

DRAFT LEGISLATION 2016

AN ACT

AMENDING TITLE 44, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 36; RELATING TO CHILD PROTECTION.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 44, Arizona Revised Statutes, is amended by adding chapter 36, to read:

CHAPTER 36

CHILD PROTECTION REGISTRY

ARTICLE 1. GENERAL PROVISIONS

44-7851. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "CONTACT POINT" MEANS AN ELECTRONIC IDENTIFICATION TO WHICH A COMMUNICATION MAY BE SENT, INCLUDING AN E-MAIL ADDRESS OR, SUBJECT TO SECTION 44-7852, ANY OF THE FOLLOWING:

(a) AN INSTANT MESSAGE IDENTITY.

(b) A MOBILE OR OTHER TELEPHONE NUMBER.

(c) A FAX NUMBER.

(d) AN ELECTRONIC ADDRESS THAT IS DEFINED AS A CONTACT POINT BY SECRETARY OF STATE RULE.

2. "REGISTRY" MEANS THE CHILD PROTECTION REGISTRY ESTABLISHED IN SECTION 44-7852.

44-7852. Child protection registry; secretary of state

A. THE SECRETARY OF STATE SHALL:

1. ESTABLISH AND MAINTAIN A CHILD PROTECTION REGISTRY TO COMPILE AND SECURE A LIST OF CONTACT POINTS THAT THE SECRETARY OF STATE RECEIVES PURSUANT TO THIS SECTION. THE SECRETARY OF STATE MAY CONTRACT WITH A THIRD PARTY TO ESTABLISH THE REGISTRY.

2. IMPLEMENT THE REGISTRY WITH RESPECT TO INSTANT MESSAGE IDENTITIES AND MOBILE OR OTHER TELEPHONE NUMBERS.

3. PROMOTE THE REGISTRY ON THE SECRETARY OF STATE'S PUBLIC WEBSITE.

4. ADOPT RULES PURSUANT TO TITLE 41, CHAPTER 6 TO IMPLEMENT AND ADMINISTER THIS CHAPTER.

B. A PERSON MAY REGISTER A CONTACT POINT WITH THE SECRETARY OF STATE IF ANY OF THE FOLLOWING APPLIES:

1. THE CONTACT POINT BELONGS TO A MINOR.

2. A MINOR HAS ACCESS TO THE CONTACT POINT.

3. THE CONTACT POINT IS USED IN A HOUSEHOLD IN WHICH A MINOR IS PRESENT.

C. A SCHOOL OR OTHER INSTITUTION THAT PRIMARILY SERVES MINORS MAY REGISTER ITS DOMAIN NAME WITH THE SECRETARY OF STATE.

D. A PERSON WHO DESIRES TO SEND A COMMUNICATION DESCRIBED IN SECTION 44-7853, SUBSECTION D TO A CONTACT POINT OR DOMAIN NAME SHALL:

1. USE A MECHANISM ESTABLISHED BY THE SECRETARY OF STATE.

2. PAY A FEE IN AN AMOUNT TO BE DETERMINED BY THE SECRETARY OF STATE.

E. THE SECRETARY OF STATE MAY IMPLEMENT A PROGRAM TO OFFER DISCOUNTED COMPLIANCE FEES TO SENDERS WHO MEET ENHANCED SECURITY CONDITIONS THAT ARE ESTABLISHED AND VERIFIED BY THE SECRETARY OF STATE, THE THIRD PARTY REGISTRY PROVIDER OR A DESIGNEE.

F. THE CONTENTS OF THE REGISTRY AND ANY COMPLAINT FILED ABOUT A SENDER WHO VIOLATES THIS CHAPTER ARE NOT SUBJECT TO PUBLIC DISCLOSURE.

44-7853. Prohibited communications; exception

A. A PERSON MAY NOT SEND, CAUSE TO BE SENT OR CONSPIRE WITH A THIRD PARTY TO SEND A COMMUNICATION TO A CONTACT POINT OR DOMAIN NAME THAT HAS BEEN

REGISTERED FOR MORE THAN THIRTY CALENDAR DAYS WITH THE SECRETARY OF STATE UNDER SECTION 44-7852 IF THE COMMUNICATION EITHER:

1. HAS THE PRIMARY PURPOSE OF ADVERTISING OR PROMOTING A PRODUCT OR SERVICE THAT A MINOR IS PROHIBITED BY LAW FROM PURCHASING.

2. CONTAINS OR HAS THE PRIMARY PURPOSE OF ADVERTISING OR PROMOTING MATERIAL THAT IS HARMFUL TO MINORS AS DEFINED IN SECTION 13-3501.

B. THE CONSENT OF A MINOR IS NOT A DEFENSE TO A VIOLATION OF THIS SECTION.

C. AN INTERNET SERVICE PROVIDER DOES NOT VIOLATE THIS SECTION FOR SOLELY TRANSMITTING A MESSAGE ACROSS THE NETWORK OF THE INTERNET SERVICE PROVIDER.

D. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A PERSON MAY SEND A COMMUNICATION TO A CONTACT POINT OR DOMAIN NAME IF, BEFORE SENDING THE COMMUNICATION, THE PERSON SENDING THE COMMUNICATION RECEIVES CONSENT FROM AN ADULT WHO CONTROLS THE CONTACT POINT OR DOMAIN NAME. ♦ A PERSON WHO PROPOSES TO SEND A COMMUNICATION UNDER THIS SUBSECTION SHALL:

1. VERIFY THE AGE OF THE ADULT WHO CONTROLS THE CONTACT POINT OR DOMAIN NAME BY INSPECTING THE ADULT'S GOVERNMENT-ISSUED IDENTIFICATION CARD IN A FACE-TO-FACE TRANSACTION.

2. OBTAIN A WRITTEN RECORD THAT INDICATES THE ADULT'S CONSENT AND THAT IS SIGNED BY THE ADULT.

3. INCLUDE IN EACH COMMUNICATION BOTH OF THE FOLLOWING:

(a) A NOTICE THAT THE ADULT MAY RESCIND THE CONSENT.

(b) INFORMATION THAT ALLOWS THE ADULT TO OPT OUT OF RECEIVING FUTURE COMMUNICATIONS.

4. NOTIFY THE SECRETARY OF STATE THAT THE PERSON INTENDS TO SEND COMMUNICATIONS UNDER THIS SUBSECTION.

44-7854. Violation; classification

A. A VIOLATION OF SECTION 44-7853 IS:

1. A CLASS 2 MISDEMEANOR FOR A FIRST VIOLATION WITH RESPECT TO A CONTACT POINT REGISTERED WITH THE SECRETARY OF STATE UNDER SECTION 44-7852, SUBSECTION B.

2. A CLASS 1 MISDEMEANOR:

(a) FOR A SECOND OR SUBSEQUENT VIOLATION WITH RESPECT TO A CONTACT POINT REGISTERED WITH THE SECRETARY OF STATE UNDER SECTION 44-7852, SUBSECTION B.

(b) FOR EACH VIOLATION WITH RESPECT TO A DOMAIN NAME REGISTERED WITH THE SECRETARY OF STATE UNDER SECTION 44-7852, SUBSECTION C.

3. A CLASS 2 FELONY IF THE PERSON EITHER:

(a) USES INFORMATION OBTAINED FROM THE SECRETARY OF STATE UNDER THIS CHAPTER TO VIOLATE SECTION 44-7853.

(b) IMPROPERLY:

(i) OBTAINS CONTACT POINTS FROM THE REGISTRY.

(ii) ATTEMPTS TO OBTAIN CONTACT POINTS FROM THE REGISTRY.

(iii) USES OR TRANSFERS TO A THIRD PARTY TO USE INFORMATION FROM THE REGISTRY TO SEND A SOLICITATION.

B. A CRIMINAL CONVICTION UNDER THIS SECTION DOES NOT RELIEVE A PERSON FROM CIVIL LIABILITY IN AN ACTION UNDER SECTION 44-7855.

C. EACH COMMUNICATION SENT IN VIOLATION OF SECTION 44-7853 IS A SEPARATE OFFENSE UNDER THIS SECTION.

44-7855. Civil actions

A. FOR A VIOLATION OF SECTION 44-7853, AN ACTION MAY BE BROUGHT BY EITHER:

1. A USER OF A CONTACT POINT OR DOMAIN NAME THAT IS REGISTERED WITH THE SECRETARY OF STATE UNDER SECTION 44-7852.

2. A LEGAL GUARDIAN OF A USER DESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION.

B. IN EACH ACTION UNDER SUBSECTION A OF THIS SECTION:

1. A PERSON MAY RECOVER THE GREATER OF ACTUAL DAMAGES OR ONE THOUSAND DOLLARS FOR EACH COMMUNICATION SENT IN VIOLATION OF SECTION 44-7853.

2. THE PREVAILING PARTY SHALL BE AWARDED COSTS AND REASONABLE ATTORNEY FEES.

44-7856. Defenses

IT IS A DEFENSE TO AN ACTION BROUGHT UNDER THIS CHAPTER THAT A PERSON REASONABLY RELIED ON THE MECHANISM ESTABLISHED BY THE SECRETARY OF STATE UNDER SECTION 44-7852 AND TOOK REASONABLE MEASURES TO COMPLY WITH THIS CHAPTER.

Sec. 2. Short title

This act may be cited as the "Child Protection Registry Act".