

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 he or she intentionally distributes to any third party private erotic matter without the written consent of the person depicted, with the intent to harm, harass, intimidate, threaten, or coerce the person depicted, and 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 or 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, 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 unless the person distributes the private erotic matter for profit or gain, in which case it is a Class D felony.

(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.