

1 AN ACT relating to data privacy, portability, and interoperability.

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 6 of this Act:*

6 *(1) "Artificial intelligence system" has the same meaning as in KRS 42.722;*

7 *(2) "Contextual data" means any information provided by a user to an artificial*  
8 *intelligence system and any context associated with the user's interactions with*  
9 *the artificial intelligence system, including prompts, conversational histories,*  
10 *files, preferences, and metadata. "Contextual data" does not include a model*  
11 *operator's trade secrets;*

12 *(3) "Model operator" means the natural or legal person that deploys an artificial*  
13 *intelligence system and retains control over how the system is offered to or*  
14 *interacts with end users, but does not include a person or entity that solely*  
15 *interacts with artificial intelligence systems through application programming*  
16 *interfaces, licensed services, prompting, or fine tuning;*

17 *(4) "Open protocol" means a publicly available set of rules that:*

18 *(a) Enables export of social graph or contextual data to other social media*  
19 *services or model operators; and*

20 *(b) Is free from licensing fees and patent restrictions;*

21 *(5) "Personal data" has the same meaning as in KRS 367.3611 and also includes a*  
22 *user's social graph;*

23 *(6) (a) "Social graph" means data that represents a user's connections and*  
24 *interactions within a social media service. Social graph includes:*

25 *1. The user's social connections with other users;*

26 *2. Content created by the user;*

27 *3. The user's responses to other users' content, including comments,*

- 1                   reactions, mentions, reposts, shares, and other engagements;
- 2                   4. Metadata associated with the items described in subparagraphs 1. to 3.
- 3                   of this paragraph; and
- 4                   5. Relational references sufficient to maintain the associations among
- 5                   data elements described in subparagraphs 1. to 3. of this paragraph;
- 6                   (7) "Social media company" means an entity that owns or operates a social media
- 7                   service;
- 8                   (8) (a) "Social media service" means a public website or application that:
- 9                   1. Displays content that is primarily generated by users and not by the
- 10                   social media company;
- 11                   2. Permits an individual to register as a user and create a profile that is
- 12                   made visible to the general public or a set of other users defined by the
- 13                   account holder;
- 14                   3. Allows users to interact socially with each other within the website or
- 15                   application;
- 16                   4. Makes available to each user a list or lists of other users with whom
- 17                   the user shares a connection within the website or application; and
- 18                   5. Allows users to post content viewable by other users.
- 19                   (b) Social media service does not include:
- 20                   1. Email;
- 21                   2. Cloud storage; or
- 22                   3. Document viewing, sharing, or collaboration services; and
- 23                   (9) "User" means an individual located in the Commonwealth who accesses or uses
- 24                   a social media service.

25                   ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO

26 READ AS FOLLOWS:

- 27                   (1) If a user requests a copy of the user's personal data under KRS 367.3615(2)(d), a

1 social media company or model operator shall provide the personal data,  
2 including the user's social graph and contextual data, in a format that:

3 (a) Is portable, to the extent technically feasible;

4 (b) Is readily usable, to the extent practicable; and

5 (c) Allows the user to transmit the data to another social media company or  
6 model operator without impediment if the social media company or model  
7 operator processes the data by automated means.

8 (2) A social media company or model operator shall delete a user's social graph and  
9 contextual data if a consumer requests, pursuant to KRS 367.3615(2)(c), that the  
10 social media service or model operator delete their personal data about the user.

11 (3) A social media company or model operator shall fulfill a request from a user to  
12 exercise the user's data rights under this section within five (5) business days.

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

15 (1) A social media company shall implement a transparent, third-party accessible  
16 interoperability interface or interfaces that allow users to choose to:

17 (a) Share a common set of the user's personal data or a user-selected part of  
18 the user's personal data between the social media services designated by the  
19 user; and

20 (b) Enable third parties to access personal data created by the user and to be  
21 notified when new or updated personal data is available, with the user's  
22 permission.

23 (2) A model operator shall implement a third-party accessible interoperability  
24 interface to allow users to share their contextual data directly with other artificial  
25 intelligence systems they designate and enable those artificial intelligence systems  
26 to be notified when new or updated data is available.

27 (3) A social media company or model operator shall reasonably secure all personal

- 1        data obtained through an interoperability interface.
- 2        (4) To achieve interoperability under subsection (1) of this section, a social media  
3        company or model operator shall:
- 4        (a) Utilize an open protocol;
- 5        (b) Facilitate and maintain interoperability and continuous, real-time data  
6        sharing with other social media services or artificial intelligence systems  
7        through an interoperability interface, based on reasonable terms that do not  
8        discriminate between social media services or artificial intelligence systems;
- 9        (c) Establish reasonable and proportionate thresholds related to the frequency,  
10       nature, and volume of requests, beyond which the social media company or  
11       model operator may assess a reasonable fee for such access; and
- 12       (d) Disclose to other social media companies or model operators complete,  
13       accurate, and regularly updated documentation describing access to the  
14       interoperability interface required under this section.
- 15       (5) A social media company, model operator, or third party shall safeguard the  
16       privacy and security of a user's personal data obtained from other social media  
17       services or artificial intelligence systems through the interoperability interface in  
18       accordance with the social media company's, model operator's, or third party's  
19       privacy notice and administrative, technical, and physical data security practices.
- 20       (6) A social media company, model operator, or third party shall not share or receive  
21       a user's personal data through the interoperability interface except with the  
22       user's consent.
- 23       (7) A social media company or model operator shall adopt an accessible, prominent,  
24       and persistent method for users to give consent for data sharing with other social  
25       media services, artificial intelligence systems, or third parties through the  
26       interoperability interface.
- 27       (8) A social media company is not required to:

1        (a) Provide access to:

- 2                1. Inferences, analyses, or derived data that the social media company  
3                has generated internally about a user; or  
4                2. Proprietary algorithms, ranking systems, or other internal operating  
5                mechanisms;

6        (b) Transmit personal data:

- 7                1. That is stored or structured in a proprietary format;  
8                2. For which no open, industry-standard format is reasonably available;  
9                and  
10               3. That would disclose information as described in subsection (7) of this  
11               section; or

12        (c) Display or otherwise use data received from another social media company  
13        or model operator.

14        (9) A business that uses an artificial intelligence system provided by a model operator  
15        to provide applications or services to a user shall promptly transmit a user's  
16        request to the model operator with sufficient information for the model operator  
17        to execute the request and communicate about the request with the user.

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

20        (1) The Attorney General, in consultation with the Consumers' Advisory Council,  
21        may identify open protocols that the Attorney General has determined, after an  
22        assessment, meet the requirements of Section 3 of this Act.

23        (2) If a social media company or model operator uses an open protocol identified by  
24        the Attorney General under subsection (1) of this section, the social media  
25        company or model operator shall be entitled to a rebuttable presumption of  
26        providing access on reasonable terms that do not discriminate between social  
27        media services or artificial intelligence systems.

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

3        (1) The Attorney General shall have exclusive authority to enforce violations of  
4        Sections 1 to 6 of this Act. The Attorney General may enforce Sections 1 to 6 of  
5        this Act by bringing an action in the name of the Commonwealth of Kentucky or  
6        on behalf of persons residing in this Commonwealth. The Attorney General shall  
7        have all powers and duties granted to the Attorney General under KRS Chapter  
8        15 to investigate and prosecute any violation of Sections 1 to 6 of this Act. The  
9        Attorney General may demand any information, documentary material, or  
10       physical evidence from any social media company, model operator, or third party  
11       believed to be engaged in, or about to engage in, any violation of Sections 1 to 6  
12       of this Act.

13       (2) Prior to initiating any action for violation of Sections 1 to 6 of this Act, the  
14       Attorney General shall provide a social media company, model operator, or third  
15       party thirty (30) days' written notice identifying the specific provisions of Sections  
16       1 to 6 of this Act that the Attorney General alleges have been or are being  
17       violated. If within the thirty (30) day period the social media company, model  
18       operator, or third party cures the noticed violation and provides the Attorney  
19       General an express written statement that the alleged violations have been cured  
20       and that no further violations shall occur, no action for damages under  
21       subsection (3) of this section shall be initiated against the social media company,  
22       model operator, or third party.

23       (3) If a social media company, model operator, or third party continues to violate  
24       Sections 1 to 6 of this Act following the cure period in subsection (2) of this  
25       section, or breaches an express written statement provided to the Attorney  
26       General under subsection (2) of this section, the Attorney General may initiate an  
27       action and seek damages for up to seven thousand five hundred dollars (\$7,500)

1 for each continued violation under Sections 1 to 6 of this Act.

2 (4) Nothing in Sections 1 to 6 of this Act or any other law, regulation, or the  
3 equivalent shall be construed as providing the basis for, or giving rise to, a  
4 private right of action for any violation of Sections 1 to 6 of this Act.

5 (5) The Attorney General may recover reasonable expenses incurred in investigating  
6 and preparing the case, court costs, attorney's fees, and any other relief ordered  
7 by the court for any action initiated under Sections 1 to 6 of this Act.

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

10 (1) There is hereby established in the State Treasury a trust and agency account to be  
11 known as the digital choice fund. The fund shall consist of moneys received from  
12 all civil penalties collected pursuant to Sections 1 to 6 of this Act. Interest earned  
13 on moneys in the fund shall accrue to the fund.

14 (2) The fund shall be administered by the Office of the Attorney General.

15 (3) Amounts deposited into the fund shall be used by the Office of the Attorney  
16 General to enforce Sections 1 to 6 of this Act.

17 (4) Notwithstanding KRS 45.229, fund amounts not expended at the close of the  
18 fiscal year shall not lapse but shall be carried forward into the next fiscal year.

19 ➔Section 7. If any provision of this Act or the application thereof to any person  
20 or circumstance is held invalid, the invalidity shall not affect other provisions or  
21 applications of this Act that can be given effect without the invalid provision or  
22 application, and to this end the provisions of this Act are severable.

23 ➔Section 8. This Act may be cited as the Kentucky Digital Choice Act.