



Reprinted  
February 9, 2011

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## HOUSE BILL No. 1418

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DIGEST OF HB 1418 (Updated February 8, 2011 4:42 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 express purpose of advertising or promoting a product or service that a minor is prohibited by law from purchasing; or (2) contains or has the express 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.

**Effective:** July 1, 2011.

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### McNamara, Turner, Welch

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January 18, 2011, read first time and referred to Committee on Family, Children and Human Affairs.  
January 27, 2011, reported — Do Pass.  
February 8, 2011, read second time, amended, ordered engrossed.

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HB 1418—LS 7511/DI 75+



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

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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 24-4.3 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
3 2011]:

4 **ARTICLE 4.3. CHILD PROTECTION REGISTRY**

5 **Chapter 1. Definitions**

6 **Sec. 1. The definitions in this chapter apply throughout this**  
7 **article.**

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

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

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

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

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

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

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

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

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

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

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

19           **Sec. 1. (a)** The division shall do either of the following:

- 20                 (1) Establish and operate a child protection registry to
- 21                 compile and secure a list of contact points the division has
- 22                 received under this article.
- 23                 (2) Contract with a third party to establish and secure the
- 24                 registry described in subdivision (1).

25           **(b)** The division shall implement the registry described in this  
 26           section with respect to electronic mail addresses not later than July  
 27           1, 2012.

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

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

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

- 36                 (1) the contact point belongs to a minor;
- 37                 (2) a minor has access to the contact point; or
- 38                 (3) the contact point is used in a household in which a minor
- 39                 is present.

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

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

3           **(b) The division shall adopt rules to establish the following:**  
4           **(1) The procedures for a person to register a contact point**  
5 **with the division under this chapter, including the information**  
6 **necessary to register an instant message identity.**

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

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

15           **(c) The division may adopt rules to do the following:**  
16           **(1) Implement a program offering discounted fees to a sender**  
17 **who meets enhanced security conditions established and**  
18 **verified by:**

- 19                   **(A) the division;**
- 20                   **(B) the third party registry provider; or**
- 21                   **(C) a designee of the division or the third party registry**  
22 **provider.**

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

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

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

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

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

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

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

42           **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. A communications service provider (as defined in IC 8-1-2.6-13(b)) does not violate section 1 of this chapter for solely transmitting a message across the network of the communications 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:

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1                   (A) Ten thousand dollars (\$10,000) for the first violation of  
 2                   IC 24-4.3-3.  
 3                   (B) Twenty-five thousand (\$25,000) dollars for each  
 4                   violation after the first violation.  
 5                   For purposes of this subdivision, each communication sent to  
 6                   a registered contact point or registered domain name in  
 7                   violation of IC 24-4.3-3 is considered a separate violation.  
 8                   (3) All money the defendant obtained through violation of  
 9                   IC 24-4.3-3.  
 10                   (4) The attorney general's reasonable costs in:  
 11                   (A) the investigation of the violation of this article; and  
 12                   (B) maintaining the action.  
 13                   (5) Reasonable attorney's fees.  
 14                   (6) Costs of the action.  
 15                   Sec. 3. An action brought under this chapter may not be brought  
 16                   more than two (2) years after the occurrence of the violation of this  
 17                   article.  
 18                   Sec. 4. An action under this chapter may be brought in the  
 19                   circuit or superior court of Marion County.  
 20                   Sec. 5. The attorney general may employ counsel to represent  
 21                   the state in an action under this chapter.  
 22                   Chapter 5. Private Right of Action  
 23                   Sec. 1. Either of the following may bring an action in a court  
 24                   with jurisdiction for a violation of IC 24-4.3-3:  
 25                   (1) A user of a registered contact point or registered domain  
 26                   name.  
 27                   (2) A legal guardian of a user described in subdivision (1).  
 28                   Sec. 2. (a) A person who prevails in an action the person brings  
 29                   under section 1 of this chapter may recover the greater of the  
 30                   following:  
 31                   (1) Actual damages.  
 32                   (2) One thousand dollars (\$1,000) for each communication  
 33                   sent in violation of IC 24-4.3-3.  
 34                   (b) A party who prevails in an action the person brings under  
 35                   section 1 of this chapter is entitled to costs and reasonable attorney  
 36                   fees.

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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.



HOUSE MOTION

Mr. Speaker: I move that House Bill 1418 be amended to read as follows:

Page 1, line 10, delete "primary" and insert "**express**".

Page 1, line 13, delete "primary" and insert "**express**".

Page 4, line 32, delete "An Internet service provider" and insert "**A communications service provider (as defined in IC 8-1-2.6-13(b))**".

Page 4, line 34, delete "Internet service provider." and insert "**communications service provider.**".

(Reference is to HB 1418 as printed January 28, 2011.)

TURNER



HOUSE MOTION

Mr. Speaker: I move that House Bill 1418 be amended to read as follows:

Page 5, delete lines 36 through 42.

Delete page 6.

(Reference is to HB 1418 as printed January 28, 2011.)

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