



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 785 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Michael D. Bishop
Committee: Technology and Energy

Date Completed: 10-17-05

RATIONALE

The Michigan Children's Protection Registry Act, enacted in 2004, requires the Department of Labor and Economic Growth (DLEG) to establish and operate the Child Protection Registry. Under the Act, a parent, guardian, or entity who is responsible for a contact point (e.g., an e-mail address) to which a minor has access may register that contact point with DLEG. Schools or other institutions or entities primarily serving minors also may register contact points.

The Act prohibits a person from sending, causing to be sent, or conspiring with a third party to send a message to a contact point that has been registered for more than 30 calendar days if the message's primary purpose is, directly or indirectly, to advertise or otherwise link to a product or service that a minor is prohibited by law from purchasing, viewing, possessing, participating in, or otherwise receiving. A person who desires to send such a message must use a mechanism established by DLEG to verify compliance with the Registry, and pay DLEG a fee for access to the mechanism. A person who violates the Act is subject to criminal and civil liability (described in **BACKGROUND**).

Since the legislation creating the Registry was enacted, some companies that refrain from sending minors messages advertising products that they may not purchase have expressed concern that the Act's verification requirements pose a burden that unduly hampers the companies' ability to do business. Some people believe that e-mail marketers who verify that message recipients are of legal age to purchase the advertised products should be exempt from

the penalties for failing to verify compliance with the Registry.

In an unrelated matter, the Department must set the fee for access to verify compliance with the Registry. The fee must be based on the number of contact points checked against the Registry for each time a contact point is checked. Eighty-five percent of the fees must be credited to the Children's Protection Registry Fund, and at least 15% must be credited to the Attorney General, for the administration, investigation, enforcement, and defense costs of the Act.

Under the Act, the maximum fee DLEG may charge is ".03 cents". Evidently, this amount, rather than "3 cents", was inadvertently enacted. It has been suggested that the maximum fee stated in the Act be increased to three cents.

CONTENT

The bill would amend the Michigan Children's Protection Registry Act to allow a person to send an e-mail message prohibited under the Act if the person obtained prior consent to receive the message from an age-verified adult; and increase from 0.03 cent to three cents the maximum amount of the fee stated in the Act for verifying compliance with the Child Protection Registry.

Under the bill, the sending of a message described in the Act would not be prohibited if, before sending it, the sender had obtained from an age-verified adult an affirmative statement of consent to receive the message at an adult-designated e-mail

address. To comply with this provision, the sender would have to do all of the following:

- Verify that the person making the affirmative statement was of legal age by inspecting in a face-to-face transaction a valid government-issued photo identification with proof of age.
- Obtain a written record stating that the recipient had consented to receive the type of messages described in the Act, which the recipient would have to sign and the sender would have to maintain and make available for verification by DLEG.
- Include in all messages allowed under the bill notice to the recipient that he or she could rescind his or her consent, and provide an opportunity for the recipient to opt out of receiving any future messages.
- Notify DLEG that the sender intended to send messages as allowed under the bill.

The Department could implement procedures to verify that the sender was in compliance with the bill's requirements.

The bill also specifies that the intent of the Act "is to provide safeguards to prevent certain messages regarding tobacco, alcohol, pornography, gambling, and other illegal products from reaching the minor children of this state".

MCL 752.1061 et al.

BACKGROUND

A violation of the Michigan Children's Protection Registry Act is a computer crime and a violation of Section 5a of Public Act 53 of 1979 subject to the penalties under that Act. (Public Act 53 prohibits fraudulent access to computers, computer systems, and computer networks. Section 5a states that a violation of the Children's Protection Registry Act is a violation of Public Act 53.) 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, computer software, and all personal property known by the owner to have been used in a violation, are subject to lawful seizure and forfeiture in the same manner as provided under the Revised Judicature Act.

A civil action may be brought by an authorized individual or registrant on behalf of a minor who received a message in violation of the Children's Protection Registry Act, a person through whose facilities the message was transmitted, or the Attorney General. In each action, the prevailing party may be awarded reasonable attorney fees, if the court finds the action to be frivolous. A person bringing an action may recover either actual damages, including reasonable attorney fees, or the lesser of the following: \$5,000 per communication received by a recipient or transmitted, or \$250,000 for each day that the violation occurs.

If the Attorney General has reason to believe that a person has violated the Act, the Attorney General may investigate that person's business transactions.

Any civil penalties collected by the Attorney General must be credited to the Attorney General for the costs of investigating, enforcing, and defending the Act and Section 5a of Public Act 53 of 1979.

The penalties for a violation of Section 5a are shown in Table 1.

Table 1

Violation	Type	Maximum Imprisonment	Maximum Fine
First	Misdemeanor	1 year	\$10,000
Second	Felony	2 years	\$20,000
Third or Subsequent	Felony	3 years	\$30,000

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

The Act currently makes no distinction between legitimate companies that take steps to ensure that recipients legally may purchase their advertised products and unscrupulous marketers who knowingly target young people. Under the bill, parents still could rely on the Registry to protect their children from receiving potentially

harmful e-mails, while responsible companies could continue to market their products without being penalized.

Supporting Argument

The maximum fee was erroneously set at 0.03 cent in the legislation creating the Child Protection Registry, and should be changed to three cents.

Opposing Argument

The proposed age verification method could place an undue compliance burden on businesses. For example, the bill would require a marketer to examine a recipient's photo identification in a face-to-face transaction. Many companies, however, never have face-to-face contact with recipients of their advertising, and use other methods to make sure that their messages reach people of legal age. Some companies, for instance, send messages only to people who opt to receive them and provide a date of birth, which is then confirmed by a third party. Rather than mandating a single verification method, the bill should include protections for all marketers who take action to ensure that their messages reach only the appropriate audience.

Furthermore, the bill does not differentiate between e-mail containing advertising for products that may be purchased by people who are 18 or older, and e-mail advertising products that may be purchased by those who are at least 21, the legal drinking age.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The Department of Labor and Economic Growth could have additional responsibilities due to the verification procedures proposed in the bill, but could likely meet these costs with existing resources. The bill would clarify the intended fee for checking against the Registry.

To the extent that the exemptions outlined in the bill resulted in fewer convictions, the bill could result in some cost savings for State and local criminal justice systems.

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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.