January 28, 2011

HOUSE BILL No. 1418

DIGEST OF HB 1418 (Updated January 26, 2011 2:42 pm - DI 107)

Citations Affected: IC 24-4.3.

Synopsis: Child protection registry. Requires the consumer protection division of the office of the attorney general (division) to establish the child protection registry. Permits a person to register "contact points" that belong to a minor with the registry. Defines a contact point to be: (1) an electronic mail address; (2) an instant message identity; (3) a mobile or other telephone number; or (4) a similar point of communication defined by rule by the division. Permits a school or other institution that primarily serves minors to register its domain name with the registry. Provides that a person may not send a communication to a contact point that has been registered for more than 30 days if the communication: (1) has the primary purpose of advertising or promoting a product or service that a minor is prohibited by law from purchasing; or (2) contains or has the primary purpose of advertising or promoting material that is harmful to minors, as described in Indiana law. Authorizes persons who send such communications to check the registry for a fee to enable compliance with the law. Authorizes the division to adopt rules to administer the statute and the registry. Provides for civil enforcement of the statute and criminal penalties.

Effective: July 1, 2011.

McNamara, Turner, Welch

January 18, 2011, read first time and referred to Committee on Family, Children and Human Affairs.
January 27, 2011, reported — Do Pass.

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January 28, 2011

First Regular Session 117th General Assembly (2011)

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 a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1418

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:

SECTION 1. IC 24-4.3 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

ARTICLE 4.3. CHILD PROTECTION REGISTRY

Chapter 1. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

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

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

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

Sec. 3. "Contact point" refers to any of the following:

(1) An electronic mail address.

(2) An instant message identity, subject to rules adopted by the division under IC 24-4.3-2-4.
(3) A mobile or other telephone number.
(4) A facsimile number.
(5) An electronic address:
(A) similar to a contact point described in subdivisions (1) through (4); and
(B) defined as a contact point by rule adopted under IC 24-4.3-2-4.

Sec. 4. "Division" refers to the consumer protection division of the office of the attorney general.

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

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

Sec. 7. "Registry" refers to the child protection registry established under IC 24-4.3-2-1.

Chapter 2. Establishing the Child Protection Registry

Sec. 1. (a) The division shall do either of the following:
(1) Establish and operate a child protection registry to compile and secure a list of contact points the division has received under this article.
(2) Contract with a third party to establish and secure the registry described in subdivision (1).

(b) The division shall implement the registry described in this section with respect to electronic mail addresses not later than July 1, 2012.

(c) The division shall implement the registry described in this section with respect to instant message identities not later than January 1, 2013.

(d) The division shall implement the registry described in this section with respect to mobile or other telephone numbers not later than July 1, 2013.

Sec. 2. A person may register a contact point with the division under rules adopted under section 4 of this chapter if:
(1) the contact point belongs to a minor;
(2) a minor has access to the contact point; or
(3) the contact point is used in a household in which a minor is present.

Sec. 3. A school or other institution that primarily serves minors may register its domain name with the division under rules adopted under section 4 of this chapter.

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

(b) The division shall adopt rules to establish the following:

(1) The procedures for a person to register a contact point with the division under this chapter, including the information necessary to register an instant message identity.

(2) The procedures for a school or other institution that primarily serves minors to register its domain name with the division.

(3) A mechanism under which a person may verify compliance with the registry to remove registered contact points from the person's communications. The mechanism established under this subdivision must protect the privacy and security of all registered contact points.

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

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

(A) the division;

(B) the third party registry provider; or

(C) a designee of the division or the third party registry provider.

(2) For purposes of IC 24-4.3-1-3, to define an electronic address that is similar to a contact point described in IC 24-4.3-1-3(5).

Sec. 5. The contents of the registry, and any complaint filed about a sender who violates this chapter, are excepted from disclosure as provided in IC 5-14-3-4(a).

Sec. 6. (a) The state shall promote the registry on the state's official Internet web site.

(b) The division may allow the third party registry provider to assist in any public or industry awareness campaign promoting the registry.

Chapter 3. Requirements for Communicating With Contact Points and Domains; Checking the Registry

Sec. 1. (a) Except as provided in section 3 of this chapter, a person may not send, cause to be sent, or conspire with a third party to send an adult communication to a registered contact point or a registered domain name.

(b) Except as provided in section 3 of this chapter, consent of a minor is not a defense to a violation of this section.

Sec. 2. (a) A person wanting to send an adult communication to

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a contact point or domain name shall:

(1) use a mechanism established by rule adopted by the division under IC 24-4.3-2-4; and

(2) pay a fee for use of the mechanism.

(b) The division shall adopt rules under IC 24-4.3-2-4 to establish fees required under subsection (a). The fee may not be greater than the following:

(1) Three cents ($0.03) for each contact point checked against the registry.

(2) Seventy-two thousand dollars ($72,000) a year.

Sec. 3. (a) Notwithstanding sections 1 and 2 of this chapter, a person may send an adult communication to a contact point if, before sending the communication, the person sending the communication receives consent from an adult who controls the contact point.

(b) A person who proposes to send a communication under subsection (a) must do all of the following:

(1) Verify the age of the adult who controls the contact point by inspecting the adult's government issued identification card in a face to face transaction.

(2) Obtain a written record indicating the adult's consent that is signed by the adult.

(3) Include in each communication:

(A) a notice that the adult may rescind the consent; and

(B) information that allows the adult to opt out of receiving future communications.

(4) Notify the division that the person intends to send communications under this section.

(c) The division shall adopt and implement rules to verify that a person providing notification under subsection (b)(4) complies with subsection (b).

Sec. 4. An Internet service provider does not violate section 1 of this chapter for solely transmitting a message across the network of the Internet service provider.

Chapter 4. Enforcement by the Attorney General

Sec. 1. The division shall investigate complaints of violations of this article.

Sec. 2. In an action under this chapter, the attorney general may obtain any or all of the following:

(1) An injunction to enjoin future violations of IC 24-4.3-3.

(2) A civil penalty of not more than the following:

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

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IC 24-4.3-3.

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

For purposes of this subdivision, each communication sent to a registered contact point or registered domain name in violation of IC 24-4.3-3 is considered a separate violation.

(3) All money the defendant obtained through violation of IC 24-4.3-3.

(4) The attorney general's reasonable costs in:

(A) the investigation of the violation of this article; and

(B) maintaining the action.

(5) Reasonable attorney's fees.

(6) Costs of the action.

Sec. 3. An action brought under this chapter may not be brought more than two (2) years after the occurrence of the violation of this article.

Sec. 4. An action under this chapter may be brought in the circuit or superior court of Marion County.

Sec. 5. The attorney general may employ counsel to represent the state in an action under this chapter.

Chapter 5. Private Right of Action

Sec. 1. Either of the following may bring an action in a court with jurisdiction for a violation of IC 24-4.3-3:

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

(2) A legal guardian of a user described in subdivision (1).

Sec. 2. (a) A person who prevails in an action the person brings under section 1 of this chapter may recover the greater of the following:

(1) Actual damages.

(2) One thousand dollars ($1,000) for each communication sent in violation of IC 24-4.3-3.

(b) A party who prevails in an action the person brings under section 1 of this chapter is entitled to costs and reasonable attorney fees.

Chapter 6. Criminal Penalties

Sec. 1. A person who recklessly, knowingly, or intentionally violates IC 24-4.3-3 commits a Class B misdemeanor for the first offense with respect to a registered contact point.

Sec. 2. A person who recklessly, knowingly, or intentionally violates IC 24-4.3-3 commits a Class A misdemeanor for each subsequent violation with respect to a registered contact point.

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Sec. 3. A person who recklessly, knowingly, or intentionally violates IC 24-4.3-3 commits a Class A misdemeanor for each violation with respect to a registered domain name.

Sec. 4. A person who recklessly, knowingly, or intentionally uses information obtained from the division under this article in a way that is not authorized by this article or by rules adopted under IC 24-4.3-2-4 to do any of the following commits a Class D felony:

(1) Obtain a contact point from the registry.

(2) Attempt to obtain a contact point from the registry.

(3) Use, or transfer to a third party to use, information from the registry to send an adult communication.

Sec. 5. Each communication sent in violation of this article is a separate offense under this chapter.

Sec. 6. A criminal conviction or penalty under this section does not relieve a person from civil liability in an action brought under IC 24-4.3-4 or IC 24-4.3-5.

Sec. 7. It is a defense to an action brought under this chapter, IC 24-4.3-4, or IC 24-4.3-5 that a person:

(1) reasonably relied on the mechanism established by the division under IC 24-4.3-2-4; and

(2) took reasonable measures to comply with this article.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Family, Children and Human Affairs, to which was referred House Bill 1418, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

NOE, Chair

Committee Vote: yeas 9, nays 0.

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