

**HEB**

**182**

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

SARAH PALIN, GOVERNOR

LEGISLATION & REGULATIONS SECTION  
P.O. BOX 110300  
DIMOND COURT HOUSE, 6<sup>TH</sup> FLOOR  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
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May 11, 2007

The Honorable Hollis French, Chair  
Senate Judiciary Committee  
Alaska State Legislature  
State Capitol, Room 417  
Juneau, Alaska 99801-1182

Re: CSHB 182(JUD) -- Offering  
Promotional Checks

Dear Senator French:

The Department of Law would appreciate scheduling of the above bill for a hearing in your committee, at your earliest convenience. The bill is a high priority of the Department of Law.

The use of promotional checks in Alaska has been, and continues to be, a problem for both individuals and businesses in Alaska. Our consumer protection office has received many complaints and we have interviewed numerous consumers who have received these checks, cashed them believing them to be a refund, rebate, or reward check, or ordinary accounts receivable, and do not realize that by cashing them they have entered into a contract for the purchase of goods or services. Many consumers and business have paid hundreds of dollars as a result of these "contracts" for goods or services that they do not want, need, and often times do not even know that they have.

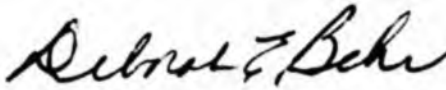
Our consumer protection office has worked with the sponsor of CSHB 182(JUD), Representative Lynn, and his staff, to draft legislation that addresses this problem by making the use of promotional checks in Alaska an unfair or deceptive act or practice in violation of the Unfair Trade Practices and Consumer Protection Act. By prohibiting the use of these checks, we would help eliminate the harm our consumer protection office has seen in connection with the use of these checks.

**If you have any questions, please feel free to contact me.**

**Sincerely,**

**TALIS J. COLBERG  
ATTORNEY GENERAL**

**By:**



**Deborah E. Behr  
Chief Assistant Attorney General**

**DEB:pvp**

**cc: John Bitney, Legislative Director, Office of the Governor  
Representative Bob Lynn, Sponsor of HB 182  
Julia Coster, Assistant Attorney General, Anchorage**

# 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](mailto:Representative_Bob_Lynn@legis.state.ak.us)  
"Bob Lynn's Alaska Blog" [RepBobLynnBlog.com](http://RepBobLynnBlog.com)

Session:  
Alaska State Capitol  
Juneau, AK 99801-1182

Phone: (907) 465-4931  
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Interim:  
716 W. 4<sup>th</sup> Ave., #650  
Anchorage, AK 99501-2133

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

May 2, 2007

To: Senator Hollis French, Chairman  
Senate Judiciary Committee

Fr: Representative Bob Lynn 

Re: HB 182

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

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Please schedule a hearing for HB 182 in the Senate Judiciary Committee at the earliest convenience. Attached is a copy of CSHB 182(JUD), Version K, which recently passed the House 37-0 and the Senate Labor and Commerce Committee without objection.

Also included is other background material, such as a Sponsor Statement, a Fiscal Note, a Question & Answer sheet with the Alaska Department of Law, a letter from a victim of a promotional check, relevant news stories, research, statutes and other information.

Thank you for considering my request for a hearing on a bill designed to protect Alaska consumers. HB 182 is considered a high priority of the state Department of Law.

# 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**

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## **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.

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.

**Dale E. Lehman  
11840 Coughlan Way  
Anchorage, AK 99516**

May 2, 2007

To Alaska State Legislators

I am writing in support of House Bill No. 182 regarding the use of promotional checks. I am a victim of the misuse of such checks and hope my experience is relevant to your deliberations. I have more years of formal education and higher income than the average Alaskan, but I share the typical Alaskan's extreme scarcity of time. This is what makes deceptive promotional checks so dangerous – they are designed to take advantage of the fact that people live busy lives, too busy to protect themselves against such schemes.

First, you should understand that I typically discard all “money saving” offers. I reject the constant offers by my credit card companies to accept “free” magazines (which are automatically renewed after a period of time), and I throw out (weekly) offers from airlines (United and Alaska, in particular) for free companion tickets that waive the annual fee for the first year. I studiously avoid placing myself in these situations where I must remember to cancel some agreement in order to avoid fees. In fact, I routinely give lectures in my economics classes about the ways in which extended warranties and frequent buyers offers are designed to harm consumers. Thus, it was a shock to me to discover that I have been a subscriber to The Home Protection Network.

Here is how I discovered this fact. I was teaching in Europe in February and I was robbed while in the Czech Republic. I had to cancel all my credit cards and I took a careful look at my statements to see if there were any unauthorized purchases. I noticed a charge for \$39.99 from TLG HOMEPR. My wife knew nothing about it; neither did I. I looked further and discovered that it had been on my Chase credit card statement for each of the past 18 months! There was a phone number next to the charge on the statement; when I dialed it, the recorded message included “press 4 if you want to find out how you enrolled in this program.” I thought that was a strange option, and after further investigation discovered a settlement between the Alaska Attorney General's office (along with 16 other states) and Chase and Trilegiant to set aside money to reimburse people for deceptive marketing practices.

It took 8 weeks, but I finally received a fax showing the canceled check with my signature that enrolled me in this program. I do remember getting such a check a year and a half ago. I recall looking at it and saying to myself, “well, if they want to give me \$10, I'm not going to refuse it.” It is my signature, but it is entirely unlike me to have signed a check with this small print. They did not send me a copy of any of the promotional materials that may have accompanied this offer. I never received any follow-up materials from Trilegiant. In fact, I am not even sure what benefits The Home Protection Network offers (strangely, this particular program is not even described on their website).

From what I have read, I have the impression that it is a warranty service on home appliances. During the period of my "subscription," I replaced a dishwasher (\$1000) and a garage opener (\$1500), but it never occurred to me to make a claim with The Home Protection Network – because, in fact, I did not know I was a subscriber to such a service.

I can think of only two possible explanations for my agreeing to this "offer." First, they could have added the small print after I endorsed the check. The faxed copy has print which is quite fuzzy as if it was placed by a stamp rather than typed onto the check. Of course, I have no way to prove this allegation. Second, my wife (who is a psychiatrist) assures me that materials can be designed so that the consumer can completely miss something centrally displayed through clever arrangement of materials. The principle is that if you are diverted into looking for something specific, you can miss something directly in front of your eyes.

I don't know which explanation is valid, but it doesn't matter. What is clear is that Trilegiant (along with Chase and Budget – the latter was involved in some way with this offer) was fully aware that I did not know I was enrolling in this program. If they had believed that I consciously enrolled, they would have surely sent me a "membership kit." That is what happens when you enroll in the AAA, AARP, or any other subscription based service. The provider wants to assure you that you are receiving valuable benefits. In this case, Trilegiant never informed me of anything about the service, including the benefits or how to file claims. Apparently, they did not want to draw my attention to the fact that I had enrolled.

I do not generally believe that government's role is to protect people from their own stupidity. However, when companies go to these lengths to intentionally deceive consumers, then I think something is wrong. They should be told that it is against the law to spend their resources attempting to fool consumers. Busy people are easy targets of such efforts. These companies, like the people that pickpocketed me in Prague, are professionals and are fully capable of taking advantage of busy consumers. When they join with credit card issuers, they abuse any trust consumers have placed in their credit card issuer.

The ultimate irony is that, as a result of the theft of my wallet, I had to spend a bunch of time giving my new credit card number to all of my monthly auto-pay bills (electric service, cable, garbage, etc.), except one: The Home Protection Network was automatically switched to my new credit card number by Chase. Now that's customer service!

I hope you will assist busy Alaskan consumers by sending a signal to marketers that such deceptive practices are not legal. They should spend their efforts marketing products and services that provide real benefits instead. House Bill No. 182 is a step in that direction.

Sincerely,

Dale E. Lehman

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VALID THROUGH

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AMOUNT PAID

Pay to  
Date Lemmon  
11840 College Way  
Anchorage AK 99515-2400  
or Branch

Amount Ten dollars and 00/100  
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Check # 4017133808  
April 18, 2005

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February 19, 2008

The Honorable Hollis French, Chair  
Senate Judiciary Committee  
Alaska State Capitol, Room 417  
Juneau, Alaska 99801-1182

HB 182 (Lynn)—Support

Dear Chair French:

On behalf of the AARP members in Alaska, we recommend that you and your colleagues on the Senate Judiciary Committee support HB 182, authored by Representative Bob Lynn and co-sponsored by twelve other House members.

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 that often have checks processed without carefully looking at the source.

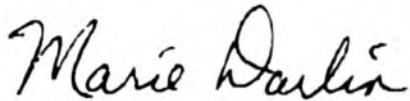
Battling scams and deceptive marketing schemes is a never-ending effort. HB 182 is one more tool that the Attorney General can use in this effort.

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 Charlie Huggins  
Senator Lesil McGuire  
Senator Bill Wielechowski  
Senator Gene Therriault  
Representative Bob Lynn

**HB 182 Offering Promotional Checks by Rep. Bob Lynn  
Senate Judiciary Committee, Feb. 20, 2008**

**Teleconference requests, including possible witnesses and sites requested:**

**From the Offnet Number: 888-295-4546 (We will try to get him to LIO)  
Victim of Promotional Check**

**Dale Lehman, Director of the Executive MBA in Information and  
Communication Technology, Alaska Pacific University  
564-8271 (office)**

**At Anchorage Legislative Information Office:**

**Julia Coster, Attorney with Department of Law  
907-269-5230  
Email: [julia\\_coster@law.state.ak.us](mailto:julia_coster@law.state.ak.us)**

**AARP Spokesperson**

**Pat Luby, AARP Alaska, at Anchorage LIO  
762-3314**

**or**

**Marie Darlin, AARP, at Senate Judiciary Committee meeting in Juneau  
586-3637**

**Staff member assigned to legislation:  
Mike Sica, 465-4965, staff for Rep. Bob Lynn**