

**CHILD PROTECTION REGISTRY**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Michael R. Styler**

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**LONG TITLE**

**General Description:**

This bill enacts provisions within the Commerce and Trade Code related to a child protection registry.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires the Division of Consumer Protection to establish a registry of contact points for minors;
- ▶ prohibits a person from sending certain materials to a registered contact point; and
- ▶ provides criminal, administrative, and civil penalties.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

**⚡ AMENDS:**

**13-2-1, as last amended by Chapter 222, Laws of Utah 2002 ⚡**

**ENACTS:**

**13-39-101, Utah Code Annotated 1953**

**13-39-102, Utah Code Annotated 1953**

**13-39-201, Utah Code Annotated 1953**

**13-39-202, Utah Code Annotated 1953**

**13-39-203, Utah Code Annotated 1953**



- 28 13-39-301, Utah Code Annotated 1953
- 29 13-39-302, Utah Code Annotated 1953
- 30 13-39-303, Utah Code Annotated 1953
- 31 13-39-304, Utah Code Annotated 1953



33 *Be it enacted by the Legislature of the state of Utah:*

33a **Ĥ Section 1. Section 13-2-1 is amended to read:**

33b **13-2-1. Consumer protection division established -- Functions.**

33c **(1) There is established within the Department of Commerce the Division of Consumer**  
 33d **Protection.**

33e **(2) The division shall administer and enforce the following:**

- 33f **(a) Chapter 5, Unfair Practices Act;**
- 33g **(b) Chapter 10a, Music Licensing Practices Act;**
- 33h **(c) Chapter 11, Utah Consumer Sales Practices Act;**
- 33i **(d) Chapter 15, Business Opportunity Disclosure Act;**
- 33j **(e) Chapter 20, New Motor Vehicles Warranties Act;**
- 33k **(f) Chapter 21, Credit Services Organizations Act;**
- 33l **(g) Chapter 22, Charitable Solicitations Act;**
- 33m **(h) Chapter 23, Health Spa Services Protection Act;**
- 33n **(i) Chapter 25a, Telephone and Facsimile Solicitation Act;**
- 33o **(j) Chapter 26, Telephone Fraud Prevention Act;**
- 33p **(k) Chapter 28, Prize Notices Regulation Act;**
- 33q **(l) Chapter 30, Utah Personal Introduction Services Protection Act; [and]**
- 33r **(m) Chapter 34, Utah Postsecondary Proprietary School Act[-]; AND**
- 33s **(n) CHAPTER 39, CHILD PROTECTION REGISTRY. ĥ**

34 Section **Ĥ [±] 2 ĥ** . Section **13-39-101** is enacted to read:

35 **CHAPTER 39. CHILD PROTECTION REGISTRY**

36 **Part 1. General Provisions**

37 **13-39-101. Title.**

38 This chapter is known as the "Child Protection Registry."

39 Section **Ĥ [2] 3 ĥ** . Section **13-39-102** is enacted to read:

40 **13-39-102. Definitions.**

41 As used in this chapter:

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

44 (a) an email address;

45 (b) an instant message identity, subject to rules made by the division under Subsection

46 13-39-203(1);

47 (c) a telephone number;

48 (d) a facsimile number; or

49 (e) an electronic address;

50 (i) similar to a contact point listed in this Subsection (1); and

51 (ii) defined as a contact point by rule made by the division under Subsection

52 13-39-203(1).

53 (2) "Division" means the Division of Consumer Protection in the Department of

54 Commerce.

55 (3) "Registry" means the child protection registry established in Section 13-39-201.

56 Section ~~H~~ [3] ~~4~~ ~~h~~ . Section **13-39-201** is enacted to read:

57 **Part 2. Operation of the Child Protection Registry**

58 **13-39-201. Establishment of child protection registry.**



59           (1) The division shall:  
60           (a) establish and operate a child protection registry to compile and secure a list of  
61 contact points the division has received pursuant to this section; or

62           (b) contract with a third party to establish and secure the registry described in  
63 Subsection (1)(a).

64           (2) (a) A person may register a contact point with the division pursuant to rules  
65 established by the division under Subsection 13-39-203(1) if:

66           (i) the contact point belongs to a minor; or

67           (ii) a minor has access to the contact point.

68           (b) A school or other institution that primarily serves minors may register its domain  
69 name with the division pursuant to rules made by the division under Subsection 13-39-203(1).

70           (3) A person desiring to send a communication described in Subsection 13-39-202(1)  
71 to a contact point or domain shall:

72           (a) use a mechanism established by rule made by the division under Subsection  
73 13-39-203(2); and

74           (b) pay a fee for use of the mechanism described in Subsection (3)(a) determined by  
75 the division in accordance with Section 63-38-3.2.

76           Section 4. Section **13-39-202** is enacted to read:

77           **13-39-202. Prohibition of sending certain materials to a registered contact point.**

78           (1) A person may not directly or indirectly send, cause to be sent, or conspire with a  
79 third party to send, a communication to a contact point or domain that has been registered for  
80 more than 30 calendar days with the division under Section 13-39-201 if the communication:

81           (a) advertises a product or service that a minor is prohibited by law from purchasing; or

82           (b) contains or advertises material that is harmful to minors, as defined in Section  
83 76-10-1201.

84           (2) The consent of a minor is not a defense to a violation of this section.

85           Section 5. Section **13-39-203** is enacted to read:

86           **13-39-203. Rulemaking authority.**

87           In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
88 division shall make rules to establish procedures under which:

89           (1) (a) a person may register a contact point with the division under Section 13-39-201,

90 including:

91 (i) the information necessary to register an instant message identity; and

92 (ii) for purposes of Subsection 13-39-102(1)(e), an electronic address that is similar to  
93 a contact point listed in Subsection 13-39-102(1); and

94 (b) a school or other institution that primarily serves minors may register its domain  
95 name with the division under Section 13-39-201; and

96 (2) the division shall:

97 (a) provide a mechanism under which a person described in Subsection 13-39-201(3)  
98 may verify compliance with the registry to remove registered contact points from the person's  
99 communications; and

100 (b) establish the mechanism described in Subsection (2)(a) in a manner that protects  
101 the privacy and security of a contact point registered with the division under Section  
102 13-39-201.

103 Section 6. Section **13-39-301** is enacted to read:

104 **Part 3. Enforcement**

105 **13-39-301. Criminal penalty.**

106 (1) A person who violates Section 13-39-202 commits a computer crime and:

107 (a) is guilty of a class B misdemeanor for a first offense with respect to a contact point  
108 registered with the division under Subsection 13-39-201(2)(a); and

109 (b) is guilty of a class A misdemeanor:

110 (i) for each subsequent violation with respect to a contact point registered with the  
111 division under Subsection 13-39-201(2)(a); or

112 (ii) for each violation with respect to a domain name registered with the division under  
113 Subsection 13-39-201(2)(b).

114 (2) A person commits a computer crime and is guilty of a second degree felony if the  
115 person:

116 (a) uses information obtained from the division under this chapter to violate Section  
117 13-39-202;

118 (b) improperly:

119 (i) obtains contact points from the registry; or

120 (ii) attempts to obtain contact points from the registry; or

121 (c) uses, or transfers to a third party to use, information from the registry to send a  
122 solicitation.

123 (3) A criminal conviction or penalty under this section does not relieve a person from  
124 civil liability in an action under Section 13-39-302.

125 (4) Each communication sent in violation of Section 13-39-202 is a separate offense  
126 under this section.

127 Section 7. Section **13-39-302** is enacted to read:

128 **13-39-302. Civil action for violation.**

129 (1) For a violation of Section 13-39-202, an action may be brought by:

130 (a) a user of a contact point or domain name registered with the division under Section  
131 13-39-201; or

132 (b) a legal guardian of a user described in Subsection (1)(a).

133 (2) In each action under Subsection (1):

134 (a) a person described in Subsection (1) may recover the greater of:

135 (i) actual damages; or

136 (ii) \$1,000 for each communication sent in violation of Section 13-39-202; and

137 (b) the prevailing party shall be awarded costs and reasonable attorney fees.

138 Section 8. Section **13-39-303** is enacted to read:

139 **13-39-303. Administrative enforcement.**

140 (1) The division shall:

141 (a) investigate violations of this chapter; and

142 (b) assess cease and desist orders and administrative fines under this section for  
143 violations of this chapter.

144 (2) A person who violates this chapter is subject to:

145 (a) a cease and desist order; and

146 (b) an administrative fine of not more than \$2,500 for each separate communication  
147 sent in violation of Section 13-39-202.

148 (3) (a) A person who intentionally violates this chapter is subject to an administrative  
149 fine of not more than \$5,000 for each communication intentionally sent in violation of Section  
150 13-39-202.

151 (b) For purposes of this section, a person intentionally violates this chapter if the

152 violation occurs after the division, attorney general, or a district or county attorney notifies the  
153 person by certified mail that the person is in violation of this chapter.

154 (4) All administrative fines collected under this section shall be deposited in the  
155 Consumer Protection Education and Training Fund created in Section 13-2-8.

156 Section 9. Section **13-39-304** is enacted to read:

157 **13-39-304. Defenses.**

158 It is a defense to an action brought under this chapter that a person:

159 (1) reasonably relied on the mechanism established by the division under Subsection  
160 13-39-203(2); and

161 (2) took reasonable measures to comply with this chapter.

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**Legislative Review Note**  
**as of 1-29-04 3:06 PM**

This bill regulates, among other things, the sending of certain commercial email messages to addresses contained on a registry. Congress recently passed the CAN-SPAM Act of 2003 that, with some exemptions, preempts a state from regulating commercial email. The act permits state regulations of commercial email that:

- prohibit falsity or deception;
- are not specific to email; or
- relate to acts of fraud or computer crime.

If this bill were challenged, a court would evaluate whether this bill falls into one of those exemptions.

**Office of Legislative Research and General Counsel**

**State Impact**

Implementation of this bill will require an additional Investigator for the Division of Consumer Protection at a cost of \$78,800 from the Commerce Service Fund. Spending from the Commerce Service Fund could affect revenue available to the General Fund. It will also require an additional Assistant Attorney General at a cost of \$58,000 from the General Fund. Start up costs of \$30,000 are expected to be donated. This bill has a Legislative Review Note. There may be additional state costs if the bill is challenged in court.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$58,000	\$56,500	\$0	\$0
Commerce Service Fund	\$78,800	\$74,300	\$0	\$0
<b>TOTAL</b>	<b>\$136,800</b>	<b>\$130,800</b>	<b>\$0</b>	<b>\$0</b>

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**Individual and Business Impact**

For every five convictions under the bill's provisions, local jail and related costs are expected to be \$10,700 annually.

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**Office of the Legislative Fiscal Analyst**