

CS FOR HOUSE BILL NO. 15(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 3/26/03

Referred: Finance

Sponsor(s): REPRESENTATIVES FATE, Gara, Chenault, Crawford, Kerttula, Croft, Seaton, Hawker,
Wilson, Foster

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to establishing the Alaska No-Call List, a data base of residential
2 telephone customers who do not wish to receive telephonic solicitations; requiring
3 telephonic sellers and paid solicitors to purchase the data base; requiring telephonic
4 sellers to identify themselves; requiring telephonic solicitors who are otherwise exempt
5 from registration as telephonic solicitors to file with the Department of Law and pay the
6 data base access fee; and providing for an effective date."

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

8 * **Section 1.** AS 45.50.475(a) is amended to read:

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

10 (1) engages in the telephonic [TELEPHONE] solicitation of a
11 residential telephone customer of a telecommunications company and the customer is
12 identified in the Alaska No-Call List, a data base established under (b) of this
13 section [TELEPHONE DIRECTORY AS NOT WISHING TO RECEIVE

1 TELEPHONE SOLICITATIONS]; or

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

4 * **Sec. 2.** AS 45.50.475(b) is repealed and reenacted to read:

5 (b) The attorney general shall contract with a designated agent to create and
6 maintain an Internet web site and the data base containing the Alaska No-Call List.
7 The Alaska No-Call List is established as a data base for use when verifying that
8 residential subscribers in the state have given notice of objection to receiving
9 telephonic solicitations. The Alaska No-Call List shall be easily accessible by persons
10 or entities desiring to make telephonic solicitations and by state and local law
11 enforcement agencies. The following apply to the Alaska No-Call List:

12 (1) the attorney general shall, by regulation, establish guidelines for the
13 designated agent for the development and maintenance of the Alaska No-Call List so
14 that

15 (A) there is an annual data base access fee for persons or
16 entities that wish to make telephonic solicitations or otherwise access the data
17 base of telephone numbers and zip codes contained in the Alaska No-Call List
18 data base; money collected under this section by the designated agent must
19 cover the costs of creating, maintaining, and updating the website and data
20 base, maintaining the online complaint system, and reimbursement to the
21 attorney general for relevant expenditures; the attorney general may adjust the
22 annual data base access fee by regulation to fully cover the costs of creating
23 and maintaining the Alaska No-Call List; the designated agent shall provide
24 means for online registration and credit card payment of fees; when initially
25 registering and paying the data base access fee for the Alaska No-Call List,
26 each person or entity shall provide information required by the attorney
27 general, including a current business name, business address, electronic mail
28 address, if available, and telephone number, and this information shall be
29 revised when changes to it occur;

30 (B) a residential subscriber may give notice to the designated
31 agent of the person's objection to receiving telephonic solicitations, or may

1 revoke notice, by

2 (i) entering the area code, telephone number, and zip
3 code of the subscriber directly into the data base by way of the
4 designated state Internet web site; or

5 (ii) using a touch-tone telephone to enter the area code,
6 telephone number, and zip code of the subscriber by way of a
7 designated statewide, toll-free telephone number maintained by the
8 designated agent as part of the Alaska No-Call List program;

9 (C) the date of every notice received under (B) of this
10 paragraph is recorded and included as part of the information in the Alaska No-
11 Call List;

12 (D) the designated agent shall

13 (i) subject to supervision by the attorney general, revise
14 information about the Alaska No-Call List program on the designated
15 state Internet web site; and

16 (ii) drop from the program each residential subscriber
17 who fails to reregister annually;

18 (E) the designated agent or a person or entity collecting
19 information to be transmitted to the designated agent may not use or distribute
20 subscriber information contained in the Alaska No-Call List except as
21 expressly authorized under this subsection;

22 (F) the methods by which additions, deletions, changes, and
23 modifications are made to the Alaska No-Call List data base are available to
24 persons or entities on request; the methods must include provisions to remove
25 a telephone number that has been disconnected or reassigned from the Alaska
26 No-Call List on at least an annual basis;

27 (G) the designated agent shall maintain an automated, online
28 complaint system for residential subscribers to report suspected violations
29 using the designated state Internet web site; the automated, online complaint
30 system must be able to electronically collect, sort, and report suspected
31 violations to the appropriate state enforcement agency for enforcement

1 purposes;

2 (H) the Alaska No-Call List is available online

3 (i) at the Alaska No-Call List web site to a person or
4 entity desiring to make telephonic solicitations if the person or entity
5 paid the access fee under (A) of this paragraph; the list shall be
6 available in a text or other compatible format, at the discretion of the
7 attorney general, but shall allow telephonic solicitors to select and sort
8 by specific zip codes and telephone area codes;

9 (ii) for the sole purpose of compliance with this section;

10 (I) other matters relating to the data base as the attorney general
11 considers necessary or desirable are covered by regulation;

12 (2) if the appropriate federal agency establishes a single national data
13 base of telephone numbers of residential subscribers who object to receiving
14 telephonic solicitations, the designated agent shall, at no additional charge to
15 telephonic solicitors, include that portion of a single national data base that relates to
16 this state in the Alaska No-Call List established under this subsection and shall
17 provide the Alaska list to the federal agency;

18 (3) the state is not liable to a person for gathering, managing, or using
19 information in the Alaska No-Call List data base under this subsection or for enforcing
20 the provisions of this section;

21 (4) the designated agent is not liable to any person other than the state
22 for performing the designated agent's duties under this subsection unless, and only to
23 the extent that, the designated agent commits a willful and wanton act or omission;

24 (5) the designated agent shall revise the data base on a periodic basis
25 with information provided by residential subscribers and local exchange providers;

26 (6) a person may not place or remove the telephone number of another
27 person on the Alaska No-Call List without the authorization of the person to whom the
28 number is assigned;

29 (7) the attorney general shall submit a report to the standing Finance
30 Committees of the Alaska Legislature not later than January 31 each year; the report
31 must include

1 (A) an account of fee revenue received under this section in the
2 previous 12 months;

3 (B) expenditures for administration of the Alaska No-Call List
4 program for the previous 12 months;

5 (C) projections of fee revenue for the next 12 months; and

6 (D) projections of expenditures for administration of the
7 program for the next 12 months, including the expenditures of the designated
8 agent and expenditures of the attorney general.

9 * **Sec. 3.** AS 45.50.475(d) is amended to read:

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

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

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

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

21 (4) **all** calls **made** on behalf of the person **who employs individuals to**
22 **engage in telephonic solicitations** that result in violations of **this section occur not**
23 **more than twice in a 30-day period** [AS 45.50.475 ARE INFREQUENT].

24 * **Sec. 4.** 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. 5.** AS 45.50.475(g)(3) is amended to read:

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

2 (A) means **a voice or telefacsimile communication over a**
 3 [THE SOLICITATION BY A PERSON BY] telephone **line** [OF A
 4 CUSTOMER AT THE RESIDENCE OF THE CUSTOMER] for the purpose
 5 of encouraging the [CUSTOMER TO] purchase, **lease, or rental of or**
 6 **investment in** property, goods, or services, or **the making of** [MAKE] a
 7 donation;

8 (B) does not include

9 (i) calls made in response to a request or inquiry by the
 10 called customer or communication made during a call made by the
 11 customer;

12 (ii) [CALLS MADE BY A CHARITABLE
 13 ORGANIZATION, A PUBLIC AGENCY, OR VOLUNTEERS ON
 14 BEHALF OF THE CHARITABLE ORGANIZATION OR PUBLIC
 15 AGENCY TO MEMBERS OF THE ORGANIZATION OR AGENCY
 16 OR TO PERSONS WHO, WITHIN THE LAST 24 MONTHS, HAVE
 17 MADE A DONATION TO THE ORGANIZATION OR AGENCY OR
 18 EXPRESSED AN INTEREST IN MAKING A DONATION];

19 (iii)] calls limited to soliciting the expression of ideas,
 20 opinions, or votes;

21 **(iii)** [(iv)] business-to-business calls; or

22 **(iv)** [(v)] a person soliciting business from prospective
 23 purchasers who have, within the last **18** [24] months, purchased from
 24 the person making the solicitation or from the business enterprise for
 25 which the person is calling but only if the person or business enterprise
 26 has not received a written request from the prospective purchaser
 27 asking that **telephonic** [TELEPHONE] solicitations cease; the person
 28 or business enterprise is presumed to have received a written request no
 29 later than 10 days after the prospective purchaser mailed it, properly
 30 addressed and with the appropriate postage.

31 * **Sec. 6.** AS 45.50.475 is amended by adding new subsections to read:

1 (h) A person required to register under AS 45.63.010 or AS 45.68.010(b), or a
 2 person who is exempt from registration under AS 45.63.080, shall purchase access to
 3 the appropriate data base from the designated agent with which the attorney general
 4 has entered into a contract if the person intends to make a telephonic solicitation.

5 (i) Notwithstanding (h) of this section, each of the following is not required to
 6 purchase access to the Alaska No-Call List and is not subject to this section:

- 7 (1) a person required to register under AS 45.68.010(a);
 8 (2) a person who is exempt from registering under AS 45.68.120; and
 9 (3) a paid solicitor under AS 45.68.010(b) who does not solicit by
 10 telephonic means.

11 (j) A person registered under AS 45.68.010(b) or a volunteer for the charitable
 12 organization is not considered to be engaging in telephonic solicitation under this
 13 section for calls made on behalf of a charitable organization to persons who, within the
 14 last 18 months, have made a donation to the organization or expressed an interest in
 15 making a donation.

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

- 17 (b) To register under (a) of this section, a person shall file with the department
 18 (1) a notice of intent to engage in a solicitation campaign; a separate
 19 notice of intent shall be filed for each solicitation campaign;
 20 (2) an irrevocable consent appointing the department the person's agent
 21 for the receipt of service of process in a court action or other proceeding against the
 22 person, or the successor in interest of the person, for a violation of this chapter; [AND]
 23 (3) **an acknowledgment from the designated agent that the person**
 24 **has paid the data base access fee under AS 45.50.475(b)(1)(A); and**
 25 (4) a signed statement that the person has read and will comply with
 26 this chapter and the regulations adopted under this chapter.

27 * **Sec. 8.** AS 45.63.010(c) is amended to read:

28 (c) Registration under (b) of this section is not complete until the telephonic
 29 seller receives an **acknowledgment** [ACKNOWLEDGEMENT] from the department
 30 that the seller has complied with (b) of this section **and the telephonic seller has the**
 31 **data base of telephone numbers of residential customers who do not wish to**

1 receive telephonic solicitations.

2 * **Sec. 9.** AS 45.63 is amended by adding a new section to read:

3 **Sec. 45.63.045. Required representations; prohibitions.** (a) A telephonic
4 seller shall

5 (1) promptly and in a clear and conspicuous manner, disclose the
6 registered seller's name and telephone number, whom the registered seller represents,
7 and that the call is a sales call; and

8 (2) provide the information under (1) of this subsection at any time
9 during the conversation after it is provided under (1) of this subsection if requested by
10 a person at the number called.

11 (b) A telephonic solicitor may not cause a telephone to ring repeatedly or
12 continuously with the intent to annoy, abuse, or harass a person at the telephone
13 number called or engage a person in a telephone conversation repeatedly.

14 * **Sec. 10.** AS 45.68.010(c) is amended to read:

15 (c) To register under this section, a charitable organization or paid solicitor
16 shall file with the department

17 (1) a registration statement on a form provided and established by the
18 department by regulation; and

19 (2) in the case of a paid solicitor,

20 (A) a bond in the amount and under the conditions established
21 by the department by regulation; **and**

22 (B) an acknowledgment from the designated agent that the
23 paid solicitor has paid the data base access fee under
24 AS 45.50.475(b)(1)(A) if the paid solicitor intends to engage in telephonic
25 solicitations.

26 * **Sec. 11.** AS 45.68.010(d) is amended to read:

27 (d) Registration under this section expires on September 1 of each year. To
28 renew a registration, a charitable organization or paid solicitor shall file with the
29 department a registration renewal statement established by the department by
30 regulation and, in the case of a paid solicitor, evidence that a bond that satisfies (c)(2)
31 of this section will be in effect for the renewal period **and, if required under (c)(2) of**

1 **this section, acknowledgment from the designated agent that the paid solicitor**
2 **has paid the data base access fee under AS 45.50.475(b)(1)(A) for the renewal**
3 **period.**

4 * **Sec. 12.** AS 45.50.475(c) is repealed.

5 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 DATA BASE SETUP. (a) Not later than January 1, 2004, the attorney general shall
8 contract with a designated agent to maintain the Internet web site and data base containing the
9 Alaska No-Call List. If only one entity bids on the contract, the attorney general may, at the
10 attorney general's discretion, award the contract. If no responsive and responsible bids are
11 received by January 1, 2004, the attorney general may advertise again for bids. The contract
12 must begin not later than July 1, 2004.

13 (b) Not later than six months after the beginning of the contract, the designated agent,
14 using the designated state Internet web site, shall develop and maintain the Alaska No-Call
15 List data base with information provided by residential subscribers.

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

18 TRANSITIONAL PROVISIONS: REGULATIONS. Notwithstanding sec. 15 of this
19 Act, the attorney general may proceed to adopt regulations necessary to implement this Act.
20 The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
21 effective date of secs. 1 - 12 of this Act.

22 * **Sec. 15.** Sections 1 - 12 of this Act take effect July 1, 2004.

23 * **Sec. 16.** Sections 13 and 14 of this Act take effect immediately under AS 01.10.070(c).