

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 7 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 by or with the participation of the social media platform; 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) "Profile-based feed":

15                  (a) Means a stream of content which has been selected or prioritized by the  
16                  social media platform for display to an account holder based in whole or in  
17                  part on the personal information of that account holder; and  
18                  (b) Does not include a stream of content where the selection or prioritization by  
19                  the social media platform is based on the personal information of the  
20                  account holder if:  
21                  1. The account holder affirmatively selected a third party's content for  
22                  inclusion or exclusion from the account holder's displayed feed,  
23                  including but not limited to following, friending, unfollowing,  
24                  blocking, or engaging in a similar action with respect to the third  
25                  party; or  
26                  2. The age or any estimate of the age of the account holder is used solely  
27                  for the purpose of excluding content which is:

- 1                    a. A matter harmful to minors; or  
2                    b. By policy of the covered social media platform, not suitable for  
3                    presentation to children of that age;

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 7 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 7 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 7 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 an account for a user identified  
3       as a child pursuant to subsection (1) of Section 3 of this Act, maintain an account  
4       for a user required to be treated as a child pursuant to Section 7 of this Act, or  
5       change the terms and conditions of an account for a child, without first obtaining  
6       verifiable parental consent. Information collected for the purpose of obtaining  
7       verifiable parental consent shall not be used for any purpose other than obtaining  
8       verifiable parental consent and shall be deleted immediately after an attempt to  
9       obtain verifiable parental consent, except to the extent necessary to comply with  
10       any other applicable state or federal law or regulation.
- 11       (3) An account for a child shall have all privacy settings set by default at the most  
12       private level. A covered social media platform shall not change the privacy  
13       settings of an account of a child without first obtaining verifiable parental  
14       consent for the change until the account holder is no longer a child.
- 15       (4) In the course of obtaining verifiable parental consent for the establishment or  
16       continuation of an account for a child, a covered social media platform shall  
17       prominently provide and explain an option for a parent to make his or her  
18       consent conditional on receipt by the parent of a separate password that enables  
19       the parent to:
- 20       (a) Monitor the amount of time the child spends using the covered social media  
21       platform;
- 22       (b) Set daily and weekly time limits on use of the covered social media platform;  
23       and
- 24       (c) Set limits on the time of day when the covered social media platform can be  
25       accessed by the child.
- 26       (5) A covered social media platform shall not present addictive features in the display  
27       or feed of any child.

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

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

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

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

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

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

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

1 (6) If an account holder disputes his or her classification as a child, a covered social  
2 media platform may rely on any commercially reasonable age verification process  
3 to resolve the dispute. A covered social media platform shall make a reasonable  
4 determination within thirty (30) days of the completion of the age verification  
5 process. If a covered social media platform concludes it is obligated to terminate  
6 an account, it shall terminate that account within seven (7) days of that  
7 determination.

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

10 Sections 1 to 7 of this Act shall not be construed to limit in any way beyond any limits  
11 imposed by other law the:

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

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

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

16 A covered social media platform shall not be liable for any violation of Sections 1 to 7  
17 of this Act if it has used reasonable means and efforts, taking into consideration  
18 available technology and any data in possession of the covered social media platform,  
19 to comply with the requirements of Sections 1 to 7 of this Act.

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

22 (1) Any waiver or limitation of any prohibition, limitation, requirement, or right to  
23 remedies established by Sections 1 to 7 of this Act is unlawful, contrary to public  
24 policy, void ab initio, and of no effect, and a court or arbitrator shall not enforce  
25 or give effect to any waiver, notwithstanding any choice of law provision in a  
26 contract.

27 (2) If any provision of Sections 1 to 7 of this Act or the application thereof to any

1 person or circumstance is held invalid, the invalidity shall not affect other  
2 provisions or applications of Sections 1 to 7 of this Act that can be given effect  
3 without the invalid provision or application, and to this end the provisions of  
4 Sections 1 to 7 of this Act are severable.

5 ➔Section 8. KRS 367.3627 is amended to read as follows:

- 6 (1) The Attorney General shall have exclusive authority to enforce violations of KRS  
7 367.3611 to 367.3629 and Sections 1 to 7 of this Act. The Attorney General may  
8 enforce KRS 367.3611 to 367.3629 and Sections 1 to 7 of this Act by bringing an  
9 action in the name of the Commonwealth of Kentucky or on behalf of persons  
10 residing in this Commonwealth. The Attorney General shall have all powers and  
11 duties granted to the Attorney General under KRS Chapter 15 to investigate and  
12 prosecute any violation of KRS 367.3611 to 367.3629 and Sections 1 to 7 of this  
13 Act. The Attorney General may demand any information, documentary material, or  
14 physical evidence from any controller or processor, or covered social media  
15 platform as defined in Section 1 of this Act, believed to be engaged in, or about to  
16 engage in, any violation of KRS 367.3611 to 367.3629 or Sections 1 to 7 of this  
17 Act.
- 18 (2) Prior to initiating any action for violation of KRS 367.3611 to 367.3629 or Sections  
19 1 to 7 of this Act, the Attorney General shall provide a controller or processor or  
20 covered social media platform as defined in Section 1 of this Act thirty (30) days'  
21 written notice identifying the specific provisions of KRS 367.3611 to 367.3629 or  
22 Sections 1 to 7 of this Act,<sup>[,]</sup> the Attorney General alleges have been or are being  
23 violated. If within the thirty (30) days the controller or processor or covered social  
24 media platform as defined in Section 1 of this Act cures the noticed violation and  
25 provides the Attorney General an express written statement that the alleged  
26 violations have been cured and that no further violations shall occur, no action for  
27 damages under subsection (3) of this section shall be initiated against the controller

- 1 or processor, or covered social media platform as defined in Section 1 of this Act.
- 2 (3) If a controller or processor, or covered social media platform as defined in Section  
3 1 of this Act, continues to violate KRS 367.3611 to 367.3629 or Sections 1 to 7 of  
4 this Act following the cure period in subsection (2) of this section or breaches an  
5 express written statement provided to the Attorney General under subsection (2) of  
6 this section, the Attorney General may initiate an action and seek damages for up to  
7 seven thousand five hundred dollars (\$7,500) for each continued violation under  
8 KRS 367.3611 to 367.3629 or Sections 1 to 7 of this Act.
- 9 (4) Nothing in KRS 367.3611 to 367.3629 and Sections 1 to 7 of this Act or any other  
10 law, regulation, or the equivalent shall be construed as providing the basis for, or  
11 give rise to, a private right of action for violations of KRS 367.3611 to 367.3629  
12 and Sections 1 to 7 of this Act.
- 13 (5) The Attorney General may recover reasonable expenses incurred in investigating  
14 and preparing the case, court costs, attorney's fees, and any other relief ordered by  
15 the court of any action initiated under KRS 367.3611 to 367.3629 and Sections 1 to  
16 7 of this Act.