~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

February 25, 2009

**S. 132**

Introduced by Senators Sheheen and Ford

S. Printed 2/25/09--S. [SEC 2/26/09 2:58 PM]

Read the first time January 13, 2009.

**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.

Amend Title To Conform

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) For purposes of this section:

(1) ‘Check’ means a demand draft drawn on or payable through an office of a depository institution located in the United States, which has imprinted on it the account holder's name and the depository institution's name, location, and routing number.

(2) ‘Unsolicited check’ means a check mailed or otherwise delivered to a person from a person, firm, or corporation engaged in lending money, which is made payable to the recipient and which, upon negotiation, creates a loan and obligates the recipient to repay the amount of the check plus interest and fees.

(B) 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.

(C) The provisions of this section do not apply to a transaction in which a person 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 person.

(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. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect one hundred eighty days after approval by the Governor.

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