

1 HOUSE BILL 237

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

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10 AN ACT

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

21  
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

25 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--PENALTY.--

25 A. A person shall not send, cause to be sent or

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

12                   (1) a petty misdemeanor for a first offense  
13      and shall be sentenced in accordance with the provisions of  
14      Section 31-19-1 NMSA 1978; and

15                   (2) a misdemeanor for each subsequent offense  
16      and shall be sentenced in accordance with the provisions of  
17      Section 31-19-1 NMSA 1978.

18                   B. A person commits a computer crime and is guilty  
19      of a fourth degree felony and shall be sentenced in accordance  
20      with the provisions of Section 31-18-15 NMSA 1978 if the  
21      person:

22                   (1) uses information obtained from the child  
23      protection registry to violate the Child Protection Registry  
24      Act;

25                   (2) improperly obtains or attempts to obtain

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1 contact points from the child protection registry; or

2 (3) uses, or transfers to a third party to  
3 use, information from the registry to send a communication.

4 C. Each communication sent in violation of  
5 Subsection A of this section shall constitute a separate  
6 offense.

7 D. An internet service provider does not violate  
8 this section solely by transmitting a communication across the  
9 network of the internet service provider.

10 E. The consent of a minor to receive the  
11 communication is not a defense to violation of this section.

12 F. A criminal conviction pursuant to this section  
13 does not relieve a person from civil liability for violation of  
14 the Child Protection Registry Act.

15 SECTION 8. [NEW MATERIAL] EXCEPTION FOR VALID CONSENT BY  
16 ADULT.--

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

24 (1) verify the age of the adult who controls  
25 the contact point by inspecting the adult's government-issued

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1 identification card in a face-to-face transaction;

2 (2) obtain a signed statement indicating that  
3 the adult consents to receive the communication; and

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

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

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

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

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

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

18 (2) the attorney general.

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

21 (1) actual damages; or

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

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1 C. In an action brought by the attorney general  
2 pursuant to Paragraph (2) of Subsection A of this section, the  
3 attorney general may recover a civil penalty not to exceed ten  
4 thousand dollars (\$10,000) per communication transmitted to a  
5 contact point in violation of the Child Protection Registry Act  
6 or five hundred thousand dollars (\$500,000) per day that the  
7 violation occurs, whichever is less.

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

11 SECTION 10. [NEW MATERIAL] DEFENSE.--It shall be a  
12 defense to an action brought pursuant to the Child Protection  
13 Registry Act that a person reasonably relied on the mechanism  
14 for verification of compliance established pursuant to Section  
15 6 of the Child Protection Registry Act.

16 SECTION 11. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2015.