

1 AN ACT relating to elections.

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

3 ➔Section 1. KRS 117.001 is amended to read as follows:

4 As used in this chapter~~[, unless the context otherwise requires]~~:

- 5 (1) "Audit log" means a detailed record of all actions and events that have occurred on  
6 the voting system, including:
- 7 (a) Log-in attempts with username and time stamp;
  - 8 (b) Election definition and setup;
  - 9 (c) Ballot preparation and results processing;
  - 10 (d) Diagnostics of any type; and
  - 11 (e) Error and warning messages and operator response;
- 12 (2) "Automatic tabulating equipment" means apparatus necessary to automatically  
13 examine and count votes as designated on ballots and data processing machines  
14 which can be used for counting ballots and tabulating results;
- 15 (3) "Ballot" or "official ballot" means the official presentation of offices and candidates  
16 to be voted for, including write-in candidates, and all public questions submitted for  
17 determination, and shall include a voting machine ballot, a paper ballot, an absentee  
18 ballot, a federal provisional ballot, a federal provisional absentee ballot, or a  
19 supplemental paper ballot which has been authorized for the use of voters in any  
20 primary, regular election, or special election by the Secretary of State or the county  
21 clerk;
- 22 (4) "Ballot box" means any box, bag, or other container that can be locked, sealed, or  
23 otherwise rendered tamper-resistant, for receiving ballots;
- 24 (5) "Ballot marking device" means any approved device for marking a ballot which  
25 will enable the ballot to be tabulated manually or by means of automatic tabulating  
26 equipment;
- 27 (6) "Election" or "elections" means any primary, regular election, or special election;

- 1 (7) "Election officer" has the same meaning as in KRS 118.015;
- 2 (8) (a) "Electioneering communication" means any communication broadcast by  
3 cable, internet, television, or radio, printed in a newspaper or on a billboard,  
4 directly mailed or delivered by hand to personal residences, or in telephone  
5 calls made to personal residences, or otherwise distributed that:
- 6 1. Unambiguously refers to any candidate for any state, county, city, or  
7 district office, or to any ballot measure;
- 8 2. Is broadcast, printed, mailed, delivered, made, or distributed within  
9 thirty (30) days before a primary election or sixty (60) days before a  
10 general election; and
- 11 3. Is broadcast to, printed in a newspaper, distributed to, mailed to or  
12 delivered by hand to, in telephone calls made to, or otherwise  
13 distributed to an audience that includes members of the electorate for  
14 such public office or the electorate associated with the ballot  
15 containing the ballot measure.
- 16 (b) "Electioneering communication" does not include:
- 17 1. Any news articles, editorial endorsements, opinions or commentary,  
18 writings, or letters to the editor printed in a newspaper, magazine, or  
19 other periodical not owned or controlled by a candidate, committee, or  
20 political party;
- 21 2. Any editorial endorsements or opinions aired by a broadcast facility  
22 not owned or controlled by a candidate, committee, or political party;
- 23 3. Any communication by persons made in the regular course and scope  
24 of their business or any communication made by a membership  
25 organization solely to members of such an organization and their  
26 families;
- 27 4. Any communication that refers to any candidate only as part of the

1 popular name of a bill or statute; or

2 5. A communication that constitutes a contribution or independent  
3 expenditure as defined in KRS 336.180;

4 (9) "E-poll book" means an electronic device capable of holding a file of voter data and  
5 related information for use in identifying registered voters prior to a voter's  
6 receiving or casting a ballot, and allowing a voter to electronically sign in on an  
7 electronic registered voter roster in lieu of signing a paper registered voter roster;

8 (10)~~(9)~~ "Federal provisional voter" means a person:

9 (a) Who does not appear to be registered to vote;

10 (b) Whose name does not appear on the precinct roster;

11 (c) Who has not provided proof of identification to the precinct election officer  
12 before voting in a federal election; and

13 (d) Who elects to proceed with voting a federal provisional ballot under KRS  
14 117.229;

15 (11)~~(10)~~ "Federal provisional ballot" or "federal provisional absentee ballot" means  
16 ballots which have been authorized by the Secretary of State or the county clerk to  
17 be used by federal provisional voters in any federal primary or election;

18 (12)~~(11)~~ "Information content provider" means any person or entity that is  
19 responsible, in whole or in part, for the creation or development of information  
20 provided through the internet or any other interactive computer service;

21 (13) "Inner envelope" or "secrecy envelope" means the envelope provided to the voter  
22 with a ballot into which the voter shall place his or her voted ballot;

23 (14) "Interactive computer service" means any information service, system, or access  
24 software provider that provides or enables computer access by multiple users to a  
25 computer server, including specifically a service or system that provides access to  
26 the internet and such services offered or systems operated by libraries or  
27 educational institutions;

1 ~~(15)~~~~(12)~~ "Political group" has the same meaning as in KRS 118.015;

2 ~~(16)~~~~(13)~~ "Political organization" has the same meaning as in KRS 118.015;

3 ~~(17)~~~~(14)~~ "Precinct ballot counter" means an automatic tabulating device used at the  
4 precinct to tabulate and process ballots;

5 ~~(18)~~~~(15)~~ "Proof of identification" means a document that was issued by:

6 (a) The United States or the Commonwealth of Kentucky, and the document  
7 contains:

- 8 1. The name of the individual to whom the document was issued; and  
9 2. A photograph of the individual to whom the document was issued;

10 (b) The United States Department of Defense, a branch of the uniformed services,  
11 the Merchant Marine, or the Kentucky National Guard, and the document  
12 contains:

- 13 1. The name of the individual to whom the document was issued; and  
14 2. A photograph of the individual to whom the document was issued;

15 (c) A public or private college, university, or postgraduate technical or  
16 professional school located within the United States, and the document  
17 contains:

- 18 1. The name of the individual to whom the document was issued; and  
19 2. A photograph of the individual to whom the document was issued; or

20 (d) Any city government, county government, urban-county government, charter  
21 county government, consolidated local government, or unified local  
22 government, which is located within this state, and the document contains:

- 23 1. The name of the individual to whom the document was issued; and  
24 2. A photograph of the individual to whom the document was issued;

25 ~~(19)~~~~(16)~~ "Risk-limiting audit" means an audit protocol that makes use of statistical  
26 principles and methods and is designed to limit to acceptable levels the risk of  
27 certifying a preliminary election outcome that constitutes an incorrect outcome;

1 (20) "Sponsor" means the person or entity paying for the electioneering  
2 communication. If a person or entity acts as an agent for another or is  
3 reimbursed by another for the payment, the original source of the payment is the  
4 sponsor;

5 (21) (a) "Synthetic media" means an image, audio recording, or video recording of  
6 an identifiable natural individual's appearance, action, or speech that has  
7 been intentionally manipulated with the use of generative adversarial  
8 network techniques or other digital technology in a manner to create a  
9 realistic but false image, audio, or video that produces:

10 1. A depiction that, to a reasonable individual, is of an identifiable  
11 natural individual in appearance, action, or speech that did not  
12 actually occur in reality and that was created without the consent of  
13 such individual; and

14 2. A fundamentally different understanding or impression of the  
15 appearance, action, or speech than a reasonable person would have  
16 from the unaltered, original version of the image, audio recording, or  
17 video recording.

18 (b) "Synthetic media" does not include content that contains a disclosure  
19 under subsection (2) of Section 2 of this Act;

20 (22)~~(17)~~ "Voting booth" or "ballot completion area" means an area in which a voter  
21 casts his or her vote or completes his or her ballot which is designed to ensure the  
22 secrecy of the vote;

23 (23)~~(18)~~ "Vote center" means a consolidated precinct of the county;

24 (24)~~(19)~~ "Voting equipment" means any physical component of a voting system and  
25 includes voting machines where voting machines are in operation;

26 (25)~~(20)~~ "Voting machine" or "machine":

27 (a) Means a part of a voting system that consists of:

- 1           1. A direct recording electronic voting machine that:
- 2           a. Records votes by means of a ballot display provided with
- 3           mechanical or electro-operated components that may be actuated
- 4           by the voter;
- 5           b. Processes the data by means of a computer program;
- 6           c. Records voting data and ballot images in internal and external
- 7           memory components; and
- 8           d. Produces a tabulation of the voting data stored in a removable
- 9           memory component and on a printed copy; or
- 10          2. One (1) or more electronic devices that operate independently or as a
- 11          combination of a ballot marking device and an electronic or automatic
- 12          vote tabulation device; and
- 13          (b) Does not include an e-poll book;
- 14          ~~(26)~~~~(21)~~ "Voting system":
- 15          (a) Means the total combination of physical, mechanical, electromechanical, or
- 16          electronic equipment, including the software, hardware, firmware, and
- 17          documentation required to program, control, and support that equipment, that
- 18          is used to:
- 19               1. Define ballots;
- 20               2. Cast and count votes;
- 21               3. Report or display election results; and
- 22               4. Maintain and produce any audit trail information;
- 23          (b) Includes the practices and associated documentation used to:
- 24               1. Identify system components and versions of those components;
- 25               2. Test the system during its development and maintenance;
- 26               3. Maintain records of system errors and defects;
- 27               4. Determine specific system changes to be made to a system after the

- 1 initial qualification of the system;
- 2 5. Make available any materials to the voter, such as notices, instructions,
- 3 forms, or paper ballots; and
- 4 (c) Does not include an e-poll book; and
- 5 ~~(27)~~~~(22)~~ "Voter-verified paper audit trail" means a contemporaneous paper record of a
- 6 ballot printed for the voter to confirm his or her votes before the voter casts his or
- 7 her ballot that:
- 8 (a) Allows the voter to verify the voter's ballot choices before the casting of the
- 9 voter's ballot;
- 10 (b) Is not retained by the voter;
- 11 (c) Does not contain individual voter information;
- 12 (d) Is produced on paper that is sturdy, clean, and resistant to degradation; and
- 13 (e) Is readable in a manner that makes the voter's ballot choices obvious to the
- 14 voter or any person without the use of computer or electronic code.

15 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 117 IS CREATED TO

16 READ AS FOLLOWS:

17 **(1) A candidate whose appearance, action, or speech is altered through the use of**

18 **synthetic media in an electioneering communication may:**

19 **(a) Seek injunctive or other equitable relief against the sponsor of the**

20 **electioneering communication prohibiting the publication of that synthetic**

21 **media; and**

22 **(b) Bring an action for damages against the sponsor of the electioneering**

23 **communication. The court may also award a prevailing party reasonable**

24 **attorneys' fees and costs. This paragraph does not limit or preclude a**

25 **plaintiff from securing or recovering any other available remedy.**

26 **(2) It is an affirmative defense for any action brought under this section that the**

27 **electioneering communication containing synthetic media includes a disclosure**

1 that is clear and conspicuous and included in, or alongside and associated with,  
2 the content in a manner that is likely to be noticed by the user.

3 (3) Any action brought under this section shall be filed in the Circuit Court of the  
4 county in which the plaintiff resides.

5 (4) In any action brought under this section, the plaintiff bears the burden of  
6 establishing the use of synthetic media by clear and convincing evidence.

7 (5) In any action brought under this section:

8 (a) The sponsor of the electioneering communication may be held liable; and

9 (b) The medium disseminating the electioneering communication and the  
10 advertising sales representative of such medium shall not be held liable,  
11 except as provided in subsection (6) of this section.

12 (6) Except when a licensee, programmer, or operator of a federally licensed  
13 broadcasting station transmits an electioneering communication that is subject to  
14 47 U.S.C. sec. 315, a medium or its advertising sales representative may be held  
15 liable in a cause of action brought under this section if:

16 (a) Such person intentionally removes any disclosure described in subsection  
17 (2) of this section from the electioneering communication it disseminates  
18 and does not remove the electioneering communication or replace the  
19 disclosure when notified; or

20 (b) Subject to affirmative defenses described in subsection (2) of this section,  
21 such person changes the content of an electioneering communication in a  
22 manner that results in it qualifying as synthetic media, as defined in Section  
23 1 of this Act.

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

27 (b) An interactive computer service may be held liable in accordance with

1 subsection (6) of this section.

2 (8) Courts are encouraged to determine matters under this section expeditiously.