

(LIMITED RUN SHOWING ALL ADDITIONAL SPONSORSHIPS)

SENATE CS FOR CS FOR HOUSE BILL NO. 339(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/3/04

Referred: Rules

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

SENATORS Elton, Ellis, French, Dyson, Gary Stevens, Bunde, Cowdery, Olson

A BILL**FOR AN ACT ENTITLED**

1 **"An Act relating to opt-out marketing 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 provide a
 7 consumer with goods or services for a free trial period unless the seller complies with
 8 all the conditions of this section.

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

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

1 (2) a description of all charges that will be imposed after the free trial
 2 period ends, including whether billing will include charges for shipping and handling,
 3 and, if the offer, promotion, or advertising is made by telephone, the amount of the
 4 shipping and handling charges;

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

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

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

10 (d) A consumer who receives goods or services for a free trial period may

11 (1) at any time during the free trial period, return the goods or cancel
 12 the services without further obligation to the seller;

13 (2) within 30 days after the free trial period ends, return the goods or
 14 cancel the services for a full refund of the charges, if any, or a partial refund for the
 15 unused portion of the goods or services.

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

19 (f) This section does not apply to

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

22 (2) a prenotification negative option plan that is regulated by 16 C.F.R.
 23 425 and that complies with 16 C.F.R. 425.

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

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

30 (b) Before using an opt-out marketing plan, a seller shall obtain express
 31 verifiable consent from the buyer that confirms that the buyer agrees to the use of the

1 plan. The seller shall provide the following information before obtaining the consent:

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

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

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

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

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

12 (d) This section does not apply to a telephonic seller who is registered under
13 AS 45.63 and who complies with AS 45.63.

14 (e) In this section,

15 (1) "opt-out marketing plan"

16 (A) means an arrangement under which a seller provides,
17 without the buyer's express verifiable consent, a notice to a buyer that
18 identifies goods or services that the seller intends to provide to the buyer and to
19 charge the buyer for, unless, by a specific date or within a specific time frame,
20 the buyer notifies the seller not to provide the goods or services;

21 (B) does not include a prenotification negative option plan that
22 is regulated by and complies with 16 C.F.R. 425;

23 (2) "seller" includes a person who engages in the business of selling,
24 contracting for the sale of, or arranging for the sale of goods or services.

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

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

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