

HOUSE No. 2679

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel Cahill

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 amending the banking laws and related statutes.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Daniel Cahill

10th Essex

Stephan Hay

3rd Worcester

HOUSE No. 2679

By Mr. Cahill of Lynn, a petition (accompanied by bill, House, No. 2679) of Daniel Cahill and Stephan Hay relative to deposits of public monies. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

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

An Act amending the banking laws and related statutes.

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. The first sentence of section 34 of Chapter 29 the General Laws as
2 appearing in the 2016 Official Edition, is hereby amended by striking out the word
3 “commonwealth” the second time it appears and inserting in place thereof following words:–
4 commonwealth, provided that, a portion of such monies may be deposited as provided in
5 subsection (d).

6 SECTION 2. Section 34 of said Chapter 29, as so appearing, is hereby further amended
7 by adding after subsection (c) the following subsection:–

8 (d) A portion of the public monies referred to in subsection (a) may be deposited in
9 accordance with the following conditions: (1) the funds are initially invested through a banking
10 institution as defined in Chapter 167A doing business in the commonwealth that is insured by the
11 Federal Deposit Insurance Corporation and is selected by the treasurer; (2) the selected banking
12 institution arranges for the redeposit of the funds in deposit accounts in one or more banks or

13 savings and loan associations wherever located; and (3) the full amount or principal and any
14 accrued interest of each such deposit account is insured by the Federal Deposit Insurance
15 Corporation.

16 SECTION 3. Chapter 35 of the General Laws, as appearing in the 2016 Official Edition
17 is hereby amended by striking out section 22 and inserting in place thereof the following
18 section:—

19 Section 22. Except as otherwise provided, county treasurers, clerks of the courts, clerks
20 of the district courts, sheriffs and superintendents of jails and houses of correction, probation
21 officers, registers of probate and insolvency and register of deeds, having more money in their
22 hands than is required for immediate use, shall deposit it, in their official names, in national
23 banks, trust companies, savings banks, co-operative banks, federal savings banks or federal
24 savings and loan associations, at the best practicable interest rates. County treasurers may also
25 deposit in time deposits in such national banks, trust companies, savings banks, co-operative
26 banks, federal savings banks or federal savings and loan associations, and invest in United State
27 treasury bills. Interest thereon shall be paid to the county, except that interest accruing to
28 deposits by registers of probate and clerks of courts shall be paid to the Commonwealth;
29 provided, that interest accruing on the deposit as aforesaid of any money paid to any official
30 mentioned in this section which is so paid under order of a court or which is otherwise subject to
31 the direction of a court shall, if the court so directs, be paid to the parties entitled to the principal
32 fund of such deposit.

33 SECTION 4. Section 4 of Chapter 40G of the General Laws as appearing in the 2016
34 Official Edition is hereby amended by striking out the second paragraph and inserting in place

35 thereof the following paragraph:– Unless otherwise specified, all moneys of the MTDC from
36 whatever source derived shall be paid to the treasurer of the MTDC. Said moneys shall be
37 deposited in the first instance by the treasurer in one or more national banks, trust companies,
38 savings banks, cooperative banks, federal savings banks or federal savings and loan associations
39 in compliance with section 34 of chapter 29. Funds in said accounts shall be paid out on the
40 warrant or other order of the treasurer of the MTDC or of such other person or persons as the
41 board may authorize to execute such warrants or orders.

42 SECTION 5. Section 55 of Chapter 44 of the General Laws, as appearing in the 2016
43 Official Edition is hereby amended by striking out, in lines 25 and 26, the words “banking
44 companies or co-operative banks” and inserting the words:– or cooperative banks or in
45 accordance with the provisions of the second paragraph of section 55B of this chapter.

46 SECTION 6. Section 55B of Chapter 44, as so appearing is hereby amended by adding
47 the following paragraph:–

48 Moneys of any city, town, district or regional school district invested in compliance with
49 this section may be invested in accordance with the following conditions: (1) the moneys are
50 initially invested through a banking institution doing business in the commonwealth selected by
51 the city, town, district or regional school district; (2) the selected banking institution arranges for
52 the redeposit of the moneys in deposit accounts in one or more banks or savings and loan
53 associations wherever located; and (3) the full amount of principal and any accrued interest of
54 each such deposit account is insured by the Federal Deposit Insurance Corporation. The
55 provisions of section 62 shall not apply to this section.

56 SECTION 7. Chapter 167 of the General Laws, as appearing in the 2016 Official Edition,
57 is hereby amended by adding after section 51 the following section:-

58 Section 52. For the purpose of this section the following words shall, unless the context
59 clearly indicates otherwise, have the following meanings:-

60 “Core processor”, an entity, other than a financial institution, bank holding company,
61 mutual holding company or credit union service organization, that provides data processing for
62 three or more of the following services to a financial institution:

- 63 1) Making and servicing loans
- 64 2) Opening new accounts
- 65 3) Processing cash deposits and withdrawals
- 66 4) Processing payments and checks
- 67 5) Managing customer accounts.
- 68 6) Maintaining records for all the bank’s transactions.

69 “Financial institution”, a bank or federal bank as defined in section 1 or a federal credit
70 union as defined in section 1 of chapter 171.

71 The following unfair methods and unfair and unsafe acts or practices are hereby declared
72 to be unlawful.

73 (a) It shall be a violation of this section for a core processor in contracting with a
74 financial institution:

75 1. To require contracts in excess of five years without a commitment to upgrade their
76 products and services to meet safe and sound tenets of banking and compliance with state and
77 federal requirements.

78 2. Failure to indemnify the financial institution from infringement claims arising out of
79 software or technology products or services provided or licensed by the core processor.

80 3. To charge excessive or previously undisclosed fees or charges for a financial
81 institution to obtain its own data including tapes of such data.

82 4. To charge termination penalties from a financial institution that is not the continuing
83 entity upon consummation of a merger with another financial institution, including a merger with
84 and into a financial institution that utilizes the same core processor, (a) that exceed the total of all
85 non-extraordinary assessments for such products or services to such financial institution during
86 the twelve months preceding the merger or combination, or (b) the financial institution
87 terminating or cancelling such agreement has maintained an arrangement for core processing
88 with such provider continuously for no less than six years preceding the merger or combination.

89 5. To perform abusive audits of existing contracts over extended retroactive periods upon
90 notification by a financial institution that it will not to renew its contract with that core processor.

91 6. To act to accomplish, either directly or indirectly, through any parent company,
92 subsidiary or agent, what would otherwise be prohibited under this section.

93 7. To coerce a financial institution to assent to a release, assignment, novation, waiver or
94 estoppel that would prospectively relieve any person from liability imposed by this section.

95 (b) Any provision of a contract between a core processor and a financial institution or
96 practice thereunder in violation of this section shall be void and unenforceable.

97 (c) This section shall apply to all contracts between a core processor and a financial
98 institution existing on or after the effective date of this chapter.

99 SECTION 8. Section 3 of chapter 167A of the General Laws, as so appearing, is hereby
100 amended by striking out in lines 22 to 24, the words “section 2 shall not apply to the acquisition
101 by a bank holding company, or a company or a banking institution which would become a bank
102 holding company if” and inserting in place thereof the following words:- If the commissioner
103 determines that the reciprocity, age of institution and deposit cap requirements of section 2 have
104 been met then the other provisions of section 2 shall not apply to the acquisition by a bank
105 holding company, or a company or a banking institution which would become a bank holding
106 company; provided that”.

107 SECTION 9. Said section 2 of said chapter 167H, as so appearing, is hereby further
108 amended by adding the following subsection:-

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

112 SECTION 10. The second paragraph of section 6 of said chapter 168 of the General
113 Laws, as so appearing, is hereby amended by inserting, after the word “issue”, in line 23, the
114 following words:- unless such time is extended by the board. Said extension shall be limited to 1
115 occurrence subject to such terms and conditions as the board may impose.

116 SECTION 11. The second paragraph of section 25 of said chapter 168, as so appearing, is
117 hereby amended by striking out the second sentence and inserting in place thereof the following
118 sentence:-

119 The directors shall elect the treasurer and may elect or select any other officers as they
120 determine.

121 SECTION 12. The second paragraph of section 6 of said chapter 170 of the General
122 Laws, as so appearing, is hereby amended by inserting, after the word “issue”, in line 24, the
123 following words:- unless such time is extended by the board. Said extension shall be limited to 1
124 occurrence subject to such terms and conditions as the board may impose.

125 SECTION 13. The second paragraph of section 19 of said chapter 170, as so appearing, is
126 hereby amended by striking out the second sentence and inserting in place thereof the following
127 sentence:-

128 The directors shall elect the president, the vice-president or vice-presidents, treasurer and
129 may elect or select any other officers as they determine.

130 SECTION 14. The second paragraph of section 6 of said chapter 172 of the General
131 Laws, as so appearing, is hereby amended by inserting, after the word “issue”, in line 23, the
132 following words:- unless such time is extended by the board. Said extension shall be limited to 1
133 occurrence subject to such terms and conditions as the board may impose.

134 SECTION 15. The second paragraph of section 13 of said chapter 172, as so appearing, is
135 hereby amended by striking out the second sentence and inserting in place thereof the following
136 sentence:-

137 The directors shall elect the treasurer and may elect or select any other officers including
138 an executive vice-president as they determine.

139 SECTION 16. Section 2 of chapter 183C of the General Laws, as so appearing, is hereby
140 amended by striking out the definition of “High cost home mortgage loan” and inserting in place
141 thereof the following definition:– “High cost home mortgage loan”, a consumer credit
142 transaction that is secured by the borrower’s principal dwelling, other than a reverse mortgage
143 transaction, with an annual percentage rate or fees which exceed the limitations set pursuant to
144 regulations issued by the Commissioner of Banks which shall be no less protective than
145 limitations set forth at 12 CFR 1026.32(a)(1).

146 SECTION 17. Said chapter 183C, as so appearing, is hereby further amended by striking
147 out section 3 and inserting in place thereof the following section:– Section 3. A creditor may not
148 make a high-cost home mortgage loan without first receiving certification from a counselor in
149 accordance with the requirements pursuant to 209 CMR 32.34(1) or 12 CFR 1026.34(a)(5). A
150 high cost home mortgage loan originated by a lender in violation of this section shall not be
151 enforceable.

152 SECTION 18. Section 4 of said chapter 183C, as so appearing, is hereby amended by
153 striking out the second paragraph and inserting in place thereof the following paragraph:– There
154 shall be a presumption that the borrower is able to make the scheduled payments if, at the time
155 the loan is made, the lender has complied with 209 CMR 32.43 or 12 CFR 1026.43 in
156 determining the borrower’s ability to repay.

157 SECTION 19. Section 6 of said chapter 183C, as so appearing, is hereby amended by
158 striking out, in lines 2 and 3, the following words:— “greater than 5 per cent of the total loan
159 amount or \$800, whichever is greater”.