

# HOUSE BILL No. 1389

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-5-10-5; IC 23-19-6-1; IC 24-11; IC 35-51-24-1.

**Synopsis:** Child protection registry. Requires the securities commissioner to establish, or contract with a third party to establish, a child protection registry. Permits a person to register a "contact point" that a minor owns, a minor has or could have access to, or is used in a household in which a minor is present. Defines a "contact point" as: (1) an electronic mail address; (2) an instant message identity; (3) a mobile or other telephone number; (4) a facsimile number; or (5) other certain electronic addresses. Permits: (1) a school; or (2) another institution that primarily serves minors; to register its domain name. Provides that a person may not send an adult communication to a contact point or domain name if the contact point or domain name has been registered with the securities commissioner for more than 30 days. Requires, with an exception, persons who send adult communications to check the registry to ensure compliance with the law. Makes it improper adult communication, a Class A misdemeanor, to knowingly or intentionally send, cause to be sent, or conspire with a third party to send an adult communication to a registered contact point or registered domain name. Makes it registry trespass, a Level 6 felony, to knowingly or intentionally: (1) use information obtained from the registry to commit improper adult communication; (2) check the registry to obtain a contact point from the registry or attempt to obtain a contact point from the registry for purposes other than to determine whether the contact point is a registered contact point; (3) use information from the registry to send a solicitation; or (4) transfer to another person information from the registry knowing the other person intends to use the information to send a solicitation. Provides for civil enforcement.

**Effective:** July 1, 2014.

---

---

## Ober

---

---

January 21, 2014, read first time and referred to Committee on Judiciary.

---

---



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## HOUSE BILL No. 1389

---

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 4-5-10-5, AS AMENDED BY P.L.114-2011,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2014]: Sec. 5. (a) The electronic and enhanced access fund is  
4 established to do the following:  
5 (1) Improve and enhance the technology necessary and desirable  
6 to fulfill the duties of the secretary of state and state agencies as  
7 provided in section 1 of this chapter.  
8 (2) Improve service to customers of the secretary of state and state  
9 agencies as provided in section 1 of this chapter.  
10 (3) Provide the public electronic and other enhanced access to  
11 information maintained by:  
12 (A) the secretary of state under IC 23 or IC 26; and  
13 (B) the secretary of state and state agencies as provided in  
14 section 1 of this chapter.  
15 (4) Allow the public to conduct business electronically with the  
16 secretary of state and state agencies as provided in section 1 of



- 1 this chapter.
- 2 (5) Acquire and finance technology necessary or desirable to
- 3 accomplish the purposes stated in subdivisions (1) through (4),
- 4 including the purchase or lease of hardware, software, and other
- 5 appropriate goods and services.
- 6 **(6) Pay expenses incurred to carry out the purposes of**
- 7 **IC 24-11.**
- 8 The secretary of state may enter into one (1) or more agreements in
- 9 furtherance of the purposes of this chapter.
- 10 (b) The fund consists solely of the following:
- 11 (1) Electronic and enhanced access fees established and collected
- 12 by the secretary of state under section 2 of this chapter.
- 13 **(2) Fees, costs of investigation, and penalties collected under**
- 14 **IC 24-11.**
- 15 ~~(2)~~ **(3)** Other money specifically provided to the fund by law.
- 16 Fees collected by the secretary of state under IC 23 or IC 26 may not
- 17 be deposited into the fund.
- 18 (c) The secretary of state shall administer the fund.
- 19 (d) The expenses of administering the fund shall be paid from
- 20 money in the fund.
- 21 (e) Money in the fund at the end of a state fiscal year does not revert
- 22 to the state general fund.
- 23 (f) The secretary of state may use money in the fund to pay expenses
- 24 related to the purposes of the fund as set forth in ~~section 5 of the~~
- 25 ~~chapter, this section,~~ to make payments under any agreement
- 26 authorized by subsection (a) or authorized by law and directly relating
- 27 to the purpose of the fund, and monies in the fund are continuously
- 28 appropriated for the purposes set forth in this chapter.
- 29 (g) Money in the fund not currently needed to meet the obligations
- 30 of the fund may be invested by either of the following:
- 31 (1) The treasurer of state in the same manner as other public
- 32 funds may be invested.
- 33 (2) A financial institution designated by trust agreement with the
- 34 secretary of state.
- 35 Interest that accrues from investment of money in the fund shall be
- 36 deposited into the fund.
- 37 SECTION 2. IC 23-19-6-1, AS AMENDED BY P.L.92-2013,
- 38 SECTION 80, AND AS AMENDED BY P.L.205-2013, SECTION
- 39 338, IS CORRECTED AND AMENDED TO READ AS FOLLOWS
- 40 [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) This article shall be
- 41 administered by a division of the office of the secretary of state. The
- 42 secretary of state shall appoint a securities commissioner who shall be



1 responsible for the direction and supervision of the division and the  
2 administration of this article **and IC 24-11** under the direction and  
3 control of the secretary of state. The salary of the securities  
4 commissioner shall be paid out of the funds appropriated for the  
5 administration of this article. The commissioner shall serve at the will  
6 of the secretary of state.

7 (b) The secretary of state:

8 (1) shall employ a chief deputy, attorneys, a senior investigator,  
9 a senior accountant, and other deputies, investigators,  
10 accountants, clerks, stenographers, and other employees necessary  
11 for the administration of this article; and

12 (2) shall fix their compensation with the approval of the budget  
13 agency.

14 (c) It is unlawful for the commissioner or an officer, employee, or  
15 designee of the commissioner to use for personal benefit or the benefit  
16 of others records or other information obtained by or filed with the  
17 commissioner that ~~are~~ **is** not public under section 7(b) of this chapter.  
18 This article does not authorize the commissioner or an officer,  
19 employee, or designee of the commissioner to disclose the record or  
20 information, except in accordance with section 2, 7(c), or 8 of this  
21 chapter.

22 (d) This article does not create or diminish a privilege or exemption  
23 that exists at common law, by statute or rule, or otherwise.

24 (e) Subject to IC 4-2-6-15, the commissioner may develop and  
25 implement investor education initiatives to inform the public about  
26 investing in securities, with particular emphasis on the prevention and  
27 detection of securities fraud. In developing and implementing these  
28 initiatives, the commissioner may collaborate with public and nonprofit  
29 organizations with an interest in investor education. The commissioner  
30 may accept a grant or donation from a person that is not affiliated with  
31 the securities industry or from a nonprofit organization, regardless of  
32 whether the organization is affiliated with the securities industry, to  
33 develop and implement investor education initiatives. This subsection  
34 does not authorize the commissioner to require participation or  
35 monetary contributions of a registrant in an investor education  
36 program.

37 (f) *The securities division enforcement account is established.* Fees  
38 and funds of whatever character accruing from the administration of  
39 this article shall be accounted for by the secretary of state and shall be  
40 deposited with the treasurer of state to be deposited by the treasurer of  
41 the state in either the state general fund or the *securities division*  
42 enforcement account. ~~referenced below~~. Subject to IC 4-2-6-15,



1 expenses incurred in the administration of this article shall be paid  
 2 from the state general fund upon appropriation being made for the  
 3 expenses in the manner provided by law for the making of those  
 4 appropriations. *However, grants and donations received under*  
 5 *subsection (e); costs of investigations recovered under section 4(e) of*  
 6 *this chapter; and civil penalties recovered under sections 3(b) and 4(d)*  
 7 *of this chapter* The following shall be deposited by the treasurer of state  
 8 in *a separate account to be known as* the securities division  
 9 enforcement account:

10 (1) *Grants and donations received under subsection (e).*

11 (2) *Costs of investigations recovered under section 4(e) of this*  
 12 *chapter.*

13 (3) *Fifty percent (50%) of the first two million dollars*  
 14 *(\$2,000,000):*

15 (A) *of a civil penalty recovered under section 3(b) or 4(d) of*  
 16 *this chapter;*

17 (B) *recovered in a settlement of an action initiated to enforce*  
 18 *this article; or*

19 (C) *awarded as a judgment in an action to enforce this article.*

20 (g) *The following shall be deposited by the treasurer of state in the*  
 21 *state general fund:*

22 (1) *Fifty percent (50%) of the first two million dollars*  
 23 *(\$2,000,000):*

24 (A) *of a civil penalty recovered under section 3(b) or 4(d) of*  
 25 *this chapter;*

26 (B) *recovered in a settlement of an action initiated to enforce*  
 27 *this article; or*

28 (C) *awarded as a judgment in an action to enforce this article.*

29 (2) *Any amount exceeding two million dollars (\$2,000,000):*

30 (A) *of a civil penalty recovered under section 3(b) or 4(d) of*  
 31 *this chapter;*

32 (B) *recovered in a settlement of an action initiated to enforce*  
 33 *this article; or*

34 (C) *awarded as a judgment in an action to enforce this article.*

35 (3) *Other fees and revenues that are not designated for deposit in*  
 36 *the securities division enforcement account or the securities*  
 37 *restitution fund.*

38 (h) *Notwithstanding ~~IC 9-23-6-4~~, IC 23-2-2.5-34, IC 23-2-2.5-43,*  
 39 *IC 23-2-5-7, IC 23-19-4-12, IC 25-11-1-15, and this chapter, five*  
 40 *percent (5%) of funds received ~~after June 30, 2010~~, for deposit in the*  
 41 *securities division enforcement account shall instead be deposited in*  
 42 *the securities restitution fund established by IC 23-20-1-25. Subject to*



1 IC 4-2-6-15, the funds deposited in the enforcement account shall be  
2 available, with the approval of the budget agency:

3 (1) to augment and supplement the funds appropriated for the  
4 administration of this article; and

5 (2) for grants and awards to nonprofit entities for programs and  
6 activities that will further investor education and financial literacy  
7 in the state.

8 The funds in the enforcement account do not revert to the state general  
9 fund at the end of any state fiscal year.

10 ~~(g)~~ (i) In connection with the administration and enforcement of this  
11 article, the attorney general shall render all necessary assistance to the  
12 commissioner upon the commissioner's request, and to that end, the  
13 attorney general shall employ legal and other professional services as  
14 are necessary to adequately and fully perform the service under the  
15 direction of the commissioner as the demands of the securities division  
16 shall require. Expenses incurred by the attorney general for the  
17 purposes stated in this subsection shall be chargeable against and paid  
18 out of funds appropriated to the attorney general for the administration  
19 of the attorney general's office. The attorney general may authorize the  
20 commissioner and the commissioner's designee to represent the  
21 commissioner and the securities division in any proceeding involving  
22 enforcement or defense of this article.

23 ~~(h)~~ (j) Neither the secretary of state, the commissioner, nor an  
24 employee of the securities division shall be liable in their individual  
25 capacity, except to the state, for an act done or omitted in connection  
26 with the performance of their respective duties under this article.

27 ~~(i)~~ (k) The commissioner shall take, prescribe, and file the oath of  
28 office prescribed by law. The commissioner, chief deputy  
29 commissioner, and each attorney or investigator designated by the  
30 commissioner are police officers of the state and shall have all the  
31 powers and duties of police officers in making arrests for violations of  
32 this article, or in serving any process, notice, or order connected with  
33 the enforcement of this article by whatever officer, authority, or court  
34 issued and shall comprise the enforcement department of the division  
35 and are considered a criminal justice agency for purposes of IC 5-2-4  
36 and IC 10-13-3.

37 ~~(j)~~ (l) The provisions of this article delegating and granting power  
38 to the secretary of state, the securities division, and the commissioner  
39 shall be liberally construed to the end that:

40 (1) the practice or commission of fraud may be prohibited and  
41 prevented;

42 (2) disclosure of sufficient and reliable information in order to



1 afford reasonable opportunity for the exercise of independent  
 2 judgment of the persons involved may be assured; and  
 3 (3) the qualifications may be prescribed to assure availability of  
 4 reliable broker-dealers, investment advisers, and agents engaged  
 5 in and in connection with the issuance, barter, sale, purchase,  
 6 transfer, or disposition of securities in this state.

7 It is the intent and purpose of this article to delegate and grant to and  
 8 vest in the secretary of state, the securities division, and the  
 9 commissioner full and complete power to carry into effect and  
 10 accomplish the purpose of this article and to charge them with full and  
 11 complete responsibility for its effective administration.

12 ~~(k)~~ (m) Copies of any statement and documents filed in the office of  
 13 the secretary of state and of any records of the secretary of state  
 14 certified by the commissioner shall be admissible in any prosecution,  
 15 action, suit, or proceeding based upon, arising out of, or under this  
 16 article to the same effect as the original of such statement, document,  
 17 or record would be if actually produced.

18 ~~(l)~~ (n) IC 4-21.5 is not applicable to any of the proceedings under  
 19 this article.

20 SECTION 3. IC 24-11 IS ADDED TO THE INDIANA CODE AS  
 21 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
 22 2014]:

23 **ARTICLE 11. CHILD PROTECTION REGISTRY**

24 **Chapter 1. Definitions**

25 **Sec. 1. The definitions in this chapter apply throughout this**  
 26 **article.**

27 **Sec. 2. "Adult communication" refers to a communication that**  
 28 **satisfies either of the following:**

29 (1) **The communication has the express purpose of advertising**  
 30 **or promoting a product or service that a minor is prohibited**  
 31 **by law from purchasing.**

32 (2) **The communication contains or has the express purpose of**  
 33 **advertising or promoting material that is harmful to minors,**  
 34 **as described in IC 35-49-2-2.**

35 **Sec. 3. "Commissioner" means the securities commissioner**  
 36 **appointed under IC 23-19-6-1(a).**

37 **Sec. 4. "Contact point" refers to any of the following:**

38 (1) **An electronic mail address.**

39 (2) **An instant message identity, subject to rules adopted by**  
 40 **the commissioner under this article.**

41 (3) **A mobile or other telephone number.**

42 (4) **A facsimile number.**



1           **(5) An electronic address:**

2           **(A) similar to a contact point described in subdivisions (1)**  
 3           **through (4); and**

4           **(B) defined as a contact point by rules adopted under this**  
 5           **article.**

6           **Sec. 5. "Registered contact point" refers to a contact point that**  
 7           **has been registered on the registry for at least thirty (30) days.**

8           **Sec. 6. "Registered domain name" refers to a domain name that**  
 9           **has been registered on the registry for at least thirty (30) days.**

10          **Sec. 7. "Registry" refers to the child protection registry**  
 11          **established under IC 24-11-2-1.**

12          **Sec. 8. "Sender" means a person who sends adult**  
 13          **communication.**

14          **Chapter 2. Establishing the Child Protection Registry**

15          **Sec. 1. (a) The commissioner shall do one (1) of the following:**

16           **(1) Establish and operate a child protection registry to**  
 17           **compile and secure a list of contact points the commissioner**  
 18           **has received under this article.**

19           **(2) Contract with a third party to establish and operate a**  
 20           **registry to compile and secure the list as described in**  
 21           **subdivision (1).**

22          **(b) The commissioner shall implement, not later than July 1,**  
 23          **2015, the registry described in this section with respect to:**

24           **(1) electronic mail addresses;**

25           **(2) facsimile numbers; and**

26           **(3) other electronic addresses as described in IC 24-11-1-4(5).**

27          **(c) The commissioner shall implement the registry described in**  
 28          **this section with respect to instant message identities not later than**  
 29          **January 1, 2016.**

30          **(d) The commissioner shall implement the registry described in**  
 31          **this section with respect to mobile or other telephone numbers not**  
 32          **later than July 1, 2016.**

33          **Sec. 2. A person may register a contact point with the**  
 34          **commissioner in accordance with rules adopted under section 4 of**  
 35          **this chapter if:**

36           **(1) the contact point belongs to a minor;**

37           **(2) a minor has or could potentially have access to the contact**  
 38           **point; or**

39           **(3) the contact point is used in a household in which a minor**  
 40           **is present.**

41          **Sec. 3. A school or another institution that primarily serves**  
 42          **minors may register its domain name with the commissioner in**





1 accordance with rules adopted under section 4 of this chapter.

2 Sec. 4. (a) The commissioner may adopt rules under IC 4-22-2  
3 to implement this article.

4 (b) The commissioner shall adopt rules to establish the  
5 following:

6 (1) The procedures for a person to register a contact point  
7 with the commissioner under this article, including the  
8 information necessary to register an instant message identity.

9 (2) The procedures for:

10 (A) a school; or

11 (B) other institution that primarily serves minors;  
12 to register its domain name with the commissioner.

13 (3) A mechanism under which a person may access the  
14 registry to remove registered contact points and registered  
15 domain names from the person's adult communications. The  
16 mechanism established under this subdivision must protect  
17 the privacy and security of all registered contact points and  
18 registered domain names.

19 (4) Subject to IC 24-11-3-2, a fee for use of the mechanism  
20 described in subdivision (3). The fee established under this  
21 subdivision may not cost more than three cents (\$0.03) for  
22 each contact point that is checked against the registry.

23 (c) The commissioner may adopt rules to do the following:

24 (1) Implement a program offering discounted fees to a sender  
25 that meets enhanced security conditions established and  
26 verified by:

27 (A) the commissioner; or

28 (B) a third party registry provider described in section  
29 1(a)(2) of this chapter.

30 (2) Establish, for purposes of the definition of contact point  
31 under IC 24-11-1-4, an electronic address as described in  
32 IC 24-11-1-4(5).

33 Sec. 5. The contents of the registry and any complaint filed  
34 about a person who violates this article are confidential under  
35 IC 5-14-3-4.

36 Sec. 6. (a) The commissioner shall promote the registry on the  
37 Indiana transparency Internet web site.

38 (b) The commissioner may allow a third party registry provider  
39 described in section 1(a)(2) of this chapter to assist in any public or  
40 industry awareness campaign promoting the registry.

41 Chapter 3. Requirements for Communicating With Contact  
42 Points and Domain Names; Checking the Registry



1           **Sec. 1. (a)** Except as provided in section 3 of this chapter, a  
 2 person may not:

- 3           (1) send;  
 4           (2) cause to be sent; or  
 5           (3) conspire with a third party to send;

6 an adult communication to a registered contact point or registered  
 7 domain name.

8           **(b)** The consent by a minor to receive an adult communication  
 9 is not a defense to a violation of this section.

10           **Sec. 2. (a)** Except as provided in section 3 of this chapter, before  
 11 sending an adult communication to a contact point or domain  
 12 name, a person shall:

- 13           (1) use a mechanism established by the commissioner under  
 14 IC 24-11-2-4 to determine whether the contact point is a  
 15 registered contact point; and  
 16           (2) subject to subsection (b), pay a fee for the use of the  
 17 mechanism.

18           **(b)** If a sender pays a total of seventy-two thousand dollars  
 19 (\$72,000) in fees under subsection (a)(2) within a calendar year, the  
 20 sender may not be charged a fee for use of the mechanism for the  
 21 remainder of that calendar year.

22           **(c)** The commissioner shall deposit the fees collected under  
 23 subsection (a) into the electronic and enhanced access fund  
 24 established under IC 4-5-10-5.

25           **Sec. 3. (a)** A person may send an adult communication to a  
 26 registered contact point without determining whether the contact  
 27 point is registered as required under section 2 of this chapter if:

- 28           (1) before sending the adult communication, the person  
 29 receives consent from an adult who controls the registered  
 30 contact point; and  
 31           (2) the person meets the requirements under subsection (b).

32           **(b)** A person who intends to send an adult communication under  
 33 subsection (a) shall do all the following:

- 34           (1) Verify the age of the adult who controls the registered  
 35 contact point by inspecting the adult's government issued  
 36 identification card in a face to face meeting.  
 37           (2) Maintain a copy of a written consent signed by the adult.  
 38           (3) Include in each adult communication:  
 39                **(A)** a notice that the adult may rescind the consent; and  
 40                **(B)** information that allows the adult to opt out of receiving  
 41 future adult communications.

42           (4) Notify the commissioner that the person intends to send



1 adult communications to that contact point under this section.  
2 Sec. 4. A communications service provider (as defined in  
3 IC 8-1-2.6-13(b)) does not violate section 1 of this chapter solely by  
4 transmitting a message across the communications service  
5 provider's network.

6 Chapter 4. Enforcement by the Securities Commissioner

7 Sec. 1. (a) The commissioner may:

8 (1) conduct public or private investigations within or outside  
9 Indiana that the commissioner considers necessary or  
10 appropriate to determine whether a person has violated, is  
11 violating, or is about to violate this article or a rule adopted  
12 or order issued under this article, or to aid in the enforcement  
13 of this article or in the adoption of rules and forms under this  
14 article;

15 (2) require or permit a person to testify, file a statement, or  
16 produce a record, under oath or otherwise as the  
17 commissioner determines, as to all the facts and  
18 circumstances concerning a matter to be investigated or about  
19 which an action or proceeding is to be instituted; and

20 (3) publish a record concerning an action, a proceeding, or an  
21 investigation under, or a violation of, this article or a rule  
22 adopted or order issued under this article if the commissioner  
23 determines it is necessary or appropriate in the public interest  
24 and for the protection of investors.

25 (b) For the purpose of an investigation under this article, the  
26 commissioner or the commissioner's designated officer may  
27 administer oaths and affirmations, subpoena witnesses, seek  
28 compulsion of attendance, take evidence, require the filing of  
29 statements, and require the production of any records that the  
30 commissioner considers relevant or material to the investigation.  
31 Upon order of the commissioner or a hearing officer appointed by  
32 the commissioner in any hearing, depositions may be taken in the  
33 manner prescribed by law for depositions in civil actions and made  
34 returnable to the commissioner or a hearing officer appointed by  
35 the commissioner.

36 (c) If a person does not appear, refuses to testify, file a  
37 statement, or produce records, or otherwise does not obey a  
38 subpoena as required by this article, the commissioner or hearing  
39 officer appointed by the commissioner may apply to the circuit or  
40 superior court in the county where the hearing, investigation, or  
41 inquiry in question is being conducted to enforce compliance. The  
42 court may:



- 1           **(1) hold the person in contempt;**
- 2           **(2) order the person to appear before the commissioner or**
- 3           **hearing officer appointed by the commissioner;**
- 4           **(3) order the person to testify about the matter under**
- 5           **investigation or in question;**
- 6           **(4) order the production of records;**
- 7           **(5) grant injunctive relief, including restricting or prohibiting**
- 8           **adult communication to any registered contact point;**
- 9           **(6) impose a civil penalty of not more than twenty thousand**
- 10          **dollars (\$20,000) for the first violation and twenty-five**
- 11          **thousand dollars (\$25,000) for each subsequent violation; and**
- 12          **(7) grant any other necessary or appropriate relief.**

13           **(d) This section does not preclude a person from applying to the**  
 14           **circuit or superior court in the county where the hearing,**  
 15           **investigation, or inquiry in question is being conducted for relief**  
 16           **from a request to appear, testify, file a statement, produce records,**  
 17           **or obey a subpoena.**

18           **(e) If a witness, in any hearing, inquiry, or investigation**  
 19           **conducted under this article, refuses to answer any question or**  
 20           **produce any item, the commissioner may file a written petition**  
 21           **with the circuit or superior court in the county where the hearing,**  
 22           **investigation, or inquiry in question is being conducted requesting**  
 23           **a hearing on the refusal. The court shall hold a hearing to**  
 24           **determine if the witness may refuse to answer the question or**  
 25           **produce the item. If the court determines that the witness, based**  
 26           **upon the witness's privilege against self-incrimination, may**  
 27           **properly refuse to answer or produce an item, the commissioner**  
 28           **may make a written request that the court grant use immunity to**  
 29           **the witness. Upon written request of the commissioner, the court**  
 30           **shall grant use immunity to a witness. The court shall instruct the**  
 31           **witness, by written order or in open court, that:**

- 32           **(1) any evidence the witness gives, or evidence derived from**
- 33           **that evidence, may not be used in any criminal proceedings**
- 34           **against that witness, unless the evidence is volunteered by the**
- 35           **witness or is not responsive to a question; and**
- 36           **(2) the witness must answer the questions asked and produce**
- 37           **the items requested. A grant of use immunity does not**
- 38           **prohibit the use of evidence that the witness gives in a**
- 39           **hearing, investigation, or inquiry from being used in a**
- 40           **prosecution for perjury under IC 35-44.1-2-1. If a witness**
- 41           **refuses to give the evidence after the witness has been granted**
- 42           **use immunity, the court may find the witness in contempt.**



1 (f) At the request of the child protection registry regulator of  
 2 another state or a foreign jurisdiction, the commissioner may  
 3 provide assistance if the requesting regulator states that it is  
 4 conducting an investigation to determine whether a person has  
 5 violated, is violating, or is about to violate a law or rule of the other  
 6 state or foreign jurisdiction relating to child protection registry  
 7 matters that the requesting regulator administers or enforces. The  
 8 commissioner may provide the assistance by using the authority to  
 9 investigate and the powers conferred by this section as the  
 10 commissioner determines is necessary or appropriate. The  
 11 assistance may be provided without regard to whether the conduct  
 12 described in the request would also constitute a violation of this  
 13 article or other law of this state if occurring in this state. In  
 14 deciding whether to provide the assistance, the commissioner may  
 15 consider:

- 16 (1) whether the requesting regulator is permitted and has  
 17 agreed to provide assistance reciprocally within its state or  
 18 foreign jurisdiction to the commissioner on child protection  
 19 registry matters when requested;  
 20 (2) whether compliance with the request would violate or  
 21 prejudice the public policy of this state; and  
 22 (3) the availability of resources and employees of the  
 23 commissioner to carry out the request for assistance.

24 Sec. 2. (a) If the commissioner determines that a person has:

- 25 (1) engaged, is engaging, or is about to engage in an act,  
 26 practice, or course of business constituting a violation of this  
 27 article or a rule adopted or order issued under this article; or  
 28 (2) materially aided, is materially aiding, or is about to  
 29 materially aid an act, practice, or course of business  
 30 constituting a violation of this article or a rule adopted or  
 31 order issued under this article;

32 the commissioner may investigate and may issue, with or without  
 33 a prior hearing, orders and notices as the commissioner determines  
 34 to be in the public interest, including cease and desist orders,  
 35 orders to show cause, and notices. After notice and hearing, the  
 36 commissioner may enter an order of rescission or disgorgement,  
 37 including interest at the legal rate of interest, directed to a person  
 38 who has violated this article or a rule or order under this article.

39 (b) An order under subsection (a) is effective on the date of  
 40 issuance. Upon issuance of the order, the commissioner shall  
 41 promptly serve each person subject to the order with a copy of the  
 42 order and a notice that the order has been entered. The order must



1 include a statement whether the commissioner will seek a civil  
2 penalty or costs of the investigation, a statement of the reasons for  
3 the order, and notice that, within forty-five (45) days after receipt  
4 of a request in a record from the person, the matter will be  
5 scheduled for a hearing. If a person subject to the order does not  
6 request a hearing and none is ordered by the commissioner within  
7 forty-five (45) days after the date of service of the order, the order,  
8 which may include a civil penalty or costs of the investigation if a  
9 civil penalty or costs were sought in the statement accompanying  
10 the order, becomes final as to that person by operation of law. If a  
11 hearing is requested or ordered, the commissioner, after notice of  
12 and opportunity for hearing to each person subject to the order,  
13 may modify or vacate the order or extend it until final  
14 determination.

15 (c) If a hearing is requested or ordered under subsection (b), the  
16 hearing must be held not later than forty-five (45) business days  
17 after the hearing is requested or ordered. A final order may not be  
18 issued unless the commissioner makes findings of fact and  
19 conclusions of law in a record. The final order may make final,  
20 vacate, or modify the order issued under subsection (a).

21 (d) If a petition for judicial review of a final order issued under  
22 subsection (c) is not filed in accordance with section 7 of this  
23 chapter, the commissioner may file a certified copy of the final  
24 order with the clerk of a court with jurisdiction. The order so filed  
25 has the same effect as a judgment of the court and may be  
26 recorded, enforced, or satisfied in the same manner as a judgment  
27 of the court.

28 (e) If a person does not comply with an order under this section,  
29 the commissioner may petition a court with jurisdiction to enforce  
30 the order. The court may not require the commissioner to post a  
31 bond in an action or proceeding under this section. If the court  
32 finds, after service and opportunity for hearing, that the person  
33 was not in compliance with the order, the court may adjudge the  
34 person in civil contempt of the order. The court may impose a  
35 further civil penalty against the person for contempt in an amount  
36 not greater than twenty thousand dollars (\$20,000) for each  
37 violation and may grant any other relief the court determines is  
38 just and proper in the circumstances.

39 **Sec. 3. (a) In an action under this chapter, the commissioner**  
40 **may obtain any or all of the following:**

41 (1) **A civil penalty of not more than the following:**

42 (A) **Ten thousand dollars (\$10,000) for the first violation of**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

**IC 24-11-3.**

**(B) Twenty-five thousand dollars (\$25,000) for each violation after the first violation.**

**For purposes of this subdivision, each adult communication sent to a registered contact point or registered domain name in violation of IC 24-11-3 is considered a separate violation.**

**(2) All money the defendant obtained through a violation of this article.**

**(3) The commissioner's reasonable costs in:**

**(A) investigating the violation under this article; and**

**(B) maintaining the action.**

**(4) Reasonable attorney's fees.**

**(5) Costs of the action.**

**(b) All the:**

**(1) fees and funds of whatever character accruing from the administration of this article; and**

**(2) costs of investigations and civil penalties recovered under this article;**

**shall be accounted for by the secretary of state and shall be deposited with the treasurer of state to be deposited by the treasurer of the state in the electronic and enhanced access fund established under IC 4-5-10-5. Subject to IC 4-2-6-15, expenses incurred in the administration of this article shall be paid from the electronic and enhanced access fund upon appropriation being made for the expenses in the manner provided by law for the making of those appropriations.**

**Sec. 4. (a) If the commissioner believes that a person:**

**(1) has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this article or a rule adopted or order issued under this article; or**

**(2) has engaged, is engaging, or is about to engage in an act, practice, or course of business that materially aids a violation of this article or a rule adopted or order issued under this article;**

**the commissioner may maintain an action in the circuit or superior court in the county where the investigation or inquiry in question is being conducted to enjoin the act, practice, or course of business and to enforce compliance with this article or a rule adopted or order issued under this article.**

**(b) In an action under this section and on a proper showing, the court may:**

**(1) issue a permanent or temporary injunction, restraining**



1 order, or declaratory judgment;

2 (2) order other appropriate or ancillary relief, which may  
3 include:

4 (A) an asset freeze, accounting, writ of attachment, writ of  
5 general or specific execution, and appointment of a  
6 receiver or conservator;

7 (B) ordering a receiver or conservator appointed under  
8 clause (A) to:

9 (i) take charge and control of a respondent's property,  
10 including investment accounts and accounts in a  
11 depository institution, rents, and profits;

12 (ii) collect debts; and

13 (iii) acquire and dispose of property;

14 (C) imposing a civil penalty up to ten thousand dollars  
15 (\$10,000) per violation and an order of rescission,  
16 restitution, or disgorgement directed to a person that has  
17 engaged in an act, practice, or course of business  
18 constituting a violation of this article or the predecessor  
19 act or a rule adopted or order issued under this article;  
20 and

21 (D) ordering the payment of prejudgment and  
22 postjudgment interest; or

23 (3) order such other relief as the court considers appropriate.

24 (c) The commissioner may not be required to post a bond in an  
25 action or proceeding under this article.

26 (d) In connection with the administration and enforcement of  
27 this article, the attorney general shall render all necessary  
28 assistance to the commissioner upon the commissioner's request,  
29 and to that end, the attorney general shall employ legal and other  
30 professional services as are necessary to adequately and fully  
31 perform the service under the direction of the commissioner.  
32 Expenses incurred by the attorney general for the purposes stated  
33 in this subsection shall be chargeable against and paid out of funds  
34 appropriated to the attorney general for the administration of the  
35 attorney general's office. The attorney general may authorize the  
36 commissioner and the commissioner's designee to represent the  
37 commissioner and the securities division in any proceeding  
38 involving enforcement or defense of this article.

39 Sec. 5. The commissioner may employ counsel to represent the  
40 state in an action under this chapter.

41 Sec. 6. An action may not be brought under this article more  
42 than two (2) years after the occurrence of the violation of this





- 1 article.
- 2 **Sec. 7. (a) An appeal may be taken by:**
- 3 (1) any person against whom a civil penalty has been imposed
- 4 under section 3 of this chapter, from the final order of the
- 5 commissioner imposing the civil penalty; or
- 6 (2) any person who is named a respondent, from any final
- 7 order issued by the commissioner under section 2 of this
- 8 chapter;
- 9 to the circuit or superior court of Marion County or the county in
- 10 which the person taking the appeal resides or maintains a place of
- 11 business.
- 12 (b) Not later than twenty (20) days after the entry of the order,
- 13 the commissioner shall be served with:
- 14 (1) a written notice of the appeal stating the court to which the
- 15 appeal will be taken and the grounds upon which a reversal of
- 16 the final order is sought;
- 17 (2) a demand in writing for a certified transcript of the record
- 18 and of all papers on file in the commissioner's office affecting
- 19 or relating to the order; and
- 20 (3) a bond in the penal sum of five hundred dollars (\$500) to
- 21 the state of Indiana with sufficient surety to be approved by
- 22 the commissioner, conditioned upon the faithful prosecution
- 23 of the appeal to final judgment and the payment of all costs
- 24 that are adjudged against the appellant.
- 25 (c) Not later than ten (10) days after the commissioner is served
- 26 with the items listed in subsection (b), the commissioner shall
- 27 make, certify, and deliver to the appellant the transcript, and the
- 28 appellant shall not later than five (5) days after the date the
- 29 appellant receives the transcript, file the transcript and a copy of
- 30 the notice of appeal with the clerk of the court. The notice of appeal
- 31 serves as the appellant's complaint. The commissioner may appear
- 32 and file any motion or pleading and form the issue. The cause shall
- 33 be entered on the trial calendar for trial de novo and given
- 34 precedence over all matters pending in the court.
- 35 (d) The court shall receive and consider any pertinent oral or
- 36 written evidence concerning the order of the commissioner from
- 37 which the appeal is taken. If the order of the commissioner is
- 38 reversed, the court shall in its mandate specifically direct the
- 39 commissioner as to the commissioner's further action in the
- 40 matter, including the making and entering of any order or orders
- 41 in connection therewith and the conditions, limitations, or
- 42 restrictions to be contained. The commissioner is not barred from



1       revoking or altering the order for any proper cause that accrues or  
 2       is discovered after the order is entered. If the order is affirmed, the  
 3       appellant is not barred after thirty (30) days from the date the  
 4       order is affirmed from filing a new application if the application is  
 5       not otherwise barred or limited. During the pendency of an appeal,  
 6       the order from which the appeal is taken is not suspended but  
 7       remains in effect unless otherwise ordered by the court. An appeal  
 8       may be taken from the judgment of the court on any appeal on the  
 9       same terms and conditions as an appeal is taken in civil actions.

10       Sec. 8. IC 4-21.5 is not applicable to any of the proceedings  
 11       under this article.

12       Chapter 5. Crimes

13       Sec. 1. A person who knowingly or intentionally violates  
 14       IC 24-11-3-1 commits improper adult communication, a Class A  
 15       misdemeanor.

16       Sec. 2. A person who knowingly or intentionally:

17       (1) uses information obtained from the registry to violate  
 18       IC 24-11-3-1;

19       (2) uses the mechanism described in IC 24-11-3-2 to:

20       (A) obtain a contact point from the registry; or

21       (B) attempt to obtain a contact point from the registry;

22       for purposes other than to determine whether the contact  
 23       point is a registered contact point;

24       (3) uses information from the registry to send a solicitation;  
 25       or

26       (4) transfers to another person information from the registry  
 27       knowing the other person intends to use the information to  
 28       send a solicitation;

29       commits registry trespass, a Level 6 felony.

30       Sec. 3. Each adult communication sent in violation of  
 31       IC 24-11-3-1 is a separate offense under this chapter.

32       Chapter 6. Private Right of Action

33       Sec. 1. Either of the following may bring an action in a court  
 34       with jurisdiction for a violation of this article:

35       (1) A user of a registered contact point or registered domain  
 36       name.

37       (2) A parent or legal guardian of a user described in  
 38       subdivision (1).

39       Sec. 2. (a) A party who prevails in an action brought by the  
 40       party under section 1 of this chapter may recover the greater of the  
 41       following:

42       (1) Actual damages.



1           **(2) One thousand dollars (\$1,000) for each adult**  
 2           **communication sent in violation of this article.**

3           **(b) A party who prevails in an action brought by the party**  
 4           **under section 1 of this chapter is entitled to costs and reasonable**  
 5           **attorney's fees.**

6           SECTION 4. IC 35-51-24-1, AS AMENDED BY P.L.222-2013,  
 7           SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8           JULY 1, 2014]: Sec. 1. The following statutes define crimes in IC 24:

9           IC 24-1-1-3 (Concerning combinations in restraint of trade).  
 10          IC 24-1-2-1 (Concerning combinations in restraint of trade).  
 11          IC 24-1-2-2 (Concerning combinations in restraint of trade).  
 12          IC 24-1-2-3 (Concerning combinations in restraint of trade).  
 13          IC 24-1-3-1 (Concerning combinations in restraint of trade).  
 14          IC 24-1-4-3 (Concerning combinations in restraint of trade).  
 15          IC 24-2-2-3 (Concerning trademarks, trade names, and trade  
 16          secrets).  
 17          IC 24-3-4-15 (Concerning regulated prices).  
 18          IC 24-3-4-16 (Concerning regulated prices).  
 19          IC 24-3-4-17 (Concerning regulated prices).  
 20          IC 24-3-5.4-24 (Concerning regulated prices).  
 21          IC 24-4-1-1 (Concerning regulated businesses).  
 22          IC 24-4-3-5 (Concerning regulated businesses).  
 23          IC 24-4-4-5 (Concerning regulated businesses).  
 24          IC 24-4-6-1 (Concerning regulated businesses).  
 25          IC 24-4-11-11 (Concerning regulated businesses).  
 26          IC 24-4-12-11 (Concerning regulated businesses).  
 27          IC 24-4-13-6 (Concerning regulated businesses).  
 28          **IC 24-4-16.4-4 (Concerning regulated businesses).**  
 29          IC 24-4-19-21 (Concerning regulated businesses).  
 30          ~~IC 24-16.4-4 (Concerning regulated businesses):~~  
 31          IC 24-4.5-5-301 (Concerning Uniform Consumer Credit Code).  
 32          IC 24-4.5-5-302 (Concerning Uniform Consumer Credit Code).  
 33          IC 24-4.6-3-4 (Concerning unauthorized solicitation of money  
 34          using the name of a public safety agency).  
 35          IC 24-5-8-19 (Concerning consumer sales).  
 36          IC 24-5-12-22 (Concerning consumer sales).  
 37          IC 24-5-12-25 (Concerning consumer sales).  
 38          IC 24-5-14-10 (Concerning consumer sales).  
 39          IC 24-5-14.5-11 (Concerning false or misleading caller  
 40          identification).  
 41          IC 24-5-16-16 (Concerning consumer sales).  
 42          IC 24-5-23.5-9 (Concerning consumer sales).



- 1 IC 24-5.5-6-1 (Concerning mortgage rescue protection fraud).
- 2 IC 24-6-1-1 (Concerning standard weights and measures).
- 3 IC 24-6-3-15 (Concerning standard weights and measures).
- 4 IC 24-6-6-11 (Concerning standard weights and measures).
- 5 IC 24-7-9-1 (Concerning retail purchase agreements).
- 6 IC 24-7-9-2 (Concerning retail purchase agreements).
- 7 IC 24-7-9-3 (Concerning retail purchase agreements).
- 8 IC 24-8-6-1 (Concerning promotional gifts and contests).
- 9 IC 24-9-8-1 (Concerning home loan practices).
- 10 **IC 24-11-5-1 (Concerning improper adult communications).**
- 11 **IC 24-11-5-2 (Concerning the child protection registry).**

