

§ 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."
- (3) The check is attached to a disclosure statement that is detachable and that contains in at least 10-point boldface type 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."
- (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 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.

(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. (2001-391, s. 1.)