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HOUSE BILL 404

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Dayan Hochman-Vigil

AN ACT

RELATING TO COMMUNICATIONS TO MINORS; ENACTING THE CHILD PROTECTION REGISTRY ACT; PROHIBITING COMMUNICATIONS TO MINORS THAT ADVERTISE A PRODUCT OR SERVICE THAT A MINOR IS PROHIBITED FROM PURCHASING OR THAT CONTAIN MATERIALS HARMFUL TO MINORS; CREATING THE CHILD PROTECTION REGISTRY FUND; REQUIRING THE ATTORNEY GENERAL TO ESTABLISH THE CHILD PROTECTION REGISTRY AND A MECHANISM FOR PERSONS DESIRING TO SEND A COMMUNICATION TO VERIFY COMPLIANCE WITH THE CHILD PROTECTION REGISTRY ACT; PROVIDING CIVIL AND CRIMINAL PENALTIES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Child Protection Registry Act".

SECTION 2. [NEW MATERIAL] PURPOSE.--The purpose of the

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1 Child Protection Registry Act is to provide safeguards to
2 prevent minor children from receiving communications that
3 advertise a product or service that a minor is prohibited by
4 law from purchasing or that contain or have the primary purpose
5 of advertising or promoting material that is harmful to minors,
6 as defined in Subsection F of Section 30-37-1 NMSA 1978.

7 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
8 Child Protection Registry Act:

9 A. "contact point" means any electronic
10 identification to which a communication can be sent, including:

- 11 (1) an email address;
- 12 (2) an instant message identity;
- 13 (3) a telephone number; or
- 14 (4) any other electronic address identified in

15 rules promulgated by the attorney general pursuant to the Child
16 Protection Registry Act; and

17 B. "minor" means a child who has not reached the
18 age of majority.

19 SECTION 4. [NEW MATERIAL] ESTABLISHMENT AND OPERATION OF
20 THE CHILD PROTECTION REGISTRY.--

21 A. The attorney general shall establish and operate
22 a child protection registry to compile and secure a list of
23 contact points registered pursuant to Subsection B of this
24 section. The attorney general shall adopt procedures to
25 prevent the unauthorized use or disclosure of contact points

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1 contained in the registry.

2 B. A person responsible for a contact point to
3 which a minor may have access may register that contact point
4 in the child protection registry pursuant to rules promulgated
5 by the attorney general. The attorney general shall establish
6 rules to ensure that a registrant meets the requirements of
7 this section.

8 C. A school or other entity that primarily serves
9 minors may register one or more contact points in the child
10 protection registry and shall be permitted to submit one
11 registration form for all contact points of the school or
12 entity. Registration submitted pursuant to this subsection may
13 include the internet domain name of the school or entity.

14 D. Registration of a contact point submitted
15 pursuant to this section shall be valid for three years.

16 E. The attorney general may contract with a third-
17 party administrator to establish, operate and secure the child
18 protection registry.

19 F. No fee shall be charged for registering a
20 contact point in the child protection registry.

21 G. Information contained in the child protection
22 registry is not a public record and shall not be made available
23 for inspection by the public.

24 SECTION 5. [NEW MATERIAL] CHILD PROTECTION REGISTRY
25 FUND--CREATED.--The "child protection registry fund" is created

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1 in the state treasury. The fund consists of appropriations and
2 fees collected pursuant to Section 6 of the Child Protection
3 Registry Act. Money in the fund shall not revert to any other
4 fund at the end of a fiscal year. The attorney general shall
5 administer the fund, and money in the fund is appropriated to
6 the office of the attorney general to establish, operate and
7 administer the child protection registry, to establish and
8 operate the verification mechanism described in Section 6 of
9 the Child Protection Registry Act and to enforce and defend the
10 Child Protection Registry Act.

11 SECTION 6. [NEW MATERIAL] VERIFICATION OF COMPLIANCE BY
12 SENDERS--FEES FOR VERIFICATION.--

13 A. A person who desires to send a communication
14 that has the primary purpose of directly or indirectly
15 advertising or otherwise linking to a communication that
16 advertises a product or service that a minor is prohibited by
17 law from purchasing or that contains or has the primary purpose
18 of advertising or promoting material that is harmful to minors,
19 as defined in Subsection F of Section 30-37-1 NMSA 1978, shall
20 verify that the intended contact points are not registered in
21 the child protection registry.

22 B. The attorney general shall establish a mechanism
23 by which a person who desires to send a communication described
24 in Subsection A of this section can verify whether a contact
25 point is registered in the child protection registry to ensure

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1 that the communication and the person are in compliance with
2 the Child Protection Registry Act. The attorney general shall
3 charge a fee not to exceed three cents (\$.03) for each contact
4 point checked against the registry for verification.

5 C. Fees collected pursuant to this section shall be
6 deposited in the child protection registry fund.

7 SECTION 7. [NEW MATERIAL] VIOLATION OF ACT.--

8 A. A person shall not knowingly send, cause to be
9 sent or conspire with a third party to send a communication to
10 a contact point that has been registered in the child
11 protection registry for more than thirty calendar days if the
12 primary purpose of the communication is to directly or
13 indirectly advertise or otherwise link to a communication that
14 advertises a product or service that a minor is prohibited by
15 law from purchasing or that contains or has the primary purpose
16 of advertising or promoting material that is harmful to minors,
17 as defined in Subsection F of Section 30-37-1 NMSA 1978.

18 B. It is a violation of the Child Protection
19 Registry Act to:

20 (1) use information obtained from the child
21 protection registry to violate the Child Protection Registry
22 Act;

23 (2) improperly obtain or attempt to obtain
24 contact points from the child protection registry; or

25 (3) use, or transfer to a third party to use,

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1 information from the registry to send a communication.

2 C. An internet service provider does not violate
3 this section solely by transmitting a communication across the
4 network of the internet service provider.

5 D. The consent of a minor to receive the
6 communication is not a defense to violation of this section.

7 E. A person is guilty of a misdemeanor and upon
8 conviction shall be sentenced pursuant to the provisions of
9 Section 31-19-1 NMSA 1978 if the person:

10 (1) uses information obtained from the child
11 protection registry to violate the Child Protection Registry
12 Act;

13 (2) improperly obtains or attempts to obtain
14 contact points from the child protection registry; or

15 (3) uses, or transfers to a third party to
16 use, information from the child protection registry to send a
17 communication.

18 F. A person who violates a provision of the Child
19 Protection Registry Act is subject to prosecution under the
20 Computer Crimes Act.

21 **SECTION 8. [NEW MATERIAL] EXCEPTION FOR VALID CONSENT BY**
22 **ADULT.--**

23 A. Notwithstanding the provisions of Section 7 of
24 the Child Protection Registry Act, a person may send a
25 communication that advertises a product or service that a minor

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1 is prohibited from purchasing, viewing, participating in or
2 possessing if the person sending the communication receives
3 consent from an adult who controls the contact point. Prior to
4 sending the communication, the person shall:

5 (1) verify the age of the adult who controls
6 the contact point by inspecting the adult's government-issued
7 identification card in a face-to-face transaction;

8 (2) obtain a signed statement indicating that
9 the adult consents to receive the communication; and

10 (3) notify the attorney general that the
11 person intends to send the communication.

12 B. A communication sent pursuant to Subsection A of
13 this section shall contain information that describes how the
14 adult may opt out of receiving future communications.

15 C. The attorney general shall promulgate rules
16 prescribing a method for verifying that valid consent has been
17 obtained for communications sent pursuant to this section.

18 SECTION 9. [NEW MATERIAL] CIVIL ACTION FOR VIOLATION.--

19 A. A civil action for a violation of the Child
20 Protection Registry Act may be brought by:

21 (1) the registrant of a contact point on
22 behalf of a minor who has received a communication in violation
23 of the Child Protection Registry Act; or

24 (2) the attorney general.

25 B. A person bringing an action pursuant to

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1 Paragraph (1) of Subsection A of this section may recover:

2 (1) actual damages; or

3 (2) the lesser of five thousand dollars

4 (\$5,000) per communication transmitted to the contact point or
5 two hundred fifty thousand dollars (\$250,000) per day that the
6 violation occurs.

7 C. In an action brought by the attorney general
8 pursuant to Paragraph (2) of Subsection A of this section, the
9 attorney general may recover a civil penalty not to exceed ten
10 thousand dollars (\$10,000) per communication transmitted to a
11 contact point in violation of the Child Protection Registry Act
12 or five hundred thousand dollars (\$500,000) per day that the
13 violation occurs, whichever is less.

14 D. In each action brought pursuant to this section,
15 the prevailing party may be awarded costs and reasonable
16 attorney fees.

17 SECTION 10. [NEW MATERIAL] DEFENSE.--It shall be a
18 defense to an action brought pursuant to the Child Protection
19 Registry Act that a person reasonably relied on the mechanism
20 for verification of compliance established pursuant to Section
21 6 of the Child Protection Registry Act.

22 SECTION 11. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2019.