

HOUSE No. 2191

The Commonwealth of Massachusetts

PRESENTED BY:

Aaron Michlewitz

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 relative to the licensing and supervision of finance companies by the Division of Banks.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>	<i>1/19/2017</i>

HOUSE No. 2191

By Mr. Michlewitz of Boston, a petition (accompanied by bill, House, No. 2191) of Aaron Michlewitz for legislation relative to the licensing and supervision of finance companies by the Division of Banks. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 543 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to the licensing and supervision of finance companies by the Division of Banks.

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. Sections 96 through 114, inclusive, and section 114A, of Chapter 140,
2 inclusive of the General Laws, as appearing in the 2012 Official Edition, are hereby repealed.

3 SECTION 2. Section 12G of chapter 255 of the General Laws, as so appearing, is hereby
4 amended by striking out the first paragraph and inserting in place thereof the following
5 paragraph:- In the event the charge or any portion thereof for life insurance under a policy issued
6 pursuant to clause (c) of the first paragraph of section 133 of chapter 175 or for accident and
7 health insurance under a policy issued pursuant to clause (j) of the first sentence of subdivision
8 (A) of section 110 of chapter 175, or for involuntary unemployment insurance under a policy
9 issued pursuant to clause (a) of section 117D of chapter 175 or any type of credit insurance under
10 a policy as authorized in connection with a loan for personal, family or household purposes, is

11 paid by the borrower or borrowers to the creditor, it shall not be deemed to constitute a charge in
12 violation of sections 90A and 114B of chapter 140 or of sections 8 and 12 of chapter 255G.

13 SECTION 3. Section 13L of chapter 255 of the General Laws, as so appearing, is hereby
14 amended by striking out the first sentence and inserting place thereof the following sentence:-
15 Section 13L. Except as otherwise provided in section 8 of chapter 255G, and section 19 of
16 chapter 255C, if a loan contract, for personal, family, or household purposes, is prepaid in full by
17 cash, a new loan, refinancing or otherwise before the final installment date, the borrower shall
18 receive a refund of the precomputed charges computed on a method which is at least as favorable
19 to the borrower as the actuarial method, so-called.

20 SECTION 4. Chapter 255B of the General Laws, as so appearing, is hereby repealed.

21 SECTION 5. Chapter 255D of the General Laws, as so appearing, is hereby repealed.

22 SECTION 6. The General Laws are hereby amended by inserting after chapter 255F, as
23 so appearing, the following chapter:

24 CHAPTER 255G. LICENSING OF CERTAIN FINANCE COMPANIES.

25 Section 1. Definitions

26 As used in this chapter the following words shall, unless the context otherwise requires,
27 have the following meanings:--

28 “Commissioner”, the commissioner of banks.

29 “Consumer Loan”, means a loan of a principal amount of less than \$50,000.00 consistent
30 with Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, the

31 proceeds of which are intended by the borrower for use primarily for personal, family, or
32 household purposes. The principal loan amount set forth in the preceding sentence shall
33 automatically adjust to correspond with any inflation adjustment made to the exempt transaction
34 amount referenced in the Federal Truth in Lending Act, Section 104, subsection (3) and any rules
35 adopted pursuant to that Act. Consumer loans subject to this chapter shall include loans made to
36 any person within this commonwealth, in person or by any other means, by an entity engaged in
37 the business of making consumer loans outside this commonwealth.

38 “Control”, means the possession, direct or indirect, of the power to direct or cause the
39 direction of the management or policies of a person, whether through the ownership of voting
40 securities, by contract other than a commercial contract for goods or non-management services,
41 or otherwise, unless the power is the result of an official position with or corporate office held by
42 the person. Controlling interest shall be presumed to exist if any person, directly or indirectly,
43 owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of
44 the voting securities or other interest of any other person.

45 “Control Person”, An individual (natural person) named that directly or indirectly
46 exercises control over the applicant.

47 “Engaged in Making Consumer Loans” means, making consumer loans or engaging
48 directly or indirectly, for a fee, commission, bonus or other consideration, in the business of
49 brokering, negotiating, arranging, aiding or assisting the borrower or lender in procuring or
50 making consumer loans.

51 “Finance charge”, the cost of credit determined in accordance with the provisions of
52 section 4 of chapter 140D.

53 “Goods”, all things movable purchased primarily for personal, family or household
54 purposes, other than motor vehicles as defined in this section, including goods which are or are
55 to become fixtures or which are to become incorporated into a structure and gift certificates.
56 Goods shall not include money or choses in action.

57 “Licensee”, means any person licensed under this chapter.

58 “Motor vehicle”, any self-propelled, motored device in, upon or by which any person is,
59 or may be, transported or drawn upon a highway and which is used or bought for use primarily
60 for personal, family or household purposes. The term does not include self-propelled tractors,
61 trucks other than those purchased for personal or family non-business use, all commercial trailers
62 and semitrailers, buses, earth-moving and construction machinery or equipment, power shovels,
63 road building machinery or equipment, implements of husbandry and other agricultural
64 machinery or equipment, or machinery or equipment not designed primarily for highway
65 transportation but which may incidentally transport persons on a highway, or devices which
66 move upon or are guided by a track, or travel through the air.

67 “Motor vehicle retail installment contract” or “contract”, an agreement, signed by the
68 buyer in this commonwealth, pursuant to which the title to, the property in or a lien upon a motor
69 vehicle, which is the subject matter of a retail installment sale, is retained or taken by a retail
70 seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term
71 includes a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing
72 of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a
73 sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee

74 or lessee is bound to become, or has the option of becoming, the owner of the motor vehicle
75 upon full compliance with the terms of the contract.

76 “Motor vehicle sales finance company”, (1) any person engaged, in whole or in part, in
77 purchasing motor vehicle retail installment contracts from one or more retail sellers and (2) a
78 retail seller engaged, in whole or in part, in holding motor vehicle retail installment contracts
79 acquired from retail buyers. The term "motor vehicle sales finance company" does not include
80 the pledge of an aggregate number of such contracts to secure a bona fide loan thereon.

81 “Nationwide multi-state licensing system”, a system involving 1 or more states, the
82 District of Columbia, or U.S. Territories for the sharing of regulatory information and the
83 licensing and application processes, by electronic or other means, for financial services providers

84 “Retail buyer” or “buyer”, a person who buys or agrees to buy a motor vehicle or goods
85 or services from a retail seller for use primarily for personal, family or household purposes and
86 who executes a retail installment contract in connection therewith, or any legal successor in
87 interest to such person, notwithstanding that he may have entered into one or more extension or
88 refinancing agreements.

89 “Retail installment sale agreement”, an agreement, other than a revolving credit
90 agreement or agreement reflecting a sale made pursuant thereto, signed by the buyer in this
91 commonwealth, involving a finance charge and providing for the sale of goods or the rendering
92 of services or both, or for the issuance of merchandise certificates, for a specified amount which
93 the buyer undertakes to pay in more than one payment subsequent to the making of the
94 agreement, or not involving a finance charge and providing for the sale of goods or the rendering
95 of services or both, or for the issuance of merchandise certificates, for a specific amount which

96 the buyer undertakes to pay in five or more installments subsequent to the making of the
97 agreement. A retail installment sales agreement shall not include an agreement signed by a
98 nonresident buyer in the commonwealth if such buyer has agreed that the law of his state shall
99 apply. Retail installment sale agreement shall also include any contract in the form of a bailment
100 or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially
101 equivalent to or in excess of the value of goods involved and it is agreed that the bailee or lessee
102 will become, or for no other or for a nominal consideration has the option to become the owner
103 of the goods upon full compliance with his obligations under the contract. A retail installment
104 sale agreement shall not include an agreement which provides (a) for the payment of the total
105 sale price in no more than three monthly installments and (b) a finance charge not in excess of
106 one dollar and (c) no collateral security for the seller.

107 “Retail installment sales finance company”, any person other than an installment seller
108 engaged, in whole or in part, in purchasing retail installment sale agreements or revolving credit
109 agreements of one or more retail sellers. The term “retail installment sales finance company”
110 shall not include the pledgee of an aggregate number of such agreements to secure a bona fide
111 loan thereon.

112 “Retail seller” or “seller”, a person who sells a motor vehicle or goods or services to a
113 retail buyer under or subject to a retail installment contract.

114 “Revolving credit agreement”, an agreement, other than a retail installment sale
115 agreement, signed by the buyer in this commonwealth pursuant to which the buyer may purchase
116 at retail, goods or services or merchandise certificates on credit from time to time and under the
117 terms of which a finance charge is to be computed in relation to the buyer’s balance from time to

118 time. A revolving credit agreement shall not include an agreement signed by a nonresident buyer
119 in the commonwealth if the buyer has agreed that the law of his state shall apply. A revolving
120 credit agreement shall be deemed to be signed by the buyer if, after a request for an account,
121 such agreement is in fact signed by the buyer, or if that account is used by the buyer, or if
122 another is authorized by the buyer to use it, or if, after receiving notice of a change in the terms
123 of an established account pursuant to which a credit card has previously been issued by the
124 creditor, that account is thereafter used by the buyer, or another person is thereafter authorized
125 by the buyer to use it.

126 “Security interest”, any property right or title in goods which are the subject of a retail
127 installment sale agreement or revolving credit agreement taken or retained to secure performance
128 of any obligation of the buyer under agreement, and any renewal or extension thereof,
129 notwithstanding shipment or delivery to the buyer.

130 “Services”, any work, labor, or other services, purchased primarily for personal, family or
131 household purposes, or furnished or agreed to be furnished in the delivery, installation, repair or
132 improvement of goods, including but not limited to alterations, or improvements upon or in
133 connection with real property, but excluding insurance of all types.

134 Section 2. Licenses Required

135 (a) No person shall without first obtaining a license under this chapter from the
136 commissioner:

137 (1) engage in making consumer loans;

138 (2) act as a motor vehicle sales finance company; or

139 (3) act as a retail installment sales finance company.

140 (b) The following shall not be required to obtain a license pursuant to subsection (a):

141 (1) a bank as defined in section one of chapter 167, or any subsidiary thereof;

142 (2) a national banking association, federal savings bank, federal savings and loan
143 association, federal credit union, or any subsidiary thereof;

144 (3) a bank, trust company, savings bank, savings and loan association or credit union
145 organized under the laws of any other state of the United States, or any subsidiary thereof;

146 (4) a person conducting fewer than 5 transactions under subsection (a) within any period
147 of 12 consecutive months.

148 (c) The provisions of this chapter shall not apply to:

149 (1) Loans to any student, or to any parent, legal guardian or sponsor of a student,
150 made by any nonprofit, public or independent post-secondary educational institution within the
151 commonwealth authorized by law to grant degrees, by the commonwealth or by any agency or
152 instrumentality thereof; and provided, further, that such institutions may not take, receive,
153 reserve, or charge interest, expenses and other consideration for making or securing a loan,
154 except in the event of prepayment or refinancing, in whole or in part, of any existing loans by
155 such institution to any such student, or to any such parent, legal guardian or sponsor of a student,
156 which refinancing or prepayment occurs within eighteen months of the date such loan was made;

157 (2) Loans that are subject to section 90A of chapter 140 or section 28B of chapter
158 183;

159 (3) Transactions for which the commissioner, by regulation, determines that coverage
160 under this chapter shall not be necessary to carry out the purposes of this chapter.

161 Section 3. License Application

162 (a) Any person seeking a license pursuant to this chapter shall file an application
163 accompanied by an investigation fee, determined annually by the secretary of administration and
164 finance under section 3B of chapter 7.

165 (b) The application for a license shall be in a form prescribed by the commissioner
166 and shall contain:

167 (1) the name and address or addresses where the business of the applicant is located; and

168 (2) if the applicant is a partnership, association, corporation, or other form of business
169 organization, the names and addresses of each member, director, principal officer thereof, and
170 any individual acting as a manager of an office location.

171 (c) Such application shall also include a description of the activities of the applicant,
172 in such detail and for such periods as the commissioner may require, as well as such further
173 information as the commissioner may require. The commissioner may require an applicant or
174 licensee to make, execute and deliver to the state treasurer a good and sufficient bond, as
175 determined by regulation.

176 (d) The commissioner may participate in a Nationwide multi-state licensing system
177 for the sharing of regulatory information and for the licensing and application, by electronic or
178 other means, of entities engaged in any business under section 2(a) of this chapter. The
179 commissioner may establish requirements for participation by an applicant in a Nationwide

180 multi-state licensing system which may vary from the provisions of this section. The
181 commissioner may require a background investigation of each applicant engaged in any business
182 under section 2(a) of this chapter by means of fingerprint and state and national criminal history
183 record checks by the department of criminal justice information services pursuant to section 172
184 of chapter 6 and the Federal Bureau of Investigation. If the applicant is a partnership, association,
185 corporation or other form of business organization, the commissioner may require a background
186 investigation for each member, director and principal officer of the applicant and any individual
187 acting as a manager of an office location. The applicant shall pay directly to the Nationwide
188 multi-state licensing system any additional fees relating to participation in the multi-state
189 licensing system.

190 Section 4. Approval and Issuance of License

191 (a) Upon the filing of an application for a license, the commissioner shall issue the
192 applicant a license to engage in a business licensed under this chapter, if the commissioner finds
193 that:

194 (1) the financial responsibility, character, reputation, integrity and general fitness of
195 the applicant, and of the partners or members thereof if the applicant is a partnership or
196 association, and of the officers, directors and principal employees if the applicant is a
197 corporation, are such as to warrant belief that the business will be operated honestly, fairly,
198 soundly and efficiently in the public interest consistent with the purposes of this chapter;

199 (2) That the applicant, and each officer, director, and control person of the applicant,
200 has never had a license under this chapter, or similar license revoked in any governmental

201 jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a
202 revocation;

203 (3) The applicant, and each officer, director, and control person of the applicant has
204 not been convicted of a felony in a domestic, foreign, or military court:

205 (i) During the 7-year period preceding the date of the application for licensing and
206 registration;

207 (ii) At any time preceding such date of application, if such felony involved an act of
208 fraud, dishonesty, or a breach of trust, or money laundering;

209 (iii) Provided that any pardon or expungement of a conviction shall not be a
210 conviction for purposes of this subsection.

211 Section 5. Procedure upon Denial of a License; Appeal to Superior Court; Review of
212 Denial

213 If the commissioner fails to find that the applicant has satisfied the requirements of
214 section 4 above, he shall notify the applicant of the denial, and within 20 days thereafter he shall
215 enter upon his records a written decision and findings containing the reasons supporting the
216 denial, and shall forthwith give written notice thereof by registered mail to the applicant. Within
217 30 days after the date of such notice the applicant may appeal from such denial to the superior
218 court for the county of Suffolk, sitting in equity. The court shall hear all pertinent evidence and
219 determine the facts, and upon the facts as so determined review said denial and, as justice and
220 equity may require, affirm the same or order the commissioner to issue such license.

221 Section 6. Approval of Transfer, Sale of Controlling Interest and Relocation

222 (a) A license under this chapter shall not be transferable or assignable and shall
223 expire on a date determined by the commissioner. Any sale or transfer of control in a licensed
224 entity under this chapter shall be approved by the commissioner prior to the sale or transfer in
225 accordance with regulations determined by the commissioner to carry out the purposes of the
226 section.

227 (b) If a licensee intends to carry on such business at any place in addition to the
228 address on the license, he shall so notify the commissioner, in writing, at least 30 days prior
229 thereto, and he shall pay a fee for such additional location determined by the commissioner. Such
230 notice shall contain the address of any such additional location and such other information as the
231 commissioner may require.

232 (c) Any change of location or closing of a place of business of the licensee, either at
233 the address stated on the license or at a place other than said address stated on the license, shall
234 require prior written notice thereof to the commissioner. Such notice shall set forth the reason
235 therefore and shall be filed with the commissioner at least 30 days prior to any such relocation or
236 closing. If there shall be any change among the members, officers, partners or directors of any
237 licensee, the licensee shall notify the commissioner in a timely manner of the name, address and
238 occupation of each new member, officer, partner or director, and provide such other information
239 as the commissioner may require.

240 Section 7. License Renewal

241 (a) A license issued under this chapter shall be valid for a period of not more than 1 year.
242 The commissioner may renew a license under this chapter upon the submission of documents
243 showing:

244 (1) the licensee remains in compliance with this chapter; and

245 (2) the licensee has paid all required fees for renewal of the license. The license of any
246 licensee failing to satisfy the minimum standards for license renewal under this chapter shall
247 expire.

248 Section 8. Board To Establish Maximum Rates of Charge; Notice; Hearing; Prohibitions

249 As used in this section the term "small loans" shall mean "consumer loans" as defined
250 under section 1 of this chapter.

251 As used in this section the term "licensee" shall mean all persons licensed to make
252 consumer loans under this chapter.

253 (a) The small loans regulatory board shall investigate from time to time the economic
254 conditions and other factors relating to and affecting the business of making loans under this
255 chapter, inclusive, and shall ascertain all pertinent facts necessary to determine what maximum
256 rate of charge should be permitted. Upon the basis of such ascertained facts, the board shall
257 determine and establish by regulation or order a maximum rate of charge in connection with such
258 loans which will induce efficiently managed commercial capital to be invested in such business
259 in sufficient amounts to make available adequate credit facilities to individuals seeking such
260 loans at reasonable rates, and which will afford those engaged in such business a fair and
261 reasonable return upon the assets. Such maximum rate of charge established by the board may be
262 the aggregate of two or more different maximum rates applicable to different portions of the
263 unpaid principal balance, so that as the size of the loan or the unpaid principal balance increases
264 the aggregate rate decreases.

265 (b) The board may reestablish the maximum monthly rate of charge from time to time on
266 the basis of changed conditions and facts. When the board establishes a maximum rate of charge
267 it shall also by order permit licensees to precompute the monthly rate of charge contracted for on
268 scheduled unpaid principal balances of loans contracted to be repaid in substantially equal and
269 consecutive monthly installments of principal and charges combined with such installments
270 applied to the unpaid balance of principal and the precomputed charge combined, subject to such
271 provisions as the board shall by order prescribe for a refund or credit in the event of prepayment
272 and for extension and default charges in the event of an extension or default. Such refund or
273 credit shall be computed on a method which is at least as favorable to the borrower as the
274 actuarial method, so-called. If the prepayment is made other than on an installment due date, it
275 shall be deemed to have been made on the first installment due date if the payment is before that
276 date, and in any other case it shall be deemed to have been made on the next preceding or next
277 succeeding installment due date, whichever is nearer to the date of prepayment. Where the
278 amount of the credit for anticipation of payment is less than one dollar, no refund need be made.
279 The details of application and the rules for a fraction of a month or partial prepayments shall be
280 subject to the order of the board.

281 (c) Before establishing or reestablishing the maximum rate of charge, the board shall give
282 reasonable notice by mail of its intention to all licensees and shall give such licensees an
283 opportunity to be heard thereon and to introduce evidence with respect thereto. Any order which
284 the board may make establishing or reestablishing the maximum rate of charge after such hearing
285 shall contain the effective date thereof, which shall be not less than 60 days after notice of the
286 establishing of such new rates as given by mail to each licensee. An order of the board
287 establishing or reestablishing the maximum rate of charge shall not apply to loans made prior to

288 its effective date. Within the authority conferred by this section, the board shall be subject to all
289 pertinent provisions of chapter 30A.

290 (d) The total amount to be collected on any loan by a licensee for interest, expenses
291 and other considerations shall not, in the aggregate, exceed an amount equivalent to the
292 maximum monthly rate computed on unpaid principal balances of the amount actually received
293 by the borrower except that the lawful fees actually paid out by the lender to a public officer for
294 filing, recording, releasing or discharging any instrument securing the loan may be charged to
295 and collected from the borrower when the loan is made or at any time thereafter and may be
296 collected in such manner as is authorized by the board in connection with loans on which charges
297 are precomputed as heretofore provided, but such interest shall not exceed 12 percent per annum
298 or the original rate of interest on the note evidencing the loan, whichever is less, after the
299 termination of 1 year after maturity of the loan.

300 (e) No licensee shall willfully permit any person, or any husband and wife jointly or
301 severally, to be obligated, either directly or contingently to such licensee, under more than one
302 contract of loan at the same time for the purpose of obtaining a higher rate of charge than would
303 otherwise be permitted by this section on a single loan contract. No licensee or company or
304 association to which this chapter applies, inclusive, apply shall charge or receive upon any loans
305 more than the maximum rate of charge permitted by this section. No charge, bonus, fee, expense
306 or demand of any nature whatsoever, except as herein provided, shall be made upon loans to
307 which said sections relate; provided, however, that a licensee may, if the loan agreement so
308 provides, assess and collect a charge, not to exceed 10 dollars, for any check, draft or order for
309 the payment of money submitted in accordance with said agreement which is returned unpaid or
310 not honored by a bank or other depository.

311 Section 9. Finance Charges; Rates; Computation; No Other Charge To Be Taken

312 (a) A motor vehicle sales finance company or retail installment sales finance
313 company may charge, receive and collect, a finance charge not in excess of an annual percentage
314 rate of 21 percent. Such finance charge shall be computed on the amount financed as determined
315 under chapter 140D on contracts payable in successive monthly installments substantially equal
316 in amount.

317 (b) On contracts providing for installments extending for a period less than or greater
318 than 1 year, the finance charge shall be computed proportionately. The finance charge may be
319 computed on the basis of a full month for any fractional month period in excess of 15 days.
320 When a motor vehicle retail installment contract or retail installment sales agreement provides
321 for unequal or irregular installments, the finance charge shall be no more than the effective rate
322 provided in this section, having due regard for the schedule of installments.

323 (c) The finance charge shall be inclusive of all charges incident to investigating and
324 making the contract, and for the extension of the credit provided for in the contract and no fee,
325 expense or other charge whatsoever shall be taken, received, reserved or contracted for except as
326 provided in this section and for those items expressly provided for in the motor vehicle retail
327 installment contract or retail installment sales agreement as set forth in chapter 140D.

328 Section 10. Law as to Rate of Interest in Absence of Agreement Not Affected

329 Section 8 of this chapter shall not affect so much of section 3 of chapter 107 as provides
330 that, if there is no agreement for a different rate, the interest on money shall be at the rate of 6
331 dollars upon each 100 dollars for a year.

332 Section 11. Enforcement Duties of Police

333 The state police and the police of the cities or towns shall carry out the directions of the
334 commissioner in enforcing the provisions of this chapter, and any regulations made by him.

335 Section 12. Loans with Charges Exceeding Section 8 Limits Voidable; Composite Rate;
336 Extension, Default or Deferment Charges Not Used To Determine Maximum Rate of Charge

337 (a) An exempt entity under section 2(b)(1), (2), or (3) of this chapter, may not take,
338 receive, reserve or charge interest, expenses and other considerations for making or securing a
339 consumer loan in excess of those permitted by section 8 of this chapter.

340 (b) Any consumer loan made by any exempt entity on which charges for interest,
341 expenses and other considerations exceed those permitted by section 8 may be declared void by
342 the supreme judicial or superior court in equity upon petition by the person to whom the loan
343 was made, and any such exempt entity making such loan shall be subject to a fine of not more
344 than 500 dollars. This section shall not be construed as preventing a rate of charge for interest,
345 expenses and other consideration on one or more portions of a loan in excess of the permitted
346 maximum rate of charge applicable to said portion or portions, provided, that the composite rate
347 of charge on the whole loan produces an amount equal to or less than that which would be
348 produced were said maximum rate of charge applied to said loan. Extension, default or
349 deferment charges shall not be deemed to be interest, expenses and other considerations in
350 determining the maximum rate of charge that may be taken, received, reserved or charged for
351 said loan.

352 Section 13. Business without License; Void Loans

353 Any consumer loan made by an unlicensed person in violation of section 8 of this chapter
354 shall be void.

355 Section 14. Regulations; Investigations and Examinations

356 (a) The commissioner shall have the powers to prescribe rules and regulations
357 necessary and proper for carrying out the administration and enforcement of this chapter
358 including, but not limited to, the granting of licenses and the renewal thereof, the conduct of
359 examinations and investigations, terms of agreements, late charges, fees, and the keeping of
360 records by a licensee.

361 (b) The commissioner shall have the authority to conduct investigations and examinations
362 for:

363 (1) purposes of initial licensing, license renewal, license suspension, license conditioning,
364 license

365 revocation or termination, or general or specific inquiry or investigation to determine
366 compliance with

367 this chapter;

368 (2) purposes of making determinations of a licensee's compliance with the provisions of
369 this chapter or any rule or regulation issued hereunder and with any other law, rule or regulation
370 applicable to the conduct of the business for which it is licensed under this chapter. The
371 commissioner or a representative of the commissioner shall have the authority to access, receive
372 and use any books, accounts, records, files, documents, information or evidence the

373 commissioner deems relevant to the inquiry or investigation regardless of the location,
374 possession, control or custody of such documents, information or evidence; and

375 (3) for the purposes of investigating violations or complaints arising under this chapter, or
376 for the purposes of examination, the commissioner may review, investigate, or examine any
377 licensee, individual or person subject to this chapter, in order to carry out the purposes of this
378 chapter.

379 (c) Each licensee or person subject to this chapter shall make available to the
380 commissioner upon request the books and records relating to the operations of such licensee,
381 individual or person. The commissioner shall have access to such books and records and
382 interview the officers, principals, employees, independent contractors, agents, and customers of
383 the licensee, individual or person subject to this chapter concerning their business.

384 (d) Each licensee or person subject to this chapter shall make or compile reports or
385 prepare other information as directed by the commissioner in order to carry out the purposes of
386 this section including, but not limited to: (i) accounting compilations; (ii) information lists and
387 data concerning transactions under this chapter in a format prescribed by the commissioner; or
388 (iii) such other information deemed necessary to carry out the purposes of this section. A
389 licensee neglecting to file such report or failing to amend the same within 15 days of notice from
390 said commissioner directing the same shall, unless such neglect or failure is due to justifiable
391 cause and not due to willful neglect, pay to the commonwealth 50 dollars for each day during
392 which such neglect or failure continues.

393 (e) In making any examination or investigation authorized by this chapter, the
394 commissioner may control access to any documents and records of the licensee or person under

395 examination or investigation. The commissioner may take possession of the documents and
396 records or place a person in exclusive charge of the documents and records in the place where
397 they are usually kept. During the period of control, no individual or person shall remove or
398 attempt to remove any of the documents and records except pursuant to a court order or with the
399 consent of the commissioner. Unless the commissioner has reasonable grounds to believe the
400 documents or records of the licensee have been, or are at risk of being altered or destroyed for
401 purposes of concealing a violation of this chapter, the licensee or owner of the documents and
402 records shall have access to the documents or records as necessary to conduct its ordinary
403 business affairs.

404 (f) The commissioner shall preserve a full record of each such examination of a licensee.
405 All records of investigation and reports of examination by the commissioner including, but not
406 limited to, work papers, information derived from such reports or in response to such reports, and
407 any copies thereof in the possession of any licensee under the supervision of the commissioner,
408 shall be confidential and privileged communications, shall not be subject to subpoena and shall
409 not be a public record under clause 26 of section 7 of chapter 4. For the purpose of this
410 paragraph, records of investigation and reports of examinations shall include records of
411 investigation and reports of examinations conducted by any bank regulatory agency of the
412 federal government and any other state, and of any foreign government which are considered
413 confidential by such agency or foreign government and which are in possession of the
414 commissioner. In any proceeding before a court, the court may issue a protective order to seal the
415 record protecting the confidentiality of any such record, other than any such record on file with
416 the court or filed in connection with the court proceeding, and the court may exclude the public
417 from any portion of a proceeding at which any such record may be disclosed. Copies of such

418 reports of examination shall be furnished to a licensee for its use only and shall not be exhibited
419 to any other person, organization or agency without prior written approval by the commissioner.
420 The commissioner may furnish to regulatory agencies of the federal government, of other states,
421 or of foreign countries and any law enforcement agency, such information, reports, inspections
422 and statements relating to the licensees under his supervision.

423 (g) In order to carry out the purposes of this section, the commissioner may: (i) retain
424 attorneys, accountants, or other professionals and specialists as examiners, auditors, or
425 investigators to conduct or assist in the conduct of examinations or investigations; (ii) enter into
426 agreements or relationships with other government officials or regulatory associations in order to
427 improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform
428 methods or procedures, and documents, records, information or evidence obtained under this
429 section; (iii) use, hire, contract or employ public or privately available analytical systems,
430 methods or software to examine or investigate the licensee, individual or person subject to this
431 chapter; (iv) accept and rely on examination or investigation reports made by other government
432 officials, within or without the commonwealth; or (v) accept audit reports made by an
433 independent certified public accountant for the licensee, individual or person subject to this
434 chapter in the course of that part of the examination covering the same general subject matter as
435 the audit and may incorporate the audit report in the report of the examination, report of
436 investigation or other writing of the commissioner.

437 (h) No person subject to this chapter shall knowingly withhold, abstract, remove,
438 mutilate, destroy, or secrete any books, records, computer records, or other information unless
439 otherwise authorized by law or regulation.

440 (i) The commissioner, and any person designated by him, may require the attendance and
441 testimony of any person whom the commissioner deems necessary relative to the conduct and
442 operation of such business. The total cost for any such inspection, which shall be paid by the
443 licensee within 30 days after the receipt of an invoice therefore, shall be in accordance with fees
444 determined annually by the secretary of administration and finance pursuant to section 3B of
445 chapter 7, including expenses for necessary travel outside the commonwealth for the purposes of
446 conducting such inspections.

447 (j) Persons licensed under this chapter are under a continuing obligation to update
448 information on file with the commissioner. If any information filed with the commissioner
449 becomes materially inaccurate, the licensee shall promptly submit an amendment to its
450 application records that will correct the information on file with the commissioner filed through
451 the Nationwide multi-state licensing system, where required.

452 Section 15. Suspension, Revocation, or Surrender of License; Grounds; Notice and
453 Hearing

454 (a) The commissioner may suspend or revoke any license issued pursuant to this chapter
455 if said commissioner finds that:

456 (1) the licensee has violated any provision of this chapter or any rule or regulation
457 adopted hereunder, or any other law applicable to the conduct of its business; or

458 (2) any fact or condition exists which, if it had existed at the time of the original
459 application for such license, would have warranted the commissioner in refusing to issue such
460 license.

461 (b) Except as provided in section 16, no license shall be revoked or suspended except
462 after notice and a hearing thereon pursuant to chapter 30A.

463 (c) A licensee may surrender a license by delivering to the commissioner written
464 notice that it thereby surrenders such license, but such surrender shall not affect the civil or
465 criminal liability of the licensee for acts committed before such surrender.

466 (d) No revocation, suspension or surrender of any license shall impair or affect the
467 obligation of any pre-existing lawful contract between the licensee and any person.

468 Section 16. Issuance of Cease and Desist Order; Notice and Hearing; Vacation or
469 Modification of Order; Review Summary Suspension

470 (a) If the commissioner determines, after giving notice of and opportunity for a hearing,
471 that a licensee has engaged in or is about to engage in an act or practice constituting a violation
472 of a provision of this chapter or a rule, regulation or order hereunder, he may order such licensee
473 to cease and desist from such unlawful act or practice and take such affirmative action as in his
474 judgment will effect the purposes of this chapter.

475 (b) If the commissioner makes written findings of fact that the public interest will be
476 irreparably harmed by delay in issuing an order under subsection (a) he may issue a temporary
477 cease and desist order. Upon the entry of a temporary cease and desist order, the commissioner
478 shall promptly notify, in writing, the licensee affected thereby that such order has been so
479 entered, the reasons therefore, and that within 20 days after the receipt of a written request from
480 such licensee, the matter will be scheduled for hearing to determine whether or not such
481 temporary order shall become permanent and final. If no such hearing is requested and none is
482 ordered by the commissioner, the order shall remain in effect until it is modified or vacated by

483 the commissioner. If a hearing is requested or ordered, the commissioner, after giving notice of
484 and opportunity for a hearing to the licensee subject to said order, shall, by written finding of
485 facts and conclusions of law, vacate, modify or make permanent the order.

486 (c) No order under this section, except an order issued pursuant to subsection (b) and (d),
487 may be entered without prior notice of and opportunity for a hearing. The commissioner may
488 vacate or modify an order under this section upon finding that the conditions which required
489 such an order have changed and that it is in the public interest to so vacate or modify.

490 (d) The commissioner may issue an order summarily suspending a license under this
491 chapter:

492 (1) when an imminent threat of financial loss or imminent threat to the public welfare
493 exists. The order to summarily suspend a license shall be served upon the licensee.

494 (2) A licensee upon which an order to summarily suspend its license has been served
495 shall have 20 days after the date of service of the order within which to file with the
496 commissioner a request for a hearing.

497 (3) A hearing shall be promptly held upon receipt of a request for a hearing filed by a
498 licensee.

499 (4) A summary suspension of a license shall continue until the commissioner finds that
500 the imminent threat of financial loss or imminent threat to the public welfare no longer exist.

501 (e) Any order issued pursuant to this section shall be subject to review as provided in
502 chapter 30A.

503 Section 17. Penalties

504 (a) Whoever violates section 2 or any rule or regulation promulgated thereunder shall be
505 punished by a fine of not more than \$2,000 or by imprisonment in the house of correction for not
506 more than 2 1/2 years or by imprisonment in state prison for not more than 5 years, or both such
507 fine and imprisonment. Each day such violation occurs or continues shall be deemed a separate
508 offense. The penalty provision of this section shall be in addition to, and not in lieu of, any other
509 law applicable to a licensee or other person for violating section 2 or any rule or regulation made
510 thereunder.

511 (b) Whenever the commissioner finds that any licensee or exempt person under section 2
512 has violated this chapter or any rule or regulation adopted thereunder, or any other law of the
513 commonwealth or federal laws applicable to the conduct of the business subject to this chapter,
514 the commissioner may, by order, in addition to any other action authorized under this chapter or
515 any rule or regulation made thereunder, impose a penalty upon the person which shall not exceed
516 \$5,000 for each violation, up to a maximum of \$100,000 for such violation plus the costs of
517 investigation. The commissioner may impose a penalty which shall not exceed \$5,000 for each
518 violation of this chapter, or any rule or regulation adopted thereunder, by a person other than a
519 licensee or exempt person under section 2, plus the costs of investigation.

520 (c) Nothing in this section shall limit the right of any individual or entity who has been
521 injured as a result of any violation of this chapter by a licensee, or any person other than a
522 licensee or exempt person under section 2, to bring an action to recover damages or restitution in
523 a court of competent jurisdiction.

524 (d) Any findings or order issued by the commissioner pursuant to this section shall be
525 subject to review as provided in chapter 30A.

526 Section 18. Violation – Written Notice

527 (a) Whenever the commissioner determines that any person has, directly or indirectly,
528 violated any section of this chapter or any rule or regulation adopted thereunder, applicable to the
529 conduct of the licensed business within the commonwealth, or any order issued by the
530 commissioner under this chapter or any written agreement entered between the licensee and the
531 commissioner, the commissioner may serve upon that person a written notice of intention:

532 (1) to prohibit the person from performing in the capacity of a principal employee on
533 behalf of any licensee for a period of time that the commissioner considers necessary;

534 (2) to prohibit the person from applying for or obtaining a license from the commissioner
535 for a period up to 36 months following the effective date of an order issued under subsection (b)
536 or (c); or

537 (3) to prohibit the person from any further participation, in any manner, in the conduct of
538 any business licensed under this chapter in Massachusetts or to prohibit the person from being
539 employed by, an agent of, or operating on behalf of a licensee under this chapter or any other
540 business which requires a license from the commissioner.

541 (b) A written notice issued under subsection (a) shall contain a written statement of the
542 facts that support the prohibition and shall give notice of an opportunity for a hearing to be held
543 thereon. The hearing shall be fixed for a date not more than 30 days after the date of service upon
544 the commissioner of the request for a hearing. If the person fails to submit a request for a hearing
545 within 20 days of service of notice under subsection (a), or otherwise fails to appear in person or
546 by a duly authorized representative, the party shall be considered to have consented to the
547 issuance of an order of prohibition in accordance with the notice.

548 (c) In the event of the consent under subsection (b), or if after a hearing the commissioner
549 finds that any of the grounds specified in the notice have been established, the commissioner
550 may issue an order of prohibition in accordance with subsection (a) as the commissioner finds
551 appropriate.

552 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the
553 person. The commissioner shall also serve a copy of the order upon the licensee of which the
554 person is an employee or on whose behalf the person is performing. The order shall remain in
555 effect and enforceable until it is modified, terminated, suspended, or set aside by the
556 commissioner or a court of competent jurisdiction.

557 (e) Except as consented to in writing by the commissioner, any person who, pursuant to
558 an order issued under subsection (b) or (c), has been prohibited from participating in whole or in
559 part in the conduct of any business licensed under this chapter in Massachusetts may not, while
560 the order is in effect, continue or commence to perform in the capacity of a principal employee,
561 or otherwise participate in any manner, if so prohibited by order of the commissioner, in the
562 conduct of the affairs of:

563 (1) any licensee under this chapter;

564 (2) any other business which requires a license from the commissioner; or

565 (3) any bank, as defined under section 1 of chapter 167 or any subsidiary thereof.

566 SECTION 7. Section 14(a) of chapter 255G of the General Laws, as inserted by
567 SECTION 6, shall take effect upon passage. The remainder of SECTION 6 shall take effect 9
568 months after date of its passage.

569 SECTION 8. (a) A license issued pursuant to chapter 140, 255B or 255D of the General
570 Laws, including all authorized locations, that is in effect immediately before the effective date of
571 this act shall remain in force as a license under said chapter 255G. Such licensees shall file a
572 renewal application in accordance with section 7 of chapter 255G of the General Laws.

573 (b) Any person that was not required to obtain a license pursuant to chapter 140, chapter
574 255B or chapter 255D, of the General Laws, but that is now required to obtain a license under
575 chapter 255G shall file an application for a license within 6 months of the effective date of this
576 act in order to continue to act as a consumer lender in the commonwealth. If such application is
577 timely filed and pending with the commissioner, that person may continue to make consumer
578 loans in this commonwealth, until such time as the application has been approved, withdrawn or
579 denied.