

The public agency is required to redact and remove the PII within three business days of receipt of the request from any public posting or publication existing at the time the request is received to the extent practicable. If a public agency cannot redact and remove the PII within three business days; then it shall provide written notification to the public officer, within twenty-four hours of the failure to redact or remove the information, specifically identifying the information that was not redacted or removed and stating the reasons why redaction or removal was not practicable.

If the public officer has been convicted of a felony or a criminal offense against a minor, then this legislation will not protect his or her PII.

The legislation also creates a new section of KRS Chapter 411 (Rights of Action and Survival of Actions), allowing public officers or their immediate family members to file a civil action against a person who disseminates personally identifiable information in response to a decision or action, or to influence or impact any future action, taken by the public officer as part of his or her official duties and with the intent to intimidate, harass, threaten, or alarm. The dissemination would have to place the public officer or his or her immediate family member in reasonable fear of physical injury, or reasonable fear of harm to their property. If the civil suit is successful, then the public officer or his or her immediate family member may recover damages; including punitive damages, court costs, and reasonable attorney's fees.

Section 1 amends KRS 61.870 to add seven definitions, including that of "personally identifiable information" and "public officer". "Federal law enforcement officer" would mean a federal employee who has statutory authority to make arrests; who is authorized by the employer to carry firearms; and whose duties are primarily: engagement in or supervision of the prevention, detection, investigation, or the incarceration of any person for any violation of law and the protection of federal, state, local, or foreign government officials against threats to personal safety. "Immediate family member" would mean a spouse, child, parent, or person under the familial custody or care of a public officer; a person related by blood, law, or marriage to a public officer; or a person who lives in the same residence as a public officer. "Judicial officer" would mean: administrative law judge or member of the Workers' Compensation Board pursuant to KRS Chapter 342; federal justice, judge, or magistrate judge as defined in the Constitution of the United States or the United States Code; hearing officer, qualified to conduct administrative hearings pursuant to KRS Chapter 13B; justice, judge, trial commissioner, or domestic relations commissioner of the Kentucky Court of Justice; or Circuit Court clerk.

"Personally identifiable information" would mean biometric, health, or medical data, or insurance information; birth and marriage records; date of birth; financial account number or credit or debit card number; home or physical address, including any secondary or vacation address; any property tax or property ownership records; or any directions to or identifying photographs of any primary, secondary, or vacation residence; home, personal mobile, or direct personal telephone number to the individual; identification of any children of the individual under the age of eighteen; personal electronic mail addresses; photographs

of any vehicle personally owned, leased, or operated by the individual, including photographs of any license plates or vehicle registration; school, day care, or employment locations or assignments; social security number; or vehicle registration. With respect to the individual's home, personal mobile, or direct personal telephone number or personal electronic mail addresses; the bill provides that nothing in this section shall be construed to exclude from disclosure any record made in the course of performing an official duty regardless of the nature of the device used.

"Prosecutor" would mean: Attorney General or deputy or assistant attorney general; Commonwealth's attorney or assistant Commonwealth's attorney; county attorney or assistant county attorney; special prosecutor appointed by law or executive or judicial order; or United States attorney or assistant United States attorney. "Public defender" would have the same meaning as defending attorney, as defined in KRS 31.100.

"Public officer" would mean any current, former, or retired: sworn public peace officer; public safety officer; federal law enforcement officer; judicial officer; prosecutor; public defender; employee of a public agency and who is or was previously certified as a first responder under KRS 61.900, 61.902 to 61.930, or Chapter 311A, or whose employment duties include or did include law enforcement, emergency medical services, or firefighting activities; employee of the Cabinet for Health and Family Services whose duties include or did include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities; employee of a law enforcement agency who testifies or previously testified in a criminal case, including investigative analysts and lab technicians; corrections officer, jailer, probation and parole officer, juvenile probation officer, and juvenile detention officer; and person employed at emergency call centers in the state of Kentucky.

Section Two modifies KRS 61.878 to exclude public records containing PII of a public officer or his or her immediate family member, from the application of the Open Records Act, if that public officer has notified the public agency responsible for those records that he or she does not want the information to be made public. The PII would be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery. Notification by the public officer is valid for three years; may be renewed; and must include a written request that the information be excluded from disclosure, the names and information of the immediate family members whose information shall be excluded, and a letter from the public officer's employer verifying present or past employment in a public officer position.

Section Three creates a new section of the Open Records Act to establish procedures for public officers to request that their PII, or their immediate family members' PII, be made confidential and not publicly posted. Upon notification by a public officer, a public agency shall not post, repost, publish, or otherwise make known the PII of that public officer or his or her immediate family members. As in Section Two, notification must include a written request that the information be excluded from disclosure, the names and information of the immediate family members whose information shall be excluded, and a

letter from the public officer's employer verifying present or past employment in a public officer position. Any public officer who has requested that their information be made confidential may withdraw the request or permit release of their PII at any time. When a public agency receives a written request pursuant to the above, the agency shall redact and remove the PII within three business days of receipt of the request from any public posting or publication existing at the time the request is received to the extent practicable. If a public agency cannot redact and remove the PII within three business days, then it shall notify the public officer, in writing, within twenty-four hours of the failure to redact or remove the information, to specifically identify the information that was not redacted or removed, and state the reasons that redaction or removal was not practicable. These procedures are in addition to the protections provided under Section Two.

Section Three stipulates that the exemptions in this section are supplemental to the exemptions provided in Section Two of this Act and shall not be deemed to replace any exemptions or personal privacy protections provided in Section Two of this Act and any other exemption or personal privacy protections provided by law. Nothing in this section shall prevent a public agency from using PII as required to perform the routine functions of the agency or routine functions necessary to complete business transactions between consumers when the transaction involves a public officer or his or her immediate family members.

Section Four creates a new section of the Open Records Act to specify that any public officer who has been convicted of or entered a plea of guilty to any felony or criminal offense against a victim who is a minor as defined in KRS 17.500, and the immediate family members of that public officer, shall not be entitled to the protections provided in Section Two and Three of this Act.

Section Five creates a new section of KRS Chapter 411 to add four definitions and create a cause of action for public officers whose PII has been disseminated. "Dissemination" or "disseminating" would mean the public publishing, posting, or otherwise disclosing or selling of information, whether electronically, by print, or through any other medium, for other persons or entities to access or view, with no purpose of legitimate communication. "Immediate family member", "personally identifiable information", and "public officer" would have the same meaning as in Section One of this Act.

In addition to pursuing any other remedy provided by law; public officers or their immediate family members may file a civil action against a person; if that person disseminates the PII of the public officer or his or her immediate family member in response to a decision or action, or to influence or impact any future action, taken by the public officer as part of his or her official duties and with the intent to intimidate, harass, threaten, or alarm. The dissemination would have to place the public officer or his or her immediate family member in reasonable fear of physical injury, or reasonable fear of harm to their property.

Public officers, or their immediate family members, may recover damages, including punitive damages, court costs, and reasonable attorney's fees, from a person who has

disseminated their PII. The action may be filed in Circuit Court in the county where the alleged violation occurred, or where the public officer or his or her immediate family member resides. The section stipulates that nothing in it shall be construed to impose liability on a broadband Internet access service provider, a telecommunications service provider, an interconnected VoIP provider, or a mobile service provider as defined in 47 U.S.C. sec. 153, a commercial mobile service provider as defined in 47 U.S.C. sec. 332(d), or a cable operator as defined in 47 U.S.C. sec. 522, when acting in its capacity as a provider of those services.

Section Six provides the rationale for the emergency clause; affirming that whereas, personal information is easily published over the Internet and social media, and there has been an increase in death threats and deaths of judges and other public officials, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

As it is unknown how many public officers, or their immediate family members, will request the exemption from disclosure of PII; **the fiscal impact is indeterminable**. With regards to cities, the Kentucky League of Cities estimates that nearly 11,000 city employees within police, fire/EMS, and corrections departments plus around 17,000 volunteer firefighters would qualify as a public officer. KLC also referenced the 8,814 retired members, as of June 2021, in CERS Hazardous and the approximately 1,300 combined retirees and beneficiaries in Lexington's Policemen's and Firefighters' Retirement Fund and City Employees' Pension Fund. Some cities have their public safety staff in CERS Nonhazardous; therefore, a portion of retirees in that plan may also qualify as a public officer.

Dependent upon how one interprets the Section Three provision that "*Nothing in this section shall prevent a public agency from using PII as required to perform the routine functions of the agency*", the legislation may prevent localities from publishing certain delinquent taxpayers and/or selling all delinquent tax bills to a third party. If cities publish or sell a list of delinquent taxpayers, which they are not required to do; then, they usually do it annually. Therefore, it is possible that one may not consider publishing or selling a list of delinquent taxpayers a routine agency function.

With respect to county clerks, the legislation is anticipated to increase duties in already understaffed offices. With the various documents under their purview including those relating to marriages, voter data, and vehicle information; there are concerns about the ability to comply. For city clerks, the duties would increase more in smaller municipalities without staff specifically designated to handle only open records requests. In some municipalities, police departments, fire, and emergency management service departments handle their own open records requests and in others, those duties are assigned to city clerk personnel.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II, above, refers to the local government impact to the House Committee Substitute. Below is the difference between the GA version to the HCS version as it relates to the LM statement.

The following change from the GA version to the House Committee Substitute does not change the estimated fiscal impact.

Section One

Removes photographs of any vehicle identification numbers from the definition of “personally identifiable information.”

Data Source(s): Kentucky County Clerks Association, Kentucky Municipal Clerks Association, Kentucky League of Cities

Preparer: Katherine L. Halloran **Reviewer:** KHC **Date:** 3/24/22