

FIRST REGULAR SESSION

# HOUSE BILL NO. 916

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BLACK.

2102L.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 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 407.1700, 407.1705, 407.1710, 407.1715, 407.1720, 407.1725, and 407.1730, to read as follows:

**407.1700. Sections 407.1700 to 407.1730 may be known and cited as the "Missouri Child Protection Registry Act".**

**407.1705. As used in sections 407.1700 to 407.1730, 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**

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  
22 407.1710;

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

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

407.1710. 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, they shall give due consideration to any person located in  
7 this state. By April 1, 2016, the attorney general or the vendor providing registry services  
8 for the attorney general shall conduct a third-party audit to certify the security of the  
9 registry. Follow-up third party audits on the registry systems shall be conducted at least  
10 annually. If the third-party security audit determines the registry does not meet or exceed  
11 the industry standard for high-security systems, the registry shall be suspended until the  
12 security systems are determined to meet such standard.

13 2. A parent, guardian, individual, school, or other institution or entity primarily  
14 serving minor children who are responsible for one or more contact points to which a  
15 minor may have access may register such contact points with the department. Schools or  
16 other institutions or entities primarily serving minor children may make one registration  
17 for all contact points of the entity, and such registration may include the entity's internet  
18 domain name. No fee or charge shall be assessed or incurred by a person, guardian,  
19 individual, school, or other institution or entity primarily serving minor children  
20 registering a contact point under sections 407.1700 to 407.1730.

21 3. A registration under this section shall be for not more than three years. If the  
22 contact point is established for a specific minor, the registration shall expire the year the  
23 minor turns eighteen years of age. A registration may be revoked or renewed by the  
24 registrant upon notification to the attorney general.

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

**407.1715. 1. Notwithstanding subsection 4 of this section, a person shall not 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 do all of**  
10 **the following:**

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

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

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

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**  
32 **against the registry for each time a contact point is checked. 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 **in section 407.1720;**

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 407.1700 to 407.1730. The attorney**  
38 **general may be reimbursed from the fund created under section 407.1720 for any costs**  
39 **incurred under this subdivision that exceed the fees credited under this subdivision.**

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

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

**407.1720. 1. There is hereby created in the state treasury the "Child Protection**  
2 **Registry Fund", which shall consist of moneys collected under section 407.1715. 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 **money in the fund shall be used solely by the attorney general for the purpose of the**  
6 **administration of sections 407.1700 to 407.1730, and for the promotion, investigation,**  
7 **enforcement, and defense of sections 407.1700 to 407.1730.**

8           **2. Notwithstanding the provisions of section 33.080 to the contrary, any moneys**  
9 **remaining in the fund at the end of the biennium shall not revert to the credit of the**  
10 **general revenue fund.**

11           **3. The state treasurer shall invest moneys in the fund in the same manner as other**  
12 **funds are invested. Any interest and moneys earned on such investments shall be credited**  
13 **to the fund.**

**407.1725. 1. Any person who violates section 407.1715 is guilty of a class A**  
2 **misdemeanor.**

3           **2. A person authorized to have personal information belonging to a minor obtained**  
4 **under section 407.1710 who knowingly discloses such information is guilty of a class A**  
5 **misdemeanor.**

6           **3. A civil action based on the violation of section 407.1715 may be brought by an**  
7 **authorized individual or the registrant of a contact point on behalf of a minor who has**  
8 **received a message in violation of section 407.1715, or by the attorney general. A civil**  
9 **action may also be brought by a person through whose facilities the message was**  
10 **transmitted in violation of section 407.1715. In any action brought under this section, the**  
11 **prevailing party may be awarded reasonable attorney fees. A person bringing an action**  
12 **under this section may recover one of the following:**

13           **(1) Actual damages, including reasonable attorney fees;**

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

15           **(a) Five thousand dollars per each message received by a recipient or transmitted;**

16   **or**

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

18           **4. If the attorney general has reason to believe that a person has violated sections**  
19 **407.1700 to 407.1730, the attorney general may investigate the business transactions of such**  
20 **person. The attorney general may require the person to appear at a reasonable time and**  
21 **place, to give information under oath, and to produce such documents and evidence**  
22 **necessary to determine whether the person is in compliance with the requirements of**  
23 **sections 407.1700 to 407.1730. Any civil penalties collected by the attorney general under**  
24 **this section shall be credited to the attorney general for the cost of investigating, enforcing,**  
25 **and defending sections 407.1700 to 407.1730.**

26           **5. It is a defense to an action brought under this section that a person reasonably**  
27 **relied on the mechanism established by the department under section 2 of section 407.1715.**

**407.1730. 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 407.1700 to 407.1725 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 of**  
5 **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, 2015, shall be invalid and void.**

9           Section B. This act shall become effective January 1, 2016.

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