

**SUBSTITUTE FOR
SENATE BILL NO. 1025**

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; 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 electronic mail address.

7 (ii) An instant message identity.

8 (iii) A telephone number.

9 (iv) A facsimile number.

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

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

5 (c) "Minor" means an individual under the age of 18 years.

6 (d) "Person" means an individual, corporation, association,
7 partnership, or any other legal entity.

8 (e) "Property" means any of the following:

9 (i) Real property.

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

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

14 (f) "Registry" means the child protection registry created
15 under section 3.

16 Sec. 3. (1) The department shall establish and operate, or
17 contract with a third party to establish and operate, the child
18 protection registry. If the department elects to contract with a
19 third party, the department shall give due consideration to any
20 party located in this state.

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

26 (3) Schools and other institutions or entities primarily
27 serving minor children may register their contact point with the

1 department. An entity under this subsection may make 1
2 registration for all contact points of the entity.

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

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

15 (6) The fees, fines, and civil penalties collected under this
16 act shall be credited to the fund created under section 4.

17 (7) The registry shall be fully operational no later than
18 July 1, 2005.

19 Sec. 4. (1) The children's protection registry fund is
20 created as a separate fund in the state treasury and administered
21 by the department. Money shall be deposited into the fund as
22 required by section 3(6).

23 (2) The department shall expend money from the fund only for
24 the purpose of administering the registry as required by this
25 act.

26 (3) If the amount in the fund for a fiscal year exceeds the
27 cost of administering the registry for that year, the excess

1 amount shall revert to the general fund.

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

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

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

14 Sec. 6. (1) A person shall not release to another person
15 information concerning persons or provide access to addresses
16 contained on the registry except as provided by this act.

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

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

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

23 Sec. 7. (1) A person who violates this act is guilty of a
24 misdemeanor punishable by 1 of the following:

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

27 (b) For the second violation, by imprisonment for not more

1 than 1 year or a fine of not more than \$10,000.00, or both.

2 (c) For the third and any subsequent violation, by
3 imprisonment for not more than 1 year or a fine of not more than
4 \$25,000.00, or both.

5 (2) A person does not violate this act because the person is
6 an intermediary between the sender and recipient in the
7 transmission of an electronic message that violates this act or
8 unknowingly provides transmission of unsolicited or commercial
9 electronic messages over the person's computer network or
10 facilities that violate this act.

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

15 (4) All money and other income, including all proceeds earned
16 but not yet received by a defendant from a third party as a
17 result of the defendant's violations of this act, and all
18 computer equipment, all computer software, and all personal
19 property used in connection with any violation of this act known
20 by the owner to have been used in violation of this act are
21 subject to lawful seizure and forfeiture in the same manner as
22 provided under sections 4701 to 4709 of the revised judicature
23 act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

24 Sec. 8. (1) A civil action may be brought by a person who
25 received a communication in violation of this act.

26 (2) A civil action may be brought by a person through whose
27 facilities the communications were transmitted in violation of

1 this act.

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

4 (4) In each action brought under this section, the prevailing
5 party may be awarded reasonable attorney fees and the recipient
6 or the attorney general may recover 1 of the following:

7 (a) Actual damages.

8 (b) In lieu of actual damages, recover the lesser of the
9 following:

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

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