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BILL ANALYSIS

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Senate Bill 785 (as introduced 9-29-05)
Sponsor: Senator Michael D. Bishop
Committee: Technology and Energy

Date Completed: 10-5-05

CONTENT

The bill would amend the Michigan Children's Protection Registry Act to require a person who desired to send an e-mail message prohibited under the Act to obtain 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.

The Act requires the Department of Labor and Economic Growth (DLEG) to establish and operate the Child Protection Registry. 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. A person who violates the Act is subject to criminal and civil liability (described in **BACKGROUND**).

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.

Under the bill, the sending of a message described above 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 a designated e-mail address. To comply with this provision, the sender would have to do all of the following:

- Verify that the recipient 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 above, 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 Act requires DLEG to set the fee for access to the mechanism for sending a message. The fee must be based on the number of contact points checked against the Registry for each time a contact point is checked. Currently, the Act states that the fee may not exceed 0.03 cent.

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.

The bill would increase the maximum fee from 0.03 cent to three cents.

The bill also specifies that the intent of the Act "is to provide safeguards to prevent certain messages regarding tobacco, alcohol, pornography, and gambling from reaching the 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 |

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.