

HOUSE BILL NO. 491

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced: 5/11/98

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to unwanted electronic mail and facsimile transmissions; relating
2 to computer crimes; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 45.63 is amended by adding new sections to read:

5 **Article 2. Electronic Advertising.**

6 **Sec. 45.63.110. Liability of advertisers and electronic mail service**
7 **providers for electronic mail advertisements.** (a) Except as provided in (d) and (e)
8 of this section, if a person transmits or causes to be transmitted to a recipient an item
9 of electronic mail that includes an advertisement, the advertiser is liable to the
10 recipient for civil damages unless

11 (1) the advertiser has a preexisting business or personal relationship
12 with the recipient;

13 (2) the recipient has expressly consented to receive the item of
14 electronic mail from the advertiser; or

1 (3) the advertisement is readily identifiable as promotional or states that
2 it is an advertisement and clearly and conspicuously provides

3 (A) the legal name, complete street address, and electronic mail
4 address of the person transmitting the electronic mail;

5 (B) a notice that the recipient may decline to receive additional
6 electronic mail that includes an advertisement from the person transmitting the
7 electronic mail; and

8 (C) the procedures for declining the additional electronic mail
9 advertisements.

10 (b) If an advertiser is liable to a recipient under (a) of this section, the
11 recipient may recover from the advertiser actual damages or damages in the amount
12 of \$10 for each item of electronic mail received, whichever is greater, and costs and
13 attorney fees as provided in court rules.

14 (c) In addition to any other recovery that is allowed under (b) of this section,
15 the recipient may apply to the superior court for an order enjoining the advertiser from
16 transmitting to the recipient any other item of electronic mail that includes an
17 advertisement.

18 (d) Except for an advertisement prepared or caused to be prepared by the
19 electronic mail service provider itself, a provider is immune from liability for civil
20 damages under this section for the transmission of an advertisement.

21 (e) This section does not apply to an item of electronic mail that a recipient
22 obtains voluntarily, including an item of electronic mail that a recipient obtains from
23 an electronic bulletin board.

24 **Sec. 45.63.120. Provider's restriction on use of electronic mail service.** (a)
25 A registered user of an electronic mail service may not use or cause to be used the
26 provider's service or equipment in violation of the provider's published policy
27 prohibiting or restricting the use of its service or equipment for the initiation of
28 unsolicited advertisements.

29 (b) A person may not, by initiating an unsolicited advertisement, use or cause
30 to be used the service or equipment of an electronic mail service provider in violation
31 of the provider's published policy prohibiting or restricting the use of its service or

1 equipment to deliver unsolicited advertisements.

2 (c) This section may not be interpreted to require an electronic mail service
3 provider to adopt a policy prohibiting or restricting the use of its service or equipment
4 for the initiation or delivery of unsolicited advertisements.

5 (d) An electronic mail service provider is considered to have published the
6 provider's policy on unsolicited advertisements if the provider

7 (1) makes the policy available on request in written form at no charge
8 to the requester; or

9 (2) displays the policy through an on-line notice on the provider's
10 Internet home page or on a page accessible through a conspicuous link on the
11 provider's Internet home page.

12 (e) A person who violates an electronic mail service provider's published
13 policy on unsolicited advertisements as provided in this section is liable to the provider
14 for the greater of

15 (1) the actual monetary loss suffered by the provider by reason of the
16 violation; or

17 (2) \$50 for each electronic mail message initiated or delivered in
18 violation of this section up to a maximum of \$15,000 a day.

19 **Sec. 45.63.130. Civil liability for computer crimes.** (a) In addition to any
20 other civil remedy available, the owner or lessee of the computer, computer system,
21 computer network, computer program, or data may bring a civil action against a person
22 convicted of a computer crime for compensatory damages, including any expenditure
23 reasonably and necessarily incurred by the owner or lessee to verify that a computer,
24 computer system, computer network, computer program, or data was or was not
25 altered, damaged, or deleted by the access.

26 (b) For purposes of an action authorized by AS 45.63.110 - 45.63.200, a parent
27 or legal guardian of an unemancipated minor may be held liable for damages caused
28 by the minor in accordance with AS 34.50.020.

29 (c) A postsecondary educational institution in the state shall include computer
30 crimes as a specific violation of the institution's student conduct policies and
31 regulations that may subject the student to disciplinary sanctions up to and including

1 dismissal from the institution. This subsection does not apply to the University of
2 Alaska unless the Board of Regents adopts a resolution to that effect.

3 (d) For purposes of bringing a civil action under AS 45.63.110 - 45.63.200,
4 a person who causes, by any means, the access of a computer, computer system, or
5 computer network in one jurisdiction from another jurisdiction is considered to have
6 personally accessed the computer, computer system, or computer network in each
7 jurisdiction.

8 **Sec. 45.63.200.** In AS 45.63.110 - 45.63.200,

9 (1) "advertisement" means an electronic mail message, the principal
10 purpose of which is to promote, directly or indirectly, the sale or other distribution of
11 real property, goods, or services;

12 (2) "advertiser" means a person who transmits or causes to be
13 transmitted to a recipient an item of electronic mail that includes an advertisement;

14 (3) "computer crime" means an offense that was committed by the use
15 of a computer, computer system, or computer network, or that damaged or impaired
16 the use of a computer, computer system, or computer network;

17 (4) "electronic mail" means a message, a file, or other information that
18 is transmitted through a local, regional, or global network, regardless of whether the
19 message, file, or other information is

20 (A) viewed;

21 (B) stored for retrieval at a later time;

22 (C) printed onto paper or other similar material; or

23 (D) filtered or screened by a computer program that is designed
24 or intended to filter or screen items of electronic mail;

25 (5) "electronic mail service provider" or "provider" means a business
26 or organization qualified to do business in the state that provides registered users with
27 the ability to send or receive electronic mail;

28 (6) "initiation" of an unsolicited advertisement refers to the action by
29 the initial sender of the advertisement; it does not refer to the actions of any
30 intervening electronic mail service providers that may handle or retransmit the
31 electronic message;

1 (7) "network" means a network comprised of one or more computers
 2 that may be accessed by a modem, electronic or optical technology, or other similar
 3 means;

4 (8) "recipient" means a person who receives an item of electronic mail;

5 (9) "registered user" means an individual, corporation, or other person
 6 that maintains an electronic mail address with an electronic mail service provider;

7 (10) "unsolicited advertisement" means an electronic mail advertisement
 8 that is

9 (A) addressed to a recipient with whom the initiator does not
 10 have an existing business or personal relationship; and

11 (B) not sent at the request of or with the express consent of the
 12 recipient.

13 * **Sec. 2.** AS 11.46.200(a) is amended to read:

14 (a) A person commits theft of services if

15 (1) the person obtains services, known by that person to be available
 16 only for compensation, by deception, force, threat, or other means to avoid payment
 17 for the services;

18 (2) having control over the disposition of services of others to which
 19 the person is not entitled, the person knowingly diverts those services to the person's
 20 own benefit or to the benefit of another not entitled to them; or

21 (3) the person obtains the use of computer time, a computer system, a
 22 computer program, a computer network, or any part of a computer system or network,
 23 with reckless disregard that the use by that person is unauthorized **or exceeds the**
 24 **scope of the person's authorization.**

25 * **Sec. 3.** AS 11.46.200 is amended by adding a new subsection to read:

26 (d) It is an affirmative defense to a prosecution under (a)(3) of this section that
 27 the defendant, at the time of the offense, was an employee who accessed or used the
 28 computer system, computer program, computer network, or data of the person's
 29 employer when the person was acting outside the scope of the employee's lawful
 30 employment provided the employee's activities did not cause an injury to the employer
 31 or to another, or so long as the value of supplies and computer service used did not

1 exceed an accumulated total of \$100.

2 * **Sec. 4.** AS 11.46.482(a) is amended to read:

3 (a) A person commits the crime of criminal mischief in the second degree if,
4 having no right to do so or any reasonable ground to believe the person has such a
5 right,

6 (1) with intent to damage property of another, the person damages
7 property of another in an amount of \$500 or more;

8 (2) the person tampers with an oil or gas pipeline or supporting facility
9 or an airplane or helicopter with reckless disregard for the risk of harm to or loss of
10 the property; [OR]

11 (3) the person recklessly creates a risk of damage in an amount
12 exceeding \$100,000 to property of another by the use of widely dangerous means; **or**

13 (4) [REPEALED]

14 (5) [REPEALED]

15 **(6) the person violates AS 11.46.484(a)(8) and the person has, in the**
16 **10 years immediately preceding the violation, been convicted of a violation of**
17 **AS 11.46.484(a)(8) or a similar law or ordinance of another jurisdiction.**

18 * **Sec. 5.** AS 11.46.484(a) is amended to read:

19 (a) A person commits the crime of criminal mischief in the third degree if,
20 having no right to do so or any reasonable ground to believe the person has such a
21 right

22 (1) with intent to damage property of another, the person damages
23 property of another in an amount of \$50 or more but less than \$500;

24 (2) [REPEALED]

25 (3) [REPEALED]

26 (4) the person tampers with a fire protection device in a building that
27 is a public place;

28 (5) the person knowingly accesses a computer, computer system,
29 computer program, computer network, or part of a computer system or network;

30 (6) the person uses a device to descramble an electronic signal that has
31 been scrambled to prevent unauthorized receipt or viewing of the signal unless the

1 device is used only to descramble signals received directly from a satellite or unless
2 the person owned the device before September 18, 1984; [OR]

3 (7) the person knowingly removes, relocates, defaces, alters, obscures,
4 shoots at, destroys, or otherwise tampers with an official traffic control device or
5 damages the work upon a highway under construction; **or**

6 **(8) the person uses the Internet domain name of another person in**
7 **connection with the sending of one or more electronic mail messages causes the**
8 **disruption or denial of computer services to an authorized user of the computer,**
9 **computer system, or computer network.**

10 * **Sec. 6.** AS 11.46.740 is amended to read:

11 **Sec. 11.46.740. Criminal use of computer in the first degree.** (a) A person
12 commits the offense of criminal use of a computer **in the first degree** if, having no
13 right to do so or any reasonable ground to believe the person has such a right, **or**
14 **otherwise in excess of the person's valid limited right to do so,** the person
15 knowingly accesses or causes to be accessed a computer, computer system, computer
16 program, computer network, or any part of a computer system or network, and, as a
17 result of that access,

18 (1) obtains information concerning a person; [OR]

19 (2) introduces false information into a computer, computer system, or
20 computer network with the intent to damage or enhance the data record of a person;
21 **or**

22 **(3) knowingly introduces a computer contaminant into the**
23 **computer, computer system, or computer network.**

24 (b) Criminal use of a computer **in the first degree** is a class C felony.

25 * **Sec. 7.** AS 11.46.990 is amended by adding new paragraphs to read:

26 (14) "computer contaminant"

27 (A) means a set of computer instructions that are designed to
28 modify, damage, destroy, record, or transmit data within a computer, computer
29 system, or computer network without the intent or permission of the owner of
30 the information;

31 (B) includes a group of computer instructions commonly called

1 viruses or worms, which are self-replicating or self-propagating and are
2 designed to contaminate other computer programs or computer data, consume
3 computer resources, modify, damage, destroy, record, or transmit data, or in
4 some other fashion usurp the normal operation of the computer, computer
5 system, or computer network;

6 (15) "electronic mail" has the meaning given in AS 45.63.200;

7 (16) "Internet domain name" means a globally unique, hierarchical
8 reference to an Internet host or service, assigned through centralized Internet naming
9 authorities, comprising a series of character strings separated by periods, with the
10 rightmost character string specifying the top of the hierarchy.

11 * **Sec. 8.** INSTRUCTION TO THE REVISOR OF STATUTES. (a) In AS 45.63.010(b),
12 45.63.050, 45.63.070, 45.63.080, 45.63.090, and 45.63.100, the revisor of statutes shall replace
13 the phrase "this chapter" with "AS 45.63.010 - 45.63.100."

14 (b) The legislature does not intend the enactment of sec. 1 of this Act to amend the
15 reference to AS 44.63 in AS 45.50.471(b)(35).

16 * **Sec. 9.** This Act takes effect immediately under AS 01.10.070(c).