MICHIGAN CHILDREN'S PROTECTION REGISTRY ACT

Act 241 of 2004

AN ACT to establish the computer crime of sending certain electronic messages to minors; to create a child protection registry; to provide notice of contact points to which a minor has access; to prescribe 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.

History: 2004, Act 241, Imd. Eff. July 21, 2004

The People of the State of Michigan enact:

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752.1061 Short title; legislative intent.

Sec. 1.

(1) This act shall be known and may be cited as the "Michigan children's protection registry act".

(2) The intent of this act is to provide safeguards to prevent certain messages regarding tobacco, alcohol, pornography, gambling, illegal drugs, and other illegal products from reaching the minor children of this state.

History: 2004, Act 241, Imd. Eff. July 21, 2004 ;-- Am. 2005, Act 298, Imd. Eff. Dec. 21, 2005
Compiler's Notes: For transfer of child protection registry from department of licensing and regulatory affairs to Michigan department of state, see E.R.O. No. 2014-1, compiled at MCL 752.1091.

752.1062 Definitions.

Sec. 2.

As used in this act:

(a) "Contact point" means any electronic identification to which messages can be sent, including any of the following:

(i) An instant message identity.

(ii) A wireless telephone, a personal digital assistant, a pager number, or any other similar wireless communication device.

(iii) A facsimile number.

(iv) An electronic mail address.

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

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

(c) "Internet domain name" means a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

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

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

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

History: 2004, Act 241, Imd. Eff. July 21, 2004
Compiler's Notes: For transfer of child protection registry from department of licensing and regulatory affairs to Michigan department of state, see E.R.O. No. 2014-1, compiled at MCL 752.1091.

752.1063 Child protection registry; establishment and operation; registration of contact points; duration; expiration; revocation; renewal; registration by schools and other institutions serving minor children; compliance mechanism; fees; operational date.

Sec. 3.

(1) The department shall establish and operate, or contract with a qualified third party to establish and operate, the child protection registry. The department or a third party administrator shall establish procedures, to the extent possible, to prevent the use or disclosure of protected contact points as required under section 6. If the department elects to contract with a third party, the department shall give due consideration to any person located in this state.

(2) A parent, guardian, individual, or an entity under subsection (4) who is responsible for a contact point to which a minor may have access may register that contact point with the department under rules promulgated by the department under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department shall establish procedures to ensure that a registrant meets the requirements of this subsection.

(3) A registration under this section shall be for not more than 3 years. If the contact point is established for a specific minor, the registration expires the year the minor turns 18 years of age. A registration can be revoked or renewed by the registrant upon notification to the department.

(4) Schools and other institutions or entities primarily serving minor children may register 1 or more contact points with the department. An entity under this subsection may make 1 registration for all contact points of the entity, and the registration may include the entity's internet domain name under rules promulgated by the department under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) No fee or charge shall be assessed or incurred by a person registering a contact point under this act.

(6) The department shall establish a mechanism for senders to verify compliance with the registry.

(7) A person desiring to send a message described in section 5 shall pay the department a fee for access to the mechanism required under subsection (6). The fee required under this subsection shall be set by the department. The fee shall not exceed 3 cents and shall be based on the number of contact points checked against the registry for each time a contact point is checked. The mechanism to verify compliance under subsection (6) and the fee required under this subsection shall be established under rules promulgated by the department under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(8) The fees collected under this act shall be credited to the following:

(a) Eighty-five percent of the fees to the fund created under section 4.

(b) Not less than 15% of the fees to the attorney general to cover the costs of investigating, enforcing, and defending this act and section 5a of 1979 PA 53, MCL 752.795a. The department may reimburse the attorney general from the fund created under section 4 for any costs incurred under this subdivision that exceed the fees credited under this subdivision.

(9) The registry shall be fully operational not later than July 1, 2005.

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History: 2004, Act 241, Imd. Eff. July 21, 2004 ;-- Am. 2005, Act 206, Imd. Eff. Nov. 14, 2005
Compiler's Notes: For transfer of child protection registry from department of licensing and regulatory affairs to Michigan department of state, see E.R.O. No. 2014-1, compiled at MCL 752.1091.

752.1064 Children's protection registry fund; creation; expenditures; reversion to general fund.

Sec. 4.

(1) The children's protection registry fund is created as a separate fund in the state treasury and administered by the department. Money shall be deposited into the fund as required by section 3(8)(a).

(2) The department shall expend money from the fund only for the purposes of administering this act and for the investigation, enforcement, and defense of this act and section 5a of 1979 PA 53, MCL 752.795a.

(3) All money, including interest and earnings, in the fund at the end of the fiscal year shall remain in the fund and not revert to the general fund.

History: 2004, Act 241, Imd. Eff. July 21, 2004
Compiler's Notes: For transfer of child protection registry from department of licensing and regulatory affairs to Michigan department of state, see E.R.O. No. 2014-1, compiled at MCL 752.1091.

752.1065 Prohibited conduct; exceptions; third-party security audits.

Sec. 5.

(1) Except as otherwise provided under this section, a person shall not send, cause to be sent, or conspire with a third party to send a message to a contact point that has been registered for more than 30 calendar days with the department if the primary purpose of the message is to, directly or indirectly, advertise or otherwise link to a message that advertises a product or service that a minor is prohibited by law from purchasing, viewing, possessing, participating in, or otherwise receiving.

(2) A person desiring to send a message described in subsection (1) shall use the mechanism created under section 3(6) to ensure compliance with this act.

(3) The consent of a minor or third party to receive the message is not a defense to a violation of this section.

(4) A person does not violate this act because the person is an intermediary between the sender and recipient in the transmission of an electronic message that violates this act or unknowingly provides transmission of electronic messages over the person's computer network or facilities that violate this act.

(5) The sending of a message described in subsection (1) is prohibited only if it is otherwise a crime for the minor to purchase, view, possess, participate in, or otherwise receive the product or service.

(6) The sending of a message described in subsection (1) is not prohibited if prior to sending the message the sender has obtained from an age-verified adult an affirmative statement of consent to receive the message at an adult designated contact point. To comply with this subsection, the sender shall do all of the following:

(a) 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.

(b) Obtain a written record stating that the recipient has consented to receive the type of messages described in subsection (1). The consent form required under this subdivision shall be signed by the recipient. The sender shall retain the consent form required under this subdivision and make it available for verification as may be required under subdivision (d).

(c) All messages allowed under this subsection shall include notice to the recipient that he or she may rescind their consent and provide an opportunity for the recipient to opt out of receiving any future messages.

(d) Notify the department that the sender intends to send messages as allowed under this subsection. The department may implement procedures to verify that the sender is in compliance with this subsection.

(7) Within 90 days of the effective date of the amendatory act that added this subsection, the department, or the vendor providing registry services for the department, shall conduct a third-party audit to certify the security of the registry. Follow-up third-party security audits on the registry systems shall be conducted at least annually. If the third-party security audit determines that the registry does not meet or exceed the industry standard for high security systems, then the registry shall be suspended until the security systems are determined to meet this standard.

History: 2004, Act 241, Imd. Eff. July 21, 2004 ;-- Am. 2005, Act 298, Imd. Eff. Dec. 21, 2005
Compiler's Notes: For transfer of child protection registry from department of licensing and regulatory affairs to Michigan department of state, see E.R.O. No. 2014-1, compiled at MCL 752.1091.

752.1066 Release of information; prohibitions; register not subject to freedom of information act.

Sec. 6.

(1) A person shall not release to another person information concerning persons or provide access to contact points or other information contained on the registry except as provided by this act.

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

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

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

History: 2004, Act 241, Imd. Eff. July 21, 2004
Compiler's Notes: For transfer of child protection registry from department of licensing and regulatory affairs to Michigan department of state, see E.R.O. No. 2014-1, compiled at MCL 752.1091.

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752.1067 Violation of act; penalties.

Sec. 7.

A violation of this act is a computer crime and a violation of section 5a of 1979 PA 53, MCL 752.795a, subject to the penalties provided for under sections 6a and 6b of 1979 PA 53, MCL 752.796a and 752.796b.

History: 2004, Act 241, Imd. Eff. July 21, 2004
Compiler's Notes: For transfer of child protection registry from department of licensing and regulatory affairs to Michigan department of state, see E.R.O. No. 2014-1, compiled at MCL 752.1091.

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752.1068 Civil action; attorney fees; remedies; investigation of business transactions; effective date of section.

Sec. 8.

(1) A civil action based on the computer crime established under this act may be brought by an authorized individual or the registrant of the contact point on behalf of a minor who has received a message in violation of this act.

(2) A civil action based on the computer crime established under this act may be brought by a person through whose facilities the message was transmitted in violation of this act.

(3) A civil action based on the computer crime established under this act may be brought by the attorney general against a person who has violated this act.

(4) In each action brought under this section, the prevailing party may be awarded reasonable attorney fees if the action is found by the court to be frivolous.

(5) A person bringing an action under this section may recover 1 of the following:

(a) Actual damages, including reasonable attorney fees.

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

(i) $5,000.00 per each message received by a recipient or transmitted.

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

(6) If the attorney general has reason to believe that a person has violated this act, the attorney general may investigate the business transactions of that person. The attorney general may require that person to appear, at a reasonable time and place, to give information under oath and to produce such documents and evidence necessary to determine whether the person is in compliance with the requirements of this act.

(7) Any civil penalties collected by the attorney general under this section shall be credited to the attorney general for the costs of investigating, enforcing, and defending this act and section 5a of 1979 PA 53, MCL 752.795a.

(8) This section takes effect July 1, 2005.

History: 2004, Act 241, Eff. July 1, 2005
Compiler's Notes: For transfer of child protection registry from department of licensing and regulatory affairs to Michigan department of state, see E.R.O. No. 2014-1, compiled at MCL 752.1091.