

1 AN ACT relating to addictive online platforms.

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 8 of this Act:*

6 *(1) "Account holder" means a natural person who is a resident of the*
7 *Commonwealth of Kentucky who has an account or a profile with a unique*
8 *identifier on a covered social media platform during any period in which a*
9 *covered social media platform knows or should reasonably know the person is*
10 *physically located in Kentucky;*

11 *(2) "Addictive feature" includes:*

12 *(a) Infinite scrolling, including:*

13 *1. Continuously loading content, or content that loads as the account*
14 *holder scrolls down the page without the need to open a separate page;*

15 *or*

16 *2. Seamless content, or the use of pages with no visible or apparent end*
17 *or page breaks;*

18 *(b) Display of a profile-based feed;*

19 *(c) Push notifications, whether audible, visual, or tactile:*

20 *1. Designed to:*

21 *a. Call the attention of the account holder to newly posted content*
22 *or to user responses to content posted by the account holder; or*

23 *b. Inform the account holder about other specific activities or*
24 *events related to the account holder's account; and*

25 *2. Not including notifications for the purposes of alerting the account*
26 *holder to incoming calls, text messages, email messages, or similar*
27 *messages sent by human contacts and delivered by means of any*

1 application;

2 (d) Autoplay video or video that begins to play without the account holder first
3 clicking on the video or on a play button for that video;

4 (e) Display of personal metrics that indicate the number of times other users
5 have clicked a button or taken other action to indicate their reaction to
6 content posted by the account holder or have shared or reposted content
7 posted by the account holder; and

8 (f) Display of awards, badges, tiers, or any form of recognition of the account
9 holder based on hours spent by the account holder on the social media
10 platform, numbers of followers, numbers of postings, frequency or
11 regularity of postings, or any other metric of usage or performance on the
12 social media platform;

13 (3) "Child" means an individual under the age of sixteen (16);

14 (4) "Covered social media platform" means a social media platform that collectively
15 generated at least one billion dollars (\$1,000,000,000) in advertising revenues
16 annually, worldwide, in one (1) or more of the preceding three (3) years;

17 (5) "First trigger date" means, with respect to each account holder and each covered
18 social media platform, the date upon which the account holder has been on the
19 covered social media platform for twenty-five (25) hours or more within a six (6)
20 month period following the effective date of this Act;

21 (6) "Matter harmful to minors" has the same meaning as in KRS 436.001;

22 (7) "Minor" means an individual under the age of eighteen (18);

23 (8) "Notice to a parent" has the same meaning as established in the Children's
24 Online Privacy Protection Act, 15 U.S.C. sec. 6501 et seq., and 16 C.F.R. sec.
25 312.4;

26 (9) "Paid commercial advertising" is advertising;

27 (a) For which the social media platform receives any compensation in return

1 for displaying the advertising; and

2 (b) That seeks to encourage the account holder to:

3 1. Purchase a product or service or otherwise engage in a commercial
4 transaction; or

5 2. Follow a link to a website that encourages the account holder to
6 engage in a commercial transaction;

7 (10) "Parent" includes any legal guardian of a child resident of the Commonwealth
8 of Kentucky;

9 (11) "Personal information":

10 (a) Means:

11 1. Information about an account holder collected online that comprises
12 personal information as defined in the Children's Online Privacy
13 Protection Act, 15 U.S.C. sec. 6501(8);

14 2. Any record of or information derived from online activity or history,
15 search history, or online communications of an account holder with
16 respect to any application, website, or social media platform;

17 3. Any photograph or biometric information that is used or could
18 reasonably be used to identify the account holder, including but not
19 limited to fingerprints, voiceprints, iris or retina imagery scans, facial
20 templates, and gait imagery or metric; or

21 4. Any geolocation information associated with an account holder or
22 with a device of an account holder; and

23 (b) Does not include:

24 1. An express search term, request, or selection submitted by the account
25 holder during the current session on the covered social media
26 platform;

27 2. An identifier used solely for the purpose of directing personal

1 communications to or from the account holder; or

2 3. Information that comprises account holder-selected or parent-selected
3 settings relating to privacy, accessibility, or blocking of age-
4 inappropriate content, or technical information concerning the
5 account holder's device;

6 (12) "Profile-based paid commercial advertising":

7 (a) Means paid commercial advertising that has been selected or prioritized for
8 display to an account holder based on personal information of the account
9 holder; and

10 (b) Does not include profile-based paid commercial advertising if that selection
11 process considers information about or an estimate of the age of the
12 account holder solely for the purpose of excluding advertisements which by
13 law or policy are not suitable for presentation to a child;

14 (13) (a) "Profile-based feed":

15 1. Means any form of automated processing performed on personal data
16 of an account holder that has been selected or prioritized by the Social
17 Media Platform for display to an account holder; and

18 2. Does not include content feed created by a third party that is displayed
19 to an account holder who has taken an affirmative step to select the
20 third party's content for inclusion in the account holder's displayed
21 feed, including but not limited to following, friending, or engaging in
22 a similar action with a third party for display to the account holder
23 based on personal information.

24 (b) Certain content from the feed of an account holder based on information to
25 estimate the age of an account holder, solely for the purpose of excluding
26 content which is:

27 1. A matter harmful to minors; or

1 2. By policy of the covered social media platform, not suitable for
2 presentation to children of that age;
3 shall not render that feed a profile-based feed.

4 (14) "Second trigger date" means, with respect to each account holder and each
5 covered social media platform, the date upon which the account holder has been
6 on the covered social media platform for fifty (50) hours or more within a six (6)
7 month period following the effective date of this Act;

8 (15) "Social media platform" has the same meaning as in KRS 17. 544; and

9 (16) "Verifiable parental consent" has the same meaning as in 15 U.S.C sec. 6501(9)
10 and implementing regulations at 16 C.F.R sec. 312.5, with the added requirement
11 that the covered social media platform has retained documentation sufficient to
12 reasonably establish that it has obtained verifiable parental consent within the
13 meaning of those provisions.

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

16 (1) (a) Within fourteen (14) days of the first trigger date, the covered social media
17 platform shall use reasonable means and efforts, taking into consideration
18 available technology and the data in the possession of the covered social
19 media platform, to estimate the age of the account holder.

20 (b) If the covered social media platform is able to conclude with eighty percent
21 (80%) confidence that the account holder is over fifteen (15) years of age,
22 the covered social media platform shall treat the account holder as an
23 individual other than a child. Otherwise, the covered social media platform
24 shall treat the account holder as a child for purposes of Sections 1 to 8 of
25 this Act.

26 (2) (a) Within fourteen (14) days of the second trigger date, the covered social
27 media platform shall use reasonable means and efforts to revise its estimate

1 of the account holder's age.

2 (b) If the covered social media platform is able to conclude with ninety percent
3 (90%) confidence that the account holder is over fifteen (15) years of age,
4 the covered social media platform may treat the account holder as an
5 individual other than a child. Otherwise, the covered social media platform
6 shall treat the account holder as a child for purposes of Sections 1 to 8 of
7 this Act.

8 (3) A covered social media platform shall update its estimate of the age of each
9 account holder after every additional one hundred (100) hours spent by the
10 account holder on the platform, or as often as the covered social media platform
11 applies any form of data analytics or artificial intelligence to update its estimate
12 of any other demographic characteristic of the account holder for any reason,
13 whichever period is shorter.

14 (4) This section shall not be construed to create any duty on the part of a covered
15 social media platform to request, collect, or retain any information from or about
16 any account holder. The age estimate required by this section shall be derived
17 based on information collected and retained in the ordinary course of operation
18 of the covered social media platform.

19 (5) A covered social media platform shall not have any obligation under Sections 1 to
20 8 of this Act to estimate the age of an account holder or take any action with
21 respect to any account if the account holder had the account with the covered
22 social media platform continuously for at least seven (7) years prior to the
23 effective date of this Act.

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

26 (1) A covered social media platform shall require any applicant for an account to
27 provide his or her birth date as part of the account application process, and may

1 not provide any default birth date when requesting that information.

2 (2) A covered social media platform shall not create or maintain an account for a
3 child, or change the terms and conditions of an account for a child, without first
4 obtaining verifiable parental consent. Information collected for the purpose of
5 obtaining verifiable parental consent shall not be used for any purpose other than
6 obtaining verifiable parental consent and shall be deleted immediately after an
7 attempt to obtain verifiable parental consent, except to the extent necessary to
8 comply with any other applicable state or federal law or regulation.

9 (3) An account for a child shall have all privacy settings set by default at the most
10 private level. A covered social media platform shall not change the privacy
11 settings of an account of a child without first obtaining verifiable parental
12 consent for the change until the account holder is no longer a child.

13 (4) In the course of obtaining verifiable parental consent for the establishment or
14 continuation of an account for a child, a covered social media platform shall
15 prominently provide and explain an option for a parent to make his or her
16 consent conditional on receipt by the parent of a separate password that enables
17 the parent to:

18 (a) Monitor the amount of time the child spends using the covered social media
19 platform;

20 (b) Set daily and weekly time limits on use of the covered social media platform;
21 and

22 (c) Set limits on the time of day when the covered social media platform can be
23 accessed by the child.

24 (5) A covered social media platform shall not present addictive features in the display
25 or feed of any child.

26 (6) A covered social medial platform shall not present profile-based paid commercial
27 advertising in the display or feed of any child.

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

3 (1) A covered social media platform shall terminate an account if it concludes, or
4 obtains information from which it should reasonably conclude pursuant to its
5 obligations under Section 2 of this Act, that the account holder is a child, unless
6 verifiable parental consent has been obtained for the account.

7 (2) A covered social media platform shall terminate an account of a minor within
8 seven (7) days after a request for termination from the account holder.

9 (3) A covered social media platform shall terminate the account of a minor within
10 fourteen (14) days after receipt of a request for termination from a parent of the
11 minor. Upon receipt of a request for termination, the covered social media
12 platform shall verify that the requesting party is a parent of the account holder by
13 the verification means used by the covered social media platform for ascertaining
14 the validity of the verifiable parental consent.

15 (4) A covered social media platform shall provide clear, simple, and efficient means
16 for the parent of any minor to request termination of any account of a minor.

17 (5) If a covered social media platform makes a determination that it must terminate
18 an account because the account holder has been classified as a child and
19 verifiable parental consent has not been obtained, the covered social media
20 platform shall notify the account holder of its intent to terminate the account
21 within seven (7) days of making the determination and shall provide the reason
22 for the termination. The account holder shall have thirty (30) days from the date
23 of the notice to dispute the age classification and complete an age verification
24 process, or to provide verifiable parental consent to the covered social media
25 platform.

26 (6) If an account holder disputes his or her classification as a child, a covered social
27 media platform may rely on any commercially reasonable age verification process

1 to resolve the dispute. A covered social media platform shall make a reasonable
2 determination within thirty (30) days of the completion of the age verification
3 process. If a covered social media platform concludes it is obligated to terminate
4 an account, it shall terminate that account within seven (7) days of that
5 determination.

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

8 Sections 1 to 8 of this Act shall not be construed to limit in any way beyond any limits
9 imposed by other law the:

10 (1) Content parents may show their children; or

11 (2) Results an online search engine may return in response to a query by a child.

12 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
13 READ AS FOLLOWS:

14 (1) If a covered social media platform permits a child to open an account or continue
15 to be an account holder without parental consent sufficient for the formation of a
16 binding contract with a minor under ordinary principles of contract law under
17 the laws of the Commonwealth of Kentucky, any contract pertaining to the
18 account is invalid and unenforceable as contrary to public policy, including but
19 not limited to any arbitration provision, limitation of liability, or limitation of
20 remedies, without regard to whether the covered social media platform had actual
21 or constructive knowledge that the account holder was a child.

22 (2) A child or parent shall have a private right of action for declaratory or injunctive
23 relief, damages, including harm to mental health and emotional distress, court
24 costs, reasonable attorney's fees, and any other appropriate relief as a result of
25 any negligent, reckless, or intentional violation of Sections 1 to 8 of this Act.

26 (3) A covered social media platform that recklessly or intentionally violates any
27 provision of Sections 1 to 8 of this Act shall be liable to the child or the parent in

1 an amount equal to or greater than ten thousand dollars (\$10,000) or the actual
2 damages established at trial.

3 (4) A covered social media platform shall not be liable for any violation of Sections 1
4 to 8 of this Act if it has used reasonable means and efforts, taking into
5 consideration available technology and any data in possession of the covered
6 social media platform, to comply with the requirements of Sections 1 to 8 of this
7 Act.

8 (5) (a) A civil action for damages for a violation of Sections 1 to 8 of this Act shall
9 be brought within three (3) years of the date the plaintiff knew or
10 reasonably should have known of the alleged violation.

11 (b) The limitation period for this action shall be tolled during the minority of
12 the plaintiff pursuant to KRS 413.170.

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

15 (1) Any waiver or limitation of any prohibition, limitation, requirement, or right to
16 remedies established by Sections 1 to 8 of this Act is unlawful, contrary to public
17 policy, void ab initio, and of no effect, and a court or arbitrator shall not enforce
18 or give effect to any waiver, notwithstanding any choice of law provision in a
19 contract.

20 (2) If any provision of Sections 1 to 8 of this Act or the application thereof to any
21 person or circumstance is held invalid, the invalidity shall not affect other
22 provisions or applications of Sections 1 to 8 of this Act that can be given effect
23 without the invalid provision or application, and to this end the provisions of
24 Sections 1 to 8 of this Act are severable.

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

27 (1) Any violation of Sections 1 to 8 of this Act shall be considered an unlawful

- 1 practice under KRS 367.170. The Attorney General may enforce Sections 1 to 8
2 of this Act by bringing an action in the name of the Commonwealth of Kentucky
3 or on behalf of persons residing in this Commonwealth. The Attorney General
4 shall have all powers and duties granted under KRS Chapter 15 to investigate and
5 prosecute any violation of Sections 1 to 8 of this Act. The Attorney General may
6 demand any information, documentary material, or physical evidence from any
7 covered social media platform believed to be engaged in, or about to engage in,
8 any violation of Sections 1 to 8 of this Act.
- 9 (2) Prior to initiating any action for violation of Sections 1 to 8 of this Act, the
10 Attorney General shall provide a covered social media platform thirty (30) days
11 written notice identifying the specific provisions of Sections 1 to 8 of this Act that
12 the Attorney General alleges have been violated. If the covered social media
13 platform cures the noticed violation within thirty (30) days and provides the
14 Attorney General an express written statement that the alleged violations have
15 been cured and that no further violations will occur, an action for damages shall
16 not be initiated against the controller or processor.
- 17 (3) If the covered social media platform continues to violate Sections 1 to 8 of this
18 Act following the cure period or breaches an express written statement provided
19 to the Attorney General under subsection (2) of this section, the Attorney General
20 may initiate a civil action and seek damages for up to five thousand dollars
21 (\$5,000) for each continued violation.
- 22 (4) Any covered social media platform that intentionally or recklessly violates
23 Sections 1 to 8 of this Act shall be assessed a civil penalty of not more than five
24 thousand dollars (\$5,000) for each offense in addition to the damages in
25 subsection (3) of this section.
- 26 (5) The Attorney General may recover reasonable expenses incurred in investigating
27 and preparing the case, court costs, attorney's fees, and any other relief ordered

1 *by the court in any action initiated under Sections 1 to 8 of this Act.*