

HOUSE No. 840

The Commonwealth of Massachusetts

PRESENTED BY:

Lori A. Ehrlich

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 consumer protection following a bankruptcy.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>
<i>Walter F. Timilty</i>	<i>7th Norfolk</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>

HOUSE No. 840

By Ms. Ehrlich of Marblehead, a petition (accompanied by bill, House, No. 840) of Lori A. Ehrlich and others relative to the reporting of credit transactions of consumers by financial or consumer lending institutions following bankruptcies. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to consumer protection following a bankruptcy.

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

1 Chapter 93 of the General Laws is hereby amended by inserting, after section 54A, the
2 following section:-

3 Section 68F. (a) For the purposes of this section, the following terms shall, unless the
4 context clearly appears otherwise, have the following meanings:-

5 “Consumer”, the buyer for value of a good or service, those who finance the acquisition
6 of goods or services through the use of loans, cash advances and credit cards.

7 “Financial or lending institution”, an insured depository institution as defined in section
8 3(c)(2) of the Federal Deposit Insurance Act, a credit union with accounts insured by the
9 National Credit Union Share Insurance Fund, a Federal home loan bank or a member, as defined
10 in section 2 of the Federal Home Loan Bank Act in 12 U.S.C. section 1422, of the Federal home
11 loan bank system; a system institution of the Farm Credit System, as defined in section 5.35(3)
12 of the Farm Credit Act of 1971; a small business investment company, as defined in section 103

13 of the Small Business Investment Act of 1958, 15 U.S.C. section 662; a depository institution
14 holding company as defined in section 3(w)(1) of the Federal Deposit Insurance Act; a Federal
15 Reserve bank or a member bank of the Federal Reserve System; a branch or agency of a foreign
16 bank as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International
17 Banking Act of 1978; or a mortgage lending business or any person or entity that makes in whole
18 or in part a federally related mortgage loan as defined in section 3 of the Real Estate Settlement
19 Procedures Act of 1974.

20 “Consumer credit reporting agencies”, any person that, for monetary fees, dues, or on a
21 cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or
22 evaluating consumer credit information or other information on consumers for the purpose of
23 furnishing consumer reports to third parties, and that uses any means or facility of interstate
24 commerce for the purpose of preparing or furnishing consumer reports to third parties bearing on
25 a consumer’s credit worthiness, credit standing, or credit capacity, the information for which is
26 provided to them by (1) public record information and (2) credit account information from
27 persons who furnish that information regularly and in the ordinary course of business.

28 “Reaffirmed debt”, a liability that survives a debtor’s bankruptcy discharge through the
29 Bankruptcy Court approval of a reaffirmation agreement.

30 (b) Any financial or consumer lending institution that reports the credit transactions of its
31 consumers to 1 of the major credit reporting agencies shall have an affirmative duty to report to
32 those agencies any payments that continue to be made by the consumer on the financial or
33 consumer lending institution’s debt after the filing of the customer’s bankruptcy, if the

34 customer's account has been reaffirmed by a judge presiding over the customer's bankruptcy
35 case.

36 (c) If the financial or consumer lending institution's financial obligation was not
37 reaffirmed as part of the customer's bankruptcy, and if the account has been active following the
38 consumer's bankruptcy filing, the number of months elapsed since the consumer's bankruptcy
39 filing and the number of payments on the liability made by the consumer during that period of
40 time shall be reported.

41 (d) Any financial or consumer lending institution:-

42 (i) who furnishes information to any consumer reporting agency, or user of information
43 which willfully fails to comply with any requirement imposed under this section, with respect to
44 any consumer shall be liable to that consumer in an amount equal to the sum of—

45 (1) any actual damages sustained by the consumer as a result of the failure;

46 (2) such amount of punitive damages as the court may allow; and

47 (3) in the case of any successful action to enforce any liability under this section, the
48 costs of the action together with reasonable attorney's fees as determined by the court;

49 (ii) who furnishes information to any consumer reporting agency, or user of information
50 which is negligent in failing to comply with this section with respect to any consumer shall be
51 liable to that consumer in an amount equal to the sum of any actual damages sustained by the
52 consumer as a result of the failure; and in the case of any successful action to enforce any
53 liability under this section, the costs of the action and reasonable attorney's fees as determined by
54 the court; and

55 (iii) found to be in violation of this section shall be: (1) required to correct the error by
56 reporting all necessary payments to the major credit reporting agencies as soon as possible; and
57 (2) subject to a fine not to exceed \$1,000 for the first offense; \$2,500 for the second offense; and
58 \$5,000 for the third and each subsequent offense; provided, that such fine shall be enforced and
59 collected by the attorney general.