Class D felony for the first offense and a Class C felony for each subsequent offense.*

- (5) *In this section, "consent" means the consent to transmission of images to a specific recipient or recipients. Consent to the creation of the visual image does not, by itself, constitute consent to the distribution of the visual image.*
- (6) *Notwithstanding KRS 17.500 to 17.580, a conviction under this section shall not result in the offender being deemed a registrant or being required to register as a sex offender.*

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

- (1) *A civil action may be maintained under this section against any person who, in violation of subsection (3) of Section 2 of this Act, does not remove a sexually explicit image upon the request of the person depicted in the image.*
- (2) *A civil action may be maintained under this section whether or not the individual who is alleged to have violated subsection (3) of Section 2 of this Act has been charged or convicted under Section 2 of this Act. Liability under this section shall include damages of one thousand dollars (\$1,000) for each sexually explicit image for each day the image remains on the Web site after receipt of the request.*
- (3) *An action under this section shall be brought within two (2) years of the last act of conduct in violation of subsection (3) of Section 2 of this Act.*

**Signed by Governor April 2, 2018.**