

**HB**

**182**



## HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120  
(907) 465-4990

### COMMITTEE MEMBERS

Rep. Jay Ramras  
Chairman  
Room, 118  
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Rep. Nancy Dahlstrom  
Vice-Chairman  
Room 409  
(907) 465-3783

Rep. John Coghill  
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Rep. Bob Lynn  
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Rep. Ralph Samuels  
Room 204  
(907) 465-2095

Rep. Max Gruenberg  
Room 110  
(907) 465-4940

Rep. Lindsey Holmes  
Room 405  
(907) 465-4919

### MEMORANDUM

Date: April 3, 2007

To: Representative John Coghill  
Chairman House Rules Committee

From: Representative Jay Ramras  
Chairman House Judiciary Committee

Re: Referral File for CSHB182(JUD)

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Attached please find the following documents:

- Sponsor Statement
- CSHB182(JUD) 25-LS0650\K
- House JUD Committee Report
- CSHB182( ) 25-LS0650\M
- Changes from original bill to CS
- Original Bill HB182 25-LS0650\C
- Fiscal Note, LAW - 0
- Support
- Relevant Statutes
  - AS 45.50.471
  - AS 45.50.551
  - AS 45.50.561

# Alaska State Legislature



**Chairman**  
State Affairs Committee

**Vice-Chairman**  
Economic Development, Trade & Tourism  
Committee

**Member**  
Judiciary Committee  
Joint Armed Services Committee

**Finance Subcommittees**  
Corrections  
Labor and Workforce Development  
Military and Veterans' Affairs  
Public Safety

*A Communication From*  
**REPRESENTATIVE BOB LYNN**  
**District 31 Anchorage**

**E-Mail:** Representative\_Bob\_Lynn@legis.state.ak.us  
**"Bob Lynn's Alaska Blog"** RepBobLynnBlog.com

**Session:**  
Alaska State Capitol  
Juneau, AK 99801-1182

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**Interim:**  
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Anchorage, AK 99501-2133

Phone: (907) 69-0205  
Fax: (907) 269-0207

## **HB 182 Sponsor Statement**

**"An Act making the offering of certain promotional checks an unfair or deceptive act or practice."**

There is no such thing as free money!

Just ask the many Alaskans who have received checks in the mail with seemingly no strings attached. Many of these consumers cash these checks, usually for small amounts, only to find themselves obligated for products and services they never intended to buy.

HB 182 amends the Unfair Trade Practices and Consumer Protection Act (Consumer Protection Act), AS 45.50.471, by making the offering of a promotional check, through the mail or by other means, an unfair or deceptive act or practice in violation of the Consumer Protection Act. Promotional checks subject to the legislation are live checks offered to consumers to promote goods or services which, when cashed or deposited, obligate the endorser or payee on the check to pay for goods or services.

Thousands of these promotional checks are sent unsolicited to Alaskan individuals, businesses, churches and schools (hereafter "consumers"). Consumers receiving them often believe them to be refund or rebate checks or ordinary business receivables. They unwittingly cash the checks without realizing that they have entered into a contract, usually for goods or services they do not want, do not use, and often do not even realize they have. By cashing the checks consumers also have often unknowingly agreed to have monthly payments automatically taken from their bank accounts, or added to credit card or utility bills. Consumers usually do not realize the debits or charges have occurred and accept or pay for them believing them to be legitimate charges. Prohibiting the use of these checks is the only effective method of preventing these accidental agreements, and subsequent charges, from occurring.

By making the offering of these promotional checks an enumerated unfair or deceptive act or practice, use of the promotional checks will be prohibited as an automatic violation of the Consumer Protection Act. The Attorney General will then be able to take enforcement action under the Act to stop the use of such checks using the remedies afforded under the Act.



ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras  
Chairman  
(907) 465-3004  
Fax: (907) 465-2070  
Representative\_Jay\_Ramras@legis.state.ak.us

---

1292 Sadler Way, Suite 324  
Fairbanks, AK 99701



**Committee Members:**  
Representative Nancy Dahlstrom,  
Vice-Chairman  
Representative John Coghill  
Representative Bob Lynn  
Representative Ralph Samuels  
Representative Max Gruenberg  
Representative Lindsey Holmes

State Capitol, Room 120  
Juneau, Alaska 99801-1182

**Fax**

To: Terry Bannister

Fax #: 2029

Number of pages including cover: 1

From: Jane Pierson

Date: April 2, 2007

Re: Final on CSHB152 (25-LS0650\M)

---

Please go final on the above referenced CS. there were no amendments.

25-LS0650\M  
Bannister  
3/22/07

**CS FOR HOUSE BILL NO. 182( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIFTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES LYNN, Gatto, Olson, Buch, Neuman, Ramras, Gardner, LeDoux**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act making the offering of certain promotional checks an unfair or deceptive act or**  
2 **practice."**

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

4 **\* Section 1.** AS 45.50.471(b) is amended by adding a new paragraph to read:

5 (52) offering a check, through the mail or by other means, to promote  
6 goods or services, if the cashing or deposit of the check obligates the endorser or  
7 payee identified on the check to pay for goods or services; in this paragraph,  
8 "services" does not include the extension of credit or the lending of money.

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Military and Veterans' Affairs  
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## **Changes from HB 182 to CS for HB 182( )**

**"An Act making the offering of certain promotional checks an unfair or deceptive act or practice."**

The CS for HB 182( ), Version M, simply adds a sentence on lines 7 and 8, after the word, "services"

"in this paragraph, 'services' does not include the extension of credit or the lending of money."

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: HB182-LAW-CFB-3-19-07  
 Bill Version: HB 182  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title An Act relating to the offering of promotional checks RDU Civil Division  
 Component Commercial & Fair Business  
 Sponsor Lynn  
 Requester House Labor & Commerce Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The bill would amend a current statute by making the offering of certain promotional checks an unfair or deceptive act or practice.

The Department of Law does not anticipate a fiscal impact from passage of this legislation.

Prepared by: Robert Meiners, Acting Director Phone 465-5427  
 Division Administrative Services Division Date/Time 3/19/07 8:00 AM  
 Approved by: Robert Meiners for Talis Colberg, Attorney General Date 3/19/2007  
 Agency Department of Law

Thursday, March 15, 2007

## **HB 182 Offering Promotional Checks Q&A with Alaska Department of Law**

*Below is a transcript of an interview with the Consumer  
Protection Unit of the Alaska Department of Law*

**QUESTION: Can you explain how Alaska businesses and individuals are being taken advantage of through promotional checks?**

DEPARTMENT OF LAW: The promotional check is often packaged and sent in a manner that causes the individual or organization receiving and cashing the check to believe that the check is a refund, rebate, or payment of some nature, and does not understand that by cashing the check they are accepting an offer to pay for goods or services.

After cashing the check, the recipient may be sent a bill for collection of the amount "due", and if the bill isn't paid, a collection agency will start hounding the consumer for payment. Another method of collection is to use the consumer's account information involved in cashing the check to debit the consumer's account on a monthly basis without the consumer's knowledge. Or, alternatively, similar monthly billings may occur through the consumer's telephone carrier, credit card, etc. Therefore, the individual or entity cashing the check may be out significant amounts of money prior to discovering and canceling whatever was purportedly authorized by merely cashing the check.

**QUESTION: How big of a problem is this for consumers in Alaska?**

DEPARTMENT OF LAW: Thousands of promotional checks have been sent to Alaskan individuals, businesses, schools, churches and other organizations over the years. Many hundreds of these checks are cashed by individuals and organizations who receive subsequent billings or automatic debits for goods or services they do not want and often are not aware that they have.

**QUESTION: Why should it be considered an unfair or deceptive practice or act to offer these "small" promotional checks?**

DEPARTMENT OF LAW: Receipt of these promotional checks by individuals and organizations causes a likelihood of misunderstanding or confusion so that the recipient believes the check is one thing (a refund, rebate or payment of some nature) when it is really another (a contract for the payment of goods or services), the recipient acts on this misunderstanding and cashes the check and incurs an obligation to pay for something they did not want, need, or even know about. That is a classic example of one of the definitions of an unfair or deceptive act or practice under the Unfair Trade Practice and Consumer Protection Act, AS 45.50.471 et seq.

**QUESTION: Don't these checks have information explaining that cashing them obligates the consumer to "larger" payments for products and services?**

DEPARTMENT OF LAW: Yes, but the information is usually on the back of the check, in very small print, or is crowded on "stuffer" included with the check, and the recipient of the check does not see, read or understand the information. This is particularly true for businesses which often believe the check to be an ordinary receivable or refund check and automatically stamp the check for deposit without ever seeing or noticing any small print disclosures.

**QUESTION: How are you currently dealing with these promotional checks?**

DEPARTMENT OF LAW: The Attorney General's Office has initiated a number of investigations relating to the use of promotional checks in Alaska. Several of the investigations have resulted in prosecutions and settlements under the Unfair Trade Practices and Consumer Protection Act. One of the most recent was a coordinated multi-state investigation involving 34 states' Attorney Generals, and resulted in a settlement agreement that prohibited the use of promotional checks by the business in all 34 states.

**QUESTION: Why is a law needed? How will it help Alaska consumers?**

DEPARTMENT OF LAW: By amending the Unfair Trade Practices and Consumer Protection Act to make it clear that the use of promotional checks in Alaska is an unfair or deceptive act or practice businesses will be put on notice that the use of these checks in Alaska is prohibited. This should stop most businesses from sending the checks. For those that persist, the Attorney General's Office has clear enforcement authority to petition the court to stop the practice.

**QUESTION: What would be the penalty for violating this proposed law?**

DEPARTMENT OF LAW: Violations of the Consumer Protection Act are subject to a civil penalty of a minimum of \$1,000 per violation and a maximum of \$25,000 per violation.

**QUESTION: Does the penalty vary depending on the number of Alaskan consumers involved?**

DEPARTMENT OF LAW: The court looks at a number of factors when deciding the amount of civil penalty to impose. The amount of consumer harm, including the number of consumers harmed by the conduct, is one of the factors.

**QUESTION: How are other states dealing with these promotional checks?**

DEPARTMENT OF LAW: Many states have brought enforcement actions under their state consumer protection statutes, and a couple states have introduced legislation similar to HB 182 banning the use of the checks.

**QUESTION: Why does the Department of Law consider this bill a high priority?**

DEPARTMENT OF LAW: Many hundreds of Alaskan consumers have been harmed by the use of promotional checks. The Attorney General's Office has spent considerable time and resources investigating and pursuing law enforcement actions against businesses that use these inherently deceptive checks, and it has been able to obtain restitution for consumers in many instances. The best way to deal with the problem, however, is to stop the practice from occurring at all, so that consumers do not have to suffer the monetary loss, time and frustration which results from cashing the checks. HB 182 would do this, by prohibiting the use of these checks in Alaska.

# **House Bill 182**

## **Background Information**

### **Offering Promotional Checks**

Alaska Department of Law April 2006 Report on  
Multi-State Settlement with Yellow Pages, Inc.

Example of a "YPI" promotional check sent to Alaska



See page 2

# Generally Speaking

## Comings and Goings

AAG **Laura Bowen** transferred from the Anchorage Child Protection section to the Collections & Support section.

**Shella Bugbee** has resigned from the Administrative Services Division. She transferred to the Department of Administration, Division of Personnel.

AAG **Alicia Porter** in the Fairbanks AGO resigned. She joined the Anchorage law firm of Landye Bennett Blumstein.

**Lynn Concepcion** joined the Anchorage AGO. Lynn will be splitting her time as a litigation assistant between the Labor and State Affairs and the Opinions, Appeals, and Ethics sections.

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## CIVIL DIVISION

### Child Protection

#### CINA Cases

The section received a number of new CINA cases. Based on the allegations in the OCS petitions, substance abuse was the most common concern.

Several newborns and a toddler tested positive for drugs. Subsequently OCS took the children into custody.

In one such case, a newborn tested positive for amphetamines. The mother refused to allow the child to room with her and did not appear to be trying to bond with the child. OCS has a history with both parents involving methamphetamine abuse. The child's father is in jail on drug and weapons violations after a California narcotics conviction.

OCS took custody of another newborn that tested positive for cocaine and had numerous medical complications. The mother acknowledged using cocaine every day and also admitted the use of methamphetamine during her pregnancy. Three of her older children had also been removed by the state.

After having removed a two-year-old child from the mother (due to drug use when the mother was seven months pregnant, OCS next assumed custody of her newborn. OCS has concerns about both parents' drug use.

In another case, a mother brought her three-year-old child to the emergency room because he was vomiting and having seizures. The child tested positive for cocaine. The mother admitted she had recently relapsed on cocaine and alcohol.

The mother was arrested for child neglect. OCS has a significant prior history with this family.

Three young children were taken into custody after a newborn and the mother tested positive for cocaine. The mother acknowledged repeated cocaine use just prior to the birth. The mother's last child had been born under similar circumstances. According to an anonymous caller, the mother had claimed that her boyfriend had sexually abused the younger siblings, but she continued to live with that man along with her young children.

In another case, OCS and APD investigated a couple who were allegedly using drugs in the home around their one-year-old child. They found crack cocaine paraphernalia, empty beer containers, smoking pipes, and other items dangerous to a young child. Both parents admitted to using crack cocaine. While OCS was in the process of attempting to take custody of the child, the mother absconded with the child. Her whereabouts and those of the child were unknown when OCS filed its petition.

In other cases, OCS was forced to remove children from their homes after social workers' attempts to assist parents to care properly for the children failed. In one instance, OCS was concerned about a family because they were being evicted, and the parents had a history of DV and drug use. When the social worker arrived at the home to investigate, he found the mother was not sober enough to care for her children. The social worker convened a Team Decision Making meeting in order to determine if there was a way to make the children safe other than by removing them from the home, but the mother did not appear for the meeting.

OCS provided extensive services to a family where the concern was unsanitary conditions in the home that affected the safety of the children. Despite active efforts to keep the children in the home and help remedy the conduct of the parents, OCS decided the children needed to be removed.

OCS social workers also attempted to work with a mother with a significant substance abuse problem. However, after repeatedly testing positive for illegal substances, the mother agreed to voluntarily place her child with a relative. The mother also has significant mental health issues.

In another case, substance abuse caused OCS to take two children ages 12 and 17 into custody after their mother and the fathers of both of the children died within three years of each other, all from drug or alcohol overdoses.

### Commercial and Fair Business

#### Consumer Protection/Anti-Trust

##### **Yellow Pages, Inc. Multi-State Settlement.**

Alaska, along with 27 other states, entered into a settlement agreement with Yellow Pages, Inc. ("YPI") resolving allegations that YPI engaged in unfair or deceptive acts or practices in violation of each state's respective consumer protection acts relating to the solicitation checks and renewal notices sent to business consumers.

Alaska's complaint, filed in superior court, alleges that YPI engaged in misleading or deceptive conduct by sending out "live" checks to small businesses and other organizations which looked like rebate checks from local yellow pages companies, but which, when deposited by the consumer, purported to create a contract for advertising services for which the consumer owed YPI \$179.00.

Under the settlement, injunctive relief was entered against YPI prohibiting YPI from sending live check solicitations into the state or attempting to collect on checks which were cashed by consumers. YPI is also required to pay refunds to consumers harmed by the conduct and pay the states \$535,000 for costs, attorney fees, and consumer protection enforcement.

**Yellow Pages, Inc.**

Independent Yellow Pages Publishers  
P.O. Box 60006, Anaheim, CA 92812-6006

BANK OF WEST  
SANTA ANA OFFICE  
SANTA ANA, CA 92701  
90-4284 889  
1222

877626242

Date: 2/20/2004

Pay To The  
Bearer Or \_\_\_\_\_

\$ **\*\*\*3.49\*\***

Three and 49/100\*\*\*\*\*

Dollars  Security Feat  
induced.  
Details on be

**VOID AFTER**  
May 20, 2004

PO BOX 100279  
ANCHORAGE, AK 99510-0279



Memo 907-272-6... - ATTORNEYS

*[Handwritten Signature]*

⑈877626242⑈ ⑆622242843⑆ 658025390⑈

Please let my company's information as shown on this check on the Yellow Pages, Inc. internet website: www.YellowPagesInc.com. I am over 18, and authorized to place this advertisement by depositing this check and by doing so I also agree to pay the fee for this advertisement, which is \$179 per year, billed in advance, according to the terms which were entered with this check. Furthermore, I understand I can cancel up to 30 days after the date I cashed or deposited this check. By endorsing I'm agreeing to terms enclosed with this check.

Signature

X

**DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE**  
RESERVED FOR FINANCIAL INSTITUTION USE

\*FEDERAL RESERVE BOARD OF GOVERNORS REG. CO  
Security Feat: Micro-Print Signature Line & Endorsement Line  
Look on the front and original documents, security screens on this book.

# **House Bill 182**

## **Background Information**

### **Offering Promotional Checks**

State of Tennessee 2006 News Release on  
Multi-State Settlement with YP Corp.

Examples of promotional checks sent to churches,  
schools and even the State of Tennessee itself



**Office of the Attorney General  
Robert E. Cooper, Jr.**

**Department of Commerce and Insurance  
Commissioner Paula Flowers**

## **NEWS RELEASE**

Office of the Attorney General  
P.O. Box 20207 Nashville, TN 37202-0207

Department of Commerce and Insurance  
Division of Consumer Affairs  
500 James Robertson Parkway Nashville, TN 37243

FOR IMMEDIATE RELEASE  
Dec. 14, 2006  
#06-46

CONTACT:  
Sharon Curtis-Flair  
(615) 741-5860

(NOTE TO EDITORS: A Knoxville consumer is available to discuss her experiences with news media. Contact Sharon Curtis-Flair at 615-741-5860 for more information)

### **STATE REACHES AGREEMENT WITH YP CORP. REGARDING CHECK SOLICITATIONS; COMPLAINT DEADLINE TO DCA IS FEB. 5, 2007**

Attorney General Bob Cooper and Division of Consumer Affairs Director Mary Clement today announced YP Corp., (doing business as YP.com) and its wholly owned subsidiary Telco Billing, Inc., have reached an agreement regarding complaints they engaged in deceptive business practices.

The companies are alleged to have mailed checks, which if cashed or deposited, charged businesses and organizations to pay for advertising on its yellow page directory. Tennessee and 33 other states reached the agreement after filing suit regarding YP.com's use of checks.

"Last legislative session, Tennessee became one of the first states in the nation to make it unlawful to market these advertising checks that lure unwitting customers to obligate themselves," Attorney General Cooper said. "We will aggressively enforce the new law against violators."

**Samples of the YP Corp. checks can be seen by scrolling below or by clicking**

<http://www.attorneygeneral.state.tn.us/press/2006/story/PR46a.pdf>

"Consumers should beware of checks for a nominal amount of money arriving in the mail for no apparent reason or little explanation," said DCA Director Mary Clement. "Because the State of Tennessee was solicited, I believe there is a widespread problem with many different kinds of businesses and individuals being targeted. I would urge consumers to contact our office if they suspect they may have received a questionable check."

Under the agreement, YP Corp. will stop using the checks to obligate businesses to purchase its products and services. YP Corp. also has agreed to pay \$2 million (in total to all of the participating states) to consumers who did not understand the potential consequences of depositing YP.com's check. YP Corp. also agreed to notify all current check customers to inform them of their right to cancel and to let them know they may be eligible for a refund.

In addition, all Tennesseans who cashed the YP Corp. checks sent after the new law became effective July 1, 2006 will receive full refunds. An estimated 950 Tennesseans were solicited after that date and were billed approximately \$8,500 for advertising. Refunds for post-July 1st consumers should arrive by February if not earlier.

Since at least 1998, YP.com mailed businesses and other organizations, including churches, public schools, and even the State of Tennessee, the YP.Corp checks, allegedly obligating them to pay for commercial listings on the web site [www.yp.com](http://www.yp.com). Some of these recipients had never advertised commercially before. Approximately 15,000 of these solicitations were sent to Tennesseans. The checks involved were small amounts, usually \$3.50. On the back of the checks, in fine print above the endorsement line, was language stating that by depositing the check, the recipient agreed to purchase advertising from YP.com for its on-line yellow pages directory.

The fine print also stated that by depositing the check, the recipient authorized YP.com (through its subsidiary Telco Billing, Inc.) to bill the monthly fees in advance, on the business's telephone bill or other means. Many recipients who deposited YP.com's checks did so without knowing the potential consequences. Some recipients did not realize they were being billed for many months or years after depositing the checks.

YP.Corp, YP.com, and Telco Billing, Inc. deny the State's allegations and any wrongdoing.

Anyone who feels they may have deposited an activation check and were consequently billed for services they did not authorize have until **Feb. 5, 2007** to contact the Division of Consumer Affairs for information on how to request a refund. Current YP.com customers who are being billed as the result of an activation check should be contacted by letter within the next two (2) weeks by YP.com. If you have received a check from YP Corp. or any other company, please contact the Division of Consumer Affairs at 1-800-342-8385 (toll-free inside Tennessee) or (615) 741-4737

ATTACHMENT TO PRESS RELEASE 46 (PR-46)

YP Corp. Sample Live Checks - 2002

BACK OF CHECK

YELLOW-PAGE.NET  
4640 E. JASMINE ST., STE. 105  
MESA, AZ 85205

BANK OF THE SOUTHWEST  
TEMPE, AZ 85284

10/11/2002

PAY TO THE BEARER OR [REDACTED] \$ \*\*\*3.50

Three and 50/100\*\*\*\*\* DOLLARS

*Carl Simon*

MEMO. [REDACTED]

Enlargement of small print states, "I am over 18 and authorized to place this advertisement by depositing this check and by doing so I **agree to pay \$17.95 per month** for this advertisement."  
(emphasis added)

Please list my company's information as shown on this check on the Yellow-Page Net Internet website. I am over 18, and authorized to place this advertisement by depositing this check and by doing so I agree to pay \$17.95 per month for this advertisement. I agree to the Terms of Offer which were enclosed with this check and authorize Telco Billing, Inc. to bill such fees in advance, on the company's phone bill or by debiting the fee from the company's bank account into which this check is deposited or by other methods, according to the Terms. I understand that I can cancel and receive a full refund by simply calling 1-800-300-3209 within 120 days. Of course, the \$3.50 is mine to keep in any case.

*[Signature]*

BACK OF CHECK

Enlargement of small print states, "I . . . authorize Telco Billing, inc. to bill such fees in advance, on the company's phone bill or by debiting the fee from company's bank account into which this check is deposited or by other methods . . ."  
(emphasis added)

ATTACHMENT TO PRESS RELEASE 46 (PR-46)  
 YP Corp. Sample Live Checks - 2004, 2005

FRONT OF CHECK

YP.COM INTERNET YELLOW PAGES  
 101 CONVENTION CENTER DR., STE. 1002  
 LAS VEGAS, NEVADA 89109  
 1-800-300-3209

BANK ONE, NA  
 DELAWARE, OH

04/30/2005

PAY TO THE BEARER OR [REDACTED] Baptist Church \$ \*\*3.25

Three and 25/100.....

[REDACTED]

[REDACTED] / Churches

MEMO [REDACTED]

*Sara Davis*

DOLLARS  
 Security features included. Details on back.

YP sent advertising solicitations to churches, the State alleges

YP.COM INTERNET YELLOW PAGES  
 101 CONVENTION CENTER DR., STE. 1002  
 LAS VEGAS, NEVADA 89109  
 1-800-300-3209

FIRST STATE BANK  
 LAKE ULLIAN, MN 56253

07/01/2004

PAY TO THE BEARER OR [REDACTED] United Methodist Chr \$ \*\*3.25

Three and 25/100.....

[REDACTED] United Methodist Chr

[REDACTED] TN

[REDACTED] / Church

MEMO [REDACTED]

*Sara Davis*

DOLLARS  
 Security features included. Details on back.

FRONT OF CHECK

YELLOW-PAGE.NET  
 608 BUSHMAN #115-250  
 BOULDER CITY, NV 89005  
 1-800-300-3209

BANK ONE, NA  
 DELAWARE, OH

03/04/2004

PAY TO THE BEARER OR [REDACTED] Church Of Christ \$ \*\*3.25

Three and 25/100.....

[REDACTED] Church Of Christ

[REDACTED] Memphis, TN

[REDACTED] Churches

MEMO [REDACTED]

*Sara Davis*

DOLLARS  
 Security features included. Details on back.

ATTACHMENT TO PRESS RELEASE 46 (PR-46)

YP Corp. Sample Live Checks - 2006

FRONT OF CHECK

YP.COM INTERNET YELLOW PAGES  
101 CONVENTION CENTER DR., STE. 1002  
LAS VEGAS, NEVADA 89109  
1-800-300-3209

CITIZENS STATE BANK OF  
CLARA CITY  
CLARA CITY, MN 55222

4/1/2006

PAY TO THE BEARER OR Elementary School \$ \*\*3.25

Three and 25/100\*\*\*\*\*

MEMO / Elementary & Seconda /

Sara Davis

YP Sent Advertising Solicitations to **Public** Elementary Schools, the State Alleges

BACK OF CHECK

Please list my company's information as shown on this check on the YP.Com Internet website. I am over 18, and authorized to place this advertisement by depositing this check into my business account and by doing so I agree to pay \$27.50 per month for this advertisement. I agree to the Terms of Offer which were enclosed with this check and authorize Telco Billing, Inc. to bill such fees in advance, on the company's local phone bill or by direct ACH debit from the company's checking account into which this check is deposited in accordance with the rules governing the ACH network. Company agrees to be bound by the rules governing the ACH network in effect at the time and may revoke its ACH debit authorization at any time, change billing method or cancel and receive a full refund within 120 days by calling 1-800-300-3209.

PAY TO THE ORDER OF

X Elementary School

DO NOT WRITE IN THESE SPACES

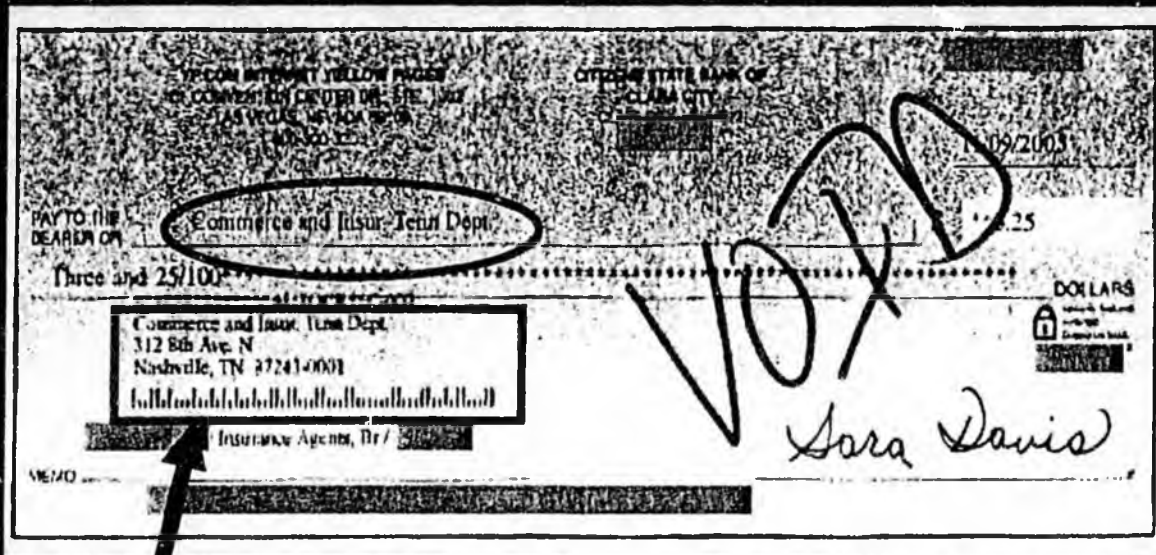
FOR DEPOSIT ONLY

SCHOOL

ATTACHMENT TO PRESS RELEASE 46 (PR-46)

YP Corp. Sample Live Checks - 2005

FRONT OF CHECK



YP even sent commercial advertising solicitations to the State itself, the State alleges. The check was not cashed.

Please see the company's information on this check, make YP Corp. Internet website, 1-800-762-1234, and authorized to place a check on account by depositing this check into any business account and voiding it. To give to the Federal Office which will check and void this check and authorize Telus Billing, Inc. to bill such fees in advance, on the company's local phone bill or by direct ACH debit to the company's checking account which this check is deposited in accordance with the rules governing the ACH network. Payment disputes to be found by the rules governing the ACH network in effect at the time and may revoke its ACH debit authorization at any time, change billing method or cancel and receive a full refund within 120 days by calling 1-800-762-1234.

X

THE FIRST THREE DIGITS ON CHECKS ARE THE BANK'S ROUTING NUMBER. THE LAST FOUR DIGITS ARE THE CHECK NUMBER.

BACK OF CHECK

# **House Bill 182**

## **Background Information**

### **Offering Promotional Checks**

News Releases, Articles, Consumer Warnings  
and additional information from other States

March 14, 2007

Quick links: [Home](#) [Overview](#) [News](#) [Employment](#) [FAQs](#) [Privacy Policy](#) [Contact Us](#)



Office of the  
**Attorney General of Florida**  
**Bill McCollum**

The Capitol PL-01  
Tallahassee, FL 32399-1050  
850-414-3300

**Attorney General Charlie Crist News Release**

December 14, 2006

**Florida, 33 States Agree to \$2 Million YP.com Settlement**

TALLAHASSEE - Attorney General Charlie Crist today announced that Florida and 33 other states have reached an agreement with a telephone directory company resolving allegations of deceptive business practices. YP Corp., commonly known as YP.com, and its subsidiary Telco Billing, Inc., have agreed to settle allegations that they used activation checks to obligate businesses and organizations to pay for an enhanced listing on YP.com's online yellow page directory. More than 40,000 Florida consumers could be eligible for refunds.

Florida and the other states began investigating YP.com in June after receiving consumer complaints about the company's marketing practices. The company allegedly has been sending businesses and organizations small promotional checks since January 2003. The states' investigation revealed that many recipients who deposited YP.com's checks, often only for \$3.50, did so without knowing that by depositing the check, they were purchasing the enhanced online listing or that they were authorizing YP.com (through Telco Billing, Inc.) to bill them monthly fees in advance on their telephone bill, by debit from their account, or through some other method. In some of these cases, the business remained unaware that it was being billed for several months, if not years, after it deposited the check.

"These checks were an excellent example of there being no such thing as free money," said Crist. "This settlement will ensure that people are not being taken advantage of and are not being stuck with unwanted subscriptions or services."

According to the settlement, YP Corp. will stop using activation checks to obligate businesses to pay for its products and services. The company also has agreed to pay more than \$1 million in restitution to former YP.com customers who did not understand the consequences of depositing the check. Florida consumers could receive more than \$84,000 in restitution.

YP Corp. must also contact its current activation check customers to inform them of their right to cancel their agreement with YP.com and of their potential eligibility for at least a partial refund of money paid to YP.com. Current YP.com customers who are being billed through their telephone bill or bank account for a listing and became a customer by depositing a promotional check are to be contacted by mail within the next two weeks by YP.com. Any customers with questions may call the Attorney General's fraud hotline at 1-866-9-NO-SCAM (1-866-966-7226.)

A copy of the YP Corp. settlement is available at:

[http://myfloridalegal.com/webfiles.nsf/WF/KGRG-6WGMCD/\\$file/YP\\_Settlement.pdf](http://myfloridalegal.com/webfiles.nsf/WF/KGRG-6WGMCD/$file/YP_Settlement.pdf)

**THE SOUTH FLORIDA BUSINESS JOURNAL**

## **YP.com may pay Floridians \$84K for fraud**

South Florida Business Journal - December 14, 2006

Florida and 33 other states have reached an agreement with a telephone directory company resolving allegations of deceptive business practices. More than 40,000 Florida consumers could be eligible for a total of more than \$84,000 in refunds.

The settlement is with YP Corp., commonly known as YP.com, and its Telco Billing subsidiary.

The companies agreed to settle allegations they used activation checks to obligate businesses and organizations to pay for an enhanced listing on the YP.com online yellow page directory.

Florida and the other states began investigating YP.com in June, after receiving consumer complaints about the company's marketing practices.

The company allegedly has sent businesses and organizations small promotional checks since January 2003.

The states' investigation showed many recipients who deposited YP.com's checks, often only for \$3.50, did so without knowing that, by depositing the check, they were purchasing an enhanced online listing or were authorizing YP.com (through Telco Billing) to bill monthly fees in advance on their telephone bill, by debit from an account or through some other method.

In some of these cases, the Florida Attorney General's Office said businesses were unaware they were being billed for several months, if not years, after depositing the check.

"These checks were an excellent example of there being no such thing as free money," Florida Attorney General and Gov.-elect Charlie Crist said. "This settlement will ensure that people are not being taken advantage of and are not being stuck with unwanted subscriptions or services."

Under the settlement, YP Corp. is to stop using activation checks to obligate businesses to pay for its products and services.

The company also agreed to pay more than \$1 million in restitution to former YP.com customers who did not understand the consequences of depositing the check.

YP Corp. must also contact its current activation check customers to inform them of their right to cancel their agreement with YP.com and of their potential eligibility for at least a partial refund of money paid to YP.com.

Within the next two weeks, the company is to contact, by mail, current YP.com customers who are being billed through their telephone bill or bank account for a listing and became a customer by depositing a promotional check.

Any customers with questions may call the attorney general's fraud hotline at (866) 966-7226.



THE OFFICE OF  
MASSACHUSETTS ATTORNEY GENERAL

*Martha Coakley*

MEDIA CENTER

*Media Center*

## **AG REILLY REACHES SETTLEMENT WITH YELLOW PAGES, INC., RESOLVING ALLEGATIONS OF CONSUMER DECEPTION**

**Company Used Promotional Checks to Lure Consumers into Purchasing Ads**

**April 25, 2006**

**CONTACT: SARAH NATHAN  
(617) 727-2543**

**BOSTON** - A Nevada-based corporation with principal offices in Anaheim, California accused of luring Massachusetts consumers and small business owners into unknowingly purchasing on-line directory listings through the use of promotional checks must put an end to the deceptive practice, Attorney General Tom Reilly announced today.

Under the terms of a multi-state agreement reached with Massachusetts and 27 other states, Nevada-based Yellow Pages, Inc., California-based Electronic Directories Company, LLC, and John Wurth, president of these companies, are prohibited from using promotional checks to bait consumers and small business owners into buying listings in their directories. The checks, according to AG Reilly's settlement, filed today in Suffolk Superior Court, did not clearly explain that, by cashing them, consumers were committing to pay for an annual listings in Yellow Pages publications. Those consumers who cashed these checks were later hit with a bill averaging \$179.

"Consumers and small business owners must be wary of live check promotions," AG Reilly said. "Promotional checks are almost always used to lure consumers into making a much bigger purchase. In this case, by cashing a check for very little money - \$2 or \$3 - consumers were unknowingly purchasing advertising with this company."

According to AG Reilly's settlement, Yellow Pages used checks, described as "instant cash back offers," to lure consumers and small business owners into contracting for annual advertising listings in an online directory and printed publication. The face of

the checks gave no indication that if cashed, it would commit the consumer to paying for an online directory listing. The information on the back of the check and on a separate disclosure used such small print and vague language as to make it virtually illegible.

Additionally, consumers and businesses that did not subsequently pay the invoices had their accounts referred by Yellow Pages, Inc., to a collection agency. Under the terms of the agreement, Continental Recovery Service, the Yellow Pages' collection agency, will cease all collection activity related to the check solicitation program. Also, the collection company will certify that no adverse credit information has been reported, and that it will not report adverse credit information about any prior customers in connection with the check solicitation program to any credit reporting agency.

Consumers and small business owners who believe they were victimized by Yellow Pages, Inc., may be entitled to refunds, and should contact Paralegal Judy Connolly in Attorney General's Consumer Protection Division at 617-727-2200 extension 2959.

This case was handled by Senior Counsel Jeffrey Shapiro of AG Reilly's Consumer Protection and Antitrust Division with assistance from Deanna Gonsalves, who serves as Vice President of Operations for the Better Business Bureau of Eastern Massachusetts.



## Beware of "Live Checks" Bearing Conditions

From the Office of Minnesota Attorney General Lori Swanson

Many companies offer potential customers incentives to encourage the purchase of goods and services. Recently, companies have begun to use check payments in connection with some marketing campaigns. Typically, a consumer receives a mailing that includes a "live check." The fine print on the back of the checks may contain language indicating that by endorsing the check, the consumer agrees to certain terms. Such terms may include membership in a club, subscription to a service, or purchase of a product.

A consumer may receive a live check and cash it, believing that it represents payment for a service rendered. Some unscrupulous marketers use checks that resemble refunds or rebates. A consumer may cash such a check, unaware that he or she is agreeing to be billed monthly for an unwanted and costly service, such as Internet access or membership in a web directory. Businesses and organizations may be particularly susceptible to cashing live checks without fully understanding the nature of the solicitation, since they frequently receive checks for payment.

Some consumers have complained that they cashed these checks without realizing that by doing so, they were charged for products or services. In some cases, such checks may bear conditions that are disclosed in small font, or placed in locations on the check that make the information difficult to access. For instance, a live check may include an asterisk near the amount, indicating that the recipient may read the rear side of the check for more information. The back of the check may then include a "disclosure" indicating that endorsing the check obligates the consumer to a certain purchase.

### Protect Your Interests

The Minnesota Attorney General's Office warns consumers to closely scrutinize any payments or checks that they receive to avoid accidentally signing up for an

unwanted program, product, or service. Consumers are further cautioned to closely monitor their accounts to catch any suspicious withdrawals or charges on their banking or credit accounts. A company may obtain a consumer's checking account information once the live check is deposited into an account. Once the marketing company has obtained the account information, it may use the information to process electronic withdrawals from the account.

### What to Do if You are Billed for Unwanted Services

Consumers who are billed electronically for unwanted services should contact their financial institution immediately. Consumers are encouraged to dispute unwanted charges by filing a written "Affidavit of Unauthorized Charges" with their financial institution. Based upon the investigation of the financial institution, it may agree to reverse the charges, clearing the consumer's account on the unauthorized debit.

Financial institutions are typically regulated at the national or state level, depending upon the institution's charter. The Office of the Comptroller of the Currency ("OCC") is the federal agency with the authority to regulate nationally-chartered banks. The Minnesota Department of Commerce is the state agency with the authority to regulate state-chartered banks in Minnesota. Accordingly, consumers who have concerns about the conduct of a given financial institution may wish to file a complaint with the appropriate regulatory agency. Consumers may contact the OCC and the Minnesota Department of Commerce as follows:

Office of the Comptroller of Currency  
Customer Assistance Group  
1301 McKinley, Suite 3710  
Houston, TX 77010  
Toll free: 1-800-613-6743

## **AG MYERS FILES RACKETEERING LAWSUIT AGAINST INTERNET YELLOW PAGES COMPANY**

**May 25, 2005**

Attorney General Hardy Myers today announced the filing of a civil racketeering lawsuit against a Nevada corporation, operating out of Anaheim, California, for allegedly tricking thousands of Oregon businesses into endorsing negotiable checks that the company claimed were actually contracts for Internet "yellow page" listings.

Named in the lawsuit filed Tuesday in Polk County Circuit Court are Yellow Pages, Inc.(YPI) and its president, John M. Wurth of Anaheim. The Oregon Department of Justice alleges in the suit that the defendants, from November 2003 through December 2004, mailed thousands of negotiable checks in a misleading solicitation to Oregon small businesses, churches and synagogues.

"Protecting legitimate Oregon businesses and non-profit and religious organizations from fraudulent enterprises is an important part of the Department of Justice legal mandate," Myers said. "In this case, the civil racketeering laws provided us the tools to sue this unscrupulous enterprise."

According to the complaint, the mailing piece was designed to imply a relationship with the recipient's commonly-used yellow page directory and the checks, ranging from \$3.47 to \$3.49, appeared to represent a refund of little consequence to resolve a small outstanding debt. The rest of the package allegedly did little to disclose the true nature of the mailing's purpose. Hence, victims thought they were dealing with their regular yellow pages directory rather than signing up for a new \$179 Internet listing.

The complaint alleges that the 2,776 Oregon victims who cashed the checks then received invoices for an Internet listing. The invoices contained the phone number of the second business in the racketeering enterprise, Continental Recovery Services, Corp. of Simi Valley, California, doing business as Continental Recovery and Filing Solutions and CRF Solutions.

Businesses calling CRF Solutions were told CRF represented Yellow Pages, Inc. If the invoice for the Internet listing was not paid, CRF continued collection efforts. Nationwide, the YPI/CRF/John Wurth enterprise collected millions from victims. In Oregon, the enterprise invoiced victims for more than \$496,000 and netted more than \$131,000.

The lawsuit, the sixth filed by a state against Yellow Pages, Inc., asks for civil penalties of \$250,000 from each defendant, attorney fees and investigative costs and the forfeiture of all monies and property derived from or used in the alleged illegal conduct. The suit

also requests restitution for all victims, who paid invoices connected to the deceptive "live" check solicitation.

In addition, the lawsuit seeks a permanent injunction prohibiting the defendants from engaging in or having an interest in any enterprise that utilizes "live" checks to promote a product or service in Oregon.

**CONTACT:**

Jan Margosian, (503) 947-4333 (media line only) [jan.margosian@doj.state.or.us](mailto:jan.margosian@doj.state.or.us) |

## ***From PROMO Magazine***

*Jan 1, 2007 12:00 PM, By Patricia Odell*

### **IF YOU BELIEVE THAT**

Planning to use a live check as a promotional hook? Think again.

Chase Bank and Trilegiant Corp. got into hot water with 17 states over the use of this device. The firms settled last month for \$14.5 million, resolving charges that they duped consumers into paying for membership programs or buying clubs.

The live checks, worth from \$2 to \$10, were tied to a "free" 30-day trial offer. Consumers were never told that by signing it, they had agreed to pay for a membership, the states alleged. The victims were mostly seniors and people with limited use of the English language.

And now the states are toughening up their guidelines on live checks.

For example, some now require specific language on the backs of checks, and disclosures in the solicitation.

A couple of states are mulling bills to prohibit the checks, says Albert Shelden, the acting senior assistant attorney general, Department of Justice for California.

Equally troubling for the states was the co-marketing aspect of the promotion. Trilegiant, a provider of loyalty and affinity programs to financial service and retail companies, was given access to Chase's database, and the solicitation arrived in a Chase-branded envelope. This led consumers to believe it had come from their bank, credit card issuer or mortgage lender, according to the states.

"The solicitation didn't adequately disclose that it was really a third party's product," Shelden says. "So there are additional requirements regarding disclosures that are going to have to be looked into."

Co-marketing with charities can create even greater problems, Shelden says. Requirements vary by state, with some requiring marketers to register as a charitable solicitor.

"Likewise, whatever you say is going to go to that charity, even if your sales are zero, better go to that charity or there are going to be problems," Shelden adds.

Iowa, which was also involved in the Trilegiant case, looked at specific words in the solicitation that it thought were misleading or created a false premise. It also examined what consumers were obligated to do.

One word that stuck out was "enroll," as in enroll in a class. The consumer who fell for this was, in fact, agreeing to a free trial in a buying club membership, says William Brauch, special assistant attorney general, consumer protection division, for Iowa.

The settlement included more than \$8 million from Trilegiant for restitution to consumers.



March 16, 2007

The Honorable Kurt Olson, Chair  
House Labor and Commerce Committee  
Alaska State Capitol, Room 408  
Juneau, Alaska 99801-1182

HB 182 (Lynn)—Support

Dear Chair Olson:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Labor and Commerce Committee to support HB 182, authored by Representative Bob Lynn and co-sponsored by your Committee colleague Representative Carl Gatto.

HB 182 would create a new category under the Consumer Act's deceptive practices to prohibit the use of "promotional checks." All of us receive these checks in our mailboxes and often they are designed to look like a refund for an overpayment or a rebate.

We would like to think that, as we grow older, we also become more savvy consumers. Unfortunately, the evidence does not support that premise.

Older people are often the targets of fraud and deceptive marketing tactics. Half of all telemarketing fraud complaints are made by victims over age 50. If you ask any of your older constituents, you will find they are bombarded regularly with deceptive mailings, come-ons, and telephone pitches. Unfortunately, the oldest of the old are generally the ones most likely to be victimized. They have a tendency to open and read all their mail and to be polite to telephone solicitors.

HB 182 will not protect all consumers of every age from becoming victims. What it will do is end one form of deceptive marketing, the use of promotional checks. This will help

our citizens as well as our businesses who often have checks processed without carefully looking at the source.

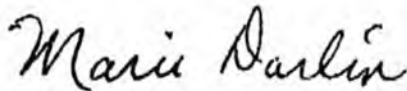
Battling scams and deceptive marketing schemes is a never-ending effort. HB 182 is one more tool that the Attorney General can use in this effort.

AARP recommends an "AYE" vote on HB 182.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,



Marie Darlin, Coordinator  
AARP Capital City Task Force  
415 Willoughby Avenue, Apt. 506  
Juneau, AK 99801  
586-3637 (voice)  
463-3580 (fax)

CC: Vice-Chair Mark Neuman  
Representative Carl Gatto  
Representative Gabrielle LeDoux  
Representative Jay Ramras  
Representative Bob Buch  
Representative Berta Gardner  
Representative Bob Lynn

# **House Bill 182**

## **Relevant Statutes**

### **Offering Promotional Checks**

Sec. 45.50.471. Unlawful acts and practices.

Sec. 45.50.551. Civil penalties.

Sec. 45.50.561. Definitions; short title.

Sec. 45.50.471. Unlawful acts and practices.

(a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.

(b) The terms "unfair methods of competition" and "unfair or deceptive acts or practices" include, but are not limited to, the following acts:

(1) fraudulently conveying or transferring goods or services by representing them to be those of another;

(2) falsely representing or designating the geographic origin of goods or services;

(3) causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person's affiliation, connection, or association with or certification of goods or services;

(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

(5) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, secondhand, or seconds;

(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(7) disparaging the goods, services, or business of another by false or misleading representation of fact;

(8) advertising goods or services with intent not to sell them as advertised;

(9) advertising goods or services with intent not to supply reasonable expectable public demand, unless the advertisement prominently discloses a limitation of quantity;

(10) making false or misleading statements of fact concerning the reason, for, existence of, or amounts of price reductions;

(11) engaging in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services;

(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression, or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged;

(13) failing to deliver to the customer at the time of an installment sale of goods or services, a written order, contract, or receipt setting out the name and address of the seller and the name and address of the organization that the seller represents, and all of the terms and conditions of the sale, including a description of the goods or services, which shall be stated in readable, clear, and unambiguous language;

(14) representing that an agreement confers or involves rights, remedies, or obligations which it does not confer or involve, or which are prohibited by law;

(15) knowingly making false or misleading statements concerning the need for parts, replacement, or repair service;

(16) misrepresenting the authority of a salesman, representative, or agent to negotiate the final terms of a consumer transaction;

(17) basing a charge for repair in whole or in part on a guaranty or warranty rather than on the actual value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the guaranty or warranty, if any;

(18) disconnecting, turning back, or resetting the odometer of a vehicle to reduce the number of miles indicated;

(19) using a chain referral sales plan by inducing or attempting to induce a consumer to enter into a contract by offering a rebate, discount, commission, or other consideration, contingent upon the happening of a future event, on the condition that the consumer either sells, or gives information or assistance for the purpose of leading to a sale by the seller of the same or related goods;

(20) selling or offering to sell a right of participation in a chain distributor scheme;

(21) selling, falsely representing, or advertising meat, fish, or poultry which has been frozen as fresh food;

(22) failing to comply with AS 45.02.350 ;

(23) failing to comply with AS 45.45.130 - 45.45.240;

(24) counseling, consulting, or arranging for future services relating to the disposition of a body upon death whereby certain personal property, not including cemetery lots and markers, will be furnished or the professional services of a funeral director or embalmer will be furnished, unless the person receiving money or property deposits the money or property, and money or property is received, within five days of its receipt, in a trust in a financial institution whose deposits are insured by an instrumentality of the federal government designating the institution as the trustee as a separate trust in the name only of the person on whose behalf the arrangements are made with a provision that the money or property may only be applied to the purchase of designated merchandise or services and should the money or property deposited and any accrued interest not be used for the purposes intended on the death of the person on whose behalf the arrangements are made, all money or property in the trust shall become part of that person's estate; upon demand by the person on whose behalf the arrangements are made, all money or property in the trust including accrued interest, shall be paid to that person; this paragraph does not prohibit the charging of a separate fee for consultation, counseling, or arrangement services if the fee is disclosed to the person making the arrangement; any arrangement under this paragraph which would constitute a contract of insurance under AS 21 is subject to the provisions of AS 21;

(25) failing to comply with the terms of AS 45.50.800 - 45.50.850 (Alaska Gasoline Products Leasing Act);

(26) failing to comply with AS 45.30 relating to mobile home warranties and mobile home parks;

(27) failing to comply with AS 14.48.060 (b)(13);

(28) dealing in hearing aids and failing to comply with AS 08.55;

(29) violating AS 45.45.910 (a), (b), or (c);

(30) failing to comply with AS 45.50.473 ;

(31) violating the provisions of AS 45.45.400 ;

(32) knowingly selling a reproduction of a piece of art or handicraft that was made by a resident of the state unless the reproduction is clearly labeled as a reproduction; in this paragraph, "reproduction" means a copy of an original if the copy is

(A) substantially the same as the original; and

(B) not made by the person who made the original;

(33) violating AS 08.66 (motor vehicle dealers);

(34) violating AS 08.66.200 - 08.66.350 (motor vehicle buyers' agents);

(35) violating AS 45.63 (solicitations by telephonic means);

(36) violating AS 45.68 (charitable solicitations);

(37) violating AS 45.50.474 (on board promotions);

(38) referring a person to a dentist or a dental practice that has paid or will pay a fee for the referral unless the person making the referral discloses at the time the referral is made that the dentist or dental practice has paid or will pay a fee based on the referral;

(39) advertising that a person can receive a referral to a dentist or a dental practice without disclosing in the advertising that the dentist or dental practice to which the person is referred has paid or will pay a fee based on the referral if, in fact, the dentist or dental practice to which the person is referred has paid or will pay a fee based on the referral;

(40) violating AS 45.50.477 (a) - (c);

(41) failing to comply with AS 45.50.475 ;

(42) violating AS 45.35 (lease-purchase agreements);

(43) violating AS 45.25.400 - 45.25.590 (motor vehicle dealer practices);

(44) violating AS 45.66 (sale of business opportunities);

(45) violating AS 08.18.023 (b) or 08.18.152;

(46) violating AS 45.50.479 (limitations on electronic mail);

- (47) violating AS 17.06.010 (sale of, or offering to sell, organic food);
- (48) violating a labeling or advertising provision of AS 17.20 (Alaska Food, Drug, and Cosmetic Act);
- (49) violating AS 45.45.920 (free trial period);
- (50) violating AS 45.45.930 (opt-out marketing plans);
- (51) violating AS 45.45.792 (deceptive acts or practices relating to spyware).

(c) The unlawful acts and practices listed in (b) of this section are in addition to and do not limit the types of unlawful acts and practices actionable at common law or under other state statutes.

Sec. 45.50.551. Civil penalties.

(a) A person who violates the terms of an injunction or restraining order issued under AS 45.50.501 shall forfeit and pay to the state a civil penalty of not more than \$50,000 for each violation. For the purposes of this section, the superior court in a judicial district issuing an injunction retains jurisdiction, and, in these cases, the attorney general acting in the name of the state may petition for recovery of the penalties.

(b) In an action brought under AS 45.50.501, if the court finds that a person is using or has used an act or practice declared unlawful by AS 45.50.471, the attorney general, upon petition to the court, may recover, on behalf of the state, a civil penalty of not less than \$1,000 and not more than \$25,000 for each violation.

(c) *[Repealed by Sec. 21 ch 166 SLA 1978].*

Sec. 45.50.561. Definitions; short title.

(a) In AS 45.50.471 - 45.50.561

(1) "advertising" includes the attempt directly or indirectly by publication, dissemination, solicitation, endorsement, or circulation, display in any manner, including solicitation or dissemination by mail, telephone or door-to-door contacts, or in any other way, to induce directly or indirectly a person to enter or not enter into an obligation or acquire title or interest in any merchandise or to increase the consumption of it or to make a loan;

(2) "cemetery lot" means a lot, plot, space, grave, niche, mausoleum, crypt, vault, or columbarium, used or intended to be used for the interment of human remains;

(3) "chain distributor scheme" means a sales device whereby a person, upon condition that the person make an investment, is granted a license or right to solicit or recruit for profit one or more additional persons who are also granted a license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted a license or right upon the condition of investment; a limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the license or right to solicit or recruit or the receipt of profit from these does not change the identity of the scheme as a chain distributor scheme; as used in this paragraph, "investment" means acquisition, for a consideration other than personal services, of tangible or intangible property, and includes but is not limited to franchises, business opportunities and services; "investment" does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

(4) "consumer" means a person who seeks or acquires goods or services by lease or purchase;

(5) "dealing in hearing aids" has the meaning given in AS 08.55.200 ;

(6) "documentary material" means the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate;

(7) "examination" of documentary material includes the inspection, study, or copying of the material, and the taking of testimony under oath or acknowledgment in respect of documentary material or copy of it;

(8) "fresh" means a condition of food that has never been frozen;

(9) "goods or services" includes goods or services provided in connection with a consumer credit transaction or with a transaction involving an indebtedness secured by the borrower's residence;

(10) "hearing aid" has the meaning given in AS 08.55.200 :

(11) "knowingly" means actual awareness of the falsity or deception, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness;

(12) "seconds" means manufactured items having flaws or consisting of a standard quantity or quality less than the manufacturer's quality standard.

(b) AS 45.50.471 - 45.50.561 may be cited as the Alaska Unfair Trade Practices and Consumer Protection Act.