

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill requires Internet access providers to make certain products and services available to subscribers. It also requires interactive computer services to preserve records and evidence upon a law enforcement agency's request and to report certain information to the National Center for Missing and Exploited Children. The bill authorizes FDLE to provide certain sexual offender information to interactive computer services.

B. EFFECT OF PROPOSED CHANGES:

Requiring Internet Providers to Provide Regulation Products and Services

CS/HB 1029 requires Internet access providers, who know or have reasonable cause to believe that a subscriber resides within this state, to make available to the subscriber a product or service that enables the subscriber to regulate a minor's use of the service to access the Internet. Internet access providers must only make such product or service available if such a product or service is reasonably and commercially available for the technology used by the subscriber to access the Internet.

Additionally, such product or service must, subject to availability, enable the subscriber to do the following:

- Block access to specific websites or domains disapproved by the subscriber.
- Restrict access to specific websites or domains deemed appropriate by the subscriber or the Internet access provider.
- Allow the subscriber to monitor a minor's use of the Internet remotely through the use of online capability or monitor a minor's use of the Internet by providing a report to the subscriber of the specific websites or domains that the minor has visited or has attempted to visit but could not access because the websites or domains were blocked or restricted by the subscriber.

If such product or service is reasonably and commercially available for the technology used by the subscriber to access the Internet, the Internet access provider:

- Shall make available to the subscriber, at or near the time of subscription, information concerning the availability of the product or service.
- May make the product or service available to the subscriber either directly or through a third-party vendor.

The bill defines the term "Internet access provider" as "any entity which, as one if its primary business activities, provides consumers with access to the Internet. The term does not include commercial mobile radio service providers as defined in s. 364.02."

Computer Evidence Preservation

CS/HB 1029 requires interactive computer services¹, upon the request of any law enforcement agency investigating an offense listed in ss. 775.21(4)(a)1.² or 943.0435(1)(a)1.³, F.S., that involves a minor, to

¹ Section 668.602, F.S., defines the term "interactive computer service" as "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically, but not limited to, a service or system that provides access to the Internet and the systems operated or services offered by libraries or educational institutions."

² Section 775.21(4)(a)1., F.S., includes the following offenses: a capital, life, or first-degree felony violation, or any attempt thereof, of s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim's parent or guardian, or s. 794.011, s. 800.04, or

take all necessary steps to preserve records and all other evidence in its possession pending issuance of a court order or other legal process. The bill specifies that such records and evidence must be retained for a period of 90 days, which may be extended for an additional 90 days upon a renewed request by the law enforcement agency.

The bill also authorizes law enforcement agencies to issue a request, without compulsory legal process or court order, to an interactive computer service to disclose, consistent with 18 USC 2702(c)(4)⁴, information identified in 18 USC 2703(c)(2)⁵. Such request may only be made in connection with a criminal investigation regarding an offense listed in ss. 775.21(4)(a)1., or 943.0435(1)(a)1., F.S. that involves a minor victim and that involves immediate danger of death or serious bodily harm.

The bill specifies that the above provisions relating to interactive computer services must be interpreted in a manner consistent with the requirements of federal law that apply to providers of an electronic communications service, including, but not limited to, 18 USC 2701⁶ and 42 USC 13032⁷.

Reporting Child Pornography

CS/HB 1029 requires interactive computer services that are doing business in Florida and who obtain knowledge of facts or circumstances from which a violation of any law prohibiting child pornography is apparent to make a report of such facts and circumstances to the National Center for Missing and Exploited Children consistent with the requirements of 42 USC 13032.

Sex Offender Registration Information – Interactive Computer Service Liability *Current Situation*

Florida statutes contain numerous registration requirements for sexual offenders and sexual predators. For example, sexual offenders and sexual predators must register in person at the sheriff's office in the county where he or she establishes or maintains a residence within 48 hours after establishing or maintaining a residence in this state.⁸ In addition to registering with the sheriff, sexual offenders and

s. 847.0145, or a violation of a similar law of another jurisdiction; or any felony violation, or any attempt thereof, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.03; s. 800.04; s. 825.1025(2)(b); s. 827.071; s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(4); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction;

³ Section 943.0435(1)(a)1., F.S., includes the following offenses: s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(4); s. 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-sub-subparagraph; s. 794.011, excluding s. 794.011(10); s. 800.04(4)(b) where the victim is under 12 years of age or where the court finds sexual activity by the use of force or coercion; s. 800.04(5)(c)1. where the court finds molestation involving unclothed genitals; or s. 800.04(5)(d) where the court finds the use of force or coercion and unclothed genitals.

⁴ 18 USC 2702(c)(4), sets forth the circumstances in which an entity providing electronic communication services or remote computing services may voluntarily divulge contents of communications.

⁵ Such information includes a subscriber's name; address; local and long distance telephone connection records, or records to session times and duration; length of service (including start date) and types of service utilized; telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and means and source of payment for such services (including any credit card or bank account number).

⁶ 18 USC 2701, describes offenses relating to the unlawful access of stored communications.

⁷ 42 USC 13032, provides child pornography reporting requirements.

⁸ See, ss. 775.21 and 943.0435, F.S.

sexual predators must register any electronic mail address⁹ or instant message¹⁰ name with FDLE prior to using such electronic mail address or instant message name.¹¹

Section 943.0437, F.S., authorizes FDLE to provide electronic mail address and instant message name information maintained as part of the sexual offender registry to commercial social networking websites¹² or third parties designated by commercial social networking websites. Commercial social networking websites may use this information for the purpose of comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and instant message names provided by FDLE.¹³ Section 943.0437, F.S., specifies that its provisions shall not be construed to impose any civil liability on a commercial social networking website for:

- Any action voluntarily taken in good faith to remove or disable any profile of a registered user associated with an electronic mail address or instant message name contained in the sexual offender registry.
- Any action taken to restrict access by such registered user to the commercial social networking website.

Effect of the Bill

CS/HB 1029 amends s. 943.0437, F.S., to authorize FDLE to provide electronic mail address and instant message name information maintained as part of the sexual offender registry to interactive computer services. The bill also authorizes interactive computer services to use this information for the purpose of comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and instant message names provided by FDLE.

The bill also specifies that the provisions of s. 943.0437, F.S. shall not be construed to impose any civil liability on a commercial social networking website or an interactive computer service for:

- Any action voluntarily taken in good faith to remove or disable any profile of a registered user associated with an electronic mail address or instant message name contained in the state sexual offender registry or the National Sex Offender Registry.
- Any action taken to restrict access by such registered user to an interactive computer service or a commercial social networking website.
- Failing to take any action to restrict access by such registered user to an interactive computer service or a commercial social networking website.

C. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of statute relating to Internet access provider; parental controls.

Section 2. Creates an unnumbered section of statute relating to evidence preservation.

⁹ Section 943.0435, F.S., defines “electronic mail address” as “a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.”

¹⁰ Section 943.0435, F.S. defines “instant message name” as “an identifier that allows a person to communicate in real time with another person using the Internet.”

¹¹ FDLE has established an online system through which sexual offenders may securely access and update all electronic mail address and instant message name information. *See* s. 943.0435(4)(d), F.S.

¹² Section 943.0437, F.S. defines “commercial social networking websites” as “a commercially operated Internet website that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger.”

¹³ s. 943.0437, F.S.

Section 3. Creates s. 847.0141, F.S., relating to reporting child pornography violations.

Section 4. Amends s. 943.0437, F.S., relating to commercial social networking websites.

Section 5. This bill takes effect October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a fiscal impact on Internet service providers in that the bill requires them to:

- Make products and services that enable subscribers to regulate a minor's use of the service to access the Internet available to subscribers; and
- Provide to subscribers information concerning the availability of such products and services.

There may be a fiscal impact on interactive computer services in that the bill requires them to:

- Preserve records and evidence upon the request of law enforcement agencies; and
- Make reports to the National Center for Missing and Exploited Children.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

The chair of the Safety & Security Council chose not to submit any further comments regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 19, 2008, the Homeland Security & Public Safety Committee adopted a strike-all amendment and reported the bill favorably as amended. The strike-all amendment:

- Makes technical changes that correct statute citations, provide definitions, and relocate sections of the bill into the appropriate statutes.
- Requires Internet providers to make products available that will allow subscribers to control a minor's use of the Internet
- Deletes duplicative language relating to defenses to certain sex crimes.
- Deletes language that imposes requirements upon FDLE and DOE as well as language requiring lifetime supervision of certain offenders.

On April 1, 2008, the Safety & Security Council adopted one amendment to the amendment and reported the bill favorably as a council substitute. The amendment to the amendment clarified the definition of "Internet access provider." This analysis is drafted to the council substitute.