

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

David M. Nangle

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 relative to furnishing or using certain consumer loan information to make solicitations.

PETITION OF:

NAME:

David M. Nangle

DISTRICT/ADDRESS:

17th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO FURNISHING OR USING CERTAIN CONSUMER LOAN INFORMATION TO MAKE SOLICITATIONS.

*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:

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3 Section 50 of Chapter 93 of the General Laws, as appearing in the 2006 Official Edition, is hereby
4 amended by inserting the following:

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6 "Lender" means any of the following:

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8 a financial institution, as defined in Chapter 167; a finance company licensed under Chapter 255; a
9 mortgage banker, loan originator, or mortgage broker registered under Chapter 255E; any other person,
10 not identified above, the primary business of which is to make loans or engage in lending activities in
11 this commonwealth.

12

13 "Nonaffiliated 3rd party" means a person that is not related by common ownership or affiliated by
14 common corporate control.

15

16 "Personal financial data provider" means any person, other than a consumer reporting agency, that
17 regularly engages in whole or in part in the practice of assembling and furnishing to 3rd parties, for a fee
18 or payment of dues, the identity of particular consumers and financial information relating to such
19 consumers that is not generally available to the public, including information derived from any

20 application by these consumers for an extension of credit or other nonpublic personal information, as
21 defined in 15 USC 6809 (4), relating to these consumers.

22
23 "Prescreened consumer report" means a consumer report furnished by a consumer reporting agency
24 under authority of 15 USC 1681b (a) (3) (A) and (c) (1) (B) to a person that the consumer reporting
25 agency has reason to believe intends to use the information in connection with any credit transaction
26 that involves the consumer on whom the information is to be furnished and that is not initiated by this
27 consumer.

28
29 "Trigger lead" means information relating to a consumer that is furnished by a consumer reporting
30 agency or personal financial data provider to a nonaffiliated 3rd party if all of the following apply:

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32 1. The consumer has applied to a lender, other than the 3rd party to whom the information is furnished,
33 for an extension of credit and the lender has provided the consumer's credit application, or information
34 derived from or related to the consumer's credit application, to a consumer reporting agency or
35 personal financial data provider for purposes of obtaining a consumer report or otherwise evaluating or
36 rating the consumer's creditworthiness.

37
38 2. The information furnished to the 3rd party includes the consumer's name and address or telephone
39 number, or other information that allows the 3rd party to identify the consumer.

40
41 3. The information furnished to the 3rd party contains, with respect to the extension of credit for which
42 the consumer has applied under this section, any identification of the amount of credit for which the
43 consumer has applied or any other information that is related to the terms and conditions of credit for
44 which the consumer has applied and that is not generally available to the public.

45
46 4. The consumer has not authorized the consumer reporting agency or personal financial data provider
47 to provide the information to 3rd parties and has not initiated any credit transaction with the 3rd party.

48
49 5. The 3rd party to whom the information is furnished has not extended credit to the consumer on
50 which an unpaid balance remains.

51
52 "Solicit" means the initiation of a communication to a consumer for the purpose of encouraging the
53 consumer to purchase property, goods, or services or apply for an extension of credit. "Solicit" does not
54 include communications initiated by the consumer or directed to the general public.

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56 SECTION 2:

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58 Chapter 93 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by
59 inserting after section 51A, the following section 51B:

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61 (a) If any trigger lead is not a prescreened consumer report, no person may furnish the trigger lead to a
62 nonaffiliated 3rd party unless the person reasonably believes that the 3rd party will not use the trigger
63 lead to solicit any consumer identified in the trigger lead.

64

65 (b) Any person that furnishes a trigger lead described in [\(2\) \(a\)](#) to a nonaffiliated 3rd party shall establish
66 and maintain procedures to reasonably ensure that the trigger lead will not be used to solicit any
67 consumer identified in the trigger lead. These procedures shall include requiring any person that obtains
68 a trigger lead described in [\(2\) \(a\)](#) to identify the user of the trigger lead and to certify, in a manner
69 similar to that required under 15 USC 1681e (a), the purpose for which the trigger lead is obtained and
70 that the person will not use the trigger lead to solicit any consumer identified in the trigger lead.

71

72 (c) No person that obtains a trigger lead described in [\(2\) \(a\)](#) may use the trigger lead to solicit any
73 consumer identified in the trigger lead.

74

75 SECTION 3:

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77 (a) If any trigger lead is a prescreened consumer report, a person that obtains a trigger lead and uses the
78 trigger lead to solicit any consumer identified in the trigger lead may not utilize unfair or deceptive
79 practices in soliciting the consumer.

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81 (b) For purposes of this subsection, unfair or deceptive practices include all of the following:

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83 1. Failure to state in the initial phase of the solicitation that the person soliciting is not the lender, and is
84 not affiliated with the lender, to which the consumer has applied for an extension of credit.

85

86 2. Failure in the initial solicitation to comply with any applicable requirement under this chapter or 15
87 USC 1681b (a), (c), (e), and (f), 1681e (a), and 1681m (d).

88

89 3. Knowingly or negligently utilizing information regarding consumers who have made an election under
90 15 USC 1681b (e) to be excluded from prescreened consumer reports, who have registered their

91 telephone numbers on the national do-not-call registry as provided in 47 CFR 64.1200, or who are listed
92 in the do-not-call list under Chapter 159C.

93

94 4. Soliciting consumers with offers of certain rates, terms, and costs, with intent to subsequently raise
95 the rates or change the terms to the consumers' detriment.

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97 5. Making false or misleading statements in connection with a credit transaction that is not initiated by
98 the consumer.

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100 SECTION 4:

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102 (a) Any person who violates subsection 2 or 3 may be required to forfeit not less than \$100 nor more
103 than \$1,000 for each violation.

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105 (b) The Attorney General may on behalf of the commonwealth:

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107 1. Bring an action for temporary or permanent injunctive or other relief for any violation of this section.
108 In such an action for injunctive relief, irreparable harm is presumed. The court may, upon entry of final
109 judgment, award restitution when appropriate to any person suffering loss because of a violation of this
110 section if proof of such loss is submitted to the satisfaction of the court.

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112 2. Bring an action in any court of competent jurisdiction for the penalties authorized under section [\(4\)](#)
113 [\(a\)](#).

114

115 (c) In addition to any other remedies, any person aggrieved by a violation of subsection 2 may bring a
116 civil action for damages. In such an action, any person who violates subsection 2 or 3 or [\(3\)](#) shall be
117 liable for twice the amount of actual damages caused by the violation or \$500, whichever is greater,
118 including reasonable attorney fees. In such an action, the court may also award any equitable relief that
119 the court determines is appropriate.