

HOUSE No. 4778

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, December 28, 2016.

The committee on Bills in the Third Reading, to whom was referred the Bill making changes to certain references in the banking laws of the Commonwealth (House, No. 4721), reports recommending that the same be amended by substitution of a Bill relative to banking law (House, No. 4778), and that when so amended the same will be correctly drawn.

For the committee,

THEODORE C. SPELIOTIS

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to banking law.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to make certain changes in the banking laws of the commonwealth, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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. Section 83 of chapter 62C of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by striking out, in lines 8 to 11, the words “section twenty-
3 six of chapter one hundred and sixty-eight or section eighteen of chapter one hundred and
4 seventy or section twenty-two of chapter one hundred and seventy-two” and inserting in place
5 thereof the following words:- section 9 of chapter 167J.

6 SECTION 2. Section 1 of chapter 63 of the General Laws, as so appearing, is hereby
7 amended by striking out, in line 93, the words “section 38 of chapter 167” and inserting in place
8 thereof the following words:- section 15 of chapter 167C.

9 SECTION 3. Section 4-406 of chapter 106 of the General Laws, as so appearing, is
10 hereby amended by striking out, in line 56, the figure “27” and inserting in place thereof the
11 following figure:- 7.

12 SECTION 4. Section 3 of chapter 110F of the General Laws, as so appearing, is hereby
13 amended by striking out, in lines 92 to 96, inclusive, the words “ a savings bank in stock form to
14 which certain provisions of said chapter 172 apply pursuant to section 34C of chapter 168, or a
15 cooperative bank in stock form to which certain provisions of said chapter 172 apply pursuant to
16 section 26C of chapter 170” and inserting in place thereof the following words:- a savings bank
17 in stock form or a cooperative bank in stock form.

18 SECTION 5. Subsection (a) of section 183 of chapter 149 of the General Laws, as so
19 appearing, is hereby amended by striking out, in lines 21 to 24, the words “a savings bank to
20 which certain provisions of said chapter 172 apply pursuant to section 34C of chapter 168, a
21 cooperative bank in stock form to which certain provisions of chapter 172 apply pursuant to
22 section 26C of chapter 170” and inserting in place thereof the following words:- a savings bank
23 in stock form, a cooperative bank in stock form.

24 SECTION 6. Section 2A of chapter 167 of the General Laws, as so appearing, is hereby
25 amended by striking out, in line 42 and lines 48 and 49, the words “banks and banking” and
26 inserting in place thereof, in each instance, the following words:- financial services.

27 SECTION 7. Section 14 of said chapter 167, as so appearing, is hereby amended by
28 striking out, in line 41, the words “banks and banking” and inserting in place thereof the
29 following words:- financial services.

30 SECTION 8. Section 37 of said chapter 167, as so appearing, is hereby amended by
31 striking out, in lines 22 to 24, inclusive the words “one hundred and sixty-seven C to one
32 hundred and sixty-seven G, inclusive, and chapters one hundred and sixty-eight to one hundred

33 and seventy-two A, inclusive,” and inserting in place thereof the following words:- 167C to
34 167J, inclusive, and chapters 168, 170, 171 and 172.

35 SECTION 9. Section 3 of chapter 167A of the General Laws, as so appearing, is hereby
36 amended by striking out, in lines 22 to 24, the words “Section 2 shall not apply to the
37 acquisition by a bank holding company, or a company or a banking institution which would
38 become a bank holding company if” and inserting in place thereof the following words:- If the
39 commissioner determines that the reciprocity, age of institution and deposit cap requirements of
40 section 2 have been met then the other provisions of section 2 shall not apply to the acquisition
41 by a bank holding company, or a company or a banking institution which would become a bank
42 holding company; provided, that.

43 SECTION 10. Section 3 of chapter 167B of the General Laws, as so appearing, is hereby
44 amended by striking out the fourth paragraph.

45 SECTION 11. Section 12 of chapter 167C of the General Laws, as so appearing, is
46 hereby amended by striking out the fourth paragraph.

47 SECTION 12. Section 16 of chapter 167D of the General Laws, as so appearing, is
48 hereby amended by striking out, in lines 6 to 9, the words “no such transfer shall be made if the
49 debt is the result of consumer credit granted under the federal Truth in Lending Act, 15 U.S.C.
50 section 1601 et. seq.” and inserting in place thereof the following words:- if the debt is the result
51 of consumer credit granted under the federal Truth in Lending Act, 15 U.S.C. section 1601 et.
52 seq. then notice, if any, shall be made in compliance with the federal act and the regulations
53 promulgated thereunder.

54 SECTION 13. Section 1 of chapter 167E of the General Laws, as so appearing, is hereby
55 amended by striking out, in line 10, the word “muform” and inserting in place thereof the
56 words:- mutual form.

57 SECTION 14. Section 2 of chapter 167H of the General Laws, as so appearing, is hereby
58 amended by inserting after the word “to,” in line 9, the following words:- the organization of an
59 interim bank or.

60 SECTION 15. Said section 2 of said chapter 167H, as so appearing, is hereby further
61 amended by striking out, in line 14, the word “mutual”.

62 SECTION 16. Said section 2 of said chapter 167H, as so appearing, is hereby further
63 amended by inserting after the word “to,” in line 32, the following words:- ,the organization of
64 an interim bank or.

65 SECTION 17. Said section 2 of said chapter 167H, as so appearing, is hereby further
66 amended by adding the following subsection:-

67 (d) The certificate of authority and a copy of the articles of organization for a subsidiary
68 banking institution established pursuant to a reorganization pursuant to clause (2) of subsection
69 (a) or clause (2) of subsection (b) shall be filed with the secretary of state.

70 SECTION 18. Section 6 of said chapter 167H, as so appearing, is hereby amended by
71 striking out, in lines 9 and 10, the words “procedures of the General Laws” and inserting in place
72 thereof the following words:- provisions of chapter 156D.

73 SECTION 19. Section 7 of said chapter 167H, as so appearing, is hereby amended by
74 striking out, in line 11, the words “form and” and inserting in place thereof the words:- form, an
75 out-of-state-bank, as defined in section 1 of chapter 167 in mutual form, and.

76 SECTION 20. Section 1 of chapter 167I of the General Laws, as so appearing, is hereby
77 amended by striking out, in line 40, the words “chapter 168 or 170” and inserting in place thereof
78 the words:- chapter 167H or section 9 of this chapter.

79 SECTION 21. The first paragraph of section 2 of said chapter 167I, as so appearing, is
80 hereby amended by inserting after the first sentence the following two sentences:- One or more
81 mutual banks, one or more thrift institutions and a subsidiary banking institution may merge or
82 consolidate into the single subsidiary banking institution, upon terms approved by a vote of at
83 least 2/3 of the board of each mutual bank, by the board of each thrift institution in accordance
84 with the laws pursuant to which each such thrift institution is organized, and the board of the
85 subsidiary banking institution and approved in writing by the commissioner. For the remaining
86 provisions of this section references to a mutual bank or mutual banks shall also mean a
87 subsidiary banking institution.

88 SECTION 22. Said section 2 of said chapter 167I, as so appearing, is hereby further
89 amended by inserting after the word “body”, in line 11, the following words:- present and voting
90 thereon.

91 SECTION 23. Section 3 of said chapter 167I, as so appearing, is hereby amended by
92 inserting after the word “bank”, in line 13, the following words:- present and voting thereon.

93 SECTION 24. Said section 3 of said chapter 167I, as so appearing, is hereby further
94 amended by inserting after the word “bank”, in line 36, the following words:- present and voting.

95 SECTION 25. Said section 3 of said chapter 167I, as so appearing, is hereby further
96 amended by inserting after the word “ascertained”, in line 64, the following words:- and paid.

97 SECTION 26. Section 11 of said chapter 167I, as so appearing, is hereby amended by
98 inserting after the word “body”, in line 2, the following words:- present and voting.

99 SECTION 27. Section 13 of said chapter 167I, as so appearing, is hereby amended by
100 striking out, in lines 29 and 30, the words “stockholders owning at least 2/3 of the stock of such
101 corporation” and inserting in place thereof the following words:- 2/3 of the stockholders present
102 and voting thereon.

103 SECTION 28. Section 15 of said chapter 167I, as so appearing, is hereby amended by
104 inserting after the word “bank”, in line 4, the following words:- present and voting thereon.

105 SECTION 29. Section 8 of chapter 167J of the General Laws, as so appearing, is hereby
106 amended by striking out, in line 3, the words “state or federally chartered” and inserting in place
107 thereof the following words:- federal savings bank or federal.

108 SECTION 30. Section 11 of said chapter 167J, as so appearing, is hereby amended by
109 inserting after the word “submitted”, in lines 7 and 8, the following words:- or as of the close of
110 the last business day of the preceding month or as of the close of a business day not more than
111 ten days prior to the date of the meeting.

112 SECTION 31. Section 21 of said chapter 167J, as so appearing, is hereby amended by
113 striking out, in line 4, the word “procedures” and inserting in place thereof the following word:-
114 provisions.

115 SECTION 32. Section 17 of chapter 168 of the General Laws, as so appearing, is hereby
116 amended by inserting after the word “bank”, in line 26, the following words:- , federal savings
117 bank.

118 SECTION 33. Section 19 of said chapter 168, as so appearing, is hereby amended by
119 striking out the third sentence and inserting in place thereof the following sentence:- Within 60
120 days after the annual meeting, the clerk shall file with the records of the corporation a list
121 containing the names of the corporators , which indicates those who are trustees.

122 SECTION 34. Section 8A of chapter 171 of the General Laws is hereby amended by
123 striking out section 8A, inserted by section 56 of chapter 482 of the acts of 2014, and inserting in
124 place thereof the following section:-

125 Section 8G. For the purposes of this section, the following words shall, unless the context
126 clearly requires otherwise, have the following meanings:-

127 “Electronic branch”, an electronic device, other than a telephone operated by a consumer,
128 through which a consumer may initiate an electronic fund transfer. Such term includes, but is not
129 limited to automated teller machines and cash dispensing machines. Such term does not include a
130 teller machine or similar device located on the premises of and operated solely by an employee
131 of a financial institution or a point-of-sale terminal.

132 “Organization”, any person, corporation, association or partnership which assists or
133 provides services to a financial institution or merchant in order to make available electronic fund
134 transfers; provided, however, that a financial institution or merchant shall not be considered an
135 organization.

136 “Point-of-sale terminal”, an electronic terminal located on the premises of a merchant
137 when such terminal is used with the assistance of an employee of a merchant for a customer's
138 purchase or lease of goods or services sold or leased by such merchant or adjustments thereto or
139 the receipt of cash by the customer which is ancillary to the customer's purchase or lease of
140 goods or services from such merchant; provided, however, that such terminal shall be deemed an
141 electronic branch for the purposes of this chapter whenever it is used for any other electronic
142 fund transfer, or for an electronic fund transfer involving a customer's account held by an
143 organization, or for an electronic fund transfer solely for customers of a single financial
144 institution or bank holding company subject to chapter 167A or the federal Bank Holding
145 Company Act of 1956, 12 U.S.C. section 1841 et seq.

146 A credit union shall comply with the federal Electronic Fund Transfer Act, 15 U.S.C.
147 section 1693 et seq. and the regulations promulgated thereunder; provided, however, the
148 maximum liability of a consumer under 15 U.S.C. section 1693g shall be limited to \$50.00.

149 After a vote of its board of directors, a credit union, except as otherwise provided in this
150 section, may purchase, establish, install, operate, lease or use individually or with any other
151 financial institution or organization or share with any other financial institution or organization
152 any number of manned or unmanned electronic branches at which a customer may make
153 deposits, withdrawals, transfers of funds, obtain advances against preauthorized lines of credit,
154 cash checks or pay obligations, and any number of point-of-sale terminals; provided, however,
155 that withdrawals from such electronic branches, other than those located at an office of a credit
156 union, shall be made only from a demand deposit account, negotiable withdrawal order account,
157 or statement account or against a preauthorized line of credit; and provided, further that the credit
158 union shall have applied for and obtained the approval of the commissioner for such electronic

159 branch except that a credit union at whose office such electronic branch is located need not have
160 applied for or obtained such approval. The commissioner shall approve such application if, in the
161 commissioner's opinion, such action will promote a sound banking system which provides for
162 the needs of the people and business, encourages competition, discourages monopolies and does
163 not ignore legislative policies.

164 There shall be no geographical limitation on the location of electronic branches which a
165 credit union may purchase, establish, install, operate, lease or use individually or with any other
166 financial institution or organization or share with any other financial institution or organization;
167 provided, however, that the site location for such electronic branches, other than an electronic
168 branch located at an office of a financial institution or in another state, shall be subject to
169 approval by, and regulation of, the commissioner. An electronic branch may be located in a
170 mobile unit under such conditions and limitations as the commissioner, by regulation, shall
171 establish.

172 A credit union shall adopt and maintain safeguards to insure the safety of a customer
173 using the electronic branch, to insure the safety of the funds, items and other information at the
174 electronic branch and to assist in the identification of criminals. The commissioner may
175 promulgate rules and regulations establishing minimum standards for such safeguards. Such
176 safeguards shall be in place and operational at the time such electronic branch begins to transact
177 business; provided, however, that such safeguards shall not apply to an electronic branch located
178 at an office of a credit union.

179 SECTION 35. Section 9A of chapter 172 of the General Laws, as so appearing, is hereby
180 amended by striking out, in line 78, the figure “ 167G” and inserting in place thereof the
181 following figure:- 167J.

182 SECTION 36. Section 2 of chapter 183C of the General Laws, as so appearing, is hereby
183 amended by striking out the definition of “High cost home mortgage loan” and inserting in place
184 thereof the following definition:- “High cost home mortgage loan”, a consumer credit
185 transaction that is secured by the borrower’s principal dwelling, except a reverse mortgage
186 transaction, with an annual percentage rate or fees which exceed the limitations set pursuant to
187 regulations issued by the commissioner of banks which shall be no less protective than
188 limitations of 12 CFR 1026.32(a)(1).

189 SECTION 37. Said chapter 183C is hereby further amended by striking out section 3, as
190 so appearing, and inserting in place thereof the following section:-

191 Section 3. A creditor may not make a high-cost home mortgage loan without first
192 receiving certification from a counselor, in accordance with the requirements of 209 CMR
193 32.34(1) or 12 CFR 1026.34(a)(5). A high cost home mortgage loan originated by a lender in
194 violation of this section shall not be enforceable.

195 SECTION 38. Section 4 of said chapter 183C, as so appearing, is hereby amended by
196 striking out the second paragraph and inserting in place thereof the following paragraph:-

197 There shall be a presumption that the borrower is able to make the scheduled payments if,
198 at the time the loan is made, the lender complied with 209 CMR 32.43 or 12 CFR 1026.43 to
199 determine the borrower’s ability to repay.

200 SECTION 39. Section 6 of said chapter 183C, as so appearing, is hereby amended by
201 striking out, in lines 2 and 3, the words- “greater than 5 per cent of the total loan amount or \$800,
202 whichever is greater”.

203 SECTION 40. Section 2 of chapter 45 of the acts of 1932, as most recently amended by
204 sections 6 and 7 of chapter 235 of the acts of 2012, is hereby further amended by striking out the
205 seventh sentence and inserting in place thereof the following words:- The board of directors shall
206 adopt such rules and regulations as they may deem necessary to effect the purposes of this act,
207 and of section 17 of chapter 167I of the General Laws.

208 SECTION 41. The first paragraph of section 1A of chapter 43 of the acts of 1934, as
209 amended by section 167 of chapter 189 of the acts of 1984, is hereby further amended by striking
210 out the last sentence and inserting in place thereof the following sentence:- Every member bank
211 shall furnish to the treasurer of the corporation one copy of any report of examination and audit
212 filed with the commissioner by such bank or caused by the commissioner to be made with
213 respect to such bank, in each case within fifteen days after such report is filed with or otherwise
214 furnished to the commissioner.

215 SECTION 42. Section 3 of said chapter 43, as most recently amended by section 33 of
216 chapter 238 of the acts of 1996, is hereby further amended by striking out the fourth and fifth
217 sentences and inserting in place thereof the following 2 sentences:- In case of the liquidation of
218 any member bank, the corporation shall, provided that the directors are satisfied that such bank
219 has paid or will be able to pay its depositors in full, return the unexpended portion, as determined
220 by said directors, of all assessments paid by such bank into the Deposit Insurance Fund, after
221 deducting as a charge for insurance of its deposits during the period from October 1, 1939, to the

222 date of the vote authorizing such liquidation, an amount equal to the sum of the annual
223 assessments due and payable on October 1, 1939 and on October 1 of each year thereafter while
224 a member bank as provided in sections 1 and 17. In the case of a merger or consolidation of a
225 savings bank with 1 or more other savings banks pursuant to chapter 167I of the General laws or
226 in the case of a sale of assets of such bank to and the assumption of liabilities by 1 or more
227 savings banks pursuant to said chapter 167I, the continuing bank shall succeed to any of the
228 rights of the discontinuing bank in the assessments theretofore paid by the discontinuing bank;
229 provided, however, that if the continuing bank is, and the discontinuing bank is not, a member of
230 the federal deposit insurance agency section 15 shall apply to such assessments of the
231 discontinuing bank as though such bank had become a member of a federal deposit insurance
232 agency as provided in sections 12 to 15, inclusive.

233 SECTION 43. The fourth paragraph of section 3A of said chapter 43, added by chapter
234 534 of the acts of 1952, is hereby amended by striking out the first sentence and inserting in
235 place thereof the following sentence:- Notwithstanding the provisions of the General Laws
236 relative to voluntary dissolution and liquidation of a savings bank, in order to give effect to the
237 purpose of this section and subject to the approval of the commissioner and of the corporation,
238 such member bank may be dissolved and liquidate its affairs if authorized by vote of at least 2/3
239 of its trustees; provided, that another savings bank shall have assumed and agreed to pay the
240 whole of the deposits of such member bank pursuant to chapter 167I of the General Laws.

241 SECTION 44. Section 7 of said chapter 43, as amended by section 87 of chapter 371 of
242 the acts of 1983, is hereby further amended by striking out the first sentence and inserting in
243 place thereof the following sentence:- For the purpose of carrying out the provisions of this act,
244 the corporation may exercise all the powers, rights and franchises of any bank the control,

245 possession and operation of which has been taken over by it under this act, and may exercise all
246 the powers and rights of the incorporators of such bank relative to a merger or consolidation
247 conferred upon them by purchase of assets and assumption of liabilities under chapter 167I.

248 SECTION 45. Section 12 of said chapter 43 is hereby amended by striking out the first
249 sentence, as amended by section 26 of chapter 64 of the acts of 1999, and inserting in place
250 thereof the following sentence:- Any member bank which shall apply for membership in a
251 federal deposit insurance agency shall forthwith give written notice thereof to the Depositors
252 Insurance Fund, and to the commissioner.

253 SECTION 46. Paragraph (d) of section 17 of said chapter 43, as appearing in section 22
254 of chapter 405 of the acts of 1985, is hereby amended by striking out the first sentence and
255 inserting in place thereof the following sentence:- Upon payment by the Deposit Insurance Fund
256 of all or any part of the portion of any deposit insured by the fund in any member bank, the fund
257 shall be subrogated to the rights of the person to whom such insurance was so paid to receive the
258 same distribution from the proceeds of assets and claims of such bank as would have been
259 payable to him on a claim for the portion of his deposit so paid by the Deposit Insurance Fund,
260 but he shall retain his right to receive distribution of so much of his claim against said assets to
261 which he may be entitled after reimbursement pro rata of the claims for subrogation to the
262 Deposit Insurance Fund as provided in this paragraph and to a federal deposit insurance agency..

263 SECTION 47. Paragraph (i) of section 19 of said chapter 43, as appearing in section 22A
264 of said chapter 405, is hereby amended by striking out the first sentence and inserting in place
265 there of the following sentence:- Upon payment by the Deposit Insurance Fund of all or any part
266 of the portion of any deposit insured by the fund in such bank, the fund shall be subrogated to the

267 rights of the person to whom such insurance was so paid to receive the same distribution from
268 the proceeds of assets and claims of such bank as would have been payable to him on a claim for
269 the portion of his deposit so paid by the Deposit Insurance Fund, but he shall retain his right to
270 receive distribution of so much of his claim against said assets to which he may be entitled after
271 reimbursement pro rata of the claims for subrogation to the Deposit Insurance Fund as provided
272 in this paragraph and to the Federal Deposit Insurance Corporation.

273 SECTION 48. Section 1 of chapter 73 of the acts of 1934, as most recently amended by
274 section 17 of chapter 235 of the acts of 2012, is hereby further amended by striking out the sixth
275 sentence and inserting in place thereof the following sentence:- All assessments pursuant to this
276 section and all payments pursuant to section 17 of chapter 167I of the General Laws shall be held
277 as a fund to be known as the Share Insurance Fund and shall be in addition to all other payments
278 to the central bank required pursuant to said chapter 45 and pursuant to said section 17 of chapter
279 167I.

280 SECTION 49. The first paragraph of section 1A of said chapter 73, as amended by
281 section 18 of said chapter 235, is hereby further amended by striking out the last sentence and
282 inserting in place thereof the following sentence:- Every member bank shall furnish to the
283 treasurer of the central bank 1 copy of any report or audit filed with the commissioner by such
284 bank or caused by the commissioner to be made with respect to such bank in each case within 15
285 days after such report is filed with or otherwise furnished to the commissioner.

286 SECTION 50. The second paragraph of section 3 of said chapter 73, is hereby amended
287 by striking out the first sentence, as appearing in section 22 of said chapter 235, and inserting in
288 place thereof the following sentence:- In the case of a merger or consolidation of a co-operative

289 bank with 1 or more other co-operative banks pursuant to 167I of the General Laws, or in the
290 case of a sale of assets of such bank to and the assumption of its liabilities by one or more co-
291 operative banks pursuant to section 7 or pursuant to chapter 167I, the continuing bank shall
292 succeed to any of the rights of the discontinuing bank in the assessments theretofore paid by the
293 discontinuing bank; provided, however, that if the continuing bank is, and the discontinuing bank
294 is not, a member of the federal deposit insurance agency section 14 shall apply to such
295 assessments of the discontinuing bank as though such bank had become a member of a federal
296 deposit insurance agency as provided in sections 11 to 14, inclusive.

297 SECTION 51. The fourth paragraph of section 3A of said chapter 73, as appearing in
298 section 23 of said chapter 235, is hereby amended by striking out the first sentence and inserting
299 in place thereof the following sentence:- Notwithstanding the provisions of the General Laws
300 relative to voluntary dissolution and liquidation of a co-operative bank, in order to give effect to
301 the purpose of this section and subject to the approval of the commissioner and of the central
302 bank, such member bank may be dissolved and liquidate its affairs if authorized by a vote of at
303 least two thirds of its directors; provided that another depository institution, the deposits of
304 which are insured by a federal deposit insurance agency, shall have assumed and agreed to pay
305 the whole of the deposits of such member bank pursuant to chapter 167I.

306 SECTION 52. Section 7 of said chapter 73, as most recently amended by section 29 of
307 said chapter 235, is hereby further amended by striking out the first sentence and inserting in
308 place thereof the following sentence:- For the purpose of carrying out this act, the central bank
309 may exercise all the powers, rights and franchises of any bank the control, possession and
310 operation of which has been taken over by it under this act, and may exercise all the powers and

311 rights of the depositors of such bank relative to a merger or consolidation conferred upon them
312 by purchase of assets or assumption of liabilities pursuant to chapter 167I.

313 SECTION 53. Section 16 of said chapter 73, as most recently amended by section 35 of
314 said chapter 235, is hereby further amended by striking out subsection (d) and inserting in place
315 thereof the following subsection:-

316 (d) Upon payment by the Share Insurance Fund of all or any part of the portion of any
317 deposit insured by the fund in any member bank, the fund shall be subrogated to the rights of the
318 person to whom such insurance was so paid to receive the same distribution from the proceeds of
319 assets and claims of such bank as would have been payable to said person on a claim for the
320 portion of said person's deposit so paid by the Share Insurance Fund, but said person shall retain
321 the person's right to receive distribution of so much of the person's claim against said assets to
322 which said person may be entitled after reimbursement pro rata of the claims for subrogation to
323 the Share Insurance Fund as provided in this paragraph and to a federal deposit insurance
324 agency.