COMMITTEE REPORT

February 4, 2009

**S. 132**

Introduced by Senator Sheheen

S. Printed 2/4/09--S.

Read the first time January 13, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 132) to amend the Code of Laws of South Carolina, 1976, by adding Section 39‑5‑175 so as to provide that a lender who delivers an unsolicited check to a person, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill as and if amended, by striking all after the enacting words and inserting the following:

/ SECTION 1. Article 1, Chapter 5, Title 39 of the 1976 Code is amended by adding:

“Section 39‑5‑175. (A) It is an unfair trade practice pursuant to Section 39‑5‑20 for a person, firm, or corporation engaged in lending money to deliver to a person an unsolicited check made payable to the recipient which, upon negotiation, 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 disclosures and restrictions required by the South Carolina Consumer Protection Code and the provisions and regulations applicable to consumer credit loans, as well as all Federal Truth in Lending disclosure requirements, the solicitation for loans using a facsimile or negotiable check must disclose all of the following on the face of the check:

(a) In at least 10-point boldface 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 6‑point type, a statement in substantially the following form: ‘By endorsing the back of this check and presenting it for negotiation, you accept our offer and agree to the terms of your loan agreement contained in the disclosure statement attached to this check.’

(2) Notification that the loan agreement is activated by negotiation must be conspicuously printed in at least 6‑point type on the back of the check in substantially the following form: ‘By endorsing this check and presenting it for negotiation, 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:

(a) In at least 10‑point boldface type a statement conspicuously placed and in substantially the following form: ‘This is a loan solicitation. If you cash, deposit, or otherwise negotiate 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. This interest rate is subject to the limitations, if any, established by the South Carolina Consumer Protection Code. 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 ten days of the date this check is cashed. You may prepay this loan agreement at any time without penalty. READ THE AGREEMENT BEFORE SIGNING.’

(b) In at least 10‑point type, if the interest rate exceeds twenty‑five percent, a statement, in bold, in substantially the following form: ‘Loans may be available at lower interest rates from other sources.’

(c) If applicable, in at least 10‑point type, a statement in substantially the following form: ‘This loan may include the cost of credit insurance. If you choose to purchase this credit insurance, you will owe more money and will be charged interest on the money used to buy the insurance. You do not have to buy this insurance, and it may not be in your best interest to do so.’

(4) The recipient has a right to cancel the loan by refunding to the lender the amount of the check within ten days of the date the check is negotiated. The loan is considered refunded when the lender receives a refund of the amount of the check within ten days of the date the check is negotiated.

(B) In the event an unsolicited check is stolen or otherwise obtained by someone other than the intended payee, and the check is negotiated 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 the intended payee did not negotiate the check, promptly shall 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 also 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. The lender shall cease all collection activity against the intended payee until the lender completes an investigation into the transaction.

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

(3) Within thirty days of the receipt of the confirmation statement, the lender shall conduct a reasonable investigation and determine if the check was fraudulently negotiated. Absent evidence to the contrary, the presumption is 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 negotiated 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 as provided in 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 do 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 if the lender has an existing account relationship with the consumer.

(D) A violation of this section is an unfair trade practice pursuant to Chapter 5 of Title 39 and is subject to all of the enforcement and penalty provisions of an unfair trade practice pursuant to this chapter.”

SECTION 2. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

PAUL G. CAMPBELL, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 39‑5‑175 SO AS TO PROVIDE THAT A LENDER WHO DELIVERS AN UNSOLICITED CHECK TO A PERSON MUST DISCLOSE THAT THE CHECK SECURES A LOAN, THE TERMS OF THE LOAN, AND NOTICE THAT BY NEGOTIATING THE CHECK THE RECIPIENT HAS ENTERED INTO A LOAN AGREEMENT, TO PROVIDE PROTECTION AND RECOURSE FOR INTENDED PAYEES IF AN UNSOLICITED CHECK IS CASHED FRAUDULENTLY, AND TO PROVIDE THAT A VIOLATION OF THIS SECTION IS AN UNFAIR TRADE PRACTICE AND SUBJECT TO APPROPRIATE PENALTIES AND ENFORCEMENT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 5, Title 39 of the 1976 Code is amended by adding:

“Section 39‑5‑175. (A) It is an unfair trade practice pursuant to Section 39‑5‑20 for a person, firm, or corporation engaged in lending money to deliver to a person an unsolicited check made payable to the recipient which, upon negotiation, 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 disclosures and restrictions required by the South Carolina Consumer Protection Code and the provisions and regulations applicable to consumer credit loans, as well as all Federal Truth in Lending disclosure requirements, the solicitation for loans using a facsimile or negotiable check must disclose all of the following on the face of the check:

(a) In at least 12‑point boldface 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 14-point type, if the interest rate exceeds twenty-five percent, a statement, in bold, in substantially the following form: ‘Loans may be available at lower interest rates from other sources.’

(c) In at least 12‑point type, a statement in substantially the following form: ‘By endorsing the back of this check and presenting it for negotiation, you accept our offer and agree to the terms of your loan agreement contained in the disclosure statement attached to this check.’

(d) In at least 12‑point type, a statement in substantially the following form: ‘This loan may include the cost of credit insurance. If you choose to purchase this credit insurance, you will owe more money and will be charged interest on the money used to buy the insurance. You do not have to buy this insurance and it may not be in your best interest to do so.’

(2) Notification that the loan agreement is activated by negotiation must be conspicuously printed in at least 12‑point type on the back of the check in substantially the following form: ‘By endorsing this check and presenting it for negotiation, 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 12‑point boldface type a statement conspicuously placed and in substantially the following form:

‘This is a loan solicitation. If you cash, deposit, or otherwise negotiate 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. This interest rate is subject to the limitations, if any, established by the South Carolina Consumer Protection Code. 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 ten days of the date this check is cashed. You may prepay this loan agreement at any time without penalty. READ THE AGREEMENT BEFORE SIGNING.’

(4) The recipient has a right to cancel the loan by refunding to the lender the amount of the check within ten days of the date the check is negotiated. The loan is considered refunded when the lender receives a refund of the amount of the check within ten days of the date the check is negotiated.

(B) In the event an unsolicited check is stolen or otherwise obtained by someone other than the intended payee, and the check is negotiated 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 the intended payee did not negotiate the check, promptly shall 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 also 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. The lender shall cease all collection activity against the intended payee until the lender completes an investigation into the transaction.

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

(3) Within thirty days of the receipt of the confirmation statement, the lender shall conduct a reasonable investigation and determine if the check was fraudulently negotiated. Absent evidence to the contrary, the presumption is 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 negotiated 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 as provided in 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 do 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 if the lender has an existing account relationship with the consumer.

(D) A violation of this section is an unfair trade practice pursuant to Chapter 5 of Title 39 and is subject to all of the enforcement and penalty provisions of an unfair trade practice pursuant to this chapter.”

SECTION 2. This act takes effect upon approval by the Governor.

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