

2010 -- H 7775 SUBSTITUTE A

LC02005/SUB A/2

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS -- INTERNET SERVICE
PROVIDERS -- DUTY TO DISCLOSE INFORMATION

Introduced By: Representatives Martin, Carnevale, Kilmartin, Gallison, and Jackson

Date Introduced: February 25, 2010

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 39-2 of the General Laws entitled "Duties of Utilities and Carriers"
2 is hereby amended by adding thereto the following section:

3 **39-2-20.1. Internet service providers -- Duty to disclose certain information. – (a) As**
4 **used in this chapter:**

5 (1) “Internet service provider” means an entity offering the transmission, routing or
6 providing of connections of digital online communications, between or among points specified by
7 a user, of material of the user’s choosing, without modification to the content of the material as
8 sent or received and includes a provider of online services or network access, including entities
9 that provide an electronic communication service or remote computing service, but does not mean
10 the offering on a common carrier basis of telecommunication facilities or of telecommunications.

11 (2) “Electronic communication service” and “remote computing service” shall have the
12 same meaning as contained in the Electronic Communications Privacy Act, 18 U.S.C. section
13 2510 and 18 U.S.C. section 2701 through 2711, as may be amended.

14 (3) “Foreign entities” means any entity that makes a contract or engages in a term of
15 service agreement with a resident of the State of Rhode Island and a foreign entity.

16 (4) “Proper service” means the delivery of a search warrant or an administrative
17 subpoena by hand, by United States mail, by commercial delivery service, by facsimile, or by any
18 other manner to any officer of a corporation or its general manager in the State of Rhode Island to

1 any natural person designated by the entity as their agent for service of process, or if such
2 corporation has designated a corporate agent.

3 (5) “Service of process on a foreign entity” means that the service of a search warrant or
4 subpoena which is properly served on said foreign entity shall have the same legal force and
5 effect as if served personally within the State of Rhode Island.

6 (b)(1) An Internet service provider, as defined herein, shall disclose to either the attorney
7 general or the superintendent of the Rhode Island state police, upon proper service and with
8 certification under oath by the attorney general or superintendent of the Rhode Island state police
9 that the information is necessary for an officially documented criminal investigation or
10 prosecution of criminal complaint based on probable cause related to the exploitation of children,
11 pursuant to section 11-9-1, online child enticement, pursuant to section 11-37-8.8, including those
12 involved in the storage or distribution of child pornography, pursuant to section 11-9-1.3,
13 subscriber account information consisting of the name, address, IP address and telephone
14 numbers associated with the account.

15 (2) A duly authorized law enforcement person, as designated above, after issuing a
16 certification pursuant to this section, shall apply to a judge for review of the subpoena as soon as
17 practicable but not later than seventy-two (72) hours after issuance of the certification. In the
18 event that such application is not approved, no information obtained or evidence derived from
19 said subpoena shall be received in evidence or otherwise disclosed in any trial, hearing, or other
20 proceeding in or before any court, grand jury, department, office, agency, regulatory body,
21 legislative committee or other governmental authority or committee, and no information
22 concerning any person acquired from such subpoena shall subsequently be used or disclosed in
23 any other manner by state or local officers or employees without the consent of such person.

24 (c) An administrative subpoena issued to an Internet service provider shall authorize the
25 release of non-content basic subscriber information identifying the name, address and telephone
26 number of said account along with the Internet protocol number. Any content-based information,
27 including uniform resource locators or website addresses or sites visited, shall be sought pursuant
28 to a court order or authorized search warrant.

29 (d) Notwithstanding any provision of this chapter, or any other provision of the general or
30 public laws to the contrary, telephone records may not be released by an Internet service provider
31 pursuant to an administrative subpoena. The Rhode Island superior court shall have the authority
32 to enforce said administrative subpoenas upon application by the issuing law enforcement
33 authority.

34 (e) The attorney general or superintendent of the Rhode Island state police who issues an

1 administrative subpoena related to a criminal investigation or prosecution of a criminal complaint
2 related to the exploitation of children, pursuant to section 11-9-1, online child enticement,
3 pursuant to section 11-37-8.8, or the storage or distribution of child pornography to Internet
4 service providers, pursuant to section 11-9-1.3, shall provide an annual report to the attorney
5 general each year detailing the following:

6 (1) The number of administrative subpoenas issued in the previous year;
7 (2) The number of separate criminal investigations for which the administrative
8 subpoenas were issued and whether said administrative subpoenas resulted in an arrest,
9 indictment or criminal information;

10 (3) The number of investigations that remain part of a pending investigation;
11 (4) The number that resulted in the closing of a criminal investigation as unfounded; and
12 (5) The number of investigations that were not able to be investigated further due to an
13 inability to identify the subscriber.

14 (f) The attorney general's office shall compile and forward said reports to the general
15 assembly on an annual basis by March 31 of each year for the previous year. The reports shall be
16 a public record.

17 (g) No cause of action shall lie in any court against any Internet service provider, its
18 officers, employees, or agents for furnishing or disclosing information, in strict compliance with
19 this section.

20 (h) No law enforcement officer, or any party to these investigations under this section,
21 shall disclose any information obtained as a result of this section, except as it is essential to the
22 proper discharge of their duties.

23 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO PUBLIC UTILITIES AND CARRIERS -- INTERNET SERVICE
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1 This act would allow law enforcement and the attorney general administrative subpoena
2 power to obtain information relative to the distribution or storage of child pornography as well as
3 the exploitation of children or online child enticement from Internet service providers. It would
4 also place the duty to disclose certain information on the Internet service provider relative to the
5 name and address of an Internet service subscriber relative to the investigation of suspected
6 related criminal violations. The act would also provide for judicial review of the subpoena no
7 later than seventy-two (72) hours after certification under oath that the subpoena is necessary.

8 This act would take effect upon passage.

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