

HOUSE BILL NO. 36

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GARA, Foster, Heinze, Meyer, Moses, Kookesh, Croft, Crawford, Guttenberg, Stevens, Cissna, McGuire, Kapsner, Gruenberg, Wilson, Lynn, Weyhrauch, Dahlstrom

Introduced: 1/21/03

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to electronic mail activities and making certain electronic mail**
2 **activities unfair methods of competition or unfair or deceptive acts or practices under**
3 **the Act enumerating unfair trade practices and consumer protections."**

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

5 *** Section 1.** AS 45.45 is amended by adding new sections to read:

6 **Article 10A. Electronic Mail Activities.**

7 **Sec. 45.45.800. Telephone number or address required.** A person who
8 does business in this state may not send or cause to be sent in the course of the
9 person's business an unsolicited electronic mail advertisement unless the business
10 person establishes a toll-free telephone number for the business person or a valid
11 electronic mail return address operated by the business person that the recipient of the
12 unsolicited electronic mail advertisement may use to notify the business person not to
13 send further unsolicited electronic mail advertisements.

14 **Sec. 45.45.810. Statement required.** A person who does business in this

1 state may not send or cause to be sent in the course of the person's business an
 2 unsolicited electronic mail advertisement unless the advertisement includes a
 3 statement informing the recipient of a local or toll-free telephone number for the
 4 business person or a valid electronic mail return address operated by the business
 5 person that the recipient may use to notify the business person not to send further
 6 unsolicited electronic mail advertisements to the electronic mail address specified by
 7 the recipient. The statement must be the first text in the body of the message and must
 8 be the same size as the majority of the text of the message.

9 **Sec. 45.45.820. Mailing prohibited after notification.** (a) After receiving a
 10 request that the business person not send further electronic mail advertisements, a
 11 person who does business in this state may not send or cause to be sent in the course
 12 of the person's business an electronic mail advertisement to the requestor, and may not
 13 share the requestor's electronic mail address with another person, except to arrange for
 14 the removal of the address from an electronic mail address list.

15 (b) The request described in (a) of this section may be made by an employer
 16 who is the registered owner of more than one electronic mail address on behalf of the
 17 employer's employees who use the addresses.

18 **Sec. 45.45.830. Disclosure required.** A person who does business in this
 19 state may not send or cause to be sent in the course of the person's business an
 20 unsolicited electronic mail advertisement unless the subject line of the advertisement
 21 includes "ADV:" as the first four characters. If the advertisement advertises real
 22 property, goods, or services, including an extension of credit, that may only be viewed
 23 by, leased by, purchased by, rented by, or held by an individual who is 18 years of age
 24 or older, the subject line of the advertisement must include "ADV:ADLT" as the first
 25 eight characters.

26 **Sec. 45.45.840. Use of electronic mail service providers.** (a) A registered
 27 user of an electronic mail service provider may not use, or cause to be used, the
 28 provider's equipment located in this state in violation of the provider's policy
 29 prohibiting or restricting the use of the provider's equipment for the initiation of
 30 unsolicited electronic mail advertisements.

31 (b) A person may not use, or cause to be used, for the initiation of an

1 unsolicited electronic mail advertisement, an electronic mail service provider's
 2 equipment located in this state in violation of the provider's policy prohibiting or
 3 restricting the use of the provider's equipment for the delivery of unsolicited electronic
 4 mail advertisements to the provider's registered users.

5 (c) Notwithstanding (a) and (b) of this section, an electronic mail service
 6 provider is not required to establish a policy prohibiting or restricting the use of the
 7 provider's equipment for the initiation or delivery of unsolicited electronic mail
 8 advertisements.

9 (d) In this section, "initiation" means the action taken by the initial sender of
 10 an electronic mail advertisement to send an unsolicited electronic mail advertisement,
 11 but does not include the action of an intervening electronic mail service provider who
 12 handles or retransmits the advertisement.

13 **Sec. 45.45.850. Violations.** A violation of AS 45.45.800 - 45.45.890 is an
 14 unfair method of competition and an unfair or deceptive act or practice under
 15 AS 45.50.471 - 45.50.561. A remedy provided under AS 45.50.471 - 45.50.561 is in
 16 addition to other remedies available to a person under law, including common law.

17 **Sec. 45.45.860. Limitation on actions.** Notwithstanding AS 45.50.531 and
 18 45.50.535, a person may not bring an action in court under AS 45.50.471 - 45.50.561
 19 for a violation of AS 45.45.800 - 45.45.890 unless the person is the state, a recipient of
 20 an unsolicited electronic mail advertisement prohibited by AS 45.45.800 - 45.45.890,
 21 or an electronic mail service provider whose registered user has either received or sent
 22 an unsolicited electronic mail advertisement prohibited by AS 45.45.800 - 45.45.890.

23 **Sec. 45.45.870. Limitation on recovery.** Notwithstanding AS 45.50.531 and
 24 45.50.535, if more than one private plaintiff brings a court action jointly under
 25 AS 45.50.531 or 45.50.535 for the same act prohibited under AS 45.45.800 -
 26 45.45.890, a defendant who is not the prevailing party is not required to pay more than
 27 \$5,000 in total combined damages to all private plaintiffs prevailing in the action,
 28 excluding actual damages, attorney fees, court costs, and interest. In this section, a
 29 message sent at one time to more than one recipient constitutes the same act.

30 **Sec. 45.45.880. Application limits.** (a) AS 45.45.800 - 45.45.890 do not
 31 apply unless a person sends or causes to be sent an unsolicited electronic mail

1 advertisement to a resident of this state by using an electronic mail service provider's
2 service or equipment located in this state.

3 (b) AS 45.45.800 - 45.45.890 may not be construed to limit or restrict

4 (1) the rights of an electronic mail service provider under 47 U.S.C.
5 230(c)(1);

6 (2) a decision of an electronic mail service provider to permit or to
7 restrict access to or the use of the provider's system; or

8 (3) an exercise of the editorial function of an electronic mail service
9 provider.

10 (c) AS 45.45.800 - 45.45.890 do not apply to an act of a nonprofit person or to
11 an act that is political rather than commercial in nature. In this subsection, "nonprofit
12 person" means a person who qualifies for an exemption from taxation under 26 U.S.C.
13 501(c).

14 **Sec. 45.45.890. Definitions.** In AS 45.45.800 - 45.45.890,

15 (1) "electronic mail advertisement" means an electronic mail message
16 if the principal purpose of the message is to promote, directly or indirectly, the sale,
17 lease, rental, gift offer, or other disposition of real property, goods, or services,
18 including the extension of credit to the recipient of the message;

19 (2) "electronic mail service provider" means a person who

20 (A) does business in this state by providing other persons with
21 the ability to send or receive electronic mail through equipment located in this
22 state; and

23 (B) is an intermediary in sending or receiving electronic mail;

24 (3) "registered user" means a person who maintains an electronic mail
25 address with an electronic mail service provider;

26 (4) "unsolicited electronic mail advertisement" means an electronic
27 mail advertisement that is addressed to a recipient with whom the initiator does not
28 have an existing business or personal relationship and that is not sent at the request of
29 or with the express consent of the recipient.

30 * **Sec. 2.** AS 45.50.471(b) is amended by adding a new paragraph to read:

31 (45) violating AS 45.45.800 - 45.45.890 (electronic mail activities).