HOUSE DOCKET, NO. 3184 FILED ON: 1/21/2011

# HOUSE . . . . . No. 2694

## The Commonwealth of Massachusetts

PRESENTED BY:

***Thomas A. Golden, Jr.***

*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 relative to furnishing or using certain consumer loan information to make solicitations.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---|---|
| *Thomas A. Golden, Jr.* | *16th Middlesex* |

HOUSE DOCKET, NO. 3184 FILED ON: 1/21/2011

# HOUSE . . . . . No. 2694

By Mr. Golden of Lowell, a petition (accompanied by bill, House, No. 2694) of Thomas A. Golden, Jr. relative to further regulating the use of certain consumer loan information to make solicitations. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *279* OF 2009-2010.]

## The Commonwealth of Massachusetts

**In the Year Two Thousand Eleven**

An Act relative to furnishing or using certain consumer loan information to make solicitations.

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

SECTION 1:

Section 50 of Chapter 93 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting the following:

"Lender" means any of the following:

a financial institution, as defined in Chapter 167; a finance company licensed under Chapter 255; a mortgage banker, loan originator, or mortgage broker registered under Chapter 255E; any other person, not identified above, the primary business of which is to make loans or engage in lending activities in this commonwealth.

9 "Nonaffiliated 3rd party" means a person that is not related by common ownership or
10 affiliated by common corporate control.

11 "Personal financial data provider" means any person, other than a consumer reporting
12 agency, that regularly engages in whole or in part in the practice of assembling and furnishing to
13 3rd parties, for a fee or payment of dues, the identity of particular consumers and financial
14 information relating to such consumers that is not generally available to the public, including
15 information derived from any application by these consumers for an extension of credit or other
16 nonpublic personal information, as defined in 15 USC 6809 (4), relating to these consumers.

17 "Prescreened consumer report" means a consumer report furnished by a consumer
18 reporting agency under authority of 15 USC 1681b (a) (3) (A) and (c) (1) (B) to a person that the
19 consumer reporting agency has reason to believe intends to use the information in connection
20 with any credit transaction that involves the consumer on whom the information is to be
21 furnished and that is not initiated by this consumer.

22 "Trigger lead" means information relating to a consumer that is furnished by a consumer
23 reporting agency or personal financial data provider to a nonaffiliated 3rd party if all of the
24 following apply:

25 1. The consumer has applied to a lender, other than the 3rd party to whom the
26 information is furnished, for an extension of credit and the lender has provided the consumer's
27 credit application, or information derived from or related to the consumer's credit application, to
28 a consumer reporting agency or personal financial data provider for purposes of obtaining a
29 consumer report or otherwise evaluating or rating the consumer's creditworthiness.

30 2. The information furnished to the 3rd party includes the consumer's name and address
31 or telephone number, or other information that allows the 3rd party to identify the consumer.

32 3. The information furnished to the 3rd party contains, with respect to the extension of
33 credit for which the consumer has applied under this section, any identification of the amount of
34 credit for which the consumer has applied or any other information that is related to the terms
35 and conditions of credit for which the consumer has applied and that is not generally available to
36 the public.

37 4. The consumer has not authorized the consumer reporting agency or personal financial
38 data provider to provide the information to 3rd parties and has not initiated any credit transaction
39 with the 3rd party.

40 5. The 3rd party to whom the information is furnished has not extended credit to the
41 consumer on which an unpaid balance remains.

42 "Solicit" means the initiation of a communication to a consumer for the purpose of
43 encouraging the consumer to purchase property, goods, or services or apply for an extension of
44 credit. "Solicit" does not include communications initiated by the consumer or directed to the
45 general public.

46 SECTION 2:

47 Chapter 93 of the General Laws is hereby amended by inserting after section 51A, the
48 following section 51B:

49 (a) If any trigger lead is not a prescreened consumer report, no person may furnish the
50 trigger lead to a nonaffiliated 3rd party unless the person reasonably believes that the 3rd party
51 will not use the trigger lead to solicit any consumer identified in the trigger lead.

52 (b) Any person that furnishes a trigger lead described in (2) (a) to a nonaffiliated 3rd
53 party shall establish and maintain procedures to reasonably ensure that the trigger lead will not
54 be used to solicit any consumer identified in the trigger lead. These procedures shall include
55 requiring any person that obtains a trigger lead described in (2) (a) to identify the user of the
56 trigger lead and to certify, in a manner similar to that required under 15 USC 1681e (a), the
57 purpose for which the trigger lead is obtained and that the person will not use the trigger lead to
58 solicit any consumer identified in the trigger lead.

59 (c) No person that obtains a trigger lead described in (2) (a) may use the trigger lead to
60 solicit any consumer identified in the trigger lead.

61 (d) If any trigger lead is a prescreened consumer report, a person that obtains a trigger
62 lead and uses the trigger lead to solicit any consumer identified in the trigger lead may not utilize
63 unfair or deceptive practices in soliciting the consumer.

64 (e) For purposes of this subsection, unfair or deceptive practices include all of the
65 following:

66 1. Failure to state in the initial phase of the solicitation that the person soliciting is not the
67 lender, and is not affiliated with the lender, to which the consumer has applied for an extension
68 of credit.

69 2. Failure in the initial solicitation to comply with any applicable requirement under this
70 chapter or 15 USC 1681b (a), (c), (e), and (f), 1681e (a), and 1681m (d).

71 3. Knowingly or negligently utilizing information regarding consumers who have made
72 an election under 15 USC 1681b (e) to be excluded from prescreened consumer reports, who
73 have registered their telephone numbers on the national do-not-call registry as provided in 47
74 CFR 64.1200, or who are listed in the do-not-call list under Chapter 159C.

75 4. Soliciting consumers with offers of certain rates, terms, and costs, with intent to
76 subsequently raise the rates or change the terms to the consumers' detriment.

77 5. Making false or misleading statements in connection with a credit transaction that is
78 not initiated by the consumer.

79