

SECOND REGULAR SESSION

SENATE BILL NO. 937

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NASHEED.

Read 1st time January 28, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5069S.011

AN ACT

To amend chapter 405, RSMo, by adding thereto nine new sections relating to expressions of speech, 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 405, RSMo, is amended by adding thereto nine new sections, to be known as sections 405.200, 405.205, 405.210, 405.215, 405.220, 405.225, 405.230, 405.235, and 405.240, to read as follows:

405.200. Sections 405.200 to 405.240 shall be known and may be cited as the "Modernization Decency Act".

405.205. As used in sections 405.200 to 405.240, the following terms shall mean:

(1) "Algorithm", a set of instructions designed to perform a specific task;

(2) "Cellular telephone", a communications device containing a unique electronic serial number that is programmed into its computer chip by its manufacturer and whose operation is dependent on the transmission of that electronic serial number along with a mobile identification number, which is assigned by the cellular telephone carrier, in the form of radio signals through cell sites and mobile switching stations;

(3) "Child pornography", the same meaning as defined in Title 18, U.S.C. 2256 and section 573.010;

(4) "Computer", the same meaning as defined in Title 18, U.S.C. 1030;

(5) "Consumer", an individual who purchases or leases for personal, family, or household purposes an internet-enabled device;

(6) "Data communication device", an electronic device that

19 receives electronic information from one source and transmits or
20 routes it to another, including, but not limited to, any such bridge,
21 router, switch, or gateway;

22 (7) "Digital blocking capability", hardware or software that
23 restricts or blocks internet access to websites, electronic mail, chat, or
24 other internet-based communications based on category, site, or
25 content, and the term includes a filter or a digital blinder rack that can
26 be deactivated by a retailer upon the satisfaction of certain nominal
27 conditions;

28 (8) "Explicit sexual material", the same meaning as ascribed in
29 section 573.010;

30 (9) "Hate speech", a phrase concerning content that an
31 individual finds offensive based on his or her personal moral code;

32 (10) "Human trafficking", sex trafficking as described in sections
33 566.206, 566.209, 566.210, or 566.211;

34 (11) "Internet", the same meaning as defined in Title 31, U.S.C.
35 Section 5362;

36 (12) "Internet-enabled device", a cellular telephone, computer,
37 data communications device, or other product manufactured,
38 distributed, or sold in this state that provides internet access or plays
39 a material role in distributing content on the internet;

40 (13) "Internet service provider", a person engaged in the business
41 of providing a computer and communications facility through which a
42 consumer may obtain access to the internet. The term does not include
43 a common carrier if it provides only telecommunications service;

44 (14) "Live adult entertainment establishment", a business in
45 which, as the major activity, customers congregate primarily for the
46 purpose of viewing or associating with employees who display
47 anatomical areas designed to provide sexual stimulation or sexual
48 gratification including the following: human genitals, the immediate
49 pubic region, or pubic hair, buttocks to the extent of exposing the
50 immediate anal area; female breasts to the points below the nipples;
51 male genitals in a state of erection, even if covered with opaque
52 clothing; all of the anatomical areas described in this subdivision when
53 covered only by transparent or diaphanous clothing;

54 (15) "Material", the same meaning as ascribed in section 573.010;

55 (16) "Minor", the same meaning as ascribed in section 573.010;

56 (17) "Nongovernment group", a nonprofit organization exempt
57 from federal income taxation under Section 501(c)(3), Internal Revenue
58 Code of 1986, as amended, having a primary purpose of ending sexual
59 violence, outreach programs, and technical assistance to and support
60 of youth and rape crisis centers working to prevent sexual
61 violence. The term also includes individuals or any group that is doing
62 anything to uphold community standards of decency;

63 (18) "Obscene", the same meaning as ascribed in section
64 573.010. The term includes but is not limited to websites that:

65 (a) Are known to facilitate human trafficking or prostitution; and

66 (b) Display or depict images that are pornographic for minors or
67 that constitute sado-masochistic abuse, sexual excitement, sexual
68 conduct, or revenge pornography;

69 (19) "Personal identification information", any information that
70 identifies a person, including an individual's photograph, Social
71 Security number, driver identification number, name, email address, or
72 telephone number;

73 (20) "Pornographic for minors", the same meaning as ascribed in
74 section 573.010;

75 (21) "Political speech", speech relating to the state, government,
76 body politic, or public administration as it relates to governmental
77 policymaking, and the term includes speech by the government or
78 candidates for office and any discussion of social issues;

79 (22) "Prostitution", the same meaning as ascribed in section
80 567.010 to "prostitution-related offense";

81 (23) "Religious speech", a set of unproven answers, truth claims,
82 faith-based assumptions, and naked assertions that attempt to explain
83 such greater questions as how the world was created, what constitutes
84 right and wrong actions by humans, and what happens after death;

85 (24) "Retailer", any person who regularly engages in the
86 manufacturing, sale, offer for sale or lease of internet-enabled devices
87 or services in this state that make content accessible on the
88 internet. The term includes internet service providers and suppliers
89 and manufacturers of internet-enabled devices that materially play a
90 role in distributing content on the internet or that make content
91 accessible that are subject to the jurisdiction of this state;

92 (25) "Revenge pornography", the distribution of sexually explicit

93 images or videos of individuals without their permission, which is an
94 offense under section 573.110;

95 (26) "Sado-masochistic abuse", the same meaning as ascribed in
96 section 573.010;

97 (27) "Sexual conduct", the same meaning as ascribed in section
98 573.010;

99 (28) "Social media website", an internet website or application
100 that enables users to communicate with each other by posting
101 information, comments, messages, or images and that meets all of the
102 following requirements:

103 (a) Is open to the public;

104 (b) Has more than seventy-five million subscribers;

105 (c) From its inception, has not been specifically affiliated with
106 any one religion or political party;

107 (d) Provides a means for the website's users to report obscene
108 materials and has in place procedures for evaluating those reports and
109 removing obscene material.

405.210. 1. A retailer that manufactures, sells, offers for sale,
2 leases, or distributes an internet-enabled device shall ensure that the
3 product is equipped with an active and operating digital blocking
4 capability prior to sale that blocks by default websites that:

5 (1) Are known to facilitate human trafficking or prostitution; and

6 (2) Display child pornography, revenge pornography, or obscene
7 material harmful to minors.

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

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

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

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

20 (4) Not block access to websites that:

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

25 (b) Serve primarily as a search engine; or

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

29 3. Except as provided by subsection 4 of this section, a retailer
30 shall not provide to a consumer, methods, source code, or other
31 operating instructions for deactivating a product's digital blocking
32 capability.

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

35 (1) Requests that the capability be disabled;

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

38 (3) Acknowledges receiving a warning regarding the potential
39 danger of deactivating the digital blocking capability; and

40 (4) Pays a one-time twenty-five dollar digital access fee to be
41 remitted quarterly to the department of revenue to be deposited into
42 the Missouri human trafficking and child exploitation prevention grant
43 fund established under subsection 1 of section 405.230.

44 5. The digital access fee in subdivision (4) of subsection 4 of this
45 section is not content-based but shall be collected and remitted to the
46 department of revenue to help the state bear the costs of upholding
47 community standards of decency and of combating sex-related offenses
48 and is to be used as set forth in subsection 5 of section 405.230. The
49 department of revenue shall prescribe the administration, payment,
50 collection, and enforcement of the fee imposed by subdivision (4) of
51 subsection 4 of this section. The department of revenue may annually
52 adjust the one-time fee to account for inflation.

53 6. Nothing in sections 405.200 to 405.240 shall be construed to
54 prevent a retailer from charging a reasonable separate fee to
55 deactivate the digital blocking capability, which it may retain for
56 profit.

57 7. The attorney general shall prepare and make available to

58 retailers a form that includes all content that must be in the warning
59 described in subdivision (3) of subsection 4 of this section.

60 8. Nothing in sections 405.200 to 405.240 shall be construed to
61 require a retailer of an internet-enabled device to create a database or
62 registry that contains the names or personal identification information
63 of adults who knowingly chose to deactivate a product's filter. A
64 retailer of an internet-enabled device shall take due care to protect the
65 privacy rights of adult consumers under this section and shall not
66 disclose the names or personal identification information of an adult
67 consumer who decided to deactivate a product's filter.

405.215. 1. Pursuant to subdivision (2) of subsection 2 of section
2 405.210, if the digital blocking capability blocks a website that is not
3 displaying content described in subsection 1 of section 405.210 and the
4 block is reported to a call center or reporting mechanism, the website
5 shall be unblocked within a reasonable time, but in no event later than
6 five business days after the block is first reported. A consumer may
7 seek judicial relief to unblock a website that was wrongfully blocked
8 by the digital blocking capability. The prevailing party in a civil
9 litigation may seek attorney fees, costs, and other forms of relief.

10 2. Pursuant to subdivision (2) of subsection 2 of section 405.210,
11 if a retailer of an internet-enabled device is unresponsive to a report
12 of a website displaying content described in subsection 1 of section
13 405.210 that has breached the digital blocking capability, the attorney
14 general or a consumer may file a civil suit. The attorney general or a
15 consumer may seek damages of up to five hundred dollars for each
16 website that was reported but not subsequently blocked. The
17 prevailing party in the civil action may seek attorneys' fees, costs, and
18 other forms of relief.

19 3. A retailer of an internet-enabled device that fails to comply
20 with a duty described in subsections 1 or 3 of this section has
21 committed the offense of an indecent deceptive trade practice under
22 section 405.220.

23 4. It shall be an affirmative defense in a civil action to a charge
24 of violating this section that the dissemination of the content described
25 in subsection 1 of section 405.210 was limited to institutions or
26 organizations having scientific, educational, or other similar
27 justifications for displaying the material.

405.220. 1. A retailer of an internet-enabled device is guilty of
2 the offense of indecent deceptive trade practice if it knowingly:

3 (1) Sells an internet-enabled device without activated blocking
4 capability that at least makes an attempt to block by default websites
5 that display content described in subsection 1 of section 405.210;

6 (2) Violates subsection 3 of section 405.210;

7 (3) Fails to comply with the requirements of subsection 4 of
8 section 405.210 before deactivating the digital blocking capability; or

9 (4) Discloses to a third party the name or the personal
10 identification information of adult consumers who have elected to
11 deactivate a product's filter in violation of subsection 8 of section
12 405.210 without a court order directing otherwise.

13 2. The offense of indecent deceptive trade practice is a class D
14 misdemeanor. A second offense shall be a class C misdemeanor. A
15 third offense shall be a class B misdemeanor. A retailer that commits
16 a fourth and subsequent offense shall be guilty of a class A
17 misdemeanor.

18 3. Only the attorney general or prosecuting or circuit attorney
19 with jurisdiction shall enforce this section.

405.225. Sections 405.200 to 405.240 shall not apply to:

2 (1) An occasional sale of an internet-enabled device by a person
3 that is not regularly engaged in the business of selling internet-enabled
4 devices;

5 (2) Products produced or sold before enactment of sections
6 405.200 to 405.240;

7 (3) Independent third-party routers that are not affiliated with
8 an internet service provider; and

9 (4) A retailer that manufactures, sells, offers for sale, leases, or
10 distributes an internet-enabled device that is not subject to the
11 jurisdiction of this state.

405.230. 1. There is established in the state treasury a special
2 fund to be known as the "Missouri Human Trafficking and Child
3 Exploitation Prevention Grant Fund" to be administered by the
4 attorney general or the attorney general's designee.

5 2. The purpose of the fund is:

6 (1) To promote the development throughout the state of locally-
7 based and supported nonprofit programs for the survivors of sex-

8 related offenses and to support the quality of services provided;

9 (2) To empower any government and, especially, non-government
10 groups working to uphold community standards of decency, to protect
11 children, to strengthen families, or to develop, expand, or to prevent or
12 offset the costs of sex-related offenses; and

13 (3) Not to promote a culture of perpetual victimhood but to
14 maximize human flourishing and to protect the public's safety, health,
15 and welfare.

16 The purpose can be interpreted broadly to meet the evolving needs of
17 the state.

18 3. The fund shall consist of:

19 (1) Deactivation fees collected by the department of revenue
20 from retailers of internet-enabled devices under subdivision (4) of
21 subsection 4 of section 405.210;

22 (2) Admission fees collected by the department of revenue from
23 live adult entertainment establishments under subsection 1 of section
24 405.235; and

25 (3) Any other appropriations, gifts, grants, donations, and
26 bequests.

27 4. Money deposited into the fund may be used only by:

28 (1) The attorney general or the attorney general's designee for
29 grants to government and, especially, non-government entities and
30 individuals that are working to uphold community standards of
31 decency, to protect children, to strengthen families, or to develop,
32 expand, or strengthen programs for victims of human trafficking or
33 child exploitation, including providing grants for:

34 (a) The needs of the Missouri human trafficking task force and
35 any other task force in Missouri;

36 (b) The needs of the various Missouri human trafficking
37 coalitions;

38 (c) The needs of victim compensation;

39 (d) Services to help women with substance abuse problems stay
40 clean;

41 (e) Counselors and victim advocates who are trained to assist
42 victims of domestic violence and sexual abuse;

43 (f) Shelters for women, particularly those who have been exposed
44 to prostitution or sex trafficking;

- 45 **(g) Research-based organizations;**
46 **(h) Faith-based organizations working to uphold community**
47 **standards of decency and assisting victims of human trafficking or**
48 **other sex offenses;**
49 **(i) Child advocacy centers;**
50 **(j) Organizations that provide legal advocacy to abused,**
51 **neglected, and at-risk children;**
52 **(k) Physical and mental health services;**
53 **(l) Temporary and permanent housing placement;**
54 **(m) Employment, placement, education, and training;**
55 **(n) Independent school districts;**
56 **(o) Family counseling and therapy;**
57 **(p) Law enforcement agencies;**
58 **(q) Musical, writing, design, cinematic, or pictorial creative art**
59 **projects that promote decency;**
60 **(r) Regional nonprofit providers of civil legal services to provide**
61 **legal assistance for sexual assault victims;**
62 **(s) Grants to support technology in rape crisis centers;**
63 **(t) Sexual violence awareness and prevention campaigns; and**
64 **(u) Scholarships for students demonstrating outstanding**
65 **character or leadership skills;**
66 **(2) Any other state agency or organization for the purpose of**
67 **conducting human trafficking enforcement programs or to uphold**
68 **community standards of decency.**
- 69 **5. Notwithstanding the provisions of section 33.080 to the**
70 **contrary, any moneys remaining in the fund at the end of the biennium**
71 **shall not revert to the credit of the general revenue fund.**
- 72 **6. The state treasurer shall invest moneys in the fund in the**
73 **same manner as other funds are invested. Any interest and moneys**
74 **earned on such investments shall be credited to the fund.**
- 75 **7. The attorney general or the attorney general's designee shall**
76 **evaluate activities conducted under this section each year, and on or**
77 **before February fifteenth, submit an annual report containing the**
78 **evaluation to the secretary of the senate and chief clerk of the house**
79 **of representatives, and notify the general assembly that the report is**
80 **available. The report shall include:**
- 81 **(1) The amount of deactivation fees received under subdivision**

82 (4) of subsection 4 of section 405.210;

83 (2) The amount of admission fees received under subsection 1 of
84 section 405.235;

85 (3) The manner in which the funds in the account maintained
86 under subsection 5 of this section were distributed; and

87 (4) The manner in which each entity receiving a grant under
88 subsection 4 of this section used the grant money.

89 8. The attorney general may promulgate by regulation:

90 (1) Determine eligibility requirements for any grant awarded
91 under this section;

92 (2) Require a grant recipient to offer minimum services for a
93 period of time before receiving a grant and to continue to offer
94 minimum services during the grant period; and

95 (3) Require a grant recipient to submit financial and
96 programmatic reports.

97 9. The attorney general or the attorney general's designee shall
98 not spend more than fifteen percent of the available funds on the
99 administration of the fund.

405.235. 1. A five dollar admission fee is imposed for each entry
2 by each customer admitted to a live adult entertainment establishment
3 to be remitted quarterly to the department of revenue and deposited
4 into the Missouri human trafficking and child exploitation prevention
5 grant fund established under subsection 1 of section 405.215. The
6 department of revenue shall prescribe the method of administration,
7 payment, collection, and enforcement of the fee imposed by this section.

8 2. The admission fee is not content based but imposed and
9 remitted to the state to offset secondary harmful effects and to help the
10 state uphold community standards of decency and to combat sex-
11 related crimes and is to be used as set forth under subsection 5 of
12 section 405.215.

13 3. The admission fee is in addition to all other taxes imposed on
14 the establishment that offers adult entertainment.

15 4. Each live adult entertainment establishment shall record daily
16 in the manner required by the department of revenue the number of
17 customers admitted to the establishment. The establishment shall
18 maintain the records for the period required by the department of
19 revenue and make the records available only for inspection and audit

20 on request by the department of revenue. The records shall not contain
21 the names or personal information of any of the customers.

22 5. This section does not require a live adult entertainment
23 establishment to impose a tax on a customer of the establishment. An
24 establishment has the discretion to determine the manner in which the
25 establishment derives the money required to pay the tax imposed under
26 this section.

405.240. 1. A social media website that is open to the public that
2 has more than seventy-five million subscribers that was not specifically
3 affiliated with any religious or political group from its inception shall
4 be held to higher standards for having substantially created a digital
5 public square.

6 2. A social media website that has more than seventy-five million
7 subscribers that was not specifically affiliated with any one religious
8 or political party from its inception that intentionally censors a user's
9 religious or political speech who resides in the state of Missouri shall
10 be subject to a cause of action by the injured party.

11 3. In the action described by subsection 1 of this section, the
12 injured party may seek the following:

13 (1) A minimum of seventy-five thousand dollars in statutory
14 damages;

15 (2) Actual damages;

16 (3) Punitive damages, if there are factors in aggravation; and

17 (4) Other forms of equitable relief.

18 4. The prevailing party in such action may seek costs and
19 attorney fees.

20 5. Hate speech shall not be a justifiable basis for a social media
21 website subjected to this section to censor users.

22 6. The attorney general may also bring a civil cause of action
23 under this section on behalf of a social media website user who resides
24 in this state and whose religious speech or political speech has been
25 censored by a social media website.

26 7. A social media website that engages in the practices described
27 in subsection 1 of this section has committed the offense of indecent
28 deceptive trade practice.

29 8. A social media website subject to this section that
30 intentionally censors a user's religious or political speech, who resides

31 in this state, shall be immune from liability if the:

32 (1) Speech called for immediate acts of violence;

33 (2) Speech was obscene, pornographic for minors, sado-
34 masochistic abuse, sexual conduct, or revenge pornography;

35 (3) Censorship was the result of operational error;

36 (4) Censorship was the result of court order;

37 (5) Speech came from an inauthentic source;

38 (6) Speech involved false impersonation;

39 (7) Speech enticed criminal conduct; or

40 (8) Speech involved minors bullying minors.

41 9. A social media website shall not be held liable under this
42 section unless the user is eighteen years of age or older.

43 10. A social media website shall not be held liable for other users
44 censoring another user's speech for any reason pursuant to the
45 Communications Decency Act of 1996, 47 U.S.C. Section 230.

46 11. If a social media website that meets the criteria to classify as
47 a public utility under chapter 393 intentionally uses algorithms to
48 intentionally suppress or shadow ban the political speech of a resident
49 of this state, the social media website shall be held liable in a civil
50 court of competent jurisdiction and subject to the relief set forth in
51 subsection 2 of this section.

52 12. The venue for any civil action brought under this section
53 shall be in this state.

Section B. The provisions of this act become effective only after the
2 passage and approval by four other states. Within ten days of the date that four
3 states adopt legislation similar to this one, the Attorney General shall advise the
4 Governor, the Speaker of the House of Representatives, the President Pro
5 tempore of the Senate, and the Revisor of Statutes of the effective date of this act.

✓