

LEGAL SERVICES

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MEMORANDUM

April 4, 2018

SUBJECT: Penalties available for violation of proposed sec. 45.48.800
(HB 230; Work Order No. 30-LS0800\D)

TO: Representative Harriet Drummond
Attn: Patrick Fitzgerald

JB
FROM: Theresa Bannister
Legislative Counsel

You have asked what penalties are available for a violation of proposed sec. 45.48.800. After discussing the penalties, you requested that I provide you with a memo containing what I had indicated about the penalties. This memo responds to that request.

Proposed sec. 45.48.800(a) prohibits certain telecommunications and Internet service providers from collecting personal information from a customer without the customer's approval. Sec. 45.48.800(b) prohibits the providers from refusing to provide services to a customer because the customer does not give the customer's approval for the collection of the information.

A violation of proposed sec. 45.48.800 is listed as an unfair trade practice under AS 45.50.471. That listing pulls in the penalties authorized by the Alaska Unfair Trade Practices and Consumer Protection Act¹ for violations of sec. 45.48.800.

Under AS 45.50.501, the attorney general may bring an action to restrain a person from violating sec. 45.48.800 if it would be in the public interest. In that action, the court may make other orders necessary to restore any money or property that may have been acquired by means of the violation.

Under AS 45.50.551(b), if the court finds in the action under AS 45.50.501 that there was a violation of sec. 45.48.800, the attorney general may recover a civil penalty. The civil penalty may not be less than \$1,000 or more than \$25,000 for each violation.

Under AS 45.50.551(a), if a person violates an injunction or restraining order issued under AS 45.50.501, the violator is subject to a civil penalty of not more than \$50,000 for each violation.

¹ AS 45.50.471 - 45.50.561.

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Under AS 45.50.531, a person who suffers an ascertainable loss of money or property as a result of a violation of sec. 45.48.800 may bring a civil action to recover three times the actual damages or \$500, whichever is greater, for each violation.² The court may also provide other relief it considers necessary and proper, including, as indicated by (i) of the section, punitive damages. This remedy may not be practical for violations of sec. 45.48.800 because it may be difficult to demonstrate an ascertainable loss of money or property from the unlawful collection of information or refusal to provide services.

Under AS 45.50.535, a person who is the victim of a violation of sec. 45.48.800 may bring a court action to obtain an injunction prohibiting the violator from continuing to engage in the act or practice that constitutes the violation.

If I may be of further assistance, please advise.

TLB:dls
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² The reference to "class actions" in the catchline of the section is misleading. The provision that authorized class actions was repealed by sec. 4, ch. 31, SLA 1987.