

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4283/1dn

CTS:lmk:rs

February 9, 2006

Representative Davis:

Please review this draft carefully to ensure it is consistent with your intent and note the following:

1. The drafting instructions indicate that the registry created in the draft should be operational no later than April 1, 2006. Because of the time required to complete this draft, this timeline may no longer be achievable. This draft directs DATCP to promulgate the rules required to operate the registry as emergency rules, which remain in place until permanent rules take effect. You may also wish to include a deadline for the agency to promulgate the emergency rules. Please contact me if you wish to further discuss timing issues concerning this draft.
2. The drafting instructions indicate that the draft should permit a person who is responsible for a minor or an Internet service provider (ISP) to bring an action against a person who sends a prohibited message to a registered contact point. This draft does not include a right of action for ISPs, because the instructions do not specify what measure of damages would apply in such an action. Unless the draft provides for monetary damages, it is unclear whether a court would award any damages in such an action. What should be the measure of damages in such an action?
3. The drafting instructions indicate that the draft should include a "safe harbor" from penalties for a sender that in good faith uses the verification mechanism created by the agency at least every 30 days and subsequently removes registered contact points. It is unclear to whom this safe harbor provision would apply. If a sender used the verification mechanism at least every 30 days and removes registered contact points identified by the verification procedure, how could a sender violate the provisions of the draft?
4. The drafting instructions indicate that violations should also be considered a computer crime. Is this a reference to current s. 943.70? To the extent that the draft would impose criminal penalties on two identical offenses (i.e., under proposed s. 100.54 and under s. 943.70), there may be constitutional double jeopardy issues. Also, the instructions suggest amendment of s. 943.70 as a way to avoid federal preemption. Could you clarify this?
5. The drafting instructions indicate that improper use of the registry should be a felony. Because I was unsure what felony classification you intended, in this draft, it

is a Class I felony to obtain or provide to another information contained in the registry except as explicitly authorized. A Class I felony is subject to a maximum fine of \$10,000, 3 years and 6 months imprisonment, or both. Is this okay?

6. The drafting instructions indicate that treble penalties--both civil and criminal--should apply if a prohibited message is viewed by a minor. In this draft, if a prohibited message is viewed by a minor, the criminal penalty for improper use of the registry rises to a Class G felony, which is subject to a \$25,000 fine, 10 years imprisonment, or both. Is this okay?

7. The drafting instructions indicate that not less than 20 percent of verification fees should be directed to the Department of Justice for enforcement of the provisions of the draft and other laws to protect the state's children while they are online. In this draft, the Department of Justice appropriation from verification fees must be used for enforcing the provisions of this draft and current s. 948.075. Is this okay?

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