

SENATE No. 2393

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

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:-

3 CHAPTER 140FUNSOLICITED LOAN CONSUMER PROTECTION

4 Section 1. For the purposes of this chapter the following words shall have the following
5 meanings, unless the context clearly requires otherwise:- “Addressee”, the intended recipient
6 of an unsolicited loan instrument. “Commissioner”, the commissioner of banks.

7 “Unauthorized use”, negotiation of an unsolicited loan instrument by a person other than
8 the addressee who does not have actual, implied or apparent authority for the negotiation and
9 from which the addressee receives no benefit. “Unsolicited loan instrument”, a negotiable
10 check, money order, draft or other instrument that may be used by a consumer to activate a loan
11 which was not solicited by the consumer.

12 Section 2. No unsolicited loan instrument shall be issued except in response to a request
13 or application; provided, however, that this section shall not prohibit a financial institution from

14 advancing money or credit in accordance with law and pursuant to a customer relationship, as
15 defined in the Gramm-Leach-Bliley Act of 1999 15 U.S.C. section 6809 (11) or a valid mortgage
16 or loan agreement.

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

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

29 Section 5. A financial institution or lender shall not transfer funds held in an account of
30 the addressee in the financial institution as a consequence of a default of a debt owed to the
31 institution as a result of the unauthorized use or fraudulent negotiation of an unsolicited loan
32 instrument. Section 6. A person or entity that knowingly sends an unsolicited loan instrument
33 as provided under section 2 shall be punished by a fine of not more than \$5,000 for each
34 violation.

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

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

39 SECTION 2. Chapter 266 of the General Laws is hereby amended by inserting after
40 section 33A the following section:- Section 33B. (a) For purposes of this section the following
41 words shall have the following meanings, unless the context clearly requires otherwise:-

42 “Negotiates”, to convert into cash or equivalent value. “Unsolicited loan
43 instrument”, a negotiable check, money order, draft or other instrument that may be used by a
44 consumer to activate a loan which was not solicited by the consumer. (b) Whoever
45 knowingly and fraudulently negotiates an unsolicited loan instrument shall be punished by
46 imprisonment in the house of correction for not more than 2 ½ years or in the state prison for not
47 more than 5 years or by a fine of not more than \$25,000, or by both such fine and imprisonment.