

1 AN ACT relating to the protection of minors.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO
4 READ AS FOLLOWS:

5 *The General Assembly of the Commonwealth of Kentucky hereby finds and declares:*

6 *(1) Pornography is creating a public health crisis and having a corroding influence*
7 *on minors.*

8 *(2) Due to advances in technology, the universal availability of the Internet, and*
9 *limited age verification requirements, minors are exposed to pornography earlier*
10 *in age.*

11 *(3) Pornography contributes to the hyper-sexualization of teens and prepubescent*
12 *children and may lead to low self-esteem, body image disorders, an increase in*
13 *problematic sexual activity at younger ages, and increased desire among*
14 *adolescents to engage in risky sexual behavior.*

15 *(4) Pornography may also impact brain development and functioning, contribute to*
16 *emotional and medical illnesses, shape deviate sexual arousal, and lead to*
17 *difficulty in forming or maintaining positive, intimate relationships, as well as*
18 *problematic or harmful sexual behaviors and addiction.*

19 *(5) It is in the interest of the people of the Commonwealth of Kentucky to protect*
20 *minors from being able to access obscene or erotic matter through the Internet or*
21 *other digital network.*

22 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO
23 READ AS FOLLOWS:

24 *As used in Sections 2 and 3 of this Act:*

25 *(1) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmit,*
26 *circulate, or disseminate by any means, with or without consideration;*

27 *(2) "Matter" means the same as in KRS 531.010;*

- 1 (3) "Matter harmful to minors" means:
- 2 (a) Any matter that the average person, applying contemporary community
- 3 standards would find, taking the matter as a whole and with respect to
- 4 minors, is designed to appeal to, or is designed to pander to, the prurient
- 5 interest;
- 6 (b) Any matter that exploits, is devoted to, or principally consists of descriptions
- 7 of actual, simulated, or animated display or depiction of any of the
- 8 following, in a manner patently offensive with respect to minors:
- 9 1. Pubic hair, anus, vulva, genitals, or nipple of the female breast;
- 10 2. Touching, caressing, or fondling of nipples, breasts, buttocks, anuses,
- 11 or genitals; or
- 12 3. Sexual conduct as defined in KRS 531.010; and
- 13 (c) The matter taken as a whole lacks serious literary, artistic, political, or
- 14 scientific value for minors;
- 15 (4) "Minor" means any person under the age of eighteen (18) years;
- 16 (5) "News-gathering organization" means:
- 17 (a) An employee of a newspaper, news publication, or news source, printed or
- 18 on an online or mobile platform, or current news and public interest, while
- 19 operating as an employee, who can provide documentation of employment
- 20 with the newspaper, news publication, or news source; or
- 21 (b) An employee of a radio broadcast station, television broadcast station, cable
- 22 television operator, or wire service while operating as an employee, who can
- 23 provide documentation of employment;
- 24 (6) "Publish" means to communicate or make information available to another
- 25 person or entity on a publicly available website;
- 26 (7) "Reasonable means of age verification" means the provision of a:
- 27 (a) State-issued form of identification, including but not limited to an

1 operator's license or personal identification card issued under KRS Chapter
2 186 that establishes the user is eighteen (18) years of age or older;

3 (b) Identification issued by the United States government, the United States
4 Department of Defense, a branch of the uniformed services, the Merchant
5 Marine, or the Kentucky National Guard that establishes the user is
6 eighteen (18) years of age or older;

7 (c) Identification issued by a public or private college, university, or
8 postgraduate technical or professional school located within the United
9 States that establishes the user is eighteen (18) years of age or older; or

10 (d) Commercially reasonable method of identification that relies on public or
11 private transaction data to verify the age of the person attempting to access
12 the information is at least eighteen (18) years of age or older, including but
13 not limited to a mortgage document or utility bill, or other reliable
14 document that establishes the user is of the age of majority;

15 (8) "Substantial portion" means more than thirty-three and one-third percent (33-
16 1/3%) of total matter on a website, which meets the definition of "matter harmful
17 to minors" as defined in this section; and

18 (9) "Transactional data" means a sequence of information that documents an
19 exchange, agreement, or transfer between an individual, commercial entity, or
20 third party used for the purpose of satisfying a request or event. Transactional
21 data can include records from mortgage, education, and employment entities.

22 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO
23 READ AS FOLLOWS:

24 (1) Any commercial entity that knowingly and intentionally publishes or distributes
25 matter harmful to minors on the Internet from a website that contains a
26 substantial portion of matter that is harmful to minors and fails to obtain
27 reasonable means of age verification to verify the age of individuals attempting to

1 access the matter shall be liable as provided in this section.

2 (2) (a) Any person injured by a violation of this section or a parent or legal
3 guardian on behalf of any minor injured by a violation of this section may
4 bring a civil action against the commercial entity to recover actual and
5 punitive damages, court costs, and reasonable attorney's fees.

6 (b) Upon commencement of any action brought under paragraph (a) of this
7 subsection, the clerk of the court shall mail a copy of the complaint or other
8 initial pleading to the Attorney General and upon entry of any judgment or
9 decree in the action, shall mail a copy of the judgment or decree to the
10 Attorney General.

11 (c) Upon a finding by the court that a violation under this section has occurred,
12 the Attorney General, upon petition to the court, may recover on behalf of
13 the Commonwealth a civil penalty of not more than ten thousand dollars
14 (\$10,000) per violation.

15 (3) Any action under this section may be filed in:

16 (a) The Circuit Court for the county where the alleged violation occurred;

17 (b) The Circuit Court where the person bringing the action resides; or

18 (c) Franklin Circuit Court.

19 (4) Any commercial entity or third party that performs the required age verification
20 shall not retain any identifying information of the individual after access has
21 been granted to the matter.

22 (5) (a) A commercial entity that is found to have knowingly retained identifying
23 information of the individual after access has been granted to the individual
24 shall be liable to the individual for damages resulting from retaining the
25 identifying information, including court costs and reasonable attorney's
26 fees as ordered by the court; and

27 (b) Shall be liable to the Commonwealth for a civil penalty of not more than

1 five thousand dollars (\$5,000) per violation. Each twenty-four (24) hour
2 period in which a commercial entity retains the identifying information
3 shall constitute a separate violation.

4 (6) Nothing in this section shall be construed to limit or restrict the exercise of
5 powers or the performance of the duties of the Attorney General authorized
6 under any other provision of law.

7 (7) Nothing in this section shall be construed to impose liability on any bona fide
8 news or public interest broadcast, website video, report, or event and shall not be
9 construed to affect the rights of any news-gathering organizations.

10 (8) Nothing in this section shall be construed to impose liability on a broadband
11 Internet access service provider, a telecommunications service provider, an
12 interconnected VoIP provider, or a mobile service provider as defined in 47
13 U.S.C. sec. 153, a commercial mobile service provider as defined in 47 U.S.C. sec
14 332(d), or a cable operator as defined in 47 U.S.C. sec. 522, when acting in its
15 capacity as a provider of those services to the extent the provider is not
16 responsible for the creation of the content of the communication that constitutes
17 matter harmful to minors.

18 (9) Nothing in this section shall be construed to limit or bar any cause of action or
19 preclude the imposition of sanctions or penalties, including criminal penalties,
20 that would otherwise be available under state or federal law.