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SENATE BILL 444
53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY
Cisco McSorley

AN ACT

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

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 10 of 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.--

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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.

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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 (\$.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

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1 not registered in the child protection registry.

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

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

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

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

19
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 this section solely by
25 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 communication is not a
3 defense to violation of this section.

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

6
7 (1) uses information obtained from the child
8 protection registry to violate the Child Protection Registry Act;

9
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 communication.

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

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

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

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1 sending the communication, the person shall:

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

4
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 this section shall
10 contain information that describes how the adult may opt out of receiving future
11 communications.

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

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

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

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

20
21 (2) the attorney general.

22 B. A person bringing an action pursuant to Paragraph (1) of
23 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 two hundred fifty thousand
 2 dollars (\$250,000) per day that the violation occurs.

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 4 C. In an action brought by the attorney general pursuant to Paragraph (2)
 5 of Subsection A of this section, the attorney general may recover a civil penalty not to
 6 exceed ten thousand dollars (\$10,000) per communication transmitted to a contact point in
 7 violation of the Child Protection Registry Act or five hundred thousand dollars (\$500,000)
 8 per day that the violation occurs, whichever is less.
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 11 D. In each action brought pursuant to this section, the prevailing party
 12 may be awarded costs and reasonable attorney fees.
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14 **SECTION 10. [NEW MATERIAL] DEFENSE.**--It shall be a defense to an action
 15 brought pursuant to the Child Protection Registry Act that a person reasonably relied on
 16 the mechanism for verification of compliance established pursuant to Section 6 of the
 17 Child Protection Registry Act.
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19 **SECTION 11. [NEW MATERIAL] SHORT TITLE.**--Sections 11 through 21
 20 of this act may be cited as the "Do Not Contact Registry Act".
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22 **SECTION 12. [NEW MATERIAL] PURPOSE.**--The purpose of the Do Not
 23 Contact Registry Act is to provide a mechanism for persons to prevent solicitations and
 24 unsolicited advertisements that are sent to their email addresses, instant messaging

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1 applications or other electronic or digital contact points. **SECTION 13.** [NEW

2 MATERIAL] DEFINITIONS.--As used in the

3 Do Not Contact Registry Act:

4 A. "contact point" means any electronic identification to which a
5 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 Not Contact Registry Act;

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

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17 (1) to a person with that person's prior express invitation
18 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 advertising the

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

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

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A. The attorney general shall establish and operate a do not contact 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.

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B. A person desiring to avoid a solicitation or an unsolicited advertisement may register that person's contact point in the do not contact 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.

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

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

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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 state treasury. The fund
4 consists of appropriations and fees collected pursuant to Section 16 of this 2017 act. Money
5 in the fund shall not revert to any other fund at the end of a fiscal year. The attorney general
6 shall administer the fund, and money in the fund is appropriated to the attorney general to
7 establish, operate and administer the do not contact registry and to enforce and defend the
8 Do Not Contact Registry Act.
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12 **SECTION 16. [NEW MATERIAL] VERIFICATION OF COMPLIANCE BY**
13 **SENDERS--FEES FOR VERIFICATION.--**

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

2 **MATERIAL**] VIOLATION OF ACT.--

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

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9 B. It is a violation of the Do Not Contact Registry

10 Act to:

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

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

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

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

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21 D. A person is guilty of a fourth degree felony and upon conviction shall

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1 contact points from the do not contact registry; or

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

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

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

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

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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 this section shall
20 contain information that describes how the registrant may opt out of receiving future

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

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

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(2) the attorney general.

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

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(1) actual damages; or

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(2) the lesser of five thousand dollars

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

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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 Do Not Contact Registry Act or five hundred thousand dollars (\$500,000) per day that the violation occurs, whichever is less.

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

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

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

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