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SENATE FILE 2178

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McCOY

(COMPANION TO LSB 5633HH
BY PETERSEN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act restricting electronic access to minors for certain
2 purposes by creating a kids no e-contact list, prohibiting the
3 sending of certain electronic messages to minors, creating a
4 kids no e-contact list fund and providing for fees, and
5 providing for civil penalties and remedies, and making
6 appropriations and providing an effective date.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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JUDICIARY
SF 2178

1 Section 1. NEW SECTION. 714C.1 TITLE.

2 This chapter shall be known and may be cited as the "Iowa
3 Kids No E-Contact Act".

4 Sec. 2. NEW SECTION. 714C.2 DEFINITIONS.

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "Administrator" means the attorney general, a designee
8 of the attorney general, or a third party contracted with by
9 the attorney general to administer the list.

10 2. "Contact point" means any electronic identification to
11 which electronic messages can be sent, including any of the
12 following:

13 a. An instant message identity.

14 b. A wireless telephone, a personal digital assistant, a
15 pager, or any other similar wireless communication device.

16 c. A facsimile number.

17 d. An electronic mail address.

18 e. Other electronic addresses as determined by the
19 attorney general.

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

25 4. "List" means the kids no e-contact list established
26 under section 714C.3.

27 5. "Minor" means a person under the age of eighteen years.

28 Sec. 3. NEW SECTION. 714C.3 KIDS NO E-CONTACT LIST --
29 ESTABLISHMENT -- ACCESS FEE.

30 1. The attorney general shall establish and operate a kids
31 no e-contact list. The attorney general may enter into any
32 necessary contracts or agreements with a third party to
33 implement the list and act as administrator.

34 2. A parent, guardian, individual, or an entity under
35 subsection 4 who is responsible for a contact point to which a

1 minor may have access may register that contact point with the
2 administrator. The administrator shall establish procedures
3 to ensure that a registrant meets the requirements of this
4 subsection, and, to the extent possible, to prevent the use or
5 disclosure of protected contact points as required under
6 section 714C.6.

7 3. A registration under this section shall not be for more
8 than three years. If the contact point is registered for a
9 specific minor, the registration expires the year the minor
10 turns eighteen years of age. A registration can be revoked or
11 renewed by the registrant upon notification to the
12 administrator.

13 4. Schools and other institutions or entities primarily
14 serving minor children may register one or more contact points
15 with the administrator. An entity under this subsection may
16 make one registration for all contact points of the entity,
17 and the registration may include the entity's internet domain
18 name.

19 5. A fee or charge shall not be assessed against or
20 incurred by a person registering a contact point under this
21 chapter.

22 6. A person desiring to send a message described in
23 section 714C.5 shall verify compliance with the list through a
24 mechanism established by the administrator. A sender shall
25 pay the administrator a fee for access to the compliance
26 verification mechanism. The access fee shall be set by rule
27 by the attorney general. The fee shall not exceed three cents
28 per contact point checked and shall be based on the number of
29 contact points checked against the list for each time a
30 contact point is checked.

31 7. The fees collected under this section shall be credited
32 to the kids no e-contact list fund created under section
33 714C.4.

34 8. The list shall be fully operational not later than July
35 1, 2007.

1 Sec. 4. NEW SECTION. 714C.4 KIDS NO E-CONTACT LIST FUND
2 -- APPROPRIATION.

3 1. The kids no e-contact list fund is established in the
4 office of the treasurer of state and under the control of the
5 attorney general. Moneys shall be deposited into the fund as
6 required by section 714C.3.

7 2. Moneys in the fund are appropriated to the attorney
8 general for the purposes of administering this chapter and for
9 the investigation, enforcement, and defense of this chapter.
10 Notwithstanding section 8.33, any moneys in the fund shall not
11 revert. Notwithstanding section 12C.7, subsection 2, interest
12 or earnings on moneys deposited in the fund shall be credited
13 to the fund.

14 Sec. 5. NEW SECTION. 714C.5 PROHIBITED ACTS --
15 EXCEPTIONS.

16 1. A person shall not send, cause to be sent, or conspire
17 with a third party to send a message to a contact point that
18 has been registered with the administrator for more than
19 thirty calendar days if the primary purpose of the message is
20 to, directly or indirectly, advertise or otherwise link to a
21 message that advertises a product or service that a minor is
22 prohibited by law from purchasing, viewing, possessing,
23 participating in, or otherwise receiving in this state.

24 2. Prior to sending a message described in subsection 1,
25 the sender shall use the compliance verification mechanism
26 created under section 714C.3, subsection 6, to ensure
27 compliance with this section.

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

30 4. A person does not violate this section because the
31 person is an intermediary between the sender and recipient in
32 the transmission of an electronic message that violates this
33 section or unknowingly provides transmission of electronic
34 messages over the person's computer network or facilities that
35 violate this section.

1 5. The sending of a message described in subsection 1 is
2 prohibited only if it is otherwise illegal for a person to
3 provide access to or for a minor to purchase, view, possess,
4 participate in, or otherwise receive the product or service.

5 Sec. 6. NEW SECTION. 714C.6 ACCESS TO LIST INFORMATION
6 -- CONFIDENTIALITY.

7 1. A person shall not release to another person
8 information concerning information contained in the list or
9 provide access to contact points or other information
10 contained in the list except as provided by this chapter.

11 2. A person shall not sell or use the list for any reason
12 other than to meet the requirements of this chapter.

13 3. A person shall not access or attempt to access the list
14 except as provided by this chapter.

15 4. The information contained in the list and submitted for
16 deposit in the list is not a public record subject to
17 disclosure under chapter 22.

18 Sec. 7. NEW SECTION. 714C.7 REMEDIES -- CIVIL PENALTIES
19 -- APPROPRIATION.

20 1. A civil action may be brought by any of the following
21 persons:

22 a. An authorized individual or the registrant of the
23 contact point on behalf of a minor who has received a message
24 in violation of this chapter against the sender of the
25 message.

26 b. A person through whose facilities the message was
27 transmitted in violation of this chapter against the sender of
28 the message.

29 c. The attorney general against a person who has violated
30 any provision of this chapter.

31 2. In a civil action brought under subsection 1, the
32 prevailing party may be awarded reasonable attorney fees,
33 costs, interest, and either of the following:

34 a. Actual damages.

35 b. The lesser of the following civil penalties:

1 (1) Five thousand dollars per message received by a
2 recipient or transmitted by the sender in violation of this
3 chapter.

4 (2) Two hundred and fifty thousand dollars for each day
5 that the violation occurs.

6 3. If the attorney general has reason to believe that a
7 person has violated any provision of this chapter, the
8 attorney general may investigate the business transactions of
9 that person to the extent necessary to determine if a
10 violation has occurred. The attorney general may require that
11 person to appear, at a reasonable time and place, to give
12 information under oath and to produce such documents and
13 evidence necessary to determine whether the person is in
14 compliance with the requirements of this chapter.

15 4. Any civil penalties and attorney fees collected by the
16 attorney general under this section are appropriated to the
17 attorney general for the costs of investigating, enforcing,
18 and defending this chapter.

19 Sec. 8. NEW SECTION. 714C.8 RULES.

20 The attorney general may adopt rules necessary to implement
21 this chapter.

22 Sec. 9. EFFECTIVE DATE. This Act, being deemed of
23 immediate importance, takes effect upon enactment.

24 EXPLANATION

25 This bill provides for a prohibition against sending
26 certain electronic messages to minors and creates a kids no e-
27 contact list of contact points for minors. The bill requires
28 the attorney general to establish a kids no e-contact list,
29 who may do so by contract with a third party to act as
30 administrator. Any parent, guardian, school, or other person
31 or institution primarily serving minors responsible for a
32 contact point to which a minor may have access may register
33 that contact point with the kids no e-contact list. The bill
34 defines a "contact point" as any electronic identification to
35 which messages can be sent including instant messages, a

1 wireless communication device, fax number, or electronic mail
2 address.

3 Prior to sending an electronic message to a contact point
4 for the primary purpose of advertising a product or service
5 that a minor is prohibited by law from purchasing, viewing,
6 possessing, participating in, or otherwise receiving, the
7 sender shall verify that the contact point is not registered
8 with the kids no e-contact list. The administrator of the
9 registry, which may be the attorney general, a designee of the
10 attorney general, or a third party, may charge a fee to a
11 person verifying contact points but may not charge a fee for
12 the registration of a contact point. The fee shall be
13 established by the attorney general by rule.

14 A person who sends, causes to be sent, or conspires with a
15 third party to send a message to a contact point that has been
16 registered with the administrator for more than 30 days may
17 have a civil action brought against the person by the attorney
18 general, an authorized person on behalf of a minor, or by a
19 person through whose facilities the messages were transmitted.
20 The remedies available in the civil action include reasonable
21 attorney fees, costs, and interest and either actual damages
22 or civil penalties in the lesser amount of \$5,000 per message
23 received or transmitted or \$250,000 for each day the violation
24 occurred. Consent to receipt of a message by a minor or other
25 third party is not a defense to a violation. A person who is
26 an intermediary between the sender and recipient of the
27 electronic message may not be liable for violations without
28 actual knowledge that the transmission was a violation.

29 The bill provides that a registration of a contact point
30 expires every three years and also when the minor turns 18
31 years of age. The bill requires the list to be operational
32 not later than July 1, 2007. The bill creates a kids no e-
33 contact list fund and appropriates all fees collected to the
34 fund to be expended by the attorney general to administer and
35 enforce the new Code chapter.

1 The bill provides that information contained in the list
2 shall not be released except as specified. The bill prohibits
3 a person from selling or using the list for any reason other
4 than as specified and prohibits a person from accessing or
5 attempting to access the list except as specified. The bill
6 provides that the information contained in the list and
7 submitted for deposit in the list is not a public record under
8 Code chapter 22.

9 The bill provides for an immediate effective date.

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