

2009 DRAFTING REQUEST

Assembly Amendment (AA-AB261)

Received: 10/14/2009

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Joel Kleefisch (608) 266-8551**

By/Representing: **Dan Lindstedt**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kleefisch@legis.wisconsin.gov**

Carbon copy (CC:) to: **christopher.sundberg@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Permit check offers that meet specified conditions

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	csundber 10/15/2009	jdye 10/16/2009		_____			
/1			mduchek 10/16/2009	_____	mbarman 10/16/2009	mbarman 10/16/2009	

FE Sent For:

<END>

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FE Sent For:

<END>

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

10/14

Dan Lindstedt / Eleetfisch

Amendment to AB 261 per emails

West's North Carolina General Statutes Annotated Currentness
 Chapter 75. Monopolies, Trusts and Consumer Protection (Refs & Annots)
 Article 1. General Provisions (Refs & Annots)
 → § 75-20. Unsolicited checks to secure loans

(a) No person, firm, or corporation engaged in lending money shall deliver to a person an **unsolicited check** made out to the recipient that upon cashing, obligates the recipient to repay the amount of the check plus interest and fees, unless all of the following requirements are satisfied:

(1) In addition to any disclosures otherwise required by law, the solicitation for loans using a facsimile or negotiable check shall disclose both of the following on the face of the check:

a. In at least 10-point boldface type ^{? LARGE ENOUGH?} 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 6-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 must be conspicuously printed in at least 6-point type ^{? COLOR OF INK?} 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 10-point boldface type ^{? LARGE ENOUGH?} a statement conspicuously placed 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 this check is cashed. You may prepay this loan agreement at anytime without penalty. READ THE AGREEMENT BEFORE SIGNING." ^{? COLOR OF INK?}

(4) The recipient has a right to cancel the loan by refunding to the lender the amount of the check within 10 days of the date the check is cashed. The loan is deemed refunded when a refund of the amount of the check is received by the lender within 10 days of the date the check is cashed.

(b) In the event an **unsolicited check** is stolen or otherwise obtained by someone other than the intended payee, and the check is cashed fraudulently or without authorization from the payee, the lender who issued the check shall provide the following recourse to the intended payee:

(1) The lender, upon receipt of notification that intended payee did not negotiate the check, shall 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 also

? WHAT ABOUT INTERNET SOLICITATIONS?
 ? LIMIT ON FEE?

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**. The lender shall cease all collection activity against the intended payee until the lender completes an investigation into the transaction.

(2) The intended payee shall be directed to complete and return the confirmation statement to the lender or an affiliate of the lender.

(3) Within 30 days of the receipt of the confirmation statement, the lender shall conduct a reasonable investigation and determine whether the check was fraudulently negotiated. Absent evidence to the contrary, the presumption shall be 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 consumer's credit reports.

(4) A consumer who is an intended payee of an **unsolicited check** under this section may bring a civil action to recover damages, costs, and attorney fees for any violation of this subsection.

(c) The provisions of this section shall not apply to a transaction in which a consumer has submitted an application or requested an extension of credit from the lender before receiving the check or instrument, or where the lender has an existing account relationship with the consumer. ? WHY/EXPLAIN?

(d) A violation of this section is an unfair trade practice under G.S. 75-1.1 and is subject to all of the enforcement and penalty provisions of an unfair trade practice under this Article. → ? APPLICABLE WI LAW?

CREDIT(S)

Added by S.L. 2001-391, § 1, eff. Oct. 1, 2001.

CROSS REFERENCES

Consumer Finance Act; limitations and prohibitions on practices and agreements, see § 53-180.

Consumer Finance Act; optional rates, maturities and amounts, see § 53-176.

Consumer Finance Act; statements and information to be furnished to borrowers; power of attorney or confession of judgment prohibited, see § 53-181.

N.C.G.S.A. § 75-20, NC ST § 75-20

Current through the end of the 2008 Regular Session.

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END OF DOCUMENT

**SENATE AMENDMENT 1,
TO 2007 SENATE BILL 211**

December 7, 2007 - Offered by Senator LEHMAN.

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

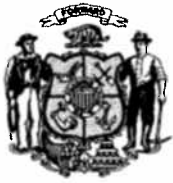
2 **1.** Page 1, line 6: delete that line and substitute "section:

3 (a) "Check" has the meaning given in §. 217.02 (2). *Q. Lockup*

4 (b) "Purchase of goods or services" does not include an extension of credit,

5 ~~except an extension of credit by a person required to be licensed under §. 138.09.~~ *Q. Lockup*

6 (END)



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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

#. Page 2, line 5: after that line insert:

- 1 At the locations indicated, amend the bill as follows:
- 2 1. Page 1, line 6: delete that line and substitute "section:"
- 3 (a) "Check" has the meaning given in s. 217.02 (2).
- 4 (b) "Purchase of goods or services" does not include an extension of credit."
- 5 2. Page 2, line 5: delete ~~the period~~ and substitute "unless all of the following
- 6 apply: "document."
- 7 (a) The document contains, on its face, both of the following:
 - 8 1. In at least 10-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."

#. Page 1, line 6: after that line insert:

move

move

1 2. In at least 6[✓]-point type, a statement in substantially the following form: "By
2 endorsing the back of this check,[✓] you accept our offer and agree to the terms of your
3 loan agreement contained in the disclosure statement attached to this check."[✓]

4 (b) Notification of the loan agreement[✓] being activated by endorsement must be
5 conspicuously printed in at least 6[✓]-point type on the back of the[✓] check in
6 substantially the following form: "By endorsing this check, you agree to repay this
7 loan according to the terms of the attached loan agreement."[✓]

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

21 (2g)[✓] In the event a check described under sub. (2)[✓] is obtained by a person other
22 than the intended payee, and the check is cashed fraudulently[✓] or without
23 authorization from the payee, the lender who issued the check shall do all of the
24 following:[✓]

Handwritten annotations include circled numbers 12, 14, 15, and 18. A bracket labeled "check Δ" spans lines 12-15. An arrow labeled "check Δ" points to line 13. Another arrow labeled "check Δ" points to line 15. The phrase "on which" is written above line 18.

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

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

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

20 (2m) A consumer who is an intended payee of an unsolicited check under this
21 section may bring an action against the violator to recover damages, costs, and,
22 notwithstanding section 814.04 (1), reasonable attorney fees.

23 (2r) This section does not apply to a transaction in which the recipient of a
24 check described under sub. (2) has submitted an application or requested an
25 extension of credit from the lender before receiving the check or instrument, or a

1 transaction in which ^gwhere the lender has an existing account relationship with the
2 recipient of a check described under sub. (2).” ✓

3

(END)