



Reprinted  
February 26, 2013

## SENATE BILL No. 344

DIGEST OF SB 344 (Updated February 25, 2013 3:21 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, unless the advertisement is from a retail establishment that: (1) is advertising a product that may be purchased by an adult; and (2) verifies the age of the purchaser at the point of sale when age restricted products are sold. Permits a communication that is in response to a direct inquiry from a consumer if the person verifies the consumer's age. 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.

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**Head, Holdman, Arnold J, Randolph**

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January 8, 2013, read first time and referred to Committee on Civil Law.  
February 19, 2013, amended, reported favorably — Do Pass.  
February 25, 2013, read second time, amended, ordered engrossed.

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SB 344—LS 6607/DI 107+



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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.

## 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 However, the term does not include:

12 (1) an advertisement or promotion from a retail establishment  
13 that:

14 (A) is primarily advertising a product that can be legally  
15 purchased by an adult; and

16 (B) verifies the age of a purchaser by inspecting a  
17 government issued identification at the point of sale when

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1                   age restricted products are purchased; or  
 2                   (2) a communication that is in response to a direct inquiry  
 3                   from a consumer if the person making the communication to  
 4                   the consumer verifies the consumer's age in accordance with  
 5                   IC 24-4.3-3-3.

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

- 7                   (1) An electronic mail address.
- 8                   (2) An instant message identity, subject to rules adopted by
- 9                   the secretary of state under IC 24-4.3-2-4.
- 10                  (3) A mobile or other telephone number.
- 11                  (4) A facsimile number.
- 12                  (5) An electronic address:
  - 13                   (A) similar to a contact point described in subdivisions (1)
  - 14                   through (4); and
  - 15                   (B) defined as a contact point by rule adopted under
  - 16                   IC 24-4.3-2-4.

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

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

21                  **Sec. 6. "Registry" refers to the child protection registry**  
 22                  **established under IC 24-4.3-2-1.**

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

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

- 25                   (1) Establish and operate a child protection registry to
- 26                   compile and secure a list of contact points the secretary of
- 27                   state has received under this article.
- 28                   (2) Contract with a third party to establish and secure the
- 29                   registry described in subdivision (1).

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

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

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

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

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

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

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

12          (b) The secretary of state shall adopt rules under IC 4-22-2 to  
13 establish the following:  
14           (1) The procedures for a person to register a contact point  
15 with the secretary of state under this chapter, including the  
16 information necessary to register an instant message identity.  
17           (2) The procedures for a school or other institution that  
18 primarily serves minors to register its domain name with the  
19 secretary of state.  
20           (3) A mechanism under which a person may access the  
21 registry to remove registered contact points from the person's  
22 communications. The mechanism established under this  
23 subdivision must protect the privacy and security of all  
24 registered contact points.

25          (c) The secretary of state may adopt rules under IC 4-22-2 to do  
26 the following:  
27           (1) Implement a program offering discounted fees to a sender  
28 who meets enhanced security conditions established and  
29 verified by:  
30           (A) the secretary of state;  
31           (B) a third party registry provider described in section  
32 1(a)(2) of this chapter; or  
33           (C) a designee of the secretary of state or a third party  
34 registry provider described in section 1(a)(2) of this  
35 chapter.  
36           (2) For purposes of IC 24-4.3-1-3, to define similarity of an  
37 electronic address for purposes of IC 24-4.3-1-3(5).

38          **Sec. 5.** The contents of the registry, and any complaint filed  
39 about a sender who violates IC 24-4.3-3, are excepted from  
40 disclosure as provided in IC 5-14-3-4(a).

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

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1 (b) The secretary of state may allow a third party registry  
 2 provider described in section 1(a)(2) of this chapter to assist in any  
 3 public or industry awareness campaign promoting the registry.

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

6 **Sec. 1. (a)** Except as provided in section 3 of this chapter, a  
 7 person may not use a communications service provider (as defined  
 8 in IC 8-1-2.6-13(b)) or an interactive computer service (as defined  
 9 in 47 U.S.C. Sec. 230(f)(2)) to send or conspire with a third party  
 10 to send an adult communication to a registered contact point or a  
 11 registered domain name.

12 (b) Subject to section 3 of this chapter, consent of a minor is not  
 13 a defense to a violation of this section.

14 **Sec. 2. (a)** Before sending an adult communication to a contact  
 15 point or domain name, a person shall:

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

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

21 (b) The secretary of state shall adopt rules under IC 24-4.3-2-4  
 22 to establish a fee required under subsection (a)(2). The fee may not  
 23 be greater than the following:

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

26 (2) Sixty-two thousand dollars (\$62,000) a year.

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

30 **Sec. 3. (a)** Notwithstanding sections 1 and 2 of this chapter, a  
 31 person may use a communications service provider (as defined in  
 32 IC 8-1-2.6-13(b)) or an interactive computer service (as defined in  
 33 47 U.S.C. Sec. 230(f)(2)) to send an adult communication to a  
 34 registered contact point if, before sending the communication, the  
 35 person sending the communication receives consent from an adult  
 36 who controls the registered contact point.

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

39 (1) Verify the age of the adult who controls the registered  
 40 contact point:

- 41 (A) by inspecting the adult's government issued  
 42 identification card in a face to face transaction; or

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(B) through the use of a commercially available data base or aggregate of data bases, consisting primarily of data from government sources that are regularly used by government and businesses for the purpose of age and identity verification, including not less than six (6) validated adaptive knowledge based verification (KBV) challenges.

**(2) Obtain:**

(A) a written record indicating the adult's consent that is signed by the adult, or a cryptographically secure electronic signature corresponding to the adult's government issued identification; and

(B) a recorded message from the adult providing the adult's oral consent.

**(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)) or an interactive computer service (as defined in 47 U.S.C. Sec. 230(f)(2)) does not violate section 1 of this chapter by transmitting a communication that is selected or composed by another person.

**Chapter 4. Enforcement by the Secretary of State**

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

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1           **(3) All money the defendant obtained through a violation of**  
2           **IC 24-4.3-3.**  
3           **(4) The secretary of state's reasonable costs in:**  
4           **(A) the investigation of the violation of IC 24-4.3-3; and**  
5           **(B) maintaining the action.**  
6           **(5) Reasonable attorney's fees.**  
7           **(6) Costs of the action.**  
8           **Sec. 3. An action brought under this chapter may not be brought**  
9           **more than two (2) years after the occurrence of the violation of**  
10           **IC 24-4.3-3.**  
11           **Sec. 4. An action under this chapter may be brought in the**  
12           **circuit or superior court of Marion County.**  
13           **Sec. 5. The secretary of state may employ counsel to represent**  
14           **the state in an action under this chapter.**  
15           **Chapter 5. Private Right of Action**  
16           **Sec. 1. Either of the following may bring an action in a court**  
17           **with jurisdiction for a violation of IC 24-4.3-3:**  
18           **(1) A user of a registered contact point or registered domain**  
19           **name.**  
20           **(2) A legal guardian of a user described in subdivision (1).**  
21           **Sec. 2. (a) A party who prevails in an action brought by the**  
22           **party under section 1 of this chapter may recover the greater of the**  
23           **following:**  
24           **(1) Actual damages.**  
25           **(2) One thousand dollars (\$1,000).**  
26           **(b) A party who prevails in an action brought by the party**  
27           **under section 1 of this chapter is entitled to costs and reasonable**  
28           **attorney's fees.**  
29           **(c) A person who is the recipient of multiple communications**  
30           **sent in violation of IC 24-4.3-3 from one (1) sender may only bring**  
31           **one (1) action against that sender. However if, after an action**  
32           **against the sender is adjudicated, the sender continues to send**  
33           **communications to the person in violation of IC 24-4.3-3, the**  
34           **person may bring an additional action that is based only on**  
35           **communications that occurred after the earlier action reached final**  
36           **judgment.**

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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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 SENATE MOTION

Madam President: I move that Senate Bill 344 be amended to read as follows:

Page 4, line 12, delete "Seventy-two thousand dollars (\$72,000)" and insert "**Sixty-two thousand dollars (\$62,000)**".

(Reference is to SB 344 as printed February 20, 2013.)

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## SENATE MOTION

Madam President: I move that Senate Bill 344 be amended to read as follows:

Page 1, line 10, after "purchasing." insert "**However, the term does not include:**

**(1) an advertisement or promotion from a retail establishment that:**

**(A) is primarily advertising a product that can be legally purchased by an adult; and**

**(B) verifies the age of a purchaser by inspecting a government issued identification at the point of sale when age restricted products are purchased; or**

**(2) a communication that is in response to a direct inquiry from a consumer if the person making the communication to the consumer verifies the consumer's age in accordance with IC 24-4.3-3-3."**

(Reference is to SB 344 as printed February 20, 2013.)

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 SENATE MOTION

Madam President: I move that Senate Bill 344 be amended to read as follows:

Page 4, line 24, after "point" insert ":

**(A)";**

Page 4, line 25, delete "." and insert "; or

**(B) through the use of a commercially available data base or aggregate of data bases, consisting primarily of data from government sources that are regularly used by government and businesses for the purpose of age and identity verification, including not less than six (6) validated adaptive knowledge based verification (KBV) challenges."**

Page 4, line 26, after "Obtain" insert ":

**(A)";**

Page 4, line 27, delete "." and insert ", or a cryptographically secure electronic signature corresponding to the adult's government issued identification; and



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**(B) a recorded message from the adult providing the adult's oral consent."**

(Reference is to SB 344 as printed February 20, 2013.)

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SENATE MOTION

Madam President: I move that Senate Bill 344 be amended to read as follows:

Page 3, line 37, after "not" insert **"use a communications service provider (as defined in IC 8-1-2.6-13(b)) or an interactive computer service (as defined in 47 U.S.C. Sec. 230(f)(2)) to"**.

Page 3, line 37, delete ", cause to be sent,".

Page 4, line 17, after "may" insert **"use a communications service provider (as defined in IC 8-1-2.6-13(b)) or an interactive computer service (as defined in 47 U.S.C. Sec. 230(f)(2)) to"**.

Page 4, delete lines 37 through 40, begin a new paragraph, and insert:

**"Sec. 4. A communications service provider (as defined in IC 8-1-2.6-13(b)) or an interactive computer service (as defined in 47 U.S.C. Sec. 230(f)(2)) does not violate section 1 of this chapter by transmitting a communication that is selected or composed by another person."**

(Reference is to SB 344 as printed February 20, 2013.)

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SENATE MOTION

Madam President: I move that Senate Bill 344 be amended to read as follows:

Page 5, line 37, delete "(\$1,000) for each communication" and insert **"(\$1,000)."**

Page 5, delete line 38.

Page 5, after line 41, begin a new paragraph and insert:

**"(c) A person who is the recipient of multiple communications sent in violation of IC 24-4.3-3 from one (1) sender may only bring one (1) action against that sender. However if, after an action**



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**against the sender is adjudicated, the sender continues to send communications to the person in violation of IC 24-4.3-3, the person may bring an additional action that is based only on communications that occurred after the earlier action reached final judgment."**

(Reference is to SB 344 as printed February 20, 2013.)

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