

CHILD PROTECTION REGISTRY

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael R. Styler

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:

This bill takes effect on July 1, 2005.

Utah Code Sections Affected:

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

13-39-301, Utah Code Annotated 1953

13-39-302, Utah Code Annotated 1953

13-39-303, Utah Code Annotated 1953

13-39-304, Utah Code Annotated 1953

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

Section 1. Section 13-39-101 is enacted to read:

CHAPTER 39. CHILD PROTECTION REGISTRY

Part 1. General Provisions

13-39-101. Title.

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

Section 2. Section 13-39-102 is enacted to read:

13-39-102. Definitions.

As used in this chapter:

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

(a) an email address; or

(b) subject to Subsection 13-39-201(2):

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

13-39-203(1);

(ii) a telephone number;

(iii) a facsimile number; or

(iv) an electronic address:

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

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

13-39-203(1).

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

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

Section 3. Section 13-39-201 is enacted to read:

Part 2. Operation of the Child Protection Registry

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

(1) The division shall:

(a) establish and operate a child protection registry to compile and secure a list of contact points the division has received pursuant to this section; or

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

(2) (a) The division shall implement the registry described in this section with respect to email addresses beginning on July 1, 2005.

(b) The division shall implement the registry described in this section with respect to instant message identities after:

(i) the division has determined to the satisfaction of the division the security of the registry described in this section with respect to email addresses; and

(ii) the division has reported to the Public Utilities and Technology Interim Committee the intention of the division to implement the registry described in this section with respect to instant message identities.

(c) The division shall implement the registry described in this section with respect to telephone numbers, facsimile numbers, and electronic addresses described in Subsection 13-39-102(1)(b)(iv) after:

(i) the division has determined to the satisfaction of the division the security of the registry described in this section with respect to instant message identities; and

(ii) the division has reported to the Public Utilities and Technology Interim Committee the intention of the division to implement the registry described in this section with respect to telephone numbers, facsimile numbers, and electronic addresses described in Subsection 13-39-102(1)(b)(iv).

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

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

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

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

(c) The division shall provide a disclosure to a person who registers a contact point under this section that reads: "No solution is completely secure. The most effective way to protect children on the Internet is to supervise use and review all email messages and other correspondence. Under law, theft of a contact point from the Child Protection Registry is a class B felony. While every attempt will be made to secure the Child Protection Registry, registrants and their guardians should be aware that their contact points may be at a greater risk of being misappropriated by marketers who choose to disobey the law."

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

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

(b) pay a fee for use of the mechanism described in Subsection (4)(a) determined by the division in accordance with Section 63-38-3.2.

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

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

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

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

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

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

(3) An Internet service provider does not violate this section for solely transmitting a message across the network of the Internet service provider.

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

13-39-203. Rulemaking authority.

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

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

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

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

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

(2) the division shall:

(a) provide a mechanism under which a person described in Subsection 13-39-201(4) may verify compliance with the registry to remove registered contact points from the person's communications; and

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

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

Part 3. Enforcement

13-39-301. Criminal penalty.

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

(a) is guilty of a class B misdemeanor for a first offense with respect to a contact point registered with the division under Subsection 13-39-201(3)(a); and

(b) is guilty of a class A misdemeanor:

(i) for each subsequent violation with respect to a contact point registered with the division under Subsection 13-39-201(3)(a); or

(ii) for each violation with respect to a domain name registered with the division under Subsection 13-39-201(3)(b).

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

person:

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

(b) improperly:

(i) obtains contact points from the registry; or

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

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

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

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

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

13-39-302. Civil action for violation.

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

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

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

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

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

(i) actual damages; or

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

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

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

13-39-303. Administrative enforcement.

(1) The division shall:

(a) investigate violations of this chapter; and

(b) assess cease and desist orders and administrative fines under this section for violations

of this chapter.

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

(a) a cease and desist order; and

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

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

(b) For purposes of this section, a person intentionally violates this chapter if the violation occurs after the division, attorney general, or a district or county attorney notifies the person by certified mail that the person is in violation of this chapter.

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

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

13-39-304. Defenses.

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

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

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

Section 10. **Effective date.**

This bill takes effect on July 1, 2005.