



February 20, 2013

SENATE BILL No. 344

DIGEST OF SB 344 (Updated February 18, 2013 2:40 pm - DI 106)

Citations Affected: IC 24-4.3.

Synopsis: Child protection registry. Requires the secretary of state to establish the child protection registry. Permits a person to register with the registry certain "contact points" that belong to a minor. Defines a contact point to be: (1) an electronic mail address; (2) an instant message identity; (3) a mobile or other telephone number; (4) a facsimile number; or (5) a similar point of communication defined by rule by the secretary of state. 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 has the express purpose of advertising or promoting a product or service that a minor is prohibited by law from purchasing. Requires persons who send such communications to check the registry (for a fee) to ensure compliance with the law, and provides that the fee will be deposited in the electronic and enhanced access fund. Provides that a contractor may not be paid more than 80% of the fees generated. Authorizes the secretary of state to adopt rules to administer the statute and the registry. Provides for civil enforcement of the statute.

Effective: July 1, 2013.

Head, Holdman, Arnold J

January 8, 2013, read first time and referred to Committee on Civil Law.
February 19, 2013, amended, reported favorably — Do Pass.

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SB 344—LS 6607/DI 107+



February 20, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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SENATE BILL No. 344

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 2013]:
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 **has the express purpose of advertising or promoting a product or**
10 **service that a minor is prohibited by law from purchasing.**
11 **Sec. 3. "Contact point" refers to any of the following:**
12 (1) **An electronic mail address.**
13 (2) **An instant message identity, subject to rules adopted by**
14 **the secretary of state under IC 24-4.3-2-4.**
15 (3) **A mobile or other telephone number.**
16 (4) **A facsimile number.**
17 (5) **An electronic address:**

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- 1 (A) similar to a contact point described in subdivisions (1)
 2 through (4); and
 3 (B) defined as a contact point by rule adopted under
 4 IC 24-4.3-2-4.

5 Sec. 4. "Registered contact point" refers to a contact point that
 6 has been registered on the registry for at least thirty (30) days.

7 Sec. 5. "Registered domain name" refers to a domain name that
 8 has been registered on the registry for at least thirty (30) days.

9 Sec. 6. "Registry" refers to the child protection registry
 10 established under IC 24-4.3-2-1.

11 Chapter 2. Establishing the Child Protection Registry

12 Sec. 1. (a) The secretary of state shall do either of the following:

13 (1) Establish and operate a child protection registry to
 14 compile and secure a list of contact points the secretary of
 15 state has received under this article.

16 (2) Contract with a third party to establish and secure the
 17 registry described in subdivision (1).

18 (b) The secretary of state shall implement the registry described
 19 in this section with respect to electronic mail addresses not later
 20 than July 1, 2014.

21 (c) The secretary of state shall implement the registry described
 22 in this section with respect to instant message identities not later
 23 than January 1, 2015.

24 (d) The secretary of state shall implement the registry described
 25 in this section with respect to mobile or other telephone numbers
 26 not later than July 1, 2015.

27 (e) The contract between a third party and the secretary of state
 28 described in subsection (a)(2) must contain a provision that the
 29 third party shall not be paid more than eighty percent (80%) of the
 30 fees generated under IC 24-4.3-3-2.

31 Sec. 2. A person may register a contact point with the secretary
 32 of state under rules adopted under section 4 of this chapter if:

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

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

40 Sec. 4. (a) The secretary of state may adopt rules under
 41 IC 4-22-2 to implement this article.

42 (b) The secretary of state shall adopt rules under IC 4-22-2 to

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establish the following:

(1) The procedures for a person to register a contact point with the secretary of state 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 secretary of state.

(3) A mechanism under which a person may access 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 secretary of state may adopt rules under IC 4-22-2 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 secretary of state;

(B) a third party registry provider described in section 1(a)(2) of this chapter; or

(C) a designee of the secretary of state or a third party registry provider described in section 1(a)(2) of this chapter.

(2) For purposes of IC 24-4.3-1-3, to define similarity of an electronic address for purposes of IC 24-4.3-1-3(5).

Sec. 5. The contents of the registry, and any complaint filed about a sender who violates IC 24-4.3-3, 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 secretary of state may allow a third party registry provider described in section 1(a)(2) of this chapter 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) Subject to section 3 of this chapter, consent of a minor is not a defense to a violation of this section.

Sec. 2. (a) Before sending an adult communication to a contact

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point or domain name, a person shall:

- (1) use a mechanism established by rule adopted by the secretary of state under IC 24-4.3-2-4(b)(3) to determine whether the contact point is a registered contact point or the domain name is a registered domain name; and
- (2) pay a fee for use of the mechanism.

(b) The secretary of state shall adopt rules under IC 24-4.3-2-4 to establish a fee required under subsection (a)(2). 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.

(c) The secretary of state shall deposit fees collected under this chapter in the electronic and enhanced access fund established under IC 4-5-10-5.

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

(c) The secretary of state 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 solely by transmitting a message across the communications service provider's network.

Chapter 4. Enforcement by the Secretary of State

Sec. 1. The secretary of state shall investigate complaints of

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violations of IC 24-4.3-3.

Sec. 2. In an action under this chapter, the secretary of state 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 IC 24-4.3-3.
 - (B) Twenty-five thousand dollars (\$25,000) 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 a violation of IC 24-4.3-3.
- (4) The secretary of state's reasonable costs in:
 - (A) the investigation of the violation of IC 24-4.3-3; 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 IC 24-4.3-3.

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

Sec. 5. The secretary of state 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 party who prevails in an action brought by the party 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 brought by the party under section 1 of this chapter is entitled to costs and reasonable attorney's fees.

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COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 344, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 9, delete "satisfies either of the following":

Page 1, line 10, delete "(1) The communication".

Page 1, run in lines 8 through 10.

Page 1, delete lines 13 through 15.

Page 2, between lines 31 and 32, begin a new paragraph and insert:

"(e) The contract between a third party and the secretary of state described in subsection (a)(2) must contain a provision that the third party shall not be paid more than eighty percent (80%) of the fees generated under IC 24-4.3-3-2."

Page 3, line 1, after "rules" insert "**under IC 4-22-2**".

Page 3, line 14, after "rules" insert "**under IC 4-22-2**".

Page 4, between lines 12 and 13, begin a new paragraph and insert:

"(c) The secretary of state shall deposit fees collected under this chapter in the electronic and enhanced access fund established under IC 4-5-10-5."

and when so amended that said bill do pass.

(Reference is to SB 344 as introduced.)

ZAKAS, Chairperson

Committee Vote: Yeas 7, Nays 1.

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