

CS FOR HOUSE BILL NO. 36(L&C) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Amended: 5/20/03

Offered: 5/12/03

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

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

12 (1) a local or toll-free telephone number for the business person; or

13 (2) a valid electronic mail return address operated by the business
14 person that the recipient of the unsolicited electronic mail advertisement may use to

1 notify the business person not to send further unsolicited electronic mail
2 advertisements.

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

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

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

23 (c) The business person shall maintain a list of the date and time of the receipt
24 of the removal request and the date and time of the actual removal of the person's
25 name from its electronic mail advertisement list and must produce, in writing other
26 than electronic mail, at the request of the person the date and time that the person's
27 name was removed from the electronic mail address list. The business person must in
28 good faith honor the removal request within 24 hours receipt of such request.

29 **Sec. 45.45.830. Use of electronic mail service providers.** (a) A registered
30 user of an electronic mail service provider may not use, or cause to be used, the
31 provider's equipment located in this state in violation of the provider's policy

1 prohibiting or restricting the use of the provider's equipment to initiate unsolicited
2 electronic mail advertisements.

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

8 (c) Notwithstanding (a) and (b) of this section, an electronic mail service
9 provider is not required to establish a policy prohibiting or restricting the use of the
10 provider's equipment to initiate or deliver unsolicited electronic mail advertisements.

11 **Sec. 45.45.840. Limitations on electronic mail.** (a) A person may not
12 initiate the transmission of an unsolicited electronic mail advertisement if the
13 transmission

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

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

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

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

21 (c) In this section,

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

24 (2) "Internet domain name" means a globally unique hierarchical
25 reference

26 (A) to an Internet host or service;

27 (B) that is assigned through a centralized Internet naming
28 authority; and

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

31 **Sec. 45.45.850. Violations.** (a) A violation of AS 45.45.800 - 45.45.890 is an

1 unfair method of competition and an unfair or deceptive act or practice under
2 AS 45.50.471 - 45.50.561. A remedy provided under AS 45.50.471 - 45.50.561 is in
3 addition to other remedies available to a person under law, including common law.

4 (b) In addition to the violation and remedy described in (a), a violation of
5 AS 45.45.820(c) is a Class B misdemeanor.

6 **Sec. 45.45.860. Limitation on actions.** Notwithstanding AS 45.50.531 and
7 45.50.535, a person may not bring an action in court under AS 45.50.471 - 45.50.561
8 for a violation of AS 45.45.800 - 45.45.890 unless the person is the state, a recipient of
9 an unsolicited electronic mail advertisement prohibited by AS 45.45.800 - 45.45.890,
10 or an electronic mail service provider whose registered user has either received or sent
11 an unsolicited electronic mail advertisement prohibited by AS 45.45.800 - 45.45.890.
12 In this section, "recipient" includes a business whose employee receives the
13 advertisement in the course of the employment.

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

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

19 (1) the rights of an electronic mail service provider under 47 U.S.C.
20 230(c)(1);

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

23 (3) an exercise of the editorial function of an electronic mail service
24 provider.

25 (c) AS 45.45.800 - 45.45.890 do not apply to an act of a nonprofit person or to
26 an act that is political rather than commercial in nature. In this subsection, "nonprofit
27 person" means a person who qualifies for an exemption from taxation under 26 U.S.C.
28 501(c).

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

30 (1) "electronic mail advertisement" means an electronic mail message
31 if the principal purpose of the message is to promote, directly or indirectly, the sale,

1 lease, rental, gift offer, or other disposition of real property, goods, or services,
 2 including the extension of credit to the recipient of the message, but does not include
 3 an advertisement attached to an electronic mail message by an electronic mail service
 4 provider in exchange for free use of an electronic mail account if the sender has agreed
 5 to this arrangement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

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

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