

SENATE BILL NO. 311

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR DUNCAN

Introduced: 5/21/91
Referred: L&C, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulation of telemarketing, junk telephone calls, and the use of
2 automatic dialing and announcing devices and facsimile machines."

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

4 * Section 1. AS 45.50.472(b) is amended to read:

5 (b) In this section

6 (1) "automatic dialing and announcing device" means equipment that dials
7 programmed telephone numbers and plays a recorded message when the telephone call is
8 answered;

9 (2) "existing business relationship" means a preexisting and continuing course
10 of dealing between parties involving the purchase or sale of property, goods, or services;

11 (3) "junk telephone call" means a telephone call made for the purpose of
12 advertising through the use of a recorded advertisement.

13 * Sec. 2. AS 45.50.472(c) is repealed and reenacted to read:

14 (c) A violation of this section constitutes a violation of AS 45.50.471 - 45.50.561.

1 * **Sec. 3.** AS 45.50.472 is amended by adding a new subsection to read:

2 (d) A person may not use an automatic dialing and announcing device to solicit the
3 purchase of property, goods, or services. This subsection does not apply to

4 (1) the solicitation for funds by charitable or political organizations or institutions;
5 or

6 (2) contacts between persons with an existing business relationship.

7 * **Sec. 4.** AS 45.50 is amended by adding new sections to read:

8 **Sec. 45.50.482. UNLAWFUL TELEPHONE SOLICITATION.** (a) A person is in
9 violation of AS 45.50.471 - 45.50.561 if, during a telephone solicitation, the called party states
10 a desire not to be called again and the person making the telephone solicitation makes a
11 subsequent telephone solicitation of the called party at that telephone number.

12 (b) Telecommunications companies shall inform parties of the provisions of this section.
13 Notification may be made by

14 (1) annual inserts in the billing statements mailed to parties; or

15 (2) conspicuous publication of the notice in the consumer information pages of
16 local telephone directories.

17 (c) In this section,

18 (1) "party" means a residential telephone customer of a telecommunication
19 customer;

20 (2) "telephone solicitation"

21 (A) means the solicitation by telephone by a person or a party at the
22 residence of the party for the purpose of encouraging the party to purchase property,
23 goods, or services, or make a donation;

24 (B) does not include

25 (i) calls made by a charitable organization, a public agency, or
26 volunteers on behalf of the organization or agency to members of the organization
27 or agency or to persons who have made a donation or expressed an interest in
28 making a donation;

29 (ii) calls limited to polling or soliciting the expression of ideas,
30 opinions, or votes; or

31 (iii) business to business contacts.

1 Sec. 45.50.484. UNSOLICITED FACSIMILE MACHINE TRANSMISSIONS. (a) If
2 a person receives on a facsimile machine unsolicited and unwanted advertising material for the
3 sale of property, goods, or services, the person may give the sender of the material written notice
4 to discontinue further transmissions. A person who has received a notice to discontinue
5 transmissions may not use a facsimile machine to transmit unsolicited advertising material for
6 the sale of property, goods, or services, to the person who gave the notice for a period of one
7 calendar year from the date that the notice was given.

8 (b) In this section, "facsimile machine" means a machine that electronically transmits or
9 receives facsimiles of documents through connection with a telephone network.

10 Sec. 45.50.486. REGISTRATION OF TELEPHONIC SELLERS. (a) A telephonic seller
11 may not conduct business in this state without having registered with the department at least 10
12 days before the conduct of that business. A telephonic seller is required to register in the name
13 under which the telephonic seller conducts business. Individual employees of the telephonic
14 seller are not required to register. A telephonic seller is conducting business in this state if
15 telephone solicitations of prospective purchasers are made from locations in this state or
16 solicitation is made of prospective purchasers located in this state.

17 (b) The department shall prescribe the form and manner for making an application for
18 registration. The application shall be in writing and contain information concerning the conduct
19 of the telephonic seller's business and personnel conducting the business. A registration or
20 renewal of registration is effective for one year from the date of filing with the department. The
21 fee for registration or for renewal of registration is \$400.

22 (c) The department shall send to each registrant a certificate demonstrating registration
23 compliance. The telephonic seller shall post the certificate at the telephonic seller's principal
24 business location.

25 (d) At the time of submission of a registration application, a telephonic seller shall file
26 with the department an irrevocable consent appointing the attorney general to act as the
27 telephonic seller's attorney to receive service of process in any action, suit, or proceeding against
28 the telephonic seller or the telephonic seller's successor in interest that may arise under
29 AS 45.50.471 - 45.50.561.

30 Sec. 45.50.487. BURDEN OF PROOF FOR PERSON CLAIMING EXEMPTION. In
31 a proceeding to enforce the provision of AS 45.50.486 - 45.50.489, the burden of proving an

1 exemption or exception is upon the person claiming it.

2 Sec. 45.50.488. **REQUIRED DISCLOSURES BY TELEPHONIC SELLER.** (a) A
3 telephonic seller, at the time that a solicitation is made and before consummation of a sales
4 transaction, shall provide the information required by this section to each prospective purchaser.

5 (b) If the telephonic seller represents or implies that a prospective purchaser will receive,
6 without charge, certain specific items or one item from among designated items, whether the
7 items are denominated as gifts, premiums, bonuses, prizes, or otherwise, the seller shall provide
8 the following information:

9 (1) the information required to be filed under AS 45.50.486(b);

10 (2) the complete street address of the location from which the salesperson is
11 calling the prospective purchaser and, if different, the complete street address of the telephonic
12 seller's principal location; and

13 (3) the total number of individuals who have actually received from the telephonic
14 seller, during the preceding 12 months or if the seller has not been in business that long, during
15 the period that the telephonic seller has been in business, the item having the greatest value and
16 the item with the smallest odds of being received.

17 (c) If the telephonic seller is offering to sell metal, stone, or minerals, or an interest in
18 oil, gas, or mineral fields, wells, or exploration sites, the seller shall provide the following
19 information:

20 (1) the information required to be filed under AS 45.50.486(b); and

21 (2) the complete street address of the location from which the salesperson is
22 calling the prospective purchaser and, if different, the complete street address of the telephonic
23 seller's principal location.

24 (d) If the telephonic seller represents that office equipment or supplies being offered are
25 offered at prices that are below those usually charged for these items, the seller shall provide the
26 following information:

27 (1) the complete street address of the location from which the salesperson is
28 calling the prospective purchaser, and, if different, the complete street address of the telephonic
29 seller's principal location;

30 (2) the name of the manufacturer of each of the items the telephonic seller has
31 represented for sale and in which the prospective purchaser expresses an interest.

1 Sec. 45.50.489. **DEFINITION OF TELEPHONIC SELLER.** (a) As used in
2 AS 45.50.486 - 45.50.489, "telephonic seller" means a person who, on the person's own behalf
3 or on behalf of another person, causes or attempts to cause a telephone solicitation to be made
4 under one of the following circumstances:

5 (1) the person initiates telephonic contact with a prospective purchaser and
6 represents or implies one of the following:

7 (A) that a prospective purchaser who buys one or more goods or services
8 unit will receive additional units, whether or not of the same type as purchased, without
9 further cost; as used in this subparagraph, "further cost" does not include actual postage
10 or common carrier delivery charges, if any;

11 (B) that a prospective purchaser will receive a prize or gift, if the person
12 also encourages the prospective purchaser to do either of the following:

13 (i) purchase or rent goods or services; or

14 (ii) pay any money, including, but not limited to, a delivery or
15 handling charge;

16 (C) that a prospective purchaser who buys goods or services, because of
17 some unusual event or imminent price increase, will be able to buy these items at prices
18 that are below those usually charged or will be charged for those items;

19 (D) that the seller is a person other than the actual seller;

20 (E) that the items for sale or rent are manufactured or supplied by a
21 person other than the actual manufacturer or supplier;

22 (F) that the items for sale are gold, silver, or other precious metals,
23 diamonds, rubies, sapphires, or other precious stones, or an interest in oil, gas, or mineral
24 fields, wells, or exploration sites; or

25 (2) the telephone solicitation is made by the person in response to inquiries from
26 prospective purchasers generated by advertisement, on behalf of the person and the solicitation
27 is conducted as described in (1) of this subsection.

28 (b) In AS 45.50.486 - 45.50.489, "telephonic seller" does not include the following:

29 (1) a person selling a security as defined in AS 45.55.130, or securities that are
30 exempt under AS 45.55.140;

31 (2) a person licensed under AS 08.88 when the transaction is governed by that

1 chapter;

2 (3) a person issued a certificate of registration under AS 08.18 or AS 08.40 when
3 the solicited transaction is governed by AS 08.18 or AS 08.40, respectively;

4 (4) a person licensed under AS 21.27 when the solicited transaction is governed
5 by AS 21 (the Insurance Code);

6 (5) a person soliciting the sale of a franchise;

7 (6) a person primarily soliciting the sale of a subscription to or advertising in a
8 newspaper of general circulation;

9 (7) a person primarily soliciting

10 (A) the sale of a magazine or periodical, or contractual plans, including
11 book or record clubs, under which the seller provides the consumer with a form that the
12 consumer may use to instruct the seller not to ship the offered merchandise, and that is
13 regulated by the Federal Trade Commission trade regulation concerning "Use of Negative
14 Option Plans by Sellers in Commerce"; or

15 (B) arrangements including continuity plans, subscription arrangements,
16 standing order arrangements, supplements and series arrangements under which the seller
17 periodically ships merchandise to a consumer who has consented in advance to receive
18 that merchandise on a periodic basis;

19 (8) a person soliciting business from prospective purchasers who have previously
20 purchased from the business enterprise for which the person is calling;

21 (9) a person soliciting without the intent to complete, and who does not complete,
22 the sales presentation during the telephone solicitation and who only completes the sale
23 presentation at a later face-to-face meeting between the solicitor and the prospective purchaser,
24 unless at that later meeting the solicitor collects or attempts to collect payment for delivery of
25 items purchased;

26 (10) a supervised financial institution or parent, subsidiary, or affiliate of a
27 supervised financial institution; as used in this paragraph, "supervised financial institution" means
28 a commercial bank, savings bank, mutual savings bank, trust company, savings and loan
29 association, credit union, industrial loan company, personal property broker, consumer finance
30 lender, commercial finance lender, or insurer that is subject to regulation by an official or agency
31 of the state or of the United States;

1 (11) a person soliciting the sale of funeral or burial services regulated under
2 AS 08.42 or AS 10.30;

3 (12) a person soliciting the sale of services provided by a cable television system
4 operating under authority of a franchise or permit issued by a governmental agency of the state
5 or a political subdivision of the state;

6 (13) a person or affiliate of a person whose business is regulated by the Alaska
7 Public Utilities Commission, or a telecommunications utility that is exempt from regulation under
8 AS 42.05.711 or a cooperative telephone association;

9 (14) a person soliciting the sale of a farm product, as defined in AS 45.09.109(3),
10 if the solicitation does not result in a sale that costs the purchaser more than \$100;

11 (15) an issuer or a subsidiary of an issuer that has a class of securities that is
12 subject to 15 U.S.C. 781 (sec. 12 of the Securities Exchange Act of 1934) and that is either
13 registered or exempt from registration under (g)(A), (B), (C), (E), (F), (G), or (H) of that section;

14 (16) a person soliciting exclusively the sale of telephone answering services to
15 be provided by that person or that person's employer;

16 (17) a person soliciting sales for a charitable organization.

17 * Sec. 5. AS 45.50.561 is amended by adding new paragraphs to read:

18 (12) "department" means the Department of Law;

19 (13) "charitable organization" means a nonprofit association, corporation, society,
20 or other entity organized or incorporated for educational, cultural, scientific, or other charitable
21 purposes, as prescribed in regulations of the department.