

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 144

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO THE KEEP IDAHO SAFE ACT; AMENDING TITLE 67, IDAHO CODE, BY THE
2 ADDITION OF A NEW CHAPTER 93, TITLE 67, IDAHO CODE, TO PROVIDE FOR THE
3 KEEP IDAHO SAFE ACT, TO PROVIDE LEGISLATIVE INTENT, TO DEFINE TERMS, TO
4 PROVIDE FOR THE ESTABLISHMENT AND OPERATION OF A REGISTRY, TO PROVIDE
5 FOR PROHIBITED COMMUNICATIONS, TO PROVIDE FOR CONSENT, TO PROVIDE FOR
6 EXCEPTIONS, TO PROVIDE FOR INVESTIGATION OF COMPLAINTS OF VIOLATIONS,
7 TO PROVIDE FOR FEES, TO PROVIDE A CRIMINAL PENALTY, TO PROVIDE FOR CIVIL
8 ACTIONS AND TO PROVIDE FOR DEFENSES.
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Title 67, Idaho Code, be, and the same is hereby amended
12 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
13 ter 93, Title 67, Idaho Code, and to read as follows:

14 CHAPTER 93
15 KEEP IDAHO SAFE ACT

16 67-9301. LEGISLATIVE INTENT. The purpose of this chapter is to:

- 17 (1) Promote awareness of all types of online communications that reach
18 children; and
19 (2) Provide parents with a voluntary tool to protect children from some
20 forms of inappropriate online contact.

21 67-9302. DEFINITIONS. As used in this chapter:

- 22 (1) "Contact point" means an electronic identification to which a com-
23 munication may be sent, including:
24 (a) An e-mail address;
25 (b) An instant message identity;
26 (c) A mobile or other telephone number;
27 (d) A facsimile number; or
28 (e) An electronic address or identifier used by an emerging technology,
29 which may be defined by rule, that is similar to those listed in this
30 subsection.
31 (2) "Division" means the agency or constitutional office responsible
32 for overseeing the registry.
33 (3) "Marketer" means a person soliciting goods or services for commer-
34 cial gain.
35 (4) "Registry" means the "do not contact" registry established in sec-
36 tion 67-9303, Idaho Code.

37 67-9303. ESTABLISHMENT AND OPERATION. (1) The division shall procure
38 services to establish and operate a repository for contact points received

1 pursuant to this chapter. The division shall assess and collect from mar-
2 keters user fees to fund implementation and maintenance.

3 (2) The division shall facilitate promotion of the do not contact reg-
4 istry online; however, the division will not be responsible for additional
5 marketing efforts to promote usage.

6 (3) The division shall appoint a registry manager to serve as the pri-
7 mary point of contact.

8 (4) The division shall establish a mechanism for marketers to verify
9 compliance with the registry.

10 (5) The division may take any other actions necessary to implement the
11 registry, including promulgating rules to establish procedures pursuant to
12 this chapter.

13 (6) A parent or other person may register a contact point with the divi-
14 sion if the contact point belongs to a minor or a minor may have access to the
15 contact point. A school or other organization that serves primarily minors
16 may register one (1) or more contact points, including the internet domain
17 name, with the division.

18 (7) A registration for a contact point shall expire on the third an-
19 niversary of the registration date.

20 (8) A person may revoke a registered contact point at any time upon no-
21 tification to the division. A person may renew a registered contact point
22 within thirty (30) days of its expiration upon notification to the division.

23 (9) Registering a contact point shall be at no cost to the registrant.

24 (10) To ensure security, an independent third party shall audit the reg-
25 istry annually.

26 (11) The contents of the registry and any complaint filed about a mar-
27 keter who violates the provisions of this chapter are confidential and ex-
28 empt from disclosure under section 74-106, Idaho Code.

29 (12) The registry shall be operational no later than July 1, 2018.

30 67-9304. PROHIBITED COMMUNICATIONS -- CONSENT -- EXCEPTIONS. (1) A
31 person may not send, cause to be sent or conspire with a third party to send a
32 communication to a contact point or domain that has been registered for more
33 than thirty (30) calendar days if the primary purpose of the communication
34 is to, directly or indirectly, advertise a product or service that a minor is
35 prohibited by law from purchasing, possessing, viewing, participating in or
36 otherwise receiving. Prohibited communications include those that contain
37 or have the primary purpose of promoting obscene material that is harmful to
38 minors, as defined in section 18-1514, Idaho Code.

39 (2) Consent of a minor is not a defense to a violation of this section.

40 (3) A communication described in subsection (1) of this section is not
41 prohibited if, before sending the communication, the marketer receives an
42 affirmative statement of consent from an age-verified adult who controls the
43 contact point. Any person who proposes to send a communication under this
44 subsection shall:

45 (a) Verify the age of the adult who controls the contact point by in-
46 specting the adult's government-issued identification card, with a
47 photo and proof of age, in a face-to-face transaction;

48 (b) Obtain a written record indicating the adult's consent that is
49 signed by the adult;

1 (c) Notify the adult that she may rescind her consent or opt out of re-
2 ceiving future communications at any time; and

3 (d) Notify the division that the person intends to send communications
4 under this subsection.

5 (4) A communication described in subsection (1) of this section is not
6 prohibited if the marketer is a restaurant with a primary purpose of selling
7 food and receives an affirmative statement of consent from an age-verified
8 adult who controls the contact point.

9 (5) A person does not violate this chapter because the person is an
10 intermediary between the marketer and recipient in the transmission of
11 an electronic message that violates this chapter or unknowingly provides
12 transmission of electronic messages over the person's computer network or
13 facilities that violate this chapter.

14 (6) The division shall investigate complaints of violations of this
15 section. If the division has reason to believe a person has violated this
16 section, the division may require that person to produce evidence to show
17 that the person complied with this chapter.

18 67-9305. FEES. (1) Before sending a communication prohibited by this
19 chapter, a marketer shall use the prescribed mechanism to remove all regis-
20 tered contact points and domains in compliance with this chapter and pay the
21 prescribed fee.

22 (2) Fees collected under this chapter shall be expended for establish-
23 ment and operation of the registry. Fees may also be expended for investiga-
24 tion, enforcement and defense of this chapter. Excess fees collected shall
25 be expended, as determined by the division, to further the intent of this
26 chapter.

27 (3) The division shall set the fee required under this subsection. The
28 fee shall not exceed two cents (2¢) and should reflect as closely as possible
29 actual registry costs.

30 67-9306. CRIMINAL PENALTY. (1) A person who violates section 67-9304,
31 Idaho Code, is guilty of a misdemeanor. Each communication sent in violation
32 of section 67-9304, Idaho Code, is a separate offense under this section.

33 (2) A person who unlawfully obtains, uses or transfers contact points
34 or other personal information from the registry commits a computer crime un-
35 der section 18-2202, Idaho Code.

36 (3) A criminal conviction or penalty under this section does not re-
37 lieve a person from civil liability.

38 67-9307. CIVIL ACTION. (1) A registrant or other authorized individ-
39 ual may bring a civil action on behalf of a minor who has received a communi-
40 cation in violation of this chapter.

41 (2) A person may recover the greater of:

42 (a) Actual damages, including reasonable attorney's fees; or

43 (b) Five thousand dollars (\$5,000) for each communication sent in vio-
44 lation of this chapter.

45 (3) The prevailing party shall be awarded costs and reasonable attor-
46 ney's fees.

1 67-9308. DEFENSES. (1) It is a defense to an action brought under this
2 chapter that a person reasonably relied on the registry and took reasonable
3 measures to comply with the provisions of this chapter.

4 (2) An internet service provider, wireless provider or other provider
5 that facilitates communication with a contact point does not violate this
6 section for solely transmitting a communication across its network.