CS FOR HOUSE BILL NO. 339(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/1/04
Referred: Rules

Sponsor(s): REPRESENTATIVES MEYER, Dahlstrom, Anderson, Gara, Holm, McGuire, Wolf, Kerttula, Seaton, Lynn, Crawford

A BILL

FOR AN ACT ENTITLED

"An Act relating to opt-out marketing plans for sales, to free trial periods for goods or services, and to acts that are unlawful as unfair trade practices."

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

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

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

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

(1) all material restrictions, limitations, terms, and conditions of the free trial period, including any obligation by the consumer to purchase a minimum quantity of goods or services after the free trial period ends;

(2) a description of all charges that will be imposed after the free trial period ends, including charges for shipping and handling;

(3) a description of the consumer's right to cancel; and

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

(c) Before providing goods or services to a consumer for a free trial period, a seller shall obtain express verifiable consent from the consumer to the free trial period.

(d) The seller has the burden of proving that the seller provided the disclosures required under (b) of this section and that the consumer gave express verifiable consent to the free trial period under (c) of this section.

(e) If a consumer agrees to a free trial period under (c) of this section, the seller shall, at least 15 days before charging the consumer's account, send the consumer a written confirmation that clearly and conspicuously states how the consumer can cancel or discontinue receiving the product or service without payment or further obligation. The confirmation form must provide a box or space allowing the consumer to indicate that the service or product is not wanted, and must be accompanied by a return envelope. The return envelope is not required if the form is contained on a card that can be returned without an envelope. The written confirmation may be sent with, or included on, a billing invoice as long as the statement explaining how to cancel receiving the product or service is made in a font size at least as large as the largest font used elsewhere on the invoice.

(f) At the end of the free trial period, a seller may not charge a consumer for any goods or services provided during or otherwise related to the free trial period unless the seller has complied with (b), (c), and (e) of this section.

(g) This section does not apply to a seller who provides goods or services to a consumer for free if the consumer does not assume any obligation by accepting the free goods or services.

(h) This section does not apply to

(1) a telephonic seller who is registered under AS 45.63 and who complies with AS 45.63; or

(2) a prenotification negative option plan that is regulated by 16 C.F.R.

425 and that complies with 16 C.F.R. 425.

(i) In this section, "seller" means a person who engages in the business of selling, contracting for the sale, arranging for the sale of, or arranging for a free trial period for goods or services.

Sec. 45.45.930. Opt-out marketing plans. (a) Notwithstanding a provision in AS 45.02 to the contrary, a seller may not use an opt-out marketing plan to sell goods or services unless the seller complies with all of the provisions of this section.

(b) Before using an opt-out marketing plan, a seller shall obtain express verifiable consent from the buyer that confirms that the buyer agrees to the use of the plan. The seller shall provide the following information before obtaining the consent:

(1) a description of the material terms and conditions of the plan, including a description of the goods or services that will be offered;

(2) that the buyer's account will be charged unless the buyer takes an affirmative action to avoid the charge;

(3) the date the charge will be submitted for payment; and

(4) the specific steps the buyer must take to avoid the charge.

(c) A seller who charges a buyer for goods or services under an opt-out marketing plan has the burden of proving that the buyer provided the express verifiable consent required by (b) of this section and was given the disclosures required by (b) of this section.

(d) This section does not apply to

(1) a telephonic seller who is registered under AS 45.63 and who complies with AS 45.63; or

(2) a prenotification negative option plan that is regulated by 16 C.F.R. 425 and that complies with 16 C.F.R. 425.

(e) In this section,

(1) "opt-out marketing plan" means an arrangement under which a seller provides an announcement to a buyer that identifies goods or services that the seller intends to provide to the buyer, unless, by a specific date or within a specific time frame, the buyer notifies the seller not to provide the goods or services;

(2) "seller" includes a person who engages in the business of selling,

contracting for the sale of, or arranging for the sale of goods or services.

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

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

(48) violating AS 45.45.930 (opt-out marketing plans).