

SENATE No. 2194

Senate, March 24, 2016 -- Text of the Senate Bill relative to unsolicited loans (Senate, No. 2194)
(being the text of Senate, No. 175, printed as amended)

The Commonwealth of Massachusetts

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

An Act relative to 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 140D the
2 following chapter:-

CHAPTER 140F

UNSOLICITED LOAN CONSUMER PROTECTION

5 Section 1. As used in this chapter, the following words shall have the following meanings
6 unless the context clearly requires otherwise:

7 "Addressee", the intended recipient of an unsolicited loan instrument.

8 "Commissioner", the commissioner of banks.

9 "Unauthorized use", negotiation of an unsolicited loan instrument by a person other than
10 the addressee who does not have actual, implied or apparent authority for the negotiation and
11 from which the addressee receives no benefit.

12 "Unsolicited loan instrument", a negotiable check, money order, draft or other instrument
13 that may be used by a consumer to activate a loan or to open any line of credit, which was not
14 solicited by the consumer.

15 Section 2. No person or entity shall issue an unsolicited loan instrument; provided,
16 however, that this section shall not prohibit a financial institution from advancing money or
17 credit in accordance with the law and pursuant to a customer relationship, as defined in the
18 Gramm-Leach-Bliley Act of 1999, 15 U.S.C. 6809 (11), or a valid mortgage or loan agreement.

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

26 Section 4. A financial institution or lender shall not transfer funds held in an account of
27 the addressee in the financial institution as a consequence of a default of a debt owed to the
28 institution as a result of the unauthorized use of an unsolicited loan instrument.

29 Section 5. A person or entity that knowingly sends an unsolicited loan instrument shall be
30 punished by a fine of not more than \$5,000 for each violation.

31 Section 6. The commissioner shall adopt rules and regulations to implement this chapter,
32 which shall include, but not be limited to, sending notice to the attorney general upon discovery
33 of a violation of this chapter.

34 Section 7. A violation of this chapter or any rule or regulation issued under this chapter
35 shall constitute an unfair or deceptive act under chapter 93A.

36 Section 8. If a an unsolicited loan instrument is negotiated, the obligor shall have the
37 right to rescind the contract within 10 days of the date that a negotiable instrument is cashed by
38 notifying the financial institution or lender and returning the entire amount of the loan pursuant
39 to the negotiable instrument.

40 SECTION 2. Chapter 266 of the General Laws is hereby amended by inserting after
41 section 33A the following section:-

42 Section 33B. Whoever converts into cash or equivalent value an unsolicited loan
43 instrument, as defined in section 1 of chapter 140F, with intent to defraud shall be punished by
44 imprisonment in a house of correction for not more than 2 ½ years or by imprisonment in the
45 state prison for not more than 5 years or by a fine of not more than \$25,000, or by both such fine
46 and imprisonment.