

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SL&C 12644



April 30, 2007

The Honorable Johnny Ellis, Chair  
Senate Labor and Commerce Committee  
Alaska State Capitol, Room 9  
Juneau, Alaska 99801-1182

HB 182 (Lynn)—Support

Dear Chair Ellis:

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

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

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

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

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

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

CC: Senator Gary Stevens  
Senator Bettye Davis  
Senator Lyman Hoffman  
Senator Con Bunde  
Representative Bob Lynn

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**



# Generally Speaking

See page 2

## 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 13 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 80004, Anchorage, CA 92812-5008

BANK OF WEST  
SANTA ANA OFFICE  
SANTA ANA, CA 92701  
90-4281 888  
1222

87762624

Date: 2/20/2004

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

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

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

Dollars

Security Fee  
included.  
Details on b

**VOID AFTER**  
**May 20, 2004**

PO BOX 100279  
ANCHORAGE, AK 99510-0279



memo 907-272-5 ATTORNEYS

⑈ 8 7 7 6 2 6 2 4 2 ⑈ ⑆ 1 2 2 2 4 2 8 4 3 ⑆ 6 5 8 0 2 5 3 9 0 ⑈

Please call my company's information as shown on this check on the Yellow Pages, Inc. Internet website, www.YellowPages.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 attached 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 Feature: Micro-Pint Signature Line & Embossed Line Path  
Keep on this front and Original Document, Security Surfaces 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](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)

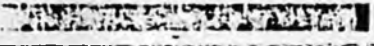
YP Corp. Sample Live Checks - 2002

80050 04 25077


YELLOW-PAGE.NET  
4840 E. JASMINE ST. STE 105  
MESA, AZ 85205

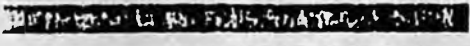
BANK OF THE SOUTHWEST  
MESA, AZ 85204


10/11/2002

PAY TO THE BEAHER 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 1-800-300-3200 within 120 days. Of course the \$3.50 is mine to keep in any case.

X 

80050 04 25077

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

Flow of Money

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

BANK ONE, NA  
 DELAWARE, OH

04/10/2005

PAY TO THE BEARER OR Baptist Church \$ \*\*3.25

Three and 25/100.....

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  
 ONE LILLIAN WAY 10003  
 LAS VEGAS, NV

07/01/2004

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

Three and 25/100.....

MEMO Church

*Sara Davis*

Flow of Money

YELLOW-PAGE.NET  
 508 BULLMAN #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.....

MEMO Churches

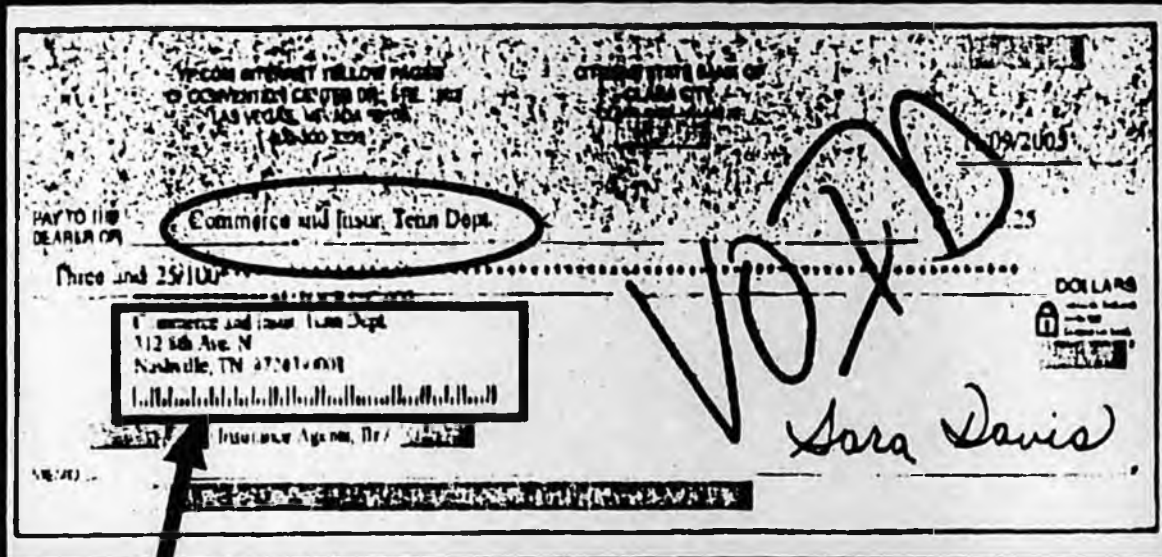
*Sara Davis*



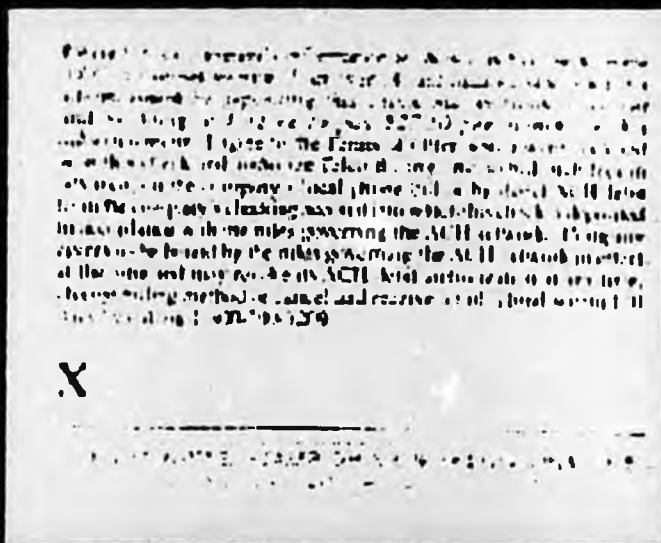
ATTACHMENT TO PRESS RELEASE 46 (PR-46)

YP Corp. Sample Live Checks - 2005

FRONT OF CHECK



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



BACK OF CHECK

# **House Bill 182**

## **Background Information**

### **Offering Promotional Checks**

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

March 14, 2007

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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 \$94,000 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@doi.state.or.us](mailto:jan.margosian@doi.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.

# **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 reasons 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**

**196**

# SENATE COMMITTEE REPORT

DATE: 4/23/07

FURTHER: State Affairs  
Judiciary

DATE TURNED  
IN TO OFFICE: 3/7/08

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 196(JUD)

HB 196 HANDLING MATTERS AFTER A PERSON'S DEATH

"An Act relating to the handling of matters after a person's death."

and recommends:

- be replaced with  SCS or  CS CSHB 196 (LFC)
- adopt previous  SCS or  CS \_\_\_\_\_
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

<b>SENATE BILL:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
<b>HOUSE BILL:</b>	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
LAW	2/19/08			✓	
CRT	2/21/08			✓	

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS	PRINTED LASTNAME	DO PASS	DO NOT PASS	NO REC.	AMEND.
<i>[Signature]</i>	Bunde	✓			
<i>[Signature]</i>	DAVIS	✓			
CHAIR: <i>[Signature]</i>	ELLIS	✓			

*adopted*

25-LS0447E.1

Bannister

2/22/08

**AMENDMENT**

*#1*

**OFFERED IN THE SENATE**

**BY SENATOR BUNDE**

**TO: CSHB 196(JUD)**

- 1 Page 2, line 6:
- 2 Delete "\$25,000"
- 3 Insert "\$100,000"

# 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

March 5, 2007

**SUBJECT:** Sectional summary of bill relating to the handling of matters after a person's death (Work Order No. 25-LS0447C)

**TO:** Representative Jay Ramras  
Chair of the House Judiciary Committee  
Attn: Jane Pierson

**FROM:** <sup>TB</sup> Theresa Bannister  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Section 1.** Amends AS 13.12.517 to provide that a penalty clause for contesting a will or instituting other proceedings apply even if probably cause exists for instituting the proceedings.

**Section 2.** Amends AS 13.16.680(a) to change one of the statements that must be contained in an affidavit to be used by a decedent's successor to collect personal property of the decedent from another person. The statement indicates that the value of the entire estate does not consist of more than certain specified amounts.

**Section 3.** Amends AS 13.16.700 to conform this section to the change made by this bill to AS 13.16.680(a).

**Section 4.** Adds new subsections to AS 13.33.101 (nonprobate transfers on death).

Proposed AS 13.33.101(d) states that the benefits paid under a nonprobate transfer provision are not subject to certain described debts and creditor claims.

Proposed AS 13.33.101(e) describes certain situations in which proposed AS 13.33.101(d) applies.

Proposed AS 13.33.101(f) establishes that proposed AS 13.33.101(d) does not limit the rights of the owner of a life insurance contract to pledge or assign the benefits as collateral for the owner's debts.

Proposed AS 13.33.101(g) defines "life insurance contract" and "retirement plan" for (d) of the section.

**Representative Jay Ramras**  
**March 5, 2007**  
**Page 2**

**Section 5.** Provides a transition section to indicate to which decedents and nonprobate transfer provisions certain provisions of the bill apply.

If I may be of further assistance, please advise.

TLB:med  
07-147.med

# ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras  
Chairman

(907) 465-3004

Fax: (907) 465-2070

Representative\_Jay\_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324  
Fairbanks, AK 99701



**Committee Members:**  
Representative Nancy Dahlstrom,  
Vice-Chairman

Representative John Coghill  
Representative Bob Lynn  
Representative Ralph Samuels  
Representative Max Gruenberg  
Representative Lindsey Holmes

State Capitol, Juneau, Alaska 99801-1182

## MEMORANDUM

To: Representative Jay Ramras

From: Jane W. Pierson  
House Judiciary Committee Aide

Date: April 17, 2007

Re: Explanation of changes between HB196 version \C and version\E

The change that was made to this bill is as follows:

In Sec. 4., a provision was inserted to protect child support arrearages and spousal support arrearages from the exemptions in sub-section (d) of AS13.33.101.



## HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120  
(907) 465-4990

### COMMITTEE MEMBERS

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

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

Rep. Mike Doogan  
Room 112  
(907) 465-4940

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

### MEMORANDUM

Date: February 23, 2008

To: Members of the Senate Labor and Commerce Committee

From: Representative Jay Ramras  
Chairman House Judiciary Committee

Re: HB 196 – Questions from Committee Members

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Senator Bunde asked about the selection of the new limit of \$25,000 for use of probate waiver affidavits on non-motor vehicle assets?

Robert L. Manley responded, "The probate waiver affidavit procedure is a Uniform Code Provision and the shift to \$25,000 is basically a consumer price index adjustment. While some states have established higher limits, the thinking behind the \$25,000 limit is that like any abbreviated and non-court supervised procedure there is some risk of abuse. If a person improperly uses the procedure, cash assets are generally disposed of promptly while automobiles are traceable assets which are less subject to abuse even at the \$100,000 level."

Steven Greer responded, "[t]hat there is always a flip side to an increased amount. For instance, let us take a situation where mom dies with a bank account of \$50,000. She has 2 sons, one who has been the good child and another child who has been particularly bad to her. Mom's will leaves everything to the good child. If the threshold amount in which probate would not be required were raised to \$ 50,000 there would be nothing to prevent the bad son from going to the bank prior to the good son and getting this amount from the bank and absconding with the funds. Setting forth a higher amount in which a formal probate would not be required also increases the potential for abuse. Although it was agreed by the drafters of this bill that the present \$15,000 was too low, the bill was also carefully tailored to prevent it from being used as a tool in which the small estate affidavit procedure could be abused.

**The other question Senator Bunde asked was how much would be charged for a \$25,000 probate?**

**The answer is anywhere from \$1,200 to \$1,500.**

Facsimile: (907) 334-9958  
E-Mail Address: bob@mb.law.pro

----- Original Message -----

From: Robert L. Manley  
To: 'Senator\_Johnny\_Ellis@legis.state.ak.us'  
Sent: 2/21/2008 3:34PM  
Subject: HB 196 - Act Relating to the Handling of Matters After a Person's Death

Dear Senator Ellis:

Thank you and the Labor and Commerce Committee for considering HB 196 at the February 21 hearing. Senator Bunde inquired about the selection of the new limit of \$25,000 for use of the probate waiver affidavit on non-motor vehicle assets. The probate waiver affidavit procedure is a Uniform Probate Code Provision and the shift to \$25,000 is basically a consumer price index adjustment. While some states have established higher limits, the thinking behind the \$25,000 limit is that like any abbreviated and non-court supervised procedure there is some risk of abuse. If a person improperly uses the procedure, cash assets are generally disposed of promptly while automobiles are traceable assets which are less subject to abuse even at the \$100,000 level.

This is not an attempt to retain more money for lawyers by running small probates. If that was the goal then the informal working group on this legislation would not have proposed the change at all. If the Committee wants to increase the general limit I suggest that it be done by separate legislation because an amendment at this point is likely to doom HB 196 for this year. At best an amendment would effectively kill the other good provisions of HB 196 in return for making a small part of the legislation better if the bill is reintroduced in the next Legislature. I know you have heard this before, but given the short session, I respectfully request that you release HB 196 so it can be considered by the State Affairs and Judiciary Committees. If any Committee members would like to discuss this further please contact me.

Robert L. Manley  
Manley and Brautigam p.c.  
845 K Street  
Anchorage, AK 99501

Telephone: (907) 334-5600  
Facsimile: (907) 334-9958  
E-Mail Address: bob@mb.law.pro <blocked::mailto:bob@mb.law.pro>

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2/22/2008

**Jane Pierson**

**From:** Patty Krueger on behalf of Rep. Jay Ramras  
**Sent:** Friday, February 22, 2008 10:33 AM  
**To:** Jane Pierson  
**Subject:** FW: HB 196

**From:** Stephen E. Greer [mailto:greer@ak.net]  
**Sent:** Thursday, February 21, 2008 5:49 PM  
**To:** Rep. Jay Ramras  
**Subject:** HB 196

Dear Rep. Ramras- today I testified in support of HB 196 in Senate Labor and Commerce. As you know, this bill makes several changes to the Uniform Probate Code as enacted by Alaska in the early 80s. Section 2 and 3 of the bill raised the most questions. These sections raise the threshold in which a formal probate would not be required where the decedent dies with less than \$25,000 of personal property and less than \$100,000 of value in automobiles. Currently our law states that a formal probate proceeding can be only be avoided when the decedent dies with less than \$ 15,000 of personal property. It was suggested that the limit set forth in HB 196 be increased to even higher amounts than those set forth in the bill. I would certainly be willing to work with any legislator who wants to re-examine the amounts set forth in the bill but this should be done in a new bill next year. Due to the shortness of time remaining in the legislative session, if HB 196 does not become law during this session then Alaska residents will continue to be saddled with the present \$15,000 threshold, which everyone seems to agree is entirely too low.

If it is suggested that the threshold in which probate can be avoided be increased to an amount in excess of what the bill presently allows, one needs to be cautioned that there is always a flip side to an increased amount. For instance, let us take a situation where mom dies with a bank account of \$50,000. She has 2 sons, one who has been the good child and another child who has been particularly bad to her. Mom's will leaves everything to the good child. If the threshold amount in which probate would not be required were raised to \$ 50,000 there would be nothing to prevent the bad son from going to the bank prior to the good son and getting this amount from the bank and absconding with the funds. Setting forth a higher amount in which a formal probate would not be required also increases the potential for abuse. Although it was agreed by the drafters of this bill that the present \$15,000 was too low, the bill was also carefully tailored to prevent it from being used as a tool in which the small estate affidavit procedure could be abused.

I sent this message to all committee members requesting their support of the bill. It is certainly an improvement over the current law. If a legislator desires to re-examine these amounts next year I would be all too glad to assist in that endeavor and of course answer any question that a legislator might have.

Thank your for your consideration in this matter.

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2/22/2008

Attached is a recap of the February 21<sup>st</sup> Senate Labor and Commerce meeting concerning HB196.

HB 196 - Breaks out into 3 parts;

- 1) Section 1 - No contest clause;
- 2) Sections 2 & 3 - Probate waiver affidavit requirements;
- 3) Section 4 - beneficiary designations for life insurance and qualified plans.

Senator Ellis: Asked:

What is the point of the bill?  
Who is going to benefit?

The point of the bill is to streamline wills to make them as efficient as possible and to keep estate laws current and in step with the rest of the country, and to keep current with trust laws.

HB196 was both initiated by trust attorneys and has elements of model legislation.

Senator Bunde: Contest provision in a will, without probable cause?

This is a common clause in trusts and it is the belief that wills should be aligned.

Senator Bunde: Would key man insurance coverage be affected by this bill?

Key man insurance would not be affected by this bill.

Jay Ramras stated that we discussed arrearages to child support and alimony and they would still act as super liens..

Jane Pierson stated that the AS 13.33.101 provisions of this bill lay out the protections of life insurance and retirements plans.

Robert Manley: Estate-planning attorney in Alaska. Mr. Manley has been practicing in Alaska for more than 30 years. He is part of informal group of attorneys working to keep trusts and estates current. HB 196 helps with estate and tax costs. HB 196 primarily of local interest. The bill has been circulated through the Alaska Bar Association. No one has objected to the legislation.

Speaking to Section No. 1, the "no contest clause". This language brings Alaska law governing wills into compliance with laws governing revocable trusts. Wills and revocable trusts are the two primary vehicles for estate planning. There are various reasons for using wills and trusts - costs, privacy, probate many jurisdictions. No contest clauses in trusts are effective. The disposition of an estate should follow the decedent's wishes. The no contest clause is intended to carry out decedent's wishes. Wills are often challenged when one decedent is left less than another; they can then challenge the will and extort a settlement. HB 196 would put wills on the same level as trusts. If there is a reason for a challenge, such as, testamentary capacity or undue influence the will can still

be challenged and court can non-validate and the no contest clause. Additionally, if a person is totally disinherited, a no contest clause does not work because there is nothing for them to lose. A decedent has a right to disposition of their estate as they see fit.

Sec. 4, sub-section (f) there is no limit to an owner of life insurance policy, or the like, from assigning a contract for collateral of debt. This bill does not interfere with creditor's ability to pledge or assign a contract. Clarifies that Alaska law can name a trust as well as an individual as a beneficiary.

Broad support of the Bar does not know of any opposition

Rodney Kleedeahn spoke to Sec. 4. Spoke specifically on life insurance payments being payable to a beneficiary and not able to be reached by a creditor. Revocable trusts are the most frequently used kind of trusts in estate planning. The problem arises because creditors are able to reach into the proceeds of revocable trusts. This legislation would protect revocable trusts the same way that irrevocable trusts are protected. This would insure that revocable trusts can be used to protect beneficiaries who are unable to manage money with unfettered control.

Aware of no opposition from the bar association

Douglas Blattmachr – Pres AK Trust Company. HB196 would improve trust and estate laws. Alaska Trust Co. Stand alone trust institution, Founded 1996, 9 employees, over 1000 trust accounts most from outside, trust services. Trust industry, banking, stockbrokers, attorneys, and the insurance industry have all benefited from new trust laws.

Steve Greer – Estate planning attorney in ANC

Spoke to Sections 2 & 3 - These sections are Uniform probate code amendment. The \$15,000 limit has not been changed since early '80s. HB196 would raise the personal property by affidavit to \$25,000, the change being equal to the consumer price index. Cars have always been a problem since no one knows exactly what it is worth. Allows spouses to change title if names are listed as "and" and not "or". Washington does not reach formal probate levels until a decedent's assets reach \$100,000. Oregon's level is \$200,000. This bill is a compromise between avoiding formal probate and protecting heirs from fraudulent acts from other potential heirs. This provision lets a decedent with a small estate avoid using expensive legal services. If the limits are too high, then there is room for abuse of assets.

Bunde – Questions on raising limits? See memo attached.

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY COMMITTEE**

**Representative Jay Ramras  
Chairman**

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**Representative\_Jay\_Ramras@legis.state.ak.us**

**1292 Sadler Way, Suite 324  
Fairbanks, AK 99701**



**Committee Members:  
Representative Nancy Dahlstrom,  
Vice-Chairman**

**Representative John Coghill**

**Representative Bob Lynn**

**Representative Ralph Samuels**

**Representative Max Gruenberg**

**Representative Lindsey Holmes**

**State Capitol, Room 120  
Juneau, Alaska 99801-1182**

**Sponsor Statement  
HB 196**

**"An Act relating to the handling of matters after a person's death."**

Existing Alaska law provides that a provision may be placed in a trust penalizing a person for contesting the trust even if probable cause exists for instituting proceedings. This bill provides for the same kind of provision in a will.

In addition, this bill provides that life insurance or retirement benefits payable at death are not subject to the claims of the creditors of the individual who is insured under the life insurance contract or who was a participant in the retirement plan.



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# Legislation Passed Into Law 1997

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**HB 101 – Effective April 2, 1997**

- **Perpetual Trusts**
- **Self-Settled Spendthrift Trusts**

**HB 266 – Effective July 1, 1997**

- **Limited Partnership & LLC Improvements  
Statute**



# Legislation 1998

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**SB 354 – Effective April 12, 1998**

- **General Modernization of Trust and Estate Laws**

**HB 199 – Effective May 23, 1998**

- **Alaska Community Property Trust**

**HB 321 – Effective May 23, 1998**

- **Alaska Uniform Prudent Investor Act**

**HB 490 – Effective June 26, 1998**

- **Life Insurance Premium Tax**



# LEGISLATION 2000

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**HB 222 – Effective March 8, 2000**

- Improvements & Technical Changes to Limited Partnerships LLC statute

**SB 166 – Effective March 8, 2000**

- Technical Changes to Alaska Community Property Trust

**SB 162 – Effective April 22, 2000**


- Modification to Perpetual Trust Statute

**HB 275 – Effective August 9, 2000**

- “Safety Net” Estate Planning Legislation

**SB 163 – Effective August 30, 2000**

- Modification and Improvement to General Trust Statutes



# Legislation 2003 - 2006

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**SB 87 – Effective September 1, 2003**

- Version of Uniform Principal & Income Act

**HB 212 – Effective October 8, 2003**

- 2003 Alaska Trust Act

**SB 344 – Effective June 24, 2004**

- Trust / Estate / Property Transfers

**SB 298 – Effective September 15, 2006**

- Amendments to Trust and Estates Statutes