

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1025

A bill to establish the computer crime of sending certain electronic messages to minors; to create a child protection registry; to provide notice of contact points to which a minor has access; to prescribe the powers and duties of certain state agencies and officials; to create a fund and provide for fees; and to provide for penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan children's protection registry act".

3 Sec. 2. As used in this act:

4 (a) "Contact point" means any electronic identification to
5 which messages can be sent, including any of the following:

6 (i) An instant message identity.

7 (ii) A wireless telephone, a personal digital assistant, a
8 pager number, or any other similar wireless communication

1 device.

2 (iii) A facsimile number.

3 (iv) An electronic mail address.

4 (v) Other electronic addresses subject to rules promulgated
5 under this act by the department.

6 (b) "Department" means the department of labor and economic
7 growth.

8 (c) "Internet domain name" means a globally unique,
9 hierarchical reference to an internet host or service, assigned
10 through centralized internet authorities, comprising a series of
11 character strings separated by periods, with the right-most
12 string specifying the top of the hierarchy.

13 (d) "Minor" means an individual under the age of 18 years.

14 (e) "Person" means an individual, corporation, association,
15 partnership, or any other legal entity.

16 (f) "Registry" means the child protection registry created
17 under section 3.

18 Sec. 3. (1) The department shall establish and operate, or
19 contract with a qualified third party to establish and operate,
20 the child protection registry. The department or a third party
21 administrator shall establish procedures, to the extent possible,
22 to prevent the use or disclosure of protected contact points as
23 required under section 6. If the department elects to contract
24 with a third party, the department shall give due consideration
25 to any person located in this state.

26 (2) A parent, guardian, individual, or an entity under
27 subsection (4) who is responsible for a contact point to which a

1 minor may have access may register that contact point with the
2 department under rules promulgated by the department under the
3 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
4 24.328. The department shall establish procedures to ensure that
5 a registrant meets the requirements of this subsection.

6 (3) A registration under this section shall be for not more
7 than 3 years. If the contact point is established for a specific
8 minor, the registration expires the year the minor turns 18 years
9 of age. A registration can be revoked or renewed by the
10 registrant upon notification to the department.

11 (4) Schools and other institutions or entities primarily
12 serving minor children may register 1 or more contact points with
13 the department. An entity under this subsection may make 1
14 registration for all contact points of the entity, and the
15 registration may include the entity's internet domain name under
16 rules promulgated by the department under the administrative
17 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

18 (5) No fee or charge shall be assessed or incurred by a
19 person registering a contact point under this act.

20 (6) The department shall establish a mechanism for senders to
21 verify compliance with the registry.

22 (7) A person desiring to send a message described in section
23 5 shall pay the department a fee for access to the mechanism
24 required under subsection (6). The fee required under this
25 subsection shall be set by the department. The fee shall not
26 exceed .03 cents and shall be based on the number of contact
27 points checked against the registry for each time a contact point

1 is checked. The mechanism to verify compliance under subsection
2 (6) and the fee required under this subsection shall be
3 established under rules promulgated by the department under the
4 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
5 24.328.

6 (8) The fees collected under this act shall be credited to
7 the following:

8 (a) Eighty-five percent of the fees to the fund created under
9 section 4.

10 (b) Not less than 15% of the fees to the attorney general to
11 cover the costs of investigating, enforcing, and defending this
12 act and section 5a of 1979 PA 53, MCL 752.795a. The department
13 may reimburse the attorney general from the fund created under
14 section 4 for any costs incurred under this subdivision that
15 exceed the fees credited under this subdivision.

16 (9) The registry shall be fully operational not later than
17 July 1, 2005.

18 Sec. 4. (1) The children's protection registry fund is
19 created as a separate fund in the state treasury and administered
20 by the department. Money shall be deposited into the fund as
21 required by section 3(8)(a).

22 (2) The department shall expend money from the fund only for
23 the purposes of administering this act and for the investigation,
24 enforcement, and defense of this act and section 5a of 1979 PA
25 53, MCL 752.795a.

26 (3) All money, including interest and earnings, in the fund
27 at the end of the fiscal year shall remain in the fund and not

1 revert to the general fund.

2 Sec. 5. (1) A person shall not send, cause to be sent, or
3 conspire with a third party to send a message to a contact point
4 that has been registered for more than 30 calendar days with the
5 department if the primary purpose of the message is to, directly
6 or indirectly, advertise or otherwise link to a message that
7 advertises a product or service that a minor is prohibited by law
8 from purchasing, viewing, possessing, participating in, or
9 otherwise receiving.

10 (2) A person desiring to send a message described in
11 subsection (1) shall use the mechanism created under section 3(6)
12 to ensure compliance with this act.

13 (3) The consent of a minor or third party to receive the
14 message is not a defense to a violation of this section.

15 (4) A person does not violate this act because the person is
16 an intermediary between the sender and recipient in the
17 transmission of an electronic message that violates this act or
18 unknowingly provides transmission of electronic messages over the
19 person's computer network or facilities that violate this act.

20 (5) The sending of a message described in subsection (1) is
21 prohibited only if it is otherwise a crime for the minor to
22 purchase, view, possess, participate in, or otherwise receive the
23 product or service.

24 Sec. 6. (1) A person shall not release to another person
25 information concerning persons or provide access to contact
26 points or other information contained on the registry except as
27 provided by this act.

1 (2) A person shall not sell or use the registry for any
2 reason other than to meet the requirements of this act.

3 (3) A person shall not access or attempt to access the
4 registry except as provided by this act.

5 (4) The registry created under this act is not subject to the
6 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

7 Sec. 7. A violation of this act is a computer crime and a
8 violation of section 5a of 1979 PA 53, MCL 752.795a, subject to
9 the penalties provided for under sections 6a and 6b of 1979 PA
10 53, MCL 752.796a and 752.796b.

11 Sec. 8. (1) A civil action based on the computer crime
12 established under this act may be brought by an authorized
13 individual or the registrant of the contact point on behalf of a
14 minor who has received a message in violation of this act.

15 (2) A civil action based on the computer crime established
16 under this act may be brought by a person through whose
17 facilities the message was transmitted in violation of this act.

18 (3) A civil action based on the computer crime established
19 under this act may be brought by the attorney general against a
20 person who has violated this act.

21 (4) In each action brought under this section, the prevailing
22 party may be awarded reasonable attorney fees if the action is
23 found by the court to be frivolous.

24 (5) A person bringing an action under this section may
25 recover 1 of the following:

26 (a) Actual damages, including reasonable attorney fees.

27 (b) In lieu of actual damages, recover the lesser of the

1 following:

2 (i) \$5,000.00 per each message received by a recipient or
3 transmitted.

4 (ii) \$250,000.00 for each day that the violation occurs.

5 (6) If the attorney general has reason to believe that a
6 person has violated this act, the attorney general may
7 investigate the business transactions of that person. The
8 attorney general may require that person to appear, at a
9 reasonable time and place, to give information under oath and to
10 produce such documents and evidence necessary to determine
11 whether the person is in compliance with the requirements of this
12 act.

13 (7) Any civil penalties collected by the attorney general
14 under this section shall be credited to the attorney general for
15 the costs of investigating, enforcing, and defending this act and
16 section 5a of 1979 PA 53, MCL 752.795a.

17 (8) This section takes effect July 1, 2005.

18 Enacting section 1. This act does not take effect unless
19 House Bill No. 5979 of the 92nd Legislature is enacted into law.