

# **HOUSE . . . . . No. 4176**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, November 6, 2019.

The committee on Ways and Means, to whom was referred the Bill relative to banks and banking (House, No. 1049), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4176).

For the committee,

AARON MICHLEWITZ.

**HOUSE . . . . . No. 4176**

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-First General Court  
(2019-2020)**  
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An Act relative to banks and banking.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to further regulate banking, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 44 of the acts of 1932, as most recently amended by section 20 of  
2 chapter 64 of the acts of 1999, is hereby amended by striking out section 1 and inserting in place  
3 thereof the following section:-

4           Section 1. All the savings banks established under the laws of the commonwealth and  
5 subject to the provisions of chapter 168 of the General Laws, hereinafter referred to as member  
6 banks, are hereby constituted a corporation under the name of the Depositors Insurance Fund,  
7 hereinafter referred to as the corporation. All the co-operative banks established under the laws  
8 of the commonwealth and subject to the provisions of chapter 170 of the General Laws shall also  
9 be members of the corporation, and the term “member bank” shall mean each such savings bank  
10 and co-operative bank. It shall be the purpose of the corporation to assist such member banks,  
11 when they are temporarily in need of cash or hold investments which cannot readily be

12 liquidated, by making loans to them or any of them secured by the pledge of mortgages or other  
13 securities legally held by such member banks. Any bank established under the authority of said  
14 chapters 168 and 170 shall upon its organization be a member bank; provided, that such bank  
15 meets the membership qualification requirements of section 17B of chapter 43 of the acts of  
16 1934, at all times. The assets of the corporation shall be divided into 2 separate and distinct  
17 funds, as follows: (a) the Liquidity Fund, which shall consist of all assessments collected under  
18 section 4 and all investments thereof and all income thereon; and (b) the Deposit Insurance Fund,  
19 established by said chapter 43 of the acts of 1934.

20 Any federal savings bank with its main office located in the commonwealth and which  
21 has converted from a state charter shall be eligible and may apply for insurance coverage by the  
22 Deposit Insurance Fund of its deposits in excess of the amount insured by a federal deposit  
23 insurance agency in accordance with the requirements of chapter 43 of the acts of 1934.

24 The term federal deposit insurance agency as used in this act shall mean Federal Deposit  
25 Insurance Corporation or Federal Savings and Loan Insurance Corporation or any successor to  
26 either corporation.

27 The corporation may require each member bank to certify at least annually that it meets  
28 the membership qualification requirements of section 17B of chapter 43 of the acts of 1934 and  
29 to submit such reports and information as the corporation deems appropriate to determine  
30 whether such member bank meets or is likely to meet such membership qualification  
31 requirements.

32 SECTION 2. Section 2 of said chapter 44, as most recently amended by section 21 of  
33 chapter 64 of the acts of 1999, is hereby further amended by striking the first sentence and

34 inserting in place thereof the following sentence:- The officers of the corporation shall be a  
35 president, 1 or more vice-presidents, a treasurer, a clerk and such other officers as the by-laws  
36 may provide.

37 SECTION 3. Said section 2 of said chapter 44, as so amended, is hereby further amended  
38 by adding the following paragraph:-

39 The by-laws may provide for such matters as the board of directors deems appropriate to  
40 implement this act and shall prescribe membership qualification requirements pursuant to section  
41 17B of chapter 43 of the acts of 1934.

42 SECTION 4. Section 7 of said chapter 44, as most recently amended by section 77 of  
43 chapter 371 of the acts of 1983, is hereby further amended by striking out clause (e) and inserting  
44 in place thereof the following clause:-

45 (e) Deposits in federally insured banks.

46 SECTION 5. The third sentence of section 8 of said chapter 44, as amended by section 8  
47 of chapter 296 of the acts of 1987, is hereby further amended by inserting after the word “banks”  
48 the following words:- and co-operative banks.

49 SECTION 6. Section 10 of said chapter 44, added by section 3 of chapter 178 of the acts  
50 of 1987, is hereby amended by striking out the first sentence and inserting in place thereof the  
51 following sentence:- The corporation shall have the authority to indemnify its directors, trustees,  
52 officers, employees and other agents and the directors, officers, employees and other agents of  
53 the Co-operative Central Bank organized pursuant to chapter 45 of the acts of 1932, as amended,  
54 to whatever extent specified in or authorized by a by-law adopted pursuant to law.

55 SECTION 7. The third paragraph of said section 10 of said chapter 44, as appearing in  
56 said section 3 of said chapter 178, is hereby amended by inserting after the word “corporation”,  
57 the second time it appears, the following words:- or the Co-operative Central Bank organized  
58 pursuant to chapter 45 of the acts of 1932, as amended.

59 SECTION 8. The first sentence of section 1 of chapter 43 of the acts of 1934, as most  
60 recently amended by section 24 of chapter 64 of the acts of 1999, is hereby further amended by  
61 inserting after the words “savings banks” the following words:- and co-operative banks.

62 SECTION 9. The first paragraph of section 1A of said chapter 43, as most recently  
63 amended by section 167 of chapter 189 of the acts of 1984, is hereby further amended by striking  
64 out the words “twenty-five of chapter one hundred and sixty eight” and inserting in place thereof  
65 the following words:- 12 of chapter 167J of the General Laws.

66 SECTION 10. Section 3 of said chapter 43, as inserted by section 33 of chapter 238 of  
67 the acts of 1996, is hereby amended by striking out the fifth sentence and inserting in place  
68 thereof the following sentence:- In the case of a merger or consolidation of a member bank with  
69 1 or more other member banks under sections 2, 3 or 5 of chapter 167I of the General Laws, or in  
70 the case of a sale of assets of such bank to and the assumption of the liabilities by 1 or more  
71 other member banks under section 8 of said chapter 167I, the continuing bank shall succeed to  
72 any of the rights of the discontinuing bank in the assessments theretofore paid by the  
73 discontinuing bank; provided, however, that if the continuing bank is, and the discontinuing bank  
74 is not, a member of the federal deposit insurance agency section 15 shall apply to such  
75 assessments of the discontinuing bank as though such bank had become a member of a federal  
76 deposit insurance agency as provided in sections 12 to 15, inclusive.

77 SECTION 11. The third paragraph of section 3A of said chapter 43, inserted by section 1  
78 of chapter 125 of the acts of 1938, is hereby amended by inserting after the word “its” the  
79 following words:- directors or.

80 SECTION 12. Said section 3A of said chapter 43, as most recently amended by chapter  
81 371 of the acts of 1983, is hereby further amended by striking out the fourth paragraph and  
82 inserting in place thereof the following paragraph:-

83 Notwithstanding section 15 of chapter 167I of the General Laws relative to voluntary  
84 dissolution and liquidation of a member bank, in order to give effect to the purpose of this  
85 section and subject to the approval of the commissioner and of the corporation, such member  
86 bank may be dissolved and liquidate its affairs if authorized by vote of at least 2/3 of its directors  
87 or trustees; provided, that another member bank shall have assumed and agreed to pay the whole  
88 of the deposits of such member bank under section 8 of said chapter 167I. A liquidating  
89 committee of 3 persons, subject to the approval of the corporation, shall thereupon be elected by  
90 and from said directors or trustees, and, under such regulations as may be prescribed by the  
91 commissioner, shall liquidate the remaining assets, and after satisfying or adjusting all debts of  
92 and claims against such member bank not assumed by such other member bank, shall distribute  
93 the remaining proceeds among those entitled thereto proportionate to their respective interests  
94 therein. The supreme judicial court, or any justice thereof, shall have jurisdiction in equity to  
95 enforce this paragraph and to act upon all applications and in all proceedings thereunder.

96 SECTION 13. The sixth sentence of section 6 of said chapter 43 is hereby amended by  
97 inserting after the words “board of” the following words:- directors or.

98 SECTION 14. Said chapter 43 is hereby further amended by striking out section 7 and  
99 inserting in place thereof the following section:-

100 Section 7. For the purpose of carrying out the provisions of this act, the corporation may  
101 exercise all the powers, rights and franchises of any bank the control, possession and operation  
102 of which has been taken over by it under this act, and may exercise all the powers and rights of  
103 the corporators or shareholders of such bank relative to a merger or consolidation conferred upon  
104 them by sections 2, 3 and 5 of chapter 167I of the General Laws.

105 SECTION 15. Section 10 of said chapter 43, as most recently amended by section 25 of  
106 chapter 64 of the acts of 1999, is hereby amended by striking the seventh sentence and inserting  
107 in place thereof the following 2 sentences:- Upon any such vote to dissolve and liquidate the  
108 Deposit Insurance Fund, the corporation shall distribute, over a period of not more than 12  
109 months, the amount of the fund so voted for distribution. Distributions shall be based upon the  
110 member banks' respective liquidation rights in the Deposit Insurance Fund and the Share  
111 Insurance Fund of the Co-operative Central Bank as of the effective date of the transfer of the  
112 Share Insurance Fund into the Depositors Insurance Fund adjusted for any pro-rata post-transfer  
113 changes in the surplus account of the Deposit Insurance Fund based upon paid in assessments;  
114 provided, however, that the liquidation rights of co-operative bank members shall be reduced to  
115 reflect any contingent liability that is incurred by the corporation as a direct result of the merger  
116 of the Co-operative Central Bank and the corporation within 3 years from the effective date of  
117 said merger.

118 SECTION 16. The fourth subparagraph of paragraph (a) of section 17 of said chapter 43,  
119 as appearing in section 29 of chapter 64 of the acts of 1999, is hereby amended by adding the

120 following sentence:- The corporation, with the approval of the commissioner, may in its sole  
121 discretion settle or compromise the distribution rights under section 10 of a member bank that  
122 has withdrawn pursuant to section 17A.

123 SECTION 17. Said chapter 43 is hereby amended by inserting after section 17A, as  
124 added by section 30 of chapter 64 of the acts of 1999, the following section:-

125 Section 17B. (a) A member bank shall, at all times, meet the membership qualification  
126 requirements prescribed by the corporation's by-laws adopted pursuant to section 2 of chapter 44  
127 of the acts of 1932.

128 (b) Whenever the corporation, by at least a 2/3 vote of the full membership of its board of  
129 directors, determines that a member bank is unlikely to meet the membership qualification  
130 requirements of the corporation's by-laws, it shall inform the commissioner of its determination  
131 and the basis for its determination. If the commissioner agrees with the corporation's  
132 determination, the directors may require the member bank to meet the requirements by: (i)  
133 restructuring its balance sheet; or (ii) taking such other actions as the directors deem appropriate.  
134 The terms and conditions of any such required actions shall become effective when approved by  
135 the commissioner.

136 (c) Whenever the directors determine that a member bank is unlikely to meet the  
137 membership qualification requirements of the corporation's by-laws, the directors shall notify the  
138 member bank in writing, including an explanation for the basis of its determination, and advise  
139 the member bank of any of the requirements imposed pursuant to paragraph (b). The member  
140 bank shall, within 60 days, comply with the requirements enumerated in the written notification.  
141 Notwithstanding any general or special law to the contrary, if a member bank, which is not a

142 savings bank, fails to comply within the 60-day period, the member bank shall by operation of  
143 law, become a savings bank subject to chapter 168 of the General Laws at the end of the 60-day  
144 period.

145 (d) The corporation may make rules and establish procedures for making membership  
146 qualification determinations pursuant to this section.

147 (e) Upon the conversion of a member bank into a savings bank, the corporate existence of  
148 the member bank shall not terminate, but such savings bank shall be deemed to be a continuation  
149 of the entity of the member bank so converted and all property of the converted member bank  
150 including its rights, title and interests in and to all property, whether real, personal or mixed, and  
151 things in action, and every right, privilege, interest and asset of any conceivable value or benefit  
152 then existing, or pertaining to it, or which would inure to it, shall immediately, by act of law and  
153 without any conveyance or transfer and without any further act or deed, remain and be vested in  
154 and continue and be the property of such savings bank into which said member bank has  
155 converted itself, and such savings bank shall have, hold and enjoy the same in its own right as  
156 fully and to the extent as the same was held, possessed and enjoyed by the converting bank, and  
157 such savings bank, as of the effective date of said conversion, shall continue to have and succeed  
158 to all the rights, obligations and relations of said converting bank. All pending actions and other  
159 judicial proceedings to which said converting bank is a party shall not be deemed to have been  
160 abated or to have been discontinued by reasons of such conversion, but may be prosecuted to  
161 final judgment, order or decree in the same manner as if such conversion into such savings bank  
162 had not been made, and such savings bank resulting from such conversion may continue such  
163 action in its corporate name as a savings bank, and any judgment, order or decree may be

164 rendered for or against it which might have been rendered for or against such converting bank  
165 theretofore involved in such judicial proceedings.

166 (f) After compliance with the foregoing requirements, the succeeding corporation shall  
167 thereafter be entitled to exercise all of the rights and privileges and shall be subject to all of the  
168 duties and obligations of a savings bank, and shall conduct its business subject to chapter 168 of  
169 the General Laws and other applicable laws; provided, however, that, with the approval of the  
170 commissioner, the succeeding corporation shall have a reasonable time after the effective date of  
171 the conversion within which to comply with any particular provisions of such laws not  
172 hereinbefore specifically provided for and which it shall be unable to comply with on or before  
173 said date.

174 SECTION 18. (a) The Co-operative Central Bank, established by chapter 45 of the acts of  
175 1932, may merge with and into the Depositors Insurance Fund, in this section and in section 19  
176 referred to as the corporation, under the name of the corporation, pursuant to an agreement and  
177 plan of merger. Prior to the merger between the Co-operative Central Bank and the corporation,  
178 the boards of directors of the Co-operative Central Bank and the corporation shall approve of the  
179 agreement and plan of merger by a 2/3 vote. The agreement and plan of merger shall establish  
180 the terms and conditions of the merger, in addition to those terms and conditions set forth in this  
181 section, which shall include membership qualification requirements to be incorporated into the  
182 corporation's by-laws, effective as of the consummation of any such merger, and any other  
183 provisions the corporation deems appropriate to effectuate the provisions of this act.

184 (b) Upon receipt of the required approval of the directors of the Co-operative Central  
185 Bank and the corporation, the articles of merger and the surviving corporation's amended by-

186 laws shall be filed with the commissioner of banks and shall state: (i) the Depositors Insurance  
187 Fund as the surviving corporation; and (ii) the effective date of the merger determined pursuant  
188 to the agreement or plan of merger. The articles of merger shall be signed by the president and  
189 the clerk of each corporation, who shall state under the penalties of perjury that the plan or  
190 agreement of merger has been duly executed on behalf of such corporation and has been  
191 approved by the directors as required.

192 (c) No such merger shall occur until the merger and restated by-laws of the surviving  
193 corporation are approved in writing by the commissioner of banks under such terms and  
194 conditions as the commissioner may impose. Upon the commissioner's approval of the merger  
195 and the amended by-laws, the commissioner of banks shall endorse said articles of merger.

196 (d) Upon the merger authorized under the provisions of this act, the corporate existence  
197 of the Co-operative Central Bank shall cease. All of the rights and privileges of the Co-operative  
198 Central Bank and its right, title and interest to all property of whatever kind and thing in action,  
199 and every right, privilege, interest or asset then existing which would inure to it except for such  
200 merger, shall fully, and without any right of reversion, by operation of law be transferred to or  
201 vested in the Depositors Insurance Fund, without further act or deed, and the Depositors  
202 Insurance Fund as the continuing corporation shall have and hold the same in its own right to  
203 every extent that the same was owned and held by the Co-operative Central Bank.

204 (e) The Co-operative Central Bank's obligations and liabilities to any member, creditor or  
205 other person, as of the effective date of the merger, shall remain unimpaired and the Depositors  
206 Insurance Fund shall, by of operation of law, succeed to all such obligations and liabilities, as  
207 though it had itself incurred the obligation or liability; and its liabilities and obligations to

208 creditors, existing for any cause whatsoever, shall not be impaired by the merger; nor shall any  
209 obligation or liability of any member in the Co-operative Central Bank or Depositors Insurance  
210 Fund, be affected by any such merger, but such obligations and liabilities shall continue as fully  
211 and to the same extent as the same existed before the merger.

212 (f) The Share Insurance Fund of the Co-operative Central Bank established by chapter 73  
213 of the acts of 1934 shall be combined with and into the Deposit Insurance Fund of the Depositors  
214 Insurance Fund established by chapter 43 of the acts of 1934. The Reserve Fund of the Co-  
215 operative Central Bank established by chapter 45 of the acts of 1932 shall be combined with and  
216 into the Liquidity Fund of the Depositors Insurance Fund established by chapter 44 of the acts of  
217 1932.

218 SECTION 19. Notwithstanding any general or special law to the contrary, a co-operative  
219 bank, established under the laws of the commonwealth and subject to chapter 170 of the General  
220 Laws, that does not meet the corporation's membership qualification requirements, as of the  
221 effective date of the merger authorized in section 18, shall immediately be converted into a  
222 savings bank pursuant to section 17B of chapter 43 of the acts 1934, without any further action  
223 by the corporation or the commissioner of banks as of the effective date of said merger.

224 SECTION 20. Notwithstanding section 2 of chapter 44 of the acts of 1932, for a period of  
225 3 years after the effective date of this act, the by-laws of the Depositors Insurance Fund may  
226 provide for a number of directors greater than 12 and may impose term limits in order to  
227 effectuate the purposes of this act.

228 SECTION 21. Chapter 45 of the acts of 1932 is hereby repealed.

229 SECTION 22. Chapter 73 of the acts of 1934 is hereby repealed.

230           SECTION 23. Sections 21 and 22 shall take effect upon the commissioner of banks'  
231 approval of the articles of merger under section 18 of this act. The commissioner of banks shall  
232 file such approval forthwith with the house and senate clerks of the General Court and the state  
233 secretary and prominently post such approval on the division of banks website.