

1 AN ACT relating to property rights to the use of an individual's image.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) As used in this section:

6 (a) "Commercial purpose" means the use of an image of an individual's
7 unclothed body:

8 1. In connection with a product, merchandise, goods, services, or
9 commercial activities;

10 2. For advertising or soliciting purchases of products, merchandise,
11 goods, services, or for promoting commercial activities;

12 3. For the purpose of fundraising; or

13 4. For promoting the use of any commercial information content
14 provider or interactive computer service;

15 (b) "Image" means a computer-generated image as defined in KRS 531.010,
16 photograph, film, or video recording;

17 (c) "Individual" means a natural person, living or dead, and includes the estate
18 of an incompetent or deceased individual;

19 (d) "Information content provider" has the same meaning as in 47 U.S.C. sec.
20 230(f)(3);

21 (e) "Interactive computer service" has the same meaning as in 47 U.S.C. sec.
22 230(f)(2);

23 (f) "Person":

24 1. Means any individual, firm, association, partnership, corporation,
25 joint stock company, syndicate, receiver, common law trust,
26 conservator, statutory trust, or any legal or commercial entity
27 organized, formed, or created, whether foreign or domestic; and

1 2. Includes nonprofit corporations, associations, educational and
2 religious institutions, political parties, community, civic, legal, and
3 commercial entities; and

4 (g) "Unclothed body" means the uncovered male or female pubic area, anus,
5 buttocks, or genitals, or the female breast.

6 (2) Every individual has property rights in images of his or her unclothed body.
7 Whether or not an individual commercially benefited from his or her rights
8 during the individual's lifetime, his or her rights shall:

9 (a) Be freely transferrable and descendible, in whole or in part;

10 (b) Not expire upon the death of the individual; and

11 (c) Be exclusive to the individual during his or her lifetime, subject to the
12 transfer of rights as provided in paragraph (a) of this subsection and to the
13 executors, heirs, transferees, or devisees for a period of ten (10) years after
14 the death of the individual unless all executors, heirs, transferees, or
15 devisees of the individual exercising his or her property rights are deceased.

16 (3) An agreement authorizing the use of images of an individual's unclothed body
17 for a commercial purpose shall be valid if at the time the agreement was
18 executed:

19 (a) The agreement was in writing; and

20 (b) The agreement was for no longer than one (1) year.

21 (4) A person shall be liable for damages as set forth in subsection (5) of this section
22 if the person, without consent of the individual exercising his or her property
23 rights:

24 (a) Creates or causes to be created within the Commonwealth goods,
25 merchandise, or other materials depicting an image of the individual's
26 unclothed body;

27 (b) Distributes, transmits, or otherwise makes available to the public an image

1 of the individual's unclothed body; or

2 (c) Materially contributes to, directs, or facilitates any of the conduct set forth
3 in paragraphs (a) and (b) of this subsection with knowledge that the
4 individual or the holder of the property rights has not consented to the
5 conduct.

6 (5) A person who violates subsection (4) of this section shall be liable to the injured
7 person for ten thousand dollars (\$10,000) per violation per person, or the actual
8 damages suffered by the person, whichever is greater, plus any profits from the
9 unauthorized use of the image of the individual's unclothed body.

10 (6) (a) In establishing an amount of profits under subsection (5) of this section, the
11 injured party or parties shall be required only to present proof of the gross
12 revenue being either directly or indirectly attributable to the unauthorized
13 use. The person who violated this section shall be required to prove his or
14 her expenses deductible therefrom.

15 (b) Punitive damages, reasonable attorney's fees, and temporary or permanent
16 injunctive relief may also be awarded to the injured party or parties.

17 (7) During any period that an action under this section is pending, a court may order
18 the impoundment of any:

19 (a) Goods, merchandise, or other materials alleged to have been made or used
20 in violation of subsection (4) of this section; and

21 (b) Plates, molds, matrices, masters, tapes, negatives, or any other item from
22 which goods, merchandise, or other materials described in paragraph (a) of
23 this subsection may be manufactured or produced.

24 (8) To the extent the use of an image of an individual's unclothed body is protected
25 by the First Amendment to the Constitution of the United States, it shall not be a
26 violation if the use is:

27 (a) For literary works, theatrical works, musical compositions, film, radio, or

- 1 television programs;
- 2 (b) For material that has political or newsworthy value;
- 3 (c) An original work of fine art;
- 4 (d) Promotional material or an advertisement for a news-gathering
5 organization as defined in KRS 189.635(9)(b) that:
- 6 1. Uses all or part of a past edition of the news-gathering organization's
7 own broadcast or publication; and
- 8 2. Does not convey or reasonably suggest that an individual endorses the
9 news-gathering organization; or
- 10 (e) In an advertisement or commercial announcement for a work described in
11 this subsection.
- 12 (9) An action under this section may be brought only for the use of an image of an
13 individual's unclothed body who is domiciled within the Commonwealth, or in the
14 case of a deceased individual, who was domiciled in the Commonwealth at the
15 time of the individual's death.
- 16 (10) This section shall not be construed to:
- 17 (a) Limit any rights an individual may have under KRS 391.170 or any other
18 statutory or common law protections against the unauthorized use of an
19 individual's unclothed body; or
- 20 (b) Impose liability on:
- 21 1. An internet service provider or its affiliates or subsidiaries;
- 22 2. A general purpose search engine; or
- 23 3. A cloud service provider;
- 24 when acting in its capacity as a provider of those services.