

HOUSE No. 2761

The Commonwealth of Massachusetts

PRESENTED BY:

Linda Dorcena Forry and Steven A. Baddour

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act protecting consumers from unsolicited loans.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>
<i>Steven A. Baddour</i>	
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>James B. Eldridge</i>	
<i>Sonia Chang-Diaz</i>	
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>George T. Ross</i>	<i>2nd Bristol</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Kathi-Anne Reinstein</i>	<i>16th Suffolk</i>

HOUSE No. 2761

By Representative Forry of Boston and Senator Baddour, a joint petition (accompanied by bill, House, No. 2761) of Linda Dorcena Forry, Steven A. Baddour and others relative to protecting consumers from unsolicited loans. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2393 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act protecting consumers from unsolicited loans.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 140E the
2 following chapter:- CHAPTER 140F UNSOLICITED LOAN CONSUMER PROTECTION

3 Section 1. For the purposes of this chapter the following words shall have the following
4 meanings, unless the context clearly requires otherwise:- “Addressee”, the intended recipient of
5 an unsolicited loan instrument. “Commissioner”, the commissioner of banks. “Unauthorized
6 use”, negotiation of an unsolicited loan instrument by a person other than the addressee who does
7 not have actual, implied or apparent authority for the negotiation and from which the addressee
8 receives no benefit. “Unsolicited loan instrument”, a negotiable check, money order, draft or
9 other instrument that may be used by a consumer to activate a loan which was not solicited by
10 the consumer.

11 Section 2. No unsolicited loan instrument shall be issued except in response to a request
12 or application; provided, however, that this section shall not prohibit a financial institution from
13 advancing money or credit in accordance with law and pursuant to a customer relationship, as
14 defined in the Gramm-Leach-Bliley Act of 1999 15 U.S.C. section 6809 (11) or a valid mortgage
15 or loan agreement.

16 Section 3. If a an unsolicited loan instrument is negotiated, the obligor shall have the
17 right to rescind the contract within 10 days of the date that a negotiable instrument is cashed by
18 notifying the financial institution or lender and returning the entire amount of the loan pursuant
19 to the negotiable instrument.

20 Section 4. An addressee shall not be held liable for any debt incurred by an unauthorized
21 use or fraudulent negotiation of an unsolicited loan instrument by a party other than the
22 addressee. In the event of an unauthorized use or fraudulent negotiation of an unsolicited loan
23 instrument, the issuing institution shall: (1) provide the addressee with a written statement
24 releasing the addressee of liability for the debt; (2) take steps in accordance with the rules and
25 regulations of the commissioner to repair an adverse effect to the addressee's credit rating as a
26 result of the unauthorized use or fraudulent negotiation; and (3) provide the addressee with a
27 written statement informing the addressee that the steps have been or will be taken.

28 Section 5. A financial institution or lender shall not transfer funds held in an account of
29 the addressee in the financial institution as a consequence of a default of a debt owed to the
30 institution as a result of the unauthorized use or fraudulent negotiation of an unsolicited loan
31 instrument.

32 Section 6. A person or entity that knowingly sends an unsolicited loan instrument as
33 provided under section 2 shall be punished by a fine of not more than \$5,000 for each violation.

34 Section 7. The commissioner shall adopt rules and regulations as are necessary to
35 implement this chapter.

36 Section 8. A violation of this chapter, or any rule or regulation issued hereunder, shall
37 constitute an unfair or deceptive act under chapter 93A.

38 SECTION 2. Chapter 266 of the General Laws is hereby amended by inserting after
39 section 33A the following section:- Section 33B.

40 (a) For purposes of this section the following words shall have the following meanings,
41 unless the context clearly requires otherwise:- “Negotiates”, to convert into cash or equivalent
42 value. “Unsolicited loan instrument”, a negotiable check, money order, draft or other instrument
43 that may be used by a consumer to activate a loan which was not solicited by the consumer.

44 (b) Whoever knowingly and fraudulently negotiates an unsolicited loan instrument shall
45 be punished by imprisonment in the house of correction for not more than 2 ½ years or in the
46 state prison for not more than 5 years or by a fine of not more than \$25,000, or by both such fine
47 and imprisonment.