

SENATE No. 133

The Commonwealth of Massachusetts

PRESENTED BY:

Karen E. Spilka

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 to protect consumers that hold credit cards..

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Karen E. Spilka

5th Worcester

Anne M. Gobi

SENATE No. 133

By Ms. Spilka, a petition (accompanied by bill, Senate, No. 133) of Karen E. Spilka and Anne M. Gobi for legislation to protect consumers who hold credit cards. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 177 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to protect consumers that hold credit cards..

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. Chapter 26 of the General Laws, as appearing in the 2008 Official
2 Edition, is hereby amended by inserting after section 5A the following new section:-

3 Section 5B. Consumer Credit Card Protection.

4 (a) Definitions. The following words and phrases when used in this section
5 shall have the following meanings:--

6 “Card holder”, any person to whom a credit card is issued or any person who has agreed
7 with the card issuer to pay obligations arising from the issuance of a credit card to another
8 person.

9 “Card issuer” or “issuer”, any bank, retailer, corporate entity, bank holding company, or
10 other financial or commercial institution, or any individual who issues a credit card, or the agent
11 of such person with respect to such card.

12 “Commissioner”, the commissioner of banks.

13 “Consumer”, A natural person whose money, property, or services are the subject of
14 transactions.

15 “Credit”, the right granted by a creditor to a debtor to defer payment of debt or to incur
16 debt and defer its payment.

17 “Credit card”, any card, plate, coupon book, or other credit device existing for the
18 purpose of obtaining money, property, labor, or services on credit, including temporary credit
19 cards, such as paper slips containing an account number, issued for use while a permanent credit
20 card is manufactured.

21 (b) Purpose

22 Whereas the Annual Percentage Rate established by the federal Truth in
23 Lending Act is not alone a sufficient vehicle for comparison between credit card contracts; and

24 Whereas disclosure law is not sufficient to eliminate all predatory lending and
25 solicitation practices in the issuance of credit cards; and

26 Whereas regulation of debt counseling agencies has not prevented abuses
27 against consumers who have acquired significant credit card debt; and

28 Whereas the use of credit cards is common among consumers nation-wide; and

29 Whereas the Commonwealth is barred by federal law from regulating many
30 substantive terms of credit card contracts between out-of-state credit card issuers and
31 Massachusetts consumers;

32 Therefore, it is the intent of the General Court to increase consumer education
33 within the Commonwealth regarding the practices of credit card issuers and to enhance consumer
34 choice.

35 (c) It is the intent of the General Court to develop an effective system for
36 enabling Massachusetts consumers to make informed decisions regarding the acceptance of
37 credit card contracts and the acquisition and management of credit card debt. This system shall
38 include the creation of a rubric and grading mechanism for credit card issuers and their contracts,
39 rely on enhanced disclosure requirements in credit card advertisements and solicitation materials,
40 involve the development of state consumer counseling services for holders of credit cards,
41 promote competition between credit card issuers, and increase the availability of credit-card
42 alternatives.

43 (d) Creation of the office of credit card information services

44 (1) There shall be an office of credit card information services, in this chapter
45 called the office, and a director of credit card information services who shall have and shall
46 exercise supervision and control of the office. The commissioner of banks shall appoint, with
47 the approval of the governor, the director of credit card information services, who shall serve at
48 the pleasure of the commissioner and may be removed by the commissioner at any time, subject
49 to approval by the governor. The director shall appoint and may remove such agents and
50 subordinate officers as the director may deem necessary.

51 (2) The office of credit card information services shall have the power to
52 enforce the provisions of this Act, and to levy fines and other civil or criminal penalties against
53 violators of this Act.

54 (e) Credit Card Issuer Grading

55 The office of credit card information services shall establish a rubric for grading the
56 lending practices of credit card issuers that contract with credit card holders and solicit
57 consumers in the Commonwealth.

58 (1) The rubric shall rely upon the following criteria, considering generally the
59 bulk of an issuer's contracts, correspondences, transactions, advertisements, and solicitations and
60 all of an issuer's credit card programs, if the issuer offers several, within Massachusetts:

61 (i) The issuer's overall compliance with disclosure law;

62 (ii) The issuer's debt-collection practices;

63 (iii) The issuer's customer service record;

64 (iv) The issuer's fees and interest charges as compared with other
65 issuers or credit lenders;

66 (A) The understandability of the issuer's credit card
67 contracts, solicitations, and advertisements;

68 (B) The extent to which the issuer engages in intentionally
69 misleading practices or disseminates purposely misleading correspondences, advertisements, or
70 solicitations; and

71 (C) Any other factors which the office reasonably deems to
72 be in accordance with the purpose and goals of this Act.

73 (2) Said rubric shall be publically disseminated and made available online.

74 (3) The office shall review the rubric at least once annually and shall update
75 the rubric as is necessary to respond to the changing needs of Massachusetts consumers.

76 (4) The office shall give any credit card issuer which contracts with or solicits
77 consumers in the Commonwealth an A, B, C, D or F grade corresponding to the issuer's
78 placement on the rubric.

79 (i) Issuer grades shall be given on a curve to ensure that the rubric
80 and grading system is a vehicle for comparing issuers to one another rather than to a static set of
81 criteria.

82 (A) No more than 15% and no fewer than 5% of issuers
83 shall receive an A grade.

84 (B) No more than 50% of issuers shall receive a B grade.

85 (C) No more than 50% of issuers shall receive a C grade.

86 (D) No more than 50% of issuers shall receive a D grade.

87 (E) No more than 15% of issuers shall receive an F grade.

88 (F) No fewer than 10% of issuers shall receive a grade
89 lower than C.

90 (G) The office may, five years after this Act goes into
91 effect, discard the percentage requirements contained in provisions (a) through (f) of this
92 subsection if the office finds that the practices of credit card issuers have undergone enough
93 change to merit different curve requirements.

94 (ii) The office shall review individual issuer grades annually and
95 update such grades if the issuer's practices have changed, the rubric has changed, or as the office
96 deems necessary. The office may change an issuer's grade before the annual review if the issuer
97 is found to be in violation of this act or if the issuer has committed an extreme deviation from its
98 usual practices.

99 (iii) The office shall notify a credit card issuer of a change in grade,
100 whether pursuant to annual review or otherwise.

101 (iv) A credit card issuer may appeal its grade to the office. The
102 office shall establish an internal appeals process for this purpose and shall have discretion to
103 determine its own appeals procedure. The office may deny appeals that it reasonably finds lack
104 merit.

105 (v) A credit card issuers may petition to change its individual grade
106 prior to the next annual review if the issuer's practices have changed or if office of credit card
107 information services has updated the rubric in such a way that may potentially impact the
108 issuer's grade. The office shall establish an internal system for reviewing such petitions and
109 shall have discretion to determine its petition review procedure. The office may deny petitions
110 that it reasonably finds lack merit.

111 (vi) Each credit card issuer shall print the grade that it is assigned by
112 the Massachusetts office of credit card information services in the upper left corner of the front
113 or only page of any still advertisement it disseminates within the Commonwealth, including but
114 not limited to fliers, magazine pages, pamphlets, bill boards, floor stands, window hangings,
115 posters, post cards, and cardboard cut outs, and on any letter, pamphlet, booklet, flier, postcard
116 or other printed material solicitation that is sent by mail to any individual person or household,
117 named or unnamed, within the state of Massachusetts.

118 (A) If such mailing contains multiple, separate pamphlets,
119 letters, booklets or other print material solicitation, the issuer shall print its grade at the top left
120 corner of the front or only page of each such solicitation.

121 (B) The grade shall be printed in red ink inside of a white
122 box. The white box shall be no smaller than five percent of the surface area of the largest page
123 contained within the solicitation or advertisement. The grade shall be printed to fit exactly inside
124 the white box.

125 (C) There shall be nothing printed directly above or to the
126 left of the grade. Directly beneath each grade box shall be printed in red ink the words “rating by
127 the Massachusetts office of credit card information services” on blank, white space in size ten
128 font or larger.

129 (D) In the event that an advertisement or solicitation is
130 irregularly shaped and does not have an upper left corner, the grade box shall be printed within
131 the top twenty percent of the page subject to all other provisions for regularly shaped pages.

132 (vii) Radio credit card advertisements broadcast within
133 Massachusetts shall verbally disclose the issuer's grade by clearly stating, "[name of issuer] is
134 rated [grade] by the Massachusetts office of credit card information services" at a normal talking
135 speed.

136 (viii) Televised credit card advertisements broadcast within
137 Massachusetts shall verbally disclose the issuer's grade by clearly stating, "[name of issuer] is
138 rated [grade] by the Massachusetts office of credit card information services" at a normal talking
139 speed and display the grade in red against a white screen for the duration of the verbal disclosure.
140 The white space shall cover the entire screen and the grade shall be framed to an exact fit with
141 the screen.

142 (f) Misleading Information

143 No credit card issuer shall refer to a print material disseminated within Massachusetts as
144 a "questionnaire," "survey," or a synonym therefore unless the issuer intends to use that print
145 material specifically and exclusively for its own information gathering purposes. A
146 questionnaire or survey may not be printed on the same page as nor affixed to a document that
147 signifies a consumer's assent to any new contract terms, the purchase of any new product or
148 service, or payment of a new charge or fee.

149 (g) Targeting of consumers

150 Credit card issuers may not specifically target or concentrate advertising or solicitations
151 in low-income neighborhoods, localities with low English-literacy, or localities where large
152 percentages of the population have not completed high school. The office of credit card

153 information shall promulgate standards for determining when a credit card issuer is singling out
154 such areas for advertising or solicitation and shall issue regulations curbing these practices.

155 (h) Services

156 (1) The office of credit card information services shall take reasonable action
157 to inform the public of the services that it provides.

158 (2) The office of credit card information services shall conduct regular public
159 information sessions at high schools, colleges, community centers, and other places of public
160 gathering throughout the state. Public information sessions shall be conducted in such a way to
161 meet the following goals:

162 (i) Increasing financial literacy;

163 (ii) Addressing the questions of individuals regarding their specific
164 credit card contracts;

165 (iii) Aiding individuals to develop debt management skills;

166 (iv) Helping consumers to choose the right credit card for their
167 individual needs.

168 (3) The office of credit card information services shall offer an online help
169 service to address individuals' questions about credit cards, the terms of their own credit card
170 contracts and debt management. Such online help service may involve a public e-mail address,
171 blogging, forums or message boards, real time chat, or any other electronic methods the office
172 chooses to employ. The office shall also consider making available a telephone hotline.

173 (4) The office shall collect and disseminate information regarding various debt
174 counseling agencies that operate within the state of Massachusetts. The office shall rate such
175 agencies based on the extent to which they respond to the needs of indebted consumers and
176 promulgate a list of approved and unapproved debt counseling agencies, to be made available on
177 its website. The office shall refer indebted consumers to debt counseling agencies based on these
178 ratings and shall only refer consumers to those agencies that it has approved.

179 (5) The office shall not approve a debt counseling agency that:

180 (i) Regularly pressures consumers into debt repayment plans they
181 cannot afford;

182 (ii) Is affiliated with or funded by creditors or acts as a debt
183 collection service;

184 (iii) Claims to be able to positively alter a consumer's credit report
185 for a fee;

186 (iv) Regularly misrepresent the terms of debt consolidation loans.