

**HOUSE BILL NO. 113**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**EIGHTEENTH LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVE LARSON**

**Introduced: 2/1/93**

**Referred: Labor & Commerce, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act regulating the solicitation of contributions by charitable organizations and**  
2 **paid solicitors and the solicitation of sales by telephonic means; and amending**  
3 **Alaska Rules of Civil Procedure 79 and 82."**

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 63. TELEPHONIC SOLICITATIONS.**

7 **Sec. 45.63.010. REGISTRATION. (a) A person may not sell or attempt to**  
8 **sell property or services by telephonic means if the person makes substantially the**  
9 **same offer on substantially the same terms to two or more persons, unless the**  
10 **telephonic seller is registered with the Department of Law at least 30 days before the**  
11 **solicitation campaign.**

12 **(b) To register under (a) of this section, a person shall file with the department**

13 **(1) a notice of intent to engage in a solicitation campaign; a separate**  
14 **notice of intent shall be filed for each solicitation campaign;**

1 (2) an irrevocable consent appointing the department the person's agent  
2 for the receipt of service of process in a court action or other proceeding against the  
3 person, or the successor in interest of the person, for a violation of this chapter; and

4 (3) a signed statement that the person has read and will comply with  
5 this chapter and the regulations adopted under this chapter.

6 (c) Registration under (b) of this section is not complete until the telephonic  
7 seller receives an acknowledgement from the department that the seller has complied  
8 with (b) of this section.

9 (d) The notice of intent must be on a form provided and established by the  
10 department by regulation. The notice of intent must include detailed information about  
11 the nature of the solicitation campaign and the identity and business practices of the  
12 telephonic seller, including information on the employees, agents, and officers  
13 affiliated with the telephonic seller. The notice of intent must disclose criminal  
14 convictions, civil judgments, orders, consent decrees, or administrative determinations  
15 involving allegations of unfair or deceptive business practices by the telephonic seller.

16 (e) A person may not provide false information in a notice of intent.

17 Sec. 45.63.020. WRITTEN CONTRACT REQUIRED. Until a telephonic  
18 seller receives from a buyer a signed, written contract for the purchase, the telephonic  
19 seller may not charge a credit card account for the purchase, negotiate a check or other  
20 commercial instrument intended for payment of the purchase, or accept a cash payment  
21 for the purchase. The written contract must notify the buyer of the rights of the buyer  
22 under AS 45.63.030(a) and disclose the information required by the department by  
23 regulation.

24 Sec. 45.63.030. CANCELLATION OR REPLACEMENT. (a)  
25 Notwithstanding AS 45.01 - AS 45.09, a telephonic seller shall give the buyer a  
26 refund, credit, or replacement, at the option of the buyer, if

27 (1) the property or services purchased are defective, not as represented,  
28 or not received as promised by the seller;

29 (2) within seven days after receiving the purchased property, the buyer  
30 returns the purchased property and makes a written request for the refund, credit, or  
31 replacement; or

1 (3) within seven days after paying for the purchased services and before  
2 the services are provided, the buyer makes a written request for the refund or credit.

3 (b) A return or request is timely under (a) of this section if the return or  
4 request is made in person within the seven days or if the return or request is mailed,  
5 properly addressed and postmarked, postage prepaid, within the seven days.

6 (c) Notwithstanding AS 45.01 - AS 45.09, a purchase of property from a  
7 telephonic seller becomes final seven days after receipt of the property, unless the  
8 buyer requests a refund, credit, or replacement under (a) of this section, or the  
9 telephonic seller fails to obtain the contract required by AS 45.63.020.

10 (d) Notwithstanding AS 45.01 - AS 45.09, a purchase of services from a  
11 telephonic seller becomes final seven days after receipt of the contract required by  
12 AS 45.63.020, unless the buyer requests a refund or credit under (a) of this section.

13 Sec. 45.63.040. PROHIBITED REPRESENTATIONS. (a) Unless the  
14 telephonic seller is asked for the information by the buyer, the seller may not state or  
15 imply that the seller has a license, consent, or other form of permission from the state.

16 (b) A telephonic seller may not state or imply that

17 (1) the seller is complying with state law; or

18 (2) the seller's compliance with the laws of this state or a municipality  
19 constitutes approval or endorsement by the state or municipality.

20 Sec. 45.63.050. WAIVER PROHIBITED AND VOID. A telephonic seller  
21 may not request or obtain from a buyer a waiver of the rights of the buyer under this  
22 chapter. A waiver of the rights of a buyer under this chapter is void.

23 Sec. 45.63.060. CRIMINAL PENALTIES. A person who violates this chapter  
24 is guilty of a class C felony.

25 Sec. 45.63.070. REMEDIES NOT EXCLUSIVE. The remedies in this chapter  
26 are in addition to other remedies available to a buyer or the department.

27 Sec. 45.63.080. EXEMPTIONS. This chapter does not apply to a sale or  
28 attempted sale

29 (1) of a security regulated under AS 45.55 or a security that is  
30 exempted by AS 45.55.140 from regulation under AS 45.55;

31 (2) by an issuer, or a subsidiary of an issuer, of a class of securities

1 that is

2 (A) subject to 15 U.S.C. 78a - 78lll (Securities Exchange Act  
3 of 1934); and

4 (B) either registered under 15 U.S.C. 78a - 78lll (Securities  
5 Exchange Act of 1934) or exempt from registration under 15 U.S.C.  
6 78l(g)(2)(A) - (C) or (E) - (H);

7 (3) by a real estate broker, associate real estate broker, or real estate  
8 salesman licensed under AS 08.88 and acting in a capacity covered by the license;

9 (4) by a person who has a certificate of registration under AS 08.18 to  
10 operate as a contractor and is acting in a capacity covered by the certificate of  
11 registration;

12 (5) by an embalmer or funeral director licensed under AS 08.42 and  
13 acting in a capacity covered by the license;

14 (6) by an insurance agent, general agent, broker, solicitor, or adjuster  
15 licensed under AS 21.27 and acting in a capacity covered by the license;

16 (7) by a person who is primarily soliciting the sale of a subscription to,  
17 or advertising in, a newspaper of general circulation;

18 (8) by a charitable organization or paid solicitor if the organization or  
19 solicitor is registered to make charitable solicitations under AS 45.68 and is acting in  
20 a capacity that is covered by the registration;

21 (9) by a person who is primarily soliciting the sale of a magazine,  
22 periodical, sound recording, book, or membership in a book or record club

23 (A) where the club provides the buyer with a form that the  
24 buyer may use to instruct the club not to ship the offered merchandise; and

25 (B) that is regulated by the Federal Trade Commission as a  
26 negative option plan under 16 CFR 425;

27 (10) of services provided by a cable television system operating under  
28 a franchise issued by a municipality;

29 (11) by a person who is soliciting for a business, or for an affiliate of  
30 a business, that is regulated by the Alaska Public Utilities Commission;

31 (12) by a person whose solicitation is solely for telephone answering

1 services provided by the person or the person's employer;

2 (13) of property from a mail order catalog that is published on a  
3 regular, periodic basis and that describes or pictures the items for sale and prominently  
4 provides the specific price of each item;

5 (14) by a supervised financial institution or the parent, subsidiary, or  
6 affiliate of a supervised financial institution; in this paragraph, "supervised financial  
7 institution" means a commercial bank, savings bank, mutual savings bank, trust  
8 company, savings and loan association, credit union, industrial loan company, personal  
9 property broker, consumer finance lender, commercial finance lender, or other financial  
10 institution if the financial institution is subject to regulation by this state or the United  
11 States.

12 (15) by an insurer or the parent, subsidiary, or affiliate of an insurer;

13 (16) by a person who solicits a sale by a contact by telephonic means  
14 without intending to complete the sales presentation during the contact, who does not  
15 complete the sales presentation during the contact, and who only completes the sales  
16 presentation at a later meeting in person, unless at the later meeting the solicitor  
17 attempts to collect payment for property or services delivered before the later meeting.

18 Sec. 45.63.090. REGULATIONS. The department shall adopt regulations  
19 under AS 44.62 (Administrative Procedure Act) to implement this chapter.

20 Sec. 45.63.100. DEFINITIONS. In this chapter,

21 (1) "buyer" means a person who buys from or is solicited by a  
22 telephonic seller;

23 (2) "department" means the Department of Law;

24 (3) "notice of intent" means the notice of intent required by  
25 AS 45.63.010 to engage in a solicitation campaign;

26 (4) "solicitation campaign" means a sale or attempt to sell property or  
27 services by telephonic means by making substantially the same offer on substantially  
28 the same terms to two or more persons;

29 (5) "telephonic means" means a telephone or another method using  
30 telephone lines, and includes a facsimile machine and electronic communication  
31 between electronic computing devices; "telephonic means" includes a letter, postcard,

1 notice, or other written communication advising, requesting, motivating, or otherwise  
2 encouraging a person to contact a seller by telephonic means;

3 (6) "telephonic seller" means a person who is required to be registered  
4 under AS 45.63.010.

5 \* **Sec. 2.** AS 45 is amended by adding a new chapter to read:

6 **CHAPTER 68. CHARITABLE SOLICITATIONS.**

7 **Sec. 45.68.010. REGISTRATION.** (a) A charitable organization may not  
8 solicit contributions of money or other property unless the charitable organization is  
9 registered with the Department of Law.

10 (b) A person may not solicit contributions of money or other property for a  
11 charitable organization for compensation unless the person is registered with the  
12 department.

13 (c) To register under this section, a charitable organization or paid solicitor  
14 shall file with the department

15 (1) a registration statement on a form provided and established by the  
16 department by regulation; and

17 (2) in the case of a paid solicitor, a bond in the amount and under the  
18 conditions established by the department by regulation.

19 (d) Registration under this section expires on September 1 of each year. To  
20 renew a registration, a charitable organization or paid solicitor shall file with the  
21 department a registration renewal statement established by the department by regulation  
22 and, in the case of a paid solicitor, evidence that a bond that satisfies (c)(2) of this  
23 section will be in effect for the renewal period.

24 (e) A person who is required to register under this section shall report to the  
25 department a material change in the information provided in the registration statement  
26 or registration renewal statement filed under this section. The person shall report the  
27 change within seven days after the change occurs.

28 **Sec. 45.68.020. CONTRACT REQUIRED.** (a) A paid solicitor may not  
29 solicit contributions on behalf of a charitable organization unless the paid solicitor  
30 executes a written contract with the charitable organization that clearly states the  
31 respective obligations of the paid solicitor and the charitable organization, including

1 (1) a statement of the method to be used to calculate the compensation  
2 of the paid solicitor; the statement must include a reasonable estimate of the expenses,  
3 including the estimated compensation of the paid solicitor, to be incurred, directly or  
4 indirectly, by the charitable organization in connection with the solicitation;

5 (2) a statement of the charitable purpose to be described in the  
6 solicitation; and

7 (3) the percentage of the gross contributions that the charitable  
8 organization is to receive.

9 (b) A copy of the contract required by (a) of this section shall be filed with  
10 the department.

11 Sec. 45.68.030. DISCLOSURES. Except as provided by AS 45.68.040, before  
12 soliciting a contribution, a paid solicitor shall clearly and conspicuously disclose the  
13 following information to the person being solicited:

14 (1) the true name of the individual making the solicitation;

15 (2) the true name of the charitable organization for whom the  
16 solicitation is being made;

17 (3) the true name of the paid solicitor;

18 (4) the true name of the person who is employing and compensating  
19 the individual making the solicitation if the individual is employed for compensation  
20 to make the solicitation;

21 (5) whether the individual making the solicitation is being paid for  
22 making the solicitation or is an unpaid volunteer;

23 (6) the name and physical address of the principal headquarters of the  
24 charitable organization for whom the solicitation is being made;

25 (7) a description of how and where the charitable contributions raised  
26 by the paid solicitor are to be utilized for the charitable purpose; and

27 (8) that a financial statement of the charitable organization for whom  
28 the solicitation is being made and a copy of the contract required under AS 45.68.020  
29 will be provided upon request.

30 Sec. 45.68.040. CONFIRMATION OF PLEDGE. A paid solicitor who makes  
31 a solicitation by mail, radio, or television, shall mail written confirmation of a

1 contribution pledge to the contributor within five days after the pledge is received.  
2 The confirmation must include a clear and conspicuous disclosure of the information  
3 identified in AS 45.68.030.

4 **Sec. 45.68.050. UNLAWFUL PRACTICES.** During a solicitation for a  
5 charitable organization, a person may not

6 (1) use a deceptive act, including an act described in AS 45.50.471;

7 (2) without first being authorized in writing by the person, represent  
8 or imply that a contribution is for or on behalf of a person, or use an emblem, device,  
9 or printed matter belonging to or associated with the person;

10 (3) use a name, symbol, or statement so closely related or similar to  
11 a name, symbol, or statement used by another charitable organization that the use may  
12 confuse or mislead a person solicited for a contribution;

13 (4) use or exploit the fact of registration under this chapter to suggest  
14 or imply that the registration constitutes an endorsement or approval by the state; or

15 (5) represent directly or by implication that a charitable organization  
16 will receive from the contributions raised by a paid solicitor a greater percentage of  
17 a contribution than allowed under the contract executed under AS 45.68.020.

18 **Sec. 45.68.060. PUBLIC RECORDS.** The registration statement, registration  
19 renewal statement, contracts, and other documents required to be filed with the  
20 department under this chapter are public records available for inspection and copying  
21 under AS 09.25.110 - 09.25.220.

22 **Sec. 45.68.070. RETENTION AND INSPECTION OF FISCAL RECORDS.**  
23 A charitable organization that is required to be registered under this chapter or that is  
24 exempted from this chapter by AS 45.68.120 and a paid solicitor that is required to be  
25 registered under this chapter or that is exempted from this chapter by AS 45.68.120  
26 shall maintain the records required by this chapter for a period of three years in a form  
27 that permits the department to make a complete audit of solicitations by the charitable  
28 organization or paid solicitor.

29 **Sec. 45.68.080. SUBSTITUTED SERVICE.** (a) A charitable organization or  
30 paid solicitor that is required to be registered under this chapter and that either has its  
31 principal place of business outside of the state or is organized under the laws of

1 another state is considered to have irrevocably appointed the department as its agent  
2 for the service of a summons, subpoena, or other process directed to the charitable  
3 organization or paid solicitor, or to a director, officer, partner, or principal of the  
4 charitable organization or paid solicitor in an action or other proceeding brought under  
5 this chapter.

6 (b) Service under (a) of this section is complete if the department immediately  
7 sends notice of the service and a copy of the process to the charitable organization,  
8 paid solicitor, or other person to whom it is directed by registered mail, return receipt  
9 requested, to the last address known to the department of the charitable organization  
10 or paid solicitor.

11 Sec. 45.68.090. PRIVATE ENFORCEMENT. (a) A charitable organization  
12 that suffers damages as a result of a violation of this chapter by another charitable  
13 organization or by a paid solicitor may bring a civil action against the violator.

14 (b) A person who makes a contribution to a charitable organization or to a  
15 paid solicitor that violates this chapter may bring a civil action against the violator.

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

17 (1) award damages for the violation;

18 (2) enjoin future violations;

19 (3) provide other relief that the court determines is necessary to restore  
20 to the person damaged real or personal property that was acquired by the violator by  
21 means of the violation;

22 (4) require the violator, under appropriate circumstances, to pay the full  
23 attorney fees and costs incurred by the charitable organization or other person bringing  
24 the action.

25 (d) A charitable organization or other person who brings an action under this  
26 section shall serve a copy of the complaint on the department when the action is filed,  
27 and, upon entry of an order or judgment in the action, shall mail a copy of the order  
28 or judgment to the department.

29 Sec. 45.68.100. CRIMINAL PENALTY. A person who violates AS 45.68.010  
30 is guilty of a class A misdemeanor.

31 Sec. 45.68.110. REMEDIES NOT EXCLUSIVE. The remedies in this chapter

1 are in addition to other remedies available to a person or the department for a violation  
2 of this chapter.

3 **Sec. 45.68.120. EXEMPTIONS FROM REGISTRATION REQUIREMENT.**

4 (a) Registration is not required under AS 45.68.010 for

5 (1) a church or religious organization that is exempt from filing a  
6 federal annual information return under 26 U.S.C. 6033(a)(2)(A);

7 (2) a candidate for national, state, or local office, and a political party  
8 or other committee or group if the candidate, party, committee, or group is required  
9 to file financial information with the Alaska Public Offices Commission under  
10 AS 15.13 or with the Federal Election Commission under 2 U.S.C. 431 - 456 (Federal  
11 Election Campaign Act);

12 (3) a charitable organization that does not intend to raise or receive  
13 contributions, excluding government grants, in excess of \$5,000 during a fiscal year  
14 of the charitable organization, or that does not intend to receive contributions from  
15 more than 10 persons during a fiscal year of the charitable organization if, in either  
16 situation,

17 (A) all of the organization's functions, including solicitation, are  
18 performed by persons who are not paid for their services; and

19 (B) an officer or member of the organization is not paid or does  
20 not otherwise receive all or a part of the assets or income of the charitable  
21 organization;

22 (4) a person or municipality who has a permit under AS 05.15.100.

23 (b) A person who qualifies for an exemption under (a)(3) of this section shall  
24 maintain the records necessary to prove that the organization qualifies for the  
25 exemption.

26 (c) Notwithstanding (a)(3) of this section, if a charitable organization actually  
27 raises or receives more than \$5,000 in contributions during a fiscal year of the  
28 charitable organization or receives contributions from more than 10 persons during the  
29 same fiscal year, the charitable organization shall, within 30 days after the earlier  
30 event, register with the department under AS 45.68.010.

31 **Sec. 45.68.130. REGULATIONS.** The department shall adopt regulations

1 under AS 44.62 (Administrative Procedure Act) to implement this chapter.

2 Sec. 45.68.900. DEFINITIONS. In this chapter,

3 (1) "charitable organization" means a nonprofit organization that

4 (A) is operated for the relief of poverty, distress, or other  
5 condition of public concern in the state; or

6 (B) the Internal Revenue Service determines to be a tax exempt  
7 organization under 26 U.S.C. 501(c)(3) (Internal Revenue Code);

8 (2) "contributions" means contributions of money or other property;

9 (3) "department" means the Department of Law;

10 (4) "paid solicitor" means a person who is required to be registered  
11 under AS 45.68.010(b), and includes a person who is employed, procured, or engaged,  
12 directly or indirectly, by a paid solicitor to solicit, if the person is compensated; "paid  
13 solicitor" does not include

14 (A) an attorney licensed to practice law in this or another state,  
15 an investment counselor, an insurance company, or a supervised financial  
16 institution, to the extent the attorney, investment counselor, insurance company,  
17 or supervised financial institution advises the person on whether to make a  
18 contribution; or

19 (B) a bona fide salaried officer, employee, or volunteer of a  
20 charitable organization;

21 (5) "solicit" means to request, directly or indirectly, and includes

22 (A) an oral or written request;

23 (B) a request made by an announcement to the news media or  
24 by radio, television, telephone, telegraph, telefax machine, or other transmission  
25 of images or information;

26 (C) a request made in a handbill or other written advertisement  
27 that is distributed or posted;

28 (D) the sale of, or attempt to sell, a membership, an  
29 advertisement, advertising space, or a tangible item by making a request for  
30 financial support for a charitable organization or purpose, by using or referring  
31 to the name of a charitable organization as a reason for making the request, or

1 by making a statement that all or part of the sale proceeds will be used for a  
2 charitable purpose or benefit a charitable organization;

3 (6) "supervised financial institution" means a commercial bank, savings  
4 bank, mutual savings bank, trust company, savings and loan association, credit union,  
5 industrial loan company, personal property broker, consumer finance lender,  
6 commercial finance lender, or other financial institution if the financial institution is  
7 subject to regulation by this state or the United States.

8 \* Sec. 3. AS 45.50.471(b) is amended by adding new paragraphs to read:

9 (33) violating AS 45.63 (telephonic solicitations);

10 (34) violating AS 45.68 (charitable solicitations).

11 \* Sec. 4. AMENDMENT OF COURT RULES. AS 45.68.090, enacted by sec. 2 of this  
12 Act, amends

13 (1) Alaska Rule of Civil Procedure 79 by requiring the court to award full  
14 costs where appropriate in certain actions under AS 45.68.090;

15 (2) Alaska Rule of Civil Procedure 82 by requiring the court to award full  
16 attorney fees where appropriate in certain actions under AS 45.68.090.