

1 AN ACT relating to the protection of children using social media.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 12 of this Act:*

6 *(1) "Digital service" means a website, an application, a program, or software that*
7 *collects or processes personally identifying information using internet*
8 *connectivity;*

9 *(2) "Digital service provider" means a person who:*

10 *(a) Owns or operates a digital service; and*

11 *(b) Determines the means or purpose of collecting and processing the*
12 *personally identifying information of users of the digital services;*

13 *(3) "Known minor" means an individual that a digital service provider knows to be a*
14 *minor;*

15 *(4) "Matter" has the same meaning as in KRS 531.010;*

16 *(5) "Minor" means a child who is younger than eighteen (18) years of age, who is*
17 *not otherwise emancipated;*

18 *(6) "Obscene" has the same meaning as in KRS 531.010;*

19 *(7) "Personally identifying information" has the same meaning as in KRS 525.085;*
20 *and*

21 *(8) "Verified caregiver" means the parent or guardian of a known minor whose*
22 *identity and relationship to the minor have been verified by a digital service*
23 *provider under Section 9 of this Act.*

24 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
25 READ AS FOLLOWS:

26 *(1) Sections 1 to 12 of this Act:*

27 *(a) Apply only to a digital service provider who provides a digital service that:*

- 1 1. Connects users in a manner that allows users to socially interact with
2 other users on the digital service;
- 3 2. Allows a user to create a public or semi-public profile for purposes of
4 signing into and using the digital service; and
- 5 3. Allows a user to create or post content that may be viewed by other
6 users of the digital service, including sharing content on a message
7 board, chat room, landing page, video channel, or feed that presents to
8 a user content created and posted by other users; and

9 (b) Do not apply to any:

- 10 1. State agency or political subdivision of this state;
- 11 2. Financial institution, including its affiliate, or data subject to Title V
12 of the Federal Gramm-Leach-Bliley Act, 15 U.S.C. sec. 6801 et seq.;
- 13 3. Covered entity or business associate governed by the privacy, security,
14 and breach notification rules issued by the United States Department
15 of Health and Human Services, 45 C.F.R. pts. 160 and 164;
- 16 4. Small business, as determined under the applicable United States
17 Small Business Administration regulations in effect on the effective
18 date of this Act;
- 19 5. Institution of higher education;
- 20 6. Digital service provider that processes or maintains user data in
21 connection with the employment, promotion, reassignment, or
22 retention of the user as an employee or independent contractor, to the
23 extent that the user's data is processed or maintained for that purpose;
- 24 7. Digital service provider that provides career development
25 opportunities, including professional networking, job skills, learning
26 certifications, and job posting and application services;
- 27 8. Educational agency or institution that is subject to the Family

1 *Educational Rights and Privacy Act, 20 U.S.C. sec. 1232g, that*
 2 *operates a digital service and primarily provides educational services*
 3 *to students or other educational institutions;*

4 *9. Digital service provider's provision of a digital service that facilitates*
 5 *email or direct messaging services, to the extent the digital service*
 6 *facilitates those services;*

7 *10. Media company that exclusively offers subscription content in which*
 8 *users follow or subscribe unilaterally and whose platforms' primary*
 9 *purpose is not social interaction; or*

10 *11. Digital service provider's provision of a digital service that:*
 11 *a. Primarily functions to provide a user with access to news, sports,*
 12 *commerce, or content primarily generated or selected by the*
 13 *digital service provider; and*
 14 *b. Includes any chat, comment, or other interactive functionality*
 15 *incidental to the digital service.*

16 *(2) An internet service provider, internet service provider's affiliate or subsidiary,*
 17 *search engine, or cloud service provider shall not be considered a digital service*
 18 *provider or to offer a digital service to the extent it provides access or connection,*
 19 *including through transmission, download, intermediate storage, access software,*
 20 *or other service, to an internet website or to other information or content on:*

21 *(a) The internet; or*

22 *(b) A facility, system, or network not under the control of the internet service*
 23 *provider, provider's affiliate or subsidiary, search engine, or cloud service*
 24 *provider.*

25 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
 26 READ AS FOLLOWS:

27 *(1) A digital service provider shall not enter into an agreement with an individual to*

1 create an account with a digital service unless the individual has registered his or
2 her age with the digital service provider.

3 (2) An individual who registers his or her age as younger than eighteen (18) years of
4 age shall be considered a known minor until after he or she reaches eighteen (18)
5 years of age or provides the digital service provider with proof of emancipation.

6 (3) A digital service provider shall not allow an individual who registers his or her
7 age to alter that registered age unless the alteration process involves a
8 commercially reasonable review process.

9 (4) Absent proof of emancipation, a minor shall be considered a known minor if:

10 (a) The minor registers his or her age as younger than eighteen (18) years of
11 age; or

12 (b) The minor's verified caregiver notifies the digital service provider that the
13 minor is younger than eighteen (18) years of age.

14 (5) If a minor is a known minor, a digital service provider shall:

15 (a) Be considered to have actual knowledge that the minor is younger than
16 eighteen (18) years of age; and

17 (b) Treat the minor as a known minor under Sections 1 to 12 of this Act.

18 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
19 READ AS FOLLOWS:

20 (1) Unless a verified caregiver provides otherwise under Section 10 of this Act, a
21 digital service provider that enters into an agreement with a known minor for
22 access to a digital service shall:

23 (a) Limit its collection of the known minor's personally identifying information
24 to information reasonably necessary to provide the digital service; and

25 (b) Limit its use of the known minor's personally identifying information to the
26 purpose for which the information was collected.

27 (2) Unless a verified caregiver provides otherwise under Section 10 of this Act, a

1 digital service provider that enters into an agreement with a known minor for
2 access to a digital service shall not:

3 (a) Allow the known minor to make purchases or engage in other financial
4 transactions through the digital service, apart from items protected by the
5 First Amendment of the Constitution of the United States;

6 (b) Share, disclose, or sell the known minor's personally identifying
7 information;

8 (c) Use the digital service to collect the known minor's precise geolocation
9 data; or

10 (d) Use the digital service to display targeted advertising to the known minor.

11 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
12 READ AS FOLLOWS:

13 (1) In relation to a known minor's use of a digital service, a digital service provider
14 shall develop and implement internal controls to prevent the known minor's
15 exposure to obscene matter.

16 (2) Internal controls developed under this section:

17 (a) Shall include:

18 1. Using commercially reasonable efforts to prevent targeted displays of
19 obscene material to known minors;

20 2. Using filtering technology and other protocols to block obscene
21 matter;

22 3. Using hash sharing technology and other protocols to identify
23 recurring obscene matter;

24 4. Using commercially reasonable efforts to identify keywords used for
25 filter evasion, including identifiable misspellings, hashtags, or
26 identifiable homoglyphs;

27 5. Undertaking standard human-performed monitoring reviews to ensure

- 1 efficacy of filtering technology; and
- 2 6. Making available to users a comprehensive description of the
- 3 categories of obscene matter that will be filtered; and
- 4 (b) May include:
- 5 1. Engaging a third party to rigorously review the digital service
- 6 provider's content filtering technology;
- 7 2. Participating in industry-specific partnerships to share best practices
- 8 in preventing access to obscene matter; and
- 9 3. Conducting periodic independent audits to ensure:
- 10 a. Continued compliance with digital service provider's strategy;
- 11 and
- 12 b. Efficacy of filtering technology and protocols used by the digital
- 13 service provider.

14 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO

15 READ AS FOLLOWS:

- 16 (1) A digital service provider shall create and provide to a verified caregiver tools to
- 17 allow the verified caregiver to supervise the verified caregiver's known minor's
- 18 use of a digital service.
- 19 (2) Tools provided under this section shall allow a verified caregiver to:
- 20 (a) Control the known minor's privacy and account settings;
- 21 (b) Alter the duties of a digital service provider under Section 4 of this Act with
- 22 regard to the verified caregiver's known minor;
- 23 (c) Restrict the ability of the known minor to make purchases or engage in
- 24 financial transactions if the verified caregiver alters the duty of a digital
- 25 service provider under subsection (2)(a) of Section 4 this Act;
- 26 (d) Monitor and limit the amount of time the known minor spends using the
- 27 digital service; and

1 (e) Deactivate the known minor's account either temporarily or permanently.

2 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
3 READ AS FOLLOWS:

4 (1) A digital service provider shall make a commercially reasonable effort to prevent
5 advertisers on the digital service provider's digital service from targeting a known
6 minor with advertisements that facilitate, promote, or offer a product, service, or
7 activity that is unlawful for a minor in this state to use or engage in.

8 (2) A digital service provider that uses algorithms to automate the suggestion,
9 promotion, or ranking of information to known minors on the digital service
10 shall:

11 (a) Make a commercially reasonable effort to ensure that the algorithm does
12 not interfere with the digital service provider's duties under Section 5 of this
13 Act; and

14 (b) Disclose in the digital service provider's terms of service, privacy policy, or
15 similar document, in a clear and accessible manner, an overview of:

16 1. The manner in which the digital service uses algorithms to provide
17 information or content;

18 2. The manner in which algorithms promote, rank, or filter information
19 or content; and

20 3. The personally identifying information used as inputs to provide
21 information or content.

22 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
23 READ AS FOLLOWS:

24 Nothing in Sections 1 to 12 of this Act shall be construed to prohibit a digital service
25 provider from collecting, processing, or sharing a known minor's personal identifying
26 information in a manner necessary to:

27 (1) Comply with a state or federal law;

- 1 (2) Comply with a law enforcement investigation;
2 (3) Detect, block, or prevent the distribution of unlawful or obscene matter to a
3 known minor;
4 (4) Block or filter spam;
5 (5) Prevent criminal activity; or
6 (6) Protect the security of a digital service.

7 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
8 READ AS FOLLOWS:

- 9 (1) A digital service provider shall verify, using a commercially reasonable method
10 and for each individual seeking to perform an action on a digital service as a
11 known minor's verified caregiver:
12 (a) The individual's identity; and
13 (b) The relationship of the individual to the known minor.
14 (2) A digital service provider shall provide a process by which an individual who has
15 been verified under this section as the verified caregiver of a known minor may
16 participate in the digital service as the known minor's verified caregiver.
17 (3) A digital service provider or third party shall not retain any personally identifying
18 information after making a decision under subsection (1) of this section.

19 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
20 READ AS FOLLOWS:

- 21 (1) A verified caregiver may alter the duties of a digital service provider under
22 Section 4 of this Act with regard to the verified caregiver's known minor.
23 (2) A verified caregiver may supervise the verified caregiver's known minor's use of a
24 digital service using tools provided by a digital service provider under Section 6 of
25 this Act.
26 (3) (a) A known minor's verified caregiver may submit a request to a digital service
27 provider to:

1 1. Review and download any personally identifying information
2 associated with the known minor in the possession of the digital
3 service provider; and

4 2. Delete any personally identifying information associated with the
5 known minor collected or processed by the digital service provider.

6 (b) A digital service provider shall establish and make available on its digital
7 service a method by which a verified caregiver may make a request for
8 access under this subsection.

9 (4) If a known minor is in the temporary custody of the Department for Community
10 Based Services, the department may designate the minor's parent or guardian, or
11 a member of the department's staff to perform the functions of the known minor's
12 verified caregiver under Sections 1 to 12 of this Act.

13 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
14 READ AS FOLLOWS:

15 (1) A violation of Sections 1 to 12 of this Act shall constitute an unfair, false,
16 misleading, or deceptive act or practice in the conduct of trade or commerce
17 under KRS 367.170.

18 (2) Nothing in Sections 1 to 12 of this Act shall be construed to require a digital
19 service provider to disclose a trade secret as defined in KRS 365.880.

20 (3) All of the remedies, powers, and duties provided to the Attorney General by the
21 Consumer Protection Act, KRS 367.110 to 367.300, appertaining to acts declared
22 unlawful by KRS 367.170 shall apply with equal force and effect to acts or
23 practices declared unlawful by Sections 1 to 12 of this Act.

24 (4) Nothing in Sections 1 to 12 of this Act shall be construed to limit or restrict the
25 exercise of powers or the performance of duties of the Attorney General
26 authorized under any provision of law.

27 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) Except as provided in this section, Sections 1 to 12 of this Act shall not be
3 construed as providing a basis for, or being subject to, a private right of action for
4 a violation of Sections 1 to 12 of this Act.

5 (2) If a digital service provider violates Sections 1 to 12 of this Act, the parent or
6 guardian of a known minor affected by that violation may bring a cause of action
7 seeking:

8 (a) A declaratory judgment under KRS 418.055; or

9 (b) An injunction against the digital service provider.

10 (3) A court shall not certify an action brought under this section as a class action.

11 ➔Section 13. If any provision of this Act or the application thereof to any person
12 or circumstance is held invalid, the invalidity shall not affect other provisions or
13 applications of the Act that can be given effect without the invalid provision or
14 application, and to this end the provisions of this Act are severable.