

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 hereby finds and declares that:*

- 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 being exposed to pornography*
10 *earlier 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 *harmful sexual behaviors and addiction; and*
- 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 networks.*

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

24 *As used in Sections 1 to 8 of this Act:*

- 25 *(1) "Age verification" means verifying that the person seeking access to the matter is*
26 *eighteen (18) years old or older, through any of the following methods:*
- 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 age;

3 (b) Identification issued by any agency of the United States government or the
4 Kentucky National Guard that establishes age;

5 (c) Identification issued by a public or private college, university, or
6 postgraduate technical or professional school located within the United
7 States that establishes age;

8 (d) Verification through an independent, third-party age verification service
9 that compares the personal information entered by the individual who is
10 seeking access to the matter with information that is available from a
11 commercially available database, or aggregate of databases, that is
12 regularly used by government agencies and businesses for purposes of age
13 and identity verification; or

14 (e) Any commercially reasonable method of identification that relies on public
15 or private transaction data to verify that the person attempting to access the
16 matter is at least eighteen (18) years of age or older, including but not
17 limited to a mortgage document or utility bill, or other reliable document
18 that establishes age;

19 (2) "Covered platform" means an entity that:

20 (a) Is a website; and

21 (b) Is in the regular course of trade or business to create, host, or make
22 available content that meets the definition of matter harmful to minors
23 under subsection (7) of this section, with the objective of earning a profit,
24 regardless of whether:

25 1. The entity actually earns a profit on the activities described in this
26 paragraph; or

27 2. Creating, hosting, or making available content that meets the

- 1 definition of matter harmful to minors under subsection (7) of this
2 section is the sole source of income or principal business of the entity;
- 3 (3) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmit,
4 circulate, or disseminate by any means, with or without consideration;
- 5 (4) "Information content provider" has the same meaning as in 47 U.S.C. sec.
6 230(f)(3);
- 7 (5) "Interactive computer service" has the same meaning as in 47 U.S.C. sec.
8 230(f)(2);
- 9 (6) "Matter" has the same meaning as in KRS 531.010;
- 10 (7) "Matter harmful to minors" means:
- 11 (a) Any matter that the average person, applying contemporary community
12 standards, and taking the matter as a whole with respect to minors, would
13 find is designed to appeal to, or pander to, the prurient interest;
- 14 (b) Any matter that exploits, is devoted to, or principally consists of descriptions
15 of actual, simulated, or animated display or depiction of any of the
16 following, in a manner patently offensive with respect to minors:
- 17 1. Pubic area, anus, vulva, genitals, or nipple of the female breast;
18 2. Touching, caressing, or fondling of buttocks, anuses, pubic areas,
19 genitals, or nipples of the female breast; or
20 3. Sexual conduct as defined in KRS 531.010; and
- 21 (c) The matter taken as a whole lacks serious literary, artistic, political, or
22 scientific value for minors;
- 23 (8) "Minor" means any person under the age of eighteen (18) years;
- 24 (9) "Publish" means to communicate or make information available to another
25 person or entity on a publicly available website; and
- 26 (10) "Transactional data" means a sequence of information that documents an
27 exchange, agreement, or transfer between an individual, commercial entity, or

1 third party used for the purpose of satisfying a request or event, and may include
2 records from mortgage, education, and employment entities.

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

5 (1) Any covered platform that knowingly and intentionally publishes or distributes
6 matter harmful to minors on the internet and fails to perform age verification of
7 individuals attempting to access the matter shall be liable as provided in this
8 section.

9 (2) Any person injured by a violation of this section, or a parent or legal guardian on
10 behalf of any minor injured by a violation of this section, may bring a civil action
11 against the covered platform to recover:

12 (a) Damages of ten thousand dollars (\$10,000) per instance that the covered
13 platform failed to perform age verification to restrict the minor's access to
14 matter harmful to minors; and

15 (b) Actual damages, court costs, and reasonable attorney's fees.

16 (3) This section shall only apply to a minor who:

17 (a) Is a permanent resident of this state;

18 (b) Has resided in this state for more than one (1) year; or

19 (c) Has been sojourning in this state for a period of at least thirty-one (31)
20 consecutive days.

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

23 (1) Any covered platform or third party that performs the age verification required
24 under Section 3 of this Act shall not retain any identifying information of the
25 individual after access has been granted to the matter.

26 (2) A covered platform or third party that is found to have knowingly retained
27 identifying information of the individual after access has been granted to the

1 matter shall be liable to the individual for:

2 (a) Damages of one thousand dollars (\$1,000) for each twenty-four (24) hour
3 period that the information is retained; and

4 (b) Actual damages, court costs, and reasonable attorney's fees.

5 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO
6 READ AS FOLLOWS:

7 (1) Any party filing a civil action under Section 3 or 4 of this Act shall:

8 (a) Bring the action in:

9 1. The Circuit Court of the county where the alleged violation occurred;

10 2. The Circuit Court of the county in which the person bringing the
11 action resides; or

12 3. Franklin Circuit Court; and

13 (b) Have the right to a jury trial, and the jury shall decide both liability and
14 damages.

15 (2) An individual may bring an action under Section 3 or 4 of this Act regardless of
16 whether another court has declared any provision of Sections 1 to 8 of this Act
17 unconstitutional, unless that court decision is binding upon the court in which
18 the action is brought.

19 (3) Nonmutual issue preclusion and nonmutual claim preclusion shall not be
20 defenses to an action brought under Section 3 or 4 of this Act.

21 (4) Notwithstanding any other law:

22 (a) The requirements of Sections 1 to 8 of this Act shall be enforced exclusively
23 through private civil actions; and

24 (b) Direct or indirect enforcement of Sections 1 to 8 of this Act shall not be
25 taken or threatened by:

26 1. The Commonwealth of Kentucky;

27 2. A political subdivision of the Commonwealth;

- 1 3. The Attorney General;
2 4. A Commonwealth's attorney or county attorney; or
3 5. An executive or administrative officer or employee of the
4 Commonwealth in his or her official capacity;
5 against any person or entity, in any manner whatsoever.

6 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO
7 READ AS FOLLOWS:

- 8 (1) Nothing in Sections 1 to 8 of this Act shall be construed to impose liability on:
9 (a) An internet service provider, or its affiliates or subsidiaries;
10 (b) A general purpose search engine;
11 (c) A cloud service provider;
12 (d) A telecommunications service provider;
13 (e) An interconnected Voice over Internet Protocol (VoIP) provider;
14 (f) A provider of mobile services as defined in 47 U.S.C. sec. 153;
15 (g) A provider of commercial mobile services as defined in 47 U.S.C. sec
16 332(d); or
17 (h) A cable operator as defined in 47 U.S.C. sec. 522;
18 when acting in its capacity as a provider of those services to the extent the
19 provider is not responsible for the creation of the content of the communication
20 that constitutes matter harmful to minors.
21 (2) Nothing in Sections 1 to 8 of this Act shall be construed to limit or bar any cause
22 of action or preclude the imposition of sanctions or penalties, including criminal
23 penalties, that would otherwise be available under state or federal law.
24 (3) Compliance with Sections 1 to 8 of this Act shall not excuse any person from any
25 other legal duties or preclude any person from any other legal remedies.
26 (4) Sections 1 to 8 of this Act shall not subject a covered platform to any cause of
27 action or liability to the extent it is protected from causes of action or liability by

1 *federal law, including but not limited to 47 U.S.C. sec. 230.*

2 *(5) The provisions of Sections 1 to 8 of this Act shall not apply in cases to the extent*
3 *the provisions would violate the Commerce Clause of the Constitution of the*
4 *United States.*

5 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO
6 READ AS FOLLOWS:

7 *(1) A waiver, purported waiver, or estoppel of a person's right to bring a civil action*
8 *under Section 3 or 4 of this Act, or of any remedy or any other protection*
9 *provided by Sections 1 to 8 of this Act, shall be void and unenforceable as against*
10 *public policy, and a court or arbitrator shall not enforce or give effect to any*
11 *waiver or estoppel, notwithstanding any choice-of-law or other provision in any*
12 *contract or other agreement.*

13 *(2) The waiver and estoppel prohibition under subsection (1) of this section:*

14 *(a) Shall not apply to contractual waivers to the extent any application of the*
15 *prohibition would impair the obligation of contract in violation of the*
16 *Constitution of Kentucky or the Constitution of the United States;*

17 *(b) Is a public policy limitation on contractual and other waivers or estoppels;*
18 *and*

19 *(c) Shall be enforced to the full extent permitted by the Constitution of*
20 *Kentucky and the Constitution of the United States.*

21 *(3) Any contract, agreement, or arrangement made or entered in violation of*
22 *Sections 1 to 8 of this Act shall be void and unenforceable as against public*
23 *policy.*

24 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO
25 READ AS FOLLOWS:

26 *(1) It is the intent of the General Assembly that a court judgment or order*
27 *suspending enforcement of any provision of Sections 1 to 8 of this Act shall not*

1 be regarded as tantamount to a repeal of that provision.

2 (2) If any provision of Sections 1 to 8 of this Act or the application thereof to any
3 person or circumstance is held invalid, the invalidity shall not affect other
4 provisions or applications of Sections 1 to 8 of this Act that can be given effect
5 without the invalid provision or application, and to this end the provisions of
6 Sections 1 to 8 of this Act are severable. In particular, it is the intent of the
7 General Assembly that:

8 (a) Any invalidity or potential invalidity of a provision of Sections 1 to 8 of this
9 Act shall not impair the immediate and continuing enforceability of the
10 remaining provisions; and

11 (b) The provisions of Sections 1 to 8 of this Act shall not have the effect of
12 repealing or limiting any other laws of this state, except as specified by
13 those sections.