

SECOND REGULAR SESSION

# HOUSE BILL NO. 2636

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HAEFNER.

6562H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 407, RSMo, by adding thereto seven new sections relating to the Missouri child protection registry, with penalty provisions and a delayed effective date.

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*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, personal digital assistant, 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  
22 407.1760;

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

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

407.1760. 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, he or she shall give due consideration to any person located  
7 in this state. By April 1, 2017, the attorney general or the vendor providing registry  
8 services for the attorney general, shall conduct a third-party audit to certify the security  
9 of the registry. Follow-up third-party audits on the registry system shall be conducted at  
10 least annually.

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

19 3. A registration under this section shall be for not more than three years. If the  
20 contact point is established for a specific minor, the registration shall expire the year the  
21 minor turns eighteen years of age. A registration can be revoked or renewed by the  
22 registrant upon notification to the attorney general. Upon registering such contact points,  
23 the registrant shall be provided the following disclosure either electronically or in writing,  
24 which shall be conspicuous and shall be in at least twelve-point font to read as follows: "No  
25 solution is completely secure. The most effective way to protect children on the Internet

26 is to supervise use and review all e-mail messages and other correspondence. Under law,  
27 theft of a contact point from the Child Protection Registry is a class A misdemeanor.  
28 While every attempt will be made to secure the Child Protection Registry, registrants and  
29 their guardians should be aware that their contact points may be at a greater risk of being  
30 misappropriated by marketers who choose to disobey the law."

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

407.1765. 1. Notwithstanding subsection 4 of this section, no person shall 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:

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

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

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

20 (4) Notify the attorney general that the sender intends to send messages as allowed  
21 under this subsection. The attorney general may implement procedures to verify that the  
22 sender is in compliance with this subsection.

23 2. The attorney general shall establish a mechanism for senders of messages to  
24 contact points to verify compliance with the registry. The mechanism to verify compliance  
25 with the registry shall be established by rules promulgated by the attorney general. A  
26 person desiring to send a message described in subsection 1 of this section shall use the  
27 mechanism created under this subsection to ensure compliance with this section. A person  
28 desiring to send a message described in subsection 1 of this section shall pay the attorney  
29 general a fee for access to the mechanism required under this subsection. The fee shall be

30 seven-tenths of one cent and shall be based on the number of contact points checked  
31 against the registry for each time a contact point is checked. The fees collected under this  
32 section shall be credited to the following:

33 (1) Eighty-five percent of the fees to the children's protection registry fund created  
34 in section 407.1770; and

35 (2) Not less than fifteen percent of the fees to the attorney general to cover the cost  
36 of investigating, enforcing, and defending sections 407.1750 to 407.1780. The attorney  
37 general may be reimbursed from the fund created under section 407.1770 for any costs  
38 incurred under sections 407.1750 to 407.1780 that exceed the fees credited under this  
39 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.

407.1770. There is hereby created in the state treasury the "Child Protection  
2 Registry Fund", which shall consist of moneys collected under section 407.1765. 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 moneys in the fund shall be used solely by the attorney general for the purpose of the  
6 administration of sections 407.1750 to 407.1780, and for the promotion, investigation,  
7 enforcement, and defense of sections 407.1750 to 407.1780. Notwithstanding the provisions  
8 of section 33.080 to the contrary, any moneys remaining in the fund at the end of the  
9 biennium shall not revert to the credit of the general revenue fund. The state treasurer  
10 shall invest moneys in the fund in the same manner as other funds are invested. Any  
11 interest and moneys earned on such investments shall be credited to the fund.

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

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

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

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

9

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

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

- 19           **(1) Actual damages, including reasonable attorney fees; or**  
20           **(2) In lieu of actual damages, recover the lesser of the following:**  
21           **(a) Five thousand dollars per message received by a recipient or transmitted; or**  
22           **(b) Two hundred fifty thousand dollars for each day the violation occurs.**

23           **3. If the attorney general has reason to believe that a person has violated sections**  
24 **407.1750 to 407.1780, the attorney general may investigate the business transactions of that**  
25 **person. The attorney general may require the person to appear at a reasonable time and**  
26 **place, to give information under oath, and to produce such documents and evidence**  
27 **necessary to determine whether the person is in compliance with the requirements of**  
28 **sections 407.1750 to 407.1780. Any civil penalties collected by the attorney general under**  
29 **this section shall be paid to the county school fund under Article IX, Section 7 of the**  
30 **Constitution of Missouri.**

31           **4. It is a defense to an action brought under this section that a person reasonably**  
32 **relied on the mechanism established by the attorney general under subsection 2 of section**  
33 **407.1765.**

**407.1780. 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 407.1750 to 407.1775 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, 2016, shall be invalid and void.**

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

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