

FIRST REGULAR SESSION

HOUSE BILL NO. 1193

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COLEMAN (32).

2258H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 407, RSMo, by adding thereto eight new sections relating to the human trafficking and child exploitation prevention 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 eight new sections, to be
2 known as sections 407.1900, 407.1902, 407.1904, 407.1906, 407.1908, 407.1910, 407.1912, and
3 407.1914, to read as follows:

407.1900. Sections 407.1900 to 407.1918 shall be known and may be cited as the
2 "**Human Trafficking And Child Exploitation Prevention Act**".

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

- 2 (1) "**Cellular telephone**", a communication device containing a unique electronic
3 serial number that is programmed into its computer chip by the manufacturer and whose
4 operation is dependent on the transmission of that electronic serial number along with a
5 mobile identification number, which is assigned by the cellular telephone carrier, in the
6 form of radio signals through cell sites and mobile switching stations;
- 7 (2) "**Child pornography**", as defined under 18 U.S.C. Section 2256 and section
8 573.010;
- 9 (3) "**Computer**", as defined under 18 U.S.C. Section 1030;
- 10 (4) "**Consumer**", an individual who purchases or leases for personal, family, or
11 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.

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

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

20 (7) "Explicit sexual material", as defined under section 573.010;

21 (8) "Human trafficking", sex trafficking or an offense under section 566.206,
22 566.209, 566.210, or 566.211;

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

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

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

31 (12) "Live adult entertainment establishment", a business in which, as the major
32 activity, customers congregate primarily for the purpose of viewing or associating with
33 employees who display anatomical areas designed to provide sexual stimulation or sexual
34 gratification: human genitals, the immediate pubic region, or pubic hair; buttocks to the
35 extent of exposing the immediate anal area; female breasts to points below the nipples;
36 male genitals in a state of erection, even if covered with opaque clothing; or all of the above
37 anatomical areas when covered only by transparent or diaphanous clothing;

38 (13) "Material", as defined under section 573.010;

39 (14) "Minor", as defined under section 573.010;

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

46 (16) "Obscene", as defined under section 573.010. The term includes, but is not
47 limited to, websites that:

- 48 **(a) Are known to facilitate human trafficking or prostitution; and**
49 **(b) Display or depict any image or video that is pornographic for minors or that**
50 **constitute sadomasochistic abuse, sexual excitement, sexual conduct, or revenge**
51 **pornography;**
- 52 **(17) "Personal identification information", any information that identifies a person,**
53 **including an individual's photograph, Social Security number, driver identification**
54 **number, name, email address, address, or telephone number;**
- 55 **(18) "Pornographic for minors", as defined under section 573.010;**
56 **(19) "Prostitution", as defined under section 567.010;**
- 57 **(20) "Retailer", any person who regularly engages in the manufacturing, sale, offer**
58 **for sale, or lease of internet-enabled devices or services in this state that make content**
59 **accessible on the internet. "Retailer" includes internet service providers and suppliers and**
60 **manufacturers of internet-enabled devices that play a material role in distributing content**
61 **on the internet or that make content accessible that are subject to the jurisdiction of this**
62 **state;**
- 63 **(21) "Revenge pornography", the distribution of sexually explicit images or videos**
64 **of an individual without his or her permission constituting an offense under section**
65 **573.110;**
- 66 **(22) "Sadomasochistic abuse", as defined under section 573.010;**
67 **(23) "Sexual conduct", as defined under section 573.010;**
68 **(24) "Sexual excitement", as defined under section 573.010;**
69 **(25) "Social media website", an internet website or application that:**
70 **(a) Enables users to communicate with each other by posting information,**
71 **comments, messages, or images;**
72 **(b) Is open to the public;**
73 **(c) Has more than seventy-five million subscribers;**
74 **(d) From its inception, has not been specifically affiliated with any one religion or**
75 **political party; and**
76 **(e) Provides a means for the website's users to report obscene materials and has**
77 **procedures in place for evaluating those reports and removing obscene material.**
- 407.1904. 1. A retailer who manufactures, sells, offers for sale, leases, or distributes**
2 **an internet-enabled device shall ensure that the product is equipped with an active and**
3 **operating digital blocking capability prior to sale that blocks by default websites that:**
4 **(1) Are known to facilitate human trafficking or prostitution; and**
5 **(2) Display child pornography, revenge pornography, or obscene material harmful**
6 **to minors.**

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

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

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

15 **(3) Report child pornography received through the reporting mechanism to the**
16 **National Center For Missing and Exploited Children's CyberTipline in accordance with**
17 **18 U.S.C. Section 2258A;**

18 **(4) Not block access to websites that:**

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

22 **(b) Serve primarily as a search engine; or**

23 **(c) Display complete movies that meet the qualifications for a "G", "PG", "PG-13",**
24 **or "R" rating by the Classification and Ratings Administration, as those qualifications**
25 **existed on September 1, 2020.**

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

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

31 **(1) Requests that the capability be disabled;**

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

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

36 **(4) Pays a one-time twenty-dollar digital access fee, the proceeds of which shall be**
37 **remitted quarterly to the department of revenue to be deposited into the Missouri human**
38 **trafficking and child exploitation prevention grant fund established under subsection 1 of**
39 **section 407.1912.**

40 **5. The digital access fee required under subdivision (4) of subsection 4 of this**
41 **section is not content-based but collected and remitted to the department of revenue to help**
42 **the state bear the costs of upholding community standards of decency and combat**

43 sex-related offenses and shall be used as provided under subsection 5 of section 407.1912.
44 The department of revenue shall prescribe the administration, payment, collection, and
45 enforcement of the fee imposed under subdivision (4) of subsection 4 of this section. The
46 department of revenue may annually adjust the one-time fee to account for inflation.

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

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

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

14 **3. A retailer of an internet-enabled device that 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 **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; and**

22 **(4) For a fourth or 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 effective date 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 Grant Fund" to**
3 **be 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 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 department of revenue from retailers of**
17 **internet-enabled devices under subdivision (4) of subsection 4 of section 407.1904;**

18 **(2) Admission fees collected by the department of revenue from live adult**
19 **entertainment establishments under 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 be used only 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 Missouri human trafficking coalitions;**

30 **(c) For victim compensation;**

31 **(d) For services to help women with substance abuse problems;**

32 **(e) To counselors and victim advocates who are trained to assist victims of domestic**
33 **violence and sexual abuse;**

- 34 (f) To shelters for women who have been exposed to prostitution or sex trafficking;
35 (g) To research-based organizations;
- 36 (h) To faith-based organizations working to uphold community standards of
37 decency and assisting victims of human trafficking or other sex offenses;
- 38 (i) To child advocacy centers;
- 39 (j) To organizations that provide legal advocacy to abused, neglected, or at-risk
40 children;
- 41 (k) For physical and mental health services;
- 42 (l) For temporary and permanent housing placement;
- 43 (m) For employment, placement, education, or training;
- 44 (n) To independent school districts;
- 45 (o) For family counseling and therapy;
- 46 (p) To law enforcement;
- 47 (q) To projects that promote decency including, but not limited to, cinematic,
48 creative art design, musical, pictorial, or written projects;
- 49 (r) To regional nonprofit providers of civil legal services to provide legal assistance
50 for sexual assault victims;
- 51 (s) To support technology in rape crisis centers;
- 52 (t) For sexual violence awareness and prevention campaigns; and
- 53 (u) For scholarships for students demonstrating outstanding character or
54 leadership skills; and
- 55 (2) Any other state agency or organization conducting human trafficking
56 enforcement programs or upholding community standards of decency.
- 57 6. Notwithstanding the provisions of section 33.080 to the contrary, any moneys
58 remaining in the fund at the end of the biennium shall not revert to the credit of the
59 general revenue fund.
- 60 7. The state treasurer shall invest moneys in the fund in the same manner as other
61 funds are invested. Any interest and moneys earned on such investments shall be credited
62 to the fund and shall not revert to the general fund, and shall be carried forward into the
63 subsequent fiscal year.
- 64 8. The attorney general or the attorney general's designee shall evaluate activities
65 conducted under this section each year and, on or before February fifteenth of each year,
66 submit to the secretary of the senate and chief clerk of the house of representatives an
67 annual report containing the evaluation, and notify the general assembly that the report
68 is available. The report shall include:

69 (1) The proceeds of deactivation fees received under subdivision (4) of subsection
70 4 of section 407.1904;

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

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

73 (4) The manner in which each entity or service receiving moneys under subsection
74 5 of this section used such moneys.

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

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

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

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

82 10. The attorney general or the attorney general's designee shall not spend more
83 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 a live adult entertainment establishment, the proceeds of which shall
3 be remitted quarterly to the department of revenue and deposited into the Missouri human
4 trafficking and child exploitation prevention grant fund established under subsection 1 of
5 section 407.1912. The department of revenue shall prescribe the method of administration,
6 payment, collection, and enforcement of the fee imposed under this subsection.

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

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

12 4. Each live adult entertainment establishment shall record daily in the manner
13 required by the department of revenue the number of customers admitted to the business.
14 The business shall maintain the records for the period required by the department of
15 revenue and make the records available only for inspection and audit on request by the
16 department of revenue. The records shall not contain the names or personal information
17 of any of the customers.

18 5. This section shall not require a live adult entertainment establishment to impose
19 a tax on a customer of the business. A business has the discretion to determine the manner
20 in which the business derives the moneys required to pay the tax imposed under this
21 section.

Section B. The enactment of sections 407.1900, 407.1902, 407.1904, 407.1906,
2 407.1908, 407.1910, 407.1912, and 407.1914 of section A of this act shall become effective ten
3 days following the notice to the revisor of statutes that no fewer than four states have enacted
4 statutes similar to sections 407.1900, 407.1902, 407.1904, 407.1906, 407.1908, 407.1910,
5 407.1912, and 407.1914 of section A of this act by the attorney general.

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