

SENATE No. 447

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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:- “Addressee”, the intended recipient of an unsolicited loan instrument.

6 “Commissioner”, the commissioner of banks. “Unauthorized use”, negotiation of an unsolicited
7 loan instrument by a person other than the addressee who does not have actual, implied, or
8 apparent authority for the negotiation and from which the addressee receives no benefit.

9 “Unsolicited loan instrument”, a negotiable check, money order, draft, or other instrument that
10 may be used by a consumer to activate a loan which was not solicited by the consumer. Section

11 2. A financial institution or lender shall not solicit a loan by mailing an unsolicited loan
12 instrument unless: (1) the instrument is not negotiable more than 30 days after the date shown on

13 the instrument; (2) the financial institution or lender has prominently disclosed in easily
14 understood language on the front or back of the instrument clearly and conspicuously the amount

15 financed, the current annual percentage rate, the number of installments to be paid and the
16 amount of each installment to be paid. The financial institution shall also print on the front and
17 back of the instrument the following statements in 14 point type using capital letters: "THIS IS A
18 SOLICITATION FOR A LOAN-- PLEASE READ ALL DISCLOSURES BEFORE SIGNING
19 AND CASHING THIS INSTRUMENT. IF THIS INSTRUMENT IS NOT CASHED, PLEASE
20 DESTROY. BY ENDORSING THIS INSTRUMENT, YOU BECOME LEGALLY LIABLE
21 FOR REPAYING MONEYS, INCLUDING INTEREST, AS SPECIFIED IN THE ENCLOSED
22 LOAN AGREEMENT".Section 3. A financial institution or lender shall mail any unsolicited
23 loan instrument in a plain envelope upon which there shall be no indication that an unsolicited
24 loan instrument is enclosed. The envelope shall be marked with instructions for the postal service
25 not to forward if the intended recipient is no longer at the address on the envelope. Section 4. A
26 financial institution or lender shall provide the addressee of any unsolicited loan instrument with
27 the option to be excluded from future solicitations for unsolicited loan instruments by providing
28 a telephone number and address to contact for that purpose. Section 5. If a an unsolicited loan
29 instrument is negotiated, the obligor shall have the right to rescind the transaction within 10 days
30 of the date a negotiable instrument is cashed, by notifying the financial institution or lender and
31 returning the entire amount of the negotiable instrument. Section 6. An addressee shall not be
32 held liable for any debt incurred by any unauthorized use or fraudulent negotiation of an
33 unsolicited loan instrument by a party other than the addressee. In the event of an unauthorized
34 use or fraudulent negotiation of an unsolicited loan instrument, the issuing institution shall: (1)
35 provide the addressee with a written statement relieving the addressee of liability for the debt; (2)
36 take steps in accordance with the rules and regulations of the commissioner to repair an adverse
37 effect to the addressee's credit rating as a result of the unauthorized use or fraudulent

38 negotiation; and (3) provide the addressee with a written statement informing the addressee that
39 the steps have been or will be taken. Section 7. (a) A financial institution or lender shall not
40 transfer funds held in an account of the addressee in the financial institution as a consequence of
41 a default of a debt owed to the institution as a result of the unauthorized use or fraudulent
42 negotiation of an unsolicited loan instrument.(b) Nothing in this chapter shall prohibit a financial
43 institution from advancing money or credit in accordance with law and pursuant to a customer
44 relationship, as defined in the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. section 6809 (11), or
45 a valid mortgage or loan agreement.Section 8: Any person or entity that willfully or knowingly
46 gives false or inaccurate information or fails to provide information required to be disclosed or
47 enclosed under this chapter or any regulation issued thereunder, or sends an unsolicited loan
48 instrument after an addressee has notified the person or entity of his request not to be subjected
49 to future solicitations as provided under section 4 shall be fined not more than \$5000 for each
50 such violation. Section 9. The commissioner shall adopt such rules and regulations as are
51 necessary to implement this chapter. Section 10. A violation of this chapter, or any rule or
52 regulation issued hereunder, shall constitute a violation of chapter 93A.

53 SECTION 2. Chapter 266 of the General Laws is hereby amended by inserting after
54 section 33A the following section:- Section 33B. (a) For purposes of this section, the following
55 words shall have the following meanings:-“Negotiates”, to convert into cash or equivalent value.
56 “Unsolicited loan instrument”, a negotiable check, money order, draft or other instrument that
57 may be used by a person to activate a loan which was not solicited by such person. Whoever
58 knowingly and fraudulently negotiates an unsolicited loan instrument shall be punished by
59 imprisonment in the house of correction for not more than 2 ½ years or in the state prison for not
60 less than 3 years nor more than 5 years, or by a fine of not more than \$25,000, or both.

61 SECTION 3. Chapter 140F of the General Laws shall apply to all unsolicited loan
62 instruments issued on or after the effective date of this act.