

Representative Bradley M. Daw proposes the following substitute bill:

CHILD PROTECTION REGISTRY

AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: John Dougall

LONG TITLE

General Description:

This bill makes changes to the Child Protection Registry disclosure provisions.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Division of Consumer Protection to:
 - compile and secure a list of domain names that are registered under the Child Protection Registry;
 - implement the Child Protection Registry with respect to domain names beginning on July, 1, 2005; and
 - implement the Child Protection Registry with respect to a contact point when the Division of Consumer Protection has determined that security of the registry is adequate and has reported the division's intent to implement the registry with respect to a contact point to the Public Utilities and Technology Interim Committee;
- ▶ describes the circumstances under which a person may register a contact point or a domain name;
- ▶ amends the disclosure to registrants provision of the Child Protection Registry to



26 conform to the criminal penalty provisions of Section 13-39-301;

27 ▶ makes technical changes, including clarifying that the Division of Consumer
28 Protection shall administer and enforce the Child Protection Registry;

29 ▶ makes it a crime to send certain communications to certain contact points if the
30 contact point or domain name have been listed on the Child Protection Registry for
31 more than 30 calendar days;

32 ▶ establishes criminal penalties and a civil cause of action for violating the criminal
33 statute described in the preceding paragraph; and

34 ▶ establishes a defense to the crime described in this bill.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 This bill takes effect on July 1, 2005.

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **13-2-1**, as last amended by Chapter 222, Laws of Utah 2002

42 **13-39-102 (Effective 07/01/05)**, as enacted by Chapter 338, Laws of Utah 2004

43 **13-39-201 (Effective 07/01/05)**, as enacted by Chapter 338, Laws of Utah 2004

44 **13-39-202 (Effective 07/01/05)**, as enacted by Chapter 338, Laws of Utah 2004

45 **13-39-203 (Effective 07/01/05)**, as enacted by Chapter 338, Laws of Utah 2004

46 **13-39-301 (Effective 07/01/05)**, as enacted by Chapter 338, Laws of Utah 2004

47 **13-39-302 (Effective 07/01/05)**, as enacted by Chapter 338, Laws of Utah 2004

48 **13-39-304 (Effective 07/01/05)**, as enacted by Chapter 338, Laws of Utah 2004



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

51 Section 1. Section **13-2-1** is amended to read:

52 **13-2-1. Consumer protection division established -- Functions.**

53 (1) There is established within the Department of Commerce the Division of Consumer
54 Protection.

55 (2) The division shall administer and enforce the following:

56 (a) Chapter 5, Unfair Practices Act;

- 57 (b) Chapter 10a, Music Licensing Practices Act;
- 58 (c) Chapter 11, Utah Consumer Sales Practices Act;
- 59 (d) Chapter 15, Business Opportunity Disclosure Act;
- 60 (e) Chapter 20, New Motor Vehicles Warranties Act;
- 61 (f) Chapter 21, Credit Services Organizations Act;
- 62 (g) Chapter 22, Charitable Solicitations Act;
- 63 (h) Chapter 23, Health Spa Services Protection Act;
- 64 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 65 (j) Chapter 26, Telephone Fraud Prevention Act;
- 66 (k) Chapter 28, Prize Notices Regulation Act;
- 67 (l) Chapter 30, Utah Personal Introduction Services Protection Act; ~~and~~
- 68 (m) Chapter 34, Utah Postsecondary Proprietary School Act~~[-];~~ and
- 69 (n) Chapter 39, Child Protection Registry.

70 Section 2. Section **13-39-102 (Effective 07/01/05)** is amended to read:

71 **13-39-102 (Effective 07/01/05). Definitions.**

72 As used in this chapter:

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

75 (a) an email address; ~~or~~

76 ~~[(b) subject to Subsection 13-39-201(2);]~~

77 ~~[(i)]~~ (b) an instant message identity, subject to rules made by the division under
78 Subsection 13-39-203(1);

79 ~~[(ii)]~~ (c) a telephone number;

80 ~~[(iii)]~~ (d) a facsimile number; or

81 ~~[(iv)]~~ (e) an electronic address:

82 ~~[(A)]~~ (i) similar to a contact point listed in this Subsection (1); and

83 ~~[(B)]~~ (ii) defined as a contact point by rule made by the division under Subsection
84 13-39-203(1).

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

87 (3) "Domain name" means an alphanumeric designation that is registered with or

88 assigned by any domain name registrar, registry, or registration authority as part of an
89 electronic address on the internet.

90 [~~3~~] (4) "Registry" means the child protection registry established in Section
91 13-39-201.

92 Section 3. Section **13-39-201 (Effective 07/01/05)** is amended to read:

93 **13-39-201 (Effective 07/01/05). Establishment of child protection registry.**

94 (1) [~~The~~] Consistent with Subsection (2), the division shall:

95 (a) establish and operate a child protection registry to:

96 (i) compile and secure a list of domain names that the division has received for
97 registration under this section; and

98 (ii) compile and secure a list of contact points that the division has received [pursuant
99 to] for registration under this section; or

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

102 (2) (a) The division shall implement the registry described in this section with respect
103 to [~~email addresses~~] domain names beginning on July 1, 2005.

104 (b) The division shall implement the registry described in this section with respect to
105 [~~instant message identities~~] any contact point after:

106 (i) the division has determined to the satisfaction of the division that the security of the
107 registry described in this section with respect to [~~email addresses~~] the contact point is adequate;
108 and

109 (ii) the division has reported to the Utah Technology Commission and the Public
110 Utilities and Technology Interim Committee the intention of the division to implement the
111 registry described in this section with respect to [~~instant message identities~~] the contact point.

112 [~~The division shall implement the registry described in this section with respect to~~
113 ~~telephone numbers, facsimile numbers, and electronic addresses described in Subsection~~
114 ~~13-39-102(1)(b)(iv) after:]~~

115 [~~the division has determined to the satisfaction of the division the security of the~~
116 ~~registry described in this section with respect to instant message identities; and]~~

117 [~~the division has reported to the Public Utilities and Technology Interim~~
118 ~~Committee the intention of the division to implement the registry described in this section with~~

119 respect to telephone numbers, facsimile numbers, and electronic addresses described in
 120 ~~Subsection 13-39-102(1)(b)(iv).~~]

121 (3) (a) A person may register a domain name with the division if:

122 (i) the person has majority ownership or control over the domain name;

123 (ii) (A) the person is domiciled in Utah; or

124 (B) the domain name is maintained using business operations in Utah;

125 (iii) all contact points that use the domain name are assigned to residents of the state;

126 and

127 (iv) a minor has access to any contact point that uses the domain name in the address of
 128 the contact point.

129 (b) The division shall make available to the public all domain names registered with
 130 the division under this section.

131 ~~[(3)]~~ (4) (a) A person may register a contact point with the division pursuant to rules
 132 established by the division under [Subsection] Section 13-39-203[(-)] if:

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

134 ~~[(ii)]~~ (B) a minor has access to the contact point[-]; and

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

137 (ii) the division has implemented the registry with respect to the type of contact point
 138 that the person is seeking to register.

139 ~~[(c)]~~ (b) The division shall provide a disclosure to a person who registers a contact
 140 point under this section that [reads] includes the following statement: "No solution is

141 completely secure. The most effective way to protect children on the Internet is to supervise
 142 use and review all email messages and other correspondence prior to viewing by a child.

143 Under law, theft of a contact point from the Child Protection Registry is a [class-B] second
 144 degree felony. While every attempt will be made to secure the Child Protection Registry,

145 registrants and their guardians should be aware that their contact points may be at a greater risk
 146 of being misappropriated by marketers who choose to disobey the law."

147 ~~[(4)]~~ (5) A person desiring to send a communication described in Subsection
 148 13-39-202(1) to a contact point or domain shall:

149 (a) use a mechanism established by rule made by the division under Subsection

150 13-39-203(2); and

151 (b) pay a fee for use of the mechanism described in Subsection [~~(4)~~] (5)(a) determined
152 by the division in accordance with Section 63-38-3.2.

153 Section 4. Section **13-39-202 (Effective 07/01/05)** is amended to read:

154 **13-39-202 (Effective 07/01/05). Prohibition of sending certain materials to a**
155 **registered contact point.**

156 (1) A person may not send, cause to be sent, or conspire with a third party to send a
157 communication to a contact point [~~or domain~~] that has been registered for more than 30
158 calendar days with the division under Section 13-39-201 or a contact point with an address that
159 contains a domain name that has been registered for more than 30 calendar days with the
160 division under Section 13-39-201 if the communication:

- 161 (a) advertises a product or service that a minor is prohibited by law from purchasing; or
- 162 (b) contains or advertises material that is harmful to minors, as defined in Section
163 76-10-1201.

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

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

167 Section 5. Section **13-39-203 (Effective 07/01/05)** is amended to read:

168 **13-39-203 (Effective 07/01/05). Rulemaking authority.**

169 In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, after
170 the division has implemented the registry with respect to a type of contact point under
171 Subsection 13-39-201(2), the division shall make rules to establish procedures relating to that
172 type of contact point under which:

- 173 (1) [~~(a)~~] a person may register a contact point with the division under Section
174 13-39-201, including:
175 [~~(i)~~] (a) the information necessary to register an instant message identity; and
176 [~~(ii)~~] (b) for purposes of Subsection 13-39-102(1)[~~(b)(iv)~~], an electronic address that is
177 similar to a contact point listed in Subsection 13-39-102(1); and
178 [~~(b) a school or other institution that primarily serves minors may register its domain~~
179 ~~name with the division under Section 13-39-201; and]~~

180 (2) the division shall:

181 (a) provide a mechanism under which a person described in Subsection
182 13-39-201[(4)](5) may verify compliance with the registry to remove registered contact points
183 from the person's communications; and

184 (b) establish the mechanism described in Subsection (2)(a) in a manner that protects
185 the privacy and security of a contact point registered with the division under Section
186 13-39-201.

187 Section 6. Section **13-39-301 (Effective 07/01/05)** is amended to read:

188 **13-39-301 (Effective 07/01/05). Criminal penalty.**

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

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

192 (b) is guilty of a class A misdemeanor[~~-(i)~~] for each subsequent violation [~~with respect~~
193 ~~to a contact point registered with the division under Subsection 13-39-201(3)(a); or~~].

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

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

198 (a) uses information obtained from the division under this chapter to violate Section
199 13-39-202;

200 (b) improperly:

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

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

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

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

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

209 Section 7. Section **13-39-302 (Effective 07/01/05)** is amended to read:

210 **13-39-302 (Effective 07/01/05). Civil action for violation.**

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

212 [~~(a) a user of a contact point or domain name registered with the division under Section~~
213 ~~13-39-201; or]~~

214 (a) a person who receives a communication sent in violation of Section 13-39-202; or

215 (b) a legal guardian of a ~~[user]~~ person described in Subsection (1)(a).

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

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

218 (i) actual damages; or

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

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

221 Section 8. Section **13-39-304 (Effective 07/01/05)** is amended to read:

222 **13-39-304 (Effective 07/01/05). Defenses.**

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

224 (1) reasonably relied on the ~~[mechanism established by the division under Subsection~~
225 ~~13-39-203(2)]~~ registry established in Section 13-39-201; and

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

227 Section 9. **Effective date.**

228 This bill takes effect on July 1, 2005.

Fiscal Note
Bill Number HB0174S01

Child Protection Registry Amendments

03-Feb-05

8:20 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst