

1 AN ACT relating to private information of public officials and declaring an
2 emergency.

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

4 ➔SECTION 1. A NEW SECTION OF KRS 61.870 TO 61.884 IS CREATED TO
5 READ AS FOLLOWS:

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

7 *(a) "Immediate family member" means:*

8 *1. A spouse, child, parent, or person under the familial custody or care*
9 *of a judicial officer, prosecutor, or law enforcement agent;*

10 *2. A person related by blood, law, or marriage to the judicial officer,*
11 *prosecutor, or law enforcement agent; or*

12 *3. A person who lives in the same residence as the judicial officer,*
13 *prosecutor, or law enforcement agent;*

14 *(b) "Judicial officer" means any current, former, or retired:*

15 *1. Administrative law judge pursuant to KRS Chapter 342;*

16 *2. Federal justice, judge, or magistrate judge as defined in the*
17 *Constitution of the United States or the United States Code;*

18 *3. Hearing officer, qualified to conduct administrative hearings pursuant*
19 *to KRS Chapter 13B; or*

20 *4. Justice, judge, trial commissioner, or domestic relations commissioner*
21 *of the Kentucky Court of Justice;*

22 *(c) "Law enforcement agent" means any peace officer as defined in KRS*
23 *446.010 and any law enforcement officer as defined in KRS 15.310 and*
24 *209A.020;*

25 *(d) "Personally identifiable information" means the following:*

26 *1. Biometric, health or medical data, or insurance information;*

27 *2. Birth and marriage records;*

- 1 3. Date of birth;
- 2 4. Financial account number or credit or debit card number;
- 3 5. Home or physical address, including:
- 4 a. Any second or vacation address;
- 5 b. Any property tax or property ownership records; or
- 6 c. Any directions to or identifying photographs of any primary,
- 7 secondary, or vacation residence;
- 8 6. Home, personal mobile, or direct personal telephone number to the
- 9 individual. Nothing in this subparagraph shall be construed to include
- 10 any record made in the course of performing an official duty
- 11 regardless of the nature of the device used;
- 12 7. Identification of any children of the individual under the age of
- 13 eighteen (18);
- 14 8. Personal electronic mail addresses;
- 15 9. Photographs of any vehicle personally owned, leased, or operated by
- 16 the individual, including photographs of any license plates, vehicle
- 17 registration, or vehicle identification numbers;
- 18 10. School, day care, or employment locations or assignments;
- 19 11. Social Security number; or
- 20 12. Vehicle registration;
- 21 (e) "Prosecutor" means any current, former, or retired:
- 22 1. Attorney General or deputy or assistant attorney general;
- 23 2. Commonwealth's attorney or assistant Commonwealth's attorney;
- 24 3. County attorney or assistant county attorney;
- 25 4. Special prosecutor appointed by law or executive or judicial order;
- 26 5. United States attorney or assistant United States attorney; and
- 27 (f) "Public agency" has the same meaning as KRS 61.870(1).

1 (2) (a) Upon written request of a judicial officer, law enforcement agent,
2 prosecutor, or immediate family member, or their authorized agent, a public
3 agency shall designate any of the requester's personally identifiable
4 information as confidential and shall not post, re-post, publish, or otherwise
5 make known the personally identifiable information. Any person, or
6 authorized agent, who has requested their information be made confidential
7 may withdraw the request or permit release of their personally identifiable
8 information at any time.

9 (b) A judicial officer, law enforcement agent, prosecutor, immediate family
10 member, or their authorized agent may request information be made
11 confidential or redacted by a public agency on behalf of any person defined
12 in subsection (1)(a), (b), (c), or (e) of this section.

13 (c) When a public agency receives a written request pursuant to paragraph (a)
14 or (b) of this subsection, the agency shall redact the personally identifiable
15 information within three (3) business days of receipt of the request.

16 (d) If a public agency cannot redact the personally identifiable information
17 within three (3) business days, then it shall notify the requester, in writing,
18 within twenty-four (24) hours of the failure to redact the information,
19 specifically identify the information that was not marked confidential or
20 redacted, and state the reasons for noncompliance.

21 (3) The exemptions in this section are supplemental to the exemptions provided in
22 KRS 61.878 and shall not be deemed to replace any exemptions or personal
23 privacy protections provided in KRS 61.878.

24 (4) Nothing in this section shall prevent a public agency from using personally
25 identifiable information as required to perform the routine functions of the
26 agency.

27 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 525 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) For the purposes of this section:

3 (a) "Data broker" means any commercial entity that collects, assembles, or
4 maintains personal information concerning an individual who is not a
5 customer or an employee of that entity in order to sell the information or
6 provide third party access to the information. For the purposes of this
7 section, "data broker" includes any employee or third party agent and is
8 considered a "person" as defined in paragraph (e) of this subsection;

9 (b) "Dissemination" or "disseminating" means publishing, posting, or
10 otherwise disclosing or selling information, whether electronically, by print,
11 or through any other medium, for other persons or entities to access or
12 view;

13 (c) "Immediate family member" has the same meaning as in Section 1 of this
14 Act;

15 (d) "Law enforcement official" includes "judicial officer," "prosecutor," and
16 "law enforcement agent" as defined in Section 1 of this Act;

17 (e) "Person" means an individual, proprietorship, firm, partnership, limited
18 partnership, joint venture, joint stock company, syndicate, business, trust,
19 estate, company, corporation, limited liability company, association, club,
20 committee, organization, or group of persons acting in concert; and

21 (f) "Personally identifiable information" has the same meaning as in Section 1
22 of this Act.

23 (2) A person or data broker is guilty of disseminating personally identifiable
24 information of a law enforcement official when the person or data broker
25 knowingly, wantonly, or recklessly:

26 (a) Disseminates the personally identifiable information of the law enforcement
27 official or his or her immediate family:

- 1 1. In response to a decision or action, or to influence or impact any
- 2 future action, taken by the law enforcement official as part of his or
- 3 her official duties; and
- 4 2. Places the law enforcement official or his or her immediate family
- 5 member in reasonable fear of physical injury, or reasonable fear of
- 6 harm to their property.
- 7 (3) Disseminating personally identifiable information of a law enforcement official is
- 8 a Class A misdemeanor unless:
- 9 (a) The dissemination was done recklessly, in which case it is a Class B
- 10 misdemeanor; or
- 11 (b) The dissemination was performed intentionally to promote or facilitate, or
- 12 the person disseminating the information had reason to believe the
- 13 dissemination would result in serious physical injury to the law
- 14 enforcement official or his or her immediate family member, and:
- 15 1. The dissemination results in serious physical injury, as defined in
- 16 KRS 500.080(15) to the law enforcement official or his or her
- 17 immediate family member, in which case it is a Class C felony;
- 18 2. The dissemination results in death of the law enforcement official or
- 19 his or her immediate family member, in which case it is a Class A
- 20 felony; or
- 21 3. The dissemination results in monetary loss of five hundred dollars
- 22 (\$500) or more to the law enforcement official or his or her immediate
- 23 family member, in which case:
- 24 a. If the loss is five hundred dollars (\$500) or more but less than
- 25 ten thousand dollars (\$10,000), it is a Class D felony;
- 26 b. If the loss is ten thousand dollars (\$10,000) or more, but less
- 27 than one million dollars (\$1,000,000), it is a Class C felony; and

1 c. If the loss is one million dollars (\$1,000,000) or more, it is a
2 Class B felony.

3 (4) (a) If a person or data broker has disseminated any personally identifiable
4 information before the effective date of this Act, and receives a request to
5 redact the information from a law enforcement official, an immediate
6 family member, or their authorized agent, the person or data broker shall
7 redact the personally identifiable information within three (3) days of the
8 request.

9 (b) If the dissemination in paragraph (a) of this subsection poses an immediate
10 threat to the health, safety, and welfare of the law enforcement official or
11 his or her immediate family member, the personally identifiable
12 information shall be redacted within twenty-four (24) hours of the request.

13 (c) A person or data broker is not guilty of an offense under this section if they
14 disseminate any personally identifiable information as required by law.

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

17 (1) For the purposes of this section:

18 (a) "Data broker" has the same meaning as in Section 2 of this Act;

19 (b) "Dissemination" or "disseminating" has the same meaning as in Section 2
20 of this Act;

21 (c) "Immediate family member" has the same meaning as in Section 1 of this
22 Act;

23 (d) "Law enforcement official" has the same meaning as in Section 2 of this
24 Act; and

25 (e) "Personally identifiable information" has the same meaning as in Section 1
26 of this Act.

27 (2) A law enforcement officer or immediate family member may file a civil action for

1 dissemination of personally identifiable information of a law enforcement official
2 against a person if the person:

3 (a) Disseminates the personally identifiable information of the law enforcement
4 official or his or her immediate family;

5 (b) Disseminates the personally identifiable information in response to a
6 decision or action, or to influence or impact any future action, taken by the
7 law enforcement official as part of his or her official duties;

8 (c) Places the law enforcement official or his or her immediate family member
9 in reasonable fear of physical injury, or reasonable fear of harm to their
10 property; and

11 (d) Does not remove the personally identifiable information after a law
12 enforcement official, immediate family member, or authorized agent of the
13 foregoing requests removal of the personally identifiable information.

14 (3) (a) A law enforcement official or immediate family member may recover
15 damages, including punitive damages, court costs, and reasonable
16 attorney's fees, from a person or entity who has disseminated their
17 personally identifiable information.

18 (b) The action may be filed in Circuit Court in the county where the alleged
19 violation occurred, or where the law enforcement official or his or her
20 immediate family member resides.

21 (4) A civil action brought under this section is remedial and does not limit any other
22 civil or criminal action provided by law. Civil remedies under this section are
23 supplemental and not exclusive.

24 (5) A person or entity found liable under this section shall be jointly and severally
25 liable with each other person, if any, found liable under this section, for the
26 damages arising from the same violation of this section.

27 ➔Section 4. This Act may be cited as the Fred Capps Act.

1 ➔Section 5. Whereas, personal information is easily published over the Internet
2 and social media, and there has been an increase in death threats and deaths of judges and
3 other public officials, an emergency is declared to exist, and this Act takes effect upon its
4 passage and approval by the Governor or upon its otherwise becoming a law.