

**HOUSE CS FOR CS FOR SENATE BILL NO. 140(RLS)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE

Offered: 5/4/05

Referred: Rules

Sponsor(s): SENATORS THERRIAULT, Elton, Ellis, Kookesh, Wagoner, Dyson, Gary Stevens, Olson, Stedman, Bunde, Ben Stevens, Cowdery, Seekins

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to computers, computer communications, and the Internet."**

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

3 \* **Section 1.** AS 11.41 is amended by adding a new section to read:

4 **Sec. 11.41.452. Online enticement of a minor.** (a) A person commits the  
5 crime of online enticement of a minor if the person, being 18 years of age or older,  
6 knowingly uses a computer to communicate with another person to entice, solicit, or  
7 encourage the person to engage in an act described in AS 11.41.455(a)(1) - (7) and

8 (1) the other person is a child under 16 years of age; or

9 (2) the person believes that the other person is a child under 16 years  
10 of age.

11 (b) In a prosecution under (a)(2) of this section, it is not a defense that the  
12 person enticed, solicited, or encouraged was not actually a child under 16 years of age.

13 (c) In a prosecution under this section, it is not necessary for the prosecution  
14 to show that the act described in AS 11.41.455(a)(1) - (7) was actually committed.

15 (d) Except as provided in (e) of this section, online enticement is a class C

1 felony.

2 (e) Online enticement is a class B felony if the defendant was, at the time of  
3 the offense, required to register as a sex offender or child kidnapper under AS 12.63 or  
4 a similar law of another jurisdiction.

5 \* **Sec. 2.** AS 11.61 is amended by adding a new section to read:

6 **Sec. 11.61.128. Electronic distribution of indecent material to minors.** (a)

7 A person commits the crime of electronic distribution of indecent material to minors if  
8 the person, being 18 years of age or older, knowingly distributes to another person by  
9 computer any material that depicts an act described in AS 11.41.455(a)(1) - (7) and

10 (1) the other person is a child under 16 years of age; or

11 (2) the person believes that the other person is a child under 16 years  
12 of age.

13 (b) In this section, it is not a defense that the victim was not actually under 16  
14 years of age.

15 (c) Except as provided in (d) of this section, electronic distribution of indecent  
16 material to minors is a class C felony.

17 (d) Electronic distribution of indecent material to minors is a class B felony if  
18 the defendant was, at the time of the offense, required to register as a sex offender or  
19 child kidnapper under AS 12.63 or a similar law of another jurisdiction.

20 \* **Sec. 3.** AS 45.45 is amended by adding new sections to read:

21 **Article 10A. Deceptive Acts or Practices Relating to Spyware.**

22 **Sec. 45.45.792. Prohibited conduct relating to spyware.** (a) It is unlawful  
23 for a person who is not the owner or authorized user of a computer to engage in  
24 deceptive acts or practices described in this subsection using spyware. Deceptive acts  
25 or practices under this subsection are

26 (1) causing a pop-up advertisement to be shown on the computer  
27 screen of a user by means of a spyware program, knowing that the pop-up  
28 advertisement is

29 (A) displayed in response to a user accessing a specific

30 (i) mark; or

31 (ii) Internet website address; and

1 (B) purchased or acquired by a person other than

2 (i) the mark owner;

3 (ii) a licensee of the mark;

4 (iii) an authorized agent of the owner of the mark;

5 (iv) an authorized user of the mark; or

6 (v) a person advertising the lawful sale, lease, or  
7 transfer of products bearing the mark through a secondary marketplace  
8 for the sale of goods or services; and

9 (2) purchasing advertising that violates (1) of this subsection if the  
10 purchaser of the advertising

11 (A) receives notice of the violation from the mark owner; and

12 (B) fails to stop the violation.

13 (b) It is not a violation of this section for a person to display a pop-up  
14 advertisement under (a)(1) of this section if the spyware program includes a function  
15 that

16 (1) requests information about the user's state of residence before  
17 displaying a pop-up advertisement to the user, and the user indicates a residence  
18 outside this state;

19 (2) implements a reasonably reliable automated system to determine  
20 the user's likely geographic location, according to current best practices in the field,  
21 and the system determines that it is unlikely that the user is located in this state; and

22 (3) does not prompt, ask, or otherwise encourage a user to indicate a  
23 residence outside this state.

24 (c) It is not a violation of (a)(2) of this section if a person purchases  
25 advertising that complies with the requirements of (b) of this section.

26 **Sec. 45.45.794. Removal of potentially harmful software.** Notwithstanding  
27 AS 45.45.792, a provider of computer software or an interactive computer service  
28 may, after notice to a customer, remove from or disable a program on the customer's  
29 computer that is used to

30 (1) violate AS 45.45.792; or

31 (2) collect information from the computer of the customer without the

1 customer's knowledge.

2 **Sec. 45.45.798. Definitions.** In AS 45.45.792 - 45.45.798,

3 (1) "interactive computer service" means an information service,  
4 system, or access software provider that provides or enables computer access by  
5 multiple users to a computer server; "interactive computer service" includes an  
6 Internet or online service provider or a service or system providing access to the  
7 Internet, including a system operated by a library or educational institution;

8 (2) "Internet" means the combination of computer systems or networks  
9 that make up the international network for interactive communications services,  
10 including remote logins, file transfer, electronic mail, and newsgroups;

11 (3) "Internet or online service provider" means an interactive computer  
12 service that provides software or other material that enables a person to transmit,  
13 receive, display, forward, cache, search, subset, organize, reorganize, or translate  
14 content; select or analyze content; or allow or disallow content;

15 (4) "mark" means a registered trademark, registered service mark, or  
16 registered domain name in an Internet website address that is owned, licensed, or  
17 lawfully used by a person doing business in this state;

18 (5) "pop-up advertisement" means material offering for sale or  
19 advertising the availability or quality of a property, good, or service that is displayed  
20 on a user's computer screen, without any request or consent of the user, separate from  
21 an Internet website that a user intentionally accesses;

22 (6) "spyware"

23 (A) means software on the computer of a user who resides in  
24 the state that

25 (i) collects information about an Internet website at the  
26 time the Internet website is being viewed in the state, unless the  
27 Internet website is the Internet website of the person who provides the  
28 software; and

29 (ii) uses the information collected contemporaneously  
30 to display a pop-up advertisement on the computer;

31 (B) does not mean

- 1 (i) an Internet website;
- 2 (ii) a service operated by an Internet or online service  
3 provider accessed by a user;
- 4 (iii) software designed and installed primarily to  
5 prevent, diagnose, detect, or resolve technical difficulties or prevent  
6 fraudulent activities;
- 7 (iv) software designed and installed to protect the  
8 security of the user's computer from unauthorized access or alteration;
- 9 (v) software or data that reports information to an  
10 Internet website previously stored by the Internet website on the user's  
11 computer, including a cookie; in this sub-subparagraph, "cookie"  
12 means a text file that is placed on a computer to record information that  
13 can be read or recognized when the user of the computer later accesses  
14 a particular Internet website, online location, or online service by an  
15 interactive computer service, Internet website, or a third party acting on  
16 behalf of an interactive computer service or an Internet website;
- 17 (vi) software that provides the user with the capability  
18 to search the Internet;
- 19 (vii) software installed on the user's computer with the  
20 consent of the user the primary purpose of which is to prevent access to  
21 certain Internet content;
- 22 (7) "user" means the owner or authorized user of a computer.

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

24 (51) violating AS 45.45.792 (deceptive acts or practices relating to  
25 spyware).

26 \* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to  
27 read:

28 **APPLICABILITY.** Sections 1 and 2 of this Act apply to offenses occurring on or  
29 after the effective date of this Act.