

2005 DRAFTING REQUEST

Bill

Received: **12/21/2005**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Brett Davis (608) 266-1192**

By/Representing: **Luke Bacher**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - electron com**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Davis@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibit communications to registered contact points associated with minors regarding drugs, alcohol, pornography, etc.

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	csundber 01/30/2006	lkunkel 02/08/2006		_____			State Crime
/1	csundber 02/10/2006 mdsida 02/10/2006	csicilia 02/10/2006	rschluet 02/09/2006	_____	lnorthro 02/09/2006		State Crime
/2	csundber	lkunkel	jfrantze	_____	lnorthro		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	02/13/2006	02/13/2006	02/10/2006	_____	02/10/2006		Crime
/3			rschluet	_____	mbarman	lnorthro	
			02/13/2006	_____	02/13/2006	02/15/2006	

FE Sent For: 02/14/2006, ~~02/14/2006~~

↳ ("13")

<END>

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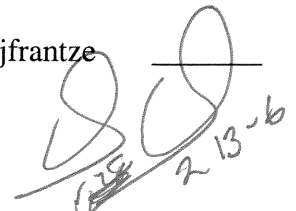
Instructions:

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13/mk 2/13



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csundber

1 3/8 lmk

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FE Sent For:

Sundberg, Christopher

From: Malaise, Gordon
Sent: Wednesday, December 21, 2005 11:57 AM
To: Bacher, Luke
Cc: Sundberg, Christopher
Subject: RE: Family and School Communications Protection Act

Thanks, Luke. In that case, I will refer the drafting request to Attorney Chris Sundberg, who drafts in the area of Trade Regulation.

Gordon

From: Bacher, Luke
Sent: Wednesday, December 21, 2005 11:50 AM
To: Malaise, Gordon
Subject: RE: Family and School Communications Protection Act

Sounds like DATCP to me.

From: Malaise, Gordon
Sent: Wednesday, December 21, 2005 11:47 AM
To: Bacher, Luke
Subject: RE: Family and School Communications Protection Act

Luke:

Your narrative talks about "the department" establishing the family and school communications protection service. Which department do you want to administer this program? That information would be helpful in determining in which chapter of the statutes the bill should be drafted and, accordingly, which drafter should draft the draft.

Gordon

From: Bacher, Luke
Sent: Wednesday, December 21, 2005 11:25 AM
To: Malaise, Gordon
Subject: Family and School Communications Protection Act

Gordon -

I'm not sure if this is your area, but could you or someone at LRB get this into drafting?

Thank you,

Luke Bacher
Legislative Assistant
Office of State Representative Brett Davis
(608)-266-1192
Toll Free: 888-534-0080
Luke.Bacher@legis.state.wi.us
<http://www.brettdavis.us>

<< File: FSCPA_Model_Statute.doc >>

Family and School Communications Protection Act

- Intent of this act is, in part, to limit youth access to solicitations of pornography, alcohol, tobacco, gambling, and other products deemed by the state to be illegal to sell or provide to children.

✓ - This is a law of general applicability to electronic messaging. "Contact point" as defined under this law includes instant messenger ids, email addresses, mobile devices that can receive text messages, or those otherwise defined by the department.

✓ - The department shall establish and operate, or contract with a qualified third party to operate, the family and school communications protection service.

✓ - An individual who is responsible for an electronic contact point may register that contact point with the family and school communications protection service.

✓ - Schools or other state institutions that primarily serve minor children may register their entire Internet domain with the family and school communications protection service.

✓ - There shall be no cost for individuals, schools, or other state institutions that primarily serve minor children to register with the family and school communications protection service.

✓ - Registered contact points expire after 3 years. Individuals, schools, or institutions that primarily serve minor children may renew a registration at any point for an additional 3-year period. There shall be no cost for renewing a registration.

✓ - As part of the family and school communications protection service, the department shall establish, or contract with a third party to establish, a mechanism whereby registered report messages sent in violation of this act. The Office of the Attorney General shall be provided access to the reports of violations generated through this service in order to help the enforcement of the law.

✓ - 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 with the family and school communications protection service for at least 30 calendar days if the primary purpose of the message is to advertise, promote, or induce the sale of a product or service that a minor is prohibited by law from purchasing, viewing, participating in, or otherwise receiving.

✓ - The department shall establish, or contract with a qualified third party to establish, a mechanism for senders to verify compliance with the family and school communications protection service.

✓ - The department shall ensure that the mechanism follows with any industry standards in order to ensure compliance with the law as easy as possible for responsible senders.

✓ - A sender desiring to send a restricted message as described above shall pay the department a fee for access to the mechanism.

✓ - The fee for access to the mechanism shall be set by the department. The fee shall not exceed 1 cent per contact point checked through the mechanism for each time a contact point is checked.

✓ - The majority of the fee generated by the act shall be directed to the department in order to fund the creation and maintenance of the family and school communications protection service.

✓ - Not less than 20 percent of the funds generated by this act shall be directed to the Office of the Attorney General for the enforcement of this act and other laws to protect the state's children while they are online.

✓ - A person does not violate this act because the person is an intermediary between the sender and the 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.

- The presence of a contact point on the family and school communications protection service shall be sufficient for the state to assert jurisdiction over that contact point and to extend that jurisdiction to any individuals who send messages to that contact point in violation of this act.

2 - The family and school communications protection service shall be fully operational no later than April 1, 2006.

✓ - A person shall not directly or indirectly, through an overt act or negligence, release or otherwise make available to another person information concerning persons or contact points registered with the family and school communications protection service except as required by this act. A person shall not sell or use the family and school communications protection service for any reason other than to meet the requirements of this act. A person shall not access or attempt to access the registry except as provided by this act. Improper use of the families and schools electronic messaging service shall be considered a felony. ✓

✓ - The family and school communications protection service and the contact points and other data contained under the service shall not be subject to the freedom of information act (or the state's equivalent). [Do not want spammers to be able to request a copy of the registered addresses and receive them. This has been a problem with some state school records in Texas and other states.]

- Senders that, in good faith, use the mechanism created by the department and subsequently remove registered contact points at least every 30 days shall receive a safe harbor from civil and criminal prosecution under the law. 2

- Violation of this law shall be considered a computer crime under the state's law. [It is very important to also amend the state's computer crimes act in order to include violation of the Family and School Communications Protection Act. This is essential to prevent potential preemption by the Federal CAN-SPAM Act.]

- Civil penalties for violation of the law. Fines per message in violation of the law to a maximum per day. [Suggested: \$1,000/message to maximum of \$100,000 per day.]
Treble civil penalties if message was viewed by a child under the age of 18.

- Civil cases may be brought by the Office of the Attorney General, the Internet Service Provider, or the individual responsible for the contact point.

- It shall be an affirmative defense under the law for a sender against a civil lawsuit brought by an individual responsible for a contact point if the sender proves that the individual affirmatively, expressly, and directly consented, and did not subsequently revoke such consent, to receive messages from the particular sender for the registered contact point. Such consent shall not be a defense for criminal or civil actions brought by the Office of the Attorney General or an Internet Service Providers.

- Criminal penalties. First two offenses escalating misdemeanors. Third offense a felony. Treble criminal penalties if the message was viewed by a child under the age of 18.

- Allow for prosecutor in criminal cases to seize any property used in committing the violation of the Act.

Sundberg, Christopher

From: Sundberg, Christopher
Sent: Wednesday, December 21, 2005 4:24 PM
To: Bacher, Luke
Subject: Family and School Communications Protection Act

I wanted to give you a heads-up right off the bat, because I think there's a good chance that federal law preempts this draft insofar as it would apply to e-mail.

The federal CAN-SPAM Act of 2003 provides for preemption of any state law "that expressly regulates the use of electronic mail to send commercial messages, except to the extent that any such statute, regulation, or rule prohibits falsity or deception." On the other hand, the CAN-SPAM Act does not preempt state laws "that are not specific to electronic mail, including State trespass, contract, or tort law" or laws that "relate to acts of fraud or computer crime." A court might find that the draft you have requested "relates to fraud or computer crime," but it is, of course, impossible to predict how a court would rule.

The substance of the draft you have requested is very similar to laws that have been enacted in Michigan and Utah. To my knowledge, however, no court has yet considered this issue with respect to the Michigan or Utah laws.

I'd be happy to discuss this issue with you, although I'll be taking off next week for some R and R.

Christopher Sundberg
Legislative Attorney
Legislative Reference Bureau
(608) 266-9739
christopher.sundberg@legis.state.wi.us

thursday

D-N

2005 BILL

regler ✓

family and school communications

providing an exemption from emergency rule-making procedures

1 AN ACT to renumber 814.75 (1) and 814.76 (1); to amend 46.07, 165.25 (4) (ar),
 2 301.32 (1), 302.12 (2), 302.13, 303.01 (8) (b) and 973.05 (2m); and to create
 3 20.115 (1) (im), 100.54, 125.07 (1) (c), 134.66 (4m), 303.01 (8) (c) 9., 303.065 (5)
 4 (cr), 814.75 (1g), 814.76 (1g), 814.78 (11m), 814.80 (12), 814.81 (10) and 973.042
 5 of the statutes; relating to: creating a child protection registry and child
 6 protection registry surcharges, granting rule-making authority, making an
 7 appropriation, and providing a penalty.

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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 child protection 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, wireless telephone number, or certain other electronic contact information ("contact point") that belongs to, or is accessible 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 may register an Internet domain name associated with the school, if a pupil at the school may obtain an electronic mail address that contains the domain name. The bill prohibits sending a restricted message to an electronic mail address that

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contains a domain name that has been registered for more than 30 days. 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 defines “restricted message” as a message in which the primary purpose is to encourage the recipient to purchase goods or services or view material, if state or federal law prohibits purchasing, selling, or possessing the goods, services, or material; prohibits a minor from purchasing, selling, or possessing the goods, services, or material; or prohibits exposing a child to the material. The bill directs DATCP to promulgate rules establishing a process 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.

The bill authorizes DATCP, the attorney general, or the district attorney to issue an advisory letter to a person if there is reasonable cause to believe that the person has violated the provisions of the bill. 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 \$2,500 per message or, if the person committed a previous violation or committed the violation after receiving an advisory letter, up to \$5,000 per message. A person who obtains or distributes information contained in the registry for purposes other than compliance with the requirements of the bill may be fined not more than \$10,000, imprisoned not more than nine months, or both. The bill authorizes a parent, guardian, or legal custodian to bring an action for damages against a person who sends a restricted message to a registered contact point that the parent, guardian, or legal custodian has registered with DATCP. A parent, guardian, or legal custodian of a minor may also bring an action against a person who sends a restricted message to the minor at an electronic mail address that contains a registered domain name.

The child protection registry is funded by a new surcharge imposed in certain criminal and civil cases. Under the bill, whenever a court imposes a forfeiture or a sentence or places a person on probation for a child sex offense, a child abduction, obscenity, using a child to distribute or manufacture illegal drugs, distributing illegal drugs to a child, providing alcohol to a person under 21, or providing tobacco products to a person under 18, the court must also impose a child protection registry surcharge of \$30, unless the offense is a felony. In that case, the surcharge is \$50. Money collected from these surcharges is credited to a DATCP continuing appropriation account and is to be used to pay for the costs of the registry program.

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.

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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:

SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

2005-06 2006-07

20.115 Agriculture, trade and consumer protection, department of

(1) **FOOD SAFETY AND CONSUMER PROTECTION**

(im) *Child protection registry* PR C -0- -0-

plain text; no ital.

SECTION 2. 20.115 (1) (im) of the statutes is created to read:

20.115 (1) (im) *Child protection registry*. As a continuing appropriation, all moneys received from the child protection registry surcharges under ss. 125.07 (1) (c), 134.66 (4m), and 973.042, for the administration and enforcement of the child protection registry under s. 100.54.

SECTION 3. 46.07 of the statutes, as affected by 2005 Wisconsin Act 25, is amended to read:

46.07 Property of patients or residents. All money including wages and other property delivered to an officer or employee of any institution for the benefit of a patient or resident shall immediately be delivered to the steward, who shall enter the money upon the steward's books to the credit of the patient or resident. The property shall be used only under the direction and with the approval of the superintendent and for the crime victim and witness assistance surcharge under s.

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SECTION 3

1 973.045 (4), the delinquency victim and witness assistance surcharge under s. 938.34
 2 (8d) (c), the deoxyribonucleic acid analysis surcharge under s. 973.046, the drug
 3 offender diversion surcharge under s. 973.043, the child protection registry
 4 surcharge under s. 973.042, or the benefit of the patient or resident. If the money
 5 remains uncalled for for one year after the patient's or resident's death or departure
 6 from the institution, the superintendent shall deposit the money in the general fund.
 7 If any patient or resident leaves property, other than money, uncalled for at an
 8 institution for one year, the superintendent shall sell the property, and the proceeds
 9 shall be deposited in the general fund. If any person satisfies the department, within
 10 5 years after the deposit, of his or her right to the deposit, the department shall direct
 11 the department of administration to draw its warrant in favor of the claimant and
 12 it shall charge the same to the appropriation made by s. 20.913 (3) (c).

13 **SECTION 4.** 100.54 of the statutes is created to read:

14 **100.54 Child protection registry. (1) DEFINITIONS.** In this section:

15 (a) "Child protection registry" means the registry created by the department
 16 under sub. (2). *Family and school communications*

17 (a) (b) "Contact point" means any of the following:

- 18 1. Electronic mail address.
- 19 2. Instant messaging identity.
- 20 3. Wireless telephone number.

21 (5.4) Electronic identifier.

22 (b) (c) "Electronic identifier" means a number, code, or other identifier that may
 23 be used to initiate an electronic communication with a minor, as determined by the
 24 department by rule.

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

BILL

(1) (c) (d) "Registered contact point" means a contact point registered with the
2 department under sub. (2) (b).

(3) (d) (e) "Registered domain name" means an Internet domain name registered with
4 the department under sub. (2) (b).

(5) (e) (f) "Restricted message" means any communication in which the primary
6 purpose is to encourage the recipient to purchase goods or services or view material
7 if state or federal law prohibit^s any of the following:

- 8 1. Purchasing the goods or services. ✓
- 9 2. Selling the goods or services. ✓
- 10 3. Possessing the goods or material. ✓
- 11 4. Exposing a child to the material. ✓
- 12 5. The purchase of the goods or services by a minor. ✓
- 13 6. Selling the goods or services to a minor. ✓
- 14 7. The possession of the goods or material by a minor. ✓

(15) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) "Send" means to initiate transmission of a message, but does not include
16 transmission of a message by an Internet service provider or wireless service
17 provider.

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

(19) (a) There is created a child protection registry consisting of contact points
20 registered with the department under par. (b) and domain names registered with the
21 department under par. (c).

22 (b) Upon the request of a parent, guardian, or legal custodian of a minor, the
23 department shall include in the child protection registry contact points that belong
24 to the minor or to which the minor has access. The department may not charge a fee

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or a state institution that primarily serves minors

1 for registering a contact point. A registration under this paragraph shall expire 3
2 years after the request is made or on the minor's 18th birthday, whichever is earlier.

3 (c) Upon the written request of an administrator of a school, as defined in s.
4 118.257 (1) (d), the department shall include in the child protection registry an
5 Internet domain name associated with the school, if a ^{minor} pupil at the school may obtain
6 an electronic mail address that contains the domain name. The department may not
7 charge a fee for registering a domain name. A registration under this paragraph

8 shall remain effective ^{for 3 years} until the administrator of the school requests in writing that
9 the Internet domain name be withdrawn from the registry.

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

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11 1. Establishing, maintaining, and monthly updating the child protection
12 registry. *under par. (a)*

13 2. Establishing a process by which a person who wishes to send a restricted
14 message to a contact point may verify that the contact point is not a registered
15 contact point and is not an electronic mail address containing a registered domain
16 name. *The department shall ensure that the procedure under this subdivision is consistent with any industry standards.*

17 (3) PROHIBITIONS. (a) No person may send a restricted message to a contact ^{that relate}
18 point if the contact point has been registered with the department for more than 30 ^{to such a}
19 days. _{procedure}

20 (b) No person may send a restricted message to an electronic mail address
21 containing a registered domain name if the domain name has been registered with
22 the department for more than 30 days. *to another*

23 (c) Except as permitted in the rules promulgated by the department under sub.

24 (2) (d), no person may obtain or provide information contained in the child protection
25 registry to another.

under sub. (2) (a)

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subject to a maximum of \$100,000 per day

message is viewed by a minor

1 (4) ENFORCEMENT. (a) *Civil penalties.* The department may commence an
2 action to restrain by temporary or permanent injunction any violation of this section.
3 The department may commence an action to recover from any person who violates
4 this section civil forfeitures in the following amounts:

- 5 1. ~~\$2,500~~^{1,800} for each message sent in violation of sub. (3) (a) or (b).
- 6 2. ~~\$5,000~~^{3,000} for each message sent in violation of sub. (3) (a) or (b), if the ~~person~~^{person}
7 who sends the message received an advisory under par. (c) prior to committing the
8 violation or if the person has previously been found by a court to have violated this
9 section.

10 (b) *Subpoenas.* The department and the department of justice may subpoena
11 persons and require the production of books and other documents to aid in the
12 investigation of alleged violations of this section.

13 (c) *Advisory letter.* If the department, attorney general, or district attorney has
14 reasonable cause to believe that a person has committed a violation of this section,
15 the department, attorney general, or district attorney may send to the person by
16 certified mail an advisory describing the violation and informing the person that
17 additional penalties may apply to violations committed after receipt of the advisory.

18 (b) (d) *Criminal penalty* A person who violates sub. (3) (c) is guilty of a Class A
19 misdemeanor. penalties - (I)

20 (d) (e) *Private action.* 1. A parent, guardian, or legal custodian of a minor who has
21 registered a contact point under sub. (2) (b) may commence an action against a
22 person who sends a restricted message to the contact point in violation of sub. (3) (a)

23 to recover actual damages or \$2,500 per message, whichever is greater.

24 Notwithstanding s. 814.04 (1), a court shall award reasonable attorney fees to a
25 plaintiff who prevails in an action under this subdivision.

I Felony If a person violates sub. (3)(c) and as a result a prohibited message is viewed by a minor the person is guilty of a class B felony.

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For damages

1 2. A parent, guardian, or legal custodian of a minor who has obtained an
 2 electronic mail address that contains a registered domain name may commence an
 3 action against a person who sends a restricted message to the electronic mail address
 4 in violation of sub. (3) (b) ~~to recover actual damages or \$2,500 per message, whichever~~
 5 ~~is greater.~~ ^{keep} Notwithstanding s. 814.04 (1), a court shall award reasonable attorney
 6 fees to a plaintiff who prevails in an action under this subdivision.

7 (e) (f) ^e *Consent not defense.* It is not a defense to an action under ~~this subsection~~
 8 that the minor to whom a registered contact point pertains has consented to receiving
 9 a restricted message.

par. (a) or to a criminal penalty under par. (b)

SECTION 5. 125.07 (1) (c) of the statutes is created to read:

11 125.07 (1) (c) *Surcharge.* 1. If a court imposes a forfeiture or a sentence or
 12 places a person on probation for a violation under par. (b) 2., the court shall also
 13 impose under ch. 814 a child protection registry surcharge of \$30. If a court imposes
 14 a sentence or places a person on probation for a violation under s. 125.075 (2), the
 15 court shall also impose under ch. 814 a child protection registry surcharge of \$50.
 16 If multiple offenses are involved, the court shall impose a child protection registry
 17 surcharge for each violation.

18 2. a. Except as provided in subd. 2. b., the clerk of the circuit court shall collect
 19 and transmit the amount of the child protection registry surcharge under subd. 1.
 20 to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall
 21 then pay that amount to the secretary of administration as provided in s. 59.25 (3)
 22 (f) 2.

23 b. If a forfeiture is imposed by a municipal court, the court shall transmit the
 24 amount of the child protection registry surcharge under subd. 1. to the treasurer of

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1 the county, city, town, or village, and that treasurer shall then pay that amount to
2 the secretary of administration as provided in s. 66.0114 (1) (bm).

3 **SECTION 6.** 134.66 (4m) of the statutes is created to read:

4 134.66 (4m) SURCHARGE. (a) If a court imposes a forfeiture for a violation of
5 sub. (2) (a), (am), or (cm) or a local ordinance in conformity with sub. (2) (a), (am), or
6 (cm), the court shall also impose under ch. 814 a child protection registry surcharge
7 of \$30. If multiple violations are involved, the court shall impose a child protection
8 registry surcharge upon each forfeiture imposed.

9 (b) 1. Except as provided in subd. 2., the clerk of the circuit court shall collect
10 and transmit the amount of the child protection registry surcharge under par. (a) to
11 the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then
12 pay that amount to the secretary of administration as provided in s. 59.25 (3) (f) 2.

13 2. If a forfeiture is imposed by a municipal court, the court shall transmit the
14 amount of the child protection registry surcharge under par. (a) to the treasurer of
15 the county, city, town, or village, and that treasurer shall then pay that amount to
16 the secretary of administration as provided in s. 66.0114 (1) (bm).

17 **SECTION 7.** 165.25 (4) (ar) of the statutes is amended to read:

18 165.25 (4) (ar) The department of justice shall furnish all legal services
19 required by the department of agriculture, trade and consumer protection relating
20 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
21 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50
22 and, 100.51, and 100.54 and chs. 126, 136, 344, 704, 707, and 779, together with any
23 other services as are necessarily connected to the legal services.

24 **SECTION 8.** 301.32 (1) of the statutes, as affected by 2005 Wisconsin Act 25, is
25 amended to read:

BILL**301.32 (1) PROPERTY DELIVERED TO WARDEN OR SUPERINTENDENT; CREDIT AND DEBIT.**

All money and other property delivered to an employee of any state correctional institution for the benefit of a prisoner or resident shall be delivered to the warden or superintendent, who shall enter the property upon his or her accounts to the credit of the prisoner or resident. The property may be used only under the direction and with the approval of the superintendent or warden and for the crime victim and witness assistance surcharge under s. 973.045 (4), the delinquency victim and witness assistance surcharge under s. 938.34 (8d) (c), the deoxyribonucleic acid analysis surcharge under s. 973.046, the drug offender diversion surcharge under s. 973.043, the child protection registry surcharge under s. 973.042, or the benefit of the prisoner or resident. If the money remains uncalled for for one year after the prisoner's or resident's death or departure from the state correctional institution, the superintendent shall deposit it in the general fund. If any prisoner or resident leaves property, other than money, uncalled for at a state correctional institution for one year, the superintendent shall sell the property and deposit the proceeds in the general fund, donate the property to a public agency or private, nonprofit organization or destroy the property. If any person satisfies the department, within 5 years after the deposit, of his or her right to the deposit, the department shall direct the department of administration to draw its warrant in favor of the claimant and it shall charge the same to the appropriation made by s. 20.913 (3) (bm).

SECTION 9. 302.12 (2) of the statutes, as affected by 2005 Wisconsin Act 25, is amended to read:

302.12 (2) Money accruing under this section remains under the control of the department, to be used for the crime victim and witness assistance surcharge under s. 973.045 (4), the deoxyribonucleic acid analysis surcharge under s. 973.046, the

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1 drug offender diversion surcharge under s. 973.043, the child protection registry
2 surcharge under s. 973.042, and the benefit of the inmate or the inmate's family or
3 dependents, under rules promulgated by the department as to time, manner and
4 amount of disbursements. The rules shall provide that the money be used for the
5 reasonable support of the inmate's family or dependents before it is allocated for the
6 drug offender diversion surcharge under s. 973.043 or child protection registry
7 surcharge under s. 973.042.

8 **SECTION 10.** 302.13 of the statutes, as affected by 2005 Wisconsin Act 25, is
9 amended to read:

10 **302.13 Preservation of property an inmate brings to prison.** The
11 department shall preserve money and effects, except clothes, in the possession of an
12 inmate when admitted to the prison and, subject to the crime victim and witness
13 assistance surcharge under s. 973.045 (4) and, the deoxyribonucleic acid analysis
14 surcharge under s. 973.046, and the drug offender diversion surcharge under s.
15 973.043, and the child protection registry surcharge under s. 973.042, shall restore
16 the money and effects to the inmate when discharged.

17 **SECTION 11.** 303.01 (8) (b) of the statutes, as affected by 2005 Wisconsin Act 25,
18 is amended to read:

19 303.01 (8) (b) The department shall distribute earnings of an inmate or
20 resident, other than an inmate or resident employed under sub. (2) (em), for the crime
21 victim and witness assistance surcharge under s. 973.045 (4), for the delinquency
22 victim and witness assistance surcharge under s. 938.34 (8d) (c), for the
23 deoxyribonucleic acid analysis surcharge under s. 973.046 (4) and for compliance
24 with s. 303.06 (2) and may distribute earnings for the support of the inmate's or
25 resident's dependents and for other obligations either acknowledged by the inmate

BILL

1 or resident in writing or which have been reduced to judgment that may be satisfied
2 according to law. The department may also distribute earnings for the drug offender
3 diversion surcharge under s. 973.043 and the child protection registry surcharge
4 under s. 973.042, but only if the inmate or resident has first provided for the
5 reasonable support of his or her dependents.

6 **SECTION 12.** 303.01 (8) (c) 9. of the statutes is created to read:

7 303.01 (8) (c) 9. Payment of the child protection registry surcharge under s.
8 973.042.

9 **SECTION 13.** 303.065 (5) (cr) of the statutes is created to read:

10 303.065 (5) (cr) Payment of the child protection registry surcharge under s.
11 973.042.

12 **SECTION 14.** 814.75 (1) of the statutes is renumbered 814.75 (1r).

13 **SECTION 15.** 814.75 (1g) of the statutes is created to read:

14 814.75 (1g) The child protection registry surcharge under ss. 125.07 (1) (c),
15 134.66 (4m), and 973.042.

16 **SECTION 16.** 814.76 (1) of the statutes is renumbered 814.76 (1r).

17 **SECTION 17.** 814.76 (1g) of the statutes is created to read:

18 814.76 (1g) The child protection registry surcharge under ss. 125.07 (1) (c) and
19 973.042.

20 **SECTION 18.** 814.78 (11m) of the statutes is created to read:

21 814.78 (11m) The child protection registry surcharge under ss. 125.07 (1) (c)
22 and 134.66 (4m).

23 **SECTION 19.** 814.80 (12) of the statutes is created to read:

24 814.80 (12) The child protection registry surcharge under ss. 125.07 (1) (c) and
25 134.66 (4m).

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1 **SECTION 20.** 814.81 (10) of the statutes is created to read:

2 814.81 (10) The child protection registry surcharge under ss. 125.07 (1) (c) and
3 134.66 (4m).

4 **SECTION 21.** 973.042 of the statutes is created to read:

5 **973.042 Child protection registry surcharge.** (1) If a court imposes a
6 forfeiture for a violation of s. 944.21 (5) (a) or an ordinance enacted under s. 59.55 (6)
7 or imposes a sentence or places a person on probation for a conviction under s. 944.21
8 (5) (b), 948.09, 948.10, or 948.11 (2) (b), the court shall impose a child protection
9 registry surcharge of \$30 for each such violation or conviction. If a court imposes a
10 sentence or places a person on probation for a conviction under s. 944.21 (5) (c) or (e),
11 948.02, 948.025, 948.05, 948.055, 948.06, 948.07, 948.075, 948.08, 948.095, 948.11
12 (2) (a) or (am), 948.12, 948.13, 948.30, 961.455, or 961.46, the court shall impose a
13 child protection registry surcharge of \$50 for each such conviction.

14 (2) Except as provided in sub. (3), the clerk of the circuit court shall collect and
15 transmit the amount of the child protection registry surcharge under sub. (1) to the
16 county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then pay
17 that amount to the secretary of administration as provided in s. 59.25 (3) (f) 2.

18 (3) If an inmate in a state prison or a person sentenced to a state prison has
19 not paid the child protection registry surcharge under this section, the department
20 shall assess and collect the amount owed from the inmate's wages or other moneys.
21 If the department collects money owed under this section from an inmate, it shall
22 transmit it to the clerk of circuit court for the county in which the inmate was
23 convicted of the relevant felony for further transmittal under s. 59.40 (2) (m).

24 **SECTION 22.** 973.05 (2m) of the statutes, as affected by 2005 Wisconsin Act 25,
25 is amended to read:

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1 973.05 (2m) Payments under this section shall be applied first to payment of
2 the penalty surcharge until paid in full, shall then be applied to the payment of the
3 jail surcharge until paid in full, shall then be applied to the payment of part A of the
4 crime victim and witness assistance surcharge until paid in full, shall then be
5 applied to part B of the crime victim and witness assistance surcharge until paid in
6 full, shall then be applied to the crime laboratories and drug law enforcement
7 surcharge until paid in full, shall then be applied to the deoxyribonucleic acid
8 analysis surcharge until paid in full, shall then be applied to the drug abuse program
9 improvement surcharge until paid in full, shall then be applied to the drug offender
10 diversion surcharge until paid in full, shall then be applied to payment of the driver
11 improvement surcharge until paid in full, shall then be applied to the child protection
12 registry surcharge until paid in full, shall then be applied to the truck driver
13 education surcharge if applicable until paid in full, shall then be applied to payment
14 of the domestic abuse surcharge until paid in full, shall then be applied to payment
15 of the consumer protection surcharge until paid in full, shall then be applied to
16 payment of the natural resources surcharge if applicable until paid in full, shall then
17 be applied to payment of the natural resources restitution surcharge until paid in
18 full, shall then be applied to the payment of the environmental surcharge if
19 applicable until paid in full, shall then be applied to the payment of the wild animal
20 protection surcharge if applicable until paid in full, shall then be applied to payment
21 of the weapons surcharge until paid in full, shall then be applied to payment of the
22 uninsured employer surcharge until paid in full, shall then be applied to payment
23 of the enforcement surcharge under s. 253.06 (4) (c), if applicable, until paid in full,
24 and shall then be applied to payment of the fine and the costs and fees imposed under
25 ch. 814.

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1

SECTION 23. Initial applicability.

2

(1) The treatment of sections 125.07 (1) (c), 134.66 (4m), 814.75 (1g), 814.76

3

(1g), and 973.042 of the statutes first applies to offenses committed on the effective

4

date of this subsection.

5

SECTION 24. Effective dates. This act takes effect on the first day of the 8th

6

month beginning after publication, except as follows:

7

(1) Section 100.54 (2) (d) of the statutes, as created by this act, takes effect on

8

the day after publication.

9

(END)

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Insert A:

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, wireless telephone number, or certain other electronic contact information ("contact point") that belongs to, or is accessible 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 pupil at the school 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 goods or services or view material, if state or federal law prohibits purchasing, selling, or possessing the goods, services, or material; prohibits a minor from purchasing, selling, or possessing the goods, services, or material; or prohibits exposing a child to the material.

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. 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 prohibited messages sent to registered contact points. DATCP may contact with a 3rd 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 may be fined not more than \$10,000, imprisoned not more than 3 years and 6 months, or both. If a minor views a prohibited message as a result, the person may be fined not more than \$25,000, imprisoned not more than 10 years, or both. In addition, a person who violates the provisions of the bill may be required to forfeit property used in committing the violation.

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 prohibited message.

DATZP
USE 2x

Under the bill, the department must charge a fee for the verification procedure not to exceed one cent for each contact point processed. Eighty percent of the fees collected are appropriated to the department 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.

1 **Insert 3-7:**

2005-06 2006-07

2

3 **20.455 Justice, department of**

4 (2) LAW ENFORCEMENT SERVICES

5 (hm) Family and school communica-

6 tions protection registry; related

7 enforcement PR C -0- -0-

8 **Insert 3-8**

9 20.115 (1) (im) Family and school communications protection registry. The

10 amounts in the schedule for the administration and enforcement of s. 100.54. Eighty

11 percent of all moneys received under s. 100.54 (2) (f) shall be credited to this
12 appropriation account. (e)

13 **SECTION 1.** 20.455 (2) (hm) of the statutes is created to read:

14 20.455 (2) (hm) Family and school communications protection registry; related
15 enforcement. The amounts in the schedule for the enforcement of ss. 100.54 and

16 948.075. Twenty percent of all moneys received under s. 100.54 (2) (f) shall be
17 credited to this appropriation account. (e)

1 **Insert 6-16:**

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

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

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

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

14 **Insert 7-19:**

Forfeiture.

15 (c) In addition to the penalties authorized under pars. (a) and (b), a person who
16 violates this section may be required to forfeit any property used to commit the
17 violation. (I)

18 **Insert 8-9:**

Safe harbor.

19 (f) This subsection does not apply to a person who has, in good faith, used the
20 verification procedure under sub. (3) (d) 2. within the 30 day period immediately
21 preceding the violation.

22 **Insert 15-4:**

23 **SECTION 2. Nonstatutory provisions.**

24 (1) Using the procedure under section 227.24 of the statutes, the department
25 of agriculture, trade and consumer protection shall promulgate the rules required

emergency

1 under section 100.54 (2) (d) of the statutes, as created by this act. Notwithstanding
2 section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this
3 subsection remain in effect until the first day of the 9th month after the effective date
4 of this subsection or the effective date of the permanent rules promulgated under
5 section 100.54 (2) (d) of the statutes, as created by this act, whichever is sooner.
6 Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not
7 required to provide evidence that promulgating a rule under this subsection is
8 necessary for the preservation of the public peace, health, safety, or welfare and is
9 not required to provide a finding of emergency for a rule promulgated under this
10 subsection.

of agriculture,
trade and
consumer protection

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4283/1dn

CTS:.....

/m/c

(date)

LPS: PLS ✓ spacing

✓
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 time line 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 view^{ed} 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? ✓

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail: christopher.sundberg@legis.state.wi.us

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.
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Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail: christopher.sundberg@legis.state.wi.us

2/10/06

Luca Bacher

Re draft 4283/1:

1. Change "restricted message" to include only pornography and gambling solicitations.
2. Allow registration of contact points that pertain to parent/guardian as well as points that pertain to minors.
3. P. 5 L. 18: delete "written"
4. Allow renewal of registrations for additional 3-year periods at request.
5. Change verification fee to not more than 1/2 cent.
6. Move criminal penalty to 943.70.