

# HOUSE . . . . . No. 1209

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## The Commonwealth of Massachusetts

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PRESENTED BY:

*David M. Nangle*

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*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 adoption of the accompanying bill:

An act updating certain banking laws.

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PETITION OF:

| NAME:                  | DISTRICT/ADDRESS:     | DATE ADDED:      |
|------------------------|-----------------------|------------------|
| <i>David M. Nangle</i> | <i>17th Middlesex</i> | <i>1/20/2011</i> |

# HOUSE . . . . . No. 1209

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By Mr. Nangle of Lowell, a petition (accompanied by bill, House, No. 1209) of David M. Nangle for legislation to update certain banking laws. Financial Services.

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## The Commonwealth of Massachusetts

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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           SECTION 1.

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

4           Whenever a bank as a consequence of a default of a debt owed to said bank by a  
5 depositor or shareholder, makes a transfer of funds of such depositor or shareholder to reduce or  
6 extinguish said debt, such depositor or shareholder shall be notified forthwith of such transfer by  
7 written notice sent by first class mail, directed to his last known address; provided, however, that  
8 no such transfer shall be made if such debt is the result of consumer credit granted under the  
9 provisions of chapter one hundred and forty D unless the written notice required by section  
10 twenty-three of said chapter one hundred and forty D has been given. A depositor or shareholder  
11 to whom such notice has not been sent shall be entitled to recover the amount of any actual  
12 damages.

13          SECTION 2:

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

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

### SECTION 3:

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

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

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

All trustees and other officers shall be sworn, and shall hold their several offices until others are elected and qualified in their stead; and a record of such qualification shall be made and preserved with the records of such corporation. If a person elected as trustee or other officer of such corporation does not, within forty-five days thereafter, take the oath of office, his office

thereupon shall become vacant; provided, that such oath may be taken in person at any office of such corporation or may be taken in writing before a notary public or justice of the peace and transmitted to such corporation within said period.

#### SECTION 4

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

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

#### SECTION 5

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

Copies of the minutes of the proceedings of such meeting of members or trustees verified by the affidavit of the secretary or an assistant secretary or clerk shall be filed in the office of the commissioner and mailed to the Office of the Comptroller of the Currency within ten days after such meeting. Such verified copies of the proceedings of the meeting when so filed shall be

presumptive evidence of the holding and action of such meeting. At the meeting at which conversion is voted upon, the members or trustees shall also vote upon the persons who shall be the incorporators and trustees of the state-chartered savings bank after conversion takes effect.

#### SECTION 6:

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

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

#### SECTION 7:

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

Any federal savings and loan association may convert itself into a co-operative bank upon the same terms and conditions that from time to time shall apply under federal law and regulations to the conversion of a co-operative bank to such an association; provided, however, that where authority is conferred upon the Office of the Comptroller of the Currency, in the case

of a conversion from a co-operative bank to an association, similar authority, in the case of a conversion from such an association to a co-operative bank, unless expressly provided in this section is hereby conferred upon the board of bank incorporation.

## SECTION 8

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

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

## SECTION 9:

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

Said report to the commissioner shall consist of, but not be limited to, the following: (a) the name of the officer, director, trustee or principal shareholder of said trust company, bank

holding company or other subsidiary to whom any loan or extension of credit has been made or the name of such company to which any such loan or extension of credit has been made, (b) the original amount of the loan and the interest rate thereon, (c) the date of the loan, (d) the type of loan, (e) if the loan is secured in any manner, the type of secured asset and its valuation, (f) the terms of the payment, (g) the current balance, and (h) the amount of principal or interest payments in default, if any, and the length of such default.

#### SECTION 10:

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

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

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

(2) any trust company or banking company may, subject to the provisions of sections seventy-five and seventy-six of chapter one hundred and fifty-six B as modified for the purpose of this section by the provisions hereof, or any such national banking association may sell or

exchange all or substantially all of its property and assets to or with any trust company, and any trust company may purchase all or substantially all of the assets of any trust company or any banking company of any such national banking association. A request for approval by the commissioner pursuant to this clause shall be accompanied by an investigation fee, the amount of which shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven.

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



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

If the consolidating corporations have main offices in different states or counties, the main office of the continuing corporation shall be the main office of that consolidating corporation which has the greater total assets on the date on which the merger or consolidation is approved by the board of the last consolidating corporation so to approve; provided, however, that upon a determination by the commissioner that such consolidation is not for the purpose of circumventing any geographic restrictions on the establishment of branch offices, he may allow

166 the main office of the consolidating corporation which has the lesser total assets on such date to  
167 be the main office 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  
174 stock corporation who have, as provided in section seventy-six or section eighty-five of chapter  
175 one hundred and fifty-six B, voted against any action authorized herein shall be ascertained in  
176 the 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  
186 clause (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  
188 subsection, the commissioner shall determine whether or not competition among banking  
189 institutions will be unreasonably affected and whether or not public convenience and advantage  
190 will be promoted. In making such determination, the commissioner shall consider, but not be  
191 limited to, a showing of net new benefits. For the purpose of this section, the term “net new  
192 benefits” shall mean initial capital investments, job creation plans, consumer and business  
193 services, commitments to maintain and open branch offices within a bank’s delineated local  
194 community, as such term is used within section fourteen of chapter one hundred and sixty-seven,  
195 and such other matters as the commissioner may determine.

196           For the purposes of this section, a state-chartered stock corporation shall mean a trust  
197 company, savings bank, or a cooperative bank in stock form chartered by the commonwealth, or  
198 a bank chartered by a country other than the United States. A federally chartered stock  
199 corporation shall mean a national banking association, federal savings and loan association or  
200 federal savings bank 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  
202 each class of capital stock at a meeting duly called for the purpose, preceded by a notice in  
203 writing sent to each stockholder of record and to the commissioner by registered mail at least  
204 sixty days 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  
208 the stock of stockholders of a trust company or banking company who have, as provided in

209 section seventy-six or section eighty-five of chapter one hundred and fifty-six B, voted against  
210 any 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  
226 converted into a national banking association, or consolidated or merged into, or the business and  
227 substantially all of the property and assets of which shall have been purchased or absorbed by a  
228 trust company or national banking association, or the affairs of which shall have been liquidated,  
229 shall be void 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.