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BILL ANALYSIS

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Senate Bill 785 (as enrolled)
Sponsor: Senator Michael D. Bishop
Senate Committee: Technology and Energy
House Committee: Energy and Technology

PUBLIC ACT 298 of 2005

Date Completed: 3-8-06

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 expressed concern that the Act's verification requirements posed a burden that unduly hampered the companies' ability to do business. It was suggested 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.

CONTENT

The bill amended the Michigan Children's Protection Registry Act to allow a person to send an e-mail message prohibited under the Act if the person obtains prior consent to receive the message from an age-verified adult; and require annual audits of the Registry's security by a third party.

The bill took effect on December 21, 2005.

Under the bill, the sending of a message described in the Act is not be prohibited if, before sending it, the sender has 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 must do all of the following:

- Verify that the person making the affirmative statement is 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 has consented to receive the type of messages described in the Act, which the recipient must sign and the sender must maintain and make available for verification by DLEG.
- Include in all messages allowed under the bill notice to the recipient that he or she may 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 intends to send messages as allowed under the bill.

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

Within 90 days after the bill's effective date, DLEG or the vendor providing Registry services for the Department must conduct a third-party audit to certify the Registry's security. Follow-up audits must be conducted at least annually. If the audit determines that the Registry does not meet or exceed the industry standard for high security systems, the Registry must be suspended until the security systems are determined to meet the standard.

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 & 752.1065

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 previously made 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 can rely on the Registry to protect their children from receiving potentially harmful e-mails, while responsible companies may continue to market their products without being penalized.

Opposing Argument

The age verification method might place an undue compliance burden on businesses.

For example, the bill requires 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 law 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 may have additional responsibilities due to the verification procedures in the bill, but likely will be able to meet these costs with existing resources. The audit requirement in the bill will increase costs to the Department by an unknown amount.

To the extent that the exemptions outlined in the bill result in fewer convictions, the bill may 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.