

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  
12 person or circumstance is held invalid, the invalidity shall not affect other provisions  
13 or 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.