

State of Wisconsin



2009 Assembly Bill 261

Date of enactment: **March 10, 2010**

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2009 WISCONSIN ACT 150

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.

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.

(b) A person may offer an extension of credit by delivering to a recipient in this state a document described in par. (a) only if all of the following apply:

1. The document contains, on its face, both of the following:

a. In at least 24-point type, a statement in substantially the following form: "THIS IS A SOLICITATION FOR A LOAN. READ THE ATTACHED DISCLOSURES BEFORE SIGNING THIS AGREEMENT."

b. In at least 10-point type, a statement in substantially the following form: "By endorsing the back of this check, you accept our offer and agree to the terms of your loan agreement contained in the disclosure statement attached to this check."

2. Notification of the loan agreement being activated by endorsement is conspicuously printed in at least 10-point type on the back of the check in substantially the following form: "By endorsing this check, you agree to repay this loan according to the terms of the attached loan agreement."

3. The check is attached to a disclosure statement that is detachable and that contains in at least 14-point bold-face type a statement that is conspicuously placed 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 period of months. Your monthly payments will be \$ for months. If you are late with a payment, you will be charged the following fees in addition to your monthly payment: (list fees). All other terms of this loan are clearly identified as loan terms and appear on the back of the check or on this attachment. Read these terms 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 the lender within 10 days of the date on which this check is cashed. You may prepay this loan agreement at anytime without penalty. READ THE AGREEMENT BEFORE SIGNING."

4. Within 3 business days after the date on which the check is processed by the lender's financial institution following negotiation of the check by the recipient, the lender who issued the check verbally discloses to the

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

recipient the terms and conditions of the extension of credit and permits the recipient to return to the lender the amount borrowed. If the recipient returns the amount borrowed within 5 business days after the check is processed by the lender's financial institution following negotiation of the check by the recipient, the lender may not assess the recipient any penalty, finance charge, interest, or fee, and the lender may not take 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:

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

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

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