

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Baddour, Steven (SEN)**

*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:

Baddour, Steven (SEN)

DISTRICT/ADDRESS:

First Essex

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S02364 OF 2007-2008.]

## **The Commonwealth of Massachusetts**

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**In the Year Two Thousand and Nine**

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### **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:-

#### **CHAPTER 140F**

#### **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 the  
10 addressee who does not have actual, implied, or apparent authority for the negotiation and from  
11 which the addressee receives no benefit.

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

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

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

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

33 Section 5. If a an unsolicited loan instrument is negotiated, the obligor shall have the right to  
34 rescind the transaction within 10 days of the date a negotiable instrument is cashed, by notifying

35 the financial institution or lender and returning the entire amount of the negotiable instrument.

36 Section 6. An addressee shall not be held liable for any 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-Leach-  
50 Bliley Act of 1999, 15 U.S.C. section 6809 (11), or a valid mortgage or loan agreement.

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

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

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

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

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

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

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

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

71 SECTION 3. [Chapter 140F of the General Laws](#) shall apply to all unsolicited loan instruments  
72 issued on or after the effective date of this act.