



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1025 (as introduced 2-26-04)
Sponsor: Senator Michael D. Bishop
Committee: Technology and Energy

Date Completed: 5-5-04

CONTENT

The bill would create the "Michigan Children's Protection Registry Act" to do the following:

- Require the Department of Labor and Economic Growth (DLEG) to establish and operate a "Child Protection Registry" on which a person or school could register contact points (e.g., e-mail addresses) belonging to a minor or to which a minor could have access.**
- Prohibit a person from sending to a registered contact point a communication that advertised a product or service that a minor is prohibited by law from purchasing, or that contained material that is harmful to minors.**
- Require a person who wanted to send such a communication to pay a fee set by the DLEG to verify compliance with the Registry.**
- Prohibit the release of information contained on the Registry.**
- Prescribe criminal penalties for violating the proposed Act; and allow a recipient, a person through whose facilities the illegal communications were transmitted, or the Attorney General to bring a civil action against a violator.**
- Provide that the Registry's operation would be funded completely from the fees, fines, and civil penalties collected by the DLEG under the proposed Act.**

The bill would define "contact point" as any electronic identification to which messages could be sent, including an electronic mail (e-mail) address, an instant message identity, a telephone number, a facsimile number, or other electronic addresses subject to rules promulgated under the proposed Act by the DLEG.

The bill is described below in further detail.

Child Protection Registry

The bill would require the DLEG to establish and operate, or contract with a third party to establish and operate, the Child Protection Registry. A person with control of a contact point belonging to a minor, or to which a minor could have access, could register that contact point with the DLEG. Schools and other institutions or entities primarily serving minors also could register, and make one registration for all of their contact points.

The Registry would have to be fully operational by January 1, 2005, or 90 days from the bill's effective date, whichever was later. The Registry would not be subject to the Freedom of Information Act.

A person could not send, cause to be sent, or conspire with a third party to send a communication to a contact point that had been registered for more than 30 calendar days

if the communication advertised a product or service that a minor is prohibited by law from purchasing; or contained or advertised material that is harmful to minors as defined by the rules promulgated under the proposed Act. A sender would have to establish procedures to ensure that no communication was sent to a registered contact point. The consent of a minor or third party to receive the communication would not be a defense to a violation.

A person who desired to send such a communication would have to use a mechanism as required by the DLEG to verify compliance with the Registry and remove registered contact points for any communications. The sender would have to pay the DLEG a fee for access to the verification mechanism. The DLEG would have to set the fee based on the number of contact points the person checked. The mechanism and fee would have to be established by the rules promulgated under the proposed Act.

The bill specifies that the Registry's operation would be funded completely from the fees, fines, and civil penalties collected by the DLEG under the proposed Act. If the amount of funds collected for a fiscal year exceeded the registry's administration costs, the excess amount would have to be deposited into the General Fund.

Registry Information

A person could not release to another person information concerning people or provide access to addresses contained on the Registry, except as provided by the proposed Act, and could not sell or use the Registry for any reason other than to meet the Act's requirements. A person could not access or attempt to access the Registry except as provided by the Act.

Penalties & Damages

A person who violated the proposed Act would be guilty of a misdemeanor punishable by one of the following:

- For the first violation, imprisonment for up to six months and/or a maximum fine of \$5,000.
- For the second violation, imprisonment for up to one year and/or a maximum fine of \$10,000.
- For the third and any subsequent violation, imprisonment for up to two years and/or a maximum fine of \$25,000.

Additionally, all money and other income, including all proceeds earned but not yet received by a defendant from a third party as a result of the defendant's violations, and all computer equipment, all computer software, and all personal property known by the owner to have been used in a violation would be subject to lawful seizure by a law enforcement officer and forfeiture by the State.

A civil action could be brought by a person who received a communication in violation of the Act, a person through whose facilities the communications were transmitted, or the Attorney General. In each action, a recipient or the Attorney General could recover either actual damages or the lesser of the following: \$5,000 per communication received by a recipient or transmitted through the e-mail service provider, or \$250,000 for each day that the violation occurred.

The bill specifies that a person would not violate the Act solely by being an intermediary between the sender and recipient in the transmission of communication that violated the Act. It would be a defense to either an action that the communication was transmitted accidentally. The burden of proving that the communication was sent accidentally would be on the sender.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the State and local government. There are no data available to indicate how many offenders would be convicted of violating the proposed Act. Department of Attorney General enforcement costs would depend on the number of violations. Local units of government incur the costs of misdemeanor probation and incarceration in a local facility, both of which vary by county. Public libraries would benefit from any additional revenue raised from the proposed penal fines.

Administrative costs incurred by the Department of Labor and Economic Growth are indeterminate and would depend on the cost of operating the Registry. The revenue generated from the fees, fines, and civil penalties proposed by the bill would be used to cover these costs.

Fiscal Analyst: Bill Bowerman
Maria Tyszkiewicz
Bethany Wicksall

S0304\sb1025sa

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.