

REFERENCE TITLE: child protection registry; prohibited communications

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

HB 2458

Introduced by
Representatives Brophy McGee, Cardenas, Carter, Senator Driggs:
Representatives Cobb, Olson, Senator Barto

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 CHAPTER 36

5 CHILD PROTECTION REGISTRY

6 ARTICLE 1. GENERAL PROVISIONS

7 44-7851. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "CONTACT POINT" MEANS AN ELECTRONIC IDENTIFICATION TO WHICH A
10 COMMUNICATION MAY BE SENT, INCLUDING AN E-MAIL ADDRESS OR, SUBJECT TO SECTION
11 44-7852, ANY OF THE FOLLOWING:

12 (a) AN INSTANT MESSAGE IDENTITY.

13 (b) A MOBILE OR OTHER TELEPHONE NUMBER.

14 (c) A FAX NUMBER.

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

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

19 44-7852. Child protection registry; secretary of state

20 A. THE SECRETARY OF STATE SHALL:

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

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

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

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

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

32 1. THE CONTACT POINT BELONGS TO A MINOR.

33 2. A MINOR HAS ACCESS TO THE CONTACT POINT.

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

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

38 D. A PERSON WHO DESIRES TO SEND A COMMUNICATION DESCRIBED IN SECTION
39 44-7853, SUBSECTION D TO A CONTACT POINT OR DOMAIN NAME SHALL:

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

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

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

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

3 44-7853. Prohibited communications; exception

4 A. A PERSON MAY NOT SEND, CAUSE TO BE SENT OR CONSPIRE WITH A THIRD
5 PARTY TO SEND A COMMUNICATION TO A CONTACT POINT OR DOMAIN NAME THAT HAS BEEN
6 REGISTERED FOR MORE THAN THIRTY CALENDAR DAYS WITH THE SECRETARY OF STATE
7 UNDER SECTION 44-7852 IF THE COMMUNICATION EITHER:

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

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

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

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

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

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

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

27 3. INCLUDE IN EACH COMMUNICATION BOTH OF THE FOLLOWING:

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

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

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

33 44-7854. Violation; classification

34 A. A VIOLATION OF SECTION 44-7853 IS:

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

38 2. A CLASS 1 MISDEMEANOR:

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

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

1 3. A CLASS 2 FELONY IF THE PERSON EITHER:
2 (a) USES INFORMATION OBTAINED FROM THE SECRETARY OF STATE UNDER THIS
3 CHAPTER TO VIOLATE SECTION 44-7853.
4 (b) IMPROPERLY:
5 (i) OBTAINS CONTACT POINTS FROM THE REGISTRY.
6 (ii) ATTEMPTS TO OBTAIN CONTACT POINTS FROM THE REGISTRY.
7 (iii) USES OR TRANSFERS TO A THIRD PARTY TO USE INFORMATION FROM THE
8 REGISTRY TO SEND A SOLICITATION.
9 B. A CRIMINAL CONVICTION UNDER THIS SECTION DOES NOT RELIEVE A PERSON
10 FROM CIVIL LIABILITY IN AN ACTION UNDER SECTION 44-7855.
11 C. EACH COMMUNICATION SENT IN VIOLATION OF SECTION 44-7853 IS A
12 SEPARATE OFFENSE UNDER THIS SECTION.
13 44-7855. Civil actions
14 A. FOR A VIOLATION OF SECTION 44-7853, AN ACTION MAY BE BROUGHT BY
15 EITHER:
16 1. A USER OF A CONTACT POINT OR DOMAIN NAME THAT IS REGISTERED WITH
17 THE SECRETARY OF STATE UNDER SECTION 44-7852.
18 2. A LEGAL GUARDIAN OF A USER DESCRIBED IN PARAGRAPH 1 OF THIS
19 SUBSECTION.
20 B. IN EACH ACTION UNDER SUBSECTION A OF THIS SECTION:
21 1. A PERSON MAY RECOVER THE GREATER OF ACTUAL DAMAGES OR ONE THOUSAND
22 DOLLARS FOR EACH COMMUNICATION SENT IN VIOLATION OF SECTION 44-7853.
23 2. THE PREVAILING PARTY SHALL BE AWARDED COSTS AND REASONABLE ATTORNEY
24 FEES.
25 44-7856. Defenses
26 IT IS A DEFENSE TO AN ACTION BROUGHT UNDER THIS CHAPTER THAT A PERSON
27 REASONABLY RELIED ON THE MECHANISM ESTABLISHED BY THE SECRETARY OF STATE
28 UNDER SECTION 44-7852 AND TOOK REASONABLE MEASURES TO COMPLY WITH THIS
29 CHAPTER.
30 Sec. 2. Short title
31 This act may be cited as the "Child Protection Registry Act".