

CS FOR HOUSE BILL NO. 448(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 4/25/02

Referred: Judiciary

Sponsor(s): REPRESENTATIVES CRAWFORD, Morgan, Porter, Kerttula, Hudson, Green, Hayes, Halcro, Guess, Wilson, Meyer, Croft, Berkowitz, Lancaster, Dyson

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to establishing a data base of residential telephone customers who do**
2 **not wish to receive telephonic solicitations, providing that the data base be compiled at**
3 **no cost to the customers, requiring paid telephonic sellers to purchase the data base,**
4 **requiring telephonic sellers to identify themselves, and requiring telephonic solicitors**
5 **who are otherwise exempt from registration as telephone solicitors to file with the**
6 **Department of Law and purchase the data base; and providing for an effective date."**

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

8 * **Section 1.** AS 37.05.146(b)(4) is amended by adding a new subparagraph to read:

9 (AAA) receipts of the Department of Law from fees for the
10 data base under AS 45.50.475;

11 * **Sec. 2.** AS 45.50.475(a) is amended to read:

12 (a) A person is in violation of AS 45.50.471(b)(41) if the person

13 (1) engages in the **telephonic** [TELEPHONE] solicitation of a

1 residential telephone customer of a telecommunications company and the customer is
 2 identified in the data base established under (b) of this section [TELEPHONE
 3 DIRECTORY AS NOT WISHING TO RECEIVE TELEPHONE SOLICITATIONS];
 4 or

5 (2) originates a telephone call using an automated or recorded message
 6 as a telephonic advertisement or solicitation.

7 * **Sec. 3.** AS 45.50.475(b) is repealed and reenacted to read:

8 (b) A data base of telephone numbers of residential customers who do not
 9 wish to receive telephonic solicitations shall be established and maintained by an
 10 administrator under contract with the attorney general. The attorney general shall
 11 advertise for bids for the contract and shall include in the contract provisions to
 12 reimburse the attorney general for meeting the department's obligations under this
 13 section and any other provisions that the attorney general determines are in the public
 14 interest. The administrator shall make the data base available for a fee to those
 15 persons intending to engage in telephonic solicitations, including persons required to
 16 purchase the data base under AS 45.63.010 and 45.63.080. The fees charged by the
 17 administrator for the data base shall cover the costs of creating, updating, and
 18 maintaining the data base. The fee for a data base and updates may not exceed \$750
 19 annually. Fees paid to the administrator shall be considered income to the
 20 administrator in the manner specified in the contract. A residential customer may add
 21 the customer's personal telephone number to the data base, and may withdraw it from
 22 the data base, by means of a toll-free telephone call to the administrator. A residential
 23 customer's notice of objection to telephonic solicitations is effective until withdrawn
 24 by the customer. Information contained in the data base shall be used only for the
 25 purpose of compliance with this section or in a proceeding or action under
 26 AS 45.50.471 - 45.50.561 (the unfair trade practices and consumer protection
 27 statutes), AS 45.63 (telephonic solicitations), or AS 45.68 (charitable solicitations).
 28 The information contained in the data base is not open to public inspection or
 29 disclosure. To implement this subsection, the attorney general shall adopt regulations
 30 that specify

31 (1) the effect of a change of a residential customer's telephone number

1 on a notice of objection to telephonic solicitations;

2 (2) the frequency with which the data base is updated;

3 (3) the methods by which a person or entity desiring to make telephone
4 solicitations may obtain access to the data base to avoid calling the telephone numbers
5 of residential customers included in the data base;

6 (4) the fees for access to or for paper or electronic copies of the data
7 base established under this subsection; and

8 (5) any other matter relating to the data base that the attorney general
9 considers desirable, recognizing the cost to local exchange carriers.

10 * **Sec. 4.** AS 45.50.475(d) is amended to read:

11 (d) A person who employs individuals to engage in **telephonic**
12 [TELEPHONE] solicitations is not liable for the violation of **this section**
13 [AS 45.50.475] if an employee solicits a residential telephone customer who is
14 identified in the **data base** [TELEPHONE DIRECTORY] as not wishing to receive
15 **telephonic** [TELEPHONE] solicitations if the person established that

16 (1) the person has adopted and implemented written procedures to
17 comply with (a) of this section including corrective actions where appropriate;

18 (2) the person has trained its personnel in the procedures established
19 under (1) of this subsection;

20 (3) the call that violated **this section** [AS 45.50.475] was made
21 contrary to the procedures and policies established by the person; and

22 (4) calls on behalf of the person that result in violations of **this section**
23 [AS 45.50.475] are infrequent.

24 * **Sec. 5.** AS 45.50.475(e) is amended to read:

25 (e) An individual who solicits a residential telephone customer who is
26 identified in the **data base** [TELEPHONE DIRECTORY] as not wishing to receive
27 **telephonic** [TELEPHONE] solicitations is not liable for the violation of **this section**
28 [AS 45.50.475] if the individual establishes that the individual did not intend to make
29 a call in violation of **this section** [AS 45.50.475] and did not recklessly disregard
30 information or policies and procedures that would have avoided the improper call.

31 * **Sec. 6.** AS 45.50.475(f) is amended to read:

1 (f) Local exchange telecommunications companies shall inform residential
2 customers of the provisions of this section. Notification **shall** [MAY] be made by

3 (1) annual inserts in the billing statements mailed to residential
4 customers; **and** [OR]

5 (2) conspicuous publication of the notice in the consumer information
6 pages of local telephone directories.

7 * **Sec. 7.** AS 45.50.475(g)(3) is amended to read:

8 (3) "**telephonic** [TELEPHONE] solicitation"

9 (A) means the solicitation by a person by telephone of a
10 customer at the residence of the customer for the purpose of encouraging the
11 customer to purchase property, goods, or services, or make a donation;

12 (B) does not include

13 (i) calls made in response to a request or inquiry by the
14 called customer or communication made during a call made by the
15 customer;

16 (ii) calls made by a charitable organization, a public
17 agency, or volunteers on behalf of the charitable organization or public
18 agency to members of the organization or agency or to persons who,
19 within the last 24 months, have made a donation to the organization or
20 agency or expressed an interest in making a donation;

21 (iii) calls limited to soliciting the expression of ideas,
22 opinions, or votes;

23 (iv) business-to-business calls; or

24 (v) a person soliciting business from prospective
25 purchasers who have, within the last 24 months, purchased from the
26 person making the solicitation or from the business enterprise for which
27 the person is calling but only if the person or business enterprise has
28 not received a written request from the prospective purchaser asking
29 that **telephonic** [TELEPHONE] solicitations cease; the person or
30 business enterprise is presumed to have received a written request no
31 later than 10 days after the prospective purchaser mailed it, properly

1 addressed and with the appropriate postage.

2 * **Sec. 8.** AS 45.50.475 is amended by adding a new subsection to read:

3 (h) A person required to register under AS 45.63.010 or a person who is
4 exempt from registration under AS 45.63.080 shall purchase the appropriate data base
5 from the attorney general or from an entity with which the attorney general has
6 entered into a contract, as provided in AS 45.63.010 or 45.63.080.

7 * **Sec. 9.** AS 45.63.010(b) is amended to read:

8 (b) To register under (a) of this section, a person shall file with the department

9 (1) a notice of intent to engage in a solicitation campaign; a separate
10 notice of intent shall be filed for each solicitation campaign;

11 (2) an irrevocable consent appointing the department the person's agent
12 for the receipt of service of process in a court action or other proceeding against the
13 person, or the successor in interest of the person, for a violation of this chapter; [AND]

14 (3) **a request and payment for the appropriate data base compiled**
15 **under AS 45.50.475(b) of the telephone numbers of residential customers who do**
16 **not wish to receive telephonic solicitations; and**

17 (4) a signed statement that the person has read and will comply with
18 this chapter and the regulations adopted under this chapter.

19 * **Sec. 10.** AS 45.63.010(c) is amended to read:

20 (c) Registration under (b) of this section is not complete until the telephonic
21 seller receives an acknowledgement from the department that the seller has complied
22 with (b) of this section **and the telephonic seller has the data base of telephone**
23 **numbers of residential customers who do not wish to receive telephonic**
24 **solicitations.**

25 * **Sec. 11.** AS 45.63 is amended by adding a new section to read:

26 **Sec. 45.63.045. Required representations.** The telephonic seller shall inform
27 each person called of the registered seller's name and telephone number before making
28 any other communications to any person or occupant of the residence called, and shall
29 provide that information at any time thereafter if requested by a person at the number
30 called.

31 * **Sec. 12.** AS 45.63.080 is amended by adding new subsections to read:

1 (b) Not less than 30 days before making a telephonic solicitation, as defined in
 2 AS 45.50.475, a person exempt from this chapter under (a) of this section shall file on
 3 the form required by the department

4 (1) a notice of intent with the department to engage in telephonic
 5 solicitation;

6 (2) an irrevocable consent appointing the department the person's agent
 7 for the receipt of service of process in a court action or other proceeding against the
 8 person for a violation of this section; and

9 (3) a request and payment for the appropriate data base compiled under
 10 AS 45.50.475(b) of the telephone numbers of residential customers who do not wish to
 11 receive telephonic solicitation.

12 (c) A person exempt from this chapter under (a) of this section may not
 13 engage in telephonic solicitations until the person receives an acknowledgment from
 14 the department that the person has complied with (b) of this section.

15 (d) A person exempt from this chapter under (a) of this section is required to
 16 comply with (b) of this section each calendar year in which the person makes
 17 telephonic solicitations.

18 (e) A charitable organization that is registered to make solicitations under
 19 AS 45.68 and is acting in a capacity that is covered by the registration is exempt from
 20 the requirements of (b) - (d) of this section.

21 (f) A violation of (b) - (d) of this section constitutes an unfair or deceptive act
 22 or practice under AS 45.50.471.

23 * **Sec. 13.** AS 45.50.475(c) is repealed.

24 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
 25 read:

26 TRANSITIONAL PROVISIONS: REGULATIONS. Notwithstanding sec. 15 of this
 27 Act, the attorney general may proceed to adopt regulations necessary to implement this Act.
 28 The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
 29 effective date of secs. 1 - 13 of this Act.

30 * **Sec. 15.** Sections 1 - 13 of this Act take effect July 1, 2003.

31 * **Sec. 16.** Section 14 of this Act takes effect immediately under AS 01.10.070(c).