

JAN 25 2006

A BILL FOR AN ACT

RELATING TO CHILD PROTECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new part to be appropriately designated and to read as
3 follows:

4 **"PART . CHILD PROTECTION REGISTRY**

5 § **-A Definitions.** As used in this part, unless the
6 context otherwise requires:

7 "Contact point" means any electronic identification to
8 which messages can be sent, including any of the following:

- 9 (1) An instant message identity;
- 10 (2) A wireless telephone, a personal digital assistant, a
11 pager number, or any other similar wireless
12 communication device;
- 13 (3) A facsimile number;
- 14 (4) An electronic mail address; or
- 15 (5) Other electronic addresses subject to rules adopted
16 under this part by the department.

17 "Department" means the department of commerce and consumer
18 affairs.



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

6 "Minor" means an individual under the age of eighteen
7 years.

8 "Person" means an individual, corporation, association,
9 partnership, or any other legal entity.

10 "Registry" means the child protection registry created
11 under section -B.

12 § -B **Child protection registry.** (a) The department
13 shall establish and operate, or contract with a qualified third
14 party to establish and operate, the child protection registry.
15 The department or a third party administrator shall establish
16 procedures, to the extent possible, to prevent the use or
17 disclosure of protected contact points as required under section
18 -E.

19 (b) A parent, guardian, individual, or an entity under
20 subsection (d) who is responsible for a contact point to which a
21 minor may have access may register that contact point with the



1 department. The department shall establish procedures to ensure
2 that a registrant meets the requirements of this subsection.

3 (c) A registration under this section shall be for not
4 more than three years. If the contact point is established for
5 a specific minor, the registration expires on the minor
6 registrant's eighteenth birthday. A registration can be
7 canceled or renewed by the registrant upon notification to the
8 department.

9 (d) Schools and other institutions or entities primarily
10 serving minor children may register one or more contact points
11 with the department. An entity under this subsection may make
12 one registration for all contact points of the entity and the
13 registration may include the entity's internet domain name.

14 (e) No fee or charge shall be assessed or incurred by a
15 person registering a contact point under this part.

16 (f) The department shall establish a procedure for senders
17 to verify compliance with the registry.

18 (g) A person desiring to send a message described in
19 section -D shall pay the department a fee for access to the
20 mechanism required under subsection (f). The fee required under
21 this subsection shall be set by the department by rule. The fee
22 shall not exceed .03 cents per contact point and shall be based



1 on the number of contact points checked against the registry for
2 each time the registry is checked.

3 (h) The fees collected under this section shall be
4 credited to the following:

5 (1) Eighty-five per cent of the fees to the special fund
6 created under section -C.

7 (2) Fifteen per cent of the fees to the attorney general
8 to cover the costs of investigating, enforcing, and
9 defending this part. The department may reimburse the
10 attorney general from the fund created under section
11 -C for any such costs incurred that exceed the fees
12 credited under this paragraph.

13 **§ -C Children's protection registry special fund. (a)**

14 The children's protection registry special fund is created as a
15 separate fund in the state treasury and shall be administered by
16 the department. Money shall be deposited into the fund as
17 required by section -B(h)(1).

18 (b) The department shall expend money from the fund only
19 for the purposes of administering this part and for
20 investigations under and enforcement and defense of this part.



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

4 § -D Prohibited acts; sending messages. (a) A person
5 shall not send, cause to be sent, or conspire with a third party
6 to send a message to a contact point that has been registered
7 for more than thirty calendar days with the department if the
8 primary purpose of the message is, directly or indirectly, to
9 advertise or otherwise link to a message that advertises a
10 product or service that a minor is prohibited by law from
11 purchasing, viewing, possessing, participating in, or otherwise
12 receiving.

13 (b) A person desiring to send a message described in
14 subsection (a) shall use the mechanism created under section
15 -B(f) to ensure compliance with this part.

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

18 (d) A person does not violate this section if the person:

- 19 (1) Is an intermediary between the sender and recipient in
20 the transmission of an electronic message that
21 violates this part; or



1 (2) Unknowingly provides transmission of electronic
2 messages that violate this part over the person's
3 computer network or facilities.

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

8 § -E Prohibited acts; release of registry information.

9 (a) A person shall not release to another person information
10 concerning persons, or provide access to contact points or other
11 information, contained on the registry except as provided by
12 this part.

13 (b) A person shall not sell or use the registry for any
14 reason other than to meet the requirements of this part.

15 (c) A person shall not access or attempt to access the
16 registry except as provided by this part.

17 (d) The registry created under this part is not subject to
18 disclosure under chapter 92F.

19 § -F Criminal penalties. An intentional or knowing
20 violation of this part is a computer crime and, in addition to
21 any penalties authorized by part IX of chapter 708, shall be
22 punishable as a class C felony.



1 § **-G Civil remedies.** (a) A civil action based on the
2 computer crime established under this part may be brought by:

3 (1) An authorized individual or the registrant of the
4 contact point on behalf of a minor who has received a
5 message in violation of this part;

6 (2) A person through whose facilities the message was
7 transmitted in violation of this part; or

8 (3) The attorney general against a person who has violated
9 this part.

10 (b) In any action brought under this section, the
11 prevailing party may be awarded reasonable attorney's fees if
12 the action is found by the court to be frivolous.

13 (c) A person bringing an action under this section may
14 recover one of the following:

15 (1) Actual damages, including reasonable attorney's fees;
16 or

17 (2) In lieu of actual damages, the lesser of the
18 following:

19 (A) \$5,000 per each message received by a recipient
20 or transmitted; or

21 (B) \$250,000 for each day that the violation occurs.



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

9 (e) Any civil penalties collected by the attorney general
10 under this section shall be credited to the attorney general for
11 the costs of investigating offenses under this part and
12 enforcing and defending this part.

13 § -H Rules. The department shall adopt rules pursuant
14 to chapter 91 necessary for the purposes of this part."

15 SECTION 2. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun, before its effective date.

18 SECTION 3. In codifying the new sections added by section
19 1 of this Act, the revisor of statutes shall substitute
20 appropriate section numbers for the letters used in designating
21 the new sections in this Act.



1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY: Will Evers

Shiranne Chun Oakland

Louise G. Brown

Arkano

Clarence D. Johnson

David J. Lee

Carol Fulmer



SB2200

Report Title:

Children's Anti-Spam Registry

Description:

Establishes registry of children's electronic contact points to which unsolicited messages regarding pornography, illegal or prescription drugs, alcohol, tobacco, gambling, firearms, and fireworks may not be sent; makes it a class C felony to send such messages to a registered electronic contact point and authorizes civil penalty of \$5,000 per message.

