

12171

HOUSE

JUDICIARY

March 13, 2007

The Honorable Craig Johnson  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

Dear Representative Johnson,

The Alaska Association of REALTORS® with over 1,600 members statewide supports House Bill 175, which relates eminent domain and recreational structures.

Last session the Association supported HB 318, the eminent domain legislation which defined whether or not it is appropriate to take a person's private property for economic development and whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another.

I favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes which are very common throughout Alaska.

So I encourage the passage of House Bill 175.

Sincerely,



Carl E. Brent  
#16675

March 12, 2007

The Honorable Craig Johnson  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

Dear Representative Johnson,

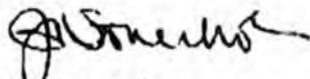
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We favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes which are very common throughout Alaska.

The Association encourages the passage of House Bill 175.

Sincerely,



Jo Sonerholm  
Associate Broker  
Prudential Jack White Vista

March 12, 2007

The Honorable Craig Johnson  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

Dear Representative Johnson,

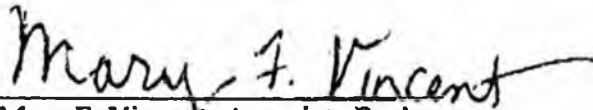
I have been selling real estate in the Mat-Su Borough for 27 years, and myself, along with the Alaska Association of REALTORS® with over 1,600 members statewide supports House Bill 175, which relates to eminent domain and recreational structures.

Last session the Association supported HB 318, the eminent domain legislation which defined whether or not it is appropriate to take a person's private property for economic development and whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another.

Our primary focus as Realtors, is to PROTECT THE RIGHTS OF THE PUBLIC. Therefore, we favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes which are extremely common throughout Alaska. Private property rights must be protected in this country – we are NOT a socialistic nation.

The Association encourages the passage of House Bill 175.

Sincerely,



Mary F. Vincent, Associate Broker  
Prudential JW/Vista RE  
907-352-1863 VM

Judy Cloud

March:

**The Honorable Craig Johnson, *Real Estate Leaders***  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

Dear Representative Johnson,

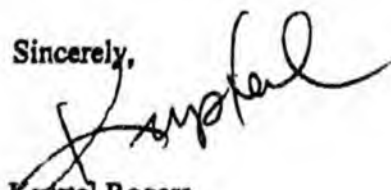
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Last session the Association supported HB 318, the eminent domain legislation which defined whether or not it is appropriate to take a person's private property for economic development and whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another.

We favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes which are very common throughout Alaska.

The Association encourages the passage of House Bill 175.

Sincerely,



Krystal Rogers  
Associate Broker  
ReMAX of Wasilla

*Krystal Rogers*  
Associate Broker

**RE/MAX** of Wasilla

3161 E. Palmer Wasilla Hwy. • Wasilla, AK 99654

Call: (907) 355-8455 • Direct: (907) 352-9345 • Fax: (907) 373-6892

E-mail: [krystal@mtsonline.net](mailto:krystal@mtsonline.net)

Each Office Independently Owned and Operated

**TEAM ROGERS**  
AT RE/MAX OF WASILLA

**Krystal Rogers**  
Associate Broker



The Real Estate Leaders

*Sales Representatives:*  
**Barbara Hocker**  
**Misty Walsh**  
**Sarah Littlefair**

**Carl-Ann Ketterling**  
Office Manager

**FAX COVER SHEET**

To: Wendy Chamberlain From: K. Rogers  
 Company: \_\_\_\_\_ Date: 3-13-07  
 Fax #: 586-8977 # of Pages: 2  
 Phone #: \_\_\_\_\_  
 RE: \_\_\_\_\_

**MESSAGE**

*Letter attached*

*Krystal*

**Team Rogers**  
**The Real Estate Center Branch**  
**1981 E. Palmer-Wasilla Hwy #250 • Wasilla, Alaska 99654**  
**Phone 907.373.4300 • Fax 907.373.4301**

**CONFIDENTIALITY NOTICE:** This message is a confidential and privileged communication intended only for the use of the individual or entity to which it is addressed, and should not be read or used by any other party. If you have received this message in error, please immediately notify us by return fax or e-mail and destroy all copies of this fax. Thank you.

**HB**

**182**



## HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120  
(907) 465-4990

### COMMITTEE MEMBERS

Rep. Jay Ramras  
Chairman  
Room, 118  
(907) 465-3004

Rep. Nancy Dahlstrom  
Vice-Chairman  
Room 409  
(907) 465-3783

Rep. John Coghill  
Room 214  
(907) 465-3719

Rep. Bob Lynn  
Room 104  
(907) 465-4931

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)

---

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

Phone: (907) 465-4931  
Fax: (907) 465-4316  
Toll Free: (800) 870-4391

**Interim:**  
716 W. 4<sup>th</sup> Ave., #650  
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



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

1292 Sadler Way, Suite 324  
Fairbanks, AK 99701

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.

# Alaska State Legislature

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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)  
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Fax: (907) 269-0207

## **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

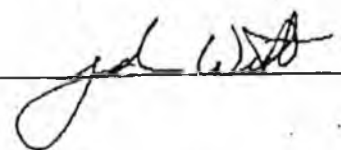
 Security features included. Details on back.

**VOID AFTER  
May 20, 2004**

PO BOX 100279  
ANCHORAGE, AK 99510-0279



Memo 907-272-6... - ATTORNEYS



⑈877626242⑈ ⑆62242843⑆ 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 Features: Micro-Print Signature Line & Endorsement Line, Fullback Color on the front and Original Document, Security Screens on the back.

# **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  \$ \*\*\*3.50

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



MEMO 

*Carl Simon*

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.



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 Baptist Church \$ \*\*3.25

Three and 25/100..... DOLLARS

MEMO / Churches

*Sara Davis*

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 United Methodist Chr \$ \*\*3.25

Three and 25/100..... DOLLARS

MEMO / Church

*Sara Davis*

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 Church Of Christ \$ \*\*3.25

Three and 25/100..... DOLLARS

MEMO Church Of Christ  
Memphis, TN  
Churches

*Sara Davis*

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 55722

4/1/2006

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

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

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



# **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)

# SOUTH FLORIDA **THE 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.



## **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.

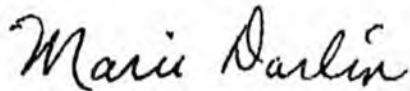
Battling scams and deceptive marketing schemes is a never-ending effort. HB 182 is one more tool that the Attorney General can use in this effort.

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.

**HB**

**187**

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

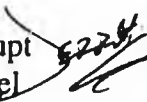
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 26, 2007

**SUBJECT:** Comments on CSHB 187(JUD) (Work Order No. 25-LS0719\K)

**TO:** Representative Jay Ramras  
Attn: Jane Pierson

**FROM:** Gerald P. Luckhaupt   
Legislative Counsel

Enclosed is the CS(JUD) you requested. I have two comments.

1. The amendment the committee adopted changing "hearing officer" to administrative law judge" reflected on p. 2, lines 26 - 27, affects the title of the bill because it affects AS 43.70.075(m)(2), which relates to violations of AS 43.70.075(g). (AS 43.70.075(g) prohibits possession of mislabeled cigarette packages.) The title will need to be amended to accurately reflect this change. One way to accomplish this would be to broaden the title by removing "**where the suspension is based on the improper sale of tobacco products**".
2. I do not know what new AS 43.70.075(x) accomplishes or does. It does not under my understanding of the term create a presumption. It appears to be something closer to prima facie evidence or something else of that ilk but how it applies to violations of AS 43.70.075 I know not.

GPL:lmb  
07-110.lmb

Enclosure

# Alaska State Legislature

*Interim:*

50 Front Street, Suite 203  
Ketchikan, AK 99901  
Phone: (907) 247-4672  
Fax: (907) 225-7157



*Session:*

State Capitol, Room 13  
Juneau, AK 99801-1182  
Phone: (907) 465-3424  
Fax: (907) 465-3793

Representative Kyle Johansen  
District 1

## Sponsor Statement

### **HB 187: An Act relating to holders of business license endorsements for sales of tobacco products**

House Bill 187 was introduced to address the lack of Due Process under the Fifth Amendment of the Alaska and United States Constitutions that retailers face during business license enforcement proceedings under AS 43.70.075 "the sale of tobacco products to underage persons".

According to the statute as it is currently written, the State of Alaska does not need to prove negligence by the retailer. It only needs to show the conviction of the employee who made the illegal sale of a tobacco product to an underage person. The retailer is not allowed to show evidence of its policies prohibiting illegal sales or any of its other good faith efforts to train and educate its employees.

House Bill 187 addresses the Due Process issue by requiring a finding of negligence of the license holder before the retailer can be sanctioned. The retailer would be allowed to show its policies and procedures as well as any other good faith efforts it has made to ensure its employees are trained not to make illegal sales to underage persons.

House Bill 187 then allows an Administrative Law Judge (ALJ) the discretion to determine the appropriate penalty based on the circumstance of each individual case. If the ALJ determines that the retailer made no real effort to adequately train its employees on the sale of age restricted products, they can impose the full 20 day license suspension. If the ALJ determines that the retailer did everything in its power to stop the employee from making an illegal sale and the employee made one anyway, the ALJ can impose a license suspension of anywhere between zero and twenty days.

The changes made in House Bill 187 are necessary to provide Alaska businesses with the Due Process granted to them under the State and Federal constitution, while still allowing Alaska to have the strictest penalty matrix in the country for the sale of tobacco products to underage persons.

# Alaska State Legislature

*Interim:*  
50 Front Street, Suite 203  
Ketchikan, AK 99901  
*Phone:* (907) 247-4672  
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*Session:*  
State Capitol, Room 13  
Juneau, AK 99801-1182  
*Phone:* (907) 465-3424  
*Fax:* (907) 465-3793

Representative Kyle Johansen  
District 1

## SECTIONAL ANALYSIS

**HB 187**

*"An Act relating to holders of business license endorsements for sales of tobacco products"*

### SECTION 1:

Provides that the department shall suspend the endorsement for the sale of tobacco only after a hearing.

### SECTION 2:

Expands the evidence that the hearing officer shall use to:

1. Did the license holder negligently violate AS 11.76.100, 11.76.102, 11.76.107? Hearing officer may consider provisions of Section 3.
2. Any other evidence that might tend to mitigate or aggravate the length of suspension.

### SECTION 3:

Allows the department to reduce license suspension period if the license holder establishes that a written policy against the selling of tobacco products to minors was adopted and enforced prior to the date of violation. Also allows the department and license holder to agree to an informal disposition of a suspension.

AMENDMENT

# 1 ADOPT

Rep. Rauvas

OFFERED IN THE HOUSE

TO: CSHB 187( ), Draft Version "M"

- 1 Page 4, following line 14:
- 2 Insert a new subsection to read:
- 3 "(w) A period of suspension may not be reduced under (t) or (v) of this section
- 4 to a period of less than 10 days."

AMENDMENT

#2 ADOPT

OFFERED IN HOUSE JUDICIARY

BY: REPRESENTATIVE GRUENBERG

TO: CSHB 187 version M

1. P. 2 – L. 25 delete:

“a hearing office”

and add:

“an administrative law judge”

ADOPT

AMENDMENT # 3

OFFERED IN HOUSE JUDICIARY

BY: REPRESENTATIVE GRUENBERG

TO: CSHB 187 version M

1. P. 4 - L. 5 delete:

granted more than "twice"

add:

granted more than "once"

Conceptual  
AMENDMENT

ADOPT

Gruenberg.

OFFERED IN THE HOUSE

To: CSHB 187 Version "M"

Page 4, line 14

Add a new subsection to read:

(w) ~~for purposes of (m)(5) of this section,~~ a conviction for a violation of AS 11.76.100, 11.76.106, or 11.76.107 by the agent or employee of the person who holds the business license endorsement is rebuttably presumed to constitute proof of the fact that the agent or employee negligently sold a cigarette, a cigar, or tobacco, or a product containing tobacco to a person under 19 years of age. The person who holds the business license endorsement may overcome the presumption by establishing by clear and convincing evidence that the agent or employee did not negligently sell a cigarette, a cigar, or tobacco, or a product containing tobacco to a person under 19 years of age in violation of AS 11.76.100, 11.76.106, or 11.76.107 as alleged in the citation issued to the agent or employee. The presentation of evidence authorized by this subsection does not constitute a collateral attack on the conviction described in this subsection.

Q re presumption  
may be the  
wrong term per  
jury. High standard  
to overcome

AMENDMENT

# 5

w/o

OFFERED IN HOUSE JUDICIARY

BY: REPRESENTATIVE GRUENBERG

TO: CSHB 187 version M

1. P. 3 – L. 26 add:  
“, 11.76-106, and 11.76-107”
2. P. 3 – L. 31 add:  
“, 11.76-106, and 11.76-107”

HP Officejet 7310xl  
Personal Printer/Fax/Copier/Scanner

Log for  
Representative Jay Ramras  
(907) 465-2070  
Apr 25 2007 5:32PM

---

Last Transaction

| <u>Date</u> | <u>Time</u> | <u>Type</u> | <u>Identification</u> | <u>Duration</u> | <u>Pages</u> | <u>Result</u> |
|-------------|-------------|-------------|-----------------------|-----------------|--------------|---------------|
| Apr 25      | 5:31PM      | Fax Sent    | 2029                  | 1:09            | 5            | OK            |

25-LS0719M  
Luckhaupt  
4/23/07

CS FOR HOUSE BILL NO. 187( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVE JOHANSEN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil penalties for the improper sale of tobacco products and to  
2 suspension of business license endorsements and the right to obtain business license  
3 endorsements where the suspension is based on the improper sale of tobacco products."

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

5 \* Section 1. AS 43.70.075(d) is amended to read:

6 (d) If a person who holds an endorsement issued under this section, or an  
7 agent or an employee of a person who holds an endorsement issued under this section  
8 acting within the scope of the agency or employment, has been convicted of violating  
9 AS 11.76.100, 11.76.106, or 11.76.107, the department, after a hearing under (m) of  
10 this section, shall suspend the endorsement for a period of

11 (1) 20 days and impose a civil penalty of \$300 if the person has not  
12 been previously convicted of violating AS 11.76.100, 11.76.106, or 11.76.107 and is  
13 not otherwise subject to the sanctions described in (2) - (4) of this subsection;

14 (2) 45 days and impose a civil penalty of \$500 if, within the 24 months

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before the date of the department's notice under (m) of this section, the person, or an agent or employee of the person while acting within the scope of the agency or employment of the person, was convicted once of violating AS 11.76.100, 11.76.106, or 11.76.107;

(3) 90 days and impose a civil penalty of \$1,000 if, within the 24 months before the date of the department's notice under (m) of this section, the person, or an agent or employee of the person while acting within the scope of the agency or employment of the person, was convicted twice of violating AS 11.76.100, 11.76.106, or 11.76.107, or a provision of this section or a regulation implementing this section adopted under AS 43.70.090; or

(4) one year and impose a civil penalty of \$2,500 if, within the 24 months before the date of the department's notice under (m) of this section, the person, or an agent or employee of the person while acting within the scope of the agency or employment of the person, was convicted more than twice of violating AS 11.76.100, 11.76.106, or 11.76.107.

\* Sec. 2. AS 43.70.075(m) is amended to read:

(m) The department may initiate suspension of a business license endorsement or the right to obtain a business license endorsement under this section by sending the person subject to the suspension a notice by certified mail, return receipt requested, or by delivering the notice to the person. The notice must contain information that informs the person of the grounds for suspension, the length of any suspension sought, and the person's right to administrative review. A suspension begins 30 days after receipt of notice described in this subsection unless the person delivers a timely written request for a hearing to the department in the manner provided by regulations of the department. If a hearing is requested under this subsection, a hearing officer of the office of administrative hearings (AS 44.64.010) shall determine the issues by using the preponderance of the evidence test and shall, to the extent they do not conflict with regulations adopted under AS 44.64.060, conduct the hearing in the manner provided by regulations of the department. A hearing under this subsection is limited to the following questions:

(1) was the person holding the business license endorsement, or an

1 agent or employee of the person while acting within the scope of the agency or  
2 employment of the person, convicted by plea or judicial finding of violating  
3 AS 11.76.100, 11.76.106, or 11.76.107;

4 (2) if the department does not allege a conviction of AS 11.76.100,  
5 11.76.106, or 11.76.107, did the person, or an agent or employee of the person while  
6 acting within the scope of the agency or employment of the person, violate a provision  
7 of (a) or (g) of this section;

8 (3) within the 24 months before the date of the department's notice  
9 under this subsection, was the person, or an agent or employee of the person while  
10 acting within the scope of the agency or employment of the person, convicted of  
11 violating AS 11.76.100, 11.76.106, or 11.76.107 or adjudicated for violating a  
12 provision of (a) or (g) of this section;

13 (4) did the person holding the business license endorsement  
14 negligently violate AS 11.76.100, 11.76.106, or 11.76.107; in making this  
15 determination, the hearing officer may consider whether the person holding the  
16 business license endorsement had adopted and used an employee education,  
17 compliance, and disciplinary program as provided in (t) of this section;

18 (5) any other evidence that might tend to mitigate or aggravate the  
19 length of suspension and civil penalty.

20 \* Sec. 3. AS 43.70.075 is amended by adding new subsections to read:

21 (t) Based on evidence provided at the hearing under (m)(4) or (5) of this  
22 section, the department may reduce the license suspension period under (d) of this  
23 section if the person holding the business license endorsement establishes that, before  
24 the date of the violation, the person had

25 (1) adopted and enforced a written policy against selling cigarettes,  
26 cigars, tobacco, or products containing tobacco to a person under 19 years of age in  
27 violation of AS 11.76.100;

28 (2) informed the person's agents and employees of the applicable laws  
29 and their requirements;

30 (3) required the employees to sign a form that the employees had been  
31 informed of and understood the written policy and the requirements of AS 11.76.100;

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(4) required employees to verify the age of tobacco product customers by means of photographic identification; and

(5) established and enforced disciplinary sanctions for noncompliance.

(u) A reduction in the period of suspension under (t) of this section may not be granted more than twice in a 12-month period for any one location.

(v) In lieu of a hearing under (m) of this section, the department and the person holding a business license endorsement may agree to an informal disposition of a suspension based on a violation of AS 11.76.100, 11.76.106, or 11.76.107. The person holding the business license endorsement shall admit that a violation occurred and punishment under this section is proper. The department may suspend the license and impose the appropriate civil penalty under this section; the department shall consider the fact that the violation is admitted and may reduce the period of suspension based on the admission if the person has not previously received a sanction under (d) of this section.

# FISCAL NOTE

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

Fiscal Note Number: HB187-DHSS-DBH-03-23-07  
 Bill Version: HB 187  
 ( ) Publish Date: \_\_\_\_\_  
 Dept. Affected: Health & Social Services  
 RDU Behavioral Health  
 Component Behavioral Health Administration

Revision Date/Time (Note if correction):  
 Title TOBACCO SALES VIOLATIONS

Sponsor JOHANSEN  
 Requester HOUSE (JUD)

Component No. 2665

**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            | 38.6        | 38.6        | 38.6        | 38.6        | 38.6        | 38.6        |
| Supplies               |             |             |             |             |             |             |
| Equipment              |             |             |             |             |             |             |
| Land & Structures      |             |             |             |             |             |             |
| Grants & Claims        |             |             |             |             |             |             |
| Miscellaneous          |             |             |             |             |             |             |
| <b>TOTAL OPERATING</b> | <b>38.6</b> | <b>38.6</b> | <b>38.6</b> | <b>38.6</b> | <b>38.6</b> | <b>38.6</b> |

|                               |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b>   |  |  |  |  |  |  |
| <b>CHANGE IN REVENUES (0)</b> |  |  |  |  |  |  |

**FUND SOURCE** (Thousands of Dollars)

|                                       |             |             |             |             |             |             |
|---------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| 1002 Federal Receipts                 |             |             |             |             |             |             |
| 1003 GF Match                         |             |             |             |             |             |             |
| 1004 GF                               | 38.6        | 38.6        | 38.6        | 38.6        | 38.6        | 38.6        |
| 1037 GF/Mental Health                 |             |             |             |             |             |             |
| Other(Specify Type-do not abbreviate) |             |             |             |             |             |             |
| Other(Specify Type-do not abbreviate) |             |             |             |             |             |             |
| <b>TOTAL</b>                          | <b>38.6</b> | <b>38.6</b> | <b>38.6</b> | <b>38.6</b> | <b>38.6</b> | <b>38.6</b> |

Estimate of any current year (FY2007) cost: \_\_\_\_\_

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 intent of this bill is to ensure due process of persons holding a tobacco endorsement on their Alaska Business License when their employees are cited for selling tobacco products to persons under the age of 19.

Section 2 requires the Department to provide notice to the endorsement holder of the employee violation and the holder's right to a hearing before a hearing officer of the office of administrative hearings.

(continued on page 2)

Prepared by: Stacy Toner, Acting Director  
 Division Behavioral health  
 Approved by: Karleen Jackson, Commissioner  
 Agency Department of Health and Social Services

Phone 465-2817  
 Date/Time 03/23/2007  
 Date 03/23/2007

**FISCAL NOTE**  
**FN #**

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

**ANALYSIS CONTINUATION**  
(Analysis continued)

This fiscal note represents the contractual costs associated with the expanded legal support necessary to ensure due process. Figures obtained from the Department of Law, approximate an increase in hearings at the rate of 1.3 hearings per month or the equivalent of .25 FTE. This translates to contractual obligations for the division in the amount of \$38.6 per year.

25-LS0719C  
Luckhaupt  
3/27/07

**CS FOR HOUSE BILL NO. 187( )**

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

**BY**

**Offered:**

**Referred:**

**Sponsor(s): REPRESENTATIVE JOHANSEN**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to holders of business license endorsements for sales of tobacco  
2 products."

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

4 \* **Section 1.** AS 43.70.075(d) is amended to read:

5 (d) If a person who holds an endorsement issued under this section, or an  
6 agent or an employee of a person who holds an endorsement issued under this section  
7 acting within the scope of the agency or employment, has been convicted of violating  
8 AS 11.76.100, 11.76.106, or 11.76.107, the department, after a hearing under (m) of  
9 this section, shall suspend the endorsement for a period of

10 (1) 20 days and impose a civil penalty of \$300 if the person has not  
11 been previously convicted of violating AS 11.76.100, 11.76.106, or 11.76.107 and is  
12 not otherwise subject to the sanctions described in (2) - (4) of this subsection;

13 (2) 45 days and impose a civil penalty of \$500 if, within the 24 months  
14 before the date of the department's notice under (m) of this section, the person, or an

1 agent or employee of the person while acting within the scope of the agency or  
2 employment of the person, was convicted once of violating AS 11.76.100, 11.76.106,  
3 or 11.76.107;

4 (3) 90 days and impose a civil penalty of \$1,000 if, within the 24  
5 months before the date of the department's notice under (m) of this section, the person,  
6 or an agent or employee of the person while acting within the scope of the agency or  
7 employment of the person, was convicted twice of violating AS 11.76.100, 11.76.106,  
8 or 11.76.107, or a provision of this section or a regulation implementing this section  
9 adopted under AS 43.70.090; or

10 (4) one year and impose a civil penalty of \$2,500 if, within the 24  
11 months before the date of the department's notice under (m) of this section, the person,  
12 or an agent or employee of the person while acting within the scope of the agency or  
13 employment of the person, was convicted more than twice of violating AS 11.76.100,  
14 11.76.106, or 11.76.107.

15 \* Sec. 2. AS 43.70.075(m) is amended to read:

16 (m) The department may initiate suspension of a business license endorsement  
17 or the right to obtain a business license endorsement under this section by sending the  
18 person subject to the suspension a notice by certified mail, return receipt requested, or  
19 by delivering the notice to the person. The notice must contain information that  
20 informs the person of the grounds for suspension, the length of any suspension sought,  
21 and the person's right to administrative review. A suspension begins 30 days after  
22 receipt of notice described in this subsection unless the person delivers a timely  
23 written request for a hearing to the department in the manner provided by regulations  
24 of the department. If a hearing is requested under this subsection, a hearing officer of  
25 the office of administrative hearings (AS 44.64.010) shall determine the issues by  
26 using the preponderance of the evidence test and shall, to the extent they do not  
27 conflict with regulations adopted under AS 44.64.060, conduct the hearing in the  
28 manner provided by regulations of the department. A hearing under this subsection is  
29 limited to the following questions:

30 (1) was the person holding the business license endorsement, or an  
31 agent or employee of the person while acting within the scope of the agency or

1 employment of the person, convicted by plea or judicial finding of violating  
2 AS 11.76.100, 11.76.106, or 11.76.107;

3 (2) if the department does not allege a conviction of AS 11.76.100,  
4 11.76.106, or 11.76.107, did the person, or an agent or employee of the person while  
5 acting within the scope of the agency or employment of the person, violate a provision  
6 of (a) or (g) of this section;

7 (3) within the 24 months before the date of the department's notice  
8 under this subsection, was the person, or an agent or employee of the person while  
9 acting within the scope of the agency or employment of the person, convicted of  
10 violating AS 11.76.100, 11.76.106, or 11.76.107 or adjudicated for violating a  
11 provision of (a) or (g) of this section;

12 (4) did the person holding the business license endorsement  
13 negligently violate AS 11.76.100, 11.76.106, or 11.76.107: in making this  
14 determination, the hearing officer may consider whether the person holding the  
15 business license endorsement had adopted and used an employee education,  
16 compliance, and disciplinary program as provided in (t) of this section;

17 (5) any other evidence that might tend to mitigate or aggravate the  
18 length of suspension and civil penalty.

19 \* Sec. 3. AS 43.70.075 is amended by adding new subsections to read:

20 (t) Based on evidence provided at the hearing under (m)(4) or (5) of this  
21 section, the department may reduce the license suspension period under (d) of this  
22 section if the person holding the business license endorsement establishes that,

23 (1) prior to the date of the violation, the person had

24 (A) adopted and enforced a written policy against selling  
25 cigarettes, cigars, tobacco, or products containing tobacco to a person under 19  
26 years of age in violation of AS 11.76.100;

27 (B) informed the person's agents and employees of the  
28 applicable laws and their requirements;

29 (C) required the employees to sign a form that the employees  
30 had been informed of and understood the written policy and the requirements  
31 of AS 11.76.100;

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(D) required employees to verify the age of tobacco product customers by means of photographic identification; and

(E) established and enforced disciplinary sanctions for noncompliance; or

(2) imposition of the full period of suspension or civil penalty would not be in the public interest.

(u) A reduction in the period of suspension under (t) of this section may not be granted more than twice in a 12-month period for any one location.

(v) In lieu of a hearing under (m) of this section, the department and the person holding a business license endorsement may agree to an informal disposition of a suspension based on a violation of AS 11.76.100, 11.76.106, or 11.76.107. The person holding the business license endorsement shall admit that a violation occurred and punishment under this section is proper. The department may suspend the license and impose the appropriate civil penalty under this section; the department shall consider the fact that the violation is admitted and may reduce the period of suspension based on the admission if the person has not previously received a sanction under (d) of this section.

|                       |                         |
|-----------------------|-------------------------|
| Post-It Fax Note 7871 | Date 4/24               |
| To Jane Pierson       | From Michelle Toohel    |
| By Rep. Jay Damras    | Co. ALAA                |
| Phone #               | Phone # 907-644-6418 or |
| Fax # 907-2070        | Fax # 907-7855          |

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## BILL NO.

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

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced:

Referred:

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to the suspension of business license endorsements and the imposition  
 2 of civil penalties for certain sales of tobacco products to persons under 19 years of age;  
 3 and providing for an effective date."

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

5 \* Section 1. AS 43.70.075(d) is amended to read:

6 (d) If a person who holds an endorsement issued under this section, or an  
 7 agent or an employee of a person who holds an endorsement issued under this section  
 8 acting within the scope of the agency or employment, has been convicted of violating  
 9 AS 11.76.100, 11.76.106, or 11.76.107, the department shall suspend the endorsement  
 10 and impose a civil penalty as set out in this subsection. However, following a  
 11 hearing under (m) of this section, and based on evidence admitted at that hearing  
 12 concerning questions specified in (m)(4) and (6) of this section, the department  
 13 may reduce by not more than 10 days a suspension under (1) of this subsection,  
 14 or by not more than 20 days a suspension under (2) of this subsection, or increase

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1 by not more than 10 days a suspension under (1) of this subsection, or by not  
2 more than 20 days a suspension under (2) of this subsection. If a hearing is not  
3 requested, or if a hearing is requested and the department determines that the  
4 evidence admitted does not support increasing or decreasing the suspension, the  
5 department shall suspend the endorsement for a period of

6 (1) 20 days and impose a civil penalty of \$300 if the person has not  
7 been previously convicted of violating AS 11.76.100, 11.76.106, or 11.76.107 and is  
8 not otherwise subject to the sanctions described in (2) - (4) of this subsection;

9 (2) 45 days and impose a civil penalty of \$500 if, within the 24 months  
10 before the date of the department's notice under (m) of this section, the person, or an  
11 agent or employee of the person while acting within the scope of the agency or  
12 employment of the person, was convicted once of violating AS 11.76.100, 11.76.106,  
13 or 11.76.107;

14 (3) 90 days and impose a civil penalty of \$1,000 if, within the 24  
15 months before the date of the department's notice under (m) of this section, the person,  
16 or an agent or employee of the person while acting within the scope of the agency or  
17 employment of the person, was convicted twice of violating AS 11.76.100, 11.76.106,  
18 or 11.76.107, or a provision of this section or a regulation implementing this section  
19 adopted under AS 43.70.090; or

20 (4) one year and impose a civil penalty of \$2,500 if, within the 24  
21 months before the date of the department's notice under (m) of this section, the person,  
22 or an agent or employee of the person while acting within the scope of the agency or  
23 employment of the person, was convicted more than twice of violating AS 11.76.100,  
24 11.76.106, or 11.76.107.

25 \* Sec. 2. AS 43.70.075(m) is amended to read:

26 (m) The department may initiate suspension of a business license endorsement  
27 or the right to obtain a business license endorsement under this section by sending the  
28 person subject to the suspension a notice by certified mail, return receipt requested, or  
29 by delivering the notice to the person. The notice must contain information that  
30 informs the person of the grounds for suspension, the length of any suspension sought,  
31 and the person's right to administrative review. A suspension begins 30 days after

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1 receipt of notice described in this subsection unless the person delivers a timely  
 2 written request for a hearing to the department in the manner provided by regulations  
 3 of the department. If a hearing is requested under this subsection, an administrative  
 4 law judge [A HEARING OFFICER] of the office of administrative hearings  
 5 (AS 44.64.010) shall determine the issues by using the preponderance of the evidence  
 6 test and shall, to the extent they do not conflict with regulations adopted under  
 7 AS 44.64.060, conduct the hearing in the manner provided by regulations of the  
 8 department. A hearing under this subsection is limited to the following questions:

9 (1) was the person holding the business license endorsement, or an  
 10 agent or employee of the person while acting within the scope of the agency or  
 11 employment of the person, convicted by plea or judicial finding of violating  
 12 AS 11.76.100, 11.76.106, or 11.76.107;

13 (2) if the department does not allege a conviction of AS 11.76.100,  
 14 11.76.106, or 11.76.107, did the person, or an agent or employee of the person while  
 15 acting within the scope of the agency or employment of the person, violate a provision  
 16 of (a) or (g) of this section;

17 (3) within the 24 months before the date of the department's notice  
 18 under this subsection, was the person, or an agent or employee of the person while  
 19 acting within the scope of the agency or employment of the person, convicted of  
 20 violating AS 11.76.100, 11.76.106, or 11.76.107 or adjudicated for violating a  
 21 provision of (a) or (g) of this section;

22 (4) did the person holding the business license endorsement  
 23 establish that the person had adopted and enforced an education, compliance,  
 24 and disciplinary program for agents and employees of the person as provided in  
 25 (f) of this section; \*

26 (5) did the person holding the business license endorsement  
 27 overcome the rebuttable presumption established in (w) of this section;

28 (6) within 10 years before the date of the violation that is the  
 29 subject of the hearing, did the department establish that the person holding the  
 30 business license endorsement T  
 10y

31 (A) previously violate (a) or (g) of this section;

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1 (B) previously violated AS 11.76.100, 11.76.106, or  
2 11.76.107 at a location or outlet in a location for which the person holds a  
3 business license endorsement, or had an agent or employee previously  
4 violate AS 11.76.100, 11.76.106, or 11.76.107; this subparagraph does not  
5 apply to a prior conviction that served to enhance a suspension period  
6 under (d)(2) - (4) of this section; or

7 (C) engaged at a location owned by the person in other  
8 conduct that was or is likely to result in the sale of tobacco to persons  
9 under 19 years of age in violation of AS 11.76.100, 11.76.106, or 11.76.107.

10 \* Sec. 3. AS 43.70.075 is amended by adding new subsections to read:

11 (t) Based on evidence admitted at a hearing under (m)(4) of this section, the  
12 department may reduce the license suspension period under (d)(1) or (2) of this section  
13 if the person holding the business license endorsement establishes that, before the date  
14 of the violation on which the hearing is being conducted, the person holding the  
15 business license endorsement

16 (1) adopted and enforced a written policy against selling cigarettes,  
17 cigars, tobacco, or other products containing tobacco to a person under 19 years of age  
18 in violation of AS 11.76.100, 11.76.106, or 11.76.107;

19 (2) informed the person's agents and employees of the applicable laws  
20 and their requirements and conducted training on complying with the laws and  
21 requirements;

22 (3) required each agent and employee of the person to sign a form  
23 stating that the agent and employee has been informed of and understands the written  
24 policy and the requirements of AS 11.76.100, 11.76.106, and 11.76.107;

25 (4) determined that the agents and employees of the person had  
26 sufficient experience and ability to comply with the written policy and requirements of  
27 AS 11.76.100, 11.76.106, and 11.76.107;

28 (5) required the agents and employees of the person to verify the age  
29 of purchasers of cigarettes, cigars, tobacco, or other products containing tobacco by  
30 means of a valid government issued photographic identification;

31 (6) established and enforced disciplinary sanctions for noncompliance

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1 with the written policy or the requirements of AS 11.76.100, 11.76.106, and  
2 11.76.107; and

3 (7) monitored the compliance of the agents and employees of the  
4 person with the written policy and the requirements of AS 11.76.100, 11.76.106, and  
5 11.76.107.

6 (u) A reduction in the period of suspension under this section may not be  
7 granted more than once in a 12-month period for a location or outlet in a location for  
8 which the person holds a business license endorsement.

9 (v) Notwithstanding (d) of this section, in place of a hearing under (m) of this  
10 section, the department and the person holding the business license endorsement may  
11 enter into a memorandum of agreement regarding the imposition of a suspension and  
12 civil penalties based on a violation of AS 11.76.100, 11.76.106, or 11.76.107. The  
13 memorandum of agreement must contain a provision that the person holding the  
14 business license endorsement admits or does not contest that a violation of  
15 AS 11.76.100, 11.76.106, or 11.76.107 occurred and accepts the imposition of  
16 suspension and civil penalty under this section. Based on the memorandum of  
17 agreement, the department may reduce the period of suspension. For violations  
18 involving AS 11.76.100, 11.76.106, or 11.76.107, the department may not reduce the  
19 period of suspension by more than 10 days under (d)(1) of this section or by more than  
20 20 days under (d)(2) of this section. The department may not agree to a reduction in  
21 the period of suspension more than once in a 12-month period for a location or outlet  
22 in a location for which the person holds a business license endorsement.

23 (w) For purposes of (n)(5) of this section, a conviction for a violation of  
24 AS 11.76.100, 11.76.106, or 11.76.107 by the agent or employee of the person who  
25 holds the business license endorsement is rebuttably presumed to constitute proof of  
26 the fact that the agent or employee negligently sold a cigarette, a cigar, tobacco, or a  
27 product containing tobacco to a person under 19 years of age. The person who holds  
28 the business license endorsement may overcome the presumption by establishing by  
29 clear and convincing evidence that the agent or employee did not negligently sell a  
30 cigarette, a cigar, tobacco, or a product containing tobacco to a person under 19 years  
31 of age in violation of AS 11.76.100, 11.76.106, or 11.76.107 as alleged in the citation

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1 issued to the agent or employee. The presentation of evidence authorized by this  
2 subsection does not constitute a collateral attack on the conviction described in this  
3 subsection.  
4 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

# STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES  
OFFICE OF THE COMMISSIONER

SARAH PALIN GOVERNOR

P.O. BOX 110601  
JUNEAU, ALASKA 99811-0601  
PHONE: (907) 465-3030  
FAX: (907) 465-3068

April 25, 2007

The Department of Health and Social Services has reviewed the proposed House (JUD) Committee Substitute for HB 187 (Version M) and regards several of the provisions as extremely problematic. The department therefore recommends adoption of the proposed CS drafted by the Department of Law (Drinkwater 4/2/2007).

### Employer Negligence

The state should not have to show that the endorsement holder negligently violated AS 11.76.100, as required in Version M (the state does have to show that the employee negligently sold to a minor, but that's at the district court level). The State's interest is in holding the employer accountable (i.e. vicariously liable) for the acts of his or her employee. There is nothing about the Holiday decision that requires the state, in order to take licensing action, to show that the employer was independently negligent in selling tobacco to a minor.

The Department of Law draft in paragraph (4) appropriately allows the hearing officer to consider the employer's efforts to institute an effective and meaningful program.

### Compliance Program

In version "M", the requirements of (t) would allow endorsement holders to easily set up a shell of a compliance program; in other words, they could set up a program on paper and make little or no effort to take precautions in terms of hiring employees, training them, or monitoring them.

The Department of Law draft addresses these additional terms in (t)(2),(4) and (7).

### Aggravators and Mitigators

While version "M" gives lip service to the notion that "aggravating factors" could result in an increased suspension or penalty, there is no mechanism for the increase to occur. Only a reduction is possible. Also, be aware that the terms "aggravators" and "mitigators" are associated with criminal cases and aren't appropriate for the administrative setting.

The Department of Law draft makes clear in (d) that there can be increases OR decreases of 10 and 20 days respectively under (d)(1) and (d)(2), but after that the suspensions are mandatory. Or, if the endorsement holder can show that the employee did not negligently sell to a minor (by overcoming the presumption in (w)) there is no suspension or penalty. (This is important to keep in mind because it goes to the heart of the Holiday decision, and the judge's ruling that Holiday should have the opportunity to contest the central issue in the case; that is, whether the employees negligently sold tobacco products).

### Ten Day Floor

While version "M" includes a floor, the devil is in the details. If the 10-day floor applies only to situations under current paragraph (m)(4), it will mean that we'll have lots of hearings and only the very least sophisticated businesses will get 20 days. If it applies to both (m)(4) and (5), there is a potential due process argument: e.g. if an employer can show that it was a candy bar and not

cigarettes that were sold, it wouldn't make sense to require a 10 day suspension. Also, is it 10-day floor on ALL the suspension periods or just the first one?

See the Department of Law draft at paragraphs (d), (m)(5) and (m)(6).

When a Business Gets a Reduction

Under version "M", a single location can get a reduction of the suspension period twice in one year. The Department of Law draft changed it to once. Paragraph (u) in both. Note that under version "M" the department can agree to a reduction if the person has not previously received a sanction under (d). The original bill did not contain this limitation.

## Policy change regarding Tobacco Enforcement within the Department of Health and Social Services

Prepared by L. Diane Casto, Manager, DBH, Prevention & Early Intervention

On October 27, 2006 the Anchorage Superior Court issued a decision in the Holiday Alaska v. SOA, DCCED, Division of Corporations, Business and Professional Licensing court case. The decision, that the current process for citing retailers who sell tobacco products to persons under 19 years of age does not provide for due process to the retailer, will impact our mandated tobacco enforcement activities.

Currently, clerks are cited under AS 11.76.100(a) (1) if they sell to an underage person. If they plead no contest or guilty, or are convicted following a trial, the conviction is forwarded from the court system to Department of Commerce, Community and Economic Development (DCCED). DCCED then sends a notice to the clerk's employer indicating that, as a result of the conviction, their tobacco endorsement will be suspended and a civil penalty imposed unless the employer request a hearing. Holiday successfully argued on appeal to superior court that it was denied due process because it faced suspension of its tobacco endorsement based on the results of court proceedings about which they had no notice and no opportunity to participate.

To rectify this situation and provide retailers with appropriate due process, DHSS will change its policy for issuing citations by citing both the employee and the corporate employer simultaneously. The business entity can be held responsible for the acts of its employees (i.e. the negligent sale of tobacco) via AS 11.16.130, which says that an organization is legally accountable for an offense if the conduct, among other things, is the conduct of its agency and within the scope of the agent's employment and in behalf of the organization.

DHSS will request, from the Commissioner of Public Safety, a special commission for the DHSS Tobacco Investigators to cite under AS 11.16.130. It should be noted that because of an Alaska case, ABC Towing v. State, which says that a sole proprietorship is not an "organization" under AS 11.16.130; sole proprietors cannot be cited under this theory of legal accountability. They could be cited if DHSS had a basis for arguing that the owner was independently guilty. Approximately 10% of tobacco enforcement cases involve a sole proprietor as the employer.

This policy change, to cite both the clerk of sale and the business, will accomplish the courts concern that due process is not given to the businesses whose clerks are cited for selling tobacco to youth under 19. Without this change to our policy, our tobacco enforcement work will be greatly compromised. This proposed change to our policy is the most valid and has been discussed with staff of the Attorney General's office. We anticipate this change will be completed within 30-days of initiation.

The Alaska Tobacco Control Alliance is supportive of the change in policy. We all believe the current system of citations and suspensions of tobacco endorsements is effective in keeping tobacco products out of the hands of youth and we have continually met our federal Synar sell rate of 20% or below since 2003.

# Best Practices for Enforcing State Laws Prohibiting the Sale of Tobacco to Minors

Joseph R. DiFranza

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**Objective:** To determine best practices for enforcing public health laws prohibiting the sale of tobacco to minors.

**Methods:** The author compared annual merchant compliance surveys to identify the 10 highest and the 10 lowest performing states. State and federal documents describing state efforts to improve compliance with their laws from 1995 to 2004 were systematically reviewed for evidence concerning the effectiveness of 26 enforcement strategies. These were rated as essential, recommended as a best practice, not recommended, or unable to rate. **Results:** The following strategies appear essential to high performance: a law enforcement strategy with a state agency coordinating enforcement, state funding of test purchases for enforcement, prosecution of offenders with penalties for violating the law, and effective merchant education. The following features are not recommended: warnings in lieu of penalties for offenders, reliance upon nonfunded local enforcement, and limitations placed on enforcement authority or the conduct of test purchases. **Conclusions:** Some states have achieved high compliance with the law by pursuing a variety of strategies employing common elements. Others have hampered their efforts by pursuing counterproductive strategies.

**KEY WORDS:** law enforcement, tobacco, youth

In July 1992, Congress enacted the Synar Amendment, making substance abuse block grants from the Department of Health and Human Services (DHHS) contingent upon states enacting and enforcing a prohibition on the sale of tobacco to minors.<sup>1</sup> Beginning in 1996, states were required to conduct annual scientific surveys, employing underage decoys to conduct test purchases to determine the rate at which merchants violate the law. Each state was assigned an individu-

alized schedule of annual targets for lowering its violation rate to 20%.<sup>2</sup> States failing to make appropriate progress were sometimes penalized and had to commit state funds to improve compliance.

Although Congress required states to enforce their laws "in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18,"<sup>1</sup> DHHS did not require states to enforce their laws by penalizing lawbreakers.<sup>3</sup> As a result, states pursued different strategies to improve compliance, with some proving more effective than others. By 1998, the violation rate for the large rural state of Maine was 4 percent, whereas the violation rate for the tiny urban District of Columbia was 47 percent.<sup>4</sup> By 2000, 23 states had missed at least one annual target.

Many of the strategies used to enforce these laws cannot be subjected to experimental manipulation. It would be a violation of the right to equal protection provided by the 14th Amendment to randomly assign fines of \$100, \$500, or \$1000 to consecutive defendants to evaluate the impact of penalty severity on subsequent compliance. Nor could states be randomly assigned different constitutions to evaluate the impact of Home Rule clauses. Although experimental evidence would be ideal, real-world limitations dictate that many decisions regarding public health policy and the allocation of resources must be made in the absence of experimental evidence. In such situations, we strive to make informed decisions on the basis of experience. The author's purpose was to identify the best public health practices in enforcing tobacco access laws by drawing

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The Robert Wood Johnson Foundation, Substance Abuse Policy Research Program, funded this project.

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Joseph R. DiFranza, MD, is Professor, Department of Family Medicine and Community Health, University of Massachusetts Medical School, Worcester. His research has focused on youth and tobacco for over 20 years

upon the experiences of states with the best and the worst performance records.

## ● Methods

Data regarding state efforts to enforce youth access laws were obtained from multiple sources. Each state files an annual block grant application with the Substance Abuse and Mental Health Services Administration (SAMHSA).<sup>5</sup> These applications describe efforts to improve compliance. Copies of state block grant applications and correspondence between the states and SAMHSA describing activities from 1995 to September 30, 2001, were obtained through a series of Freedom of Information Act requests made by the author to the DHHS. Additional information was obtained from SAMHSA publications; by contacting voluntary agencies and state, county, and local officials by phone or e-mail; by attending SAMHSA-sponsored Syner conferences; and from official state Web sites.<sup>6</sup> These materials were supplemented by requesting state block grant applications for 2002–2004 from the states, and additional information by phone and e-mail. The author reviewed over 10,000 pages of materials. The outline presented in Table 1 guided data extraction, which produced a 127-page, single-spaced summary document, which was itself extracted onto 42 spreadsheets, each of which organized the data from 20 selected states on a single topic. Complete data extraction was performed only for the 20 selected states. Each spreadsheet was examined for striking patterns that distinguished the best and worst performing states from one another.

Each state is required to annually conduct a random survey to measure statewide compliance with the law.<sup>1</sup> Results are reported on the SAMHSA Web site in terms of the percentage of merchants who made an illegal sale when approached by an underage decoy.<sup>4</sup> Several options were considered for using these data to rank states according to their performance: the number of years it took each state to lower its violation rate to 20 percent; the highest and lowest violation rates for the most recent year; or the highest and lowest average violation rates. State violation rates often fluctuated: Vermont had the second best in 1998, but fell to 37th place by 2001. Wyoming had the worst violation rate in 1999, but rose to sixth place the following year. If Wyoming were placed in the top tier for its most recent performance, would the policies that put it in last place be considered best practices? To avoid these problems, a ranking system was chosen to emphasize consistently good or poor performance.

The following method was used to identify 10 high-performing (HI) and 10 low-performing (LO) states.

**TABLE 1** ○ The guide used to extract data from the audit materials

### The law

- Is there a designated enforcement agency?
- Is a license required to sell tobacco?
- Is licensing at the local or state level?
- Does the state law facilitate or hinder enforcement?
- Does the state law prohibit local enforcement efforts?
- What are the penalties for illegal sales?
- Can a license be suspended or revoked?
- Can storeowners be cited?
- Are there restrictions on vending machines?

### Legislative support

- Is the legislature supportive?
- Does the state fund enforcement?
- Does the state expect local government to fund enforcement?

### Administration

- Is it clear which state agency is responsible for Syner compliance?
- Has the legislature assigned enforcement responsibility?
- What type of agency is responsible for enforcement?
- Do state agencies collaborate?
- Are there regular meetings of state officials to deal with enforcement?
- Is there a clear plan based on a workable model?
- Is the state's goal just to pass, or to get its violation rates as low as possible?

### Mechanism of enforcement

- Does a state agency coordinate enforcement?
- Is the state divided into regions of responsibility where specific agents are assigned and compliance rates are monitored on an ongoing basis?
- Have enforcement positions been established?
- Is there a statewide database of retailers?
- Is there a statewide system for tracking inspections?
- How often does the state measure compliance rates?
- Is enforcement targeted to problem areas?
- What proportion of merchants is inspected each year?
- Are other aspects of the law enforced, such as signage?
- Are citations issued to the clerk, the storeowner, or both?
- Are all violators prosecuted?
- Is prosecution handled criminally, civilly, or administratively?
- Are prosecutions generally successful?
- What penalties are administered?
- Are offending retailers reinspected?

### Merchant/community education

- What is done to educate merchants?
- Are the names of violators publicized?
- Are violators targeted for reeducation?
- Is there a hotline for citizens to report stores that sell to minors? Are complaints pursued?
- Do community coalitions play a role?

The states and the District of Columbia were ranked 1 to 51 from the lowest to the highest violation rate reported for each of the 6 years from 1997 to 2002. (Data

TABLE 2 • Top- and bottom-ranked states\*

|                          | Violation rates |      |      |      |      |      | Rankings |      |      |      |      |      |
|--------------------------|-----------------|------|------|------|------|------|----------|------|------|------|------|------|
|                          | 1997            | 1998 | 1999 | 2000 | 2001 | 2002 | 1997     | 1998 | 1999 | 2000 | 2001 | 2002 |
| High performing          |                 |      |      |      |      |      |          |      |      |      |      |      |
| 1. Maine                 | 13              | 4    | 6    | 9    | 7    | 7    | 6        | 1    | 1    | 7    | 3    | 7    |
| 2. Florida               | 7               | 6    | 8    | 8    | 8    | 7    | 2        | 4    | 4    | 5    | 5    | 6    |
| 3. South Dakota          | 13              | 18   | 9    | 8    | 5    | 8    | 7        | 15   | 5    | 4    | 1    | 8    |
| 4. New Hampshire         | 12              | 8    | 8    | 10   | 11   | 10   | 4        | 3    | 3    | 8    | 11   | 13   |
| 5. Hawaii                | 23              | 15   | 11   | 7    | 8    | 6    | 20       | 12   | 7    | 3    | 6    | 4    |
| 6. Colorado              | 19              | 28   | 16   | 6    | 7    | 5    | 9        | 36   | 12   | 1    | 4    | 1    |
| 7. Washington            | 6               | 15   | 12   | 14   | 11   | 14   | 1        | 11   | 9    | 16   | 12   | 29   |
| 8. Massachusetts         | 17              | 19   | 14   | 18   | 10   | 9    | 8        | 18   | 10   | 24   | 9    | 11   |
| 9. Louisiana             | 39              | 20   | 7    | 7    | 9    | 6    | 47       | 21   | 2    | 2    | 7    | 3    |
| 10. New Mexico           | 23              | 14   | 19   | 12   | 12   | 10   | 21       | 9    | 20   | 10   | 14   | 15   |
| Low performing           |                 |      |      |      |      |      |          |      |      |      |      |      |
| 42. North Carolina       | 45              | 26   | 25   | 20   | 20   | 18   | 48       | 31   | 34   | 32   | 38   | 41   |
| 43. Indiana              | 24              | 26   | 28   | 22   | 25   | 19   | 25       | 32   | 40   | 36   | 47   | 45   |
| 44. Iowa                 | 27              | 36   | 33   | 29   | 18   | 11   | 29       | 49   | 46   | 50   | 31   | 21   |
| 45. District of Columbia | 34              | 47   | 25   | 25   | 16   | 16   | 43       | 51   | 35   | 45   | 23   | 35   |
| 46. Maryland             | 36              | 35   | 33   | 25   | 25   | 10   | 44       | 48   | 45   | 46   | 48   | 18   |
| 47. Tennessee            | 37              | 24   | 31   | 26   | 20   | 22   | 46       | 26   | 43   | 47   | 40   | 49   |
| 48. Pennsylvania         | 30              | 32   | 41   | 27   | 28   | 15   | 36       | 39   | 50   | 48   | 50   | 31   |
| 49. Montana              | 37              | 35   | 25   | 22   | 23   | 23   | 45       | 45   | 33   | 37   | 46   | 50   |
| 50. Alaska               | 29              | 24   | 34   | 36   | 27   | 30   | 34       | 24   | 49   | 51   | 49   | 51   |
| 51. Kansas               | 47              | 35   | 29   | 23   | 21   | 21   | 49       | 47   | 41   | 39   | 41   | 47   |

\* Cell values indicate the state's reported rate of illegal tobacco sales for the federal fiscal years indicated. States were ranked from 1 to 51 from the lowest to the highest violation rate reported for each year. The mean of these six rankings was used to identify the 10 highest-performing and 10 lowest-performing states as indicated by the number preceding the state's name.

from 1996 were not used because very few states had initiated enforcement and seven did not have data.) The mean of the six annual rankings for each state was used to identify the 10 HI and 10 LO states (Table 2). The violation rates for HI and LO states overlapped on 3 of the 6 years (Table 2). Differences of a few percentage points in violation rates between states may not be meaningful, as states used different protocols for measuring violation rates<sup>7</sup> and the surveys generally had a 95 percent confidence interval of 3 percentage points.<sup>2</sup> This ranking method factors in the speed with which violation rates were lowered, the level of reduction achieved in comparison to that achieved by other states during the same year, and maintenance of performance. Twenty states were included to ensure that the sample reflected state diversity.

The small sample size and the nature of the data did not allow for meaningful quantitative or statistical analysis. For example, reported merchant education efforts included various combinations of letters, mailed training materials, signs, stickers, buttons, posters, billboards, community coalition activities, public service announcements on radio or television, training seminars, videos, Web-based courses, educational test pur-

chases with warnings or prizes, and personal visits from citizen volunteers, health officials, or law enforcement officers. Even if the cost or volume of these efforts could be determined, a quantitative analysis would be comparing not apples and oranges but a cornucopia of assorted fruits and vegetables. Without valid quantitative data for most of the variables, multivariate analyses too were not an option.

State experiences were compared and contrasted to evaluate the impact of different strategies to improve compliance. The author rated strategies according to these criteria: (1) *essential* to success, (2) not essential, but *recommended as a best practice*, (3) *hindering efficient operation and therefore not recommended*, and (4) *unable to rate* because of insufficient evidence. All HI states sustained violation rates below 15 percent. A strategy was considered *essential* if no state had attained a violation rate below 20 percent without it. Strategies *recommended as best practices* improve program productivity, making efficient use of state revenues and allowing states to accomplish more with less. Several states have adopted legislation drafted by the tobacco industry that hampers efficient enforcement, for example, by stripping enforcement powers from

local authorities, or by placing gratuitous limitations on how compliance checks are conducted.<sup>8</sup> Strategies that squander resources by impeding enforcement are *not recommended*.

Most LO states abandoned their initial approaches after failing to make adequate progress. For some, new strategies brought success. This transition came in different years for different states; the analysis is based on the *early years of poor performance*.

## ● Results

Table 2 presents the final state rankings. To determine how the selection of states might have differed if other ranking strategies had been employed, states were ranked according to their average violation rate from 1997 through 2002. This was averaged with the six annual rankings: the same 20 states sorted into the HI and LO groups. When the average violation rate from 1997 through 2002 was used as the sole ranking criterion, 9 of the 10 HI states were reselected, as were 8 of the 10 LO states. Thus, identification of HI and LO states was not strongly influenced by the choice of ranking method.

### Features of the law

Five LO states, but no HI states, had laws that protected offenders from punishment or otherwise made enforcement more difficult. Maryland exempted vending machines from penalties. North Carolina allowed only a warning for first offenses. Tennessee required state officials to obtain permission from local judges to employ minors for test purchases. Montana allowed only the health department to enforce the law, exempted store-owners from penalties, and reduced a schedule of escalating fines (\$100, \$200, \$300, and \$500) to a flat \$25. Indiana's law, with no requirement for proof of age, provided that it must be proved that a clerk "knowingly" sold tobacco to a minor, allowing for a defense that the clerk "reasonably believed" the customer was 18.<sup>9</sup> When the legislature protects offenders from prosecution or penalties, the effectiveness of enforcement efforts is undermined. Such provisions are *not recommended* (Table 3).

The state law determines whether a violation is prosecuted through the court as a criminal or civil offense, or administratively within the enforcement agency. All three approaches were used by both HI and LO states. Although criminal prosecution sounds tougher, it is the least efficient: inspectors must appear in court, judges dismiss many cases, and penalties can be trivialized. Although all three approaches are compatible with excellent performance, administrative disposition is the

TABLE 3 ○ Summary of recommendations

|   |
|---|
| Essential   |
| A concrete plan concerning how the state will enforce its law |
| A state agency overseeing enforcement                         |
| Ongoing enforcement inspections employing test purchases      |
| State funding of enforcement inspections                      |
| Prosecution of offenders                                      |
| Penalties for violating the law                               |
| Effective merchant education                                  |
| Recommended   |
| Administrative disposition of citations                       |
| Licensing of tobacco sellers                                  |
| Maintenance of a state database of tobacco sellers            |
| Not recommended   |
| Reliance upon unfunded local enforcement                      |
| Warnings instead of penalties for offenders                   |
| Protecting offenders from prosecution and penalties           |
| Limitations on the conduct of test-purchases                  |
| Limiting which officials can enforce the law                  |
| Unable to rate  |
| The type of agency that is conducting enforcement             |
| The proportion of merchants to inspect each year              |
| The severity of the penalty                                   |
| Whether the owner, the clerk, or both are charged             |
| Citizen complaint lines                                       |
| Test purchases conducted solely for educational purposes      |
| Tobacco industry-sponsored merchant education programs        |

*recommended* approach as it makes the most efficient use of state resources.

In some states, enforcement did not happen because nobody was assigned responsibility. However, provisions in the state law assigning enforcement responsibility did not correlate with state performance. In both HI (New Mexico, South Dakota) and LO states (District of Columbia), the assigned agency either ignored its responsibility or employed ineffective methods (Tennessee). Whether or not the law assigns enforcement responsibility, the governor can. A state agency quickly assumed responsibility for coordinating enforcement in every HI state. In the LO states, this was true only in Tennessee and Kansas. In Tennessee, Department of Agriculture agents attempted to observe illegal sales during food inspections but did not perform test purchases. As no LO state was able to lower violation rates to 20 percent without a state agency leading the effort, this appears to be *essential* to success.

A license to sell tobacco is required in six HI states and seven LO states. Although a licensing requirement had no apparent impact on state performance, states without licensing expended more resources to establish and maintain a database of tobacco retailers. A database is used to plan enforcement, track violations,

conduct the annual Synar compliance survey, and mail educational and training materials to merchants. With increased productivity, states might save money even if licenses were issued free of charge: licensing is *recommended*.

Every state restricted vending machines to reduce youth access. Such restrictions are *recommended* as violation rates for unrestricted vending machines are consistently higher than for over-the-counter sales.<sup>10</sup>

A preemptive state law strips local government of authority. Bans on self-service displays, bans on tobacco-vending machines, and enforcement of tobacco access laws all began with local government.<sup>11</sup> The tobacco industry has worked hard for preemption.<sup>6</sup> Five HI and five LO states had preemptive laws, and one in each group prohibited local enforcement. Thus, preemption did not preclude the successful implementation of enforcement at the state level. However, preemption forecloses a community's ability to eliminate other sources of tobacco for youth, such as free samples or products stolen from self-service displays.

### Enforcement

In nine HI states, the legislature supported enforcement with funding or facilitative laws. Every HI state used state funds to pay people to enforce the law. This involved state personnel or contracts with local officials or civilians. Among the LO states, in the early years only Alaska and Kansas spent more than a pittance on enforcement; several legislatures were hostile to enforcement. Not 1 of the 50 states achieved the 20 percent goal without funding enforcement; state funding for enforcement appears to be *essential*.

In six LO states, local authorities were encouraged to enforce the law but were not paid. Among the HI states, only New Hampshire tried this briefly. This approach was never successful: it is *not recommended*; all who attempted it either instituted state-level enforcement or later channeled state funds to support local enforcement.

All HI states settled quickly upon an enforcement plan and instituted the legislative or administrative modifications necessary to make it work. Although the letter of the law required states to only reduce violation rates to 20 percent, all HI states embraced the spirit of the law by attempting to extinguish illegal sales. Although some LO states now have their sights on goals below the mandatory 20 percent, in the early years, their common ambition was to protect their block grant funds by hitting their assigned annual targets. The most efficient states set up all responsibilities (merchant education, licensing, enforcement, and administrative disposition) within a single agency. When this was not the case, HI states coordinated activities across state

agencies through interdepartmental meetings and memoranda of understanding. During the first several years under Synar, coordinated action was uncommon in LO states and only Alaska and Kansas had a plan of action. Advocates of enforcement in LO states were often frustrated by a lack of cooperation from the legislature, executive branch, other state agencies, or local authorities. Planning appears to be *essential*.

HI states rely on a variety of state agencies to conduct, or contract for, test purchases. In Maine, it is the Attorney General's office; in Hawaii, South Dakota, Massachusetts, and New Mexico, the health department; and in Florida, New Hampshire, Colorado, Washington, and Louisiana, the alcoholic beverage enforcement agency. LO states also relied primarily on alcoholic beverage agencies. Health departments were involved because their block grant was at risk. Efforts in Alaska and the District of Columbia failed because health departments were unable to obtain police cooperation. While success can be achieved with different types of state agencies overseeing enforcement, failure may result when that agency does not have enforcement powers.

Test purchases are performed by youths supervised by either civilian contractors (South Dakota) or law enforcement officers. States had no trouble prosecuting violations occurring under civilian supervision; this offers a more cost-effective approach than do the utilization of sworn law enforcement officers. A particularly wasteful system is to have a nonenforcement state agency contract with an enforcement agency at overtime rates (District of Columbia).

The number of enforcement inspections can vary with funding levels. Six HI states had at least one year during which they averaged one or more inspection per merchant. The lowest inspection rate among HI states was 20 percent. By contrast, 20 percent represented the highest inspection rate (only Kansas) among LO states in the early years. All LO states, but Kansas, later increased their inspection rates. Higher inspection rates are generally associated with better performance, but other factors too are important. Both Kansas and Florida maintained inspection rates of 20 percent over the period 1997-2002. The violation rate for Kansas never dropped below 20 percent, while Florida's was consistently under 10 percent. In 2000, Massachusetts had a violation rate of 18 percent compared to 8 percent for Florida, despite the fact that the inspection rate for Massachusetts was 200 percent, 10 times that for Florida. Florida's inspections were conducted by state law enforcement and resulted in \$500 fines for all offenders. Massachusetts' inspections were conducted by local health boards and resulted in warnings for about half of offenders and fines of \$50 to \$100 for the rest.

Six states in each group found it helpful to divide the state into regions of enforcement responsibility. All 20 states maintain databases of tobacco retailers; HI states more commonly used these to facilitate enforcement. All HI states and seven LO states now use their databases to track inspection results for individual merchants. All states must measure their violation rate annually for Synar. Nine states (five HI, four LO) track enforcement inspections to monitor violation rates in real time, making it possible to respond to adverse trends. Six HI states and three LO states identify and target areas of poor compliance for additional enforcement and/or education. Seven HI states and eight LO states have at least occasionally reinspected offenders.

### Penalties

No state achieved the 20 percent goal without prosecuting offenders. Eight LO states prosecuted offenders only very rarely, whereas nearly 100 percent of offenders were prosecuted in eight HI states. Initially, offenders in Massachusetts and South Dakota were as likely to receive a warning as a fine, and these states had to compensate by implementing the nation's highest inspection rates.

In New Mexico, fines for a first offense ranged from \$20 to \$200, whereas in other HI states fines ranged from \$50 (Massachusetts, South Dakota, Louisiana) to \$500 (Florida). Among LO states, Tennessee and North Carolina have no penalty for a first offense, and fines in the remaining states range from \$25 to \$300 plus court costs. State performance did not correlate with the severity of the fine: the average fine was \$271 in the top-ranked state (Maine) and \$272 in the bottom-ranked state (Kansas). In Alaska, stiff penalties may have backfired by increasing appeals, and therefore the cost of prosecution, draining resources from inspections. Very high compliance rates can be achieved with modest fines, but having no penalty for a first offense may not be compatible with high performance. Six HI states and five LO states provide for license suspension, but this penalty was rarely used. Although the most common practice in both HI and LO states was to cite both the clerk and the storeowner, some states cite only one or the other. All approaches were compatible with HI performance.

Five HI states target offenders for merchant education, sometimes court ordered. Two LO states make merchant education available to offenders. Six HI and five LO states have citizen tip lines to report stores selling tobacco to minors. Nine HI and nine LO states had community groups involved in generating support for the law, conducting merchant education, or helping to recruit youth for test purchases.

### Merchant education

Merchant education and enforcement are two sides to a coin. A state must educate to ensure that sellers know how to refuse illegal sales, and enforce to ensure that they are motivated to do so. If there is no penalty for breaking the law, didactic efforts are not enough; no state achieved a 20 percent violation rate through education alone. All HI states combined strong education with strong enforcement. Although it is impossible to quantify, HI states did much more to educate merchants. Although some LO states had strong education and some had adequate enforcement, none had both. In the early years, Kansas had high prosecution rates, substantial penalties, and an inspection rate equal to Florida's, but it had very weak education and its violation rate far surpassed Florida's. North Carolina had an excellent education program and a high inspection rate, but with only a warning for first offenses they provided little motivation to obey the law.

Good education can enhance the impact of enforcement; many states notify sellers that they have been inspected and publicize the names of offenders. These practices were more common among HI states. The yellowed newspaper clipping taped to the cash register listing fines paid by local clerks may have more educational impact than do any glossy pamphlet.

Nonenforcement test purchases can be educational by informing sellers that they are being watched, and by providing feedback regarding the adequacy of employee training. Educational tests could be counterproductive if offenders are not punished and word spreads that violations are not taken seriously.

The use of tobacco industry-sponsored educational programs, such as We Card, was strongly associated with poor performance (used in six LO states and one HI state, briefly). It seems unlikely that the industry programs were responsible for the poor performance. Rather, those states that relied on the industry programs were those that were reluctant to invest state resources in education and enforcement, and were willing to trust the industry to foot the bill and police itself.

### ● Discussion

For a state to achieve excellent compliance with tobacco sales laws, the following features appear to be essential: (1) a concrete plan concerning how the state will enforce its law, (2) effective merchant education, (3) ongoing enforcement inspections employing test purchases, (4) a state agency overseeing enforcement, (5) state funding of enforcement inspections, (6) prosecution of offenders, and (7) penalties for violating the law. Although the highly successful states employed a variety of different approaches, these seven features

were common to all. The study results are summarized in Table 3.

Although a regression analysis would be the ideal method for examining the impact of these multiple factors, it was simply impossible to quantify much of the data. For example, within a single state, one county could prosecute only clerks, another only storeowners, and in a third, it could be both. Likewise, penalties can vary from case to case within a state. A valid statistical analysis requires valid state data.

On the basis of the Massachusetts experience, the author had previously recommended that every merchant be inspected three to four times each year.<sup>12</sup> With higher rates of prosecution and stiffer penalties, states have achieved excellent results while inspecting as few as 20 percent of their merchants each year. The cost-effectiveness of enforcement has been estimated at \$44 to \$8,200 per year of life saved, based on the assumption that each merchant is inspected four times per year (a rate that is 20 times higher than that used successfully by Florida).<sup>13</sup> To the degree that illegal sales can be curtailed with far fewer inspections, the potential cost-effectiveness of these programs has been seriously underestimated.

Hawaii did very well by providing state funding to county police. However, when Alaska tried the same approach, the local police refused to cooperate. An approach that works in one state may not work in another. Nevertheless, there are many effective approaches to choose from. Success may require experimenting with different approaches. Success was not limited to states of one size, population density, demographic makeup, or governmental organization. This suggests that all states could achieve very high rates of compliance if they were to use this analysis to strengthen their programs.

A limitation of this study is that a second reviewer did not verify the accuracy of the data extraction. However, there was ample opportunity for self-correction as the same data was extracted from annual reports from 1995 to 2004. Further, the study design minimized the role of judgment; almost all the data extraction questions could be answered yes or no; no rating scales were used. Finally, strategies were identified as essential only

when no state had reached the 20 percent violation rate goal without it; no judgment was needed for this call.

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