



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2009 Assembly Bill 261

**Assembly
Amendment 2**

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2009 ASSEMBLY BILL 261

2009 Assembly Bill 261 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: (1) the endorsement of the document purports to bind the recipient to purchasing goods or services; and (2) the recipient did not request the delivery of the document.

ASSEMBLY AMENDMENT 2 TO ASSEMBLY BILL 261

Assembly Amendment 2 to the bill creates an exception to the prohibition in the bill. Under the amendment:

1. A person **may offer an extension of credit** by delivering to a recipient in this state a document described in the general prohibition in the bill **only if all of the following apply**:
 - a. The document contains, on its face, **both** of the following:
 - (1) 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.”
 - (2) 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.”
 - b. 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."

- c. The check is attached to a disclosure statement that is detachable and that contains in at least **14-point boldface 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.**"

- d. **Within three 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: (1) verbally discloses to the recipient the terms and conditions of the extension of credit; and (2) permits the recipient to return to the lender the amount borrowed. If the recipient returns the amount borrowed within five 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**: (1) assess the recipient any penalty, finance charge, interest, or fee; and (2) take any action on the basis of the return that would affect the recipient's credit score.
2. In the event a check described under item 1, above, 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 must 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 must: (1) 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 (2) 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 must presume that the confirmation statement submitted by the intended payee is accurate. The lender must notify the intended payee in writing of the results of the investigation. If it is determined that the check was cashed fraudulently, the lender must take **immediate action**: (1) to remove the intended payee from all liability on the account; and (2) to request all credit reporting agencies to remove references to the transaction, if any, from the intended payee's credit reports.
3. A consumer who is an intended payee of an unsolicited check under the provisions in the bill may bring an action against the violator to recover damages, costs, and **reasonable attorney fees**.
 4. The provisions in the bill do not apply to a transaction in which the recipient of a check **described under item 1, above**, has submitted an application or requested an extension of credit from the lender **before** receiving the check or instrument.

Legislative History

On October 27, 2009, the Assembly adopted Assembly Amendment 2 to 2009 Assembly Bill 261 (offered by Representative Bernard Schaber) on a voice vote, and passed the bill, as amended, on a vote of Ayes, 84; Noes 12. The bill was subsequently referred to the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection.

DLS:jal