

SENATE No. 128

The Commonwealth of Massachusetts

PRESENTED BY:

Kathleen O'Connor Ives

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 unsolicited loans.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|-------------------------------|-------------------------------------|
| <i>Kathleen O'Connor Ives</i> | <i>First Essex</i> |
| <i>Karen E. Spilka</i> | <i>Second Middlesex and Norfolk</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> |

SENATE No. 128

By Ms. O'Connor Ives, a petition (accompanied by bill, Senate, No. 128) of Kathleen O'Connor Ives, Karen E. Spilka and Sal N. DiDomenico for legislation relative to unsolicited loans. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to 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.

16 Section 3. An addressee shall not be held liable for any debt incurred by an unauthorized
17 use or fraudulent negotiation of an unsolicited loan instrument by a party other than the

18 addressee. In the event of an unauthorized use or fraudulent negotiation of an unsolicited loan
19 instrument, the issuing institution shall: (1) provide the addressee with a written statement
20 releasing the addressee of liability for the debt; (2) take steps in accordance with the rules and
21 regulations of the commissioner to repair an adverse effect to the addressee's credit rating as a
22 result of the unauthorized use or fraudulent negotiation; and (3) provide the addressee with a
23 written statement informing the addressee that the steps have been or will be taken.

24 Section 4. A financial institution or lender shall not transfer funds held in an account of
25 the addressee in the financial institution as a consequence of a default of a debt owed to the
26 institution as a result of the unauthorized use or fraudulent negotiation of an unsolicited loan
27 instrument.

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

30 Section 6. The commissioner shall adopt rules and regulations as are necessary to
31 implement this chapter.

32 Section 7. A violation of this chapter, or any rule or regulation issued hereunder, shall
33 constitute an unfair or deceptive act under chapter 93A.

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

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

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

39 "Unsolicited loan instrument", a negotiable check, money order, draft or other instrument
40 that may be used by a consumer to activate a loan which was not solicited by the consumer. (b)
41 Whoever knowingly and fraudulently negotiates an unsolicited loan instrument shall be punished
42 by imprisonment in the house of correction for not more than 2 1/2 years or in the state prison for
43 not more than 5 years or by a fine of not more than \$25,000, or by both such fine and
44 imprisonment.