

HOUSE No. 01209

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 updating certain banking laws.

PETITION OF:

NAME:

David M. Nangle

DISTRICT/ADDRESS:

17th Middlesex

HOUSE No. 01209

By Mr. David M. Nangle of Lowell, petition (accompanied by bill, House, No. 01209) of David M. Nangle for legislation to update certain banking laws. Joint Committee on Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An act updating certain banking laws.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1

2 SECTION 1.

3 Section 19 of chapter 167D, as appearing in the 2008 Official Edition, is hereby amended by
4 striking out said section and inserting in place thereof:

5 Whenever a bank as a consequence of a default of a debt owed to said bank by a depositor or
6 shareholder, makes a transfer of funds of such depositor or shareholder to reduce or extinguish
7 said debt, such depositor or shareholder shall be notified forthwith of such transfer by written
8 notice sent by first class mail, directed to his last known address; provided, however, that no
9 such transfer shall be made if such debt is the result of consumer credit granted under the
10 provisions of chapter one hundred and forty D unless the written notice required by section
11 twenty-three of said chapter one hundred and forty D has been given. A depositor or shareholder

12 to whom such notice has not been sent shall be entitled to recover the amount of any actual
13 damages.

14 SECTION 2:

15 Section 9 of Chapter 168 is amended by inserting after the second paragraph, the following:

16 No person shall continue to be a corporator, if such corporator was a trustee of the bank and was
17 removed from office by the trustees for a breach of responsibility as provided in section 10 of
18 this chapter.

19 SECTION 3:

20 Section 14 of Chapter 168, as so appearing is hereby amended by striking out said section and
21 inserting in place thereof the following:

22 The president, clerk of the corporation and such members of the board of trustees as may be
23 required to be elected under the provisions of section ten shall be elected at the annual meeting
24 or a special meeting of the corporators. If any such office becomes vacant between meetings of
25 the corporators, during the year the trustees may, except as otherwise provided in this chapter,
26 fill the vacancy or appoint a new officer until the next annual meeting.

27 The members of the board of investment, the treasurer, vice treasurer, assistant treasurers, vice
28 presidents, and such other officers as may be determined to be necessary as provided in section
29 thirteen, shall be elected by the trustees and shall hold office during their pleasure, and the
30 trustees may fill vacancies in such offices at any time.

31 All trustees and other officers shall be sworn, and shall hold their several offices until others are
32 elected and qualified in their stead; and a record of such qualification shall be made and

33 preserved with the records of such corporation. If a person elected as trustee or other officer of
34 such corporation does not, within forty-five days thereafter, take the oath of office, his office
35 thereupon shall become vacant; provided, that such oath may be taken in person at any office of
36 such corporation or may be taken in writing before a notary public or justice of the peace and
37 transmitted to such corporation within said period.

38 SECTION 4

39 Section 20 of Chapter 168, as so appearing, is hereby amended by striking out the second
40 paragraph and inserting in place thereof:

41 The report to the commissioner shall consist of, but not be limited to, the following: (1) the name
42 of the officer as defined in section 19, director, trustee or principal shareholder of said
43 corporation, bank holding company or other subsidiary to whom any such loan or extension of
44 credit has been given or the name of such company to which such loan or extension of credit has
45 been made, (2) the original amount of the loan and the interest rate thereon, (3) the date of the
46 loan, (4) the type of loan, (5) if the loan is secured in any manner, the type of secured asset and
47 its valuation, (6) the terms of the payment, (7) the current balance, and (8) the amount of
48 principal or interest payments in default, if any, and the length of the default.

49 SECTION 5

50 Section 38 of Chapter 168, as so appearing, is hereby amended by striking out the second
51 paragraph and inserting in place thereof:

52 Copies of the minutes of the proceedings of such meeting of members or trustees verified by the
53 affidavit of the secretary or an assistant secretary or clerk shall be filed in the office of the

54 commissioner and mailed to the Office of the Comptroller of the Currency within ten days after
55 such meeting. Such verified copies of the proceedings of the meeting when so filed shall be
56 presumptive evidence of the holding and action of such meeting. At the meeting at which
57 conversion is voted upon, the members or trustees shall also vote upon the persons who shall be
58 the incorporators and trustees of the state-chartered savings bank after conversion takes effect.

59 SECTION 6:

60 Section 19 of Chapter 170, as so appearing is hereby amended by striking the fourth paragraph
61 and inserting in place thereof:

62 Said report to the commissioner shall consist of, but not be limited to, (a) the name of the officer,
63 director, trustee or principal shareholder of said corporation, bank holding company or other
64 subsidiary to whom any such loan or extension of credit has been made or the name of such
65 company to which any such loan or extension of credit has been made, (b) the original amount of
66 the loan and the interest rate thereon, (c) the date of the loan, (d) the type of loan, (e) if the loan
67 is secured in any manner, the type of secured asset and its valuation, (f) the terms of the
68 payment, (g) the current balance, and (h) the amount of principal or interest payments in default,
69 if any, and the length of any such default.

70 SECTION 7:

71 Section 29 of Chapter 170, as so appearing, is hereby amended by striking out the first paragraph
72 and inserting in place thereof:

73 Any federal savings and loan association may convert itself into a co-operative bank upon the
74 same terms and conditions that from time to time shall apply under federal law and regulations to

75 the conversion of a co-operative bank to such an association; provided, however, that where
76 authority is conferred upon the Office of the Comptroller of the Currency, in the case of a
77 conversion from a co-operative bank to an association, similar authority, in the case of a
78 conversion from such an association to a co-operative bank, unless expressly provided in this
79 section is hereby conferred upon the board of bank incorporation.

80 SECTION 8

81 Section 13 of Chapter 172, as so appearing, is hereby amended by striking out the second
82 paragraph and inserting in place thereof:

83 Each director shall own, in his own right and free of any lien or encumbrance, common stock,
84 either of such corporation or of a company owning seventy-five per cent of the stock of such
85 corporation, having a par value, or a fair market value on the date the person became a director,
86 of not less than one thousand dollars. Any director who ceases to be the owner of the required
87 number of shares of stock, or who becomes in any other manner disqualified, shall vacate his
88 office forthwith. Each director, when appointed or elected, shall take an oath that he will
89 faithfully perform the duties of his office and that he is the owner, in his own right and free of
90 any lien or encumbrance, of the amount of stock required by this section. The oath shall be taken
91 before a notary public or justice of the peace, and a record of the oath shall be made a part of the
92 records of such corporation.

93 SECTION 9:

94 Section 18 of Chapter 172, as so appearing is hereby amended by striking the fourth paragraph
95 and inserting in place thereof:

96 Said report to the commissioner shall consist of, but not be limited to, the following: (a) the
97 name of the officer, director, trustee or principal shareholder of said trust company, bank holding
98 company or other subsidiary to whom any loan or extension of credit has been made or the name
99 of such company to which any such loan or extension of credit has been made, (b) the original
100 amount of the loan and the interest rate thereon, (c) the date of the loan, (d) the type of loan, (e)
101 if the loan is secured in any manner, the type of secured asset and its valuation, (f) the terms of
102 the payment, (g) the current balance, and (h) the amount of principal or interest payments in
103 default, if any, and the length of such default.

104 SECTION 10:

105 Section 36 of Chapter 172 is hereby amended by striking out said section and inserting in place
106 thereof

107 Section 36. A. With the written approval of the commissioner:

108 (1) any trust company, any banking company, or any national banking association engaged in the
109 business of banking in the commonwealth may, upon compliance with the provisions of section
110 seventy-eight of chapter one hundred and fifty-six B, which are hereby made applicable in all
111 such cases, and subject, as to any such trust company or banking company, to the provisions of
112 section eighty-five of chapter one hundred and fifty-six B as modified for the purposes of this
113 section by the provisions hereof, consolidate or merge into any trust company. A request for
114 approval by the commissioner of such a consolidation or merger shall be accompanied by an
115 investigation fee, the amount of which shall be determined annually by the commissioner of
116 administration under the provision of section three B of chapter seven.

117 (2) any trust company or banking company may, subject to the provisions of sections seventy-
118 five and seventy-six of chapter one hundred and fifty-six B as modified for the purpose of this
119 section by the provisions hereof, or any such national banking association may sell or exchange
120 all or substantially all of its property and assets to or with any trust company, and any trust
121 company may purchase all or substantially all of the assets of any trust company or any banking
122 company of any such national banking association. A request for approval by the commissioner
123 pursuant to this clause shall be accompanied by an investigation fee, the amount of which shall
124 be determined annually by the commissioner of administration under the provision of section
125 three B of chapter seven.

126 (3) by vote, at a meeting duly called for the purpose, of two-thirds of each class of its stock
127 outstanding and entitled to vote and upon execution by a majority of its directors in form
128 satisfactory to the commissioner of an agreement of association, an organization certificate and
129 such other instruments as the commissioner shall prescribe, any federally chartered stock
130 corporation having an unimpaired capital stock sufficient in value or amount to satisfy the
131 provisions of section five may, upon approval by the board of bank incorporation, be converted
132 into a state-chartered stock corporation and shall not, in connection with or upon such
133 conversion, be subject to the requirements of this chapter with respect to the organization and
134 commencement of business of trust companies, the requirements of chapter one hundred and
135 sixty-eight with respect to the organization and commencement of business of savings banks, or
136 the requirements of chapter one hundred and seventy with respect to the organization and
137 commencement of business of cooperative banks, as applicable; provided, however, that such
138 conversion shall not be in contravention of the laws of the United States; and provided, further,
139 that any such conversion into a state-chartered savings bank shall be subject to applicable

140 provisions of section thirty-eight of chapter one hundred and sixty-eight, and any such
141 conversion into a state-chartered cooperative bank shall be subject to applicable provisions of
142 section twenty-nine of chapter one hundred and seventy.

143 (4) any one or more such trust companies may, upon compliance with the provisions of section
144 seventy-eight of chapter one hundred and fifty-six B, which are hereby made applicable in all
145 such cases and subject as to any such trust company to the provisions of section eighty-five of
146 chapter one hundred and fifty-six B as modified for the purposes of this section by the provisions
147 hereof, consolidate or merge into any single state or federally-chartered stock corporation. A
148 request for approval by the commissioner of such a consolidation or merger shall be
149 accompanied by an investigation fee, the amount of which shall be determined annually by the
150 commissioner of administration under the provision of section three B of chapter seven. A
151 certificate under the hands of the presidents and clerks or other duly authorized officers of all
152 merging or consolidating corporations setting forth that each corporation, respectively, has
153 complied with the requirements of this section shall be submitted to the commissioner. No such
154 transaction under this section shall be consummated until arrangements satisfactory to any excess
155 deposit insurer of each such bank have been made and notice thereof has been received by the
156 commissioner. The offices and depots of any such corporation merged or consolidated under this
157 section may be maintained as branch offices or depots, respectively, of the continuing institution
158 with the written permission of and under such conditions, if any, as may be approved by the
159 commissioner.

160 If the consolidating corporations have main offices in different states or counties, the main office
161 of the continuing corporation shall be the main office of that consolidating corporation which has
162 the greater total assets on the date on which the merger or consolidation is approved by the board

163 of the last consolidating corporation so to approve; provided, however, that upon a determination
164 by the commissioner that such consolidation is not for the purpose of circumventing any
165 geographic restrictions on the establishment of branch offices, he may allow the main office of
166 the consolidating corporation which has the lesser total assets on such date to be the main office
167 of the continuing corporation.

168 If the merging or consolidating corporations are chartered by or, in the case of federally
169 chartered stock corporations, have their main offices located in and are authorized to do business
170 in different states, then from and after the effective date of the merger or consolidation, the
171 citizenship and residency requirements for directors set forth in section thirteen shall no longer
172 apply, and any citizen of the United States may serve as director of the continuing corporation.

173 For the purposes of this section, the value of the stock of stockholders of a state-chartered stock
174 corporation who have, as provided in section seventy-six or section eighty-five of chapter one
175 hundred and fifty-six B, voted against any action authorized herein shall be ascertained in the
176 manner provided in sections eighty-six to ninety-eight, inclusive, of said chapter one hundred
177 and fifty-six B.

178 The provisions of section eighty of chapter one hundred and fifty-six B shall apply to
179 consolidations and mergers of state-chartered stock corporations authorized under this section
180 provided that, for this purpose, references in said section eighty to said chapter one hundred and
181 fifty-six B shall be deemed to be to the chapter of the General Laws governing such stock
182 corporation, and references in said section eighty to articles of organization shall be deemed to
183 be to the articles of organization, including any special act of incorporation, as from time to time
184 amended.

185 The provisions of this clause shall not apply to a consolidation or merger authorized by clause
186 (1) or to a consolidation or merger under subsection B.

187 In deciding whether or not to approve any such consolidation or merger under this subsection,
188 the commissioner shall determine whether or not competition among banking institutions will be
189 unreasonably affected and whether or not public convenience and advantage will be promoted. In
190 making such determination, the commissioner shall consider, but not be limited to, a showing of
191 net new benefits. For the purpose of this section, the term “net new benefits” shall mean initial
192 capital investments, job creation plans, consumer and business services, commitments to
193 maintain and open branch offices within a bank’s delineated local community, as such term is
194 used within section fourteen of chapter one hundred and sixty-seven, and such other matters as
195 the commissioner may determine.

196 For the purposes of this section, a state-chartered stock corporation shall mean a trust company,
197 savings bank, or a cooperative bank in stock form chartered by the commonwealth, or a bank
198 chartered by a country other than the United States. A federally chartered stock corporation shall
199 mean a national banking association, federal savings and loan association or federal savings bank
200 in stock form which has its main office located in the commonwealth.

201 B. A trust company or banking company by vote of the holders of at least two- thirds of each
202 class of capital stock at a meeting duly called for the purpose, preceded by a notice in writing
203 sent to each stockholder of record and to the commissioner by registered mail at least sixty days
204 before said meeting, may consolidate or merge into or convert into a national banking
205 association in accordance with the laws of the United States and without the approval of any
206 authority of the commonwealth.

207 C. For the purposes of either clause (1) or clause (2) of subsection A hereof, the value of the
208 stock of stockholders of a trust company or banking company who have, as provided in section
209 seventy-six or section eighty-five of chapter one hundred and fifty-six B, voted against any
210 action authorized by either of such clauses shall be ascertained in the manner provided in
211 sections eighty-six to ninety-eight, inclusive, of said chapter one hundred and fifty-six B.

212 D. The continuing state-chartered stock corporation into which a trust company, banking
213 company or a national banking association shall have been consolidated or merged or into which
214 a federally chartered stock corporation shall have been converted under this section shall be
215 considered the same business and corporate entity as that of the consolidating or merging or
216 converting institution and the rights, powers and duties of the continuing trust company shall be
217 those established by its charter; provided that if the consolidating corporations have main offices
218 in different counties, the main office of the continuing corporation shall be the main office of
219 that consolidating corporation which has the greater total assets on the date on which the merger
220 or consolidation is approved by the board of directors of the last consolidating corporation so to
221 approve; provided, further, that upon a determination by the commissioner that such
222 consolidation is not for the purpose of circumventing any geographic restrictions on the
223 establishment of branch offices, he may allow the main office of the consolidating corporation
224 which has the lesser total assets on such date to be the main office of the continuing corporation.

225 E. The charter of any trust company or banking company which shall have been converted into a
226 national banking association, or consolidated or merged into, or the business and substantially all
227 of the property and assets of which shall have been purchased or absorbed by a trust company or
228 national banking association, or the affairs of which shall have been liquidated, shall be void
229 except for the purpose of discharging existing obligations and liabilities.

230 F. The provisions of section eighty of chapter one hundred and fifty-six B shall apply to
231 consolidations and mergers of trust companies authorized under this section provided that, for
232 this purpose, references in said section eighty to said chapter one hundred and fifty-six B shall be
233 deemed to be to this chapter, and references in said section eighty to articles of organization shall
234 be deemed to be to the articles of organization, including any special act of incorporation, as
235 from time to time amended.