

State of Misconsin 2009 - 2010 LEGISLATURE

LRB-2140/en SRM:nwn:...

2009 ASSEMBLY BILL 261

AN ACT to create 100.315 of the statutes; relating to: soliciting purchases of
goods or services using unsolicited checks or money orders and providing a
penalty.
Analysis by the Legislative Reference Bureau
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:
SECTION 1. 100.315 of the statutes is created to read:
100.315 Solicitation of contract using check or money order. (1) In this
section, "check" has the meaning given in s. 217.02 (2).
(2) (a) Except as provided in par. (b), no person may solicit the purchase of goods
or services by delivering to a recipient in this state a document that is or appears to
be a check payable to the recipient, if the endorsement of the document purports to
bind the recipient to purchasing goods or services and the recipient did not request
the delivery of the document.

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1 (b) A person may offer an extension of credit by delivering to a recipient in this 2 state a document described in par. (a) only if all of the following apply: 3 1. The document contains, on its face, both of the following: 4 a. In at least 24–point type, a statement in substantially the following form: 5 "THIS IS A SOLICITATION FOR A LOAN. READ THE ATTACHED 6 DISCLOSURES BEFORE SIGNING THIS AGREEMENT." 7 b. In at least 10–point type, a statement in substantially the following form: 8 "By endorsing the back of this check, you accept our offer and agree to the terms of 9 your loan agreement contained in the disclosure statement attached to this check." 10 2. Notification of the loan agreement being activated by endorsement is 11 conspicuously printed in at least 10-point type on the back of the check in 12 substantially the following form: "By endorsing this check, you agree to repay this 13 loan according to the terms of the attached loan agreement." 14 3. The check is attached to a disclosure statement that is detachable and that 15 contains in at least 14-point boldface type a statement that is conspicuously placed 16 and is in substantially the following form: "This is a loan solicitation. If you cash this check, you are agreeing to borrow the sum of \$ at the % rate of interest for a 17 18 period of months. Your monthly payments will be \$ for months. If you are 19 late with a payment, you will be charged the following fees in addition to your 20 monthly payment: (list fees). All other terms of this loan are clearly identified as loan 21 terms and appear on the back of the check or on this attachment. Read these terms 22 carefully before you cash this check. Cashing this check constitutes a loan

transaction. You may cancel this loan by returning the amount of the check to thelender within 10 days of the date on which this check is cashed. You may prepay this

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loan agreement at anytime without penalty. READ THE AGREEMENT BEFORE
 SIGNING."

3 4. Within 3 business days after the date on which the check is processed by the 4 lender's financial institution following negotiation of the check by the recipient, the 5 lender who issued the check verbally discloses to the recipient the terms and 6 conditions of the extension of credit and permits the recipient to return to the lender 7 the amount borrowed. If the recipient returns the amount borrowed within 5 8 business days after the check is processed by the lender's financial institution 9 following negotiation of the check by the recipient, the lender may not assess the 10 recipient any penalty, finance charge, interest, or fee, and the lender may not take 11 any action on the basis of the return that would affect the recipient's credit score.

(2g) In the event a check described under sub. (2) (b) is obtained by a person
other than the intended payee, and the check is cashed fraudulently or without
authorization from the payee, the lender who issued the check shall do all of the
following:

16 (a) Upon receipt of notification that intended payee did not negotiate the check, 17 promptly provide the intended payee with a statement or affidavit to be signed by 18 the intended payee confirming that the intended payee did not deposit or cash the 19 check or receive the proceeds of the check. The lender shall provide the intended 20 payee with the name and telephone number of a contact person designated by the 21 lender to provide assistance to intended payees who have been victimized by the 22 fraudulent negotiation of unsolicited checks and cease all collection activity against 23 the intended payee until the lender completes an investigation into the transaction.

(b) Direct the intended payee to complete and return the confirmationstatement to the lender or an affiliate of the lender.

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1 (c) Within 30 days of the receipt of the confirmation statement, conduct a 2 reasonable investigation to determine whether the check was fraudulently 3 negotiated. Absent evidence to the contrary, the lender shall presume that the 4 confirmation statement submitted by the intended payee is accurate. The lender 5 shall notify the intended payee in writing of the results of the investigation. If it is 6 determined that the check was cashed fraudulently, the lender shall take immediate 7 action to remove the intended payee from all liability on the account and to request 8 all credit reporting agencies to remove references to the transaction, if any, from the 9 intended payee's credit reports.

(2m) A consumer who is an intended payee of an unsolicited check under this
 section may bring an action against the violator to recover damages, costs, and,
 notwithstanding s. 814.04 (1), reasonable attorney fees.

(2r) This section does not apply to a transaction in which the recipient of a
 check described under sub. (2) (b) has submitted an application or requested an
 extension of credit from the lender before receiving the check or instrument.

(3) The department shall investigate violations of this section and may bring
an action against a person who violates this section to recover a forfeiture of not more
than \$100 for each solicitation sent in violation of this section, except that the
forfeiture may not exceed \$10,000 for each 7-day period in which the person violates
this section.

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(END)