

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 photograph, film, or video recording;*

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

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

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

22 *(f) "Person":*

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

27 *2. Includes nonprofit corporations, associations, educational and*

1 religious institutions, political parties, community, civic, legal, and  
2 commercial entities; and

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

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

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

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

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

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

18 (a) The agreement was in writing; and

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

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

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

26 (b) Distributes, transmits, or otherwise makes available to the public an image  
27 of the individual's unclothed body; or

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

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

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

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

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

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

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

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

26                    (a) *For literary works, theatrical works, musical compositions, film, radio, or*  
27                    *television programs;*

- 1        (b) For material that has political or newsworthy value;
- 2        (c) An original work of fine art;
- 3        (d) Promotional material or an advertisement for a news-gathering  
4            organization as defined in KRS 189.635(9)(b) that:
- 5            1. Uses all or part of a past edition of the news-gathering organization's  
6            own broadcast or publication; and
- 7            2. Does not convey or reasonably suggest that an individual endorses the  
8            news-gathering organization; or
- 9        (e) In an advertisement or commercial announcement for a work described in  
10           this subsection.
- 11       (9) This section shall apply to an act or event that occurs within the Commonwealth,  
12           regardless of an individual's domicile, residence, or citizenship.
- 13       (10) This section shall not be construed to limit any rights an individual may have  
14           under KRS 391.170 or any other statutory or common law providing protections  
15           against the unauthorized use of an individual's unclothed body.