

SENATE No. 00401

The Commonwealth of Massachusetts

PRESENTED BY:

Steven A. Baddour

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 passage of the accompanying bill:

An Act protecting consumers from unsolicited loans.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Steven A. Baddour</i>	<i>First Essex</i>
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex, Suffolk, and Essex</i>
<i>Barry R. Finegold</i>	<i>Second Essex and Middlesex</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>

SENATE No. 00401

By Mr. Baddour, petition (accompanied by bill, Senate, No. 401) of Devers, Finegold, Eldridge and other members of the General Court for legislation to protect consumers from unsolicited loans [Joint Committee on Financial Services].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ SENATE
□ , NO. 2393 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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, unless the context clearly requires otherwise:-

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

14 Section 2. No unsolicited loan instrument shall be issued except in response to a request
15 or application; provided, however, that this section shall not prohibit a financial institution from
16 advancing money or credit in accordance with law and pursuant to a customer relationship, as
17 defined in the Gramm-Leach-Bliley Act of 1999 15 U.S.C. section 6809 (11) or a valid mortgage
18 or loan agreement.

19 Section 3. If a an unsolicited loan instrument is negotiated, the obligor shall have the
20 right to rescind the contract within 10 days of the date that a negotiable instrument is cashed by
21 notifying the financial institution or lender and returning the entire amount of the loan pursuant
22 to the negotiable instrument.

23 Section 4. An addressee shall not be held liable for any debt incurred by an unauthorized
24 use or fraudulent negotiation of an unsolicited loan instrument by a party other than the
25 addressee. In the event of an unauthorized use or fraudulent negotiation of an unsolicited loan
26 instrument, the issuing institution shall: (1) provide the addressee with a written statement
27 releasing the addressee of liability for the debt; (2) take steps in accordance with the rules and
28 regulations of the commissioner to repair an adverse effect to the addressee's credit rating as a

29 result of the unauthorized use or fraudulent negotiation; and (3) provide the addressee with a
30 written statement informing the addressee that the steps have been or will be taken.

31 Section 5. A financial institution or lender shall not transfer funds held in an account of
32 the addressee in the financial institution as a consequence of a default of a debt owed to the
33 institution as a result of the unauthorized use or fraudulent negotiation of an unsolicited loan
34 instrument.

35 Section 6. A person or entity that knowingly sends an unsolicited loan instrument as
36 provided under section 2 shall be punished by a fine of not more than \$5,000 for each violation.

37 Section 7. The commissioner shall adopt rules and regulations as are necessary to
38 implement this chapter.

39 Section 8. A violation of this chapter, or any rule or regulation issued hereunder, shall
40 constitute an unfair or deceptive act under chapter 93A.

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

43 Section 33B. (a) For purposes of this section the following words shall have the
44 following meanings, unless the context clearly requires otherwise:-

45 "Negotiates", to convert into cash or equivalent value.

46 "Unsolicited loan instrument", a negotiable check, money order, draft or other instrument
47 that may be used by a consumer to activate a loan which was not solicited by the consumer.

48 (b) Whoever knowingly and fraudulently negotiates an unsolicited loan instrument shall
49 be punished by imprisonment in the house of correction for not more than 2 1/2 years or in the

50 state prison for not more than 5 years or by a fine of not more than \$25,000, or by both such fine
51 and imprisonment.