

FIRST REGULAR SESSION

HOUSE BILL NO. 756

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JETTON, CROWELL, HUNTER AND BEARDEN (Co-sponsors).

Read 1st time April 28, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2238L.011

AN ACT

To amend chapter 573, RSMo, by adding thereto ten new sections relating to Internet child pornography, with penalty provisions.

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

Section A. Chapter 573, RSMo, is amended by adding thereto ten new sections, to be
2 known as sections 573.200, 573.202, 573.204, 573.206, 573.208, 573.210, 573.212, 573.214,
3 573.216, and 573.218, to read as follows:

573.200. As used in sections 573.200 to 573.218, the following terms mean:

2 **(1) "Child pornography", as defined in section 573.010;**

3 **(2) "Internet", the myriad of computer and telecommunications facilities, including**
4 **equipment and operating software, which comprise the interconnected worldwide network**
5 **of networks that employ the transmission control protocol, Internet protocol, or any**
6 **predecessor or successor protocols to such protocol to communicate information of all**
7 **kinds by wire or radio;**

8 **(3) "Internet service provider", a person who provides a service that enables users**
9 **to access content, information, electronic mail, or other services offered over the Internet.**

573.202. An Internet service provider shall remove or disable access to child
2 **pornography items residing on its service in a manner accessible to persons located within**
3 **this state. The child pornography items shall be disabled or removed within fifteen**
4 **business days of when the Internet service provider is notified by the attorney general or**
5 **prosecuting attorney or circuit attorney pursuant to section 573.214, that child**
6 **pornography items reside on its service.**

573.204. Nothing in sections 573.200 to 573.218, shall be construed as imposing a
2 **duty on an Internet provider to actively monitor its network or affirmatively seek evidence**

3 of illegal activity on its network.

573.206. Any Internet service provider who violates section 573.202 shall be guilty
2 of a class D felony.

573.208. The attorney general shall have concurrent prosecutorial jurisdiction with
2 circuit attorneys and prosecuting attorneys for violations of section 573.202 and any crime
3 arising out of the activity prohibited by section 573.202. No person charged with a
4 violation of section 573.202 by the attorney general shall have standing to challenge the
5 authority of the attorney general to prosecute the case and if any such challenge is made,
6 the challenge shall be dismissed and no relief shall be available in the courts of this state
7 to the person making the challenge.

573.210. An application for an order to remove or disable materials from an
2 Internet service provider shall be made to the circuit court having jurisdiction in writing
3 upon the personal oath or affirmation of the attorney general or the prosecuting attorney
4 or circuit attorney of the county wherein the material has been discovered and shall
5 contain all of the following information if available:

6 (1) A statement of the authority of the applicant to make the application;

7 (2) A statement of the identity of the investigative or law enforcement officer that
8 has, in the official scope of that officer's duties, discovered the child pornography items;

9 (3) A statement by the investigative or law enforcement officer who has knowledge
10 of relevant information justifying the application;

11 (4) The uniform resource locator providing access to such materials;

12 (5) The identity of the Internet service provider used by the law enforcement
13 officer;

14 (6) A showing that there is probable cause to believe that such materials constitute
15 a violation of section 573.023, 573.025, 573.035, 573.037, or 573.040;

16 (7) A proposed order of authorization for consideration by the judge;

17 (8) Additional testimony or documentary evidence in support of the application as
18 the judge may require.

573.212. 1. Upon consideration of an application, the court may enter an order,
2 including an ex parte order as requested, advising the attorney general that such materials
3 constitute probable cause evidence of a violation of section 573.023, 573.025, 573.035,
4 573.037, or 573.040.

5 2. Each order authorizing the removal or disabling of any child pornography items
6 from an Internet service provider shall include the following:

7 (1) The uniform resource locator providing access to such materials if included in
8 the application;

9 (2) The identity of the Internet service provider used by the law enforcement officer
10 in the official scope of that officer's duties to gain access to such materials;

11 (3) A statement that there is probable cause to believe that such materials constitute
12 a prima facie violation of section 573.023, 573.025, 573.037, or 573.040;

13 (4) Such other information as the court deems relevant and necessary.

14 3. Upon receipt by the attorney general, such order shall be forwarded to the
15 Internet service provider, or the person designated by the Internet service provider, within
16 three days of its receipt.

 573.214. 1. The attorney general shall have exclusive jurisdiction to notify Internet
2 service providers pursuant to sections 573.200 to 573.218. The attorney general shall be
3 required to initiate notification pursuant to sections 573.200 to 573.218, if requested by the
4 prosecuting attorney or circuit attorney.

5 2. For purposes of this section, an Internet service provider or the person
6 designated by the Internet service provider shall be notified in writing by the attorney
7 general within three business days of the attorney general's receipt of an application by a
8 circuit attorney or prosecuting attorney.

9 3. The notice shall include the following information:

10 (1) A copy of the application made pursuant to section 573.210;

11 (2) The uniform resource locator providing access to the child pornography
12 materials if included in the application;

13 (3) Notification that the Internet service provider must remove or disable the
14 materials from its service within fifteen business days of the date the application was filed
15 with the court pursuant to section 573.210;

16 (4) Contact information for the office of the attorney general, including the name,
17 address, and telephone number of any assistant or agent authorized by the attorney
18 general to submit notification pursuant to this section.

 573.216. An Internet service provider may designate an agent to receive notification
2 provided pursuant to section 573.214.

 573.218. The attorney general shall make an annual report to the judiciary
2 committee of the house of representatives and to the judiciary and civil and criminal
3 jurisprudence committee of the senate providing information on the number of notices
4 issued and the prosecutions made pursuant to sections 573.200 to 573.218, and making any
5 recommendations for amendatory legislation.