

CHILD PROTECTION REGISTRY FEE

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Senate Bill 708 as passed by the Senate
Sponsor: Sen. Michael D. Bishop
House Committee: Energy and Technology
Senate Committee: Technology and Energy

First Analysis (10-27-05)

BRIEF SUMMARY: The bill would amend the Michigan Children's Protection Registry Act to increase the maximum compliance verification fee contained in the act from 0.03 cents to 3 cents. [This has been described as a technical error.] Generally speaking, the registry allows families to register e-mail addresses of minors (or addresses to which minors have access), and then makes it against the law for anyone to send a message to a registered address if the message advertises a product or service a minor is prohibited from possessing or using. The fee is to be charged when individuals or entities seeking to send messages check with the registry to make sure they are in compliance with the act.

FISCAL IMPACT: The bill would have no fiscal impact on state or local government. The bill makes the verification fee conform to the original intent of the 2004 act. The fee is intended to raise \$250,000 annually to maintain the registry program.

THE APPARENT PROBLEM:

Public Act 241 of 2004 (Senate Bill 1025) created the Michigan Children's Protection Registry Act as a means of preventing minors from being sent messages that advertise, or otherwise link to messages that advertise, a product or service that a minor is prohibited by law from purchasing, viewing, possessing, or otherwise receiving. Public Act 242 of 2004 (House Bill 5979) made violations of the registry act violations of Public Act 53 of 1979, which applies to computer crimes, and prescribed penalties.

Under the act, the Department of Labor and Economic Growth (DLEG) is required to operate a Child Protection Registry where a person can register contact points (that is, e-mail addresses) belonging to a minor or to which a minor has access. An individual or entity would then be prohibited from sending a message to a contact point that had been registered for more than 30 calendar days if the message involved advertising a product or service that a minor is prohibited by law from purchasing, viewing, possessing, participating in, or otherwise receiving. An individual or entity that wants to send such a message can check with the registry to see if the message can be sent. A verification fee was established, with the maximum fee set at **".03 cents."** The act says, "this fee shall be based on the number of contact points checked against the registry for each time a contact point is checked." From the fees collected, 85 percent of the revenue is to go the new Children's Protection Registry Fund and 15 percent to the attorney general for investigation and enforcement.

The fee amount contained in the new act, according to supporters of the legislation, was supposed to be set at 3 cents per contact not three one-hundredths of a cent per contact. The contract with the vendor that created and is operating the registry reportedly contains the 3 cent figure. The registry is in operation (see www.michigan.gov/protectmichild), and legislation has been introduced to make sure that the funding will be adequate by establishing the maximum fee at 3 cents per contact.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Children's Protection Registry Act to make the maximum compliance verification fee 3 cents rather than .03 cents (three hundredths of one cent).

MCL 752.1063

HOUSE COMMITTEE ACTION:

The House Committee on Energy and Technology made no amendments to the bill. It remains in the form that it passed the Senate.

ARGUMENTS:

For:

Supporters of the bill say it is merely technical. They say it corrects an error made in the Michigan Children's Protection Registry Act when it was enacted in 2004. The fee that Senate Bill 708 would put into statute is the fee that was understood to be in the act when arrangements were made with a vendor to create and operate the registry. To protect the funding stream for the registry, the act needs to be corrected.

Against:

The act itself is controversial (even if this bill is technical in nature). Opponents argue against Senate Bill 708 on the grounds that it does not correct what is a flawed underlying act. In brief, opponents of the state registry say:

** While well intentioned, the registry act could cause more harm than good. It creates a list of children's email addresses that cannot be protected. One critic has called the registry "the 'Fort Knox' list of e-mail addresses for a criminal spammer, pornographer, or pedophile."

** A representative of marketers has said, "Only legitimate marketers, who want to play by the rules and respect the wishes of consumers, will be subject to the state registry. Therefore, the registry would not be enforceable against the true bad actors and would not reduce the amount of inappropriate spam that reaches children in the state."

** Some critics say the current law is overbroad: it applies not only to pornography but also to many legitimate and legal products that nevertheless cannot be sold to a minor.

An e-mail message containing a link to a webpage that contains an advertisement for the state lottery, beer, or tobacco might be covered. This is said to be troublesome because it makes companies targets for lawsuits, and large, legitimate businesses are more inviting targets than the bad actors the law is supposed to target.

** The Miller Brewing Company has said that the act "does not anticipate the variety of ways responsible marketers are able to ensure that only an adult audience is appropriately receiving its marketing e-mails." Miller says it only sends e-mail messages to consumers who register for them and who provide a date of birth, which is then confirmed through a third-part provider. The act needs to be amended to provide "safe harbor" language protecting marketers using other satisfactory kinds of protections.

** The underlying act is vulnerable to lawsuits on First Amendment and interstate commerce grounds.

Response:

The registry act will in fact provide protection to the state's children. The advantages of having such a registry law in place include giving the state the means to detect individuals and entities sending harmful messages to children, the jurisdiction to go after the "bad guys," and the financing required for effective enforcement. The legislature debated this issue last session, has evaluated the pros and cons, and the registry has been put in place. It is already possible to register e-mail addresses through Protect Mi Child at www.michigan.gov/protectmichild. Michigan, along with Utah, is a leader in this revolutionary effort. The registry act makes it clear that there are certain addresses that certain kinds of e-mail messages cannot be sent to. The technology exists to make this system work and to protect the lists of registered e-mail addresses.

POSITIONS:

The Michigan Public Service Commission indicated support for the bill. (10-26-05)

Unspam Registry Services, Inc., testified in support of the bill. (10-26-05)

A representative from Microsoft testified in opposition to the bill. (10-26-05)

A representative from the Email Service Provider Coalition (and Skylist, Inc.) testified in opposition to the bill. (10-25-05)

Among those indicating opposition to the House Committee on Energy and Technology were the Miller Brewing Co.; the American Association of Advertising Agencies; the Association of National Advertisers; the Michigan Advertising Industry Alliance; the Ad Club of West Michigan; the Flint Area Advertising Federation; and the Lansing Advertising Club. (10-25-05)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.