

1 AN ACT relating to consumer protection.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 117 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Candidate" has the same meaning as in Section 2 of this Act;*

7 *(b) "Deplatform" has the same meaning as in Section 2 of this Act;*

8 *(c) "Social media platform" has the same meaning as in Section 2 of this Act;*

9 *and*

10 *(d) "User" has the same meaning as in Section 2 of this Act.*

11 *(2) A social media platform shall not willfully deplatform a candidate for office who*
12 *is known by the social media platform to be a candidate, beginning on the date of*
13 *qualification as a candidate and ending on the date of the election or the date the*
14 *candidate ceases to be a candidate. A social media platform shall provide each*
15 *user a method by which the user may be identified as a qualified candidate and*
16 *which provides sufficient information to allow the social media platform to*
17 *confirm the user's qualification by reviewing the Web site of the State Board of*
18 *Elections or the Web site of the applicable county clerk.*

19 *(3) Upon a finding by the State Board of Elections of a violation of subsection (2) of*
20 *this section, the social media platform shall be fined two hundred and fifty*
21 *thousand dollars (\$250,000) per day for a candidate for statewide office and*
22 *twenty-five thousand dollars (\$25,000) per day for a candidate for other offices.*

23 *(4) This section shall only be enforced to the extent not inconsistent with applicable*
24 *state or federal law.*

25 *(5) The Attorney General, or his or her designee, shall enforce the provisions of this*
26 *section.*

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

1 READ AS FOLLOWS:

2 (1) As used in this section and Section 3 of this Act:

3 (a) "Affiliate" means:

4 1. A predecessor or successor of a person convicted of or held civilly
5 liable for an antitrust violation;

6 2. An entity under the control of any natural person who is active in the
7 management of the entity that has been convicted of or held civilly
8 liable for an antitrust violation, including but not limited to those
9 officers, directors, executives, partners, shareholders, employees,
10 members, and agents who are active in the management of an
11 affiliate;

12 3. A person or entity possessing enough ownership of shares to constitute
13 a controlling interest in another person or entity, or a pooling of
14 equipment, income, or a combination among persons or entities when
15 not for fair market value under an arm's length agreement; or

16 4. A person who knowingly enters into a joint venture with a person who
17 has violated an antitrust law during the preceding thirty-six (36)
18 months;

19 (b) "Algorithm" means a mathematical set of rules that specifies how a group
20 of data behaves and that assists in ranking search results and maintaining
21 order or that is used in sorting or ranking content or material based on
22 relevancy or other factors instead of using published time or chronological
23 order of such content or material;

24 (c) "Antitrust violation" means any failure to comply with a state or federal
25 antitrust law as determined in a civil or criminal proceeding brought by the
26 Attorney General, a state attorney, a similar body or agency of another
27 state, the Federal Trade Commission, or the United States Department of

1 Justice;

2 (d) "Antitrust violator vendor list" means a list required to be kept by the
3 Department of Law pursuant to Section 3 of this Act;

4 (e) "Candidate" means any person that is actively seeking a public office at a
5 local or statewide level;

6 (f) "Censor" includes any action taken by a social media platform to delete,
7 regulate, restrict, edit, alter, inhibit the publication or republication of,
8 suspend a right to post, remove, or post an addendum to any content or
9 material posted by a user. The term also includes actions to inhibit the
10 ability of a user to be viewable by or to interact with another user of the
11 social media platform;

12 (g) "Conviction or being held civilly liable" or "convicted or held civilly liable"
13 means a criminal finding of responsibility, guilt, or conviction, with or
14 without an adjudication of guilt, being held civilly responsible or liable, or
15 having a judgment levied for an antitrust violation in any federal or state
16 trial court of record relating to charges brought by indictment, information,
17 or complaint on or after January 1, 2023, as a result of a jury verdict,
18 nonjury trial, or entry of a plea of guilty or nolo contendere or other finding
19 of responsibility or liability;

20 (h) "Deplatform" means the action or practice by a social media platform to
21 permanently delete or ban a user or to temporarily delete or ban a user from
22 the social media platform for more than fourteen (14) days;

23 (i) "Economic incentives" means state grants, cash grants, tax exemptions, tax
24 refunds, tax credits, state funds, and other state incentives administered by
25 the Department of Revenue;

26 (j) "Journalistic enterprise" means an entity doing business in Kentucky that:
27 1. Publishes in excess of one hundred thousand (100,000) words

- 1 available online with at least fifty thousand (50,000) paid subscribers
2 or one hundred thousand (100,000) monthly active users;
- 3 2. Publishes one hundred (100) hours of audio or video available online
4 with at least one hundred million (100,000,000) viewers annually;
- 5 3. Operates a cable channel that provides more than forty (40) hours of
6 content per week to more than one hundred thousand (100,000) cable
7 television subscribers; or
- 8 4. Operates under a broadcast license issues by the Federal
9 Communications Commission;
- 10 (k) "Post-prioritization" means action by a social media platform to place,
11 feature, or prioritize certain content or material ahead of, below, or in a
12 more or less prominent position than others in a newsfeed, a feed, a view, or
13 in search results. The term does not include post-prioritization of content
14 and material of a third party, including other users, based on payments by
15 that third party to the social media platform;
- 16 (l) "Person" means a natural person or an entity organized under the laws of
17 any state or of the United States which operates as a social media platform;
- 18 (m) "Public entity" means the state and any of its departments or agencies;
- 19 (n) "Shadow ban" means an action by a social media platform, through any
20 means, whether the action is determined by a natural person or an
21 algorithm, to limit or eliminate the exposure of a user or content or material
22 posted by a user to other users of the social media platform. This term
23 includes acts of shadow banning by a social media platform which are not
24 readily apparent to a user;
- 25 (o) "Social media platform" means any information service, system, Internet
26 search engine, or access software provider that:
- 27 1. Provides or enables computer access by multiple users to a computer

- 1 server, including an Internet platform or a social media site;
- 2 2. Operates as a sole proprietorship, partnership, limited liability
- 3 company, corporation, association, or other legal entity;
- 4 3. Does business in the state; and
- 5 4. Satisfies at least one (1) of the following thresholds:
- 6 a. Has annual gross revenues in excess of one hundred million
- 7 dollars (\$100,000,000), as adjusted in January of each odd-
- 8 numbered year to reflect any increase in the Consumer Price
- 9 Index for All Urban Consumers as determined by the United
- 10 States Department of Labor; or
- 11 b. Has at least one hundred million (100,000,000) monthly
- 12 individual platform participants globally; and
- 13 (p) "User" means a person who resides or is domiciled in this state and who
- 14 has an account on a social media platform, regardless of whether the
- 15 person posts or has posted content or material to the social media platform.
- 16 (2) A social media platform shall:
- 17 (a) Publish the standards, including detailed definitions, it uses or has used for
- 18 determining how to censor, deplatform, and shadow ban;
- 19 (b) Apply censorship, deplatforming, and shadow banning standards in a
- 20 consistent manner among its users on the platform;
- 21 (c) Inform each user about any changes to its user rules, terms, and
- 22 agreements before implementing the changes and shall not make changes
- 23 more than once every thirty (30) days;
- 24 (d) Not censor or shadow ban a user's content or material or deplatform a user
- 25 from the social media platform:
- 26 1. Without notifying the user who posted or attempted to post the content
- 27 or material; or

- 1 2. In a way that violates this section;
- 2 (e) 1. Provide a mechanism that allows a user to request the number of
- 3 other individual platform participants who were provided or shown the
- 4 user's content or posts; and
- 5 2. Provide, upon request, a user with the number of other individual
- 6 platform participants who were provided or shown content or posts;
- 7 (f) 1. Categorize algorithms used for post-prioritization and shadow
- 8 banning; and
- 9 2. Allow a user to opt out of post-prioritization and shadow banning
- 10 algorithm categories to allow sequential or chronological posts and
- 11 content;
- 12 (g) Provide users with an annual notice on the use of algorithms for post-
- 13 prioritization and shadow banning and reoffer annually the opt-out
- 14 opportunity in paragraph (f) of this subsection;
- 15 (h) Not apply or use post-prioritization or shadow banning algorithms for
- 16 content and material posted by or about a user who is known by the social
- 17 media platform to be a candidate beginning on the date of qualification and
- 18 ending on the date of the election or the date the candidate ceases to be a
- 19 candidate. Post-prioritization of certain content or material from or about a
- 20 candidate for office based on payments to the social media platform by the
- 21 candidate for office or a third party is not a violation of this paragraph. A
- 22 social media platform shall provide each user a method by which the user
- 23 may be identified as a qualified candidate and which provides sufficient
- 24 information to allow the social media platform to confirm the user's
- 25 qualification by reviewing the Web site of the State Board of Elections or
- 26 the Web site of the local county clerk;
- 27 (i) Allow a user who has been deplatformed to access or retrieve all of the

1 user's information, content, material, and data for at least sixty (60) days
2 after the user receives the notice required under paragraph (d)1. of this
3 subsection; and

4 (j) Not take any action to censor, deplatform, or shadow ban a journalistic
5 enterprise based on the content of its publication or broadcast. Post-
6 prioritization of certain journalistic enterprise content based on payments to
7 the social media platform by the journalistic enterprise is not a violation of
8 this paragraph. This paragraph does not apply if the content or material is
9 obscene.

10 A social media platform that fails to comply with any of the provisions of this
11 subsection commits an unfair or deceptive act or practice.

12 (3) For purposes of subsection (2) of this section, a notification shall:

13 (a) Be in writing;

14 (b) Be delivered via electronic mail or direct electronic notification to the user
15 within seven (7) days after the censoring action;

16 (c) Include a thorough rationale explaining the reason that the social media
17 platform censored the user; and

18 (d) Include a precise and thorough explanation of how the social media
19 platform became aware of the censored content or material, including a
20 thorough explanation of the algorithms used, if any, to identify or flag the
21 user's content or material as objectionable.

22 (4) Notwithstanding any other provisions of this section, a social media platform is
23 not required to notify a user if the censored content or material is obscene.

24 (5) If the Attorney General, by his or her own inquiry or as a result of a complaint,
25 suspects that a violation of this section is imminent, occurring, or has occurred,
26 the Attorney General may investigate the suspected violation. Based on its
27 investigation, the Attorney General may bring a civil or administrative action

1 under this section.

2 (6) A user may only bring a private cause of action for violations of subsection (2)(b)
3 or (2)(d)1. of this section. In a private cause of action brought under paragraph
4 (2)(b) or (2)(d)1. of this section, the court may award the following remedies to
5 the user:

6 (a) Up to one hundred thousand dollars (\$100,000) in statutory damages per
7 proven claim;

8 (b) Actual damages;

9 (c) If aggravating factors are present, punitive damages;

10 (d) Other forms of equitable relief, including injunctive relief; or

11 (e) If the user was deplatformed in violation of subsection (2)(b), costs and
12 reasonable attorney fees.

13 (7) For purposes of bringing an action in accordance with subsections (5) and (6) of
14 this section, each failure to comply with the individual provisions of subsection
15 (2) of this section shall be treated as a separate violation, act, or practice. For
16 purposes of bringing an action in accordance with subsections (5) and (6) of this
17 section, a social media platform that censors, shadow bans, deplatforms, or
18 applies post-prioritization algorithms to candidates and users in the state is
19 conclusively presumed to be both engaged in substantial and not isolated
20 activities within the state and operating, conducting, engaging in, or carrying on
21 a business, and doing business in this state, and is therefore subject to the
22 jurisdiction of the courts of the state.

23 (8) In an investigation by the Attorney General into alleged violations of this section
24 and pursuant to KRS 367.240, the Attorney General's investigative powers
25 include but are not limited to the ability to subpoena any algorithm used by a
26 social media platform related to any alleged violation.

27 (9) This section shall only be enforced to the extent not inconsistent with federal law

1 and 47 U.S.C. sec. 230(e)(3), and notwithstanding any other provision of state
2 law.

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

5 (1) Notwithstanding other provisions in the Kentucky Revised Statutes:

6 (a) A person or an affiliate who has been placed on the antitrust violator
7 vendor list following a conviction or being held civilly liable for an antitrust
8 violation shall not be eligible to:

9 1. Submit a bid, proposal, or reply for any new contract to provide any
10 goods or services to a public entity;

11 2. Submit a bid, proposal, or reply on new leases of real property to a
12 public entity;

13 3. Perform work as a contractor, supplier, subcontractor, or consultant
14 under a new contract with a public entity; or

15 4. Transact new business with a public entity;

16 (b) A public entity shall not accept a bid, proposal, or reply from, award a new
17 contract to, or transact new business with any person or affiliate on the
18 antitrust violator vendor list unless that person or affiliate has been
19 removed from the list pursuant to subsection (8) of this section; and

20 (c) This subsection shall not apply to contracts that were awarded or business
21 transactions that began before a person or an affiliate was placed on the
22 antitrust violator vendor list or before January 1, 2023, whichever date
23 occurs later.

24 (2) A public entity in the Commonwealth procuring invitations to bid, requests for
25 proposals, and invitations to negotiate, as set forth in the Kentucky Revised
26 Statutes, shall release a statement informing persons of the provisions of
27 subsection (1)(a) of this section.

- 1 (3) The Department of Law shall maintain an antitrust violator vendor list of the
2 names and addresses of the persons or affiliates who have been disqualified from
3 the public contracting and purchasing process under this section. The
4 Department of Law shall electronically publish the initial antitrust violator
5 vendor list on January 1, 2023, and shall update and electronically publish the
6 list quarterly thereafter. Notwithstanding this subsection, a person or an affiliate
7 disqualified from the public contracting and purchasing process pursuant to this
8 section shall be disqualified as of the date the Department of Law enters the final
9 order.
- 10 (4) The Department of Law shall promulgate administrative regulations to effectuate
11 the provisions of this section.
- 12 (5) In determining whether it is in the public interest to place a person or an affiliate
13 on the antitrust violator vendor list pursuant to subsection (1) of this section, the
14 adjudicating body shall consider the following factors:
- 15 (a) Whether the person or affiliate was convicted or held civilly liable for an
16 antitrust violation;
- 17 (b) The nature and details of the antitrust violation;
- 18 (c) The degree of culpability of the person or affiliate proposed to be placed on
19 the antitrust violator vendor list;
- 20 (d) Reinstatement or clemency in any jurisdiction in relation to the antitrust
21 violation at issue in the proceeding;
- 22 (e) The needs of public entities for additional competition in the procurement
23 of goods and services in their respective markets; and
- 24 (f) The effect of the antitrust violations on residents of the Commonwealth.
- 25 (6) (a) Upon receipt of an information or indictment from any source that a person
26 has been charged with or accused of violating any state or federal antitrust
27 law in a civil or criminal proceeding, including a civil investigative demand,

1 brought by the Attorney General, a state attorney, the Federal Trade
2 Commission, or the United States Department of Justice on or after
3 January 1, 2023, the Attorney General shall determine whether there is
4 probable cause that a person has likely violated the underlying antitrust
5 laws, which shall justify temporary placement of the person on the antitrust
6 violator vendor list until the proceeding concludes. This paragraph shall not
7 apply to affiliates.

8 (b) A person shall not be temporarily placed on the antitrust violator vendor list
9 until the Attorney General:

- 10 1. Provides notice to the person it seeks to temporarily place on the
11 antitrust violator vendor list; and
- 12 2. Proves to the adjudicating body that it is in the public interest to
13 temporarily place this person on the antitrust violator vendor list.

14 (c) In determining whether it is in the public interest to place a person on the
15 antitrust violator vendor list, the adjudicating body shall consider the
16 following factors:

- 17 1. The likelihood the person will be convicted or held civilly liable for the
18 antitrust violation;
- 19 2. The nature and details of the antitrust violation;
- 20 3. The degree of culpability of the person proposed to be placed on the
21 antitrust violator vendor list;
- 22 4. The needs of public entities for additional competition in procurement
23 of goods and services in their respective markets; and
- 24 5. The effect of the antitrust violations on residents of the
25 Commonwealth.

26 (7) Any person or affiliate placed on the antitrust vendor list shall be entitled to an
27 administrative hearing pursuant to KRS Chapter 13B.

- 1 (8) A person or an affiliate may be removed from the antitrust violator vendor list
2 subject to such terms and conditions as shall be prescribed by the Department of
3 Law and upon determination by the adjudicating body that removal is in the
4 public interest. In determining whether removal is in the public interest, the
5 adjudicating body shall consider any relevant factors, including but not limited to
6 the factors identified in subsection (6)(c) of this section.
- 7 (9) The conviction of a person or a person being held civilly liable for an antitrust
8 violation, or placement on the antitrust violator vendor list, shall not affect any
9 rights or obligations under any contract, franchise, or other binding agreement
10 that predates such conviction, finding of civil liability, or placement on the
11 antitrust violator vendor list.
- 12 (10) A person who has been placed on the antitrust violator vendor list shall not be a
13 qualified applicant for economic incentives, and such a person shall not be
14 qualified to receive such economic incentives. This subsection shall not apply to
15 economic incentives that are awarded before a person is placed on the antitrust
16 violator vendor list or before January 1, 2023.
- 17 (11) This section shall not apply to:
- 18 (a) Any activity regulated by the Kentucky Public Service Commission;
19 (b) The purchase of goods or services made by any public entity from the
20 Department of Corrections, from the nonprofit corporation organized under
21 KRS Chapter 273, or from any qualified nonprofit agency for the blind or
22 other severely handicapped persons under the state law; or
23 (c) Any contract with a public entity to provide any goods or services for
24 emergency response efforts related to a state of emergency declaration
25 issued by the Governor.

26 ➔Section 4. KRS 367.150 is amended to read as follows:

27 The Department of Law shall have the following functions, powers and duties:

- 1 (1) To promote the coordination of consumer protection activities of all departments,
2 divisions and branches of state, county and city government, concerned with
3 activities involving consumer interests;
- 4 (2) To assist, advise and cooperate with federal, state and local agencies and officials to
5 protect and promote the interests of the consumer public; to advise the Governor
6 and the legislature in all matters concerning consumer affairs;
- 7 (3) To conduct investigations, research, studies and analysis of matters affecting health,
8 safety, the human environment, the marketplace and all other consumer affairs, and
9 take appropriate action; to communicate the view of the consumer to state, county,
10 and city agencies and officials;
- 11 (4) To study the operation of all laws, rules, regulations, orders, and state policies
12 affecting consumers and to recommend to the Governor and to the Legislature, new
13 legislation, rules, regulations, orders, and policies in the consumers' interest;
- 14 (5) To organize and hold conferences on problems affecting consumers; to undertake
15 activities to encourage business, industry, the professions, and others offering goods
16 or services to maintain high standards of honesty, fair business practices, and public
17 responsibility in the production, promotion and sale of consumer goods and
18 services;
- 19 (6) To provide a central clearing house of information for all citizens of the
20 Commonwealth by collecting and compiling consumer complaints and inquiries,
21 and forwarding them to the proper governmental agencies if appropriate; it shall be
22 the further responsibility of the department to maintain records indicating the final
23 disposition by the agency of any matter so referred;
- 24 (7) To organize, promote and conduct consumer education programs within the
25 Commonwealth; to cooperate with and establish necessary liaison with consumer
26 organizations;
- 27 (8) (a) To appear before any federal, state or local governmental branch, commission,

1 department, rate-making or regulatory body or agency, to represent and be
2 heard on behalf of consumers' interests; and

3 (b) To be made a real party in interest to any action on behalf of consumer
4 interests involving a quasijudicial or rate-making proceeding of any state or
5 local governmental branch, commission, department, agency, or rate-making
6 body whenever deemed necessary and advisable in the consumers' interest by
7 the Attorney General;[.]

8 (9) To perform all duties related to the maintenance of the antitrust violator vendor
9 list; and

10 (10) To perform such other acts as may be incidental to the exercise of the functions,
11 powers and duties set forth in KRS 367.120 to 367.300 and Sections 2 and 3 of this
12 Act.