

CS FOR HOUSE BILL NO. 113(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/22/93
Referred: Finance

Sponsor(s): REPRESENTATIVE LARSON

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 solicit payment for the purchase, charge a credit card account for the
20 purchase, negotiate a check or other commercial instrument intended for payment of
21 the purchase, or accept a cash payment for the purchase. The written contract must
22 notify the buyer of the rights of the buyer under AS 45.63.030(a) and disclose the
23 information required by the department by 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) A purchase of services from a telephonic seller becomes final seven days
11 after receipt of the contract required by AS 45.63.020, unless the buyer requests a
12 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) A person who sells or attempts
24 to sell property or services by telephonic means by making substantially the same offer
25 on substantially the same terms to two or more persons without complying with the
26 registration requirements of AS 45.63.010, or who solicits, or receives, payment for
27 a purchase before receiving the written contract required by AS 45.63.020 is guilty of
28 a class C felony.

29 (b) A person who violates AS 45.63.030 - 45.63.050 is guilty of a class A
30 misdemeanor.

31 Sec. 45.63.070. REMEDIES NOT EXCLUSIVE. The remedies in this chapter

1 are in addition to other remedies available to a buyer or the department.

2 **Sec. 45.63.080. EXEMPTIONS.** This chapter does not apply to a sale or
3 attempted sale

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

6 (2) by a person registered with the United States Securities and
7 Exchange Commission when acting within the scope of the person's Securities and
8 Exchange Commission license;

9 (3) by an issuer, or a subsidiary of an issuer, of a class of securities
10 that is

11 (A) subject to 15 U.S.C. 78a - 78III (Securities Exchange Act
12 of 1934); and

13 (B) either registered under 15 U.S.C. 78a - 78III (Securities
14 Exchange Act of 1934) or exempt from registration under 15 U.S.C.
15 78I(g)(2)(A) - (C) or (E) - (H);

16 (4) by a real estate broker, associate real estate broker, or real estate
17 salesman licensed under AS 08.88 and acting in a capacity covered by the license;

18 (5) by a person who has a certificate of registration under AS 08.18 to
19 operate as a contractor and is acting in a capacity covered by the certificate of
20 registration;

21 (6) by an embalmer or funeral director licensed under AS 08.42 and
22 acting in a capacity covered by the license;

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

25 (8) by a person who is primarily soliciting the sale of a subscription to,
26 or advertising in, a newspaper of general circulation;

27 (9) by a charitable organization or paid solicitor if the organization or
28 solicitor is registered to make charitable solicitations under AS 45.68 and is acting in
29 a capacity that is covered by the registration;

30 (10) by a person who is primarily soliciting the sale of a magazine,
31 periodical, sound recording, book, or membership in a book or record club

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

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

5 (11) of services provided by a cable television system operating under
6 a franchise issued by a municipality;

7 (12) by a person who is soliciting for a business, or for an affiliate of
8 a business, that is regulated by the Alaska Public Utilities Commission;

9 (13) by a person whose solicitation is solely for telephone answering
10 services provided by the person or the person's employer;

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

14 (15) by a supervised financial institution or the parent, subsidiary, or
15 affiliate of a supervised financial institution; in this paragraph, "supervised financial
16 institution" means a commercial bank, savings bank, mutual savings bank, trust
17 company, savings and loan association, credit union, industrial loan company, personal
18 property broker, consumer finance lender, commercial finance lender, or other financial
19 institution if the financial institution is subject to regulation by this state or the United
20 States.

21 (16) by an insurer or the parent, subsidiary, or affiliate of an insurer;

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

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

29 Sec. 45.63.100. DEFINITIONS. In this chapter,

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

- 1 (2) "department" means the Department of Law;
- 2 (3) "notice of intent" means the notice of intent required by
- 3 AS 45.63.010 to engage in a solicitation campaign;
- 4 (4) "solicitation campaign" means a sale or attempt to sell property or
- 5 services by telephonic means by making substantially the same offer on substantially
- 6 the same terms to two or more persons;
- 7 (5) "telephonic means" means a telephone or another method using
- 8 telephone lines, and includes a facsimile machine and electronic communication
- 9 between electronic computing devices; "telephonic means" includes a letter, postcard,
- 10 notice, or other written communication advising, requesting, motivating, or otherwise
- 11 encouraging a person to contact a seller by telephonic means;
- 12 (6) "telephonic seller" means a person who is required to be registered
- 13 under AS 45.63.010.

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

15 CHAPTER 68. CHARITABLE SOLICITATIONS.

16 Sec. 45.68.010. REGISTRATION. (a) A charitable organization may not

17 solicit contributions of money or other property unless the charitable organization is

18 registered with the Department of Law.

19 (b) A person may not solicit contributions of money or other property for a

20 charitable organization for compensation unless the person is registered with the

21 department.

22 (c) To register under this section, a charitable organization or paid solicitor

23 shall file with the department

24 (1) a registration statement on a form provided and established by the

25 department by regulation; and

26 (2) in the case of a paid solicitor, a bond in the amount and under the

27 conditions established by the department by regulation.

28 (d) Registration under this section expires on September 1 of each year. To

29 renew a registration, a charitable organization or paid solicitor shall file with the

30 department a registration renewal statement established by the department by regulation

31 and, in the case of a paid solicitor, evidence that a bond that satisfies (c)(2) of this

1 section will be in effect for the renewal period.

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

6 Sec. 45.68.020. CONTRACT REQUIRED. (a) A paid solicitor may not
7 solicit contributions on behalf of a charitable organization unless the paid solicitor
8 executes a written contract with the charitable organization that clearly states the
9 respective obligations of the paid solicitor and the charitable organization, including

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

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

16 (3) the percentage of the gross contributions that the charitable
17 organization is to receive.

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

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

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

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

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

27 (4) the true name of the person who is employing and compensating
28 the individual making the solicitation if the individual is employed for compensation
29 to make the solicitation;

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

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

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

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

8 Sec. 45.68.040. CONFIRMATION OF PLEDGE. A paid solicitor who makes
9 a solicitation by mail, radio, or television, shall mail written confirmation of a
10 contribution pledge to the contributor within five days after the pledge is received.
11 The confirmation must include a clear and conspicuous disclosure of the information
12 identified in AS 45.68.030.

13 Sec. 45.68.050. UNLAWFUL PRACTICES. During a solicitation for a
14 charitable organization, a person may not

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

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

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

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

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

27 Sec. 45.68.060. PUBLIC RECORDS. The registration statement, registration
28 renewal statement, contracts, and other documents required to be filed with the
29 department under this chapter are public records available for inspection and copying
30 under AS 09.25.110 - 09.25.220.

31 Sec. 45.68.070. RETENTION AND INSPECTION OF FISCAL RECORDS.

1 A charitable organization that is required to be registered under this chapter or that is
2 exempted from this chapter by AS 45.68.120 and a paid solicitor that is required to be
3 registered under this chapter or that is exempted from this chapter by AS 45.68.120
4 shall maintain the records required by this chapter for a period of five years in a form
5 that permits the department to make a complete audit of solicitations by the charitable
6 organization or paid solicitor.

7 Sec. 45.68.080. SUBSTITUTED SERVICE. (a) A charitable organization or
8 paid solicitor that is required to be registered under this chapter and that either has its
9 principal place of business outside of the state or is organized under the laws of
10 another state is considered to have irrevocably appointed the department as its agent
11 for the service of a summons, subpoena, or other process directed to the charitable
12 organization or paid solicitor, or to a director, officer, partner, or principal of the
13 charitable organization or paid solicitor in an action or other proceeding brought under
14 this chapter.

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

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

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

25 (c) In an action under (a) or (b) of this section, a court may
26 (1) award damages for the violation;
27 (2) enjoin future violations;
28 (3) provide other relief that the court determines is necessary to restore
29 to the person damaged real or personal property that was acquired by the violator by
30 means of the violation;
31 (4) require the violator, under appropriate circumstances, to pay the full

1 attorney fees and costs incurred by the charitable organization or other person bringing
2 the action.

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

7 Sec. 45.68.100. CRIMINAL PENALTY. A person who solicits contributions
8 for a charitable organization for compensation without complying with the registration
9 requirements of AS 45.68.010 is guilty of a class A misdemeanor.

10 Sec. 45.68.110. REMEDIES NOT EXCLUSIVE. The remedies in this chapter
11 are in addition to other remedies available to a person or the department for a violation
12 of this chapter.

13 Sec. 45.68.120. EXEMPTIONS FROM REGISTRATION REQUIREMENT.

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

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

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

22 (3) a charitable organization that does not intend to raise or receive
23 contributions, excluding government grants, in excess of \$5,000 during a fiscal year
24 of the charitable organization, or that does not intend to receive contributions from
25 more than 10 persons during a fiscal year of the charitable organization if, in either
26 situation,

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

29 (B) an officer or member of the organization is not paid or does
30 not otherwise receive all or a part of the assets or income of the charitable
31 organization;

- 1 (4) a person or municipality who has a permit under AS 05.15.100.
- 2 (b) A person who qualifies for an exemption under (a)(3) of this section shall
3 maintain for five years the records necessary to prove that the organization qualifies
4 for the exemption.
- 5 (c) Notwithstanding (a)(3) of this section, if a charitable organization actually
6 raises or receives more than \$5,000 in contributions during a fiscal year of the
7 charitable organization or receives contributions from more than 10 persons during the
8 same fiscal year, the charitable organization shall, within 30 days after the earlier
9 event, register with the department under AS 45.68.010.
- 10 Sec. 45.68.130. REGULATIONS. The department shall adopt regulations
11 under AS 44.62 (Administrative Procedure Act) to implement this chapter.
- 12 Sec. 45.68.900. DEFINITIONS. In this chapter,
- 13 (1) "charitable organization" means a nonprofit organization that
14 (A) is operated for the relief of poverty, distress, or other
15 condition of public concern in the state; or
16 (B) the Internal Revenue Service determines to be a tax exempt
17 organization under 26 U.S.C. 501(c)(3) (Internal Revenue Code);
- 18 (2) "contributions" means contributions of money or other property;
- 19 (3) "department" means the Department of Law;
- 20 (4) "paid solicitor" means a person who is required to be registered
21 under AS 45.68.010(b), and includes a person who is employed, procured, or engaged,
22 directly or indirectly, by a paid solicitor to solicit, if the person is compensated; "paid
23 solicitor" does not include
- 24 (A) an attorney licensed to practice law in this or another state,
25 an investment counselor, an insurance company, or a supervised financial
26 institution, to the extent the attorney, investment counselor, insurance company,
27 or supervised financial institution advises the person on whether to make a
28 contribution; or
- 29 (B) a bona fide salaried officer, employee, or volunteer of a
30 charitable organization;
- 31 (5) "solicit" means to request, directly or indirectly, and includes

- 1 (A) an oral or written request;
- 2 (B) a request made by an announcement to the news media or
3 by radio, television, telephone, telegraph, telefax machine, or other transmission
4 of images or information;
- 5 (C) a request made in a handbill or other written advertisement
6 that is distributed or posted;
- 7 (D) the sale of, or attempt to sell, a membership, an
8 advertisement, advertising space, or a tangible item by making a request for
9 financial support for a charitable organization or purpose, by using or referring
10 to the name of a charitable organization as a reason for making the request, or
11 by making a statement that all or part of the sale proceeds will be used for a
12 charitable purpose or benefit a charitable organization;
- 13 (6) "supervised financial institution" means a commercial bank, savings
14 bank, mutual savings bank, trust company, savings and loan association, credit union,
15 industrial loan company, personal property broker, consumer finance lender,
16 commercial finance lender, or other financial institution if the financial institution is
17 subject to regulation by this state or the United States.
- 18 * **Sec. 3.** AS 45.50.471(b) is amended by adding new paragraphs to read:
- 19 (33) violating AS 45.63 (telephonic solicitations);
- 20 (34) violating AS 45.68 (charitable solicitations).
- 21 * **Sec. 4.** AMENDMENT OF COURT RULES. AS 45.68.090, enacted by sec. 2 of this
22 Act, amends
- 23 (1) Alaska Rule of Civil Procedure 79 by requiring the court to award full
24 costs where appropriate in certain actions under AS 45.68.090;
- 25 (2) Alaska Rule of Civil Procedure 82 by requiring the court to award full
26 attorney fees where appropriate in certain actions under AS 45.68.090.