

HOUSE BILL No. 5774

March 6, 2002, Introduced by Rep. Bradstreet and referred to the Committee on Energy and Technology.

A bill to regulate internet service providers; to provide certain protections from disclosure of personally identifying information by internet service providers; and to provide remedies and prescribe penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "internet privacy protection act".

3 Sec. 2. As used in this act:

4 (a) "Affiliate" means any company that controls an internet
5 service provider, is controlled by an internet service provider,
6 or is controlled by another company that also controls an inter-
7 net service provider company.

8 (b) "Affirmative consent" means a statement by a subscriber
9 authorizing an internet service provider to gather personally
10 identifying information about the subscriber and distribute it to

1 an affiliate of the internet service provider or to a third party
2 or parties for marketing or other purposes.

3 (c) "Direct internet access services" includes providing
4 dial-up modem connections via telephone, ISDN, DSL, or coaxial
5 cable, or any other means of providing direct TCP/IP services
6 that include, at a minimum, access to a domain name server and an
7 electronic mail server.

8 (d) "Internet service provider" means any business or organ-
9 ization qualified to do business in this state that provides
10 direct internet access services to residents of this state.

11 (e) "Personally identifying information" includes a
12 subscriber's electronic mail address, social security number,
13 date of birth, income, occupation, credit card or debit card
14 information, current and prior addresses, telephone number, or
15 mother's maiden name. The term includes any information gathered
16 by means of tracking a subscriber's internet usage, IP connection
17 history, preferences, equipment, software, or user profile, but
18 does not include aggregate data that cannot be used to identify a
19 subscriber or information disclosed by the internet service pro-
20 vider to an affiliate or to a third party in connection with the
21 processing, billing, collection, or maintenance of a subscriber's
22 account.

23 (f) "Subscriber" means an individual to whom an internet
24 service provider provides direct internet access services.

25 Sec. 3. (1) An internet service provider that provides
26 direct internet access services to residents of this state shall
27 not disclose any personally identifying information about a

1 subscriber in this state to an affiliate or to a third party or
2 parties for marketing or other purposes without the knowledge and
3 affirmative consent of the subscriber.

4 (2) A subscriber's affirmative consent shall be in writing
5 and obtained by the internet service provider on a form that is
6 separate and distinct from the internet service provider's gener-
7 ally applicable service agreement or contract. A subscriber's
8 affirmative consent may be provided to the internet service pro-
9 vider by electronic mail or other electronic means. The affirma-
10 tive consent shall identify each affiliate and third party to
11 whom the internet service provider will disclose the subscriber's
12 personally identifying information and each affiliate and third
13 party who will have access to that information.

14 (3) An internet service provider shall obtain a separate
15 affirmative consent from a subscriber prior to each disclosure of
16 personally identifying information about the subscriber to an
17 affiliate or third party for marketing or other purposes.

18 (4) An internet service provider shall not disclose person-
19 ally identifying information about a subscriber to an affiliate
20 or third party who is not named on the affirmative consent of the
21 subscriber.

22 (5) An internet service provider shall confirm its receipt
23 of a subscriber's affirmative consent prior to disclosing to an
24 affiliate or third party any personally identifying information
25 about the subscriber.

26 Sec. 4. (1) Except as provided in subsection (2), an
27 internet service provider who violates section 3 is guilty of a

1 misdemeanor punishable by imprisonment for not more than 90 days
2 or a fine of not more than \$100.00, or both.

3 (2) An internet service provider who violates section 3 is
4 guilty of a felony punishable by imprisonment for not more than 2
5 years or a fine of not more than \$5,000.00, or both, if the
6 internet service provider intended to cause the subscriber physi-
7 cal or financial harm by violating section 3.

8 Sec. 5. A subscriber injured as a result of a violation of
9 section 3 may file a civil action against the internet service
10 provider who violated section 3 and recover damages for his or
11 her injuries.