

SECOND REGULAR SESSION

HOUSE BILL NO. 1352

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BEARD.

4407H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 407, RSMo, by adding thereto seven new sections relating to the Missouri child protection registry, with penalty provisions and a delayed effective date.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto seven new sections, to be known as sections 407.1750, 407.1755, 407.1760, 407.1765, 407.1770, 407.1775, and 407.1780, to read as follows:

407.1750. Sections 407.1750 to 407.1780 shall be known and may be cited as the "Missouri Child Protection Registry Act".

407.1755. As used in sections 407.1750 to 407.1780, the following terms shall mean:

- (1) "Contact point", any electronic identification to which messages can be sent, including any of the following:
- (a) An instant message identity;
 - (b) A wireless telephone, personal digital assistant, pager number, or any other similar wireless communications device;
 - (c) A facsimile number;
 - (d) An electronic mail address; or
 - (e) Other electronic addresses subject to rules promulgated by the attorney general;
- (2) "Controlled substance", the same as defined in section 195.010;
- (3) "Gambling", the same as defined in section 572.010;
- (4) "Internet domain name", a globally unique, hierarchical reference to an internet host or service assigned through centralized internet authorities, consisting of a

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

14 series of character strings separated by periods with the right-most string specifying the
15 top of the hierarchy;

16 (5) "Intoxicating liquor", the same as defined in section 311.020;

17 (6) "Minor", an individual under the age of eighteen years;

18 (7) "Person", an individual, corporation, association, partnership, or any other
19 legal entity;

20 (8) "Pornographic for minors", the same as defined in section 573.010;

21 (9) "Registry", the Missouri child protection registry established in section
22 407.1760;

23 (10) "Tobacco product", the same as defined in section 149.011;

24 (11) "Vapor product", the same as defined in section 407.925.

407.1760. 1. The attorney general shall establish and operate, or contract with a
2 qualified third party to establish and operate, the Missouri child protection registry
3 composed of a secure list of contact points belonging or accessible to minors received under
4 this section. The attorney general or a third party administrator shall establish procedures
5 to prevent the use or disclosure of protected contact points. If the attorney general elects
6 to contract with a third party, he or she shall give due consideration to any person located
7 in this state. By April 1, 2019, the attorney general or the vendor providing registry
8 services for the attorney general, shall conduct a third-party audit to certify the security
9 of the registry. Follow-up third-party audits on the registry system shall be conducted at
10 least annually.

11 2. A parent, guardian, individual, school, or other institution or entity primarily
12 serving minor children that is responsible for one or more contact points to which a minor
13 may have access may register such contact points with the attorney general. Schools or
14 other institutions or entities primarily serving minor children may make one registration
15 for all contact points of the entity, and such registration may include the entity's internet
16 domain name. No fee or charge shall be assessed or incurred by a person, guardian,
17 individual, school, or other institution or entity primarily serving minor children
18 registering a contact point under sections 407.1750 to 407.1780.

19 3. A registration under this section shall be for not more than three years. If the
20 contact point is established for a specific minor, the registration shall expire the year the
21 minor turns eighteen years of age. A registration can be revoked or renewed by the
22 registrant upon notification to the attorney general. Upon registering such contact points,
23 the registrant shall be provided the following disclosure either electronically or in writing,
24 which shall be conspicuous and shall be in at least twelve-point font, to read as follows:
25 "No solution is completely secure. The most effective way to protect children on the

26 Internet is to supervise use and review all e-mail messages and other correspondence.
27 Under law, theft of a contact point from the Child Protection Registry is a class A
28 misdemeanor. While every attempt will be made to secure the Child Protection Registry,
29 registrants and their guardians should be aware that their contact points may be at a
30 greater risk of being misappropriated by marketers who choose to disobey the law."

31 4. The registry created under this section and the information submitted to the
32 attorney general shall be confidential and not subject to public disclosure.

407.1765. 1. Notwithstanding subsection 4 of this section, no person shall send,
2 cause to be sent, or conspire with a third party to send a message to a contact point that has
3 been registered for more than thirty calendar days with the attorney general if the primary
4 purpose of the message is to directly or indirectly advertise or otherwise link to a message
5 that advertises gambling, intoxicating liquor, tobacco products, vapor products, controlled
6 substances, or material pornographic for minors. The sending of a message described in
7 this subsection is not prohibited if, prior to sending the message, the sender has obtained
8 from an age-verified adult an affirmative statement of consent to receive the message at an
9 adult-designated contact point. To comply with this subsection, the sender shall:

10 (1) Verify the person making the affirmative statement is of legal age by inspecting,
11 in a face-to-face transaction, a valid government-issued photo identification with proof of
12 age;

13 (2) Obtain a written record stating that the recipient has consented to receive the
14 type of message described in this subsection. The consent form required under this
15 subdivision shall be signed by the recipient. The sender shall retain the consent form and
16 make it available for verification as may be required under subdivision (4) of this
17 subsection;

18 (3) Include notice to the recipient in all messages allowed under this subsection that
19 he or she may rescind his or her consent and provide an opportunity for the recipient to
20 opt-out of receiving of any future messages; and

21 (4) Notify the attorney general that the sender intends to send messages as allowed
22 under this subsection. The attorney general may implement procedures to verify that the
23 sender is in compliance with this subsection.

24 2. The attorney general shall establish a mechanism for senders of messages to
25 contact points to verify compliance with the registry. The mechanism to verify compliance
26 with the registry shall be established by rules promulgated by the attorney general. A
27 person desiring to send a message described in subsection 1 of this section shall use the
28 mechanism created under this subsection to ensure compliance with this section. A person
29 desiring to send a message described in subsection 1 of this section shall pay the attorney

30 general a fee for access to the mechanism required under this subsection. The fee shall be
31 seven-tenths of one cent and shall be based on the number of contact points checked for
32 each time a contact point is checked against the registry. The fees collected under this
33 section shall be credited to the following:

34 (1) Eighty-five percent of the fees to the children's protection registry fund created
35 under section 407.1770; and

36 (2) Not less than fifteen percent of the fees to the attorney general to cover the cost
37 of investigating, enforcing, and defending sections 407.1750 to 407.1780. The attorney
38 general may be reimbursed from the fund created under section 407.1770 for any costs
39 incurred under sections 407.1750 to 407.1780 that exceed the fees credited under this
40 subdivision.

41 3. The consent of a minor or third party to receive the message is not a defense to
42 a violation of this section.

43 4. An internet service provider does not violate this section by solely transmitting
44 a message across the network of the internet service provider.

407.1770. There is hereby created in the state treasury the "Child Protection
2 Registry Fund", which shall consist of moneys collected under section 407.1765. The state
3 treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180,
4 the state treasurer may approve disbursements. The fund shall be a dedicated fund and
5 moneys in the fund shall be used solely by the attorney general for the purpose of the
6 administration, promotion, investigation, enforcement, and defense of sections 407.1750
7 to 407.1780. Notwithstanding the provisions of section 33.080 to the contrary, any moneys
8 remaining in the fund at the end of the biennium shall not revert to the credit of the
9 general revenue fund. The state treasurer shall invest moneys in the fund in the same
10 manner as other funds are invested. Any interest and moneys earned on such investments
11 shall be credited to the fund.

407.1775. 1. A person commits the offense of tampering with the Missouri child
2 protection registry if he or she:

3 (1) Uses information obtained from the Missouri child protection registry to violate
4 sections 407.1750 to 407.1780;

5 (2) Improperly obtains or attempts to obtain contact points from the Missouri child
6 protection registry; or

7 (3) Uses, or transfers to a third party to use, information from the Missouri child
8 protection registry to send a communication.

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10 The offense of tampering with the Missouri child protection registry shall be a class A
11 misdemeanor.

12 2. A civil action based on the violation of section 407.1765 may be brought by an
13 authorized individual or the registrant of a contact point on behalf of a minor who has
14 received a message in violation of section 407.1765, or by the attorney general. A civil
15 action may also be brought by a person through whose facilities the message was
16 transmitted in violation of section 407.1765. In any action brought under this section, the
17 prevailing party may be awarded reasonable attorney's fees. A person bringing an action
18 under this section may recover one of the following:

- 19 (1) Actual damages, including reasonable attorney's fees; or
20 (2) In lieu of actual damages, recover the lesser of the following:
21 (a) Five thousand dollars per message received by a recipient or transmitted; or
22 (b) Two hundred fifty thousand dollars for each day the violation occurs.

23 3. If the attorney general has reason to believe that a person has violated sections
24 407.1750 to 407.1780, the attorney general may investigate the business transactions of that
25 person. The attorney general may require the person to appear at a reasonable time and
26 place, to give information under oath, and to produce such documents and evidence
27 necessary to determine whether the person is in compliance with the requirements of
28 sections 407.1750 to 407.1780. Any civil penalties collected by the attorney general under
29 this section shall be paid to the county school fund under article IX, section 7 of the
30 Constitution of Missouri.

31 4. It is a defense to an action brought under this section that a person reasonably
32 relied on the mechanism established by the attorney general under subsection 2 of section
33 407.1765.

407.1780. Any rule or portion of a rule, as that term is defined in section 536.010,
2 that is created under the authority delegated in sections 407.1750 to 407.1775 shall become
3 effective only if it complies with and is subject to all of the provisions of chapter 536, and,
4 if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any
5 of the powers vested with the general assembly pursuant to chapter 536 to review, to delay
6 the effective date, or to disapprove and annul a rule are subsequently held
7 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
8 after August 28, 2018, shall be invalid and void.

Section B. The enactment of sections 407.1750, 407.1755, 407.1760, 407.1765,
2 407.1770, 407.1775, and 407.1780 of this act shall become effective January 1, 2019.

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