

HOUSE BILL No. 2772

By Committee on Federal and State Affairs

Requested by Representative Rhiley

2-10

1 AN ACT concerning consumer protection; enacting the Kansas age-
2 appropriate design code act; requiring businesses to assess and mitigate
3 risks of compulsive use of digital products in minors; mandating
4 privacy settings for minors to be set at the highest level by default;
5 detailing the right of each consumer to access and control such
6 consumer's own personal data; authorizing the attorney general to
7 enforce compliance and adopt necessary rules and regulations; creating
8 a private right of action for violations; enacting the Kansas stopping
9 digital likeness abuse by nonconsensual digital replicas act; creating a
10 private right of action for the unauthorized digital replication and
11 distribution of individuals' digital likenesses; enacting the Kansas
12 saving human connection act; prohibiting deceptive practices and
13 ensuring transparency in chatbot interactions; imposing liability on
14 chatbot providers for injuries caused by such providers' products;
15 creating a private right of action for violations; granting the attorney
16 general authority to enforce compliance of this act and adopt necessary
17 rules and regulations.
18

19 *Be it enacted by the Legislature of the State of Kansas:*

20 Section 1. Sections 1 through 12, and amendments thereto, shall be
21 known and may be cited as the Kansas age-appropriate design code act.

22 Sec. 2. As used in the Kansas age-appropriate design code act, unless
23 the context requires otherwise:

24 (a) "Act" means the Kansas age-appropriate design code act.

25 (b) (1) "Affiliate" means a legal entity that shares common branding
26 with another legal entity or controls, is controlled by or is under common
27 control with another legal entity.

28 (2) As used in paragraph (1), "control" or "controlled" means:

29 (A) Ownership of, or the power to vote, more than 50% of the
30 outstanding shares of any class of voting security of a company;

31 (B) control in any manner over the election of a majority of the
32 directors or of individuals exercising similar functions; or

33 (C) the power to exercise controlling influence over the management
34 of a company.

35 (c) "Age assurance" means a range of methods used to determine,

1 estimate or communicate the age or an age status of an online user.

2 (d) "Age status" means either an interval with an upper and lower age

3 limit or a label indicating age above or below a specific age.

4 (e) (1) "Algorithmic recommendation system" means a computational

5 process used to determine the selection, order, rank, relative prioritization

6 or relative prominence of media provided to a user through an online

7 service, product or feature, including search results, ranking,

8 recommendations, display or any other method of automated selection.

9 (2) "Algorithmic recommendation system" does not include a

10 computational process that:

11 (A) Enables users to find specific other users on a covered business's

12 service, such as by entering individual information as a search query or

13 uploading a list of contacts; or

14 (B) otherwise returns media responsive to a user's search query, as

15 long as the system does not:

16 (i) Process other personal data of the user to determine the selection,

17 order, rank, relative prioritization or relative prominence of the media; or

18 (ii) associate the search query with the user after the search results are

19 returned.

20 (f) "Algorithmic feed" means a component of an online service,

21 product or feature that displays or delivers a stream or list of media that is

22 selected, ranked or arranged in whole or in part by an algorithmic

23 recommendation system.

24 (g) (1) "Biometric data" means data generated from the technological

25 processing of a consumer's unique biological, physical or physiological

26 characteristics that allow or confirm the unique identification of the

27 consumer, including:

28 (A) Iris or retina scans;

29 (B) fingerprints;

30 (C) facial or hand mapping, geometry or templates;

31 (D) vein patterns;

32 (E) voice prints or vocal biomarkers; and

33 (F) gait or personally identifying physical movement or patterns.

34 (2) "Biometric data" does not include:

35 (A) A digital or physical photograph;

36 (B) an audio or video recording; or

37 (C) any data generated from a digital or physical photograph, or audio

38 or video recording, unless such data can be used to identify a specific

39 individual.

40 (h) "Business associate" means the same as defined in 45 C.F.R. §

41 160.103, as in effect on January 1, 2027.

42 (i) "Collect" means buying, renting, gathering, obtaining, receiving or

43 accessing any personal data by any means. "Collect" includes receiving

1 data from the consumer, either actively or passively, or by observing the
2 consumer's behavior.

3 (j) "Compulsive use" means a pattern of use of a covered business's
4 product or service that:

5 (1) Is repetitive and is difficult for a user to stop or reduce despite a
6 desire to do so; and

7 (2) materially disrupts one or more major life activities, including
8 sleeping, eating, learning, reading, communicating or working.

9 (k) (1) "Consumer" means an individual who is a resident of the state
10 of Kansas.

11 (2) "Consumer" does not include an individual acting in a commercial
12 or employment context or as an employee, owner, director, officer or
13 contractor of a company, partnership, sole proprietorship, nonprofit
14 organization or government agency whose communications or transactions
15 with the covered business occur solely within the context of that
16 individual's role with the company, partnership, sole proprietorship,
17 nonprofit organization or government agency.

18 (l) "Covered business" means a sole proprietorship, partnership,
19 limited liability company, corporation, association, other legal entity or an
20 affiliate thereof:

21 (1) That conducts business in the state of Kansas;

22 (2) that generates a majority of its annual revenue from online
23 services;

24 (3) whose online products, services or features are reasonably likely
25 to be accessed by a minor;

26 (4) that collects consumers' personal data or has consumers' personal
27 data collected on its behalf by a processor; and

28 (5) that alone or jointly with others determines the purposes and
29 means of the processing of consumers' personal data.

30 (m) "Covered entity" means the same as defined in 45 C.F.R. §
31 160.103, as in effect on January 1, 2027.

32 (n) "Covered minor" means a consumer who a covered business
33 knows or should have known, based on knowledge fairly implied under
34 objective circumstances, is a minor.

35 (o) "Default" means a preselected option adopted by the covered
36 business for the online service, product or feature.

37 (p) (1) "De-identified data" means data that does not identify and
38 cannot reasonably be used to infer information about, or otherwise be
39 linked to, an identified or identifiable individual, or a device linked to the
40 individual, if the covered business that possesses the data:

41 (A) Takes reasonable measures to ensure that the data cannot be used
42 to reidentify an identified or identifiable individual or be associated with
43 an individual or device that identifies or is linked or reasonably linkable to

1 an individual or household;

2 (B) publicly commits to processing the data only in a de-identified
3 fashion and not attempting to re-identify the data; and

4 (C) contractually obligates any recipients of the data to comply with
5 the provisions of this act.

6 (2) For purposes of subparagraph (A), "reasonable measures"
7 includes the deidentification requirements provided by 45 C.F.R. §
8 164.514, as in effect on January 1, 2027.

9 (q) "Derived data" means data that is created by the derivation of
10 information, data, assumptions, correlations, inferences, predictions or
11 conclusions from facts, evidence or another source of information or data
12 about a minor or a minor's device.

13 (r) "Direct messaging" means sending private one-on-one or group
14 messages to other users, separate from public posts.

15 (s) "Design" means:

16 (1) The processing of personal data; and
17 (2) design features.

18 (t) "Design feature" means any aspect of an online service, product or
19 feature the covered business develops or creates, in whole or in part, to
20 facilitate use of the online service, product or feature.

21 (1) "Design feature" includes, in whole or in part, any:

22 (A) Algorithmic recommendation system;
23 (B) algorithmic feed;
24 (C) user interface;
25 (D) notification or push alert system; and
26 (E) reward or incentive system.

27 (2) "Design feature" does not include any:

28 (A) Media;
29 (B) content moderation policy; or
30 (C) component of an algorithmic recommendation system that
31 enforces the covered business' content moderation policies.

32 (u) "Genetic data" means any data, regardless of its format, that:

33 (1) Results from the analysis of a biological sample of an individual,
34 or from another source enabling equivalent information to be obtained;
35 and

36 (2) concerns genetic material, including deoxyribonucleic acids,
37 ribonucleic acids, genes, chromosomes, alleles, genomes, alterations or
38 modifications to deoxyribonucleic acids or ribonucleic acids, single
39 nucleotide polymorphisms, epigenetic markers, uninterpreted data that
40 results from analysis of the biological sample or other source and any
41 information extrapolated, derived or inferred therefrom.

42 (v) "Identified or identifiable individual" means an individual who
43 can be readily identified, directly or indirectly, including by reference to an

1 identifier such as a name, an identification number, specific geolocation
2 data or an online identifier.

3 (w) "Known adult" means a consumer who a covered business knows
4 or should have known, based on knowledge fairly implied under objective
5 circumstances, is 18 years of age or older.

6 (x) "Minor" means an individual under 18 years of age.

7 (y) "Online service, product or feature" means a digital product that is
8 accessible to the public via the internet, including a website or application,
9 and does not mean any of the following:

10 (1) Telecommunications service, as defined in 47 U.S.C. § 153, as in
11 effect on January 1, 2027;

12 (2) a broadband internet access service as defined in 47 C.F.R. §
13 54.400, as in effect on January 1, 2027; or

14 (3) the sale, delivery or use of a physical product.

15 (z) (1) "Personal data" means any information, including derived data
16 and unique identifiers, that is linked or reasonably linkable, alone or in
17 combination with other information, to an identified or identifiable
18 individual or to a device that identifies, is linked to or is reasonably
19 linkable to one or more identified or identifiable individuals in a
20 household.

21 (2) "Personal data" does not include de-identified data or publicly
22 available information.

23 (aa) "Process" or "processing" means any operation or set of
24 operations performed, whether by manual or automated means, on
25 personal data or on sets of personal data, such as the collection, use,
26 storage, disclosure, analysis, deletion, modification or otherwise handling
27 of personal data.

28 (bb) "Processor" means a person who processes personal data on
29 behalf of:

30 (1) A covered business;

31 (2) another processor; or

32 (3) a federal, state, tribal or local government entity.

33 (cc) (1) "Publicly available information" means information that:

34 (A) Is made available through federal, state, tribal or local
35 government records or to the general public from widely distributed
36 media; or

37 (B) a covered business has a reasonable basis to believe that the
38 consumer has lawfully made available to the general public.

39 (2) "Publicly available information" does not include:

40 (A) Biometric data collected by a covered business about a consumer
41 without the consumer's knowledge;

42 (B) information that is collated and combined to create a consumer
43 profile that is made available to a user of a publicly available website,

1 either in exchange for payment or free of charge;

2 (C) information that is made available for sale;

3 (D) an inference that is generated from the information described in

4 subparagraphs (B) or (C);

5 (E) any obscene visual depiction, as described in 18 U.S.C. Pt. 1, Ch.

6 71, as in effect on January 1, 2027;

7 (F) personal data that is created through the combination of personal

8 data with publicly available information;

9 (G) genetic data, unless otherwise made publicly available by the

10 consumer to whom the information pertains;

11 (H) information provided by a consumer on a website or online

12 service made available to all members of the public, for free or a fee,

13 where the consumer has maintained a reasonable expectation of privacy in

14 the information, such as by restricting the information to a specific

15 audience; or

16 (I) intimate images, authentic or computer-generated, known to be

17 nonconsensual.

18 (dd) "Reasonable alternative design" means an alternative design

19 feature for which the risk of encouraging compulsive use in minor users is

20 lower, unless the use of this alternative design would reduce the benefit of

21 the product to minor users in a way that substantially outweighs the

22 reduction in the risk of compulsive use to minor users.

23 (ee) "Reasonably likely to be accessed" means the online service,

24 product or feature is reasonably likely to be accessed by a covered minor

25 based on any of the following indicators:

26 (1) The online service, product or feature is directed to children, as

27 defined by the children's online privacy protection act, 15 U.S.C. §§ 6501–

28 6506 and 16 C.F.R. Ch. 1, Subch. C, Pt. 312, as in effect on January 1,

29 2027;

30 (2) the online service, product or feature is determined, based on

31 competent and reliable evidence regarding audience composition, to be

32 routinely accessed by an audience that is composed of at least 2% minor

33 users, two through 17 years of age; or

34 (3) the covered business knew or should have known that at least 2%

35 of the audience of the online service, product or feature includes minor

36 users two through 17 years of age, provided that, in making this

37 assessment, the covered business shall not collect or process any personal

38 data that is not reasonably necessary to provide an online service, product

39 or feature with which a minor is actively and knowingly engaged.

40 (ff) "Small business" means a covered business that meets the

41 following criteria for the three preceding calendar years or for the period

42 during which the covered business has been in existence, if such period is

43 less than three years:

1 (1) The covered business's average annual gross revenues during the
2 period did not exceed \$25,000,000, as adjusted annually to reflect changes
3 to the consumer price index; and

4 (2) the covered business, on average, did not annually collect,
5 process, retain or transfer the personal data of more than 50,000
6 individuals during the period for any purpose other than initiating,
7 rendering, billing for, finalizing, completing or otherwise collecting
8 payment for a requested service or product.

9 (gg) "Third party" means a natural or legal person, public authority,
10 agency or body other than the covered minor or the covered business.

11 (hh) "Weight" means the individual numeric setting that controls the
12 output of a recommender system at a high level across a covered online
13 platform's user base, such as the relative contributions of different factors
14 to an item's ranking.

15 Sec. 3. This act shall not apply to:

16 (a) A federal, state, tribal or local government entity in the ordinary
17 course of such government's operation;

18 (b) protected health information that a covered entity or business
19 associate thereof processes in accordance with or documents that a
20 covered entity or business associate creates for the purpose of complying
21 with HIPAA;

22 (c) information used only for public health activities and purposes
23 described in 45 C.F.R. § 164.512, as in effect on January 1, 2027;

24 (d) information that identifies a consumer in connection with:

25 (1) Activities that are subject to the federal policy for the protection
26 of human subjects as provided in 45 C.F.R. Pt. 46, as in effect on January
27 1, 2027;

28 (2) research on human subjects undertaken in accordance with good
29 clinical practice guidelines issued by the international council for
30 harmonization of technical requirements for pharmaceuticals for human
31 use;

32 (3) activities that are subject to the protections provided in 21 C.F.R.
33 Pt. 50 and 21 C.F.R. Part 56, as in effect on January 1, 2027;

34 (4) research conducted in accordance with the requirements set forth
35 in paragraphs (1) through (3) or otherwise in accordance with state or
36 federal law;

37 (5) an entity that primarily acts as a journalist as defined in K.S.A.
38 60-480, and amendments thereto, and that has a majority of such entity's
39 workforce consisting of individuals acting as journalists; or

40 (6) a financial institution subject to 15 U.S.C. Ch. 94, as in effect on
41 January 1, 2027.

42 Sec. 4. (a) A covered business shall not engage in any of the high-risk
43 data practices or design features listed in subsection (b) with respect to any

1 consumer unless:

2 (1) The consumer expressly and unambiguously requests the specific
3 practice or feature; and

4 (2) the consumer is not a covered minor.

5 (b) A covered business shall not:

6 (1) Collect, sell, share or retain any personal data of a consumer that
7 is not necessary to provide an online service, product or feature with which
8 the consumer is actively and knowingly engaged;

9 (2) use previously collected personal data of the consumer for any
10 purpose other than a purpose for which the personal data was collected,
11 unless necessary to comply with any obligation under this act;

12 (3) permit any individual, including a parent or guardian, to monitor
13 the online activity of the consumer or to track the location of the consumer
14 without providing a conspicuous signal to the consumer when the
15 consumer is being monitored or tracked;

16 (4) use the personal data of the consumer to select, recommend or
17 prioritize media for the covered minor, unless the personal data is:

18 (A) The consumer's express and unambiguous request to receive:

19 (i) Media from a specific account, feed or user or to receive more or
20 less media from that account, feed or user;

21 (ii) a specific category of media, such as "cat videos" or "breaking
22 news," or to see more or less of that category of media; or

23 (iii) more or less media with characteristics similar to the media they
24 are currently viewing;

25 (B) user-selected privacy or accessibility settings;

26 (C) the consumer's location, but only to determine whether the
27 consumer is within the State for purposes of complying with this section;

28 (D) the consumer's age status, but only to implement the covered
29 business's policies regarding media appropriate for minors; or

30 (E) a search query, provided the search query is only used to select
31 and prioritize media in response to the search query;

32 (5) send push notifications to the consumer between 12:00 a.m. and
33 6:00 a.m.; or

34 (6) use any design feature or component of a feature that:

35 (A) Automatically plays a video, unless the video is the next in a
36 series and the user expressly and unambiguously chose to play a prior
37 video in the series;

38 (B) uses intermittent variable reward schedules;

39 (C) continuously loads new media in an algorithmic feed seamlessly
40 and absent a specific request from the user, such as an infinite scroll feed;

41 (D) is intended to induce compulsive use; and

42 (E) has been identified and declared by the attorney general as a
43 prohibited data practice or design feature pursuant to the rulemaking

1 process outlined in subsection (c);

2 (7) provide a single setting to make more than one setting under this
3 subsection less protective; or

4 (8) prompt a consumer to change any of the consumer's settings under
5 this subsection unless strictly necessary to provide the consumer with the
6 online product, service or feature with which they are actively or
7 knowingly engaged.

8 (c) The attorney general shall, on or before January 1, 2027, adopt
9 rules and regulations that prohibit data processing or design practices of a
10 covered business that, in the opinion of the attorney general:

11 (1) Carry a risk of causing compulsive use that is not substantially
12 outweighed by any benefits provided by the practice or feature to users; or

13 (2) subvert or impair user autonomy, decision making or choice
14 during the use of an online service, product or feature of the covered
15 business.

16 (d) The attorney general may review and update the rules and
17 regulations adopted under subsection (c) as necessary to keep pace with
18 emerging technology.

19 Sec. 5. (a) Prior to deploying any new design, or a material change to
20 an existing design, to consumers, a covered business shall assess the risk
21 that the design will encourage compulsive use in minor users.

22 (b) For any design that carries a reasonably foreseeable risk of
23 encouraging compulsive use in minors, a covered business shall:

24 (1) Determine if there is a reasonable alternative design; and

25 (2) if one or more reasonable alternative designs do exist, provide the
26 reasonable alternative design that carries the lowest risk of compulsive use
27 as a default to each consumer, until:

28 (A) The consumer expressly and unambiguously requests the design;
29 and

30 (B) the covered business determines, using a commercially
31 reasonable and technically feasible age assurance method, that the
32 consumer is not a minor.

33 (c) Notwithstanding subsection (b), a covered business shall not
34 deploy any design to consumers if the design's assessed risk of compulsive
35 use to minors outweighs the assessed benefit of the design to minors,
36 unless:

37 (1) The consumer expressly and unambiguously requests the design;
38 and

39 (2) the covered business determines, using a commercially reasonable
40 and technically feasible age assurance method, that the consumer is not a
41 minor.

42 (d) A covered business shall assess all existing designs and mitigate
43 the risk of encouraging compulsive use in minors as described in this

1 section.

2 (e) A covered business shall document each step taken in accordance
3 with subsections (a), (b) and (c), along with any experiments, evidence and
4 data that supports the assessments and determinations made, and retain
5 such documents for a period of 10 years. All data collected about
6 individual users to support this subsection shall be anonymized.

7 (f) A covered business shall submit all records related to the
8 assessments and determinations made in subsections (a), (b) and (c) to an
9 independent auditor annually, who will assess the records for compliance
10 with this section and recommend any changes that would bolster
11 compliance.

12 (g) Nothing in this section shall require a covered business to:

13 (1) Assess any media for the media's risk of inducing compulsive use;
14 or

15 (2) limit any consumer's access to any specific user-generated content
16 or category of user-generated content.

17 (h) The provisions of this section shall not apply to any covered
18 business that qualifies as a small business.

19 Sec. 6. (a) (1) A covered business shall configure all default privacy
20 settings provided to a covered minor through the online service, product or
21 feature to the highest level of privacy.

22 (2) A covered business shall provide the following settings by default
23 to all covered minors:

24 (A) Do not use an algorithmic recommendation system to recommend
25 to any known adult user that they connect to the covered minor as a friend,
26 follower or contact;

27 (B) do not use an algorithmic recommendation system to recommend
28 to any known adult user that they follow the covered minor's media, unless
29 the covered minor's account was connected to the known adult's account as
30 a friend, follower or contact prior to the recommendation;

31 (C) do not use an algorithmic recommendation system to recommend
32 to any known adult user that they communicate with the covered minor
33 through direct messaging, unless the covered minor's account was
34 connected to the known adult's account as a friend, follower or contact
35 prior to the recommendation;

36 (D) do not use an algorithmic recommendation system to recommend
37 to the covered minor that they communicate with any known adult through
38 direct messaging, unless the covered minor's account was connected to the
39 known adult's account as a friend, follower or contact prior to the
40 recommendation;

41 (E) do not display the covered minor's friends, followers, or contacts;
42 and

43 (F) disable search engine indexing of the covered minor's account

1 profile and media.

2 (3) (A) A covered business shall not display the location of any
3 covered minor to any other user by default.

4 (B) A covered business shall only display the covered minor's
5 location to another user when the covered minor has expressly and
6 unambiguously chosen to share their location with the specific user.

7 (4) (A) A covered business shall not:

8 (i) Send push notifications to any covered minor by default; or
9 (ii) provide a single setting that enables all push notifications.

10 (B) A covered business shall provide covered minors with settings to
11 enable or disable each specific category of push notification offered by the
12 covered business on the product or service, such as marketing
13 notifications, direct message notifications, media interaction notifications
14 and any other category of notification pushed by the product or service.

15 (5) (A) A covered business shall:

16 (i) Disable by default all interaction counts, including counts of
17 reactions and comments, on all of the covered minor's media;

18 (ii) offer settings to enable or disable specific types of interaction
19 counts, such as comments, reactions, reshares or other categories of
20 interactions; and

21 (iii) offer a single setting to turn all interaction counts on at once only
22 if the settings to turn specific interactions on are equally or more
23 prominent and accessible.

24 (6) A covered business shall not:

25 (A) Provide a covered minor with a single setting that makes more
26 than one privacy setting less protective at once; or

27 (B) request or prompt a covered minor to make any of such minor's
28 settings less protective, unless the change is strictly necessary for the
29 covered minor to access a service or feature that such minor has expressly
30 and unambiguously requested.

31 (b) A covered business that facilitates communications between users
32 shall:

33 (1) Provide a prominent, accessible, and responsive tool that gives a
34 covered minor the option to block specific users from taking, at minimum,
35 each of the following actions:

36 (A) Accessing the user's media;

37 (B) interacting with the user's media;

38 (C) communicating with the user through the covered business'
39 media;

40 (D) communicating with the user through direct messaging; and

41 (E) communicating with the user through any other means offered by
42 the covered business through the product or service.

43 (2) The tool described in paragraph (1) shall provide a covered minor

1 with the option to prevent media from the blocked user from appearing in
2 the covered minor's feed.

3 (3) The tool described in paragraph (1) shall, at a minimum, be
4 accessible from a feature located:

5 (A) Proximate to every instance of another user's username and
6 avatar;

7 (B) on all media shared by another user;

8 (C) on every direct message or direct message thread; and

9 (D) in a first-level settings menu labeled "Blocked Users".

10 (4) The features described in subparagraphs (A) through (C) of
11 paragraph (3) shall provide a covered minor with the option to:

12 (A) Block the other user, which will trigger all of the settings in
13 paragraphs (1) and (2); or

14 (B) go to the settings page to select more granular block settings for
15 the other user.

16 (c) A covered business that offers an algorithmic feed to a covered
17 minor that uses the covered minor's personal data to select, recommend or
18 prioritize media in the feed shall:

19 (1) Provide a prominent and accessible user interface that enables the
20 covered minor to:

21 (A) Expressly and unambiguously communicate such covered minor's
22 preferences about the types of media to be recommended and to be
23 blocked in the output of the relevant algorithmic recommendation system;
24 and

25 (B) access, review and make changes to any personal data the
26 covered business uses to determine the output of the relevant algorithmic
27 recommendation system; and

28 (2) ensure that the relevant algorithmic recommendation system is
29 informed by these preferences.

30 (d) A covered business that offers an algorithmic feed to a covered
31 minor that uses the covered minor's personal data to select, recommend or
32 prioritize media in the feed shall provide the covered minor with the
33 choice of an algorithmic feed that only selects media from sources the
34 covered minor affirmatively chose to follow or otherwise include in the
35 feed.

36 (e) A covered business shall:

37 (1) Provide a prominent and accessible tool to allow:

38 (A) A covered minor to request the covered business delete any
39 account profiles, media and personal data provided by, or obtained about,
40 the covered minor, including personal data the covered minor provided to
41 the covered business, personal data the covered business obtained from
42 another source and derived data; and

43 (B) the parent or legal guardian of a covered minor to take such a

1 request on the covered minor's behalf; and

2 (2) honor a request made under paragraph (1) not later than 15 days
3 after a covered business receives the request.

4 (f) A covered business shall not delete anonymized data collected for
5 the purpose of complying with the transparency requirements in Section
6 5(e), and amendments thereto.

7 Sec. 7. A covered business shall prominently and clearly provide on
8 such covered business's website or mobile application:

9 (a) The covered business's privacy information, terms of service,
10 policies and community standards;

11 (b) for each algorithmic feed in use by the covered business:

12 (1) The purpose of the feed; and

13 (2) the algorithmic recommendation system or systems used to
14 determine the feed;

15 (c) for each algorithmic recommendation system in use by the
16 covered business:

17 (1) The purpose of the system;

18 (2) a description of any personal data of minors that is used as an
19 input or to inform an input;

20 (3) the source of the personal data;

21 (4) the purpose of using the personal data; and

22 (5) how each personal data input is:

23 (A) Measured and determined, if it is derived data; and

24 (B) weighed relative to the other inputs reported in this subsection,
25 categorized into one of four quartile groups according to the input's
26 relative importance in contributing to the system's output; and

27 (d) for every other service feature of the product or service that uses
28 the personal data of covered minors, descriptions of:

29 (1) The purpose of the service feature;

30 (2) the personal data collected by the service feature;

31 (3) the personal data used by the service feature;

32 (4) how the service feature uses the personal data;

33 (5) any personal data transferred to or shared with a processor or third
34 party by the service feature, the identity of the processor or third party and
35 the purpose of the transfer or sharing; and

36 (6) how long the personal data is retained.

37 Sec. 8. (a) Any covered business or processor conducting age
38 assurance shall:

39 (1) Only collect personal data of a consumer that is strictly necessary
40 for determining a consumer's age status;

41 (2) immediately upon determining whether a consumer is a covered
42 minor, delete any personal data collected of that consumer for age
43 assurance, except for the determination of the user's age status;

1 (3) not use any personal data of a consumer collected for age
2 assurance for any other purpose;

3 (4) not combine personal data of a consumer collected for age
4 assurance, except for the determination of the consumer's age status, with
5 any other personal data of the consumer;

6 (5) not disclose personal data of a consumer collected for age
7 assurance to a third party that is not a processor; and

8 (6) implement a review process to allow consumers to appeal such
9 consumer's age status determination.

10 (b) A covered business or processor that complies with all the
11 provisions of this act shall not be held liable for any inaccuracies in a
12 consumer's age status.

13 (c) The attorney general may adopt and update rules implementing
14 this section, including:

15 (1) Describing:

16 (A) How covered businesses may comply with the covered minor and
17 known adult standards;

18 (B) appropriate review processes for consumers appealing their age
19 status determinations; and

20 (C) transparency measures that would increase consumer trust in age
21 assurance; and

22 (2) providing any additional privacy protections for personal data
23 collected for age assurance.

24 Sec. 9. (a) A violation of this act by a covered business shall
25 constitute a deceptive act pursuant to the Kansas consumer protection act,
26 K.S.A. 50-623 et seq., and amendments thereto.

27 (b) The attorney general shall have the same authority under this act
28 to adopt rules and regulations, conduct civil investigations, bring civil
29 actions and seek remedies as provided under the Kansas consumer
30 protection act, K.S.A. 50-623 et seq., and amendments thereto.

31 (c) Any violation of this act or rules adopted pursuant to this act
32 constitutes an injury in fact to a consumer.

33 (d) A consumer injured by a violation of this act may bring a civil
34 action against the covered business or processor that violates this act, in
35 which the court may award a prevailing plaintiff:

36 (1) Statutory damages of \$5,000 per individual per violation, as
37 adjusted annually to reflect an increase in the consumer price index, or
38 actual damages, whichever is greater;

39 (2) punitive damages, for reckless or knowing violations;

40 (3) injunctive relief;

41 (4) declaratory relief; and

42 (5) reasonable attorney's fees and litigation costs.

43 Sec. 10. Nothing in this act shall be interpreted or construed to:

- 1 (a) Impose liability in a manner that is inconsistent with 47 U.S.C. §
2 230;
- 3 (b) impose liability in a manner that is inconsistent with the first
4 amendment to the Constitution of the United States;
- 5 (c) force any consumer to undergo age assurance as a condition of
6 accessing the products or services of any covered business;
- 7 (d) prevent any consumer from accessing any user-generated media;
8 or
- 9 (e) preempt or otherwise affect any right, claim, remedy, presumption
10 or defense available at law or in equity, including, but not limited to, anti-
11 discrimination, consumer protection, labor and civil rights laws.

12 Sec. 11. A covered business shall not discriminate or retaliate against
13 any consumer, including denying products or services, charging different
14 prices or rates for products or services, or providing lower quality products
15 or services to the consumer, for receiving any of the protections contained
16 in this act, exercising any of the rights contained in this act, for refusing to
17 change their privacy and safety settings or for refusing to agree to the
18 collection or processing of personal data or to the use of any design
19 feature.

20 Sec. 12. Nothing in this act may be construed to infringe on the
21 existing rights and freedoms of covered minors or be construed to
22 discriminate against the covered minors based on race, ethnicity, sex,
23 disability, religion or national origin.

24 Sec. 13. (a) Sections 13 through 18, and amendments thereto, shall be
25 known and may be cited as the Kansas stopping likeness abuse by
26 nonconsensual digital replicas act.

27 (b) (1) The purpose of this act is to enshrine robust, dignity-based
28 protections for all individuals over their digital likeness against replication
29 without consent, while respecting constitutional doctrine concerning
30 public and limited-purpose public figures.

31 (2) Dignity-based protections recognize the intrinsic worth of human
32 beings shared by all people, as well as the individual reputation of each
33 person built upon their own individual actions and achievements.
34 Violations of dignity-based protections, unlike property right violations, do
35 not manifest in clear monetary or financial losses. Instead, violations of
36 one's dignity produce emotional harms like distress, embarrassment or
37 humiliation, as well as psychological harms. Violations may also cause
38 reputational harm, including being misrepresented in relation to a matter,
39 including one's beliefs, identities and actions or experiencing
40 disadvantageous changes in employment status, position or duties as a
41 result of the violation. Monetary and financial harms can accompany
42 dignity-based violations, including resultant damage to property or damage
43 to a business or financial position.

1 Sec. 14. As used in the Kansas stopping likeness abuse by
2 nonconsensual digital replicas act, unless the context requires otherwise:

3 (a) "Act" means the Kansas stopping likeness abuse by
4 nonconsensual digital replicas act.

5 (b) "Consent" means prior written and signed affirmation of an
6 individual to such individual's digital replication by another. If such
7 individual is a minor, "consent" shall be made by the minor's parents or
8 legal guardians. If the individual is deceased, "consent" shall be given by
9 such individual's executor or administrator, heirs or devisees. Mere
10 acceptance of a terms of use or service agreement for a digital product or
11 service does not constitute consent to digital replication alone, even where
12 such agreements contain explicit provisions concerning digital replicas,
13 without a further showing that the individual materially understood such
14 terms and provided prior, written and signed consent to such individual's
15 digital replication. "Consent" can be established through the provision of
16 documented contract negotiations or other formal, legal communications
17 demonstrating that the individual had a genuine opportunity to bargain
18 with the parties responsible for such individual's replication prior to the
19 creation of any digital replica of such individual.

20 (c) "Developer" means any individual, group of individuals or legal
21 entities who develop or deploy any type of digital technology capable of
22 producing digital replicas. Such technology is not limited to digital
23 services and products with the sole purpose or function of digital
24 replication. Legal entities include, but are not limited to, firms,
25 associations, partnerships, corporations, joint stock companies, syndicates,
26 common law and statutory trusts, educational and religious institutions,
27 political parties and community, civic or other organizations. "Developer"
28 shall not be interpreted to be mutually exclusive for the purposes of this
29 act.

30 (e) (1) "Digital likeness" means the likeness of an individual that has
31 been created or manipulated through the use of any digital technology.

32 (2) "Digital likeness" includes the use of an individual's likeness in
33 any technological product or service that represents itself as having a
34 likeness to the individual depicted.

35 (f) (1) (A) "Digital replica" means a newly-created, highly realistic
36 image, video or audio recording that has been digitally created or
37 manipulated to depict an individual's likeness without such individual's
38 consent.

39 (B) "Digital replica" includes an exact copy, imitation or close
40 approximation of the likeness of an individual created or altered, in whole
41 or in part, using any type of digital technology.

42 (2) "Digital replica" does not include:

43 (A) Original depictions of an individual created through:

1 (i) Traditional, non-human audiovisual technologies, including, but
2 not limited to, photography and video and audio recording; and

3 (ii) human audiovisual technologies such as visual, musical, dramatic
4 and other performance-based art forms;

5 (B) the electronic reproduction of a previously-existing unaltered
6 video, image or audio recording of an individual; and

7 (C) the remixing, mastering or digital remastering of a sound
8 recording, image or an audiovisual work depicting an individual's likeness,
9 especially when doing so superficially alters the appearance of the original
10 work, such as through the use of a filter.

11 (g) (1) "Digital replication" means the act of producing a digital
12 replica of another individual by another using digital technology.

13 (2) "Digital replication" does not include the production of a digital
14 replica of an individual by such same individual.

15 (h) (1) "Digital technology" means any information computer and
16 communication technology products, services or tools, including the
17 internet and other communication networks, computer devices and other
18 computer and communications hardware, software applications, data
19 systems and other electronic content, including multimedia content, and
20 data storage.

21 (2) "Digital technology" includes, but is not limited to, complex
22 computational systems commonly referred to as "artificial intelligence,"
23 "generative artificial intelligence," "machine learning," "deep learning"
24 and other related technical systems that can generate novel outputs through
25 data-based statistical pattern identification, whether through the use of
26 models, rule-based learning or other methods.

27 (i) "Individual" means a human being, living or deceased.

28 (j) "Likeness" means the actual or simulated image, voice, signature
29 and other uniquely identifying features, including one's face, mannerisms,
30 distinctive appearance, distinctive speech patterns, including speech and
31 language disorders, distinguishing body-based characteristics, such as
32 visible physical marks and permanent body modifications and other
33 unique, personally-identifying characteristics of an individual, regardless
34 of the means of creation, that is readily identifiable as the individual
35 through visual or auditory means. "Likeness" does not include the use of
36 an individual's name alone, without any other representation of the
37 individual.

38 (k) "Limited-purpose public figure" means any individual who
39 voluntarily places themselves into a particular public controversy and thereby
40 becomes a public figure for a limited issue or range of issues and for a
41 limited duration of time. Private individuals shall not be converted into
42 limited-purpose public figures solely through being made the subject of
43 news reporting.

1 (l) "Private individual" means any individual who is not a public
2 figure or limited-purpose public figure.

3 (m) (1) "Public figure" means any individual who has achieved fame
4 or notoriety and is known to many people outside of such individual's
5 personal and professional connections.

6 (2) "Public figure" includes any individual who has run for
7 government office or otherwise holds a position of prominence in society.

8 Sec. 15. (a) This act shall be liberally construed in a manner
9 consistent with the intent to provide maximal protection to all individuals
10 against the nonmonetary harms of nonconsensual digital replication
11 without violating existing rights and obligations imposed under other laws
12 of this state.

13 (b) The duties and obligations imposed by this act are cumulative
14 with any other duties or obligations imposed under other law and shall not
15 be construed to relieve any party from any duties or obligations imposed
16 under other law and do not limit any rights or remedies under existing law.

17 (c) The remedies provided in this act shall be construed as cumulative
18 to each other and the remedies or penalties available under all other laws
19 of this state.

20 (d) Nothing in this act shall be construed to limit existing and future
21 claims related to the prevention of likeness harms, including common law
22 or statutory misappropriation of likeness tort and right of publicity claims,
23 as well as any laws governing the assignment or licensing of property-
24 based interests in one's likeness, or any other legal remedy potentially
25 available to a claimant under this act.

26 (e) This act shall not apply to the extent that this act is preempted by
27 federal law.

28 Sec. 16. (a) Every individual shall have a dignity-based right of
29 protection against nonconsensual digital replication. This right shall not be
30 limited by the commercial value of the individual's likeness or digital
31 likeness, or lack thereof.

32 (b) Subject to the provisions of section 18, and amendments thereto,
33 any individual or developer who knowingly engages in digital replication,
34 without the prior consent of the individual subjected to such digital
35 replication, shall be liable to a civil action to the individual depicted
36 therein.

37 (c) Subject to the provisions of section 18, and amendments thereto,
38 any individual or developer who knowingly publishes, distributes,
39 transmits or otherwise makes available to the public an individual's digital
40 replica, without such individual's prior consent, shall be liable to a civil
41 action.

42 (d) Subject to the provisions of section 18, and amendments thereto,
43 any individual or developer who knowingly distributes, transmits or

1 otherwise makes available any type of digital technology whose sole
2 purpose is digital replication shall be liable to a civil action, as well as
3 statutory damages and structural remedies under section 18, and
4 amendments thereto.

5 Sec. 17. (a) Any claim pursuant to this act concerning the digital
6 replication of a private figure, including that of a minor or deceased
7 private figure, shall show that the alleged conduct would be offensive to a
8 reasonable person similarly situated.

9 (b) Offensiveness shall be established through a showing:

10 (1) Of the intensity and durability of the offense;
11 (2) the reasonability or foreseeability of the offense;
12 (3) the extent to which the private individual could have reasonably
13 avoided the offense; and

14 (4) the extent to which the private individual willingly assumed the
15 risk of the offense.

16 (c) (1) A claimant establishes a rebuttable presumption of
17 offensiveness by showing:

18 (A) Mental or emotional distress, including, but not limited to:

19 (i) Incurring financial expenses, medical expenses, job loss or other
20 monetary burdens as a result;

21 (ii) non-financial, dignity and control-based burdens, such as
22 violations of the claimant's sincerely held personal, political or religious
23 beliefs;

24 (iii) experienced or highly likely damage to the claimant's reputation
25 or ability to maintain such claimant's pre-replication reputation; or

26 (iv) that the digital replica so produced is likely to cause confusion, to
27 cause mistake or to deceive another as to the affiliation, connection or
28 association of the individual depicted with another person, group,
29 institution or commercial product, service or interest;

30 (B) the digital replica so produced would more likely than not offend
31 an individual similarly situated to the claimant; or

32 (C) the claimant gained knowledge of the digital replica at issue
33 through any means other than direct, post-replication disclosure by the
34 individual or developer.

35 (2) (A) A defendant shall overcome the presumption established in
36 paragraph (1) by showing the immediate removal of the offending digital
37 replica so produced, and the immediate destruction of any digital
38 technology whose sole purpose is digital replication and is under such
39 defendant's direct control, as well as providing documented proof that the
40 defendant made a good-faith effort to immediately inform any other
41 individual or developer described in section 16(c) or (d), and amendments
42 thereto, that the defendant reasonably knew and continued to make the
43 digital replica at issue available to the public after the defendant's

1 immediate removal or destruction of the underlying technology.

2 (B) If the defendant is an individual without direct access to or
3 control over the digital technology whose sole purpose is digital
4 replication, such individual defendant shall overcome the presumption
5 established in subsection (c) by providing documented proof of a good-
6 faith effort to request that the offending digital replica be immediately
7 removed by any other individual or developer described in section 16(c) or
8 (d), and amendments thereto, that such individual defendant reasonably
9 knew continued to make the digital replica at issue available to the public.

10 (C) Where the claimant directly contacts the defendant prior to filing
11 a civil action, immediate removal or destruction shall occur within 48
12 hours of such contact for the defendant to meet the showing requirements
13 described in subparagraph (A).

14 (D) Such showing requirements shall not be met if such defendant
15 merely demonstrates that the private figure depicted by the digital replica
16 at issue voluntarily publicized such private figure's own likeness or digital
17 likeness in other contexts beyond the digital replication at issue, including,
18 but not limited to, appearing in photos, video recordings, audio recordings
19 and other readily-identifiable means.

20 (d) Any claim pursuant to this act concerning the digital replication of
21 a public or limited-purpose public figure, including that of a minor or
22 deceased public or limited-purpose public figure, shall show both that the
23 alleged conduct would be offensive to a reasonable person similarly
24 situated as provided in subsections (a), (b) and (c) and that the defendant
25 violated the right provided in section 16(a), and amendments thereto, with
26 knowledge that the digital replica resulting from conduct provided in
27 section 16(b), (c) or (d), and amendments thereto, was false, or with
28 reckless disregard of whether such digital replica was false.

29 (e) Any claim pursuant to this act may include a claim of secondary
30 liability for any individual or developer who provided substantial
31 assistance to others to infringe on the right provided in section 16(a), and
32 amendments thereto, where such individual or developer knows or
33 reasonably should have known of the illegality of such conduct.

34 Sec. 18. (a) (1) The court having jurisdiction for any civil action
35 arising pursuant to this act may grant injunctions on terms as such court
36 may deem reasonable to prevent or restrain any violation of section 16,
37 and amendments thereto.

38 (2) (A) As part of such injunction and so far as the developer is not an
39 individual, the court may authorize the impounding, confiscation or
40 destruction of all unauthorized items and seize all tangible personal
41 property or other instrumentalities used in connection with the violation of
42 the individual's rights and any underlying likeness-related data therein.

43 (B) All instrumentalities seized pursuant to enforcing an injunction

1 under this subsection shall be liquidated and used to satisfy statutory
2 damages, if damages are recovered by the rights holder.

3 (b) (1) An individual shall be entitled to recover whichever is greater
4 of \$5,000 or the actual damages suffered as a result of any violation of
5 section 16, and amendments thereto, as well as any profits that are
6 attributable to any such violation that are not taken into account in
7 computing the actual damages.

8 (2) Profit or lack thereof by the infringement of an individual's rights
9 as provided in section 16(a), and amendments thereto, shall not be a
10 criteria of determining liability.

11 (c) An individual or developer shall not be liable in a civil action
12 brought pursuant to this act if:

13 (1) A violation of section 16, and amendments thereto, is performed:

14 (A) For the purpose of reporting on newsworthy events and matters
15 of legitimate public concern, including accounts of crimes, accidents,
16 deaths, natural and human-made disasters, entertainment events and the
17 activities of public officials;

18 (B) for commentary, criticism, satire or parody, or any portion
19 thereof. To constitute satire or parody under this act, the conduct shall be
20 an exaggerated, outrageous commentary which a reasonable person could
21 not construe as truthful;

22 (C) for scholarship or educational purposes;

23 (D) within creative works, the character and purpose of which is
24 primarily expressive or artistic in nature rather than commercial, and that
25 includes a clear and obvious disclaimer as to the fictional nature of the
26 depictions at issue, or any portion thereof;

27 (E) fleeting or incidental replications;

28 (F) in a manner that is otherwise protected by the first amendment to
29 the Constitution of the United States; or

30 (G) any combination of the above; or

31 (2) (A) Such individual or developer is a traditional publisher,
32 including, but not limited to, newspapers, magazines, radio and television
33 stations, billboards and transit ads, where such publishers have published
34 or disseminated any advertisement or solicitation in violation of section
35 (16)(a), and amendments thereto.

36 (B) Subparagraph (A) shall not apply if it is established that such
37 publishers had knowledge or reasonably should have known of the
38 nonconsensual nature of the digital replication at issue. Such knowledge
39 may be implied where traditional publishers covered in this section fall
40 under section 16(b), (c) or (d), and amendments thereto.

41 Sec. 19. Sections 19 through 25, and amendments thereto, shall be
42 known and may be cited as the Kansas saving human connection act.

43 Sec. 20. As used in the Kansas saving human connection act, unless the

1 context requires otherwise:

2 (a) "Act" means the Kansas saving human connection act.

3 (b) "Advertisement" means any written or oral statement, illustration
4 or depiction that promotes the sale or use of a good or service or is
5 designed to increase interest in a brand, good or service where such
6 statement, illustration or depiction is displayed in exchange for monetary
7 or other valuable consideration, including access to data, between the
8 chatbot provider and the brand, good or service.

9 (c) (1) "Affirmative consent" means a clear affirmative act signifying
10 a user's freely given, specific, informed and unambiguous authorization for
11 an act or practice in response to a specific request from a chatbot provider,
12 provided:

13 (A) The request is provided to the user in a clear and conspicuous
14 standalone disclosure;

15 (B) the request includes a description, written in easy-to-understand
16 language, of the act or practice for which the user's consent is sought;

17 (C) the request is made in a manner reasonably accessible to and
18 usable by users with disabilities;

19 (D) the request is made available to the user in each language in
20 which the chatbot provider provides a chatbot;

21 (E) the option to refuse to give consent is at least as prominent as the
22 option to give consent, and the option to refuse to give consent takes the
23 same number of steps or fewer as the option to give consent; and

24 (F) affirmative consent to an act or practice is not inferred from the
25 inaction of the user or the user's continued use of a chatbot provided by the
26 chatbot provider.

27 (2) "Affirmative consent" does not include:

28 (A) Acceptance of a general or broad terms of use or similar
29 document;

30 (B) hovering over, muting, pausing or closing a given piece of
31 content;

32 (C) agreement obtained through the use of a false, fraudulent or
33 materially misleading statement or representation; or

34 (D) agreement obtained through the use of other dark patterns.

35 (d) "Chatbot" means any artificial intelligence, algorithmic or
36 automated system that generates information via text, audio, image or
37 video in a manner that simulates interpersonal interactions or conversation.

38 (e) "Chat log" means any input data, outputs generated by a chatbot
39 or record of the input data or outputs from user interactions with a chatbot.

40 (f) "Chatbot provider" means any person creating, distributing or
41 otherwise making available a chatbot.

42 (g) "Collect" or "collecting" means creating, buying, renting,
43 gathering, obtaining, receiving, accessing or otherwise acquiring personal

1 data or input data by any means through individuals' use of chatbots.

2 (h) "Dark pattern" means a user interface designed or manipulated
3 with the substantial effect of subverting or impairing user autonomy,
4 decision-making or choice.

5 (i) "De-identified data" means information that cannot reasonably be
6 used to infer or derive the identity of an individual or does not identify and
7 is not linked or reasonably linkable to an individual or a device that
8 identifies or is linked or reasonably linkable to such individual, regardless
9 of whether the information is aggregated, provided that the chatbot
10 provider:

11 (1) Takes such physical, administrative and technical measures as are
12 necessary to ensure that the information cannot, at any point, be used to re-
13 identify any individual or device that identifies or is linked or reasonably
14 linkable to an individual;

15 (2) publicly commits in a clear and conspicuous manner to:

16 (A) Process, retain or transfer the information solely in a de-identified
17 form without any reasonable means for re-identification; and

18 (B) not attempt to re-identify the information with any individual or
19 device that identifies or is linked or reasonably linkable to an individual;
20 and

21 (3) contractually obligates any entity that receives the information
22 from the chatbot provider to:

23 (A) Comply with all of the provisions of this section with respect to
24 the information; and

25 (B) require that such contractual obligations be included in all
26 subsequent instances for which the data may be received.

27 (j) "Input data" means information, including text, photos, audio,
28 video or files, provided to a chatbot by a user.

29 (k) "Model" means an engineered or machine-based system
30 underlying a chatbot that can, for explicit or implicit objectives, infer how
31 to generate outputs from received inputs that can influence physical or
32 virtual environments.

33 (l) (1) "Personal data" means any information, including derived data,
34 inferences or unique identifiers, that is linked or reasonably linkable, alone
35 or in combination with other information, to an identified or identifiable
36 individual or a device that identifies or is linked or reasonably linkable to
37 an individual.

38 (2) "Personal data" does not include de-identified data or publicly
39 available information.

40 (m) (1) "Publicly available information" means information that has
41 been lawfully made available to the general public from:

42 (A) Federal, state, tribal or municipal government records, if the
43 person collects, processes and transfers such information in accordance

1 with any restrictions or terms of use placed on the information by the
2 relevant government entity;

3 (B) widely distributed media; or

4 (C) a disclosure to the general public as required by federal, state,
5 tribal or local law.

6 (2) "Publicly available information" does not include:

7 (A) Any obscene visual depiction, as defined in 18 U.S.C. § 1460;

8 (B) biometric data;

9 (C) personal data that is created through the combination of personal
10 data with publicly available information;

11 (D) information that is collated and combined to create user profiles
12 on publicly available or subscription-based websites and inferences
13 generated from such information;

14 (E) genetic data, unless otherwise made publicly available by the
15 individual to whom the information pertains;

16 (F) information made available by a user on a website or online
17 service made available to all members of the public, for free or a fee,
18 where the user has restricted the information to a specific audience; or

19 (G) intimate images, authentic or computer-generated, known to be
20 nonconsensual.

21 (n) "Process" or "processing" means any operation or set of
22 operations performed, whether by manual or automated means, on
23 personal data or input data or on sets of personal data or input data, such as
24 the use, storage, disclosure, analysis, deletion or modification of such data.

25 (o) (1) "Profiling" means any form of processing performed on
26 personal data or input data to detect and classify or designate personality
27 and behavioral characteristics of an individual.

28 (2) "Profiling" does not include processing of chat logs for purposes
29 of user safety or to otherwise comply with this act.

30 (p) (1) "Sell" means exchanging personal data or input data for
31 monetary or other valuable consideration, or making available such data or
32 use of such data, by the chatbot provider to a third party.

33 (2) "Sell" does not include:

34 (A) The disclosure of personal data or input data to a third party that
35 processes the data on behalf of the chatbot provider;

36 (B) with the user's affirmative consent, the disclosure of personal data
37 or input data where the user affirmatively directs the chatbot provider to
38 disclose the data or intentionally uses the chatbot provider to interact with
39 a third party; or

40 (C) the disclosure of personal data that the user:

41 (i) Intentionally made available to the general public via a channel of
42 mass media; and

43 (ii) did not restrict to a specific audience.

1 (q) (1) "Training" means the use of input data to adjust or modify a
2 model.

3 (2) "Training" does not include:

4 (A) Testing to identify risks of harm to users;

5 (B) adjustments or modifications to address identified risks of harm
6 to users; or

7 (C) any actions necessary to comply with this act or otherwise
8 required by law.

9 (r) "User" means any natural person, regardless of age.

10 (s) "Widely distributed media" means information that is available to
11 the general public, including information from a telephone book or online
12 directory, a television, internet or radio program, the news media, or an
13 internet website that is available to the general public on an unrestricted
14 basis. "Widely distributed media" does not include an obscene visual
15 depiction as defined in 18 U.S.C. § 1460.

16 Sec. 21. (a) A chatbot provider shall not:

17 (1) Process personal data other than input data to inform chatbot
18 outputs unless the processing of personal data is necessary to fulfill an
19 express request made by a user and that user has provided affirmative
20 consent;

21 (2) process a user's chat log:

22 (A) To determine whether to display an advertisement for a product
23 or service to the user;

24 (B) to determine a product, service or category of product or service
25 to advertise to the user; or

26 (C) to customize an advertisement or how an advertisement is
27 presented to the user;

28 (3) process a user's chat log or personal data:

29 (A) If the chatbot provider knows or should know, based on
30 knowledge fairly implied on the basis of objective circumstances, that the
31 user is under 18 years of age, without the affirmative consent of that user's
32 parent or legal guardian;

33 (B) for training purposes, if the chatbot provider knows or should
34 have known, based on knowledge fairly implied on the basis of objective
35 circumstances, that a user is under 18 years of age;

36 (C) of a user who is over 18 years of age for training purposes, unless
37 the chatbot provider first obtains affirmative consent; or

38 (D) to engage in profiling beyond what is necessary to fulfill an
39 express request;

40 (4) use any classification or designation of a user's personality or
41 behavioral characteristics created through profiling beyond what is
42 necessary to fulfill an express request made by a user;

43 (5) sell a user's chat logs;

1 (6) retain a user's chat log for longer than 10 years, unless retention is
2 necessary to comply with this act or otherwise required by law; or

3 (7) discriminate or retaliate against any user, including by denying
4 products or services, charging different prices or rates for products or
5 services or providing lower quality products or services to the user, for
6 refusing to consent to the use of chat logs or personal data for training
7 purposes.

8 (b) A user has the right to access, at any time, any of the user's own
9 chat logs that a chatbot provider has retained in a portable and readily
10 usable format.

11 (1) Chat logs shall be made available to users in a downloadable and
12 human- and machine-readable format.

13 (2) A chatbot provider shall not discriminate or retaliate against any
14 user, including by denying products or services, charging different prices
15 or rates for products or services or providing lower quality products or
16 services to the user, for accessing such user's own chat logs.

17 (c) A government entity shall not compel the production of or access
18 to input data or chat logs from a chatbot provider, except as pursuant to a
19 wiretap warrant obtained in accordance with K.S.A. 22-2514, et seq., and
20 amendments thereto.

21 (d) A chatbot provider shall develop, implement and maintain a
22 comprehensive data security program that contains administrative,
23 technical and physical safeguards that are proportionate to the volume and
24 nature of the personal data and chat logs maintained by the chatbot
25 provider. The program shall be written and made publicly available on the
26 chatbot provider's website.

27 Sec. 22. (a) (1) A chatbot provider shall not use any term, letter or
28 phrase in the advertising, interface or outputs of a chatbot that indicates or
29 implies that any output data is being provided by, endorsed by or
30 equivalent to those provided by:

31 (A) A licensed healthcare professional;

32 (B) a licensed legal professional;

33 (C) a licensed accounting professional;

34 (D) a certified financial fiduciary or planner; or

35 (E) any person who the laws of Kansas require to be licensed or
36 otherwise credentialed in order to offer services in the state of Kansas.

37 (2) Such prohibition shall include any representation that a user's
38 input data or chat log is subject to client or patient confidentiality. Any
39 violation of this subsection shall be deemed a deceptive act or practice
40 under K.S.A. 50-626, and amendments thereto.

41 (b) Chatbot providers shall provide clear, conspicuous and explicit
42 notice to users that they are interacting with a chatbot rather than a human
43 prior to the chatbot generating any outputs, every hour thereafter and each

1 time a user prompts the chatbot about whether the chatbot is a real person.

2 (1) The text of such notice shall appear in the same language as the
3 one in which the user is interacting with the chatbot, in a font size easily
4 readable by an average user and no smaller than the largest font size of
5 other text appearing on the interface on which the chatbot is provided.

6 (2) Such notice shall be accessible to users with disabilities.

7 Sec. 23. The attorney general may adopt any rules or regulations
8 necessary to implement this act.

9 Sec. 24. (a) Chatbots are products for the purposes of product liability
10 actions.

11 (b) A chatbot provider has a duty to ensure that the use of such
12 provider's chatbot does not cause injury to a user.

13 (c) A chatbot provider is liable for any injury to a user that is caused
14 by such user's use of such provider's chatbot, even if:

15 (1) The chatbot provider exercised all reasonable care in the design
16 and distribution of the chatbot; or

17 (2) the chatbot provider did not directly distribute the chatbot to the
18 user or otherwise enter into a contractual relationship with the user.

19 Sec. 25. (a) The attorney general, a district attorney or a municipality
20 may bring a civil action against a chatbot provider that violates this act to:

21 (1) Enjoin the act or practice that is in violation of this act;

22 (2) enforce compliance with this act;

23 (3) obtain damages, civil penalties, restitution or other remedies on
24 behalf of the residents of the state of Kansas; or

25 (4) obtain reasonable attorney's fees and other litigation costs
26 reasonably incurred.

27 (b) A violation of sections 22 or 23, and amendments thereto, shall
28 constitute an injury in fact to a user.

29 (c) A user injured by a violation of sections 22 or 23, and
30 amendments thereto, may bring a civil action against the chatbot provider,
31 in which the court may award a prevailing plaintiff:

32 (1) Statutory damages of:

33 (A) An amount not to exceed \$5,000 per violation for any violation of
34 section 22, and amendments thereto, or actual damages, whichever is
35 greater; and

36 (B) An amount not to exceed \$5,000 in total for all violations of
37 section 23, and amendments thereto, or actual damages, whichever is
38 greater;

39 (2) punitive damages, for reckless and knowing violations;

40 (3) injunctive relief;

41 (4) declaratory relief; and

42 (5) reasonable attorney's fees and litigation costs.

43 Sec. 26. The provisions of the Kansas age-appropriate design code

1 act, the Kansas stopping likeness abuse by nonconsensual digital replicas
2 act and the Kansas saving human connection act are severable. If any
3 portion of any such act is held by a court to be unconstitutional or invalid,
4 or the application of any portion of such act to any person or circumstance
5 is held by a court to be unconstitutional or invalid, the invalidity shall not
6 affect other portions of such act that can be given effect without the invalid
7 portion or application, and the applicability of such other portions of such
8 act to any person or circumstance remains valid and enforceable.

9 Sec. 27. This act shall take effect and be in force from and after
10 January 1, 2027, and its publication in the statute book.