

CS FOR SENATE BILL NO. 293(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 3/14/08

Referred: Judiciary

Sponsor(s): SENATOR MCGUIRE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to electronic communication devices and to personal information and**
2 **making certain violations related to electronic communication devices unfair trade**
3 **practices."**

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

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

6 **Chapter 48. Electronic Communication Devices.**

7 **Sec. 45.48.010. Label and information required.** (a) A provider of an
8 electronic communication device shall label the electronic communication device, an
9 item it is part of, or the packaging of the device or item clearly and conspicuously with
10 an industry recognized symbol for radio frequency identification technology, and

11 (1) distribute information to the consumer that explains the meaning of
12 the industry recognized symbol; or

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

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

3 (B) explains the industry recognized symbol;

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

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

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

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

14 (b) In this section,

15 (1) "industry recognized symbol" means a graphical system designed
16 to provide a standard way to show the presence, frequency, and data structure of a
17 radio frequency identification transponder;

18 (2) "transponder" means a wireless communications, monitoring, or
19 control device that picks up and automatically responds to an incoming signal.

20 **Sec. 45.48.020. Consent required.** A provider shall, before the sale or
21 issuance of an electronic communication device, in addition to complying with the
22 requirements of AS 45.48.010, notify the consumer that the electronic communication
23 device transmits personal information about the consumer and obtain the consent of
24 the consumer under AS 45.48.070 for the collection, maintenance, and disclosure of
25 information gathered by the electronic communication device about the consumer.

26 **Sec. 45.48.030. Deactivation.** (a) A provider may not activate a deactivated
27 electronic communication device without obtaining the consent under AS 45.48.020 of
28 the consumer who purchased the electronic communication device.

29 (b) A provider may not activate an electronic communication device that has
30 been deactivated unless the provider deletes any personal information stored in the
31 device before it was deactivated.

1 **Sec. 45.48.040. Requirement prohibited.** A provider may not require a
 2 consumer to keep an electronic communication device activated in order for the
 3 consumer to exchange, return, repair, or service an item that the electronic
 4 communication device is a part of.

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

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

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

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

22 (1) comply with federal or state law;

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

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

29 **Sec. 45.48.070. Forms of consent.** (a) The consent required by AS 45.48.020,
 30 45.48.030, and 45.48.060 may be made by

31 (1) an electronic or written record; the record must, at a minimum,

1 clearly and conspicuously state the provider's privacy policy and the manner in which
2 information relating to the consumer will be collected and disseminated; or

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

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

12 **Sec. 45.48.080. Exemption.** This chapter does not apply to a travel document,
13 including a passport and a passport card, that contains an electronic communication
14 device and is issued by this nation or a foreign nation.

15 **Sec. 45.48.095. Definitions.** In this chapter,

16 (1) "activate" means to make activated;

17 (2) "activated" means not disabled, not deactivated, or not removed
18 from another item;

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

22 (4) "consumer" means an individual who buys or is issued an
23 electronic communication device for use in this state;

24 (5) "data" means signs, signals, writing, images, sounds, and other
25 information;

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

27 (7) "electronic communication device" means an electronic device,
28 whether sold or issued by itself or as part of another item, that transmits, receives, or
29 stores personal information and that uses radio frequency identification technology in

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

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

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

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

10 (A) first or last name;

11 (B) social security number;

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

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

15 (E) credit card number or debit card number;

16 (F) automated or electronic signature;

17 (G) unique biometric data;

18 (H) an unlisted telephone number;

19 (I) medical information;

20 (J) address;

21 (K) date of birth;

22 (L) ethnicity or nationality;

23 (M) religion;

24 (N) political affiliation;

25 (O) sexual orientation;

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

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

31 (11) "radio frequency identification" means a tagging and tracking

1 technology that uses electronic devices to transmit information to a reader.

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

3 (53) violating AS 45.48 (electronic communication devices).