

SENATE NO. 565

AN ACT PROTECTING CONSUMERS FROM 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 140E the
2 following chapter:

3 Chapter 140F

4 Section 1. For the purposes of this chapter the following words shall have the following
5 meanings:

6 “Addressee”, the intended recipient of an unsolicited loan instrument.

7 “Commissioner”, the commissioner of banks.

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

11 “Unsolicited loan instrument”, a negotiable check, money order, draft, or other instrument that
12 may be used by a consumer to activate a loan that was not solicited by the consumer.

13 Section 2. A financial institution or lender shall not solicit a loan by mailing an unsolicited loan
14 instrument unless: (1) the instrument is not negotiable more than 30 days after the date shown
15 on the instrument; (2) the financial institution or lender has prominently disclosed in easily
16 understood language on the front or back of the instrument clearly and conspicuously: the
17 amount financed, the current annual percentage rate, the number of installments to be paid and
18 the amount of each installment to be paid. The financial institution shall also print on the front
19 and back of the instrument the following statements in 14 point type using capital letters: "THIS
20 IS A SOLICITATION FOR A LOAN-- PLEASE READ ALL DISCLOSURES BEFORE
21 SIGNING AND CASHING THIS INSTRUMENT. IF THIS INSTRUMENT IS NOT
22 CASHED, PLEASE DESTROY. BY ENDORSING THIS INSTRUMENT, YOU BECOME
23 LEGALLY LIABLE FOR REPAYING MONEYS, INCLUDING INTEREST, AS SPECIFIED
24 IN THE ENCLOSED LOAN AGREEMENT".

25 Section 3. A financial institution or lender mailing an unsolicited loan instrument shall mail the
26 instrument in a plain envelope. There shall be no indication that an unsolicited loan instrument
27 is enclosed. The envelope shall be marked with instruction for the postal service not to forward
28 if the intended recipient is no longer at the address on the envelope.

29 Section 4. A financial institution or lender issuing unsolicited loan instruments shall provide the
30 addressee with the option to be excluded from future solicitations for unsolicited loan
31 instruments by providing a telephone number and address that may be contacted for that
32 purpose.

33 Section 5. In the case of an unsolicited loan instrument negotiation, the obligor shall have the
34 right to rescind the transaction within 10 days of the date the check is cashed, by notifying the
35 financial institution or lender and returning the entire amount of the instrument.

36 Section 6. An addressee shall not be held liable for a debt incurred by any unauthorized use or
37 fraudulent negotiation of an unsolicited loan instrument by a party other than the addressee. In
38 the event of an unauthorized use or fraudulent negotiation of an unsolicited loan instrument, the
39 issuing institution shall: (1) provide the addressee with a written statement relieving the
40 addressee of liability for the debt; (2) take steps in accordance with the rules and regulations of
41 the commissioner to repair an adverse effect to the addressee's credit rating as a result of the
42 unauthorized use or fraudulent negotiation; and (3) provide the addressee with a written
43 statement informing the addressee that the steps have been or will be taken.

44 Section 7. (a) A financial institution or lender shall not transfer funds held in an account of the
45 addressee in the financial institution as a consequence of a default of a debt owed to the
46 institution as a result of the unauthorized use or fraudulent negotiation of an unsolicited loan
47 instrument.

48 (b) Nothing in this chapter shall prohibit a financial institution from advancing money or credit
49 in accordance with law and pursuant to a customer relationship, as defined in the Gramm-
50 Leach-Bliley Act of 1999, 15 U.S.C. section 6809 (11), or a valid mortgage or loan agreement.

51 Section 8: A person or entity that willfully or knowingly gives false or inaccurate information
52 or fails to provide information that he is required to disclose or enclose under this chapter or any
53 regulation issued, or sends an unsolicited loan instrument after an addressee has opted out of
54 future solicitations as provided under section 4 shall be fined not more than \$5000 for each
55 violation.

56 Section 9. The commissioner shall prescribe from time to time rules and regulations necessary
57 and proper to carry out this chapter.

58 Section 10. A violation of this chapter, or any rule or regulation issued hereunder, shall
59 constitute a violation of chapter 93A.

60 SECTION 2. Chapter 266 of the General Laws, as appearing in the 2004 Official Edition, is
61 hereby amended by inserting after section 33A the following section:-

62 Section 33B. Whoever knowingly and fraudulently negotiates or attempts or conspires to
63 fraudulently negotiate an unsolicited loan instrument shall be punished by imprisonment in the
64 state prison for not more than 5 years, or by a fine not more than \$25,000, or both.

65 SECTION 3. Chapter 140F of the General Laws, inserted by section 1 of this act, shall apply to
66 all unsolicited loan instruments issued or consummated on or after the effective date of this act.