SENATE DOCKET, NO. 411 FILED ON: 1/14/2019

SENATE . . . . . No. 138

The Commonwealth of Massachusetts

PRESENTED BY:

Diana DiZoglio

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 unsolicited loans.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Diana DiZoglio	*First Essex*	
Rebecca L. Rausch	*Norfolk, Bristol and Middlesex*	*1/30/2019*

SENATE DOCKET, NO. 411 FILED ON: 1/14/2019

SENATE . . . . . No. 138

By Ms. DiZoglio, a petition (accompanied by bill, Senate, No. 138) of Diana DiZoglio and Rebecca L. Rausch for legislation relative to unsolicited loans. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *143* OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

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:

SECTION 1. 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 to 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 will 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 a an unsolicited loan instrument is negotiated, the obligor shall have the right to rescind the contract within 10 days of 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.

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

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