

**Senator John L. Valentine** proposes the following substitute bill:

**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:**

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



- 26 13-39-202, Utah Code Annotated 1953
- 27 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

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

34 Section 1. 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 2. 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; or

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

46 (i) an instant message identity, subject to rules made by the division under Subsection  
47 13-39-203(1);

48 (ii) a telephone number;

49 (iii) a facsimile number; or

50 (iv) an electronic address:

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

52 (B) defined as a contact point by rule made by the division under Subsection  
53 13-39-203(1).

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

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

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

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

59 **13-39-201. Establishment of child protection registry.**

60 (1) The division shall:

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

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

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

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

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

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

74 (c) The division shall implement the registry described in this section with respect to  
75 telephone numbers, facsimile numbers, and electronic addresses described in Subsection  
76 13-39-102(1)(b)(iv) after:

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

79 (ii) the division has reported to the Public Utilities and Technology Interim Committee  
80 the intention of the division to implement the registry described in this section with respect to  
81 telephone numbers, facsimile numbers, and electronic addresses described in Subsection  
82 13-39-102(1)(b)(iv).

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

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

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

87 (b) A school or other institution that primarily serves minors may register its domain

88 name with the division pursuant to rules made by the division under Subsection 13-39-203(1).

89 (c) The division shall provide a disclosure to a person who registers a contact point  
90 under this section that reads: "Under law, theft of a contact point from the Child Protection  
91 Registry is a Class B Felony. While every attempt will be made to secure the Child Protection  
92 Registry, registrants and their guardians should be aware that their contact points may risk  
93 being misappropriated by marketers who choose to disobey the law."

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

96 (a) use a mechanism established by rule made by the division under Subsection  
97 13-39-203(2); and

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

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

101 **13-39-202. Prohibition of sending certain materials to a registered contact point.**

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

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

106 (b) contains or advertises material that is harmful to minors, as defined in Section  
107 76-10-1201.

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

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

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

112 **13-39-203. Rulemaking authority.**

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

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

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

118 (ii) for purposes of Subsection 13-39-102(1)(b)(iv), an electronic address that is similar

119 to a contact point listed in Subsection 13-39-102(1); and

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

122 (2) the division shall:

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

126 (b) establish the mechanism described in Subsection (2)(a) in a manner that protects  
127 the privacy and security of a contact point registered with the division under Section  
128 13-39-201.

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

130 **Part 3. Enforcement**

131 **13-39-301. Criminal penalty.**

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

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

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

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

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

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

142 (a) uses information obtained from the division under this chapter to violate Section  
143 13-39-202;

144 (b) improperly:

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

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

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

149 (3) A criminal conviction or penalty under this section does not relieve a person from

150 civil liability in an action under Section 13-39-302.

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

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

154 **13-39-302. Civil action for violation.**

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

156 (a) a user of a contact point or domain name registered with the division under Section  
157 13-39-201; or

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

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

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

161 (i) actual damages; or

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

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

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

165 **13-39-303. Administrative enforcement.**

166 (1) The division shall:

167 (a) investigate violations of this chapter; and

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

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

171 (a) a cease and desist order; and

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

174 (3) (a) A person who intentionally violates this chapter is subject to an administrative  
175 fine of not more than \$5,000 for each communication intentionally sent in violation of Section  
176 13-39-202.

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

180 (4) All administrative fines collected under this section shall be deposited in the

181 Consumer Protection Education and Training Fund created in Section 13-2-8.  
182 Section 9. Section **13-39-304** is enacted to read:  
183 **13-39-304. Defenses.**  
184 It is a defense to an action brought under this chapter that a person:  
185 (1) reasonably relied on the mechanism established by the division under Subsection  
186 13-39-203(2); and  
187 (2) took reasonable measures to comply with this chapter.  
188 Section 10. **Effective date.**  
189 This bill takes effect on July 1, 2005.

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**Legislative Review Note**  
**as of 3-2-04 10:35 AM**

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**