

CS FOR HOUSE BILL NO. 36(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/12/03

Referred: Judiciary

Sponsor(s): REPRESENTATIVES GARA, Foster, Heinze, Meyer, Moses, Kookesh, Croft, Crawford, Guttenberg, Stevens, Cissna, McGuire, Kapsner, Gruenberg, Wilson, Lynn, Weyhrauch, Dahlstrom, Masek, Seaton, Chenault

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to unlawful electronic mail activities and making certain electronic**
2 **mail activities unfair methods of competition or unfair or deceptive acts or practices**
3 **under the state's unfair trade practices and consumer protection laws; and providing for**
4 **an effective date."**

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

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

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

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

1 **Sec. 45.45.810. Statement required.** A person who does business in this
 2 state may not send or cause to be sent in the course of the person's business an
 3 unsolicited electronic mail advertisement unless the advertisement includes a
 4 statement informing the recipient of a local or toll-free telephone number for the
 5 business person or a valid electronic mail return address operated by the business
 6 person that the recipient may use to notify the business person not to send further
 7 unsolicited electronic mail advertisements to the electronic mail address specified by
 8 the recipient. The statement must appear at or before the end of the advertisement and
 9 must be at least the same size as the majority of the text of the advertisement or be
 10 fairly readable.

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

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

21 **Sec. 45.45.830. Use of electronic mail service providers.** (a) A registered
 22 user of an electronic mail service provider may not use, or cause to be used, the
 23 provider's equipment located in this state in violation of the provider's policy
 24 prohibiting or restricting the use of the provider's equipment to initiate unsolicited
 25 electronic mail advertisements.

26 (b) A person may not use, or cause to be used, to initiate an unsolicited
 27 electronic mail advertisement, an electronic mail service provider's equipment located
 28 in this state in violation of the provider's policy prohibiting or restricting the use of the
 29 provider's equipment for the delivery of unsolicited electronic mail advertisements to
 30 the provider's registered users.

31 (c) Notwithstanding (a) and (b) of this section, an electronic mail service

1 provider is not required to establish a policy prohibiting or restricting the use of the
2 provider's equipment to initiate or deliver unsolicited electronic mail advertisements.

3 **Sec. 45.45.840. Limitations on electronic mail.** (a) A person may not
4 initiate the transmission of an unsolicited electronic mail advertisement if the
5 transmission

6 (1) uses a third party's Internet domain name without the permission of
7 the third party;

8 (2) misrepresents or obscures information that identifies the point of
9 origin or the transmission path of the advertisement; or

10 (3) contains false or clearly misleading information in the subject line.

11 (b) An intervening interactive computer service does not violate (a) of this
12 section by handling or retransmitting the message initiated by a sender.

13 (c) In this section,

14 (1) "electronic mail address" means a destination, commonly
15 expressed as a string of characters, to which electronic mail may be sent;

16 (2) "Internet domain name" means a globally unique hierarchical
17 reference

18 (A) to an Internet host or service;

19 (B) that is assigned through a centralized Internet naming
20 authority; and

21 (C) that is made up of a series of character strings separated by
22 periods.

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

27 **Sec. 45.45.860. Limitation on actions.** Notwithstanding AS 45.50.531 and
28 45.50.535, a person may not bring an action in court under AS 45.50.471 - 45.50.561
29 for a violation of AS 45.45.800 - 45.45.890 unless the person is the state, a recipient of
30 an unsolicited electronic mail advertisement prohibited by AS 45.45.800 - 45.45.890,
31 or an electronic mail service provider whose registered user has either received or sent

1 an unsolicited electronic mail advertisement prohibited by AS 45.45.800 - 45.45.890.
 2 In this section, "recipient" includes a business whose employee receives the
 3 advertisement in the course of the employment.

4 **Sec. 45.45.870. Application limits.** (a) AS 45.45.800 - 45.45.890 do not
 5 apply unless a person initiates the sending of an unsolicited electronic mail
 6 advertisement to a resident of this state by using any of an electronic mail service
 7 provider's service or equipment located in this state.

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

9 (1) the rights of an electronic mail service provider under 47 U.S.C.
 10 230(c)(1);

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

13 (3) an exercise of the editorial function of an electronic mail service
 14 provider.

15 (c) AS 45.45.800 - 45.45.890 do not apply to an act of a nonprofit person or to
 16 an act that is political rather than commercial in nature. In this subsection, "nonprofit
 17 person" means a person who qualifies for an exemption from taxation under 26 U.S.C.
 18 501(c).

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

20 (1) "electronic mail advertisement" means an electronic mail message
 21 if the principal purpose of the message is to promote, directly or indirectly, the sale,
 22 lease, rental, gift offer, or other disposition of real property, goods, or services,
 23 including the extension of credit to the recipient of the message, but does not include
 24 an advertisement attached to an electronic mail message by an electronic mail service
 25 provider in exchange for free use of an electronic mail account if the sender has agreed
 26 to this arrangement;

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

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

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

1 (3) "initiate" means to take action as the initial sender of an unsolicited
 2 electronic mail advertisement to send the advertisement, but does not include the
 3 action of an intervening electronic mail service provider who handles or retransmits
 4 the advertisement;

5 (4) "registered user" means a person who maintains an electronic mail
 6 address with an electronic mail service provider;

7 (5) "unsolicited electronic mail advertisement" means an electronic
 8 mail advertisement that is addressed to a recipient with whom the person who initiates
 9 the advertisement does not have an existing business or personal relationship, unless
 10 the advertisement is sent at the request of or with the express consent of the recipient.

11 * **Sec. 2.** AS 45.45.870(a) is repealed and reenacted to read:

12 (a) AS 45.45.800 - 45.45.890 do not apply unless a person initiates the
 13 sending of an unsolicited electronic mail advertisement

14 (1) from a computer located in the state; or

15 (2) to an electronic mail address if the person

16 (A) knows the address is held by a recipient in this state; or

17 (B) is aware of a fact that makes fairly apparent that the address
 18 is held by a recipient in this state.

19 * **Sec. 3.** AS 45.50.471(b) is amended by adding a new paragraph to read:

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

21 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
 22 read:

23 CONTINGENT EFFECT OF SECTION 2. Section 2 of this Act takes effect only if a
 24 court of competent jurisdiction whose decisions are binding in this state enters a final
 25 judgment that the application of AS 45.45.870(a), as enacted by sec. 1 of this Act, to a person
 26 who sends a commercial electronic mail advertisement from outside the state into the state is
 27 unconstitutional.

28 * **Sec. 5.** If, under sec. 4 of this Act, sec. 2 of this Act takes effect, it takes effect on the day
 29 after the last day on which the judgment described in sec. 4 of this Act could have been
 30 appealed, including appeal by writ of certiorari.