

SENATE BILL No. 1025

February 26, 2004, Introduced by Senators BISHOP, BIRKHOLZ, CASSIS, PATTERSON, GARCIA, SIKKEMA, KUIPERS, McMANUS, GILBERT, ALLEN, VAN WOERKOM, BROWN, GOSCHKA, HAMMERSTROM, JELINEK, HARDIMAN, GEORGE, JACOBS, BRATER, BASHAM and OLSHOVE and referred to the Committee on Technology and Energy.

A bill to create a child protection registry; to prohibit the sending of certain communications to registered contact points; to proscribe the powers and duties of certain state agencies and officials; 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, but not limited to, any of
6 the following:

7 (i) An electronic mail address.

8 (ii) An instant message identity.

9 (iii) A telephone number.

(iv) A facsimile number.

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

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

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

(d) "Property" means any of the following:

(i) Real property.

(ii) Computers, computer networks, and computer services.

(iii) Financial instruments, computer data, computer programs, computer software, and all other personal property regardless of whether it is tangible or intangible.

(e) "Registry" means the child protection registry created under section 3.

Sec. 3. (1) The department shall establish and operate, or contract with a third party to establish and operate, the child protection registry.

(2) A person with control of a contact point belonging to a minor, or to which a minor may have access, may register that contact point with the department under rules promulgated by the department under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(3) Schools and other institutions or entities primarily

1 serving minor children may register their contact point with the
2 department. An entity under this subsection may make 1
3 registration for all contact points of the entity.

4 (4) A person desiring to send a communication described in
5 section 4 to a contact point shall use a mechanism as required by
6 the department to verify compliance with the registry and remove
7 registered contact points for any communications.

8 (5) A person desiring to send a communication covered by this
9 act shall pay the department a fee for access to the mechanism
10 required under subsection (4). The fee required under this
11 subsection shall be set by the department based on the number of
12 contact points checked by the person. The mechanism to verify
13 compliance under subsection (4) and the fee required under this
14 subsection shall be established by the rules promulgated under
15 this act.

16 (6) The operation of the registry shall be funded completely
17 from the fees, fines, and civil penalties collected by the
18 department as allowed under this act. If the amount of funds
19 collected under this act for a fiscal year exceeds the cost of
20 administering the registry, the excess amount shall be deposited
21 into the general fund.

22 (7) The registry shall be fully operational no later than
23 January 1, 2005 or 90 days from the effective date of this act,
24 whichever is later.

25 Sec. 4. (1) A person shall not send, cause to be sent, or
26 conspire with a third party to send a communication to a contact
27 point that has been registered for more than 30 calendar days

1 with the department if the communication does either of the
2 following:

3 (a) Advertises a product or service that a minor is
4 prohibited by law from purchasing.

5 (b) Contains or advertises material that is harmful to minors
6 as defined by the rules promulgated under this act.

7 (2) The consent of a minor or third party to receive the
8 communication is not a defense to a violation of this section.

9 (3) A sender of a communication under this section shall
10 establish procedures to ensure that no communication is sent to a
11 contact point on the registry created under section 3.

12 Sec. 5. (1) A person shall not release to another person
13 information concerning persons or provide access to addresses
14 contained on the registry except as provided by this act.

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

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

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

21 Sec. 6. (1) A person who violates this act is guilty of a
22 misdemeanor punishable by 1 of the following:

23 (a) For the first violation, by imprisonment for not more
24 than 6 months or a fine of not more than \$5,000.00, or both.

25 (b) For the second violation, by imprisonment for not more
26 than 1 year or a fine of not more than \$10,000.00, or both.

27 (c) For the third and any subsequent violation, by

1 imprisonment for not more than 2 years or a fine of not more than
2 \$25,000.00, or both.

3 (2) A person does not violate this act solely by being an
4 intermediary between the sender and recipient in the transmission
5 of communication that violates this act.

6 (3) It is a defense to an action brought under this section
7 or section 6 that the communication was transmitted
8 accidentally. The burden of proving that the communication was
9 transmitted accidentally is on the sender.

10 (4) All money and other income, including all proceeds earned
11 but not yet received by a defendant from a third party as a
12 result of the defendant's violations of this act, and all
13 computer equipment, all computer software, and all personal
14 property used in connection with any violation of this act known
15 by the owner to have been used in violation of this act are
16 subject to lawful seizure by a law enforcement officer and
17 forfeiture by this state.

18 Sec. 7. (1) A civil action may be brought by a person who
19 received a communication in violation of this act.

20 (2) A civil action may be brought by a person through whose
21 facilities the communications were transmitted in violation of
22 this act.

23 (3) A civil action may be brought by the attorney general
24 against a person who has violated this act.

25 (4) In each action brought under this section, a recipient or
26 the attorney general may recover 1 of the following:

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

1 (b) In lieu of actual damages, recover the lesser of the
2 following:

3 (i) \$5,000.00 per each communication received by a recipient
4 or transmitted through the e-mail service provider.

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