

SECOND REGULAR SESSION

# SENATE BILL NO. 1031

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SATER.

Read 1st time February 4, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6180S.03I

## AN ACT

To amend chapter 407, RSMo, by adding thereto seven new sections relating to the Missouri child protection registry, with penalty provisions and an 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 may be known and 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, a personal digital assistant, a 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, comprising of a series of character strings separated by periods with the right-most string specifying the top of**

18 the hierarchy;

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

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

21 (7) "Person", an individual, corporation, association, partnership,

22 or any other legal entity;

23 (8) "Pornographic for minors", the same as defined in section  
24 573.010;

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

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

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

407.1760. 1. The attorney general shall establish and operate, or  
2 contract with a qualified third party to establish and operate, the  
3 Missouri child protection registry composed of a secure list of contact  
4 points belonging or accessible to minors received pursuant to this  
5 section. The attorney general or a third party administrator shall  
6 establish procedures to prevent the use or disclosure of protected  
7 contact points. If the attorney general elects to contract with a third  
8 party, they shall give due consideration to any person located in this  
9 state. By April 1, 2017, the attorney general or the vendor providing  
10 registry services for the attorney general, shall conduct a third-party  
11 audit to certify the security of the registry. Follow-up third party  
12 audits on the registry systems shall be conducted at least annually.

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

23 3. A registration under this section shall be for not more than  
24 three years. If the contact point is established for a specific minor, the  
25 registration shall expire the year the minor turns eighteen years of age.  
26 A registration can be revoked or renewed by the registrant upon

27 notification to the attorney general. Upon registering such contact  
28 points, the registrant shall be provided the following disclosure either  
29 electronically or in writing, which shall be conspicuous and shall be in  
30 at least twelve-point font to read as follows: "No solution is completely  
31 secure. The most effective way to protect children on the Internet is to  
32 supervise use and review all e-mail messages and other  
33 correspondence. Under law, theft of a contact point from the Child  
34 Protection Registry is a class A misdemeanor. While every attempt will  
35 be made to secure the Child Protection Registry, registrants and their  
36 guardians should be aware that their contact points may be at a greater  
37 risk of being misappropriated by marketers who choose to disobey the  
38 law."

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

407.1765. 1. Notwithstanding subsection 4 of this section, a  
2 person shall not send, cause to be sent, or conspire with a third party  
3 to send a message to a contact point that has been registered for more  
4 than thirty calendar days with the attorney general if the primary  
5 purpose of the message is to, directly or indirectly, advertise or  
6 otherwise link to a message that advertises gambling, intoxicating  
7 liquor, tobacco products, vapor products, controlled substances, or  
8 material pornographic for minors. The sending of a message described  
9 in this subsection is not prohibited if, prior to sending the message, the  
10 sender has obtained from an age-verified adult an affirmative  
11 statement of consent to receive the message at an adult designated  
12 contact point. To comply with this subsection, the sender shall do all  
13 of the following:

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

17 (2) Obtain a written record stating that a recipient has consented  
18 to receive the type of message described in subsection 1 of this  
19 section. The consent form required under this section shall be signed  
20 by the recipient. The sender shall retain the consent form and make it  
21 available for verification as may be required under subdivision (4) of  
22 subsection 1 of this section;

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

27           **(4) Notify the attorney general that the sender intends to send**  
28 **messages as allowed under this subsection. The attorney general may**  
29 **implement procedures to verify that the sender is in compliance with**  
30 **this subsection.**

31           **2. The attorney general shall establish a mechanism for senders**  
32 **of messages to contact points to verify compliance with the**  
33 **registry. The mechanism to verify compliance with the registry shall**  
34 **be established by rules promulgated by the attorney general. A person**  
35 **desiring to send a message described in subsection 1 of this section**  
36 **shall use the mechanism created under this subsection to ensure**  
37 **compliance with this section. A person desiring to send a message**  
38 **described in subsection 1 of this section shall pay the attorney general**  
39 **a fee for access to the mechanism required under this subsection. The**  
40 **fee shall be seven-tenths of one cent and shall be based on the number**  
41 **of contact points checked against the registry for each time a contact**  
42 **point is checked. The fees collected under this section shall be credited**  
43 **to the following:**

44           **(1) Eighty-five percent of the fees to the children's protection**  
45 **registry fund created in section 407.1770;**

46           **(2) Not less than fifteen percent of the fees to the attorney**  
47 **general to cover the cost of investigating, enforcing, and defending**  
48 **sections 407.1750 to 407.1780. The attorney general may be reimbursed**  
49 **from the fund created under section 407.1770 for any costs incurred**  
50 **under this subdivision that exceed the fees credited under this**  
51 **subdivision.**

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

54           **4. An internet service provider does not violate this section by**  
55 **solely transmitting a message across the network of the internet service**  
56 **provider.**

**407.1770. There is hereby created in the state treasury the "Child**  
2 **Protection Registry Fund", which shall consist of money collected under**  
3 **section 407.1765. The state treasurer shall be custodian of the fund. In**

4 accordance with sections 30.170 and 30.180, the state treasurer may  
5 approve disbursements. The fund shall be a dedicated fund and money  
6 in the fund shall be used solely by the attorney general for the purpose  
7 of the administration of sections 407.1750 to 407.1780, and for the  
8 promotion, investigation, enforcement, and defense of sections 407.1750  
9 to 407.1780. Notwithstanding the provisions of section 33.080 to the  
10 contrary, any moneys remaining in the fund at the end of the biennium  
11 shall not revert to the credit of the general revenue fund. The state  
12 treasurer shall invest moneys in the fund in the same manner as other  
13 funds are invested. Any interest and moneys earned on such  
14 investments shall be credited to the fund.

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

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

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

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

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

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

20 (1) Actual damages, including reasonable attorney fees;

21 (2) In lieu of actual damages, recover the lesser of the following:

22 (a) Five thousand dollars per each message received by a  
23 recipient or transmitted; or

24 (b) Two hundred and fifty thousand dollars for each day the  
25 violation occurs.

26 3. If the attorney general has reason to believe that a person has

27 violated sections 407.1750 to 407.1780, the attorney general may  
28 investigate the business transactions of that person. The attorney  
29 general may require the person to appear at a reasonable time and  
30 place, to give information under oath, and to produce such documents  
31 and evidence necessary to determine whether the person is in  
32 compliance with the requirements of sections 407.1750 to 407.1780. Any  
33 civil penalties collected by the attorney general under this section shall  
34 be paid to the county school fund pursuant to Article IX, Section 7 of  
35 the Constitution of Missouri.

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

407.1780. Any rule or portion of a rule, as that term is defined in  
2 section 536.010 that is created under the authority delegated in sections  
3 407.1750 to 407.1775 shall become effective only if it complies with and  
4 is subject to all of the provisions of chapter 536, and, if applicable,  
5 section 536.028. This section and chapter 536 are nonseverable and if  
6 any of the powers vested with the general assembly pursuant to chapter  
7 536, to review, to delay the effective date, or to disapprove and annul  
8 a rule are subsequently held unconstitutional, then the grant of  
9 rulemaking authority and any rule proposed or adopted after August  
10 28, 2016, shall be invalid and void.

Section B. The enactment of sections 407.1750, 407.1755, 407.1760,  
2 407.1765, 407.1770, 407.1775, and 407.1780 of this act shall become effective  
3 January 1, 2017.

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