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FISCAL IMPACT REPORT

ORIGINAL DATE 2/12/19

SPONSOR Hochman-Vigil LAST UPDATED _____ HB 404

SHORT TITLE Child Protection Registry Act SB _____

ANALYST Torres

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
Indeterminate*			Indeterminate*	Child Protection Registry Fund

*See fiscal implications.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	>\$82.2 thousand	>\$82.2 thousand	>\$164.4 thousand	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

SUMMARY

Synopsis of Bill

HB 404 would create the Child Protection Registry Act, which is meant to keep minors from being exposed to advertisements for products or services which are prohibited from purchase by minors, or that contain or have the purpose of advertising or promoting material that is harmful to minors. It does this by requiring the Attorney General to establish and operate a child protection registry to compile a list of contact points (any electronic identification to which a communication may be sent such as an email address, instant messaging, telephone number or any other electronic address) to be identified in rules promulgated by the New Mexico Attorney General (NMAG).

It establishes a non-reverting fund of appropriations and fees for use by the NMAG to establish, operate, administer, enforce and defend the registry. Registration is free, and valid for three years, but fees are generated by charging entities to search the registry.

Penalties for unauthorized communication to a registered contact point, which has been registered for more than 30 days, is a misdemeanor. Unauthorized use of information from the registry is a computer crime, which is fourth degree felony. Internet service providers have some protection and minors cannot consent to receive communications. In addition to criminal prosecutions for violations of the Act, either a registrant on behalf of a minor receiving a prohibited communication or NMAG may bring a civil action alleging violations. A registrant may recover actual damages or the lesser of \$5 thousand per communication transmitted to the contact point or \$250 thousand for each day the violation occurs. AGO may recover a penalty not to exceed \$10 thousand per communication or \$500 thousand for each day the violation occurs, whichever is less. The prevailing party in such an action may be awarded costs and reasonable attorney fees.

This bill lists steps to receive permission to contact a minor via a contact point. It also lists who may bring a civil action, recoverable damages, and defenses.

This bill also requires the attorney general to establish and operate a do not contact registry for all persons seeking to prevent solicitations and unsolicited advertisements sent to their email, instant messaging applications, or other electronic or digital contact points.

It falls to the NMAG to promulgate rules to prevent unauthorized use of the registry and ensure that a registrant meets the requirements of the Act. The registry is not a public record.

The bill allows the NMAG to contract with a third party to establish, operate and secure the registry.

The effective date of this act is July 1, 2019.

FISCAL IMPLICATIONS

HB 404 would appropriate monies in the child protection registry fund to the office of the Attorney General to establish, operate and administer the child protection registry, to establish and operate the verification mechanism described in Section 6 of the Child Protection Registry Act and to enforce and defend the Child Protection Registry Act. The OAG is unable to estimate or determine an amount of revenue that the fund would create as an appropriation, or the amount of funding necessary to maintain such a registry database.

The NMAG estimates that at least one full time Assistant Attorney General will be needed to fulfill the duties of this legislation. The mid-point cost for this position is \$82.2 thousand.

SIGNIFICANT ISSUES

This bill creates two databases of extremely sensitive information and allows a third-party contractor to administer all aspects of it.

CYFD, as an entity that primarily serves minors, may register contact points. Although the

statute says “may,” this may create an implied mandate to do so for children in CYFD’s care and custody.

The AOC also notes that:

There is concern as to the interplay between this bill and existing criminal statutes regarding sexually oriented material harmful to minors. Sections 30-37-1 through 10, NMSA 1978 provide criminal penalties for sale, distribution, and display of visual representations that come within the definition of “harmful to minors” (the same definition that is used in this bill). The statutory scheme set out in those laws requires notice prior to prosecution and provides various defenses and exemptions. Section 30-37-8 provides that those statutes are intended to be the sole and only regulation of such representations, and any other laws covering such representations “shall be or become void, unenforceable and of no effect...” If HB 404 is not intended to be part of those laws, to the extent it regulates visual representations “harmful to minors” its validity could be challenged under Section 30-37-8.

Other concerns include the absence of a provision providing for removal of a contact point from the registry upon the minor reaching the age of majority. Additionally, it notes that Section 7(F) provides that a person who violates a provision of the Act is subject to prosecution under the Computer Crimes Act. The Computer Crimes Act contains three specific offenses: 1) computer access with intent to defraud or embezzle (Section 30-45-3); 2) computer abuse (Section 30-45-4); and 3) unauthorized computer use (Section 30-45-5). It is unclear under which of those sections a violation of the Act would be prosecuted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Exposing minors to materials “harmful to minors” may still be prosecuted under the statutes regarding sexually oriented material harmful to minors.

IT/sb