AN ACT

RELATING TO COMMUNICATIONS TO MINORS; ENACTING THE CHILD PROTECTION REGISTRY ACT; PROHIBITING COMMUNICATIONS TO MINORS THAT ADVERTISE A PRODUCT OR SERVICE THAT A MINOR IS PROHIBITED FROM PURCHASING OR THAT CONTAIN MATERIALS HARMFUL TO MINORS; CREATING THE CHILD PROTECTION REGISTRY FUND; REQUIRING THE ATTORNEY GENERAL TO ESTABLISH THE CHILD PROTECTION REGISTRY AND A MECHANISM FOR PERSONS DESIRING TO SEND A COMMUNICATION TO VERIFY COMPLIANCE WITH THE CHILD PROTECTION REGISTRY ACT; PROVIDING CIVIL AND CRIMINAL PENALTIES; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Child Protection Registry Act".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. The attorney general shall establish a mechanism
by which a person desiring to send a communication can verify
whether a contact point is registered in the child protection
registry in order to ensure compliance with the Child
Protection Registry Act. The attorney general shall charge a
fee not to exceed three cents ($0.03) per contact point checked
against the registry.

B. A person desiring to send a communication
described in Subsection A of Section 7 of the Child Protection
Registry Act shall verify that the intended contact points are
not registered in the child protection registry.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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 signed statement indicating that
the adult consents to receive the communication; and

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

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

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

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

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

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

(2) the attorney general.

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

(1) actual damages; or

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

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

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

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

SECTION 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2016.