

HOUSE BILL 237

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

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AN ACT

RELATING TO COMMUNICATIONS TO MINORS; ENACTING THE CHILD PROTECTION REGISTRY ACT; PROHIBITING COMMUNICATIONS TO MINORS THAT ADVERTISE A PRODUCT OR SERVICE THAT A MINOR IS PROHIBITED FROM PURCHASING OR THAT CONTAIN MATERIALS HARMFUL TO MINORS; CREATING THE CHILD PROTECTION REGISTRY FUND; REQUIRING THE ATTORNEY GENERAL TO ESTABLISH THE CHILD PROTECTION REGISTRY AND A MECHANISM FOR PERSONS DESIRING TO SEND A COMMUNICATION TO VERIFY COMPLIANCE WITH THE CHILD PROTECTION REGISTRY ACT; PROVIDING CIVIL AND CRIMINAL PENALTIES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Child Protection Registry Act".

SECTION 2. [NEW MATERIAL] PURPOSE.--The purpose of the

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1 Child Protection Registry Act is to provide safeguards to  
2 prevent minor children from receiving communications that  
3 advertise a product or service that a minor is prohibited by  
4 law from purchasing or that contain or have the primary purpose  
5 of advertising or promoting material that is harmful to minors,  
6 as defined in Subsection F of Section 30-37-1 NMSA 1978.

7 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
8 Child Protection Registry Act:

9 A. "contact point" means any electronic  
10 identification to which a communication can be sent, including:

- 11 (1) an email address;
- 12 (2) an instant message identity;
- 13 (3) a telephone number; or
- 14 (4) any other electronic address identified in

15 rules promulgated by the attorney general pursuant to the Child  
16 Protection Registry Act; and

17 B. "minor" means a child who has not reached the  
18 age of majority.

19 SECTION 4. [NEW MATERIAL] ESTABLISHMENT AND OPERATION OF  
20 THE CHILD PROTECTION REGISTRY.--

21 A. The attorney general shall establish and operate  
22 a child protection registry to compile and secure a list of  
23 contact points registered pursuant to Subsection B of this  
24 section. The attorney general shall adopt procedures to  
25 prevent the unauthorized use or disclosure of contact points

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1 contained in the registry.

2 B. A person responsible for a contact point to  
3 which a minor may have access may register that contact point  
4 in the child protection registry pursuant to rules promulgated  
5 by the attorney general. The attorney general shall establish  
6 rules to ensure that a registrant meets the requirements of  
7 this section.

8 C. A school or other entity that primarily serves  
9 minors may register one or more contact points in the child  
10 protection registry and shall be permitted to submit one  
11 registration form for all contact points of the school or  
12 entity. Registration submitted pursuant to this subsection may  
13 include the internet domain name of the school or entity.

14 D. Registration of a contact point submitted  
15 pursuant to this section shall be valid for three years.

16 E. The attorney general may contract with a third-  
17 party administrator to establish, operate and secure the child  
18 protection registry.

19 F. No fee shall be charged for registering a  
20 contact point in the child protection registry.

21 G. Information contained in the child protection  
22 registry is not a public record and shall not be made available  
23 for inspection by the public.

24 SECTION 5. [NEW MATERIAL] CHILD PROTECTION REGISTRY  
25 FUND--CREATED.--The "child protection registry fund" is created

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1 in the state treasury. The fund consists of appropriations and  
2 fees collected pursuant to Section 6 of the Child Protection  
3 Registry Act. Money in the fund shall not revert to any other  
4 fund at the end of a fiscal year. The attorney general shall  
5 administer the fund, and money in the fund is appropriated to  
6 the attorney general to establish, operate and administer the  
7 child protection registry and to enforce and defend the Child  
8 Protection Registry Act.

9 SECTION 6. [NEW MATERIAL] VERIFICATION OF COMPLIANCE BY  
10 SENDERS--FEES FOR VERIFICATION.--

11 A. The attorney general shall establish a mechanism  
12 by which a person desiring to send a communication can verify  
13 whether a contact point is registered in the child protection  
14 registry in order to ensure compliance with the Child  
15 Protection Registry Act. The attorney general shall charge a  
16 fee not to exceed three cents (\$.03) per contact point checked  
17 against the registry.

18 B. A person desiring to send a communication  
19 described in Subsection A of Section 7 of the Child Protection  
20 Registry Act shall verify that the intended contact points are  
21 not registered in the child protection registry.

22 C. Fees collected pursuant to this section shall be  
23 deposited in the child protection registry fund.

24 SECTION 7. [NEW MATERIAL] VIOLATION OF ACT.--

25 A. A person shall not knowingly send, cause to be

1 sent or conspire with a third party to send a communication to  
2 a contact point that has been registered in the child  
3 protection registry for more than thirty calendar days if the  
4 primary purpose of the communication is to directly or  
5 indirectly advertise or otherwise link to a communication that  
6 advertises a product or service that a minor is prohibited by  
7 law from purchasing or that contains or has the primary purpose  
8 of advertising or promoting material that is harmful to minors,  
9 as defined in Subsection F of Section 30-37-1 NMSA 1978.

10 B. It is a violation of the Child Protection  
11 Registry Act to:

12 (1) use information obtained from the child  
13 protection registry to violate the Child Protection Registry  
14 Act;

15 (2) improperly obtain or attempt to obtain  
16 contact points from the child protection registry; or

17 (3) use, or transfer to a third party to use,  
18 information from the registry to send a communication.

19 C. An internet service provider does not violate  
20 this section solely by transmitting a communication across the  
21 network of the internet service provider.

22 D. The consent of a minor to receive the  
23 communication is not a defense to violation of this section.

24 E. A person is guilty of a fourth degree felony and  
25 upon conviction shall be sentenced pursuant to the provisions

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1 of Section 31-18-15 NMSA 1978 if the person:

2 (1) uses information obtained from the child  
3 protection registry to violate the Child Protection Registry  
4 Act;

5 (2) improperly obtains or attempts to obtain  
6 contact points from the child protection registry; or

7 (3) uses, or transfers to a third party to  
8 use, information from the child protection registry to send a  
9 communication.

10 F. A person who violates a provision of the Child  
11 Protection Registry Act is subject to prosecution under the  
12 Computer Crimes Act.

13 SECTION 8. [NEW MATERIAL] EXCEPTION FOR VALID CONSENT BY  
14 ADULT.--

15 A. Notwithstanding the provisions of Section 7 of  
16 the Child Protection Registry Act, a person may send a  
17 communication that advertises a product or service that a minor  
18 is prohibited from purchasing, viewing, participating in or  
19 possessing if the person sending the communication receives  
20 consent from an adult who controls the contact point. Prior to  
21 sending the communication, the person shall:

22 (1) verify the age of the adult who controls  
23 the contact point by inspecting the adult's government-issued  
24 identification card in a face-to-face transaction;

25 (2) obtain a signed statement indicating that

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1 the adult consents to receive the communication; and

2 (3) notify the attorney general that the  
3 person intends to send the communication.

4 B. A communication sent pursuant to Subsection A of  
5 this section shall contain information that describes how the  
6 adult may opt out of receiving future communications.

7 C. The attorney general shall promulgate rules  
8 prescribing a method for verifying that valid consent has been  
9 obtained for communications sent pursuant to this section.

10 SECTION 9. [NEW MATERIAL] CIVIL ACTION FOR VIOLATION.--

11 A. A civil action for a violation of the Child  
12 Protection Registry Act may be brought by:

13 (1) the registrant of a contact point on  
14 behalf of a minor who has received a communication in violation  
15 of the Child Protection Registry Act; or

16 (2) the attorney general.

17 B. A person bringing an action pursuant to  
18 Paragraph (1) of Subsection A of this section may recover:

19 (1) actual damages; or

20 (2) the lesser of five thousand dollars  
21 (\$5,000) per communication transmitted to the contact point or  
22 two hundred fifty thousand dollars (\$250,000) per day that the  
23 violation occurs.

24 C. In an action brought by the attorney general  
25 pursuant to Paragraph (2) of Subsection A of this section, the

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1 attorney general may recover a civil penalty not to exceed ten  
2 thousand dollars (\$10,000) per communication transmitted to a  
3 contact point in violation of the Child Protection Registry Act  
4 or five hundred thousand dollars (\$500,000) per day that the  
5 violation occurs, whichever is less.

6 D. In each action brought pursuant to this section,  
7 the prevailing party may be awarded costs and reasonable  
8 attorney fees.

9 SECTION 10. [NEW MATERIAL] DEFENSE.--It shall be a  
10 defense to an action brought pursuant to the Child Protection  
11 Registry Act that a person reasonably relied on the mechanism  
12 for verification of compliance established pursuant to Section  
13 6 of the Child Protection Registry Act.

14 SECTION 11. EFFECTIVE DATE.--The effective date of the  
15 provisions of this act is July 1, 2016.