

HOUSE BILL No. 2277

By Committee on Judiciary

2-10

1 AN ACT concerning children and minors; enacting the Kansas child
2 protection registry act.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) Sections 1 through 6, and amendments thereto, shall be
6 known and may be cited as the Kansas child protection registry act.

7 (b) As used in the Kansas child protection registry act:

8 (1) "Contact point" means an electronic identification to which a
9 communication may be sent, including:

10 (A) An e-mail address;

11 (B) an instant message identity;

12 (C) a mobile or other telephone number;

13 (D) a facsimile number; or

14 (E) an electronic address defined as a "contact point" by rules and
15 regulations of the office of attorney general.

16 (2) "Communication" means any "wire communication," "oral
17 communication" or "electronic communication" as those terms are defined
18 in K.S.A. 22-2514, and amendments thereto.

19 (3) "Communications provider" means any person that: (A) Provides
20 an electronic communication service, as defined in K.S.A. 22-2514, and
21 amendments thereto; or (B) is a provider, as defined in K.S.A. 2014 Supp.
22 12-5363, and amendments thereto.

23 (4) "Harmful to minors" means that quality of any description,
24 exhibition, presentation or representation, in whatever form, of nudity,
25 sexual conduct, sexual excitement or sadomasochistic abuse when the
26 material or performance, taken as a whole, or that portion of the material
27 that was actually exposed to the view of minors, has the following
28 characteristics:

29 (A) The average adult person applying contemporary community
30 standards would find that the material or performance has a predominant
31 tendency to appeal to a prurient interest in sex to minors;

32 (B) the average adult person applying contemporary community
33 standards would find that the material or performance depicts or describes
34 nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a
35 manner that is patently offensive to prevailing standards in the adult
36 community with respect to what is suitable for minors; and

1 (C) a reasonable person would find that the material or performance
2 lacks serious literary, scientific, educational, artistic or political value for
3 minors. As used in this subsection, "material" means any text, print,
4 picture, figure, image, description, film or record.

5 Sec. 2. (a) The office of attorney general shall:

6 (1) Establish and operate a Kansas child protection registry to
7 compile and secure a list of contact points the office of attorney general
8 has received pursuant to this section; or

9 (2) contract with a third party to establish and secure the Kansas child
10 protection registry described in subsection (a)(1).

11 (b) (1) The office of attorney general shall implement the Kansas
12 child protection registry described in this section beginning on January 1,
13 2016.

14 (2) A person may register a contact point with the office of attorney
15 general if:

16 (A) The contact point belongs to a minor;

17 (B) a minor has access to the contact point; or

18 (C) the contact point is used in a household in which a minor is
19 present.

20 (c) A school or other institution that primarily serves minors may
21 register its domain name with the office of attorney general.

22 (d) A person desiring to send a communication described in section 3,
23 and amendments thereto, to a contact point or domain shall:

24 (1) Use a mechanism established by rules and regulations of the
25 office of attorney general pursuant to section 4, and amendments thereto;
26 and

27 (2) pay a fee for use of such mechanism as established by rules and
28 regulations of the office of attorney general.

29 (e) Notwithstanding any provision of K.S.A. 45-215 et seq., and
30 amendments thereto, to the contrary, the contents of the Kansas child
31 protection registry, and any complaint filed about a sender who violates
32 the Kansas child protection registry, are not subject to the provisions of the
33 Kansas open records act when, in the opinion of the attorney general,
34 disclosure of the contents of the Kansas child protection registry would be
35 harmful to the public welfare or public safety. The provisions of this
36 subsection shall expire on June 30, 2020, unless the legislature acts to
37 reenact such provisions. The provisions of this section shall be reviewed
38 by the legislature prior to July 1, 2020.

39 (f) The office of attorney general shall promote the Kansas child
40 protection registry on the office of attorney general's official internet
41 website.

42 Sec. 3. (a) A person may not send, cause to be sent or conspire with a
43 third party to send a communication to a contact point or domain that has

1 been registered for more than 30 calendar days with the office of attorney
2 general under section 2, and amendments thereto, if the communication:

3 (1) Has the primary purpose of advertising or promoting a product or
4 service that a minor is prohibited by law from purchasing; or

5 (2) contains or has the primary purpose of advertising or promoting
6 material that is harmful to minors.

7 (b) Except as provided in subsection (d), consent of a minor is not a
8 defense to a violation of this section.

9 (c) A communications provider does not violate this section by solely
10 transmitting a message across the network of such communications
11 provider.

12 (d) (1) Notwithstanding subsection (a), a person may send a
13 communication to a contact point if, before sending the communication,
14 the person sending the communication receives consent from an adult who
15 controls the contact point.

16 (2) Any person who proposes to send a communication under
17 subsection (d)(1) shall:

18 (A) Verify the age of the adult who controls the contact point by
19 inspecting the adult's government-issued identification card in a face-to-
20 face transaction;

21 (B) obtain a written record indicating the adult's consent that is signed
22 by the adult;

23 (C) include in each communication:

24 (i) A notice that the adult may rescind the consent; and

25 (ii) information that allows the adult to opt out of receiving future
26 communications; and

27 (D) notify the office of attorney general that the person intends to
28 send a communication under subsection (d)(1).

29 (e) The office of attorney general shall promulgate rules and
30 regulations to verify that a person providing notification complies with the
31 provisions of this section.

32 Sec. 4. The office of attorney general shall promulgate rules and
33 regulations to establish procedures under which:

34 (a) A person may register a contact point with the office of attorney
35 general under section 2, and amendments thereto, including:

36 (1) The information necessary to register an instant message identity
37 or other electronic address that is similar to a contact point; and

38 (2) a school or other institution that primarily serves minors may
39 register its domain name with the office of attorney general;

40 (b) the office of attorney general shall:

41 (1) Provide a mechanism under which a person described in section 2,
42 and amendments thereto, may verify compliance with the Kansas registry
43 protection act to remove registered contact points from such person's

1 communications; and

2 (2) establish the mechanism described in subsection (b)(1) in a
3 manner that protects the privacy and security of a contact point registered
4 with the office of attorney general under the Kansas child protection
5 registry act; and

6 (c) the office of attorney general may:

7 (1) Implement a program offering discounted fees to a sender who
8 meets enhanced security conditions established and verified by the office
9 of attorney general, the third party registry provider or a designee; and

10 (2) allow the third party registry provider or designee to assist in any
11 public or industry awareness campaign promoting the Kansas child
12 protection registry.

13 Sec. 5. (a) For a violation of the Kansas child protection registry act,
14 an action may be brought by:

15 (1) A user of a contact point or domain name registered with the
16 office of attorney general under the Kansas child protection registry act; or

17 (2) a parent or legal guardian of a user described in subsection (a)(1).

18 (b) In each action under subsection (a):

19 (1) A person described in subsection (a) may recover the greater of:

20 (A) Actual damages; or

21 (B) \$1,000 for each communication sent in violation of the Kansas
22 child protection registry act; and

23 (2) the prevailing party shall be awarded costs and reasonable
24 attorney fees.

25 (c) The office of attorney general shall:

26 (1) Investigate violations of the Kansas child protection registry act;
27 and

28 (2) issue cease and desist orders and administrative fines under this
29 section for violations of the Kansas child protection registry act.

30 (d) A person who violates the Kansas child protection registry act is
31 subject to:

32 (1) A cease and desist order; and

33 (2) an administrative fine of not more than \$2,500 for each separate
34 communication sent in violation of the Kansas child protection registry
35 act.

36 (e) (1) A person who intentionally violates the Kansas child
37 protection registry act is subject to an administrative fine of not more than
38 \$5,000 for each communication intentionally sent in violation of the
39 Kansas child protection registry act.

40 (2) For purposes of this section, a person intentionally violates the
41 Kansas child protection registry act if the violation occurs after the
42 attorney general notifies such person by certified mail that the person is in
43 violation of the Kansas child protection registry act.

1 (f) All administrative fines collected under this section shall be
2 deposited in the state general fund.

3 (g) It is a defense to an action brought under the Kansas child
4 protection registry act that a person:

5 (1) Reasonably relied on the mechanism established by the office of
6 attorney general; and

7 (2) took reasonable measures to comply with the provisions of the
8 Kansas child protection registry act.

9 Sec. 6. A person who knowingly violates the provisions of the Kansas
10 child protection registry act shall be guilty of a class C misdemeanor.

11 Sec. 7. This act shall take effect and be in force from and after its
12 publication in the statute book.