SENATE . . . . . No. 2357

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

SENATE, Monday, March 19, 2018

The committee on Ways and Means to whom was referred the Senate Bill relative to unsolicited loans (Senate, No.143),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2357).

For the committee,
Karen E. Spilka

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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:

The General Laws are hereby amended by inserting after chapter 140D the following chapter:-

CHAPTER 140F.

UNSOLICITED LOAN CONSUMER PROTECTION.

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

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

"Commissioner", the commissioner of banks.

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

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

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

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

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

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

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

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

Section 8. If an unsolicited loan instrument is negotiated, the obligor may rescind the contract not later than 10 days after the date that a negotiable instrument is cashed by notifying the financial institution or lender and returning the entire amount of the loan pursuant to the negotiable instrument.