

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 723
House Committee Substitute Favorable 8/1/01

Short Title: Unsolicited Checks to Secure Loans.

(Public)

Sponsors:

Referred to:

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CERTAIN DISCLOSURE AND WARNING STATEMENTS
ON UNSOLICITED CHECKS THAT, WHEN CASHED BY THE RECIPIENTS,
OBLIGATE THE RECIPIENTS TO REPAY THE AMOUNT OF THE CHECKS
PLUS INTEREST AND FEES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by
adding a new section to read:

"§ 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 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 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.'

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

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

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

25 (1) The lender, upon receipt of notification that intended payee did not
26 negotiate the check, shall promptly provide the intended payee with a
27 statement or affidavit to be signed by the intended payee confirming
28 that the intended payee did not deposit or cash the check or receive the
29 proceeds of the check. The lender shall also provide the intended
30 payee with the name and telephone number of a contact person
31 designated by the lender to provide assistance to intended payees who
32 have been victimized by the fraudulent negotiation of unsolicited
33 checks. The lender shall cease all collection activity against the
34 intended payee until the lender completes an investigation into the
35 transaction.

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

38 (3) Within 30 days of the receipt of the confirmation statement, the lender
39 shall conduct a reasonable investigation and determine whether the
40 check was fraudulently negotiated. Absent evidence to the contrary,
41 the presumption shall be that the confirmation statement submitted by
42 the intended payee is accurate. The lender shall notify the intended

1 payee in writing of the results of the investigation. If it is determined
2 that the check was cashed fraudulently, the lender shall take immediate
3 action to remove the intended payee from all liability on the account
4 and to request all credit reporting agencies to remove references to the
5 transaction, if any, from the consumer's credit reports.

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

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

13 (d) A violation of this section is an unfair trade practice under G.S. 75-1.1 and is
14 subject to all of the enforcement and penalty provisions of an unfair trade practice under
15 this Article."

16 **SECTION 2.** This act becomes effective October 1, 2001.