

# HOUSE BILL NO. 2286

## 100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HANNEGAN.

5068H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To amend chapter 407, RSMo, by adding thereto ten new sections relating to the modernization decency act, with penalty provisions and a contingent 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 ten new sections, to be  
2 known as sections 407.1900, 407.1902, 407.1904, 407.1906, 407.1908, 407.1910, 407.1912,  
3 407.1914, 407.1916, and 407.1918, to read as follows:

2 **407.1900. Sections 407.1900 to 407.1918 shall be known and may be cited as the**  
3 **"Modernization Decency Act".**

2 **407.1902. As used in sections 407.1900 to 407.1918, the following terms mean:**

2 (1) "Adult cabaret", as defined under section 573.010;

3 (2) "Algorithm", a set of instructions designed to perform a specific task;

4 (3) "Cellular telephone", a communication device containing a unique electronic  
5 serial number that is programmed into its computer chip by its manufacturer and whose  
6 operation is dependent on the transmission of that electronic serial number along with a  
7 mobile identification number, which is assigned by the cellular telephone carrier, in the  
8 form of radio signals through cell sites and mobile switching stations;

9 (4) "Child pornography", as defined under 18 U.S.C. Section 2256 and section  
10 573.010;

11 (5) "Computer", as defined under 18 U.S.C. Section 1030;

12 (6) "Consumer", an individual who purchases or leases for personal, family, or  
13 household purposes an internet-enabled device;

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 (7) "Data communications device", an electronic device that receives electronic  
15 information from one source and transmits or routes it to another including, but not  
16 limited to, any such bridge, router, switch, or gateway;

17 (8) "Digital blocking capability", hardware or software that restricts or blocks  
18 internet access to websites, email, chat, or other internet-based communications based on  
19 category, site, or content. "Digital blocking capability" also means a filter or a digital  
20 blinder rack that can be deactivated by a retailer upon the satisfaction of certain nominal  
21 conditions;

22 (9) "Explicit sexual material", as defined under section 573.010;

23 (10) "Hate speech", a phrase concerning content that an individual finds offensive  
24 based on his or her personal moral code;

25 (11) "Human trafficking", sex trafficking and is an offense under section 566.206,  
26 566.209, 566.210, or 566.211;

27 (12) "Internet", as defined under 31 U.S.C. Section 5362;

28 (13) "Internet-enabled device", a cellular telephone, computer, data  
29 communications device, or other product manufactured, distributed, or sold in this state  
30 that provides internet access or plays a material role in distributing content on the internet;

31 (14) "Internet service provider", a person engaged in the business of providing a  
32 computer and communications facility through which a consumer may obtain access to the  
33 internet. The term shall not include a common carrier if the common carrier provides only  
34 telecommunications service;

35 (15) "Material", as defined under section 573.010;

36 (16) "Minor", as defined under section 573.010;

37 (17) "Nongovernment group", a nonprofit organization exempt from federal  
38 income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended,  
39 having as a primary purpose of ending sexual violence in this state and having programs  
40 for the prevention of sexual violence, outreach programs, and technical assistance to and  
41 support of youth and rape crisis centers working to prevent sexual violence. The term also  
42 includes individuals or any group that is upholding community standards of decency;

43 (18) "Obscene", as defined under section 573.010. The term includes, but is not  
44 limited to, websites that:

45 (a) Are known to facilitate human trafficking or prostitution; and

46 (b) Display or depict images that are pornographic for minors or that constitute  
47 sadomasochistic abuse, sexual excitement, sexual conduct, or revenge pornography;

48           (19) "Personal identification information", any information that identifies a person,  
49 including an individual's photograph, Social Security number, driver identification  
50 number, name, email address, address or telephone number;

51           (20) "Political speech", speech relating to the state, government, body politic, or  
52 public administration as it relates to governmental policymaking. The term includes  
53 speech by the government or candidates for office and any discussion of social issues;

54           (21) "Pornographic for minors", as defined under section 573.010;

55           (22) "Religious speech", a set of unproven answers, truth claims, faith-based  
56 assumptions, and naked assertions that attempt to explain such greater questions as how  
57 the world was created, what constitutes right and wrong actions by humans, and what  
58 happens after death;

59           (23) "Retailer", any person who regularly engages in the manufacturing, sale, offer  
60 for sale, or lease of internet-enabled devices or services in this state that make content  
61 accessible on the internet. The term includes internet service providers and suppliers and  
62 manufacturers of internet-enabled devices that play a material role in distributing content  
63 on the internet or that make content accessible that are subject to the jurisdiction of this  
64 state;

65           (24) "Revenge pornography", the distribution of sexually explicit images or videos  
66 of individuals without their permission constituting an offense under section 573.110;

67           (25) "Sadomasochistic abuse", as defined under section 573.010;

68           (26) "Sexual conduct", as defined under section 573.010;

69           (27) "Social media website", an internet website or application that enables users  
70 to communicate with each other by posting information, comments, messages, or images  
71 and that meets all of the following requirements:

72           (a) Is open to the public;

73           (b) Has more than seventy-five million subscribers;

74           (c) From its inception, has not been specifically affiliated with any one religion or  
75 political party; and

76           (d) Provides a means for the website's users to report obscene materials and has in  
77 place procedures for evaluating those reports and removing obscene material;

78           (28) "State of nudity", the showing of the human male or female genitals, pubic  
79 area, vulva, anus, anal cleft, or anal cleavage with less than a fully opaque covering; the  
80 showing of the female breast with less than a fully opaque covering of any part of the  
81 nipple; or the showing of the covered male genitals in a discernibly turgid state.

407.1904. 1. A retailer who manufactures, sells, offers for sale, leases, or distributes an internet-enabled device shall ensure that the product is equipped with an active and operating digital blocking capability prior to sale that blocks by default websites that:

- (1) Are known to facilitate human trafficking or prostitution; and
- (2) Display child pornography, revenge pornography, or obscene material harmful to minors.

2. A retailer who manufactures, sells, offers for sale, leases, or distributes an internet-enabled device shall:

(1) Make reasonable and ongoing efforts to ensure that the digital content blocking capability functions properly;

(2) Establish a reporting mechanism, such as a website or call center, to allow a consumer to report unblocked websites displaying content described in subsection 1 of this section or to report blocked websites that are not displaying content described in subsection 1 of this section;

(3) Report child pornography received through the reporting mechanism to the National Center For Missing and Exploited Children's CyberTipline in accordance with 18 U.S.C. Section 2258A;

(4) Not block access to websites that:

(a) Are social media websites that provide a means for the website's users to report obscene materials and have in place procedures for evaluating those reports and removing obscene material;

(b) Serve primarily as a search engine; or

(c) Display complete movies that meet the qualifications for a "G", "PG", "PG-13", or "R" rating by the Classification and Ratings Administration.

3. Except as provided under subsection 4 of this section, a retailer shall not provide to a consumer methods, source codes, or other operating instructions for deactivating a product's digital blocking capability.

4. A retailer of an internet-enabled device shall deactivate the digital blocking capability after a consumer:

(1) Requests that the capability be disabled;

(2) Presents personal identification information to verify that the consumer is eighteen years of age or older;

(3) Acknowledges receiving a warning regarding the potential danger of deactivating the digital blocking capability; and

35           (4) Pays a one-time twenty-dollar digital access fee to be remitted quarterly to the  
36 state treasurer and deposited into the Missouri human trafficking and child exploitation  
37 prevention fund established under subsection 1 of section 407.1912.

38           5. The digital access fee required under subdivision (4) of subsection 4 of this  
39 section is not content-based but collected and remitted to the state treasurer to help the  
40 state bear the costs of upholding community standards of decency and combat sex-related  
41 offenses and shall be used as provided under subsection 5 of section 407.1912. The state  
42 treasurer shall prescribe payment, collection, and enforcement of the fee imposed under  
43 subdivision (4) of subsection 4 of this section. The state treasurer may annually adjust the  
44 one-time fee to account for inflation.

45           6. Nothing in sections 407.1900 to 407.1918 shall be construed to prevent a retailer  
46 from charging a reasonable separate fee to deactivate the digital blocking capability, which  
47 the retailer may retain for profit.

48           7. The attorney general shall prepare and make available to retailers a form that  
49 includes all content that shall be in the warning required under subdivision (3) of  
50 subsection 4 of this section.

51           8. Nothing in sections 407.1900 to 407.1918 shall be construed to require a retailer  
52 of an internet-enabled device to create a database or registry that contains the names or  
53 personal identification information of adults who knowingly chose to deactivate a  
54 product's filter. A retailer of an internet-enabled device shall take due care to protect the  
55 privacy rights of adult consumers under this section and shall not disclose the names or  
56 personal identification information of an adult consumer who deactivated a product's  
57 filter.

          407.1906. 1. If the digital blocking capability blocks a website that is not displaying  
2 content described under subsection 1 of section 407.1904 and the block is reported to a call  
3 center or reporting mechanism, the website shall be unblocked within a reasonable time,  
4 but in no event later than five business days after the block is first reported. A consumer  
5 may seek judicial relief to unblock a website that was wrongfully blocked by the digital  
6 blocking capability. The prevailing party in a civil litigation may seek attorneys' fees,  
7 costs, and other forms of relief.

8           2. If a retailer of an internet-enabled device is unresponsive to a report of a website  
9 displaying content described under subsection 1 of section 407.1904 that has breached the  
10 digital blocking capability, the attorney general or a consumer may file a civil action. The  
11 attorney general or a consumer may seek damages of up to five hundred dollars for each  
12 website that was reported but not subsequently blocked. The prevailing party in the civil  
13 action may seek attorneys' fees, costs, and other forms of relief.

14           **3. A retailer of an internet-enabled device who fails to comply with a duty described**  
15 **under subsection 1 or 2 of this section has committed an indecent deceptive trade practice**  
16 **and may be subject to penalties as provided under section 407.1908.**

17           **4. It shall be an affirmative defense in a civil action to a charge of violating this**  
18 **section that the dissemination of the content described under subsection 1 of section**  
19 **407.1904 was limited to institutions or organizations having scientific, educational, or other**  
20 **similar justifications for displaying the material.**

**407.1908. 1. A retailer of an internet-enabled device is guilty of the offense of**  
2 **indecent deceptive trade practice if such retailer knowingly:**

3           **(1) Sells an internet-enabled device without activated blocking capability that**  
4 **makes an attempt to block by default websites that display content described under**  
5 **subsection 1 of section 407.1904;**

6           **(2) Violates subsection 3 of section 407.1904;**

7           **(3) Fails to comply with the requirements under subsection 4 of section 407.1904**  
8 **before deactivating the digital blocking capability; or**

9           **(4) Discloses to a third party the name or the personal identification information**  
10 **of adult consumers who have elected to deactivate a product's filter in violation of**  
11 **subsection 8 of section 407.1904 without a court order directing otherwise.**

12           **2. A retailer who commits the offense of indecent deceptive trade practice shall be**  
13 **subject to the following:**

14           **(1) For a first offense, the retailer is guilty of a class D misdemeanor, subject to a**  
15 **fine not to exceed five hundred dollars;**

16           **(2) For a second offense, the retailer is guilty of a class C misdemeanor, subject to**  
17 **confinement not to exceed fifteen days and subject to a fine not to exceed seven hundred**  
18 **fifty dollars;**

19           **(3) For a third offense, the retailer is guilty of a class B misdemeanor, subject to**  
20 **confinement not to exceed six months and subject to a fine not to exceed one thousand**  
21 **dollars;**

22           **(4) For a fourth and any subsequent offense, the retailer is guilty of a class A**  
23 **misdemeanor, subject to confinement not to exceed one year and subject to a fine not to**  
24 **exceed two thousand dollars.**

25           **3. Only the attorney general or prosecuting or city attorney may enforce the**  
26 **provisions of this section.**

**407.1910. 1. Sections 407.1900 to 407.1918 shall not apply to:**

2           **(1) An occasional sale of an internet-enabled device by a person that is not**  
3 **regularly engaged in the trade business of selling internet-enabled devices;**

4           (2) Products produced or sold before the enactment of sections 407.1900 to  
5 407.1918; and

6           (3) Independent third-party routers that are not affiliated with an internet service  
7 provider.

8           2. Sections 407.1900 to 407.1918 shall not apply to a retailer who manufactures,  
9 sells, offers for sale, leases, or distributes an internet-enabled device that is not subject to  
10 the jurisdiction of this state.

          407.1912. 1. There is hereby established in the state treasury a fund to be known  
2 as the "Missouri Human Trafficking and Child Exploitation Prevention Fund" to be  
3 administered by the attorney general or the attorney general's designee.

4           2. The purpose of the fund is:

5           (1) To promote the development throughout the state of locally-based and  
6 supported nonprofit programs for the survivors of sex-related offenses and to support the  
7 quality of services provided;

8           (2) To empower any government and nongovernment groups working to uphold  
9 community standards of decency, to protect children, to strengthen families, or to develop,  
10 expand, or to prevent or offset the costs of sex-related offenses; and

11           (3) To not promote a culture of perpetual victimhood but to maximize human  
12 flourishing and to protect the public's safety, health, and welfare.

13           3. The purpose of the fund shall be interpreted broadly to meet the evolving needs  
14 of the state.

15           4. The fund shall consist of:

16           (1) Deactivation fees collected by the state treasurer from retailers of  
17 internet-enabled devices under subdivision (4) of subsection 4 of section 407.1904;

18           (2) Admission fees collected by the state treasurer from adult cabarets under  
19 subsection 1 of section 407.1914; and

20           (3) Any other appropriations, gifts, grants, donations, and bequests.

21           5. Moneys deposited into the fund shall only be used by:

22           (1) The attorney general or the attorney general's designee to provide assistance to  
23 government and nongovernment entities and individuals that are working to uphold  
24 community standards of decency, to protect children, to strengthen families, or to develop,  
25 expand, or strengthen programs for victims of human trafficking or child exploitation,  
26 including providing assistance:

27           (a) To the Missouri Human Trafficking Task Force or any other human trafficking  
28 task force in Missouri;

29           (b) To various Missouri human trafficking coalitions;

- 30 (c) For victim compensation;
- 31 (d) For services to help women with substance abuse problems stay clean;
- 32 (e) To counselors and victim advocates who are trained to assist victims of domestic  
33 violence and sexual abuse;
- 34 (f) To women shelters for women who have been exposed to prostitution or sex  
35 trafficking;
- 36 (g) To research-based organizations;
- 37 (h) To faith-based organizations working to uphold community standards of  
38 decency and assisting victims of human trafficking or other sex offenses;
- 39 (i) To child advocacy centers;
- 40 (j) To organizations that provide legal advocacy to abused, neglected, and at-risk  
41 children;
- 42 (k) For physical and mental health services;
- 43 (l) For temporary and permanent housing placement;
- 44 (m) For employment, placement, education, or training;
- 45 (n) To independent school districts;
- 46 (o) For family counseling and therapy;
- 47 (p) To law enforcement;
- 48 (q) To regional nonprofit providers of civil legal services to provide legal assistance  
49 for sexual assault victims;
- 50 (r) To support technology in rape crisis centers;
- 51 (s) For sexual violence awareness and prevention campaigns; and
- 52 (t) For scholarships for students demonstrating outstanding character or leadership  
53 skills; and
- 54 (2) Any other state agency or organization for the purpose of conducting human  
55 trafficking enforcement programs or to uphold community standards of decency.
- 56 6. Notwithstanding the provisions of section 33.080 to the contrary, any moneys  
57 remaining in the fund at the end of the biennium shall not revert to the credit of the  
58 general revenue fund.
- 59 7. The state treasurer shall invest moneys in the fund in the same manner as other  
60 funds are invested. Any interest and moneys earned on such investments shall be credited  
61 to the fund.
- 62 8. The attorney general or the attorney general's designee shall evaluate activities  
63 conducted under this section each year and, on or before February fifteenth of each year,  
64 submit to the secretary of the senate and chief clerk of the house of representatives an



65 annual report containing the evaluation, and notify the general assembly that the report  
66 is available. The report shall include:

67 (1) The amount of deactivations fees received under subdivision (4) of subsection  
68 (4) of section 407.1904;

69 (2) The amount of admission fees received under subsection 1 of section 407.1914;

70 (3) The manner in which the moneys in the fund were distributed; and

71 (4) The manner in which each entity or service receiving moneys under subsection  
72 5 of this section used such moneys.

73 9. The attorney general or the attorney general's designee may by rule:

74 (1) Determine eligibility requirements for any moneys awarded under this section;

75 (2) Require a recipient receiving moneys under this section to offer minimum  
76 services for a period of time before receiving moneys and to continue to offer minimum  
77 services during the period of time the recipient receives moneys; and

78 (3) Require a recipient receiving moneys under this section to submit financial and  
79 programmatic reports.

80 10. The attorney general or the attorney general's designee shall not spend more  
81 than fifteen percent of the available moneys on the administration of the fund.

407.1914. 1. A five dollar admission fee shall be imposed for each entry by each  
2 customer admitted to an adult cabaret to be remitted quarterly to the state treasurer and  
3 deposited into the Missouri human trafficking and child exploitation prevention fund  
4 established under subsection 1 of section 407.1912. The state treasurer shall prescribe the  
5 method of payment, collection, and enforcement of the fee imposed under this subsection.

6 2. The admission fee is not content based but imposed and remitted to the state to  
7 offset secondary harmful effects, help the state uphold community standards of decency,  
8 combat sex-related crimes, and be used as set forth under subsection 5 of section 407.1912.

9 3. The admission fee is in addition to all other taxes imposed on the business that  
10 offers adult entertainment.

11 4. Each adult cabaret shall record daily in the manner required by the state  
12 treasurer the number of customers admitted to the business. The business shall maintain  
13 the records for the period required by the state treasurer and make the records available  
14 only for inspection and audit on request by the state treasurer. The records shall not  
15 contain the names or personal information of any of the customers.

16 5. The provisions of this section shall not require an adult cabaret to impose a tax  
17 on a customer of the business. A business has the discretion to determine the manner in  
18 which the business derives the moneys required to pay the tax imposed under this section.

2 **407.1916. 1. A social media website open to the public having more than**  
3 **seventy-five million subscribers and not specifically affiliated with any religious or political**  
4 **group from its inception shall be held to higher standards for having substantially created**  
5 **a digital public square.**

6 **2. A social media website having more than seventy-five million subscribers and not**  
7 **specifically affiliated with any one religious or political party from its inception that**  
8 **intentionally censors a user's religious or political speech who resides in the state of**  
9 **Missouri shall be subject to a private right of action by the injured party.**

10 **3. If a person brings an action for a violation under subsection 1 of this section, the**  
11 **injured party may seek the following:**

12 **(1) A minimum of seventy-five thousand in statutory damages;**

13 **(2) Actual damages;**

14 **(3) Punitive damages, if there are factors in aggravation; and**

15 **(4) Other forms of equitable relief.**

16 **4. The prevailing party in such action may seek costs and attorney's fees.**

17 **5. Hate speech shall not be a justifiable basis for a social website subjected to this**  
18 **section to censor users.**

19 **6. The attorney general may also bring a civil cause of action under this section on**  
20 **behalf of a social media website user who resides in this state and whose religious speech**  
21 **or political speech has been censored by a social media website.**

22 **7. A social media website that engages in the practices described under subsection**  
23 **1 of this section has committed an indecent deceptive trade practice and may be subject to**  
24 **penalties as provided under section 407.1908.**

25 **8. A social media website subject to this section that intentionally censors a user's**  
26 **religious or political speech, and such user resides in this state, shall be immune from**  
27 **liability if the:**

28 **(1) Speech called for immediate acts of violence;**

29 **(2) Speech was obscene, pornographic for minors, sadomasochistic abuse, sexual**  
30 **conduct, or revenge pornography;**

31 **(3) Censorship was the result of operational error;**

32 **(4) Censorship was the result of court order;**

33 **(5) Speech came from an inauthentic source;**

34 **(6) Speech involved false impersonation;**

35 **(7) Speech enticed criminal conduct; or**

**(8) Speech involved minors bullying minors.**

36           **9. A social media website shall not be held liable under this section unless the user**  
37 **is eighteen years of age or older.**

38           **10. A social media website shall not be held liable for other users censoring another**  
39 **user's speech for any reason under 47 U.S.C Section 230.**

40           **11. If a social media website that meets the criteria to classify as a public utility**  
41 **under chapter 393 intentionally uses algorithms to intentionally suppress or shadowban**  
42 **the political speech of a resident of this state, the social media website shall be held liable**  
43 **in a civil court of competent jurisdiction and subject to the relief set forth under this**  
44 **section.**

45           **12. The venue for any civil action brought under this section shall be in the state**  
46 **of Missouri.**

**407.1918. The attorney general may promulgate rules to implement the provisions**  
2 **of sections 407.1900 to 407.1918. Any rule or portion of a rule, as that term is defined in**  
3 **section 536.010, that is created under the authority delegated in this section shall become**  
4 **effective only if it complies with and is subject to all of the provisions of chapter 536 and,**  
5 **if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any**  
6 **of the powers vested with the general assembly pursuant to chapter 536 to review, to delay**  
7 **the effective date, or to disapprove and annul a rule are subsequently held**  
8 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**  
9 **after August 28, 2020, shall be invalid and void.**

          Section B. Section A of this act shall become effective upon the notification by the  
2 attorney general to the revisor of statutes that four states have adopted similar legislation.

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