

Senate, No. 2365

[Senate, October 16, 2007 – Text of the Senate amendment (Baddour) for Senate, No. 2364]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND SEVEN

1 SECTION 1. The General Laws are hereby amended by inserting after chapter
2 140E the 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
6 following 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
10 other than the addressee who does not have actual, implied, or apparent authority for the
11 negotiation and 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
14 the 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
17 after the date shown on the instrument; (2) the financial institution or lender has
18 prominently disclosed in easily understood language on the front or back of the
19 instrument, clearly and conspicuously, the amount financed, the current annual
20 percentage rate, the number of installments to be paid and the amount of each installment
21 to be paid. The financial institution shall also print on the front and back of the
22 instrument the following statements in 14 point type using capital letters: “THIS IS A
23 SOLICITATION FOR A LOAN-- PLEASE READ ALL DISCLOSURES BEFORE
24 SIGNING AND CASHING THIS INSTRUMENT. BY ENDORSING THIS
25 INSTRUMENT, YOU BECOME LEGALLY LIABLE FOR REPAYING MONEYS,
26 INCLUDING INTEREST, AS SPECIFIED IN THE ENCLOSED LOAN
27 AGREEMENT. IF THIS INSTRUMENT IS NOT CASHED, PLEASE DESTROY.”

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

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

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

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

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

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

58 Section 8. Any person or entity that willfully or knowingly gives false or
59 inaccurate information or fails to provide information required to be disclosed or
60 enclosed under this chapter or any regulation issued thereunder, or sends an unsolicited
61 loan instrument after an addressee has notified the person or entity of his request not to be
62 subjected to future solicitations, as provided under section 4, shall be fined not more than
63 \$5000 for each such violation.

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

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

68 SECTION 2. Chapter 140F of the General Laws shall apply to all unsolicited loan
69 instruments issued on or after the effective date of this act.