

2005 ASSEMBLY BILL 1029

February 16, 2006 – Introduced by Representatives DAVIS, WIECKERT, GARD, BIES, J. FITZGERALD, HINES, JESKEWITZ, MONTGOMERY, MUSSER, VAN ROY, VOS and OWENS, cosponsored by Senators KANAVAS, LEIBHAM, A. LASEE, HARSDDORF and ROESSLER. Referred to Committee on Children and Families.

1 **AN ACT** *to amend* 165.25 (4) (ar), 943.70 (4) and 943.70 (5); and *to create* 20.115
2 (1) (im), 20.455 (2) (hm), 100.54 and 943.70 (3m) of the statutes; **relating to:**
3 creating a family and school communications protection registry, providing an
4 exemption from emergency rule-making procedures, granting rule-making
5 authority, making appropriations, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Agriculture, Trade and Consumer Protection (DATCP) to create, and to monthly update, a family and school communications protection registry (registry). Under the bill, a parent, guardian, or legal custodian of a minor may request that DATCP include in the registry an electronic mail address, a wireless telephone number, or certain other electronic contact information (“contact point”) that pertains to the person making the request or to the minor. The bill prohibits sending certain types of solicitations, identified in the bill as restricted messages, to a contact point that has been registered for more than 30 days. Also, under the bill, an administrator of a school or state institution that primarily serves minors may register an Internet domain name associated with the school or institution, if a minor may obtain an electronic mail address that contains the domain name. The bill defines “restricted message” as a message in which the primary purpose is to encourage the recipient to purchase or view material that is obscene or sexually explicit. The bill prohibits sending a restricted message to an electronic mail address that contains a domain name that has been registered for more than 30 days.

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The bill also prohibits obtaining or distributing information contained in the registry for purposes other than compliance with the requirements of the bill. The bill directs DATCP to promulgate rules establishing a procedure by which a person who wishes to send a restricted message to a contact point may verify that the contact point is not a registered contact point or an electronic mail address that contains a registered domain name (verification procedure). DATCP must also establish a mechanism for reporting restricted messages sent to registered contact points. DATCP may contract with a third party to create and operate the verification procedure and the reporting mechanism.

Under the bill, a person who sends a restricted message to a registered contact point or to an electronic mail address that contains a registered domain name is subject to a forfeiture (civil penalty) up to \$1,000 per message or, if the message is viewed by a minor, up to \$3,000 per message, subject to a maximum of \$100,000 per day. A person who obtains or distributes information contained in the registry for purposes other than compliance with the requirements of the bill is guilty of a Class I felony and may be fined not more than \$10,000, imprisoned not more than three years and six months, or both. If a minor views a restricted message as a result, the person is guilty of a Class G felony and may be fined not more than \$25,000, imprisoned not more than ten years, or both. A person who violates the provisions of the bill may also be required to forfeit property used in committing the violation. In addition, if a person is convicted of a crime created under the bill, the court may restrict the person's use of computers for up to three years and six months, if the crime is a Class I felony, or for up to ten years, if the crime is a Class G felony.

The bill authorizes a parent, guardian, or legal custodian who has registered a contact point to bring an action for damages against a person who sends a restricted message to the contact point. Also, a parent, guardian, or legal custodian of a minor may bring a private action against a person who sends a restricted message to the minor at an electronic mail address that contains a registered domain name. Under the bill, it is a defense to a private action, but not to a forfeiture or criminal penalty, that the minor consented to receiving a restricted message.

Under the bill, DATCP must charge a fee for the verification procedure not to exceed one-half of one cent for each contact point processed. Eighty percent of the fees collected are appropriated to DATCP for the administration and enforcement of the registry; 20 percent are appropriated to the Department of Justice for enforcement of the registry.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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SECTION 4

1 **100.54 Family and school communications protection registry. (1)**

2 DEFINITIONS. In this section:

3 (a) “Contact point” means any of the following:

4 1. Electronic mail address.

5 2. Instant messaging identity.

6 3. Wireless telephone number.

7 4. Identifier for a wireless device that is capable of receiving a text message.

8 5. Electronic identifier.

9 (b) “Electronic identifier” means a number, code, or other identifier that may
10 be used to initiate an electronic communication with a minor, as determined by the
11 department by rule.

12 (c) “Registered contact point” means a contact point registered with the
13 department under sub. (2) (b).

14 (d) “Registered domain name” means an Internet domain name registered with
15 the department under sub. (2) (c).

16 (e) “Restricted message” means any communication in which the primary
17 purpose is to encourage the recipient to purchase or view obscene material, as
18 defined in s. 944.21 (2) (c), or material that depicts sexually explicit conduct as
19 defined in s. 948.01 (7).

20 (f) “Send” means to initiate transmission of a message, but does not include
21 transmission of a message by an Internet service provider or wireless service
22 provider.

23 **(2) REGISTRY OF CONTACT POINTS AND DOMAIN NAMES; RULES.**

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1 (a) There is created a family and school communications protection registry
2 consisting of contact points registered with the department under par. (b) and
3 domain names registered with the department under par. (c).

4 (b) Upon the request of a parent, guardian, or legal custodian of a minor, the
5 department shall include in the registry a contact point that pertains to the minor
6 or to the parent, guardian, or legal custodian. The department may not charge a fee
7 for registering a contact point. A registration under this paragraph shall expire 3
8 years after the request is made, and may be renewed for additional 3-year periods
9 at the request of the parent, guardian, or legal custodian.

10 (c) Upon the request of an administrator of a school, as defined in s. 118.257
11 (1) (d), or a state institution that primarily serves minors, the department shall
12 include in the registry an Internet domain name associated with the school or
13 institution, if a minor may obtain an electronic mail address that contains the
14 domain name. The department may not charge a fee for registering a domain name.
15 A registration under this paragraph shall remain effective for 3 years, and may be
16 renewed for additional 3-year periods at the request of the administrator.

17 (d) The department shall promulgate rules for all of the following:

- 18 1. Establishing, maintaining, and monthly updating the registry under par. (a).
- 19 2. Establishing a procedure by which a person who wishes to send a restricted
20 message to a contact point may verify that the contact point is not a registered
21 contact point and is not an electronic mail address containing a registered domain
22 name. The department shall ensure that the procedure under this subdivision is
23 consistent with any industry standards that relate to such a procedure.

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1 (e) The department shall charge a fee to perform the verification procedure
2 under par. (d) 2. The fee under this paragraph may not exceed one-half of one cent
3 for each contact point for which a person requests verification.

4 (f) The department shall establish a mechanism to allow a person who registers
5 a contact point to report a message sent to the contact point in violation of this
6 section. If the department receives a report that a message has been sent in violation
7 of this section, the department shall notify the department of justice.

8 (g) The department may contract with a 3rd party to create and operate the
9 verification procedure under par. (d) 2. and the reporting mechanism under par. (f).

10 (h) The records of the department or a contractor that constitute the family and
11 school communications protection registry are not subject to inspection and copying
12 under s. 19.35 (1).

13 **(3) PROHIBITIONS.** (a) No person may send a restricted message to a contact
14 point if the contact point has been registered with the department for more than 30
15 days.

16 (b) No person may send a restricted message to an electronic mail address
17 containing a registered domain name if the domain name has been registered with
18 the department for more than 30 days.

19 (c) Except as permitted in the rules promulgated by the department under sub.
20 (2) (d), no person may obtain or provide to another information contained in the
21 registry under sub. (2) (a).

22 **(4) ENFORCEMENT.** (a) *Civil penalties.* The department may commence an
23 action to restrain by temporary or permanent injunction any violation of this section.
24 The department may commence an action to recover from any person who violates

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1 this section civil forfeitures in the following amounts, subject to a maximum of
2 \$100,000 per day:

3 1. \$1,000 for each message sent in violation of sub. (3) (a) or (b).

4 2. \$3,000 for each message sent in violation of sub. (3) (a) or (b), if the message
5 is viewed by a minor.

6 (b) *Forfeiture.* In addition to the penalties authorized under par. (a), a person
7 who violates this section may be required to forfeit any property used to commit the
8 violation.

9 (c) *Private action.* 1. A parent, guardian, or legal custodian of a minor who has
10 registered a contact point under sub. (2) (b) may commence an action for damages
11 against a person who sends a restricted message to the contact point in violation of
12 sub. (3) (a). Notwithstanding s. 814.04 (1), a court shall award reasonable attorney
13 fees to a plaintiff who prevails in an action under this subdivision.

14 2. A parent, guardian, or legal custodian of a minor who has obtained an
15 electronic mail address that contains a registered domain name may commence an
16 action for damages against a person who sends a restricted message to the electronic
17 mail address in violation of sub. (3) (b). Notwithstanding s. 814.04 (1), a court shall
18 award reasonable attorney fees to a plaintiff who prevails in an action under this
19 subdivision.

20 (d) *Consent not defense.* It is not a defense to an action under par. (a) that the
21 minor to whom a registered contact point pertains has consented to receiving a
22 restricted message.

23 (e) *Safe harbor.* This subsection does not apply to a person who has, in good
24 faith, used the verification procedure under sub. (2) (d) 2. within the 30 day period
25 immediately preceding the violation.

ASSEMBLY BILL 1029**SECTION 5**

1 **SECTION 5.** 165.25 (4) (ar) of the statutes is amended to read:

2 165.25 **(4)** (ar) The department of justice shall furnish all legal services
3 required by the department of agriculture, trade and consumer protection relating
4 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
5 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50
6 ~~and~~, 100.51, and 100.54 and chs. 126, 136, 344, 704, 707, and 779, together with any
7 other services as are necessarily connected to the legal services.

8 **SECTION 6.** 943.70 (3m) of the statutes is created to read:

9 **943.70 (3m)** CERTAIN OTHER OFFENSES INVOLVING COMPUTERS. Any person who
10 violates s. 100.54 (3) (c) is guilty of a Class I felony. If a person violates s. 100.54 (3)
11 (c) and, as a result, a restricted message, as defined in s. 100.54 (1) (e), is viewed by
12 a person who is less than 18 years of age, the person is guilty of a Class G felony. This
13 subsection does not apply to a person who has, in good faith, used the verification
14 procedure under s. 100.54 (2) (d) 2. within the 30 day period immediately preceding
15 the violation.

16 **SECTION 7.** 943.70 (4) of the statutes is amended to read:

17 **943.70 (4)** COMPUTER USE RESTRICTION. In addition to the other penalties
18 provided ~~for violation of~~ under this section, a judge may place restrictions on the
19 offender's use of computers. The duration of any such restrictions may not exceed
20 the maximum period for which the offender could have been imprisoned; except if the
21 offense is punishable by forfeiture, the duration of the restrictions may not exceed
22 90 days.

23 **SECTION 8.** 943.70 (5) of the statutes is amended to read:

24 **943.70 (5)** INJUNCTIVE RELIEF. Any aggrieved party may sue for injunctive relief
25 under ch. 813 to compel compliance with ~~this section~~ sub. (2) or (3). In addition,

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1 owners, lessors, users or manufacturers of computers, or associations or
2 organizations representing any of those persons, may sue for injunctive relief to
3 prevent or stop the disclosure of information which may enable another person to
4 gain unauthorized access to data, computer programs or supporting documentation.

SECTION 9. Nonstatutory provisions.

6 (1) Using the procedure under section 227.24 of the statutes, the department
7 of agriculture, trade and consumer protection shall promulgate emergency rules
8 required under section 100.54 (2) (d) of the statutes, as created by this act.
9 Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules
10 promulgated under this subsection remain in effect until the first day of the 9th
11 month after the effective date of this subsection or the effective date of the permanent
12 rules promulgated under section 100.54 (2) (d) of the statutes, as created by this act,
13 whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes,
14 the department of agriculture, trade and consumer protection is not required to
15 provide evidence that promulgating a rule under this subsection is necessary for the
16 preservation of the public peace, health, safety, or welfare and is not required to
17 provide a finding of emergency for a rule promulgated under this subsection.

18 **SECTION 10. Effective dates.** This act takes effect on the first day of the 6th
19 month beginning after publication, except as follows:

20 (1) Section 100.54 (2) (d) of the statutes, as created by this act, takes effect on
21 the day after publication.

22 (END)