

1 AN ACT relating to consumer privacy of personal information.

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 *As used in Sections 1 to 6 of this Act:*

6 *(1) (a) "Business" means a sole proprietorship, partnership, corporation, limited*
7 *liability company, association, or other entity, that is organized or operated*
8 *for commercial purposes that:*

9 *1. Satisfies one (1) or more of the following:*

10 *a. Has annual gross revenues in excess of twenty-five million*
11 *dollars (\$25,000,000);*

12 *b. Alone or in combination, annually buys, receives for the*
13 *business's commercial purposes, sells, or shares for commercial*
14 *purposes, alone or in combination, the personal information of*
15 *fifty thousand (50,000) or more consumers, households, or*
16 *devices; or*

17 *c. Derives fifty percent (50%) or more of its annual revenues from*
18 *selling consumers' personal information;*

19 *2. Collects and maintains personal information from consumers who*
20 *reside in Kentucky and use or visit the Internet Web site or online*
21 *service; and*

22 *3. Purposefully directs its activities toward Kentucky, consummates some*
23 *transaction with Kentucky or a resident thereof, purposefully avails*
24 *itself of the privilege of conducting activities in Kentucky, or otherwise*
25 *engages in any activity that constitutes sufficient nexus with Kentucky*
26 *to satisfy the requirements of the United States Constitution.*

27 *(b) "Business" does not include:*

- 1 1. A third party that operates, hosts, or manages an Internet Web site or
2 online service on behalf of its owner or processes information on
3 behalf of the owner of an Internet Web site or online service;
- 4 2. A financial institution or an affiliate of a financial institution that is
5 subject to the provisions of the Gramm-Leach-Bliley Act of 1999, Pub.
6 L. No. 106-102, or the Fair Credit Reporting Act, 15 U.S.C. secs. 6801
7 et seq.;
- 8 3. An entity that is subject to the provisions of the Health Insurance
9 Portability and Accountability Act of 1996, Pub. L. No. 104-191, as
10 amended, and the regulations adopted pursuant thereto; or
- 11 4. A manufacturer of a motor vehicle or a person who repairs or services
12 a motor vehicle who collects, generates, records, or stores covered
13 information that is:
- 14 a. Retrieved from a motor vehicle in connection with a technology
15 or service related to the motor vehicle; or
- 16 b. Provided by a consumer in connection with a subscription or
17 registration for a technology or service related to the motor
18 vehicle;
- 19 (2) "Collects" means buying, renting, gathering, obtaining, receiving, or accessing
20 any personal information pertaining to a consumer by any means. This includes
21 receiving information from the consumer, either actively or passively, or by
22 observing the consumer's behavior;
- 23 (3) "Consumer" means a person who seeks or acquires, by purchase or lease, any
24 good, service, money, or credit for personal, family, or household purposes;
- 25 (4) "Personal information" has the same meaning as "personally identifiable
26 information" in KRS 365.720(4) and also includes geolocation data;
- 27 (5) (a) "Sale" or "sell" means selling, renting, disclosing, disseminating, making

1 available, transferring, or otherwise communicating orally, in writing, or by
2 electronic or other means, a consumer's personal information by the
3 business to another business or a third party for monetary or other valuable
4 consideration.

5 (b) "Sale" does not include:

6 1. The disclosure of personal information by a business to a person with
7 whom the consumer has a direct relationship for the purposes of
8 providing a product or service requested by the consumer;

9 2. Uses or shares of an identifier for a consumer who has opted out of
10 the sale of the consumer's personal information for the purposes of
11 alerting third parties that the consumer has opted out of the sale of the
12 consumer's personal information;

13 3. A disclosure where the consumer directs the business to intentionally
14 disclose personal information or intentionally interact with a third
15 party, so long as the third party does not also sell the personal
16 information, unless that disclosure would be consistent with Sections
17 1 to 6 of this Act. An intentional interaction occurs when the
18 consumer intends to interact with the third party via one (1) or more
19 deliberate interactions. Hovering over, muting, pausing, or closing a
20 given piece of content does not constitute a consumer's intent to
21 interact with a third party; or

22 4. The disclosure or transfer of personal information to a person as an
23 asset that is part of a merger, acquisition, bankruptcy, or other
24 transaction in which the person assumes control of all or part of the
25 assets of the operator; and

26 (6) "Verified request" means a request submitted by a consumer for the purpose set
27 forth in Section 3 of this Act that a business can reasonably verify the

1 authenticity of and the identity of the consumer using commercially reasonable
2 means.

3 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) A business shall make available, in a manner reasonably calculated to be
6 accessible by consumers whose personal information the business collects
7 through its Internet Web site or online service, a notice that:

8 (a) Identifies the categories of personal information that the business collects
9 through its Internet Web site or online service about consumers who use or
10 visit the Internet Web site or online service, the purposes for which the
11 categories of personal information may be used, and the categories of third
12 parties with whom the business may share such personal information;

13 (b) Provides a description of the process, if any such process exists, for an
14 individual consumer who uses or visits the Internet Web site or online
15 service to review and request changes to any of his or her personal
16 information that is collected through the Internet Web site or online
17 service;

18 (c) Describes the process by which the business notifies consumers who use or
19 visit the Internet Web site or online service of material changes to the notice
20 required to be made available by this subsection;

21 (d) Discloses whether a third party may collect personal information about an
22 individual consumer's online activities over time and across different
23 Internet Web sites or online services when the consumer uses the Internet
24 Web site or online service of the business; and

25 (e) States the effective date of the notice.

26 (2) A business may remedy any failure to comply with the provisions of subsection
27 (1) of this section within thirty (30) days after being informed of such a failure.

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

3 (1) A consumer shall have the right, at any time, to submit a verified request to a
4 business directing the business not to make any sale of the consumer's personal
5 information the business has collected or will collect about the consumer. This
6 right may be referred to as the "right to opt-out."

7 (2) Each business shall provide notice to consumers that personal information may
8 be sold and that consumers have the right to opt-out of the sale of their personal
9 information. This notice shall:

10 (a) Provide a clear and conspicuous link on the business's Internet homepage,
11 titled "Do Not Sell My Personal Information," that directs consumers to an
12 Internet Web page that enables a consumer, or a person authorized by the
13 consumer, to submit a verified request to opt-out of the sale of the
14 consumer's personal information. A business shall not require a consumer
15 to create an account in order to direct the business not to sell the
16 consumer's personal information; and

17 (b) Include a description of a consumer's right to opt-out along with a separate
18 link to the "Do Not Sell My Personal Information" Internet Web page in:

19 1. Its online privacy policy if the business has an online privacy policy;

20 and

21 2. Any Kentucky-specific description of consumers' privacy rights.

22 (3) A business is not required to include the required links and text on the homepage
23 for the public generally as required in subsection (2) of this section if a business
24 maintains a separate and additional homepage that is dedicated to Kentucky
25 consumers and includes the required links and text, and the business takes
26 reasonable steps to ensure that Kentucky consumers are directed to the homepage
27 for Kentucky consumers and not the homepage made available to the public

1 generally.

2 (4) A business that has received a verified request submitted by a consumer pursuant
3 to subsection (1) of this section shall not make any sale of any covered
4 information the operator has collected or will collect about that consumer.

5 (5) A business shall respond to a verified request submitted by a consumer pursuant
6 to subsection (1) of this section within sixty (60) days after receipt thereof. A
7 business may extend by not more than thirty (30) days the period prescribed by
8 this subsection if the business determines that such an extension is reasonably
9 necessary. A business who extends the period prescribed by this subsection shall
10 notify the consumer of such an extension.

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

13 A business shall not sell the personal information of a consumer if the business has
14 actual knowledge that the consumer is less than sixteen (16) years of age, unless the
15 consumer, in the case of a consumer at least thirteen (13) years of age and less than
16 sixteen (16) years of age, or the consumer's parent or guardian, in the case of
17 consumers who are less than thirteen (13) years of age, has affirmatively authorized
18 the sale of the consumer's personal information. A business that willfully disregards
19 the consumer's age shall be deemed to have had actual knowledge of the consumer's
20 age. This right may be referred to as the "right to opt-in."

21 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO
22 READ AS FOLLOWS:

23 A business shall not discriminate against a consumer because the consumer exercised
24 the right to opt-out of the sale of his or her personal information by:

25 (1) Denying goods or services to the consumer;

26 (2) Charging different prices or rates for goods or services, including through the
27 use of discounts or other benefits or imposing penalties;

- 1 (3) Providing a different level or quality of goods or services to the consumer;
- 2 (4) Suggesting that the consumer will receive a different price or rate for goods or
- 3 services or a different level or quality of goods or services; or
- 4 (5) Discriminating through any other means because a consumer exercised his or
- 5 her right to opt-out.

6 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO
7 READ AS FOLLOWS:

- 8 (1) The Attorney General shall enforce Sections 2 to 5 of this Act.
- 9 (2) If the Attorney General has reason to believe that a business, either directly or
- 10 indirectly, has violated or is violating Sections 2 to 5 of this Act, the Attorney
- 11 General may institute an appropriate legal proceeding against the business. Any
- 12 business that violates Sections 2 to 5 of this Act shall be subject to an injunction
- 13 and liable for a civil penalty of not more than five thousand dollars (\$5,000) for
- 14 each violation, which shall be assessed and recovered in a civil action brought by
- 15 the Attorney General.