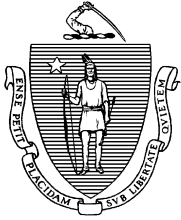


Senate, No. 2364

[Senate, October 16, 2007 - Substituted by amendment by the Senate (SWM) for Senate, No. 565]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND SEVEN

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 UNSOLICITED LOAN CONSUMER PROTECTION

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

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
13 instrument that may be used by a consumer to activate a loan which was not solicited by the
14 consumer.

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

27 Section 3. A financial institution or lender shall mail any unsolicited loan instrument in a
28 plain envelope upon which there shall be no indication that an unsolicited loan instrument is
29 enclosed. The envelope shall be marked with instructions for the postal service not to forward if
30 the intended recipient is no longer at the address on the envelope.

31 Section 4. A financial institution or lender shall provide the addressee of any unsolicited
32 loan instrument with the option to be excluded from future solicitations for unsolicited loan
33 instruments by providing a telephone number and address to contact for that purpose.

34 Section 5. If a an unsolicited loan instrument is negotiated, the obligor shall have the
35 right to rescind the transaction within 10 days of the date a negotiable instrument is cashed, by
36 notifying the financial institution or lender and returning the entire amount of the negotiable
37 instrument.

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

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

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

54 Section 8: Any person or entity that willfully or knowingly gives false or inaccurate
55 information or fails to provide information required to be disclosed or enclosed under this
56 chapter or any regulation issued thereunder, or sends an unsolicited loan instrument after an
57 addressee has notified the person or entity of his request not to be subjected to future
58 solicitations as provided under section 4 shall be fined not more than \$5000 for each such
59 violation.

60 Section 9. The commissioner shall adopt such rules and regulations as are necessary to
61 implement this chapter.

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

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

66 Section 33B. (a) For purposes of this section, the following words shall have the
67 following meanings:-

68 “Negotiates”, to convert into cash or equivalent value.

69 “Unsolicited loan instrument”, a negotiable check, money order, draft or other
70 instrument that may be used by a person to activate a loan which was not solicited by such
71 person.

72 Whoever knowingly and fraudulently negotiates an unsolicited loan instrument shall be
73 punished by imprisonment in the house of correction for not more than 2 ½ years or in the state
74 prison for not less than 3 years nor more than 5 years, or by a fine of not more than \$25,000, or
75 both.

76 SECTION 3. Chapter 140F of the General Laws shall apply to all unsolicited loan
77 instruments issued on or after the effective date of this act.