SENATE BILL NO. 293

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY SENATOR MCGUIRE

Introduced: 2/19/08
Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

"An Act relating to electronic communication devices and to personal information."

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

*** Section 1.** AS 45 is amended by adding a new chapter to read:

Chapter 48. Electronic Communication Devices.

Sec. 45.48.010. Label and information required. (a) A provider of an active electronic communication device shall label the electronic communication device, an item it is part of, or the packaging of the device or item clearly and conspicuously with a universally accepted symbol for radio frequency identification technology, and

(1) distribute information to the consumer that explains the meaning of the universally accepted symbol; or

(2) post a sign on the premises where the electronic communication device is sold or issued that

(A) indicates that the provider is selling or issuing an electronic communication device;

(B) explains the universally accepted symbol;

(C) explains how an electronic communication device may send, gather, or transmit information about the consumer that can be read by an unauthorized third party; and

(D) states whether it is technically feasible to deactivate the electronic communication device, and, if technically feasible to deactivate the electronic communication device, provide instructions on

(i) the specific location of the electronic communication device in the item, if it is part of another item; and

(ii) how the consumer may deactivate the electronic communication device.

(b) In this section, "universally accepted symbol" means a graphical system designed to provide a standard way to show the presence, frequency, and data structure of a radio frequency identification transponder; in this paragraph, "transponder" means a wireless communications, monitoring, or control device that picks up and automatically responds to an incoming signal.

Sec. 45.48.020. Consent required. Before the sale or issuance of an electronic communication device, a provider of an electronic communication device that transmits personal information about a consumer shall, in addition to complying with the requirements of AS 45.48.010, notify the consumer that the electronic communication device transmits personal information about the consumer and obtain the consent of the consumer under AS 45.48.070 for the collection, maintenance, and disclosure of information gathered by the electronic communication device about the consumer.

Sec. 45.48.030. Deactivation. (a) If a consumer consents under AS 45.48.020 to the collection, maintenance, and disclosure of information gathered by an electronic communication device on the consumer but later requests that the provider deactivate the electronic communication device the consumer may be required to pay the costs associated with deactivation.

(b) When an electronic communication device has been deactivated under (a) of this section, the provider of the electronic communication device may not make the electronic communication device active without obtaining the consent under

AS 45.48.020 of the consumer who purchased the electronic communication device.

Sec. 45.48.040. Coercion prohibited. A provider may not coerce a consumer to keep an electronic communication device active in order for the consumer to exchange, return, repair, or service an item that the electronic communication device is a part of.

Sec. 45.48.050. Required security measures. (a) At the point of sale or issuance, a provider shall use industry-accepted best standards to ensure that personal information collected by using the electronic communication device is secure from unauthorized access, loss, and tampering.

(b) A provider who retains personal information gathered through an electronic communication device shall implement adequate security measures to ensure that personal information collected by using the electronic communication device is secure from unauthorized access, loss, and tampering. The security measures must be consistent with the amount and sensitivity of the personal information being stored on the system.

Sec. 45.48.060. Remote scanning and reading. (a) A person may not remotely scan, read, attempt to remotely scan, or attempt to remotely read an electronic communication device to obtain personal information on a consumer without obtaining the consumer's consent under AS 45.48.070.

(b) This section does not prohibit scanning or reading an electronic communication device or using information gathered through an electronic communication device to

(1) comply with federal or state law;

(2) comply with a properly authorized civil, criminal, administrative, or regulatory investigation, subpoena, or summons by an agency of the federal government, state government, or a municipality; or

(3) respond to a judicial process or, for examination, compliance, or other purposes authorized by law, to a government regulatory authority having jurisdiction over the person.

Sec. 45.48.070. Forms of consent. (a) The consent required by AS 45.48.020 and 45.48.030 may be made by

(1) an electronic or written record; the record must, at a minimum, clearly and conspicuously state the provider's privacy policy and the manner in which information relating to the consumer will be collected and disseminated; or

(2) a deliberate act that indicates that the consumer volunteers to be identified with the use of personal information gathered by, or contained within, an electronic communication device; in this paragraph, "deliberate act" includes a consumer voluntarily submitting the consumer's electronic communication device for scanning or reading for the purpose of completing a wholesale or retail transaction.

(b) Consent under (a)(2) of this section that is obtained in one specific situation may not apply to another specific situation unless the provider obtains in a written contract the consumer's permission to apply the consent to more than one specific situation.

Sec. 45.48.080. Enforcement. (a) The attorney general may bring an action against a person who violates this chapter to enjoin further violations and to recover the greater of

(1) the actual damages suffered by a consumer; or

(2) $10,000 for each separate violation.

(b) In (a) of this section, if multiple violations of this chapter result from a single act or instance of conduct, the multiple violations are considered one violation.

(c) In an action under (a) of this section, a court may

(1) increase the damages up to three times the damages allowed by (a) of this section if the person who violated this chapter has engaged in a pattern and practice of violating this chapter; and

(2) award costs and attorney fees as provided by the rules of court.

Sec. 45.48.095. Definitions. In this chapter,

(1) "active" means not disabled, not deactivated, or not removed from another item;

(2) "clearly and conspicuously" means reasonably understandable and designed to call attention to the nature and significance of the information being conveyed;

(3) "consumer" means an individual who buys or is issued an

electronic communication device for use in this state;

(4) "data" means signs, signals, writing, images, sounds, and other information;

(5) "deactivate" means to disable, deactivate, or remove from an item;

(6) "electronic communication device" means an electronic device, whether sold or issued by itself or as part of another item, that uses radio frequency identification technology in

(A) the 902 - 928 MHz frequency range or the 2.4 GHz frequency authorized by the Federal Communications Commission; or

(B) another frequency range authorized by the Federal Communications Commission for radio frequency identification technology;

(7) "person" has the meaning given in AS 01.10.060, but expressly includes an agency of this state, a municipality of this state, or an agency of a municipality of this state; "person" does not include an agency in the judicial branch of the government of this state;

(8) "personal information" means one of the following data elements about a consumer whether used alone or with other information to identify the consumer:

(A) first or last name;

(B) social security number;

(C) driver's license number or state identification card;

(D) bank account number or other financial institution account number;

(E) credit card number or debit card number;

(F) automated or electronic signature;

(G) unique biometric data;

(H) an unlisted telephone number;

(I) medical information;

(J) address;

(K) date of birth;

(L) ethnicity or nationality;

(M) religion;

(N) political affiliation;

(O) sexual orientation;

(P) a private group affiliation not available in the public domain;

(9) "provider" means a person who sells, offers to sell, or issues an electronic communication device; in this paragraph, "sell" does not mean resale by a consumer;

(10) "radio frequency identification" means a tagging and tracking technology that uses electronic devices to transmit information to a remote reader.