

CS FOR HOUSE BILL NO. 339(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 2/5/04

Referred: Judiciary

Sponsor(s): REPRESENTATIVES MEYER, Dahlstrom, Anderson, Gara, Holm, McGuire

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to negative option plans for sales, to free trial periods for goods or**
2 **services, and to acts that are unlawful as unfair trade practices."**

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

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

5 **Sec. 45.45.920. Free trial period.** (a) Notwithstanding a provision in
6 AS 45.02 to the contrary, a seller may not offer, promote, advertise, or otherwise give
7 a consumer goods or services for a free trial period unless the seller complies with all
8 the conditions of this section.

9 (b) When offering, promoting, advertising, or otherwise giving a consumer
10 goods or services for a free trial period, a seller shall clearly and conspicuously
11 disclose all material terms and conditions of the free trial period, including

12 (1) any obligation by the consumer to purchase a minimum quantity of
13 goods or services after the free trial period ends;

14 (2) a description of all charges that will be made after the free trial

1 period ends and how those charges will be calculated;

2 (3) whether any charges for goods or services will include shipping
3 and handling;

4 (4) any other obligations the consumer assumes by accepting or using
5 the goods or services within the free trial period.

6 (c) When offering or otherwise giving a consumer goods or services for a free
7 trial period, a seller shall obtain express written consent from the consumer to the free
8 trial period. The form for the written consent must be prepared by the seller and must
9 include the consumer's acknowledgment that the consumer has received and
10 understands the disclosures required by (b) of this section.

11 (d) At the end of the free trial period, a seller may not charge a consumer for
12 the goods and services that were the subject of the free trial period unless the seller has
13 complied with (b) and (c) of this section.

14 (e) This section does not apply to a seller who offers, promotes, advertises, or
15 otherwise gives a consumer goods or services for free if the seller does not impose any
16 obligations on a consumer who accepts the free goods or services.

17 (f) In this section, "free trial period" means a period of time that a seller
18 provides to a consumer goods or services to sample or use without charge.

19 **Sec. 45.45.930. Negative option plans.** (a) Notwithstanding a provision in
20 AS 45.02 to the contrary, a seller may not use a negative option plan to sell goods or
21 services unless the seller complies with all provisions of this section.

22 (b) Before using a negative option plan, a seller must clearly and
23 conspicuously disclose in writing to the prospective buyer before the goods or services
24 are provided

25 (1) the material terms of the plan, including a description of the goods
26 or services being sold;

27 (2) a statement of the price the seller will charge for the goods or
28 services, and the date when the price will be charged if the prospective buyer does not
29 cancel the sale by using the steps identified under (e) of this section; and

30 (3) the specific steps that the buyer must take by telephone, regular
31 mail, or electronic mail to cancel the sale.

1 (c) Before using a negative option plan, a seller shall obtain express written
2 authorization from the buyer to use the negative option plan.

3 (d) At least 15 days before a seller may charge a buyer for goods or services
4 provided under a negative option plan, the seller shall provide the buyer with a notice
5 that contains

6 (1) a clearly written description of the negative option plan, including a
7 description of the goods or services being sold;

8 (2) a statement of the amount that will be charged and the date when
9 the charge will be imposed if the buyer does not cancel the sale; and

10 (3) the specific steps that the buyer is required to take to cancel the
11 charge by telephone, by regular mail, or by electronic mail.

12 (e) A seller who charges a buyer for goods or services under a negative option
13 plan has the burden of proving that the seller provided with the buyer the notice
14 required by (d) of this section and that the buyer expressly agreed to be charged for the
15 goods or services.

16 (f) In this section,

17 (1) "negative option plan" means an arrangement under which a seller
18 provides goods or services to a person and charges the person for the goods or services
19 unless the person notifies the seller that the person does not want to buy the goods or
20 services;

21 (2) "seller" means a person who engages in the business of selling
22 goods or services.

23 * **Sec. 2.** AS 45.50.471(b) is amended by adding new paragraphs to read:

24 (47) violating AS 45.45.920 (free trial period);

25 (48) violating AS 45.45.930 (negative option plans).