

ASSEMBLY BILL 261 (LRB -2140)

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. (FE)

2009

05-08. A. Introduced by Representatives **Bernard Schaber, Pocan, Berceau, Black, Brooks, Clark, Cullen, Dexter, Grigsby, Gunderson, Hebl, Hixson, Kaufert, Kestell, Mason, Molepske Jr., Nass, Milroy, A. Ott, Parisi, Pasch, Pope-Roberts, Petrowski, Richards, Roys, Seidel, Sinicki, Smith, Steinbrink, Toles, Townsend, Van Akkeren, Vos, A. Williams, Zepnick and Zigmunt**; cosponsored by Senators **Lehman, Carpenter, Hansen, Lassa, Plale, Risser, Schultz, Taylor, Wirch** and **Coggs**.

05-08. A. Read first time and referred to committee on Consumer Protection 173

06-17. A. Fiscal estimate received.

07-01. A. Public hearing held.

10-20. A. Assembly amendment 1 offered by Representative Kleefisch (**LRB a0880**) 433

10-21. A. Executive action taken.

10-21. A. Report passage recommended by committee on Consumer Protection, Ayes 7, Noes 2 446

10-21. A. Referred to committee on Rules 446

10-21. A. Placed on calendar 10-27-2009 by committee on Rules.

10-27. A. Read a second time 462

10-27. A. Assembly amendment 2 offered by Representative Bernard Schaber (**LRB a0970**) 462

10-27. A. Assembly amendment 2 **adopted** 462

10-27. A. Ordered to a third reading 462

10-27. A. Rules suspended 462

10-27. A. Read a third time and **passed**, Ayes 84, Noes 12 462

10-27. A. Representative Hilgenberg added as a coauthor 462

10-27. A. Ordered immediately messaged 462

10-28. S. Received from Assembly 390

10-29. S. Read first time and referred to committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection 394

2010

02-03. S. Public hearing held.

02-16. S. Executive action taken.

02-17. S. Report concurrence recommended by committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection, Ayes 4, Noes 1 566

02-17. S. Available for scheduling.

02-23. S. Placed on calendar 2-25-2010 pursuant to Senate Rule 18(1) 0

02-25. S. Senator Miller added as a cosponsor.

02-25. S. Read a second time.

02-25. S. Ordered to a third reading.

02-25. S. Rules suspended.

02-25. S. Read a third time and **concurred in**.

02-25. S. Ordered immediately messaged.

02-25. A. Received from Senate concurred in 697

MB

2009
ENROLLED BILL

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ADOPTED DOCUMENTS:

Orig Engr SubAmdt

09-2140/3

Amendments to above (if none, write "NONE"): AA2-a0970/1

Corrections - show date (if none, write "NONE"): None

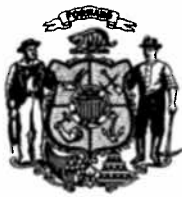
Topic Rel

2-26-2010

Date

JR Miller

Enrolling Drafter



2009 ASSEMBLY BILL 261

May 8, 2009 – Introduced by Representatives BERNARD SCHABER, POCAN, BERCEAU, BLACK, BROOKS, CLARK, CULLEN, DEXTER, GRIGSBY, GUNDERSON, HEBL, HIXSON, KAUFERT, KESTELL, MASON, MOLEPSKE JR., NASS, MILROY, A. OTT, PARISI, PASCH, POPE-ROBERTS, PETROWSKI, RICHARDS, ROYS, SEIDEL, SINICKI, SMITH, STEINBRINK, TOLES, TOWNSEND, VAN AKKEREN, VOS, A. WILLIAMS, ZEPNICK and ZIGMUNT, cosponsored by Senators LEHMAN, CARPENTER, HANSEN, LASSA, PLALE, RISSER, SCHULTZ, TAYLOR, WIRCH and COGGS. Referred to Committee on Consumer Protection.

1 **AN ACT** *to create* 100.315 of the statutes; **relating to:** soliciting purchases of
2 goods or services using unsolicited checks or money orders and providing a
3 penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits soliciting the purchase of goods or services by the delivery to a recipient in this state of a document that is or appears to be a check or money order 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. Under the bill, the Department of Agriculture, Trade and Consumer Protection may bring an action against a violator for a forfeiture of \$100 per solicitation, except that the forfeiture may not exceed \$10,000 for each seven-day period in which the person commits a violation.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 100.315 of the statutes is created to read:
5 **100.315 Solicitation of contract using check or money order.** (1) In this
6 section, “check” has the meaning given in s. 217.02 (2).

ASSEMBLY BILL 261

SECTION 1

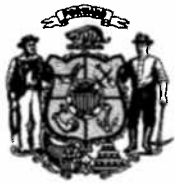
INSERT AA2-1

1 (2) ~~no~~ person may solicit the purchase of goods or services by delivering to a
2 recipient in this state a document that is or appears to be a check payable to the
3 recipient, if the endorsement of the document purports to bind the recipient to
4 purchasing goods or services and the recipient did not request the delivery of the
5 document.

INSERT AA2-2

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

11 (END)



**ASSEMBLY AMENDMENT 2,
TO 2009 ASSEMBLY BILL 261**

October 27, 2009 – Offered by Representative BERNARD SCHABER.

1 At the locations indicated, amend the bill as follows:

AA2-1

2 **1.** Page 2, line 1: delete “No” and substitute “(a) Except as provided in par. (b),
3 no”.

4 **2.** Page 2, line 5: after that line insert:

AA2-2

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

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

8 a. In at least 24–point type, a statement in substantially the following form:

9 “THIS IS A SOLICITATION FOR A LOAN. READ THE ATTACHED
10 DISCLOSURES BEFORE SIGNING THIS AGREEMENT.”

11 b. In at least 10–point type, a statement in substantially the following form:

12 “By endorsing the back of this check, you accept our offer and agree to the terms of
13 your loan agreement contained in the disclosure statement attached to this check.”

AA2-2

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

5 3. The check is attached to a disclosure statement that is detachable and that
6 contains in at least 14-point boldface type a statement that is conspicuously placed
7 and is in substantially the following form: “This is a loan solicitation. If you cash this
8 check, you are agreeing to borrow the sum of \$ at the ... % rate of interest for a
9 period of months. Your monthly payments will be \$ for months. If you are
10 late with a payment, you will be charged the following fees in addition to your
11 monthly payment: (list fees). All other terms of this loan are clearly identified as loan
12 terms and appear on the back of the check or on this attachment. Read these terms
13 carefully before you cash this check. Cashing this check constitutes a loan
14 transaction. You may cancel this loan by returning the amount of the check to the
15 lender within 10 days of the date on which this check is cashed. You may prepay this
16 loan agreement at anytime without penalty. **READ THE AGREEMENT BEFORE**
17 **SIGNING.”**

18 4. Within 3 business days after the date on which the check is processed by the
19 lender’s financial institution following negotiation of the check by the recipient, the
20 lender who issued the check verbally discloses to the recipient the terms and
21 conditions of the extension of credit and permits the recipient to return to the lender
22 the amount borrowed. If the recipient returns the amount borrowed within 5
23 business days after the check is processed by the lender’s financial institution
24 following negotiation of the check by the recipient, the lender may not assess the

AA2-2

1 recipient any penalty, finance charge, interest, or fee, and the lender may not take
2 any action on the basis of the return that would affect the recipient's credit score.

3 **(2g)** In the event a check described under sub. (2) (b) is obtained by a person
4 other than the intended payee, and the check is cashed fraudulently or without
5 authorization from the payee, the lender who issued the check shall do all of the
6 following:

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

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

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

AA2-2

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

4 **(2r)** This section does not apply to a transaction in which the recipient of a
5 check described under sub. (2) (b) has submitted an application or requested an
6 extension of credit from the lender before receiving the check or instrument.”

7

(END)