

HOUSE No. 1123

The Commonwealth of Massachusetts

PRESENTED BY:

Jonathan D. Zlotnik

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 mergers of credit unions and banks, and charter conversions of insured depository institutions.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|----------------------------|----------------------|-----------------|
| <i>Jonathan D. Zlotnik</i> | <i>2nd Worcester</i> | <i>1/9/2019</i> |

HOUSE No. 1123

By Mr. Zlotnik of Gardner, a petition (accompanied by bill, House, No. 1123) of Jonathan D. Zlotnik relative to mergers of certain financial institutions. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2980 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to mergers of credit unions and banks, and charter conversions of insured depository institutions.

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. Chapter 167I of the General Laws is hereby amended by striking section 4
2 and inserting in place thereof the following section:-

3 Section 4. Any 1 or more mutual banks or subsidiary banking institutions and any 1 or
4 more credit unions, or federal credit unions may merge or consolidate into a single mutual bank,
5 subsidiary banking institution, or credit union upon terms approved by a vote of at least 2/3 of
6 the board of each mutual bank and the board of directors of each credit union, and shall have
7 been approved in writing by the commissioner. The terms of any such merger or consolidation
8 shall be approved by the voting body of each mutual bank and the shareholders of each credit
9 union in the manner prescribed herein. A request for such approval by the commissioner shall be
10 accompanied by an investigation fee, the amount of which shall be determined annually by the

11 secretary of administration and finance pursuant to section 3B of chapter 7, a copy of the terms
12 of any agreement reached by the respective boards and certified copies of the votes of such
13 boards. If the commissioner, after such notice and hearing as the commissioner may require, is
14 satisfied that a merger or consolidation may be effected on terms approved by the commissioner
15 and finds that such merger or consolidation is in the interests of the depositors, shareholders or
16 members of the institutions concerned, such merger or consolidation may be approved by the
17 commissioner subject to the commissioner's direction. In making a finding that any such merger
18 or consolidation is in the interests of depositors, shareholders or members, the commissioner
19 shall also determine whether competition among banking institutions or credit unions will be
20 unreasonably affected and whether public convenience and advantage will be promoted. In
21 making such determination, the commissioner shall consider, at a minimum, a showing of net
22 new benefits. For the purposes of this section, the term "net new benefits" shall include initial
23 capital investments, job creation plans, consumer and business services, commitments to
24 maintain and open branch offices within the bank or credit union's delineated community, as
25 such term is used within section 14 of chapter 167, and such other matters as the commissioner
26 may deem necessary or advisable.

27 Before becoming effective, any merger or consolidation authorized by this section,
28 hereinafter referred to as a "consolidation", shall have been approved by a vote of at least 2/3 of
29 the voting body of each mutual bank, subsidiary banking institution or credit union present,
30 qualified to vote and voting at a meeting specially called to consider the subject and approved by
31 a vote of at least a majority of the members, corporators or shareholders of each credit union or
32 bank present, qualified to vote and voting at a meeting specially called for that purpose. Notice
33 for such meetings shall be given in accordance with the relevant provisions of law. A certificate

34 under the hands of the presidents and clerks or other duly authorized officers of all merging or
35 consolidating corporations and credit unions setting forth that each institution, respectively, has
36 complied with the requirements of this section shall be submitted to the commissioner who, if
37 approving such consolidation, shall endorse such approval upon such certificate. No such
38 transaction under this section shall be consummated until arrangements satisfactory to any excess
39 deposit insurer of each such bank or credit union, if applicable, have been made and notice
40 thereof has been received by the commissioner.

41 The offices and depots of any credit union or bank merged or consolidated under this
42 section may be maintained as branch offices or depots of the continuing corporation with the
43 written permission of, and under such conditions, if any, as approved by the commissioner.

44 SECTION 2. Said chapter 167I is hereby further amended by striking out section 10 and
45 inserting in place thereof the following section:-

46 Section 10. A credit union may convert to a mutual bank and a mutual bank may convert
47 to a credit union pursuant to section 80A of chapter 171. A federally-chartered credit union may
48 convert to a mutual bank and a mutual bank may convert to a federally-chartered credit union
49 pursuant to the Federal Credit Union Act subject to the approval of the commissioner under such
50 conditions as may be imposed by the commissioner and subsection (m) of section 80A of chapter
51 171.

52 SECTION 3. Chapter 171 of the General Laws is hereby amended by striking out section
53 78A and inserting in place thereof the following section:-

54 Section 78A. Any 1 or more credit unions may merge or consolidate with 1 or more
55 savings banks, as defined in section 1 of chapter 168, or 1 or more co-operative banks, as defined

56 in section 1 of chapter 170, or 1 or more subsidiary banking institutions, as defined in section 1
57 of chapter 167H and section 4 of chapter 167I. Any 1 or more savings banks, as defined in
58 section 1 of chapter 168, co-operative banks, as defined in section 1 of chapter 170, or 1 or more
59 subsidiary banking institutions, as defined in section 1 of chapter 167H and section 4 of chapter
60 167I may merge or consolidate with 1 or more credit unions.

61 SECTION 4. Said chapter 171 is hereby further amended by striking out section 80A and
62 inserting in place thereof the following section:-

63 Section 80A. (a) A credit union subject to this section may convert into a federal credit
64 union, a mutual savings bank governed by chapter 168, a mutual co-operative bank governed by
65 chapter 170, a mutual federal savings bank or a mutual federal savings and loan association
66 which exist under authority of the United States. A mutual savings bank governed by chapter
67 168 or a mutual co-operative bank governed by chapter 170 may convert into a credit union. If
68 permissible under federal law, a mutual federal savings bank or a mutual federal savings and
69 loan association may convert into a credit union. The conversion shall comply with all
70 applicable federal laws and regulations. A credit union insured by the Massachusetts Credit
71 Union Share Insurance Corporation shall file notification of its intent to convert with said
72 corporation at least 90 days before the date of the proposed special meeting of the members of
73 the credit union. A mutual savings bank insured by the Deposit Insurance Fund shall file
74 notification of its intent to convert with said Fund at least 90 days before the date of the proposed
75 special meeting of the incorporators of the mutual savings bank. A mutual co-operative bank
76 insured by The Co-operative Central Bank shall file notification of its intent to convert with said
77 Bank at least 90 days before the date of the proposed special meeting of the shareholders of the
78 mutual co-operative bank. No credit union, mutual savings bank, or co-operative bank may

79 convert pursuant to this section so long as any financial assistance provided by said corporation
80 to such credit union, mutual savings bank, or co-operative bank remains unpaid or has not been
81 compromised or settled. Any such repayment, compromise or settlement shall be approved by
82 the commissioner.

83 (b) The converting institution shall file with the commissioner, at the same time, notices,
84 disclosures and communications required by or sent to the National Credit Union Administration
85 or the Federal Deposit Insurance Corporation. The commissioner may require changes and
86 additions to said notices, disclosures or communications, except as required by federal law or
87 regulation.

88 (c) A converting financial institution that is adequately capitalized and has received at
89 least a satisfactory rating in its most recent examination for compliance with the Community
90 Reinvestment Act may submit a plan of conversion approved by a 2/3 vote of the entire board of
91 directors or trustees, as the case may be, to the commissioner. Unless waived by the
92 commissioner, the plan shall include but not be limited to:

93 (1) a 3 year business plan for the appropriate chartered institution which shall include pro
94 forma financial statements for the resulting institution;

95 (2) in the case of a conversion to a bank charter, a commitment by the converting
96 institution that it will not convert to a stock form before the expiration of 1 year of the effective
97 date of the conversion to a mutual bank charter;

98 (3) an estimated budget for conversion expenses;

99 (4) financial statements for the most recently completed quarter;

100 (5) if applicable, the procedures and timing for termination of excess deposit insurance
101 from the Massachusetts Credit Union Share Insurance Corporation, The Depositors Insurance
102 Fund or the Co-operative Central Bank, as the case may be; and

103 (6) other relevant information that the commissioner may reasonably require.

104 (d) Included with the plan shall be an information statement to be sent to corporators,
105 shareholders or members, as the case may be, of the converting institution which shall fully and
106 fairly disclose all significant terms and steps to be taken for the conversion and shall include but
107 not be limited to:

108 (1) a statement as to why the board is considering the conversion;

109 (2) a statement of the major positive and negative business effects of the proposed
110 conversion;

111 (3) the impact on the corporator's, shareholder's or member's financial and other
112 interests in the resulting financial institution;

113 (4) in the case of a credit union converting to a bank charter, a disclosure that the
114 conversion from a credit union to a mutual bank could lead to a member losing ownership
115 interest in the credit union if the mutual bank subsequently converts to a stock institution and the
116 member does not become a stockholder; and

117 (5) in the case of a credit union converting to a bank charter, a disclosure of any
118 conversion related economic benefit a director or senior management official may receive
119 including receipt of or an increase in compensation and an explanation of any foreseeable stock
120 related benefits associated with a subsequent conversion to a stock institution; the explanation of

121 stock related benefits shall include a comparison of the opportunities to acquire stock that are
122 available to officials and employees, with those opportunities available to the general
123 membership.

124 (e) A converting institution shall file with the commissioner a plan of conversion and an
125 information statement at least 120 days before the date of the proposed special meeting of the
126 corporators, shareholders or members, as the case may be. The commissioner may require
127 reasonable changes to the plan of conversion and information statement. The commissioner may
128 also require any equitable disclosure he determines applicable to the proposed conversion. The
129 commissioner may specify the form, type and other material aspects of the plan of conversion
130 and information statement to be sent to corporators, shareholders or members, as the case may
131 be, except to the extent that it does not conflict with federal law or regulation.

132 (f) The commissioner shall review the contents of the plan before the board of directors
133 or trustees of the converting institution presents the conversion plan to the corporators,
134 shareholders or members, as the case may be, for a vote. The commissioner shall authorize the
135 distribution of the conversion plan and information statement only if the commissioner is
136 satisfied of all of the following:

137 (1) the plan discloses to the corporators, shareholders or members, as the case may be,
138 information concerning the advantages and disadvantages of the proposed conversion;

139 (2) the information statement discloses the impact on the corporator's, shareholder's or
140 member's financial and other interests in the resulting institution; and

141 (3) the conversion would not be made to circumvent a pending supervisory action that is
142 initiated by the commissioner or other regulatory agency because of a concern over the safety
143 and soundness of the converting institution.

144 (g) The commissioner shall render a decision within 30 days from the date of the filing of
145 the plan or any amendment thereof. Upon authorization by the commissioner of the distribution
146 of the contents of the conversion plan and information statement, the converting institution shall
147 call a special meeting of the corporators, shareholders or members, as the case may be, to vote on
148 the conversion plan. At least 30 days before the special meeting, the converting institution shall
149 mail to each corporator, shareholder or member, as the case may be, a notice of the special
150 meeting, the conversion plan and information statement.

151 (h) The plan of conversion shall be approved by a majority vote of those corporators,
152 shareholders or members voting. A corporator, shareholder or member may vote on the proposal
153 to convert in person at the special meeting held on the date set for the vote or by written ballot
154 filed by the qualified voter. The vote on the conversion proposal shall be by secret ballot and
155 conducted by an independent entity. The independent entity shall be a company with experience
156 in conducting corporate elections. A director or officer of the converting institution, or an
157 immediate family member of a director or officer, shall not have an ownership interest in, or be
158 employed by, the entity.

159 (i) A converting institution or an officer or director thereof shall not directly or indirectly
160 give or offer or provide a chance to win a lottery or anything of substantial value, as determined
161 by the commissioner, to a member or a director of the credit union, to a corporator or a trustee of

162 a mutual savings bank or a shareholder or a director of a mutual co-operative bank for an action
163 related to the conversion or as an inducement to vote on the plan of conversion.

164 (j) The provisions on notice to corporators, shareholders or members, as the case may be,
165 and voting procedures in this section shall govern the process for converting to a mutual bank or
166 credit union notwithstanding other provisions of this chapter or a by-law of the converting
167 institution to the contrary.

168 (k) Certified copies of the results of the board of the converting institution and votes of
169 the respective corporators, shareholders or members, as the case may be, shall be filed with the
170 commissioner. The converting institution shall also certify that the information statement, plan,
171 and other written materials provided to corporators, shareholders or members were identical to
172 those materials considered satisfactory by the commissioner.

173 (l) If the commissioner disapproves of the methods by which the votes were taken or the
174 procedures applicable to the votes, the commissioner may direct that a new vote be taken. If the
175 commissioner does not disapprove of the methods by which the membership or board vote was
176 taken within 10 days after the notification is given, the vote shall be considered approved.

177 (m) If the conversion to a mutual savings bank or a mutual co-operative bank is approved
178 by the credit union members and the commissioner receives notification from the converting
179 credit union that approvals required under state and federal law and regulations, including
180 approvals needed for deposit insurance by the Federal Deposit Insurance Corporation have been
181 obtained, and that any waiting period prescribed by federal law has expired, and in the case of
182 conversion to a mutual savings bank, it will become a member of the Depositors Insurance Fund
183 and of the deposit insurance fund thereof and has made all applicable payments thereto as

184 determined by the commissioner, or in the case of conversion to a mutual co-operative bank it
185 shall become a member of The Co-operative Central Bank and of the share insurance fund
186 thereof and has made all applicable payments thereto as determined by the commissioner, a
187 certificate to transact business shall be issued by the commissioner as applicable. A conversion
188 to a state chartered savings bank or a state chartered co-operative bank under this section shall
189 not be consummated until arrangements satisfactory to the Depositors Insurance Fund or The
190 Co-operative Central Bank have been made and notice thereof has been received by the
191 commissioner. After receipt of the certificate to transact business, the converting credit union
192 shall promptly file the certificate and its articles of organization with the secretary of state. Upon
193 the filing, the charter of the converting credit union shall automatically cease and the converting
194 credit union shall cease to be a credit union and shall become a mutual savings bank or a mutual
195 co-operative bank. Upon the conversion, the converted mutual bank shall possess all of the
196 rights, privileges and powers granted to it by its articles of organization and by the laws
197 applicable to the type of mutual bank charter into which it converted, and all of the assets and
198 business of the converting credit union shall be transferred to and vested in it without any deed
199 or instrument of conveyance; but the converting credit union may execute a deed or instrument
200 of conveyance as is convenient to confirm the transfer. The converted mutual bank shall be
201 subject to all of the duties, relations, obligations and liabilities of the converting credit union,
202 whether as debtor, depository or otherwise, and shall be liable to pay and discharge the debts and
203 liabilities, to perform all the duties in the same manner and to the same extent as if the converted
204 mutual bank had itself incurred the obligation or liability or assumed the duty or relation. Rights
205 of creditors of the converting credit union and liens upon the property of such credit union shall
206 be preserved unimpaired and the converted mutual bank shall be entitled to receive, accept,

207 collect, hold and enjoy all gifts, bequests, devises, conveyances and appointments in favor of or
208 in the name of the converting credit union and whether made or created to take effect before or
209 after the conversion.

210 If the conversion to a credit union is approved by the board of the converting mutual
211 bank, and its incorporators or shareholders, and the commissioner receives notification from the
212 converting mutual bank that approvals required under state and federal law and regulations,
213 including approvals needed for insurance by the National Credit Union Administration have been
214 obtained, and that any waiting period prescribed by federal law has expired, and it will become a
215 member of the Massachusetts Credit Union Share Insurance Corporation and of the share
216 insurance fund thereof and has made all applicable payments thereto as determined by the
217 commissioner, a certificate to transact business shall be issued by the commissioner as
218 applicable. A conversion to a credit union under this section shall not be consummated until
219 arrangements satisfactory to the Massachusetts Credit Union Share Insurance Corporation have
220 been made and notice thereof has been received by the commissioner. After receipt of the
221 certificate to transact business, the converting mutual bank shall promptly file the certificate and
222 its articles of organization with the secretary of state. Upon the filing, the charter of the
223 converting mutual bank shall automatically cease and the converting mutual bank shall cease to
224 be a mutual bank and shall become a credit union. Upon the conversion, the converted credit
225 union shall possess all of the rights, privileges and powers granted to it by its articles of
226 organization and by the laws applicable to the type of credit union charter into which it
227 converted, and all of the assets and business of the converting mutual bank shall be transferred to
228 and vested in it without any deed or instrument of conveyance; but the converting mutual bank
229 may execute a deed or instrument of conveyance as is convenient to confirm the transfer. The

230 converted credit union shall be subject to all of the duties, relations, obligations and liabilities of
231 the converting mutual bank, whether as debtor, depository or otherwise, and shall be liable to pay
232 and discharge the debts and liabilities, to perform all the duties in the same manner and to the
233 same extent as if the converted credit union had itself incurred the obligation or liability or
234 assumed the duty or relation. Rights of creditors of the converting mutual bank and liens upon
235 the property of such mutual bank shall be preserved unimpaired and the converted credit union
236 shall be entitled to receive, accept, collect, hold and enjoy all gifts, bequests, devises,
237 conveyances and appointments in favor of or in the name of the converting mutual bank and
238 whether made or created to take effect before or after the conversion.

239 (n) If the conversion to a federal chartered institution is approved by the Board of the
240 converting institution and by the incorporators, shareholders or members, as the case may be, the
241 converting institution shall provide notification to the commissioner that all approvals under state
242 and federal law and regulations including approvals needed for deposit insurance by the Federal
243 Deposit Insurance Corporation or the National Credit Union Administration have been obtained
244 and that any waiting period prescribed by federal law has expired and shall provide a certified
245 copy of the approval of the federal mutual charter by the appropriate regulatory agency of the
246 federal government. Upon acceptance of the federal charter, the converting institution's charter
247 from the commonwealth shall cease to exist.

248 (o) A person who willfully violates the disclosure provisions of this section knowing the
249 disclosure made to be false or misleading in a material respect shall upon conviction be fined not
250 more than \$5,000 or imprisoned not more than 3 years, or both.