

**CS FOR HOUSE BILL NO. 273(L&C)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/27/00

Referred: Judiciary

Sponsor(s): REPRESENTATIVES KERTTULA, Dyson

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the disclosure of subscriber information by Internet service  
2 providers."

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

4 \* **Section 1.** AS 45.50.471(b) is amended by adding a new paragraph to read:

5 (43) violating AS 45.50.479 (disclosure of information by Internet  
6 service provider).

7 \* **Sec. 2.** AS 45.50 is amended by adding a new section to read:

8 **Sec. 45.50.479. Disclosure of information by Internet service provider.** (a)

9 Except as provided in (b) of this section, an Internet service provider or an employee  
10 of an Internet service provider may not disclose subscriber information about a  
11 subscriber of the Internet service provider, or about another person who uses the  
12 provided Internet access services, to a third party for any purpose, including marketing,  
13 without the affirmative consent of the subscriber.

14 (b) An Internet service provider may disclose subscriber information without

1 the affirmative consent of the subscriber to an agency of the state, the federal  
2 government, or a municipality for the investigation of a criminal offense or an  
3 investigation related to a civil or administrative proceeding if, with regard to an  
4 investigation

5 (1) of a criminal offense, a court, upon application of the agency  
6 seeking information that is relevant to the investigation, has issued an order authorizing  
7 the disclosure of the subscriber information without the affirmative consent of the  
8 subscriber; or

9 (2) related to a civil or administrative proceeding, the agency makes  
10 a written request to the Internet service provider to disclose the subscriber information.

11 (c) When an Internet service provider activates a new account for a subscriber,  
12 the Internet service provider shall directly notify the subscriber that, except for certain  
13 disclosures to governmental agencies, the Internet service provider or an employee of  
14 an Internet service provider may not disclose subscriber information about a subscriber  
15 of the Internet service provider, or about another person who uses the provided Internet  
16 access services, to a third party for any purpose, including marketing, without the  
17 affirmative consent of the subscriber. The Internet service provider may provide the  
18 notification by mail or by electronic mail, addressed to the subscriber's address and  
19 to the subscriber's personal attention. The notification must also include

20 (1) a statement whether or not the subscriber has given the subscriber's  
21 affirmative consent to disclosure;

22 (2) if the subscriber has not given the subscriber's affirmative consent  
23 to disclosure, a statement

24 (A) that the Internet service provider will not disclose subscriber  
25 information about the subscriber, or about another person who uses the  
26 provided Internet access services, to a third party for any purpose, including  
27 marketing; and

28 (B) that the Internet service provider may disclose subscriber  
29 information to an agency of the state, the federal government, or a municipality  
30 for the investigation of a criminal offense or an investigation related to a civil  
31 or administrative proceeding if, with regard to an investigation

1 (i) of a criminal offense, a court, upon application of the  
2 agency seeking information that is relevant to the investigation, has  
3 issued an order authorizing the disclosure of the subscriber information  
4 without the affirmative consent of the subscriber; or

5 (ii) related to a civil or administrative proceeding, the  
6 agency makes a written request to the Internet service provider to  
7 disclose the subscriber information;

8 (3) if the subscriber has given the subscriber's affirmative consent to  
9 disclosure,

10 (A) a description of the personal identifying information  
11 concerning the subscriber in the possession of the service provider to which  
12 access will be

13 (i) available without restriction to users of the Internet;

14 (ii) restricted by the service provider;

15 (B) a statement that the Internet service provider may disclose  
16 subscriber information to an agency of the state, the federal government, or a  
17 municipality for the investigation of a criminal offense or an investigation  
18 related to a civil or administrative proceeding if, with regard to an investigation

19 (i) of a criminal offense, a court, upon application of the  
20 agency seeking information that is relevant to the investigation, has  
21 issued an order authorizing the disclosure of the subscriber information  
22 without the affirmative consent of the subscriber; or

23 (ii) related to a civil or administrative proceeding, the  
24 agency makes a written request to the Internet service provider to  
25 disclose the subscriber information;

26 (C) the circumstances in addition to (B) of this paragraph under  
27 which the Internet service provider will disclose contents of a subscriber's  
28 electronic mail or web site traffic to law enforcement officials;

29 (D) the circumstances under which the network administrator  
30 or network contractor of the Internet service provider is permitted to review the  
31 contents of the subscriber's electronic mail or web site traffic; in this

1           subparagraph, "network contractor" means the person or entity paid directly by  
2           the Internet service provider to supply and maintain bandwidth, server space,  
3           and network support software;

4                       (E) the Internet service provider's policy with regard to the sale  
5           or redistribution of subscriber information.

6           (d) Notwithstanding AS 45.50.531(a), if an Internet service provider or an  
7           employee of the Internet service provider discloses subscriber information in violation  
8           of this section, the subscriber, or the state on the subscriber's behalf, may bring a civil  
9           action against the Internet service provider to recover \$500 as damages for each  
10          disclosure. Each item of subscriber information that is disclosed is considered a  
11          separate disclosure for which \$500 may be awarded as damages. The \$500 award  
12          constitutes the value under this subsection of damages for the violation, and the  
13          subscriber or the state is not required to prove actual damages. An action under this  
14          subsection is in addition to any other remedy allowed under AS 45.50.471 - 45.50.561.

15          (e) This section does not apply to disclosure of subscriber information by an  
16          Internet service provider if the application of it would violate 15 U.S.C. 6502(d)  
17          (Children's Online Privacy Protection Act of 1998).

18          (f) In this section,

19                       (1) "affirmative consent" means a written statement signed by a  
20          subscriber authorizing an Internet service provider to distribute personal subscriber  
21          information to third parties for marketing or other purposes;

22                       (2) "criminal offense" has the meaning given to "offense" in  
23          AS 11.81.900(b);

24                       (3) "direct Internet access services" means direct transmission control  
25          protocol/Internet protocol (TCP/IP) services if the services

26                               (A) include access to a domain name server and an electronic  
27          mail server; and

28                               (B) are provided by dial-up modem connections using a  
29          telephone, the Integrated Services Digital Network, a digital subscriber line, or  
30          a coaxial cable, or by other means;

31                       (4) "Internet service provider" means a person that engages in the

1 business of providing direct Internet access services to other persons;

2 (5) "subscriber" means a person who contracts with an Internet service  
3 provider to receive direct Internet access services if the person's address provided to  
4 the Internet service provider is located in this state;

5 (6) "subscriber information" means information obtained from or as a  
6 result of the contract between an Internet service provider and a subscriber; the term

7 (A) includes

8 (i) social security number, date of birth, occupation,  
9 credit card information, debit card information, current address, prior  
10 addresses, telephone number, mother's maiden name, and income  
11 information; and

12 (ii) information gathered by means of tracking Internet  
13 usage, Internet protocol connection history, Internet preferences,  
14 computer equipment, computer software, or subscriber profiles;

15 (B) does not include aggregated data that cannot be used to  
16 identify a subscriber;

17 (7) "third party"

18 (A) means a person who is not the Internet service provider, an  
19 employee of the Internet service provider, or the subscriber;

20 (B) includes an organization that controls, is controlled by, or  
21 is under common control with the Internet service provider.

22 \* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section  
23 to read:

24 **APPLICABILITY.** AS 45.50.479, enacted by sec. 2 of this Act, applies to contracts  
25 between Internet service providers and subscribers if the contracts are in existence when this  
26 Act takes effect or are entered into on or after the effective date of this Act.