

1 SENATE BILL 444

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Cisco McSorley

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10 AN ACT

11 RELATING TO COMMUNICATIONS; ENACTING THE CHILD PROTECTION
12 REGISTRY ACT AND THE DO NOT CONTACT REGISTRY ACT; PROHIBITING
13 CERTAIN COMMUNICATIONS TO MINORS THAT ADVERTISE A PRODUCT OR
14 SERVICE THAT A MINOR IS PROHIBITED FROM PURCHASING OR THAT
15 CONTAIN MATERIALS HARMFUL TO MINORS; PROHIBITING CERTAIN
16 COMMUNICATIONS TO PERSONS WHO HAVE REGISTERED WITH THE DO NOT
17 CONTACT REGISTRY; CREATING THE CHILD PROTECTION REGISTRY FUND
18 AND THE DO NOT CONTACT REGISTRY FUND; REQUIRING THE ATTORNEY
19 GENERAL TO ESTABLISH THE CHILD PROTECTION REGISTRY AND THE DO
20 NOT CONTACT REGISTRY AND A MECHANISM FOR PERSONS DESIRING TO
21 SEND A COMMUNICATION TO VERIFY COMPLIANCE WITH THE CHILD
22 PROTECTION REGISTRY ACT OR THE DO NOT CONTACT REGISTRY ACT;
23 PROVIDING CIVIL AND CRIMINAL PENALTIES; RESOLVING CONFLICTS;
24 MAKING AN APPROPRIATION.

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

2 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
3 through 10 of this act may be cited as the "Child Protection
4 Registry Act".

5 SECTION 2. [NEW MATERIAL] PURPOSE.--The purpose of the
6 Child Protection Registry Act is to provide safeguards to
7 prevent minor children from receiving communications that
8 advertise a product or service that a minor is prohibited by
9 law from purchasing or that contain or have the primary purpose
10 of advertising or promoting material that is harmful to minors,
11 as defined in Subsection F of Section 30-37-1 NMSA 1978.

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

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

- 16 (1) an email address;
- 17 (2) an instant message identity;
- 18 (3) a telephone number; or
- 19 (4) any other electronic address identified in
20 rules promulgated by the attorney general pursuant to the Child
21 Protection Registry Act; and

22 B. "minor" means a child who has not reached the
23 age of majority.

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

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1 A. The attorney general shall establish and operate
2 a child protection registry to compile and secure a list of
3 contact points registered pursuant to Subsection B of this
4 section. The attorney general shall adopt procedures to
5 prevent the unauthorized use or disclosure of contact points
6 contained in the registry.

7 B. A person responsible for a contact point to
8 which a minor may have access may register that contact point
9 in the child protection registry pursuant to rules promulgated
10 by the attorney general. The attorney general shall establish
11 rules to ensure that a registrant meets the requirements of
12 this section.

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

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

21 E. The attorney general may contract with a third-
22 party administrator to establish, operate and secure the child
23 protection registry.

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

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1 G. Information contained in the child protection
2 registry is not a public record and shall not be made available
3 for inspection by the public.

4 **SECTION 5. [NEW MATERIAL] CHILD PROTECTION REGISTRY**
5 **FUND--CREATED.--**The "child protection registry fund" is created
6 in the state treasury. The fund consists of appropriations and
7 fees collected pursuant to Section 6 of the Child Protection
8 Registry Act. Money in the fund shall not revert to any other
9 fund at the end of a fiscal year. The attorney general shall
10 administer the fund, and money in the fund is appropriated to
11 the attorney general to establish, operate and administer the
12 child protection registry and to enforce and defend the Child
13 Protection Registry Act.

14 **SECTION 6. [NEW MATERIAL] VERIFICATION OF COMPLIANCE BY**
15 **SENDERS--FEES FOR VERIFICATION.--**

16 A. The attorney general shall establish a mechanism
17 by which a person desiring to send a communication can verify
18 whether a contact point is registered in the child protection
19 registry in order to ensure compliance with the Child
20 Protection Registry Act. The attorney general shall charge a
21 fee not to exceed three cents (\$.03) per contact point checked
22 against the registry.

23 B. A person desiring to send a communication
24 described in Subsection A of Section 7 of the Child Protection
25 Registry Act shall verify that the intended contact points are

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1 not registered in the child protection registry.

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

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

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

15 B. It is a violation of the Child Protection
16 Registry Act to:

17 (1) use information obtained from the child
18 protection registry to violate the Child Protection Registry
19 Act;

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

22 (3) use, or transfer to a third party to use,
23 information from the registry to send a communication.

24 C. An internet service provider does not violate
25 this section solely by transmitting a communication across the

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1 network of the internet service provider.

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

4 E. A person is guilty of a fourth degree felony and
5 upon conviction shall be sentenced pursuant to the provisions
6 of Section 31-18-15 NMSA 1978 if the person:

7 (1) uses information obtained from the child
8 protection registry to violate the Child Protection Registry
9 Act;

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

12 (3) uses, or transfers to a third party to
13 use, information from the child protection registry to send a
14 communication.

15 F. A person who violates a provision of the Child
16 Protection Registry Act is subject to prosecution under the
17 Computer Crimes Act.

18 SECTION 8. [NEW MATERIAL] EXCEPTION FOR VALID CONSENT BY
19 ADULT.--

20 A. Notwithstanding the provisions of Section 7 of
21 the Child Protection Registry Act, a person may send a
22 communication that advertises a product or service that a minor
23 is prohibited from purchasing, viewing, participating in or
24 possessing if the person sending the communication receives
25 consent from an adult who controls the contact point. Prior to

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1 sending the communication, the person shall:

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

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

7 (3) notify the attorney general that the
8 person intends to send the communication.

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

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

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

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

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

21 (2) the attorney general.

22 B. A person bringing an action pursuant to
23 Paragraph (1) of Subsection A of this section may recover:

24 (1) actual damages; or

25 (2) the lesser of five thousand dollars

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1 (\$5,000) per communication transmitted to the contact point or
2 two hundred fifty thousand dollars (\$250,000) per day that the
3 violation occurs.

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

11 D. In each action brought pursuant to this section,
12 the prevailing party may be awarded costs and reasonable
13 attorney fees.

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

19 SECTION 11. [NEW MATERIAL] SHORT TITLE.--Sections 11
20 through 21 of this act may be cited as the "Do Not Contact
21 Registry Act".

22 SECTION 12. [NEW MATERIAL] PURPOSE.--The purpose of the
23 Do Not Contact Registry Act is to provide a mechanism for
24 persons to prevent solicitations and unsolicited advertisements
25 that are sent to their email addresses, instant messaging

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1 applications or other electronic or digital contact points.

2 SECTION 13. [NEW MATERIAL] DEFINITIONS.--As used in the
3 Do Not Contact Registry Act:

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

- 6 (1) an email address;
- 7 (2) an instant message identity;
- 8 (3) a telephone number; or
- 9 (4) any other electronic address identified in
10 rules promulgated by the attorney general pursuant to the Do
11 Not Contact Registry Act;

12 B. "solicitation" means the initiation of a
13 message, for the purpose of encouraging the purchase or rental
14 of, or investment in, property, goods or services, that is
15 transmitted to a person, but "solicitation" does not include a
16 message:

- 17 (1) to a person with that person's prior
18 express invitation or permission;
- 19 (2) to a person with whom the message sender
20 has an established business relationship; or
- 21 (3) by a tax-exempt nonprofit organization;

22 and

23 C. "unsolicited advertisement" means any material
24 advertising the commercial availability or quality of any
25 property, goods or services that is transmitted to any person

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1 without that person's prior express invitation or permission,
2 in writing or otherwise.

3 SECTION 14. [NEW MATERIAL] ESTABLISHMENT AND OPERATION OF
4 THE DO NOT CONTACT REGISTRY.--

5 A. The attorney general shall establish and operate
6 a do not contact registry to compile and secure a list of
7 contact points registered pursuant to Subsection B of this
8 section. The attorney general shall adopt procedures to
9 prevent the unauthorized use or disclosure of contact points
10 contained in the registry.

11 B. A person desiring to avoid a solicitation or an
12 unsolicited advertisement may register that person's contact
13 point in the do not contact registry pursuant to rules
14 promulgated by the attorney general. The attorney general
15 shall establish rules to ensure that a registrant meets the
16 requirements of this section.

17 C. Registration of a contact point submitted
18 pursuant to this section shall be valid for three years.

19 D. The attorney general may contract with a third-
20 party administrator to establish, operate and secure the do not
21 contact registry.

22 E. No fee shall be charged for registering a
23 contact point in the do not contact registry.

24 F. Information contained in the do not contact
25 registry is not a public record and shall not be made available

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1 for inspection by the public.

2 SECTION 15. [NEW MATERIAL] DO NOT CONTACT REGISTRY FUND--
3 CREATED.--The "do not contact registry fund" is created in the
4 state treasury. The fund consists of appropriations and fees
5 collected pursuant to Section 16 of this 2017 act. Money in
6 the fund shall not revert to any other fund at the end of a
7 fiscal year. The attorney general shall administer the fund,
8 and money in the fund is appropriated to the attorney general
9 to establish, operate and administer the do not contact
10 registry and to enforce and defend the Do Not Contact Registry
11 Act.

12 SECTION 16. [NEW MATERIAL] VERIFICATION OF COMPLIANCE BY
13 SENDERS--FEES FOR VERIFICATION.--

14 A. The attorney general shall establish a mechanism
15 by which a person desiring to send a solicitation or an
16 unsolicited advertisement can verify whether a contact point is
17 registered in the do not contact registry in order to ensure
18 compliance with the Do Not Contact Registry Act. The attorney
19 general shall charge a fee not to exceed three cents (\$.03) per
20 contact point checked against the registry.

21 B. A person desiring to send a solicitation or an
22 unsolicited advertisement communication shall verify that the
23 intended contact points are not registered in the do not
24 contact registry.

25 C. Fees collected pursuant to this section shall be

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1 deposited in the do not contact registry fund.

2 SECTION 17. [NEW MATERIAL] VIOLATION OF ACT.--

3 A. A person shall not knowingly send, cause to be
4 sent or conspire with a third party to send a solicitation or
5 unsolicited advertisement communication to a contact point that
6 has been registered in the do not contact registry for more
7 than thirty calendar days.

8 B. It is a violation of the Do Not Contact Registry
9 Act to:

10 (1) use information obtained from the do not
11 contact registry to violate the Do Not Contact Registry Act;

12 (2) improperly obtain or attempt to obtain
13 contact points from the do not contact registry; or

14 (3) use, or transfer to a third party to use,
15 information from the do not contact registry to send a
16 communication.

17 C. An internet service provider does not violate
18 this section solely by transmitting a communication across the
19 network of the internet service provider.

20 D. A person is guilty of a fourth degree felony and
21 upon conviction shall be sentenced pursuant to the provisions
22 of Section 31-18-15 NMSA 1978 if the person:

23 (1) uses information obtained from the do not
24 contact registry to violate the Do Not Contact Registry Act;

25 (2) improperly obtains or attempts to obtain

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1 contact points from the do not contact registry; or

2 (3) uses, or transfers to a third party to
3 use, information from the do not contact registry to send a
4 communication.

5 E. A person who violates a provision of the Do Not
6 Contact Registry Act is subject to prosecution under the
7 Computer Crimes Act.

8 SECTION 18. [NEW MATERIAL] EXCEPTION FOR VALID CONSENT.--

9 A. Notwithstanding the provisions of Section 17 of
10 this 2017 act, a person may send a solicitation or an
11 unsolicited advertisement communication if the person sending
12 the communication receives consent from the registrant of the
13 contact point. Prior to sending the communication, the person
14 shall:

15 (1) obtain a signed statement indicating that
16 the registrant consents to receive the communication; and

17 (2) notify the attorney general that the
18 person intends to send the communication.

19 B. A communication sent pursuant to Subsection A of
20 this section shall contain information that describes how the
21 registrant may opt out of receiving future communications.

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

25 SECTION 19. [NEW MATERIAL] CIVIL ACTION FOR VIOLATION.--

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1 A. A civil action for a violation of the Do Not
2 Contact Registry Act may be brought by:

3 (1) the registrant of a contact point who has
4 received a communication in violation of the Do Not Contact
5 Registry Act; or

6 (2) the attorney general.

7 B. A person bringing an action pursuant to
8 Paragraph (1) of Subsection A of this section may recover:

9 (1) actual damages; or

10 (2) the lesser of five thousand dollars
11 (\$5,000) per communication transmitted to the contact point or
12 two hundred fifty thousand dollars (\$250,000) per day that the
13 violation occurs.

14 C. In an action brought by the attorney general
15 pursuant to Paragraph (2) of Subsection A of this section, the
16 attorney general may recover a civil penalty not to exceed ten
17 thousand dollars (\$10,000) per communication transmitted to a
18 contact point in violation of the Do Not Contact Registry Act
19 or five hundred thousand dollars (\$500,000) per day that the
20 violation occurs, whichever is less.

21 D. In each action brought pursuant to this section,
22 the prevailing party may be awarded costs and reasonable
23 attorney fees.

24 SECTION 20. [NEW MATERIAL] DEFENSE.--It shall be a
25 defense to an action brought pursuant to the Do Not Contact

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1 Registry Act that a person reasonably relied on the mechanism
2 for verification of compliance established pursuant to Section
3 16 of this 2017 act.

4 SECTION 21. [NEW MATERIAL] INTERPRETATION.--Nothing in
5 the Do Not Contact Registry Act is intended to conflict with or
6 replace any provision of the Child Protection Registry Act. To
7 the extent a conflict exists, the provisions of the Child
8 Protection Registry Act shall take precedence.

9 SECTION 22. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2017.