



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 773 (as passed by the Senate)
Sponsor: Senator Buzz Thomas
Committee: Judiciary

Date Completed: 6-14-04

RATIONALE

Under the Michigan Penal Code, knowingly possessing child sexually abusive material is a felony punishable by up to four years' imprisonment, a maximum fine of \$10,000, or both. The prohibition and penalty do not apply to certain people, including a commercial film or photographic print processor who reports a violation. In addition, the identity of a film or photograph processor reporting a violation must remain confidential, and the processor is immune from civil liability for good faith actions taken in reporting the violation. Since many images now are available via computer, and the Internet has become a forum for viewing pornography, it has been suggested that computer technicians who report pornography involving children should be afforded the same protections granted to film or photograph processors.

CONTENT

The bill would amend the Michigan Penal Code to do all of the following:

- **Exclude a computer technician who reported a violation from the prohibition against and penalties for knowingly possessing child sexually abusive material.**
- **Require that the identity of a computer technician who reported a violation be kept confidential.**
- **Provide that a computer technician who acted in good faith would be immune from civil liability for actions taken in reporting a violation.**

"Computer technician" would mean a person who installs, maintains, troubleshoots, upgrades, or repairs

computer hardware, software, personal computer networks, or peripheral equipment.

If a computer technician did any of the following within the scope of his or her professional capacity or employment, the technician's identity would have to remain confidential, subject to disclosure only by judicial process or with his or her consent, and the technician would be immune from civil liability for taking that action:

- Reported to the local prosecuting attorney his or her knowledge or observation of an electronic visual image, computer-generated image, or picture or sound recording depicting a person whom the technician had reason to know or believe was a child engaged in a "listed sexual act" as defined in the Code.
- Furnished a copy of the image, picture, or sound recording to the prosecuting attorney.
- Kept the image, picture, or sound recording, according to the prosecuting attorney's instructions.

MCL 750.145c

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

A film or photograph processor will not be prosecuted for possessing child sexually abusive material if he or she reports another person's violation of Michigan's child pornography laws, furnishes a copy of the

film, photograph, video, or slide to the prosecuting attorney, or keeps it as instructed by the prosecutor. These days, when visual images are widely available via computer, there is a good possibility that a computer technician might discover child pornography while working on a computer or computer network, just as a film processor might happen upon a violation while developing photographs. By offering computer technicians the same exception from prosecution and the same confidentiality and civil immunity protections that apply to film processors, the bill could encourage computer technicians to report child pornography that they discover in the course of repairing or maintaining a computer user's hardware, software, or Internet service. This, in turn, could lead to the identification and prosecution of violators, and the protection of children.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have little, if any, fiscal impact on State and local government. To the extent that it would decrease the number of offenders prosecuted and convicted for possessing child sexually abusive material by exempting computer technicians under certain circumstances, the bill could potentially decrease court and corrections costs.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.