

1 AN ACT relating to data privacy.

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

3 ➔Section 1. KRS 367.3611 is amended to read as follows:

4 As used in KRS 367.3611 to 367.3629:

- 5 (1) "Affiliate" means a legal entity that controls, is controlled by, or is under common  
6 control with another legal entity or shares common branding with another legal  
7 entity. For the purposes of this definition, "control" or "controlled" means:
- 8 (a) Ownership of, or the power to vote, more than fifty percent (50%) of the  
9 outstanding shares of any class of voting security of a company;
  - 10 (b) Control in any manner over the election of a majority of the directors or of  
11 individuals exercising similar functions; or
  - 12 (c) The power to exercise controlling influence over the management of a  
13 company;
- 14 (2) "Authenticate" means verifying through reasonable means that the consumer  
15 entitled to exercise his or her consumer rights in KRS 367.3615 is the same  
16 consumer exercising such consumer rights with respect to the personal data at issue;
- 17 (3) **"Automatic content recognition" means technology embedded or operating**  
18 **through a smart television or smart monitor with integrated internet connectivity**  
19 **and an operating system that identifies, in real time, the specific content displayed**  
20 **by analyzing audio or video fingerprints, including but not limited to content**  
21 **received through broadcast, cable, satellite, streaming services, or external inputs,**  
22 **through digital fingerprinting, watermark detection, or similar comparison**  
23 **techniques;**
- 24 **(4)** "Biometric data" means data generated by automatic measurements of an  
25 individual's biological characteristics, such as a fingerprint, voiceprint, eye retinas,  
26 irises, or other unique biological patterns or characteristics that are used to identify  
27 a specific individual. Biometric data does not include a physical or digital

1 photograph, a video or audio recording, or data generated therefrom, unless that  
2 data is generated to identify a specific individual or information collected, used, or  
3 stored for health care treatment, payment, or operations under HIPAA;

4 ~~(5)~~~~(4)~~ "Business associate" has the same meaning as established in 45 C.F.R. sec.  
5 160.103 pursuant to HIPAA;

6 ~~(6)~~~~(5)~~ "Child" has the same meaning as in 15 U.S.C. sec. 6501;

7 ~~(7)~~~~(6)~~ "Consent" means a clear affirmative act signifying a consumer's freely given,  
8 specific, informed, and unambiguous agreement to process personal data relating to  
9 the consumer. Consent may include a written statement, written by electronic  
10 means or any other unambiguous affirmative action;

11 ~~(8)~~~~(7)~~ "Consumer" means a natural person who is a resident of the Commonwealth  
12 of Kentucky acting only in an individual context. Consumer does not include a  
13 natural person acting in a commercial or employment context;

14 ~~(9)~~~~(8)~~ "Controller" means the natural or legal person that, alone or jointly with  
15 others, determines the purpose and means of processing personal data;

16 ~~(10)~~~~(9)~~ "Covered entity" has the same meaning as established in 45 C.F.R. sec.  
17 160.103 pursuant to HIPAA;

18 ~~(11)~~~~(10)~~ "Decisions that produce legal or similarly significant effects concerning a  
19 consumer" means a decision made by a controller that results in the provision or  
20 denial by the controller of financial and lending services, housing, insurance,  
21 education enrollment, criminal justice, employment opportunities, health care  
22 services, or access to basic necessities like food and water;

23 ~~(12)~~~~(11)~~ "De-identified data" means data that cannot reasonably be linked to an  
24 identified or identifiable natural person or a device linked to a person;

25 ~~(13)~~~~(12)~~ "Fund" means the consumer privacy fund established in KRS 367.3629;

26 ~~(14)~~~~(13)~~ "Health care provider" means:

27 (a) Any health facility as defined in KRS 216B.015;

- 1 (b) Any person or entity providing health care or health services, including those  
2 licensed, certified, or registered under, or subject to, KRS 194A.700 to  
3 194A.729 or KRS Chapter 310, 311, 311A, 311B, 312, 313, 314, 314A, 315,  
4 319, 319A, 319B, 319C, 320, 327, 333, 334A, or 335;
- 5 (c) The current and former employers, officers, directors, administrators, agents,  
6 or employees of those entities listed in paragraphs (a) and (b) of this  
7 subsection; or
- 8 (d) Any person acting within the course and scope of his or her office,  
9 employment, or agency relating to a health care provider;
- 10 ~~(15)~~~~(14)~~ "Health record" means a record, other than for financial or billing purposes,  
11 relating to an individual, kept by a health care provider as a result of the  
12 professional relationship established between the health care provider and the  
13 individual;
- 14 ~~(16)~~~~(15)~~ "HIPAA" means the federal Health Insurance Portability and Accountability  
15 Act of 1996, Pub. L. No. 104-191;
- 16 ~~(17)~~~~(16)~~ "Identified or identifiable natural person" means a person who can be readily  
17 identified directly or indirectly;
- 18 ~~(18)~~~~(17)~~ "Institution of higher education" means an educational institution which:
- 19 (a) Admits as regular students only individuals having a certificate of graduation  
20 from a high school or the recognized equivalent of such a certificate;
- 21 (b) Is legally authorized in this state to provide a program of education beyond  
22 high school;
- 23 (c) Provides an educational program for which it awards a bachelor's or higher  
24 degree, or provides a program which is acceptable for full credit toward such  
25 a degree, a program of postgraduate or postdoctoral studies, or a program of  
26 training to prepare students for gainful employment in a recognized  
27 occupation; and

1 (d) Is a public or other nonprofit institution;

2 ~~(19)~~~~(18)~~ "Nonprofit organization" means any incorporated or unincorporated entity  
3 that:

4 (a) Is operating for religious, charitable, or educational purposes; and

5 (b) Does not provide net earnings to, or operate in any manner that inures to the  
6 benefit of, any officer, employee, or shareholder of the entity;

7 ~~(20)~~~~(19)~~ "Personal data" means any information that is linked or reasonably linkable to  
8 an identified or identifiable natural person. Personal data does not include de-  
9 identified data or publicly available information;

10 ~~(21)~~~~(20)~~ "Precise geolocation data" means information derived from technology,  
11 including but not limited to global positioning system level latitude and longitude  
12 coordinates or other mechanisms, that directly identifies the specific location of a  
13 natural person with precision and accuracy within a radius of one thousand seven  
14 hundred fifty (1,750) feet. Precise geolocation data does not include the content of  
15 communications or any data generated by or connected to advanced utility metering  
16 infrastructure systems or equipment for use by a utility;

17 ~~(22)~~~~(21)~~ "Process" or "processing" means any operation or set of operations performed,  
18 whether by manual or automated means, on personal data or on sets of personal  
19 data, including but not limited to the collection, use, storage, disclosure, analysis,  
20 deletion, or modification of personal data;

21 ~~(23)~~~~(22)~~ "Processor" means a natural or legal entity that processes personal data on  
22 behalf of a controller;

23 ~~(24)~~~~(23)~~ "Profiling" means any form of automated processing performed on personal  
24 data to evaluate, analyze, or predict personal aspects related to an identified or  
25 identifiable natural person's economic situation, health, personal preferences,  
26 interests, reliability, behavior, location, or movements;

27 ~~(25)~~~~(24)~~ "Protected health information" means the same as established in 45 C.F.R.

1 sec. 160.103 pursuant to HIPAA;

2 ~~(26)~~~~(25)~~ "Pseudonymous data" means personal data that cannot be attributed to a  
3 specific natural person without the use of additional information, provided that the  
4 additional information is kept separately and is subject to appropriate technical and  
5 organizational measures to ensure that the personal data is not attributed to an  
6 identified or identifiable natural person;

7 ~~(27)~~~~(26)~~ "Publicly available information" means information that is lawfully made  
8 available through federal, state, or local government records, or information that a  
9 business has a reasonable basis to believe is lawfully made available to the general  
10 public through widely distributed media, by the consumer, or by a person to whom  
11 the consumer has disclosed the information, unless the consumer has restricted the  
12 information to a specific audience;

13 ~~(28)~~~~(27)~~ "Sale of personal data" means the exchange of personal data for monetary  
14 consideration by the controller to a third party. Sale of personal data does not  
15 include:

- 16 (a) The disclosure of personal data to a processor that processes the personal data  
17 on behalf of the controller;
- 18 (b) The disclosure of personal data to a third party for purposes of providing a  
19 product or service requested by the consumer;
- 20 (c) The disclosure or transfer of personal data to an affiliate of the controller;
- 21 (d) The disclosure of information that the consumer:
- 22 1. Intentionally made available to the general public via a channel of mass  
23 media; and
- 24 2. Did not restrict to a specific audience; or
- 25 (e) The disclosure or transfer of personal data to a third party as an asset that is  
26 part of a proposed or actual merger, acquisition, bankruptcy, or other  
27 transaction in which the third party assumes control of all or part of the

1 controller's assets;

2 ~~(29)~~~~(28)~~ "Sensitive data" means a category of personal data that includes:

3 (a) Personal data indicating racial or ethnic origin, religious beliefs, mental or  
4 physical health diagnosis, sexual orientation, or citizenship or immigration  
5 status;

6 (b) The processing of genetic or biometric data that is processed for the purpose  
7 of uniquely identifying a specific natural person;

8 (c) The personal data collected from a known child;~~or~~

9 (d) Precise geolocation data; or

10 (e) Automatic content recognition data;

11 (30) "Smart monitor":

12 (a) Means a digital, display device that integrates hardware and software  
13 components to enable:

14 1. Internet connectivity;

15 2. Application execution; and

16 3. Media content streaming independently of an external computer or  
17 media source; and

18 (b) Does not include a voice assistant device or mobile device;

19 ~~(31)~~~~(29)~~ "State agency" means all departments, offices, commissions, boards,  
20 institutions, and political and corporate bodies of the state, including the offices of  
21 the clerk of the Supreme Court, clerks of the appellate courts, the several courts of  
22 the state, and the legislature, its committees, or commissions;

23 ~~(32)~~~~(30)~~ "Targeted advertising" means displaying advertisements to a consumer where  
24 the advertisement is selected based on personal data obtained or inferred from that  
25 consumer's activities over time and across nonaffiliated websites or online  
26 applications to predict that consumer's preferences or interests. "Targeted  
27 advertising" does not include:

1 (a) Advertisements based on activities within a controller's own or affiliated  
2 websites or online applications;

3 (b) Advertisements based on the context of a consumer's current search query,  
4 visit to a website, or online application;

5 (c) Advertisements directed to a consumer in response to the consumer's request  
6 for information or feedback; or

7 (d) Processing personal data solely for measuring or reporting advertising  
8 performance, reach, or frequency;

9 ~~(33)~~~~(31)~~ "Third party" means a natural or legal person, public authority, agency, or  
10 body other than the consumer, controller, processor, or an affiliate of the processor  
11 or the controller; and

12 ~~(34)~~~~(32)~~ "Trade secret" has the same meaning as in KRS 365.880.

13 ➔Section 2. This Act takes effect July 1, 2027.