

**Representative John Dougall** proposes the following substitute bill:

**CHILD PROTECTION REGISTRY**

**AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: John Dougall**

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**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 and contact points that are registered under the Child Protection Registry;
  - implement the Child Protection Registry with respect to domain names and email addresses beginning on July, 1, 2005; and
  - implement the Child Protection Registry with respect to a contact point, other than an email address, 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;
- ▶ grants rulemaking authority to the Division of Consumer Protection;



- 26           ▶ amends the disclosure to registrants provision of the Child Protection Registry to  
27 conform to the criminal penalty provisions of Section 13-39-301;
- 28           ▶ requires that the Division of Consumer Protection or a third party that contracts with  
29 the division to establish and secure the Child Protection Registry provide a  
30 disclosure to a person who registers a contact point with the Child Protection  
31 Registry;
- 32           ▶ amends provisions related to the disclosure described previously;
- 33           ▶ provides that a person who uses the registry before sending a communication shall  
34 provide identifying information required by the division;
- 35           ▶ provides that the contract with the third party that establishes and secures the Child  
36 Protection Registry shall require that:
- 37               • the third party provide a statement to a person who seeks information regarding  
38 the registry relating to establishing and registering a new email account; and
- 39               • if the security of the Child Protection Registry is compromised, notice shall be  
40 given to each person who has registered on the Child Protection Registry, to the  
41 Division of Consumer Protection, and to a person designated by the division, by  
42 rule, that the security of the Child Protection Registry has been compromised;
- 43           ▶ makes technical changes, including clarifying that the Division of Consumer  
44 Protection shall administer and enforce the Child Protection Registry;
- 45           ▶ addresses the release of information on the registry;
- 46           ▶ makes it a crime to send certain communications to certain contact points if the  
47 contact point or domain name have been listed on the Child Protection Registry for  
48 more than 30 calendar days;
- 49           ▶ makes it a crime to send, cause to be sent, or conspire with a third party to send,  
50 certain communications to a contact point after improperly obtaining the contact  
51 point from the Child Protection Registry;
- 52           ▶ makes it a crime to improperly use, or transfer to a third party to use, information  
53 from the registry;
- 54           ▶ establishes criminal penalties and a civil cause of action for violating the criminal  
55 provisions described previously; and
- 56           ▶ establishes a defense to the crimes described in this bill.

57 **Monies Appropriated in this Bill:**

58 None

59 **Other Special Clauses:**

60 This bill takes effect on July 1, 2005.

61 **Utah Code Sections Affected:**

62 AMENDS:

63 **13-2-1**, as last amended by Chapter 222, Laws of Utah 2002

64 **13-39-102 (Effective 07/01/05)**, as enacted by Chapter 338, Laws of Utah 2004

65 **13-39-201 (Effective 07/01/05)**, as enacted by Chapter 338, Laws of Utah 2004

66 **13-39-202 (Effective 07/01/05)**, as enacted by Chapter 338, Laws of Utah 2004

67 **13-39-203 (Effective 07/01/05)**, as enacted by Chapter 338, Laws of Utah 2004

68 **13-39-301 (Effective 07/01/05)**, as enacted by Chapter 338, Laws of Utah 2004

69 **13-39-302 (Effective 07/01/05)**, as enacted by Chapter 338, Laws of Utah 2004

70 **13-39-304 (Effective 07/01/05)**, as enacted by Chapter 338, Laws of Utah 2004

71 ENACTS:

72 **13-39-204**, Utah Code Annotated 1953



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

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

76 **13-2-1. Consumer protection division established -- Functions.**

77 (1) There is established within the Department of Commerce the Division of Consumer  
78 Protection.

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

- 80 (a) Chapter 5, Unfair Practices Act;
- 81 (b) Chapter 10a, Music Licensing Practices Act;
- 82 (c) Chapter 11, Utah Consumer Sales Practices Act;
- 83 (d) Chapter 15, Business Opportunity Disclosure Act;
- 84 (e) Chapter 20, New Motor Vehicles Warranties Act;
- 85 (f) Chapter 21, Credit Services Organizations Act;
- 86 (g) Chapter 22, Charitable Solicitations Act;
- 87 (h) Chapter 23, Health Spa Services Protection Act;

- 88 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 89 (j) Chapter 26, Telephone Fraud Prevention Act;
- 90 (k) Chapter 28, Prize Notices Regulation Act;
- 91 (l) Chapter 30, Utah Personal Introduction Services Protection Act; [~~and~~]
- 92 (m) Chapter 34, Utah Postsecondary Proprietary School Act[-]; and
- 93 (n) Chapter 39, Child Protection Registry.

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

95 **13-39-102 (Effective 07/01/05). Definitions.**

96 As used in this chapter:

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

99 (a) an email address; [~~or~~]

100 [~~(b) subject to Subsection 13-39-201(2):~~]

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

103 [(ii)] (c) a telephone number;

104 [(iii)] (d) a facsimile number; or

105 [(iv)] (e) an electronic address:

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

107 [(B)] (ii) defined as a contact point by rule made by the division under Subsection  
108 13-39-203(1).

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

111 (3) "Domain name" means an alphanumeric designation that is registered with or  
112 assigned by any domain name registrar, registry, or registration authority as part of an  
113 electronic address on the internet.

114 [(3)] (4) "Registry" means the child protection registry established in Section  
115 13-39-201.

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

117 **13-39-201 (Effective 07/01/05). Establishment of child protection registry.**

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

- 119 (a) establish and operate a ~~[child protection]~~ registry to:
- 120 (i) compile and secure a list of domain names that the division has received for
- 121 registration under this section;
- 122 (ii) compile and secure a list of contact points ~~that~~ the division has received [pursuant
- 123 ~~to] for registration under this section; [or] and~~
- 124 (iii) compile and secure a list of email addresses that the division has received for
- 125 registration under this section; or
- 126 (b) consistent with Subsection (6), contract with a third party to establish and secure
- 127 the registry described in Subsection (1)(a).
- 128 (2) (a) The division shall implement the registry described in this section with respect
- 129 to ~~[email addresses]~~ domain names beginning on July 1, 2005.
- 130 (b) ~~[The]~~ Except as provided in Subsection (2)(c), the division shall implement the
- 131 registry described in this section with respect to ~~[instant message identities]~~ any contact point
- 132 after:
- 133 (i) the division has determined to the satisfaction of the division that the security of the
- 134 registry described in this section with respect to ~~[email addresses]~~ the contact point is adequate;
- 135 and
- 136 (ii) the division has reported to the Utah Technology Commission and the Public
- 137 Utilities and Technology Interim Committee the intention of the division to implement the
- 138 registry described in this section with respect to [instant message identities] the contact point.
- 139 ~~[(c) The division shall implement the registry described in this section with respect to~~
- 140 ~~telephone numbers, facsimile numbers, and electronic addresses described in Subsection~~
- 141 ~~13-39-102(1)(b)(iv) after:]~~
- 142 ~~[(i) the division has determined to the satisfaction of the division the security of the~~
- 143 ~~registry described in this section with respect to instant message identities; and]~~
- 144 ~~[(ii) the division has reported to the Public Utilities and Technology Interim~~
- 145 ~~Committee the intention of the division to implement the registry described in this section with~~
- 146 ~~respect to telephone numbers, facsimile numbers, and electronic addresses described in~~
- 147 ~~Subsection 13-39-102(1)(b)(iv).]~~
- 148 (c) The division shall implement the registry described in this section with respect to
- 149 email addresses beginning on July 1, 2005.

- 150 (3) A person may register a domain name with the division if:  
151 (a) the person has majority ownership or control over the domain name;  
152 (b) (i) the person is domiciled in Utah; or  
153 (ii) the domain name is maintained using business operations in Utah;  
154 (c) all contact points that use the domain name are assigned to residents of the state;  
155 and  
156 (d) the domain name primarily provides services to minors.
- 157 [~~(3)~~] (4) (a) A person may register a contact point with the division pursuant to rules  
158 established by the division under [Subsection] Section 13-39-203[+] if:  
159 (i) (A) the contact point belongs to a minor; or  
160 [+] (B) a minor has access to the contact point[-]; and  
161 (ii) the division has implemented the registry with respect to the type of contact point  
162 that the person is seeking to register.
- 163 (b) A school or other institution that primarily serves minors may register its domain  
164 name with the division pursuant to rules made by the division under Subsection 13-39-203(1).
- 165 (c) The division or a third party described in Subsection (1)(b) shall provide a  
166 disclosure to a person who registers a contact point under this section that [reads] includes the  
167 following statement: "No solution is completely secure. The most effective way to protect  
168 children on the Internet is to supervise use and review all email messages and other  
169 correspondence prior to viewing by a child. Under law, theft or unauthorized use of a contact  
170 point from the Child Protection Registry is a [class-B] second degree felony. While every  
171 attempt will be made to secure the Child Protection Registry, registrants and their guardians  
172 should be aware that their contact points may be at a greater risk of being misappropriated by  
173 marketers or other persons who choose to disobey the law."
- 174 (d) The division:  
175 (i) may require that additional statements, as specified by the division, be included in  
176 the disclosure described in Subsection (4)(c);  
177 (ii) shall require that a third party described in Subsection (1)(b) provide additional  
178 information regarding internet safety and protection, as specified by the division, to a person  
179 who registers a contact point under this section; and  
180 (iii) shall establish by rule under Title 63, Chapter 46a, Utah Administrative

181 Rulemaking Act, information that shall be collected from a person registering a contact point or  
 182 domain name on the registry to enable the party that establishes and secures the registry to  
 183 comply with Subsection (6)(b).

184 [~~(4)~~] (5) A person desiring to send a communication described in Subsection  
 185 13-39-202(1) to a contact point or domain shall:

186 (a) use a mechanism established by rule made by the division under Subsection  
 187 13-39-203(2); [~~and~~]

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

190 (c) provide identifying information regarding the person, as required by the division.

191 (6) The contract described in Subsection (1)(b) shall require the third party that  
 192 establishes and secures the registry to:

193 (a) provide a statement to a person who seeks information regarding the registry:

194 (i) that the person may:

195 (A) open a new email account with an alternate email service provider; and

196 (B) register the new email account, instead of the person's primary email account, on  
 197 the registry;

198 (ii) suggesting that the person take the action described in Subsection (6)(a)(i); and

199 (iii) listing or providing links to email service providers that the division determines  
 200 satisfy criteria for protecting children; and

201 (b) if the security of the registry is compromised, provide notice of the security  
 202 compromise to:

203 (i) each person who has registered a contact point or domain name on the registry;

204 (ii) the division; and

205 (iii) any other person designated by the division by rule under Title 63, Chapter 46a,  
 206 Utah Administrative Rulemaking Act.

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

208 **13-39-202 (Effective 07/01/05). Prohibition of sending certain materials to a**  
 209 **registered contact point.**

210 (1) A person may not send, cause to be sent, or conspire with a third party to send a  
 211 communication to a contact point [~~or domain~~] that has been registered for more than 30

212 calendar days with the division under Section 13-39-201 or a contact point with an address that  
213 contains a domain name that has been registered for more than 30 calendar days with the  
214 division under Section 13-39-201 if the communication:

215 (a) advertises a product or service that a minor is prohibited by law from purchasing; or  
216 (b) contains or advertises material that is harmful to minors, as defined in Section  
217 76-10-1201.

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

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

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

222 **13-39-203 (Effective 07/01/05). Rulemaking authority.**

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

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

229 (i) the information necessary to register an instant message identity; and  
230 (ii) for purposes of Subsection 13-39-102(1)[~~(b)(iv)~~], an electronic address that is  
231 similar to a contact point listed in Subsection 13-39-102(1); and

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

234 (2) the division shall:

235 (a) provide a mechanism under which a person described in Subsection  
236 13-39-201[~~(4)~~](5) may verify compliance with the registry to remove registered contact points  
237 from the person's communications; and

238 (b) establish the mechanism described in Subsection (2)(a) in a manner that protects  
239 the privacy and security of a contact point registered with the division under Section  
240 13-39-201.

241 Section 6. Section **13-39-204** is enacted to read:

242 **13-39-204. Release of information on registry.**



243 The information on the registry may not be released to any person except:

244 (1) as provided in this chapter; or

245 (2) under court order.

246 Section 7. Section **13-39-301 (Effective 07/01/05)** is amended to read:

247 **13-39-301 (Effective 07/01/05). Criminal penalty.**

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

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

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

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

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

257 (a) uses information obtained from the division under this chapter to violate Section  
258 13-39-202; or

259 (b) improperly:

260 (i) obtains contact points from the registry; [~~or~~]

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

262 [~~(e)~~] (iii) uses, or transfers to a third party to use, information from the registry [~~to send~~  
263 ~~a solicitation~~].

264 (3) A person commits a computer crime and is guilty of a second degree felony if the  
265 person:

266 (a) improperly obtains a contact point from the registry; and

267 (b) after improperly obtaining the contact point described in Subsection (3)(a), sends,  
268 causes to be sent, or conspires with a third party to send, to the contact point a communication  
269 that contains or advertises material that is harmful to minors, as defined in Section 76-10-1201.

270 [~~(3)~~] (4) A criminal conviction or penalty under this section does not relieve a person  
271 from civil liability in an action under Section 13-39-302.

272 [~~(4)~~] (5) Each communication sent in violation of Section 13-39-202 is a separate  
273 offense under this section.

274 Section 8. Section **13-39-302 (Effective 07/01/05)** is amended to read:  
275 **13-39-302 (Effective 07/01/05). Civil action for violation.**  
276 (1) For a violation of Section 13-39-202, an action may be brought by:  
277 [~~(a) a user of a contact point or domain name registered with the division under Section~~  
278 ~~13-39-201; or~~  
279 (a) a person who receives a communication sent in violation of Section 13-39-202; or  
280 (b) a legal guardian of a ~~[user]~~ person described in Subsection (1)(a).  
281 (2) In each action under Subsection (1):  
282 (a) a person described in Subsection (1) may recover the greater of:  
283 (i) actual damages; or  
284 (ii) \$1,000 for each communication sent in violation of Section 13-39-202; and  
285 (b) the prevailing party shall be awarded costs and reasonable attorney fees.  
286 Section 9. Section **13-39-304 (Effective 07/01/05)** is amended to read:  
287 **13-39-304 (Effective 07/01/05). Defenses.**  
288 It is a defense to an action brought under this chapter that a person:  
289 (1) reasonably relied on the [~~mechanism established by the division under Subsection~~  
290 ~~13-39-203(2)] registry established in Section 13-39-201; and  
291 (2) took reasonable measures to comply with this chapter.  
292 Section 10. **Effective date.**  
293 This bill takes effect on July 1, 2005.~~