

1 AN ACT relating to the protection of children using the internet.

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 5 of this Act:*

6 *(1) "Best interest of children" means children's privacy, safety, mental and physical*  
7 *health, access to information, freedom to participate in society, meaningful*  
8 *access to digital technologies, and well-being;*

9 *(2) "Child" or "children" means a consumer or consumers who a covered entity has*  
10 *actual knowledge is or are under eighteen (18) years of age;*

11 *(3) "Collect," "collected," or "collection" means buying, renting, gathering,*  
12 *obtaining, receiving, or accessing any personal information pertaining to a*  
13 *consumer by any means, and includes receiving information from the consumer,*  
14 *either actively or passively, or by observing the consumer's behavior;*

15 *(4) "Consumer":*

16 *(a) Means an individual who is a resident of this state; and*

17 *(b) Does not include an individual acting in a commercial or employment*  
18 *context or as an employee, owner, director, officer or contractor of a*  
19 *company, partnership, sole proprietorship, nonprofit or government agency*  
20 *whose communications or transactions with the covered entity occur solely*  
21 *within the context of that individual's role with the company, partnership,*  
22 *sole proprietorship, nonprofit or government agency;*

23 *(5) "Covered entity" means a business or organization that knowingly processes a*  
24 *child's personal information;*

25 *(6) "Dark pattern" means a user interface knowingly designed with the intended*  
26 *purpose of subverting or impairing user decision-making or choice;*

27 *(7) "Data protection impact assessment" means a systematic survey to assess*

1 compliance with the duty to act in the best interests of children;

2 (8) "Default" means a preselected option adopted by the covered entity for the online  
3 service, product, or feature;

4 (9) "De-identified data" means information that cannot reasonably be linked to an  
5 individual, or a device linked to an individual, provided that the covered entity  
6 that possesses the information:

7 (a) Takes reasonable technical and administrative measures to prevent the  
8 information from being reidentified;

9 (b) Does not attempt to reidentify the information and publicly commits not to  
10 attempt to reidentify the information; and

11 (c) Contractually obligates any person to which it transfers the information to  
12 comply with the requirements of this paragraph;

13 (10) "Likely to be accessed by children" means it is reasonable to expect that the  
14 online service, product, or feature would be accessed by children based on the  
15 following indicators:

16 (a) The online service, product, or feature is directed to children as defined by  
17 the Children's Online Privacy Protection Act of 1998, 15 U.S.C. sec. 6501 et  
18 seq.; and

19 (b) The online service, product, or feature is determined, based on competent  
20 and reliable evidence regarding audience composition, to be routinely  
21 accessed by a significant number of children;

22 (11) "Online service, product, or feature" does not mean:

23 (a) A telecommunications service, as defined in 47 U.S.C. sec. 153; or

24 (b) The delivery or use of a physical product;

25 (12) "Personal information"

26 (a) Means any information that is linked or reasonably linkable to an identified  
27 or identifiable individual;

1 (b) Does not include de-identified data or publicly available information;

2 (13) "Precise geolocation information" means any data that is derived from a device  
3 and that is used or intended to be used to locate a consumer within a geographic  
4 area that is equal to or less than the area of a circle with a radius of one  
5 thousand eight hundred fifty (1,850) feet;

6 (14) "Profiling":

7 (a) Means any form of automated processing of personal information that uses  
8 personal information to evaluate certain aspects relating to a natural  
9 person, including analyzing or predicting aspects concerning a natural  
10 person's performance at work, economic situation, health, personal  
11 preferences, interests, reliability, behavior, location, or movements; and

12 (b) Does not include, by itself, processing that does not result in some  
13 assessment or judgment about a natural person;

14 (15) "Sensitive personal information":

15 (a) Means personal information that:

16 1. Reveals racial or ethnic orientation, religious beliefs, mental or  
17 physical health condition or diagnosis, sex life, sexual orientation, or  
18 citizenship or immigration status;

19 2. Genetic or biometric information processed for the purpose of  
20 uniquely identifying an individual; and

21 3. Precise geolocation data.

22 (b) Does not include de-identified data or publicly available information; and

23 (16) "Third party" means an individual or legal entity, public authority, agency, or  
24 body, other than the consumer, covered entity, or processor or an affiliate of the  
25 processor or the covered entity.

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

1 (1) A covered entity that provides an online service, product, or feature likely to be  
2 accessed by children shall:

3 (a) Before any new online services, products, or features are offered to the  
4 public, complete a Data protection impact assessment for any online service,  
5 product, or feature likely to be accessed by children that uses a type of  
6 processing, in particular using new technologies, and taking into account  
7 the nature, scope, context, and purposes of the processing, that is likely to  
8 result in high risk to children, and:

9 1. Maintain documentation of this assessment as long as the online  
10 service, product, or feature is reasonably likely to be accessed by  
11 children and uses processing that is likely to result in high risk to  
12 children; and

13 2. Review all Data protection impact assessments as necessary to account  
14 for any significant changes to the processing operations of the online  
15 service, product, or feature;

16 (b) Configure all default privacy settings provided to children by the online  
17 service, product, or feature to settings that offer a high level of privacy,  
18 unless the underlying processing enhances children's experience of the  
19 applicable service, product, or feature and the covered entity offers settings  
20 to control the use of children's data for that purpose;

21 (c) If the online service, product, or feature allows a child's parent, guardian,  
22 or any other consumer to monitor the child's online activity or track the  
23 child's location, provide an obvious signal to the child when the child is  
24 being monitored or tracked; and

25 (d) Provide prominent, accessible, and responsive tools to help children, or if  
26 applicable their parents or guardians, exercise their privacy rights and  
27 report concerns.

- 1 (2) A covered entity that provides an online service, product, or feature reasonably  
2 likely to be accessed by children shall not:
- 3 (a) Use the personal information of any child likely to access the online service,  
4 product, or feature in a way that the covered entity knows is likely to result  
5 in high risk on the basis of a data protection impact assessment, and the  
6 high risk has not been suitably mitigated through measures identified in the  
7 Data protection impact assessment;
- 8 (b) Profile a child by default where the profiling has been identified as high  
9 risk on the basis of a data protection impact assessment, and the high risk  
10 has not been suitably mitigated through measures identified in the data  
11 protection impact assessment. Profiling by default is presumed to be  
12 permitted where:
- 13 1. The covered entity can demonstrate it has appropriate safeguards in  
14 place to protect children;
- 15 2. Profiling is necessary to provide the online service, product, or feature  
16 requested and only with respect to the aspects of the online service,  
17 product, or feature with which the child is actively and knowingly  
18 engaged; or
- 19 3. The profiling enhances the children’s experience on the applicable  
20 service, product, or feature; and the covered entity offers settings to  
21 control the use of children’s data for that purpose;
- 22 (c) Collect, retain, process, or disclose any personal information of a child in a  
23 manner that has been identified as high risk on the basis of a data  
24 protection impact assessment, and the high risk has not been suitably  
25 mitigated through measures identified in the data protection impact  
26 assessment;
- 27 (d) If the end user is a child, use personal information for any reason other

1 than a reason for which that personal information was collected or another  
2 disclosed purpose that is compatible with the context in which the personal  
3 information was collected, unless the covered entity can demonstrate a  
4 compelling reason that use of the personal information is in the best  
5 interests of children;

6 (e) Collect, sell, process, or retain any precise geolocation information of  
7 children by default unless:

8 1. The covered entity can demonstrate a compelling reason that the  
9 processing is in the best interests of children; or

10 2. The processing enhances children's experience of the applicable  
11 service, product, or feature and the covered entity offers settings to  
12 control the use of children's data for that purpose;

13 (f) Track any precise geolocation information of a child without providing  
14 notice regarding the tracking of the minor's precise geolocation  
15 information; or

16 (g) Use dark patterns to knowingly lead or encourage children to provide  
17 personal information beyond what is reasonably expected to provide that  
18 online service, product, or feature, to forego privacy protections, or to take  
19 any action that the covered entity knows is not in the best interest of  
20 children reasonably likely to access the online service, product, or feature.

21 (3) If a covered entity chooses to conduct age estimation to determine which users  
22 are under eighteen (18) years of age, the covered entity will not be liable for data  
23 processing undertaken during the period in which it is estimating age, or for an  
24 erroneous estimation, or for data processing in the absence of reasonable  
25 evidence that a user is a child.

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

- 1 (1) The data protection impact assessment required by Section 2 of this Act shall  
2 identify the purpose of the online service, product, or feature, how it uses  
3 children's personal information, and determine whether the online service,  
4 product, or feature is designed and offered in a manner consistent with the best  
5 interests of children that are reasonably likely to access the online service,  
6 product, or feature by examining:
- 7 (a) A systematic description of the envisaged processing operations and the  
8 purposes of the processing;
- 9 (b) An assessment of the necessity and proportionality of the processing  
10 operations in relation to the purposes;
- 11 (c) An assessment of the risks to the rights and freedoms of children; and
- 12 (d) The measures envisaged to address the risks, including safeguards, security  
13 measures, and mechanisms to ensure the protection of personal information  
14 and to demonstrate compliance with this law taking into account the rights  
15 and freedoms of children.
- 16 (2) A covered entity that provides an online service, product, or feature likely to be  
17 accessed by children shall within a reasonable timeframe, provide to the Attorney  
18 General, pursuant to a written request, provide a list of all data protection impact  
19 assessments the covered entity has completed.
- 20 (3) Notwithstanding any other law, a data protection impact assessment is protected  
21 as confidential and shall be exempt from public disclosure.
- 22 (4) To the extent any information contained in a data protection impact assessment  
23 disclosed to the Attorney General includes information subject to attorney-client  
24 privilege or work product protection, disclosure pursuant to this section shall not  
25 constitute a waiver of that privilege or protection.

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

1 (1) A violation of Sections 1 to 5 of this Act shall constitute an unfair, false,  
2 misleading, or deceptive act or practice in the conduct of trade or commerce  
3 under KRS 367.170.

4 (2) If a covered entity has made a good faith effort to comply with the requirements  
5 of Sections 1 to 5 of this Act, the Attorney General shall provide written notice to  
6 the covered entity before initiating an action under Sections 1 to 5 of this Act,  
7 identifying the specific provision or provisions of sections 1 to 5 of this Act that  
8 the Attorney General alleges have been or are being violated.

9 (3) If within ninety (90) days of the notice required by this section, the covered entity  
10 cures any noticed violation, provides the Attorney General a written statement  
11 that the alleged violations have been cured, and sufficient measures have been  
12 taken to prevent future violations, the covered entity shall not be liable for a civil  
13 penalty for any violation cured in accordance with this section.

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

16 (1) Sections 1 to 5 of this Act do not apply to:

17 (a) Protected health information that is collected by a covered entity or covered  
18 entity associate governed by the privacy, security, and breach notification  
19 rules issued by the United States Department of Health and Human  
20 Services, 45 C.F.R. pts. 160 and 164, established pursuant to the Health  
21 Insurance Portability and Accountability Act of 1996 and the Health  
22 Information Technology for Economic and Clinical Health Act;

23 (b) A covered entity governed by the privacy, security, and breach notification  
24 rules issued by the United States Department of Health and Human  
25 Services, 45.C.F.R. pts. 160 and 164, established pursuant to the Health  
26 Insurance Portability and Accountability Act of 1996, to the extent the  
27 provider or covered entity maintains patient information in the same



- 1           manner as medical information or protected health information as  
2           described in paragraph (a) of this subsection; and
- 3           (c) Information collected as part of a clinical trial subject to the Federal Policy  
4           for the Protection of Human Subjects, also known as the Common Rule,  
5           pursuant to good clinical practice guidelines issued by the International  
6           Council for Harmonization or pursuant to human subject protection  
7           requirements of the United States Food and Drug Administration.
- 8           (2) Compliance with the Children’s Online Privacy Protection Act, 15 U.S.C. sec.  
9           6501 et seq., shall constitute compliance with Sections 1 to 5 of this Act for  
10           children under thirteen (13) years of age.
- 11           (3) Nothing in Sections 1 to 5 of this Act may be interpreted to:
- 12           (a) Impose liability in a manner that is inconsistent with 47 U.S.C. sec. 230; or  
13           (b) Infringe on the existing rights and freedoms of children.
- 14           (4) Sections 1 to 5 of this Act shall become ineffective immediately upon the  
15           enactment or promulgation of any federal law, rule, or regulation or amendment  
16           or modification to any federal law, rule, or regulation, including but not limited  
17           to amendments to the Children’s Online Privacy Protection Act, 15 U.S.C. sec.  
18           6501 et seq., that relates to:
- 19           (a) Covered entities’ collection, use, retention, or disclosure of personal  
20           information of individuals under age eighteen (18) years of age;  
21           (b) Consent requirements for the collection, use, retention, or disclosure of  
22           personal information of individuals under age eighteen (18) years of age,  
23           including consent requirements to register for or maintain an account with  
24           an online service;
- 25           (c) Requirements to ascertain or verify the age of any individual; or  
26           (d) Parental settings, controls, or other over sight or monitoring mechanisms.
- 27           ➔Section 6. KRS 367.990 is amended to read as follows:

- 1 (1) Any person who violates the terms of a temporary or permanent injunction issued  
2 under KRS 367.190 shall forfeit and pay to the Commonwealth a civil penalty of  
3 not more than twenty-five thousand dollars (\$25,000) per violation. For the  
4 purposes of this section, the Circuit Court issuing an injunction shall retain  
5 jurisdiction, and the cause shall be continued, and in such cases the Attorney  
6 General acting in the name of the Commonwealth may petition for recovery of civil  
7 penalties.
- 8 (2) In any action brought under KRS 367.190, if the court finds that a person is  
9 willfully using or has willfully used a method, act, or practice declared unlawful by  
10 KRS 367.170, the Attorney General, upon petition to the court, may recover, on  
11 behalf of the Commonwealth, a civil penalty of not more than two thousand dollars  
12 (\$2,000) per violation, or where the defendant's conduct is directed at a person aged  
13 sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000)  
14 per violation, if the trier of fact determines that the defendant knew or should have  
15 known that the person aged sixty (60) or older is substantially more vulnerable than  
16 other members of the public.
- 17 (3) Any person with actual notice that an investigation has begun or is about to begin  
18 pursuant to KRS 367.240 and 367.250 who intentionally conceals, alters, destroys,  
19 or falsifies documentary material is guilty of a Class A misdemeanor.
- 20 (4) Any person who, in response to a subpoena or demand as provided in KRS 367.240  
21 or 367.250, intentionally falsifies or withholds documents, records, or pertinent  
22 materials that are not privileged shall be subject to a fine as provided in subsection  
23 (3) of this section.
- 24 (5) The Circuit Court of any county in which any plan described in KRS 367.350 is  
25 proposed, operated, or promoted may grant an injunction without bond, upon  
26 complaint filed by the Attorney General to enjoin the further operation thereof, and  
27 the Attorney General may ask for and the court may assess civil penalties against

1 the defendant in an amount not to exceed the sum of five thousand dollars (\$5,000)  
2 which shall be for the benefit of the Commonwealth of Kentucky.

3 (6) Any person, business, or corporation who knowingly violates the provisions of  
4 KRS 367.540 shall be guilty of a violation. It shall be considered a separate offense  
5 each time a magazine is mailed into the state; but it shall be considered only one (1)  
6 offense for any quantity of the same issue of a magazine mailed into Kentucky.

7 (7) Any solicitor who violates the provisions of KRS 367.513 or 367.515 shall be  
8 guilty of a Class A misdemeanor.

9 (8) In addition to the penalties contained in this section, the Attorney General, upon  
10 petition to the court, may recover, on behalf of the Commonwealth a civil penalty  
11 of not more than the greater of five thousand dollars (\$5,000) or two hundred  
12 dollars (\$200) per day for each and every violation of KRS 367.175.

13 (9) Any person who shall willfully and intentionally violate any provision of KRS  
14 367.976 to 367.985 shall be guilty of a Class B misdemeanor.

15 (10) (a) Any person who violates the terms of a temporary or permanent injunction  
16 issued under KRS 367.665 shall forfeit and pay to the Commonwealth a  
17 penalty of not more than five thousand dollars (\$5,000) per violation. For the  
18 purposes of this section, the Circuit Court issuing an injunction shall retain  
19 jurisdiction, and the cause shall be continued, and in such cases the Attorney  
20 General acting in the name of the Commonwealth may petition for recovery  
21 of civil penalties.

22 (b) 1. The Attorney General may, upon petition to a court having jurisdiction  
23 under KRS 367.190, recover on behalf of the Commonwealth from any  
24 person found to have willfully committed an act declared unlawful by  
25 KRS 367.667 a penalty of not more than five thousand dollars (\$5,000)  
26 per violation.

27 2. In addition to any other penalties provided for the commission of the

- 1 offense, any person found guilty of violating KRS 367.667(1)(c):
- 2 a. Shall be punished by a fine of no less than five hundred dollars
- 3 (\$500) for the first offense and no less than five thousand dollars
- 4 (\$5,000) for any subsequent offense; and
- 5 b. Pay restitution of any financial benefit secured through conduct
- 6 proscribed by KRS 367.667(1)(c).
- 7 3. The Office of the Attorney General or the appropriate Commonwealth's
- 8 attorney shall have concurrent enforcement powers as to fines, felonies,
- 9 and misdemeanors under this paragraph.
- 10 (c) Any person who knowingly violates any provision of KRS 367.652, 367.653,
- 11 367.656, 367.657, 367.658, 367.666, or 367.668 or who knowingly gives false
- 12 or incorrect information to the Attorney General in filing statements or reports
- 13 required by KRS 367.650 to 367.670 shall be guilty of a Class D felony.
- 14 (11) Any dealer who fails to provide a statement under KRS 367.760 or a notice under
- 15 KRS 367.765 shall be liable for a penalty of one hundred dollars (\$100) per
- 16 violation to be collected in the name of the Commonwealth upon action of the
- 17 Attorney General.
- 18 (12) Any dealer or manufacturer who falsifies a statement under KRS 367.760 shall be
- 19 liable for a penalty not exceeding one thousand dollars (\$1,000) to be collected in
- 20 the name of the Commonwealth upon action by the Attorney General.
- 21 (13) Any person who violates KRS 367.805, 367.809(2), 367.811, 367.813(1), or
- 22 367.816 shall be guilty of a Class C felony.
- 23 (14) Either the Attorney General or the appropriate Commonwealth's attorney shall have
- 24 authority to prosecute violations of KRS 367.801 to 367.819.
- 25 (15) A violation of KRS 367.474 to 367.478 and 367.482 is a Class C felony. Either the
- 26 Attorney General or the appropriate Commonwealth's attorney shall have authority
- 27 to prosecute violators of KRS 367.474 to 367.478 and 367.482.

- 1 (16) Any person who violates KRS 367.310 shall be guilty of a violation.
- 2 (17) Any person, partnership, or corporation who violates the provisions of KRS  
3 367.850 shall be guilty of a Class A misdemeanor.
- 4 (18) Any dealer in motor vehicles or any other person who fraudulently changes, sets  
5 back, disconnects, fails to connect, or causes to be changed, set back, or  
6 disconnected, the speedometer or odometer of any motor vehicle, to effect the sale  
7 of the motor vehicle shall be guilty of a Class D felony.
- 8 (19) Any person who negotiates a contract of membership on behalf of a club without  
9 having previously fulfilled the bonding requirement of KRS 367.403 shall be guilty  
10 of a Class D felony.
- 11 (20) Any person or corporation who operates or attempts to operate a health spa in  
12 violation of KRS 367.905(1) shall be guilty of a Class A misdemeanor.
- 13 (21) (a) Any person who violates KRS 367.832 shall be guilty of a Class C felony;  
14 and
- 15 (b) The appropriate Commonwealth's attorney shall have authority to prosecute  
16 felony violations of KRS 367.832.
- 17 (22) (a) Any person who violates the provisions of KRS 367.855 or 367.857 shall be  
18 guilty of a violation. Either the Attorney General or the appropriate county  
19 health department may prosecute violators of KRS 367.855 or 367.857.
- 20 (b) The provisions of this subsection shall not apply to any retail establishment if  
21 the wholesaler, distributor, or processor fails to comply with the provisions of  
22 KRS 367.857.
- 23 (23) Notwithstanding any other provision of law, any telemarketing company,  
24 telemarketer, caller, or merchant shall be guilty of a Class D felony when that  
25 telemarketing company, telemarketer, caller, or merchant three (3) times in one (1)  
26 calendar year knowingly and willfully violates KRS 367.46955(15) by making or  
27 causing to be made an unsolicited telephone solicitation call to a telephone number

1 that appears in the current publication of the zero call list maintained by the Office  
2 of the Attorney General, Division of Consumer Protection.

3 (24) Notwithstanding any other provision of law, any telemarketing company,  
4 telemarketer, caller, or merchant shall be guilty of a Class A misdemeanor when  
5 that telemarketing company, telemarketer, caller, or merchant uses a zero call list  
6 identified in KRS 367.46955(15) for any purpose other than complying with the  
7 provisions of KRS 367.46951 to 367.46999.

8 (25) (a) Notwithstanding any other provision of law, any telemarketing company,  
9 telemarketer, caller, or merchant that violates KRS 367.46951 to 367.46999  
10 shall be assessed a civil penalty of not more than five thousand dollars  
11 (\$5,000) for each offense.

12 (b) The Attorney General, or any person authorized to act in his or her behalf,  
13 shall initiate enforcement of a civil penalty imposed under paragraph (a) of  
14 this subsection.

15 (c) Any civil penalty imposed under paragraph (a) of this subsection may be  
16 compromised by the Attorney General or his or her designated representative.  
17 In determining the amount of the penalty or the amount agreed upon in  
18 compromise, the Attorney General, or his or her designated representative,  
19 shall consider the appropriateness of the penalty to the financial resources of  
20 the telemarketing company, telemarketer, caller, or merchant charged, the  
21 gravity of the violation, the number of times the telemarketing company,  
22 telemarketer, caller, or merchant charged has been cited, and the good faith of  
23 the telemarketing company, telemarketer, caller, or merchant charged in  
24 attempting to achieve compliance, after notification of the violation.

25 (d) If a civil penalty is imposed under this subsection, a citation shall be issued  
26 which describes the violation which has occurred and states the penalty for the  
27 violation. If, within fifteen (15) working days from the receipt of the citation,

1           the affected party fails to pay the penalty imposed, the Attorney General, or  
2           any person authorized to act in his or her behalf, shall initiate a civil action to  
3           collect the penalty. The civil action shall be taken in the court which has  
4           jurisdiction over the location in which the violation occurred.

5 (26) Any person who violates KRS 367.500 shall be liable for a penalty of two thousand  
6       five hundred dollars (\$2,500) per violation. Either the Attorney General or the  
7       appropriate Commonwealth's attorney may prosecute violations of KRS 367.500.

8 **(27) Any covered entity that violates Sections 1 to 5 this Act shall be subject to an**  
9 **injunction and liable for a civil penalty of not more than two thousand five**  
10 **hundred dollars (\$2,500) per affected child for each negligent violation, or not**  
11 **more than seven thousand five hundred dollars (\$7,500) per affected child for**  
12 **each intentional violation, which shall be assessed and recovered only in a civil**  
13 **action brought by the Attorney General.**